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PDR

UNITED STATES,
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

March 23, 1982

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MEMORANDUM FOR: Chairman Palladino
Commissioner Gilinsky
Commissioner Ahearne
Commissioner Roberts

FROM: Carlton Kammerer, Director
Office of Congressional Affairs

SUBJECT: SENATE CONSIDERATION OF S. 1207

The Senate began consideration of S. 1207, NRC's FY 82-83 authorization, on March 22, 1982. The Senate accepted the following amendments:

Abdnor (R-SD) amendment which gives DOE authority to take remedial action in the vicinity of the TVA uranium mill site at Edgemont, SD: ✓

Simpson (R-WY)--Hart (D-CO) technical amendment which:

- (1) provides an overall reduction in the level of spending authority for FY 82 of \$10 million;
- (2) makes adjustments in the allocation of the authorization of \$485,200,000 among the Commission's major program categories;
- (3) makes clarifying changes to the interim operating authority provision;
- (4) makes clear that Section 202, which authorizes the NRC to issue immediate effective license amendments where no significant hazards exist, applies to facility licenses and not material licenses; *shelley*
- (5) deletes the requirement for a nuclear powerplant licensing study; and
- (6) deletes the requirement for DOE and NRC to enter into an MOU on TMI cleanup;

McClure (R-ID) amendment which requires NRC to conduct a detailed technical review and analysis of research results obtained from LOFT:

Hart (D-CO) amendment which conforms the procedural requirements applicable to the withholding of unclassified information by DOE and NRC pursuant to Sections 147 and 148 of the Atomic Energy Act; ✓

Ford (D-KY) amendment which:

- (1) directs NRC to accelerate its resident inspector program to assure that by the end of 1982 a resident inspector is assigned at each site which is 15% complete;
- (2) directs the NRC to study ways to improve QA/QC programs; and
- (3) directs the NRC to conduct a pilot program on improved QA/QC measures;

Simpson (R-WY) amendment which requires the NRC to expedite the establishment of safety goals;

Simpson (R-WY) amendment which authorizes NRC to reimburse resident inspectors for their relocation and commuting costs.

A McClure (R-ID) amendment which would have restricted NRC from considering psychological stress issues in licensing proceedings was withdrawn when Senators Simpson and Hart committed to holding hearings on the issue when the Court's opinion was rendered.

The Senate will resume consideration of S. 1207 on Monday, March 29, 1982. Attached for your information is the Senate debate from the Congressional Record.

Attachments:
As stated

cc: EDO
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as no longer deployable, at a large waste of Federal dollars.

Finally, expenditure of R. & D. and procurement funds for any work connected with the ineffective interim basing mode dilutes and delays efforts to develop a survivable permanent basing system.

For these reasons, Mr. President, I believe it is militarily and fiscally prudent that any funding included in the MX budget request in fiscal year 1983 for work connected to the interim basing mode, and for the proposed procurement of nine missiles, be rejected by the Armed Services Committee and the Senate. I shall work with our colleagues toward this goal.

I am mindful that those who might oppose my position would argue that the interim basing mode is needed to demonstrate to the Soviets that the United States is serious about modernizing its land-based missile force, and that without interim MX deployment, our strategic position will worsen.

I believe strongly, however, that deployment of MX missiles in a basing mode which will not work would only demonstrate a weak defense policy and a wasteful investment strategy.

Mr. President, I have articulated these views in a letter I have sent today, to the chairman of our committee's strategic subcommittee (Mr. WARNER). I have urged him to support action in the strategic subcommittee to address these concerns.

I wish to share this letter with my colleagues, and ask unanimous consent that it be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE

COMMITTEE ON ARMED SERVICES,

Washington, D.C., March 22, 1982

HON. JOHN W. WARNER,

Chairman, Strategic Forces Subcommittee,
Russell Senate Office Building, Wash-
ington, D.C.

DEAR JOHN: In the past three years, we all have observed with growing frustration the nation's struggle to develop a satisfactory solution to the theoretical vulnerability of our intercontinental ballistic missile (ICBM) force. Sadly, I must conclude that we are no closer to solving that problem today than we were three years ago.

The latest proposal for procuring and basing the MX missile, embodied in the Fiscal 1983 defense budget request, represents a backward step. I believe its enactment actually will make us weaker militarily and far less able financially to fund needed defense programs.

The Fiscal 1983 (FY 83) proposal to procure nine MX missiles for about \$1.5 billion, and to devote much of the \$2.76 billion in requested research and development funds for work related to their interim basing, has several serious and fundamental flaws:

First, there has been ample expert testimony during the past five months that the interim basing mode is a military failure because it in no way reduces the vulnerability of our land-based missiles. To place 40% of our newest, proposed strategic nuclear asset, the MX missiles, in existing, non-surviving silos just repeats our present problem which

MX was supposed to solve—i.e. land based missile vulnerability.

In addition, the Air Force has testified that it is uncertain whether, and at what cost, it would transfer MX missiles from the interim basing mode to a permanent deployment scheme. This raises the prospect that 40% of our most modernized ICBM capability would remain vulnerable, and in a militarily inferior and neutralized position, even after MX deployment in a survivable system.

Thus, militarily, the interim basing mode makes no sense.

Second, fiscally, the interim basing mode makes no sense because its cost to the taxpayers for each surviving MX is about \$1.3-\$1.45 billion. This is immensely greater than the cost per surviving submarine-launched ballistic missile, and per surviving bomber, in the other two legs of our strategic deterrent TRIAD.

Third, from an arms control perspective, MX in the interim basing mode makes no sense because it dangerously reduces "crisis stability" and the threshold to nuclear war. It actually invites a preemptory strike by the Soviets, who might well feel tempted to eliminate our most threatening missiles before we could use them and it forces us to rely more heavily on a risky "launch on warning" policy, so as to "use, not lose" these MX.

Fourth, the Air Force has acknowledged that it is considering other, smaller missiles for deployment in the permanent, survivable basing mode. It also has said some changes in the current MX configuration, designed for the now-rejected multiple protective structure (MPS) basing, will be needed for permanent basing. Thus, any MX missiles procured before the final basing mode is selected could require redesign, at additional cost, or could be discarded outright as no longer deployable, at a large waste of federal dollars.

Fifth, expenditure of R&D and procurement funds for any work connected with the ineffective, interim basing mode, dilutes and delays efforts to develop a survivable, permanent basing system.

For these reasons, I believe it would be militarily and fiscally prudent for the Strategic Subcommittee to restructure the MX program. This can best be accomplished by eliminating any missile and basing mode R&D funding connected with the interim basing mode and pacing R&D to support a 1989 IOC for the permanent mode, by rejecting the proposed procurement of nine MX missiles in FY 83; and by establishing a 1989 IOC for an entire militarily credible system. I urge you to support an amendment in the Strategic subcommittee to accomplish these objectives.

I am mindful that those who might oppose our position would argue that the interim basing mode is needed to demonstrate to the Soviet Union that the United States is serious about modernizing its land-based missile force, and that without interim MX deployment, our strategic position will worsen. I believe strongly, however, that deployment of MX missiles, which could be changed or discarded, in a basing mode which will not work, would only demonstrate a weak defense policy and a wasteful investment strategy.

Thanks in advance for your consideration.

Sincerely,

CARL LEVIN,
U.S. Senator.

Mr. LEVIN. Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

REGULATORY REFORM

The PRESIDING OFFICER. The Senate will now resume consideration of S. 1080, which will be stated by title.

The legislative clerk read as follows:

A bill (S. 1080) to amend the Administrative Procedure Act to require Federal agencies to analyze the effects of rules to improve their effectiveness and to decrease their compliance costs; to provide for a periodic review of regulations, and for other purposes.

NUCLEAR REGULATORY COMMISSION AUTHORIZATIONS

TIME LIMITATION AGREEMENT

Mr. STEVENS. Mr. President, I now ask unanimous consent that the Senate proceed to the consideration of Calendar No. 141, S. 1207, authorization of appropriations for the Nuclear Regulatory Commission, under the following time agreement:

One hour on the bill, to be equally divided between the Senator from Wyoming (Mr. SIMPSON) and the Senator from Colorado (Mr. HART) or their designees.

Mr. ROBERT C. BYRD. Mr. President, has the bill been called up?

Mr. STEVENS. It has not been.

Mr. ROBERT C. BYRD. Has the clerk stated the title?

Mr. STEVENS. We have before the Senate another measure as pending business, unless it is displaced by this agreement, I say to the Senator from West Virginia.

Mr. ROBERT C. BYRD. I thought the distinguished Senator asked that the Senate proceed to the consideration of another bill.

Mr. STEVENS. No; I said, "under the following time agreement," which I have not yet read. If we do not obtain that time agreement, it is my understanding that we will remain on the other bill.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. STEVENS. I will resume. I indicated that there would be 1 hour, equally divided between the managers of the bill.

One hour on an amendment by Senators HART, SIMPSON, and MITCHELL to prohibit the use of commercial spent fuel for nuclear explosive purposes.

Thirty minutes on an amendment by Senators FORD, SIMPSON, and HART on nuclear powerplant quality assurance.

Thirty minutes on a technical amendment by Senators HART and SIMPSON.

Thirty minutes on an amendment by Senators DOMENICI and SIMPSON on uranium mill tailings regulation.

Thirty minutes on an amendment by Senator SIMPSON to require the development of a safety goal.

Thirty minutes on an amendment by Senators SIMPSON and HART on resident inspectors.

Thirty minutes on an amendment by Senator McCURE on the analysis of LOFT test results.

Thirty minutes on an amendment by Senator HART on safeguards information.

Thirty minutes on an amendment by Senator ABDNOR on uranium mill tailings at Edgemont, S. Dak.

Thirty minutes on an amendment by Senator HEINZ regarding Three Mile Island waste storage.

One hour on an amendment by Senator McCURE on powerplants licensing.

Thirty minutes on all other amendments in the first degree.

Twenty minutes on all amendments in the second degree.

Ten minutes on any debatable motion, appeals, or points of order, if submitted to the Senate.

Also, that the agreement be in the usual form, with the following proviso: That the Senate dispose of all amendments to S. 1207 with the exception of the Hart, Simpson, and Mitchell amendment to prohibit the use of commercial spent fuel for nuclear explosive purposes, limited to 1 hour, and the Domenici and Simpson amendment on uranium mill tailings regulation, limited to 30 minutes during today's session.

Provided, further, that the Senate not resume consideration of S. 1207 prior to Monday, March 29.

Provided, further, that no call for the regular order will displace S. 1207.

Mr. President, that is the proposed time agreement. If it is agreed to, it is my understanding that if any rollcall votes are ordered today, they will be dealt with by agreement, after consultation with the minority leader, with the intent that they will be put over until another time. The precise time would have to be determined later.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object—

Mr. STEVENS. Mr. President, I add to that an omission, and I apologize to the minority leader, because it was left out of my version.

Provided, further, that the Senate resume consideration of S. 1207 following disposition of S. 1080, the regulatory reform bill, and that the only amendments to be in order to S. 1207 are the amendments identified in this agreement above.

I did state that we would not resume consideration of S. 1207 prior to

Monday, March 29, and that no call for the regular order would take S. 1207 down. That was part of my original request.

The PRESIDING OFFICER. The Senator is correct.

The minority leader is recognized.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object.

Mr. STEVENS. Mr. President, I say again to the distinguished minority leader there is no intention to have rollcall votes on these amendments today if they are ordered. The precise time at which those rollcall votes would take place that may be ordered today has not yet been determined with the managers of the bill, and we are unable to state with specificity as to the exact time when we would like to hold any rollcall votes which would be ordered today on amendments that are listed in this agreement.

Mr. ROBERT C. BYRD. Mr. President, I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the agreement follows:

Ordered, That when the Senate resumes consideration of S. 1207, a bill to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes, the following amendments be the only amendments in order: (1) an amendment to be offered by the Senator from Colorado (Mr. HART), for himself and the Senator from Wyoming (Mr. SIMPSON) and the Senator from Maine (Mr. MITCHELL), to prohibit the use of commercial spent fuel for nuclear explosive purposes, to be limited to 1 hour, to be equally divided and controlled by the Senator from Colorado (Mr. HART) and the manager of the bill; (2) an amendment to be offered by the Senator from New Mexico (Mr. DOMENICI), for himself and the Senator from Wyoming (Mr. SIMPSON), relative to uranium mill tailings regulation, to be limited to 30 minutes, to be equally divided and controlled by the Senator from New Mexico (Mr. DOMENICI) and the manager of the bill; and (3) an amendment to be offered by the Senator from Pennsylvania (Mr. HEINZ), to be limited to 30 minutes, to be equally divided and controlled by the Senator from Pennsylvania (Mr. HEINZ) and the manager of the bill: Provided, That the agreement on the Heinz amendment be subject to the approval of the minority leader and may be violated by the minority leader prior to the close of business on March 23, 1982.

Ordered further, That debate on the bill shall be limited to 1 hour, to be equally divided and controlled by the Senator from Wyoming (Mr. SIMPSON) and the Senator from Colorado (Mr. HART), or their designees.

Ordered further, That debate on any debatable motion, appeal, or point of order if submitted to the Senate shall be limited to 10 minutes, to be equally divided and controlled in the usual form: Provided, That no call for the regular order shall serve to displace S. 1207.

MARCH 22, 1982.

Mr. STEVENS. Mr. President, is it correct that S. 1207 is now the pending business before the Senate?

The PRESIDING OFFICER. The Senator is correct.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1207) to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

The Senate proceeded to the consideration of the bill.

Mr. STEVENS. Mr. President, it would be the leadership's intention to notify and we hope that the cloakrooms on both sides will notify the membership that we are now on S. 1207. There is a series of amendments that will be argued before the Senate today. We do not anticipate rollcall votes on those amendments today, but once they are disposed of and the time is yielded back they will be voted on at a later time without debate.

It is incumbent upon those who wish to be heard and involved to keep up with the development of the consideration of the Nuclear Regulatory Commission bill today.

It is our hope that with the exception of those two amendments this bill will be disposed of today with the exception of the time on the bill itself. The amendments listed in the agreement just agreed to with the cooperation of my good friend, the distinguished minority leader, are most, most controversial amendments and very technical.

We are hopeful that Senators will heed our call and come to the floor if they intend to be involved in the debate on the Nuclear Regulatory Commission Authorization Act of 1982.

Mr. ROBERT C. BYRD. Mr. President, I share the views that have just been expressed by the distinguished acting Republican leader.

Will he put in a quorum call and not charge it against anyone on the bill until some of the participants can arrive?

Mr. STEVENS. Yes; I think that is proper.

Mr. President, until the arrival of the managers of the bill, at which time we will take the quorum call off, I ask unanimous consent that there be a quorum call and that time not be charged on the agreement just entered into.

The PRESIDING OFFICER (Mr. ANDREWS). Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I am pleased to present for the consideration of the Senate S. 1207, a bill authorizing funds for the Nuclear Regulatory Commission for fiscal years 1982 and 1983.

As reported from the Committee on Environment and Public Works on May 8, this bill authorizes appropriations in the amount of \$495.7 million for fiscal year 1982, and \$530 million for fiscal year 1983.

I wish to note that this is the first year the committee has recommended a multiyear authorization for the NRC, and, based upon the detailed 2-year budget proposal submitted by the agency, it is the hope that this 2-year authorization will greatly enhance the agency's ability to plan for the future.

As for the particulars of the bill: The committee has recommended an authorization of \$495.7 million for fiscal year 1982—a reduction of 1 percent in the agency's 1982 budget request. That amount, which represents a real increase in fiscal year 1982 dollars of \$6.6 million, is to be divided among the four major program offices within the agency in the following manner: \$75.6 million to "Nuclear reactor regulation," \$67.4 million to "Inspection and enforcement," \$46.3 million to "Nuclear material safety and safeguards," and \$245.7 million to "Research," with the balance allocated for "Program technical support" and "Program direction and administration."

For fiscal year 1983, the committee has recommended an authorization of \$530 million—an amount equivalent to the NRC's 1983 budget request. Similarly, this amount is to be divided among the 4 major program offices in the following manner: \$78.3 million to nuclear reactor regulation, \$70.3 million to inspection and enforcement, \$48 million to nuclear material safety and safeguards, and \$270 million to research, with the balance going to program technical support and program direction and administration.

In addition to the general funding level set forth in this bill, the committee has further recommended that certain funds be earmarked for expenditure by the agency in four specific areas: First, the bill sets aside \$27 million for fast-breeder reactor safety research and licensing review work to be conducted in each fiscal year. These funds are to be used by the agency for the purpose of establishing a regulatory framework for the licensing of fast-breeder reactors.

Of the \$27 million specifically set aside by the committee, \$20.4 million has been earmarked for use by the Office of Research to expand its review of the safety aspects of fast-breeder technology. It is the intent of the committee that the NRC have the capability to license any breeder reactor intended to demonstrate the commercial workability of breeder technology. The funds set aside for this purpose would insure the NRC's li-

ensing review process will not stand as a barrier in the critical path toward operation of such a facility.

Second, the bill earmarks a total of \$10 million in fiscal years 1982-83 for the purposes of accelerating the agency's research activities in the area of high-temperature, gas-cooled reactors. Based upon testimony which was presented to the committee, Mr. President, it appears that high-temperature, gas-cooled reactors may have significant advantages over the current generation of light-water reactors, including greater safety margins, and reduced siting risks.

Accordingly, the committee recommended that \$10 million be set aside for the purpose of enabling the agency's regulatory program in that area to keep pace with industry and Government programs for the development of a large-scale, high-temperature, gas-cooled reactor.

Third, the bill earmarks a total of \$91 million to be used by the agency in fiscal years 1982-83 for the loss of fluid test facility research program, a program which focuses on the consequences of loss-of-coolant accidents in certain types of commercial reactors.

The committee concluded, based upon testimony presented by the agency, that this program should be continued through 1983 for the purpose of completing the testing program described in the LOFT special review group report, and valuable safety information can be obtained in this 2-year period as a result of such tests. Accordingly, the committee set aside \$91 million for that purpose.

Fourth, and very importantly, the bill earmarks \$11.3 million in fiscal years 1982-83 for the purpose of developing a nuclear data link system. Briefly, that system is designed to collect data at individual operating reactors, transmit the data to NRC's headquarters, and display the data in a uniform manner in order to enable the NRC to monitor the plant and independently assess plant conditions during an accident.

Several investigations of the Three Mile Island accident pointed out the lack of timely and accurate information available to NRC's headquarters personnel and, in particular, the serious shortcomings of an emergency communication system that relies upon people to determine and communicate critical technical plant data.

The committee has long supported efforts to improve NRC's ability to communicate with the licensee during an emergency, and has, accordingly, earmarked \$11.3 million for the nuclear data link proposal. The bill specifically provides, however, that the Commission shall not have more than \$1 million in fiscal years 1982-83 until the Commission has established a prototype data link system, and, upon assessing the results of the prototype, has submitted a report to Congress containing a Commission recommendation on implementing a specific

system for all operating nuclear powerplants.

Upon submitting its report, the NRC may then proceed with a complete system—a long-needed item in nuclear regulation.

Mr. President, there have been a number of developments since the committee reported the bill many months ago. Among those is the continuing growing need for reductions in the Federal budget. The Commission should bear a share of that burden, and for this reason I intend to offer an amendment that would reduce the level of authorizations in the bill for fiscal year 1982 by an additional \$10 million.

In addition, the amendment will provide adjustments in the allocation of funding among the major program categories in the agency's budget and for certain specified activities in the bill. I believe these changes are more in line with the Commission's spending plans and priorities, given our present budgetary constraints.

The bill also contains three amendments to the Atomic Energy Act set forth in title II. The first of those amendments, authorizing the NRC to grant interim operating licenses, addresses the problem of a backlog in licensing new nuclear powerplants. For the very first time it appears that the agency's hearing process for a number of nuclear powerplants has the potential for extending beyond the date when the plants will be ready to operate.

This backlog, which can be traced to NRC's diversion of resources from licensing activities to other safety concerns following the Three Mile Island accident, has the potential, if not addressed, to impose what the committee views as unacceptable financial costs upon utilities and their ratepayers.

Mr. President, there has been considerable study of these projected licensing delays for new nuclear powerplants. When NRC projected licensing delays in January 1981, the agency anticipated that 12 plants would be delayed a total of 90 months. A number of factors have changed those early projections of delay rather dramatically. First, I think it is very fair to say that some of the utility projections of plant construction completion were overly optimistic. Lengthening construction periods have, therefore, eliminated a portion of the expected delays.

Second, the Commission has done much to accelerate its licensing program, both by directing additional effort to licensing reviews and by adopting a number of administrative reforms to eliminate unnecessary delays in staff reviews and licensing hearings. I believe the Commission has been most responsive here, while preserving its paramount responsibility to protect the public health and safety. Third, several plants in the interim have now received their full operating

licenses, thereby eliminating any further delay potential in those cases. As a result, Mr. President, the Commission's latest report to the Congress on potential reactor licensing delays anticipates that only one plant will experience any delay, and that delay is expected to be limited to 2 months.

Mr. President, the result of this latest report from the Commission are most personally gratifying to me. Some may, therefore, suggest—if I might anticipate a bit—that we might no longer need that authority in the bill to issue interim operating licenses. I do not believe that is so. I do not believe that is the case for several reasons.

First, the present Commission projections of very limited delays assumes a very ambitious licensing schedule by the Commission for the next 2 years. If the Commission meets its present projections, it will license in each of the next 2 years more than twice the number of new reactor operating licenses than have ever been issued by NRC in a single year. Mr. President, I believe it is wise and appropriate to have the interim operating authority available as a backup over the next 2 years in the event the Commission's projected schedule proves to be overly optimistic.

Second, the interim operating authority provides a useful safeguard to avoid pressures that might otherwise exist to accelerate the licensing process for these plants at the expense of safety. Should problems arise in a given case that require further study, the availability of the interim licensing authority should remove any inordinate pressures to hurry the review of those issues in the hearing process as soon as possible to avoid a licensing delay. The availability of this authority should help assure that the Commission will give all these applications a thorough review without imposing unnecessary economic costs on the ratepayers. I believe this concept of using this authority as a safeguard in those few cases where it may be needed is entirely consistent with the committee's intent. In fact, the provision itself directs the Commission to take all appropriate administrative steps to minimize the need for issuing interim operating licenses under this authority.

Mr. President, for the foregoing reasons, the committee has recommended that the Atomic Energy Act be amended to permit the NRC through 1983 to issue interim operating licenses, prior to the completion of any required hearing.

The amendment set forth in this bill establishes, however, a very detailed procedural framework for granting such licenses that is patterned after a similar provision in the Atomic Energy Act that authorized the Commission to issue such licenses up until October 30, 1973. Briefly, the amendment provides that an applicant may petition the NRC for an interim operating li-

cence after the filing of the Advisory Committee on Reactor Safeguards report, the NRC staff safety report, the NRC staff environmental statement, and a State, local, or utility emergency preparedness plan. The NRC is required to provide notice of the petition and a 30-day period for public comment. This is a very critical and important part of the procedure. Upon expiration of the 30-day comment period, the NRC may issue the interim operating license if it determines that: first, all requirements of law other than the conduct or completion of any required hearing are met; second, there is reasonable assurance that interim operation of the facility in accordance with the terms of the license will provide adequate protection to the public health and safety and the environment, which is the sole mission of the Nuclear Regulatory Commission; and third, denial of the interim license will result in delay between the time when the facility is sufficiently completed to permit interim operation and the time when a final operating license would otherwise be issued.

The amendment further provides that an applicant's initial petition for interim operating license authority shall be limited to 5 percent power. Upon approval by the NRC of the applicant's petition for interim operation at 5 percent power, the applicant may then petition for interim operation at increased power levels. Separate petitions from the utility, notice and public comment periods, and determinations by the NRC are required, however, before the Commission can allow operation at each succeeding power level.

The amendment also includes a number of procedural safeguards to insure that the issuance of the interim operating license does not prejudice the outcome of the licensing hearing for the final operating license or prejudice the rights of any party to the hearing to raise any issue in the hearing and to have that issue decided. In addition, the amendment requires that any party to the hearing or any Licensing Board member conducting the hearing promptly notify the Commission of any information indicating that the terms and conditions of the interim operating license are not being met.

Moreover, the amendment provides that, if the applicant is not prosecuting its application for the final operating license with due diligence, the interim operating license shall be suspended.

Finally, as I mentioned earlier, the Commission is directed under the amendment to adopt those administrative remedies deemed necessary to minimize the need for issuance of interim operating licenses.

The second amendment recommended by the committee in this bill authorizes the NRC to issue amendments to licenses without first holding a

public hearing, where it determines that such amendments pose "no significant hazards consideration." Although the NRC has, for years, interpreted the Atomic Energy Act to authorize the issuance of such amendments without holding a prior hearing, a recent D.C. court of appeals decision, the Sholly decision, struck down the agency's interpretation of the act.

By including this amendment, the committee seeks to address the concern expressed by the Commission in its recent testimony that a requirement that the NRC grant a requested hearing prior to making effective a facility license amendment involving "no significant hazards consideration," could result in unnecessary disruption or delay in the operation of a nuclear powerplant and could impose unnecessary regulatory burdens upon the NRC that are not related to significant safety benefits.

It is for these reasons that the committee recommends that the Atomic Energy Act be amended to authorize the NRC to issue license amendments "posing no significant hazards consideration" without first holding a public hearing.

It should be noted that, in deciding whether a particular amendment poses "no significant hazards consideration," this amendment required that the NRC consult with the State in which the particular facility is located. The committee fully expects that consultation with the State will be the rule, rather than the exception, but in those instances where prior consultation is virtually impossible and the plant is threatened with shutdown unless the amendment is granted, the NRC has further options under this amendment.

In addition, it should be noted that the authority granted the NRC under this amendment will not take effect until the Commission has promulgated regulations establishing standards for determining whether an amendment to a license involves no significant hazards consideration.

Finally, the NRC is required, under title III of this bill, to promulgate regulations establishing criteria for providing or dispensing with prior notice and public comment on "no significant hazards consideration" determinations, and procedures for consultation on such determinations with the State in which the facility is located.

The third and final amendment to the Atomic Energy Act contained in this bill deals with the sabotage of nuclear facilities. Section 236 of the Atomic Energy Act now provides that any person who intentionally and willfully destroys or causes physical damage to, or attempts to destroy or cause physical damage to, a nuclear facility shall be fined up to \$10,000, imprisoned for not more than 10 years, or both.

That provision does not cover the situation in which a person intention-

ally and willfully interrupts a powerplant's operation by merely tampering with or improperly using, rather than physically damaging or destroying, the machinery, components, or controls of the plant. Because such acts could result in substantial replacement power costs to a utility and its customers, and may endanger the public health and safety, the committee recommends amendment of the Atomic Energy Act to include this situation.

This provision is essentially the same as an amendment to the 1981 NRC authorization bill accepted by the Senate, but not enacted as law.

That, briefly, is a summary of the measure proposed to the Senate. It has been considered now for the many weeks that it has been before the body. There are two amendments under the time agreement that will come up later.

At this moment I want to signify how much I appreciate the work of my colleague, the ranking minority member of this subcommittee, Senator GARY HART, my neighbor from Colorado. He has been extraordinarily supportive and helpful, as have his staff, and the full committee. The steady counsel of Senator STAFFORD should also be recognized, the chairman of the full committee, and the ranking member of the full committee, the Senator from West Virginia (JENNINGS RANDOLPH).

The entire staff, the majority and minority staffs, has been more than helpful, as I say, in the drafting, in the presentation, and in the amending process.

Mr. President, at this time I yield to my colleague from Colorado, Senator HART.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. HART. Mr. President, I join with the distinguished Senator from Wyoming, the chairman of the Senate Subcommittee on Nuclear Regulation, in urging the Senate to pass the NRC Authorization Act for fiscal years 1982 and 1983, as reported by the Environment and Public Works Committee. Needless to say, this bill represents many hours of negotiations among the members and staff of the committee to produce a bill the members could accept unanimously.

I think that is the important consideration as the full Senate undertakes to review this measure.

The Senator from Wyoming has very skillfully, fairly, and accurately described the provisions in the reported bill.

I will not repeat that effort. I would, however, like to discuss a provision in the bill that is of particular concern to me—the provision authorizing the NRC to grant interim operating licenses for new nuclear powerplants. The interim license authorized by this provision would allow a utility to operate its powerplant prior to the conduct or completion of an NRC hearing on granting a final operating license.

The provision contains several important restrictions on the NRC's authority to issue interim operating licenses. First, the interim operating license must be limited to power levels no greater than 5 percent of full-rated thermal power. Second, if a utility seeks an interim license to operate the reactor at power levels greater than 5 percent, it must formally petition the Commission to amend the interim operating license to allow the operation of the powerplant in staged increases at specific power levels set by the NRC.

Third, the NRC may issue an interim operating license at 5 percent power, or an amendment to the license for operation at greater power levels—but only if it finds three things: First, that in all respects other than the conduct or completion of any required hearing, the requirements of law are met. Second, that there is reasonable assurance that operation of the powerplant during the interim period will provide adequate protection to public health and safety and the environment. Third, that denial of the interim operating license will result in a delay between the date on which construction of the powerplant is completed, in the NRC's judgment, and the date the final operating license would otherwise issue.

In my view, this last requirement does not authorize the NRC to issue an interim license when the utility, by failing to make a reasonable effort to meet the requirements of the licensing process in a timely manner, substantially delays completion of that process. In other words, a utility should not be able to obtain an interim operating license by unreasonably delaying its application for a final operation license.

The final restriction in this provision is the automatic termination, on December 31, 1983, of the NRC's authority to grant interim operating licenses.

I recognize and strongly support the need for the public to have a meaningful opportunity to participate in NRC decisions on licensing nuclear powerplants for operation. Because of this, I have been extremely reluctant to accept legislative changes in the NRC's regulatory regime that could short circuit mechanisms for public participation. Because, however, this provision carefully circumscribes NRC's authority to grant an interim operating license to a utility prior to completion of a public hearing, I am willing to accept it.

Other committee members and I were persuaded the NRC needed limited authority to grant interim operating licenses to eliminate an estimated 79 months of licensing delay covering some 12 or 13 separate nuclear powerplants. This is the difference between the time when construction on a plant would be completed and the date on which the NRC would issue a final operating license. Indeed, representatives

of the nuclear industry painted a grim picture of increases in licensing delays as time went on, imposing additional costs of several billion dollars on utility ratepayers.

That presentation was 10 months ago. However, the most recent NRC report on license delays, issued 2 weeks ago, shows a dramatic decrease in license delays to only 2 months.

Several factors undoubtedly have contributed to the reduction in licensing delays. The NRC has implemented administrative changes in its regulatory processes. In addition, the nuclear industry in several cases was too overly optimistic in estimating the dates for completion of construction on several nuclear powerplants. For example, last spring Diablo Canyon had an estimated license delay of 12 months. Subsequent events revealed serious deficiencies in construction of the Diablo Canyon plant which pushed farther into the future the date for completion of construction and removed Diablo Canyon from the licensing delay category altogether.

Mr. President, the fact nevertheless remains that last spring the nuclear industry cried wolf with its estimates of licensing delays and demanded relief from the Congress. That wolf, if it ever existed, apparently does not exist now. Fortunately, the Environment and Public Works Committee carefully deliberated on what type of legislative relief it would grant the nuclear industry. It developed a reasonable provision that did not overreact to the nuclear industry's extreme claims. Indeed, because a utility must demonstrate the need for an interim operating license, and given the virtual elimination of licensing delays, it is very conceivable that the authority in this provision will never be invoked.

The experience with this provision should serve as a lesson for future decisions by the Congress on reform of the NRC's regulatory processes. While we should willingly consider reasonable proposals for regulatory reform, we should also avoid knee-jerk responses to cries of "wolf" similar to the one we heard from the nuclear industry last spring.

Mr. President, I again urge the Senate to pass this bill.

I return the perhaps excessive compliments to the Senator from Wyoming as to whatever efforts I have put into presenting this legislation on the floor of the Senate. The credit for what I think is a responsible and reasonable piece of legislation lies entirely with the Senator from Wyoming as the chairman of the subcommittee. He skillfully guided this measure through a very observant full committee of the Environment and Public Works Committee, and the able staff which has assisted him so well not only this year but in the past.

Once again I add my words of thanks to him and words of congratulations for his continuing fine effort.

Mr. SIMPSON. Mr. President, I thank the Senator from Colorado. I would certainly indicate that it was during his leadership as chairman, while I was ranking minority member, that I did learn about the observancy capabilities of our colleagues on not only the subcommittee but the full committee.

Mr. President, I ask unanimous consent that the following staff members be given floor privileges during debate on S. 1207: Jim Asselstine, Keith Glaser, Erich Bretthauer, Jim Curtiss, Heather Lancaster, Jim Davenport, and Barbara Magnuson.

I also ask unanimous consent that the following members of the Energy Committee staff be granted the privileges of the floor during consideration of S. 1207:

Chuck Trabandt and Paul Gilman.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTERIM OPERATING LICENSING PROVISIONS

Mr. MITCHELL. Mr. President, I rise to voice my concerns with the interim operating licensing provisions included in this legislation. The NRC authorization bill provides that interim operating licenses for nuclear powerplants may be granted prior to hearings for NRC final operating licenses.

It is important to gain a perspective on these provisions, and to see, precisely, what they were in response to. The reasons originally given for the need for interim operating licenses are manifold. But I believe the reason which has been the most effective is the notion, put forth by administration and industry officials, of a dilatory NRC bottling up its own licensing process. For the past year, "delay" has become the most prominent catchword in the debate over the NRC's licensing process.

Catchwords, like this one, are often ideas which become prominent because they are assumed to contain a high level of truth. The more often they are repeated, the more true they become. Delays in the licensing process, as the primary or only obstacle facing the construction of new plants, have been so widely referred to that they are now widely assumed to be true. It has been my concern throughout this debate that the issue of delay has gained a certain currency and legitimacy which is unwarranted. Since the time this legislation was first reported by the Senate Environment Committee, my concern about interim licenses has been shown to be justified.

It has become evident that the level of truth in the catchword "delay" makes it undeserving of the degree to which it is now assumed by the public.

When this legislation was first introduced, interim license proponents who supported the notion of massive delays were clearly abetted by NRC data on the number of months of delay in the licensing schedule, and the cost of those delays to the ratepayer. In its January 1981 report to the Congress,

the NRC predicted that, according to estimated construction completion dates provided by the utilities, 12 powerplants would face 90 cumulative months of delay during 1981 and 1982 due to the NRC licensing process. Although, as the NRC staff pointed out at the time, utility estimates on construction completion dates have been historically very optimistic, these figures were accepted as reliable at the time. Numerous sources stated that plants which stood idle also resulted in a cost to the Nation of upward of \$3 billion in higher utility rates.

Much has changed since the publication of the NRC's January 1981 report. The latest NRC report on delays in the licensing schedule for all pending operating license applications shows a total of 2 months of delay. It is fair to say that the total number of 90 cumulative months of delay has been erased. Much has also changed since allegations were first made regarding the cost of plants which sit idle. The Department of Energy began estimating the potential cost in April 1981. Since that time, the DOE figures have demonstrated two facts:

First, the original cost estimates provided by the industry were inherently inflated by the cost of capital carrying costs; second, they were exaggerated by the overstated number of months of delay and other cost assertions which the DOE regularly rejected.

The figures which were the basis of the interim license argument have been proven to be unrealistic in the case of delay figures, and hypothetical and overstated in the case of cost figures. The interim license argument implied that these figures exposed a permanent dilemma which demanded a permanent solution. The rapid change in the cost and delay figures dramatically weakens this argument. Present figures clearly show that the delays represented a temporary, curable passage in the NRC's licensing process.

Nevertheless, it is a passage which demands that a number of tough questions be answered by the industry. Instead of blaming delays solely on the NRC's licensing process, it is essential that the industry realize that reasons for delays also exist elsewhere, primarily in two areas. First, the delays caused by the NRC's licensing process were mainly the result of a manpower reallocation within the agency designed to meet the demands placed on it by the Three Mile Island accident. The accident there holds a valuable perspective for utility representatives who believe NRC regulations alone cause delays which in turn cause the ratepayer excessive costs; the cost of cleaning up the accident at TMI, estimated at between \$1 to \$1.3 billion, is a cogent reminder of other potential costs to the ratepayer and makes a case for more, not fewer, safety regulations.

Second, there are other, essentially economic reasons for the slowdown in powerplant licenses: primary among

them are financial problems and changing financial considerations, labor difficulties, and engineering complications. These are reasons which are in the hands of the utility owners, and are not attributable to the NRC.

It is important to note, too, that current efforts to "streamline" the NRC process, like interim licenses and other similar proposals, come at the expense of safety regulations. Such measures may ultimately harm, rather than help, the nuclear industry. Recent polls show that an increasing number of Americans are concerned about the health and safety implications of nuclear power, and it is imperative that we in Congress be responsive to these concerns. Present construction problems at the Diablo Canyon plant, along with similarly serious engineering complications at other plants across the country, make a strong argument for strengthening the NRC licensing process. They also make a strong case, as NRC Chairman Nunzio Palladino noted, for nuclear utility management "to reorient its thinking." As Chairman Palladino stated in a recent speech before the Atomic Industrial Forum:

Some utilities fall short of protecting their own best interests and meeting the high standards expected for nuclear power. Their deficiencies in quality assurance are inexcusable. There have been lapses of many kinds—in design analyses, resulting in built-in design errors; in poor construction practices; in falsified documents; in harassment of quality control personnel; and inadequate training of reactor operators. These practices must change if true regulatory reform is to take place . . .

Industry has the key role in the construction and safe operation of nuclear power plants. That is the fact. Not only public health and safety considerations, but economic imperatives dictate the highest professional standards in building and operating a nuclear plant. When construction or operation falls below the highest standards, the entire industry is hurt.

The Senate Environment Committee made a number of changes in the interim license provisions of the bill as it was originally introduced. These provisions strengthen the bill itself, and provide more reassurance to persons like myself that interim licenses will be granted only in the most severe instances. The Environment Committee bill requires that, prior to the issuance of interim licenses, determinations be made by the NRC that:

First. All legal requirements, other than those relating to hearings, are met.

Second. There is reasonable assurance that interim operation of the facility in accordance with the terms and conditions of the license will adequately protect the public health and safety and the environment; and

Third. Denial of the interim license will result in delay between the time the facility is sufficiently completed to permit interim operation and the time when a final operating license would

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otherwise be issued before operation at each power level.

The bill also includes procedural safeguards to assure that the issuance of an interim license does not prejudice the outcome of the license hearing for the plant's final operating license or the rights of any party to the hearing. As well, the bill directs the NRC to adopt appropriate administrative remedies to minimize the need for the issuance of interim licenses.

I offered an amendment to the committee bill which further strengthens the interim licensing provisions. The bill, as introduced, allowed utilities to operate at full power under an interim license. My amendment provides for a step-by-step progression from initial fuel loading and low-power testing up to full-power levels.

To conclude, Mr. President, I find it distressing that the debate over interim licenses has focused almost entirely on nuclear development, and supposed obstacles to that development, rather than on nuclear safety. We do have an obligation to see that the process does not become bogged down needlessly while trivial items are discussed. This is not just an NRC or industry concern. It is a public concern.

But we have another obligation that must always take precedence. We have an obligation to insure that nuclear power does not endanger the public health and safety, and that those who may have legitimate questions and information about health and safety hazards are afforded an opportunity to participate in the licensing and license-amendment process. To meet this obligation, we must scrutinize more carefully the cost and delay figures provided to the Congress by the industry in the future. But we must also scrutinize more incisively the use of catchwords which, if they do not contain a high level of truth, have the ability to distort and mislead a national policy debate.

Mr. SIMPSON. Mr. President, I believe that the Senator from South Dakota has an amendment to propose. I yield to him for that purpose.

UP AMENDMENT NO. 834

Mr. ABDNOR. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from South Dakota (Mr. ABDNOR), for himself and Mr. PRESSLER, proposes an unprinted amendment numbered 834.

Mr. ABDNOR. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 15, after line 23, add a new section to read as follows:

Sec. (a) The Commission, in consultation with the Environmental Protection

Agency, the Department of Housing and Urban Development, the Department of Energy, the Tennessee Valley Authority, and the State of South Dakota, is authorized and directed to establish and coordinate a monitoring, engineering assessment and remedial action program for the management of byproduct material, as defined in section 11 e. (2) of the Atomic Energy Act of 1954, at offsite locations in the vicinity of the Edgemont, South Dakota, uranium mill site. Such program shall provide for necessary monitoring and engineering assessments at such locations and the establishment and performance of requirements for the management, including remedial action, of such byproduct material.

(b) In carrying out the monitoring, engineering assessment and remedial action program established by subsection (a), the Commission shall have lead responsibility for coordinating the monitoring, engineering assessment and remedial action program established by subsection (a) and, in consultation with the State of South Dakota, shall—

(1) establish general objectives and priorities for the program;

(2) review and approve a monitoring, engineering assessment and remedial action program for the locations described in subsection (a);

(3) assure that an approved monitoring, engineering assessment and remedial action program complies with the requirements of section 84 of the Atomic Energy Act of 1954, as amended, and conforms to the standards of general application for the protection of the public health, safety and the environment from radiological and nonradiological hazards associated with residual radioactive materials located at inactive uranium mill tailings sites and depository sites promulgated by the Administrator of the Environmental Protection Agency pursuant to section 275 a. of the Atomic Energy Act of 1954, as amended; and

(4) provide funding through contract for an approved monitoring and engineering assessment program at the locations described in subsection (a).

(c) Section 102(e) of the Uranium Mill Tailings Radiation Control Act of 1978 (92 Stat. 3025) is amended by adding a new paragraph (3) to read as follows:

"(3) Notwithstanding the one-year limitation contained in this section, the Secretary shall designate for remedial action any real property, or improvements thereon, in Edgemont, South Dakota that—

(A) is in the vicinity of the Tennessee Valley Authority uranium mill site in Edgemont, and

(B) is determined by the Commission to be contaminated with residual radioactive materials derived from that site.

In making the designations under this paragraph, the Secretary shall consult with the Administrator, the Commission and the State of South Dakota. The provisions of Title I of this Act shall apply to the remedial action at property designated under this paragraph, except that notwithstanding any other provision of this Act, the Secretary shall pay the full cost of such remedial action."

Mr. ABDNOR. Mr. President, on behalf of myself and Senator PRESSLER, I offer this amendment to give the Department of Energy (DOE) authority to take remedial action at designated property in the vicinity of the Tennessee Valley Authority (TVA) uranium mill site at Edgemont, S. Dak.

The Uranium Mill Tailings Act of 1978 was enacted to assist in the

cleanup of contaminated property on, and in the vicinity of, abandoned uranium mill sites. However, since TVA holds a source material license on the inactive mill site, Edgemont is excluded from compensation under the act.

Let me emphasize, Mr. President, that in 1980, both Houses of Congress adopted amendments to remedy the off-site tailings problem at Edgemont. Unfortunately, the amendments were attached to different bills and the provision was not enacted.

In fiscal year 1981, Congress made available funds to enable DOE to begin off-site remedial work. Lacking the statutory authority, DOE was unable to expend those funds.

Mr. President, this situation has imposed severe hardships on the citizens of Edgemont. Uranium mill tailings, which have been located in the foundations of several homes and in the yards of dozens of homes in the area, pose a serious health threat. In 1980, due to the high radon levels detected in the residential community, the Environmental Protection Agency (EPA) prohibited the Department of Housing and Urban Development (HUD) from engaging in Federal Housing Authority (FHA) loan transactions in Edgemont. The negative press the uranium mill tailings issue has provoked has had a significant economic impact on the community. Having been surveyed and studied for some 10 years, area residents feel that appropriate remedial action is long past due.

The Nuclear Regulatory Commission (NRC), in cooperation with TVA, the State of South Dakota and EPA, has nearly completed the preparation necessary to begin the actual remedial work. If enacted, this amendment will enable DOE to begin work on the remedial project during the next construction season.

Mr. President, I understand that this amendment has the support of the distinguished subcommittee chairman and ranking minority member, Mr. SIMPSON and Mr. HART.

I do thank both of these gentlemen for the cooperation and the help they have given me on this particular problem.

● Mr. PRESSLER. Mr. President, I wish to express my support for the amendment, of which I am a cosponsor, offered by my colleague from South Dakota. I have been working on the problem of procuring assistance in dealing with the mill tailings in Edgemont for some time now. It is gratifying to see that we are coming close to a resolution of this matter.

The radiation problem in the Edgemont area came to a head in March 1980, after the Department of Housing and Urban Development (HUD) gave the town notice that it would no longer insure housing mortgages for homes that were found to exceed the Environmental Protection Agency's (EPA's) radiation levels. At that time,

I personally visited Edgemont and spoke with area residents about the problem. I also offered several amendments during the 96th Congress to authorize this remedial action and appropriate funds, but, unfortunately, legal barriers have remained.

The source of the radiation in the town is a former uranium mill. Through EPA investigations, various houses in the Edgemont community were determined to have exceedingly high levels of radiation. It was found that some houses in the community had been built with mill tailings as backfill.

Throughout the Government's dealings with the community of Edgemont, there have been delays in securing remedial actions for the properties contaminated with uranium mill tailings. The Department of Energy has determined that it cannot proceed with the remedial actions necessary until Congress provides authorization. The Department also indicates that it is prepared to proceed soon after receiving statutory authority.

The purpose of this amendment is to grant the authority needed to begin this important task. I can assure my colleagues here that from my contacts with the people of Edgemont there is no question but that this amendment is very important to the well-being of the Edgemont community. I hope that this amendment will receive the support it merits, and urge my colleagues to readily adopt it.

Mr. SIMPSON. Mr. President, I am pleased to support the amendment by the distinguished Senator from South Dakota. As the sponsor of the amendment pointed out, this amendment is similar to one adopted last year by the Senate on the NRC authorization bill for fiscal year 1981. That measure failed due to inaction by the House.

Mr. President, the Edgemont situation is a unique one. We recognize that. Although the Edgemont site is an inactive uranium mill site, it was included in the remedial action program established by the Uranium Mill Tailings Radiation Control Act of 1978 because TVA held a current license from NRC for the mill. Although TVA is obligated and has agreed—this is important—to clean up the mill tailings on the Edgemont site, it has no legal responsibility for cleanup of the tailings at the offsite locations. As I understand the Senator's amendment, it would incorporate into the remedial action program of the Mill Tailings Act these offsite mill tailings locations. Also, the amendment would confirm the monitoring and engineering assessment program now underway by NRC that would precede the cleanup itself at these offsite locations.

Indeed, Mr. President, we appreciate the work of the Senator from South Dakota and his thoughtful response to an extraordinarily unique situation in his State.

Mr. ABDNOR. I thank the Senator for that very thorough explanation.

That is exactly the way it has occurred and we appreciate his explanation of the amendment.

The PRESIDING OFFICER. Does the Senator from South Dakota move his amendment?

Mr. ABDNOR. I shall do that after the expiration of the time, Mr. President.

Mr. HART. Mr. President, this amendment would provide authority for the Department of Energy to begin work on remedial action for mill tailings at the Edgemont site, as the distinguished Senator from South Dakota has outlined. Although DOE is ready, it needs the authority to go forward. I agree with the case that the Senator has made to cleanup offsite mill tailings of Edgemont. It will reduce the public health and safety hazards that sites of this sort present in his State and in my State and, unfortunately, in too many States.

I join the Senator from Wyoming in endorsing and supporting the amendment.

Mr. ABDNOR. I thank the Senator from Colorado.

Mr. President, I move adoption of my amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from South Dakota (Mr. ABDNOR).

The amendment (UP No. 834) was agreed to.

Mr. SIMPSON. I move to reconsider the vote by which the amendment was agreed to, Mr. President.

Mr. McCLURE. I move to lay that motion on the table.

UP AMENDMENT NO. 835

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I send to the desk an amendment, and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wyoming (Mr. SIMPSON), for himself and Mr. HART, proposes an unprinted amendment numbered 835.

Mr. SIMPSON. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER.—Without objection, it is so ordered.

The amendment is as follows:

(1) On page 2, line 9, change "\$495,700,000" to "\$425,200,000".

(2) On page 2, line 11, change "\$75,610,000" to "\$55,100,000"; on page 2, line 14, change "\$6,500,000" to "an amount not to exceed \$6,500,000"; and on page 2, line 16, insert "an amount not to exceed" before the figure "\$1,000,000".

(3) On page 2, line 19, change "\$67,424,000" to "\$62,900,000"; on page 2, lines 22 and 23, insert the words "an amount not to exceed" before the figures "\$5,013,000" and "\$6,300,000".

(4) On page 3, line 18, change "\$46,257,000" to "\$38,500,000".

(5) On page 3, line 21, change "\$245,670,000" to "\$240,300,000"; on page 3, line 24, insert the words "an amount not to

exceed" before the figure "\$20,400,000"; on page 4, line 1, insert the words "an amount not to exceed" before the figures "\$3,500,000" and "\$4,500,000"; and on page 4, line 4, change "\$45,500,000" to "an amount not to exceed \$45,500,000".

(6) On page 4, line 7, change "\$19,095,000" to "\$21,900,000".

(7) On page 4, line 10, change "\$41,644,000" to "\$37,000,000".

(8) On page 7, line 15, strike "(2) the final safety evaluation report on the application by the Nuclear Regulatory Commission staff;" and insert in lieu thereof: "(2) the filing of the Initial Safety Evaluation Report by the Nuclear Regulatory Commission staff and the NRC staff's first supplement to the report prepared in response to the report of the Advisory Committee on Reactor Safeguards for the facility;".

(9) On page 9, line 7, strike "date on which a final operating license for such facility would otherwise issue under this Act.", and insert in lieu thereof: "date when such facility would otherwise begin full power operation."

(10) On page 11, strike lines 5 and 6, and insert in lieu thereof:

"e. The authority to issue new interim operating licenses under this section shall expire on December 31, 1983."

(11) On page 11, lines 11, 19 and 21, insert "facility" before the word "license".

(12) On page 13, line 9, insert "or an interim operating license" after the word "license".

(13) On page 13, beginning on line 16, strike section 303.

(14) On page 15, beginning on line 16, strike section 304.

Mr. SIMPSON. Mr. President, this amendment makes a number of changes to the bill that are of a technical and clarifying nature. In addition, the amendment modifies certain portions of the bill to reflect changes that have occurred since the committee reported the bill last May.

First, the amendment provides an overall reduction in the level of spending authorized for the agency for fiscal year 1982 of \$10 million. This reduction reflects the present constraints on the Federal budget in general, and is more consistent with the amounts now appropriated to the NRC for fiscal year 1982.

Second, the amendment makes several adjustments in the allocation of the authorization of \$485,200,000 among the Commission's major program categories. These adjustments take into account the Commission's most recent estimates of budgetary needs in several areas, including the increased reactor licensing effort and licensing requirements for the Clinch River breeder reactor.

Third, the amendment makes three clarifying changes to the provision in the bill, section 201, granting the Commission the authority to issue interim operating licenses for new nuclear powerplants. The first of these changes makes it clear that a petition for an interim operating license may be filed after the issuance of the NRC staff's safety evaluation report and the supplement to that report prepared by the NRC staff in response to the report of the Advisory Committee

on Reactor Safeguards. There may well be supplements to the NRC staff's SER prepared after this point, and this change makes it clear that the interim operating license petition could precede these later supplements. The second of these clarifying changes more precisely defines the third test in the bill for the issuance of an interim operating license. Under that test, the Commission must find that there would be a licensing delay for the plant if the interim operating license were not issued. The revised test would permit issuance of the interim license if the Commission finds that there would otherwise be a delay between the expected date of plant completion and the expected date on which the plant would otherwise begin full-power operation. The third change makes it clear that the Commission's authority to issue new interim operating licenses expires on December 31, 1983, but that any interim licenses issued before that date may continue in effect beyond the end of 1983.

Fourth, the amendment makes a change to the provision in the bill, section 202, that authorizes the NRC to issue and to make immediately effective license amendments that involve no significant hazards consideration. This change makes it clear that this provision in section 189 of the Atomic Energy Act applies to facility licenses and not to materials licenses.

Fifth, the amendment deletes the requirement for the nuclear powerplant licensing study that is contained in section 303 of the bill.

After the committee adopted this provision, Mr. President, both the NRC and the Department of Energy began internal studies of the licensing process that are aimed at the development of nuclear powerplant licensing reform proposals early this year. The Commission has also agreed to establish an independent review group for the purpose of evaluating and reporting to the Commission on legislative and administrative proposals for reforming the licensing process. A focus of this review group's efforts will be the legislative and administrative reform proposals now being developed by the Commission's Internal Regulatory Reform Task Force, although the review group will be free to make other recommendations and comments to the Commission. The Commission is in the process of selecting individuals to serve on this review group who reflect a range of interests and perspectives and who have a detailed knowledge of, and direct experience with, the nuclear powerplant licensing process. We believe that the Commission's efforts to move forward with this independent review effort will achieve the purposes of section 303 of the bill and will avoid any unnecessary delay in the consideration of licensing reform issues by NRC or the administration. Therefore, section 303 of the bill is no longer needed.

Finally, Mr. President, the amendment strikes the provision in the bill, section 304, that requires DOE and NRC to enter into a memorandum of understanding regarding radioactive wastes from the Three Mile Island accident cleanup.

My colleague from Colorado and I were both involved in seeing that that was placed in the provision, and I am pleased to report that after the committee adopted that provision, the agencies completed their work on that memorandum of understanding. It is finished, and that provision is therefore no longer required.

That concludes the summary of the changes made by this technical amendment, and I move the adoption of the amendment.

Mr. HART. Mr. President, I fully support the effort of the floor manager and chairman of the committee in this matter. He has stated the case adequately, and I support the adoption of the amendment and endorse the proposal by the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. McCLURE. Mr. President, will the Senator from Wyoming yield to the Senator from Idaho?

Mr. SIMPSON. Mr. President, I yield to the Senator from Idaho.

Mr. McCLURE. I thank the Senator for yielding.

Mr. President, section 303 of the bill would establish an independent advisory panel to evaluate the effectiveness and efficiency of the current licensing process and to report its findings to the NRC and the Congress within 180 days of enactment. The section sets forth the specific procedures for establishment of the advisory panel by the NRC, including membership, expenses, the substantive focus of its efforts, and reporting requirements. The panel is exempted from certain requirements of the Federal Advisory Committee Act. The committee amendment would strike section 303 and remove the requirement for such an advisory panel.

Mr. President, at the time this provision was adopted, in early May of last year, the new administration was still in the formative stages in terms of both personnel and policies related to nuclear power. Since that time, however, the open positions at the NRC have been filled and the President has enunciated his nuclear power policy in a formal policy statement and in a series of related programmatic and policy actions at NRC and the Department of Energy. One essential element of the President's formal policy statement on nuclear power was the President's directive that the Secretary of Energy give immediate priority attention to recommending improvements in the nuclear regulatory and licensing process.

DOE has implemented that directive by forming a task force whose efforts are now well underway. That task force will also include representation

from the Office of Science and Technology Policy, and other appropriate executive agencies. It plans to consult in a meaningful fashion with industry, environmental and public interest groups, and State and local organizations. NRC also has embarked upon its own licensing reform task force. DOE will endeavor to work closely with NRC to enable the administration to propose a coordinated set of appropriate improvements in the licensing process well in advance of the timetable for the advisory panel contemplated by section 303.

Mr. President, it now is late in March and it appears likely that this bill probably will require a conference because of certain significant differences from the House-passed bill. As a result, it will probably be at least April, if not later in 1982, before any conference report on this legislation could be enacted. Consequently, the requirement for this independent advisory panel could lead to NRC and advisory panel action which could consume the balance of calendar year 1982 and certainly extend well beyond the adjournment of the 2d session of the 97th Congress. In that event, the report required of the advisory panel might not be considered by the Congress until calendar year 1983.

Mr. President, I commend the committee for the action that it has taken not only in the total legislation before us but also in the technical amendment now pending, and particularly with respect to the removal of the requirement for the advisory panel:

I take this time only to say that at the time this was put into the bill, it seemed an advisable thing to do, and as a matter of fact the other body has done so in their pending legislation.

I seek the statement of the Senator from Wyoming and the managers of the bill, when it goes to conference, what their attitude would be if the House keeps the advisory panel in their proposed legislation, as to whether or not the Senate conferees would strongly urge our position of removing the advisory panel.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I thank the Senator from Idaho for those points of clarification.

He, indeed, in my time here has followed the issue of regulation of the nuclear industry in more adept fashion than many, and I appreciate his assistance.

Mr. McCLURE. I assume that the Senator from Wyoming would seek to prevail, in the event of a conference with the House. If, indeed, they do not remove the advisory panel, as set forth in their legislation, and you should arrive at conference with them with legislation from the House with such an advisory panel, this amendment stating your position would be strongly held in the conference, I assume.

Mr. SIMPSON. Mr. President, in all ways I shall try to preserve the Senate's position on that.

Mr. McCLURE. I thank the Senator from Wyoming.

The PRESIDING OFFICER. Does the Senator from Wyoming yield time?

Mr. SIMPSON. I yield now to the Senator from Colorado.

The PRESIDING OFFICER. Will the Senator from Wyoming dispose of the amendment now pending?

Mr. SIMPSON. Yes. We do have an amendment before the body.

The PRESIDING OFFICER. There is an amendment before the body. The question is on agreeing to the amendment.

The amendment (UP No. 835) was agreed to.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HART. Mr. President, I move to lay that motion on the table.

The motion to lay the amendment on the table was agreed to.

Mr. SIMPSON. Mr. President, I yield to the Senator from Idaho.

UP AMENDMENT NO. 836

Mr. McCLURE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows: [The Senator from Idaho (Mr. McCLURE) proposes unprinted amendment No. 836.]

Mr. McCLURE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:
On page 12, after line 19, add a new section to read as follows:

SEC.—(a). Chapter 10 of the Atomic Energy Act of 1954, as amended, is amended by adding the following new section at the end thereof:

"SEC. 112. PSYCHOLOGICAL HEALTH AND WELL BEING.—

"Notwithstanding any other provisions of law, the Commission shall not be required to consider the effects of any of its actions on psychological health or well being."

"(b). The table of contents for such Chapter 10 is amended by adding the following new item at the end thereof:

"SEC. 112. PSYCHOLOGICAL HEALTH AND WELL BEING."

Mr. McCLURE. Mr. President, this amendment would reverse a judgment issued on January 7, 1982, by the U.S. Court of Appeals in the case of *Pane* against the U.S. Nuclear Regulatory Commission. In that judgment, the court ordered the NRC to prepare an environmental assessment of the effects of restart of Three Mile Island Unit One on "psychological health of neighboring residents and on the well-being of the surrounding communities." The court further ordered the NRC, if it finds such effects to be significant, to prepare a full environmental impact statement.

Finally, the court's order bars the NRC from making a decision on the restart of TMI-1 pending completion of the environmental assessment and, if necessary, an environmental impact statement.

Mr. President, I believe the court's judgment in the *Pane* case that psychological health and well-being must be considered by the NRC, pursuant to the National Environmental Policy Act, before the Commission may allow the restart of TMI-1 represents a totally incorrect reading of the requirements of NEPA.

In addition, I believe the court's judgment has potentially serious adverse consequences in the case of TMI-1 restart proceedings, in the Commission's other licensing actions, and in a variety of other actions by numerous Federal agencies. For these reasons, I believe the Congress should act promptly to reverse the court's judgment in this case by making it clear as a matter of law that the NRC is not required to consider the effects of any of its actions on psychological health or well-being.

Mr. President, the most immediate impact of the court's decision will be on the restart of TMI-1. The NRC staff has estimated that the preparation of an environmental assessment of psychological stress will require at least 6 months.

If, after preparing such an assessment, the NRC finds that psychological stress resulting from the restart of TMI-1 will be significant, the Commission must then prepare an environmental impact statement, which the NRC staff estimates will require an additional 6 months.

If the court imposes further procedural requirements on the NRC such as the requirement to conduct an adjudicatory hearing on the issue, as the court has done in at least one instance in the past, the hearing would likely require at least 6 more months.

Thus, it is entirely possible that 1½ years or more could be required to comply with the court's ruling. Such a delay in the restart of TMI-1 could very well jeopardize the commitments that have been made by the State public utility commissions in Pennsylvania and New Jersey to designate ratepayer funds for the cleanup of Three Mile Island unit two.

In any event, under present arrangements, such funds cannot actually be spent for cleanup until TMI-1 is restored to service.

Mr. President, this potential of the court's decision to delay further, or even to jeopardize, the clean-up of TMI-2 is only one of the possible consequences of this decision. The court's requirement that psychological stress be considered an environmental impact under NEPA may well extend to other NRC licensing actions, and to a wide range of actions by other Federal agencies.

In the case of NRC, at the time of the court's decision, the Commission

had rejected similar psychological stress arguments in six other proceedings. Two of these are proceedings for the issuance of new powerplant operating licenses.

Requiring the consideration of psychological stress in these cases would almost certainly delay the issuance of these licenses, and would very likely lead to a flood of psychological stress contentions in other pending and future NRC proceedings.

If the court's decision extends to other agencies as well, virtually every major construction or development project requiring Federal approval—from airports, to bridges and roads, to military installations—would become targets for psychological stress contentions under NEPA.

Mr. President, I do not believe that the Congress ever intended NEPA to require the consideration of psychological stress as an environmental impact—in a case such as the restart of Three Mile Island Unit One, in NRC's other licensing actions, or in the actions of other Federal agencies. My amendment would make this clear. I urge the adoption of the amendment.

Mr. President, appended to my statement is a list of psychological, or at least so-called, stress situations involving environmental impact statements under the court order where Federal funds are involved. I refer to the possibility of interstate highways, airports, low-income housing projects, section 404 permits under the Federal Water Pollution Control Act, Forest Service programs, Bureau of Reclamation projects, Corps of Engineers projects, energy projects, urban renewal-development activities, actions affecting historic sites, actions involving toxic substances, including pesticides.

Mr. President, the list goes on and on where the possibility of claims made by various persons with respect to so-called psychological stress would open such a tremendous Pandora's box that I think it is well for us to address that question now and immediately.

Mr. SIMPSON. Mr. President, may I say to my good friend, and neighbor, the distinguished Senator from Idaho, that I certainly agree with all of his comments, and I fully support the reasons that he has presented for his amendment.

I would even add an additional point. I am very troubled by the extremely subjective nature of the phrase "psychological health of neighboring residents and the well-being of the surrounding communities," to use the words of the court. Unlike the kinds of environmental impacts that are now routinely considered pursuant to NEPA, psychological health and well-being are not objectively determinable or measurable. I feel that the court's decision in the *Pane* case will lead the Commission, and perhaps other Feder-

al agencies as well, into a morass of speculation and subjective judgement.

This decision might well lead to protracted hearings in which competing panels of psychologists and psychiatrists argue about the state of mind of the community. Perhaps the decision may even require public referenda in areas where psychological stress is alleged.

Certainly, whatever means the Commission selects for assessing psychological health and well-being is likely to be challenged as inadequate, leading to further litigation and delay. I, for one, certainly share your view that this is something that was never intended by the Congress when it enacted the National Environmental Policy Act.

Mr. McCURE. Mr. President, I appreciate the comments of the distinguished Senator from Wyoming, and I share the concerns that he has mentioned.

Mr. SIMPSON. Mr. President, there is one other comment that I should like to make about this amendment. As the Senator from Idaho knows, we are in a somewhat unusual situation with the Pane case. Although the court issued its two-page judgment on January 7, it has not yet seen fit to issue its opinions, which will explain the court's rationale and define the scope of the decision. We discussed this matter with the Commission in our budget hearing earlier this year.

Although several of the Commissioners expressed serious concerns about the Pane decision, particularly if it extends beyond the restart of TMI-1, the Commission was unable to provide us with an assessment of the precise scope and impacts of the decision.

Thus, as a consequence of the court's failure to complete its work in this case, the committee has not yet been able to assess the scope of the decision or its likely impact. Given the seriousness of legislating any changes to NEPA, some of our colleagues have urged postponing any legislative action until after the court's opinions become available and the committee is able to assess the scope and impact of the decision.

I therefore inquire of the sponsor of the amendment if he would be willing to withdraw the amendment at this time with the understanding that the committee would actively consider this matter—and in a very prompt manner—after the court issues its opinions in the Pane case.

Mr. McCURE. Mr. President, I agree with my colleague that it is somewhat difficult to assess the impact of this case, and to arrive at an appropriate legislative solution, in the absence of the court's opinions.

I reluctantly agree to withdraw the amendment at this time if the distinguished chairman and ranking minority member of the Nuclear Regulation Subcommittee will assure me that the committee will hold hearings on this matter as soon as the court's opinions

are available, and that the committee will act expeditiously to report out any necessary corrective legislation using whatever legislative vehicle is available at that time to assure prompt enactment.

Mr. SIMPSON. Mr. President, I am pleased to provide those assurances to the distinguished Senator from Idaho and pledge to do so. I certainly believe that some legislation will be needed to correct the court's erroneous interpretation of NEPA in sufficient time to avoid unwarranted impacts on the Commission's licensing actions.

This approach will allow us to closely tailor the legislative solution to the problem. I also add that this matter has been discussed with the distinguished Senator from Vermont, the chairman of the Environment and Public Works Committee, and he stands by these assurances as well.

Mr. HART. Mr. President, although I am not yet convinced of the need for legislation in this case, I would certainly support the assurances made by the distinguished Senator from Wyoming that the committee will actively consider this matter, including the need for legislation, as soon as the court issues its opinions.

Mr. McCURE. Mr. President, I thank my distinguished colleagues, and with those assurances on behalf of the committee, I withdraw the amendment at this time.

The PRESIDING OFFICER (Mr. ARMSTRONG). Without objection, the amendment is withdrawn.

UP AMENDMENT NO. 837

(Purpose: To amend the Atomic Energy Act of 1954)

Mr. HART. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows: The Senator from Colorado (Mr. HART) proposes an unprinted amendment numbered 837.

Mr. HART. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 12, after line 19, add the following new section:

Sec. —. (a) Section 148a. (1) of the Atomic Energy Act of 1954, as amended, is amended by inserting immediately after "Secretary" a comma and the following: "with respect to atomic energy defense programs."

(b) Section 148 of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following new subsections:

"d. Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to subsection (a)(4)(B) of section 552 of title 5 of the United States Code.

"e. The Secretary shall prepare on a quarterly basis a report to be made available upon the request of any interested person, detailing the Secretary's application during that period of every regulation or order pre-

scribed or issued under this section. In particular, the report shall:

"(1) identify any information protected from disclosure pursuant to such regulation or order;

"(2) specifically state the Secretary's justification for determining that unauthorized dissemination of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons or theft, diversion, or sabotage of nuclear materials, equipment, or facilities, as specified under subsection a. of this section; and

"(3) provide justification that the Secretary has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security."

Mr. HART. Mr. President, I offer what I hope will be a noncontroversial amendment to section 148 of the Atomic Energy Act. Section 148, enacted last fall as part of the DOE National Security Programs Authorization Act of 1982 (Public Law 97-90), authorizes the Secretary of Energy to withhold from disclosure unclassified information pertaining to the design of production or utilization facilities, safeguards, and the design of atomic weapons.

As passed by the Senate, this provision included a subsection (c) that subjected to judicial review the Secretary's exercise of this authority, and a subsection (d) that directed the Secretary to publish quarterly a report detailing the application of every regulation or order prescribed or issued under the provision.

During conference with the House, these two subsections were dropped.

My amendment today would simply restore these two subsections to section 148. I urge Senate passage of this amendment for two reasons. First, without these two subsections, the Secretary of Energy can withhold information free from the public scrutiny necessary to guard against abuse of this authority. The withholding of information from the public is a serious business. We should at least insure an independent review of the Secretary's exercise of this authority. These subsections will do just that.

Second, restoring these two subsections to section 148 would carry out the stated intent of the Armed Services Committee, when it reported this section, to make this provision consistent with section 147 of the Atomic Energy Act. Section 147 grants the NRC similar authority to withhold information about safeguards for NRC-licensed facilities. The NRC provision, however, provides for judicial review of, and periodic public reports on, the NRC's exercise of its authority.

I urge the Senate to accept this amendment, and I hope my colleague from Wyoming will support this measure.

Mr. SIMPSON. Mr. President, I support the amendment offered by the distinguished Senator from Colorado.

In the 96th Congress, as part of the NRC fiscal year 1980 authorization, the NRC was given the authority to withhold certain narrowly-defined categories of safeguards information related to activities over which the NRC has jurisdiction. That authority is set forth in section 147 of the Atomic Energy Act.

In November 1981, section 148 was added to the Atomic Energy Act, extending to the Department of Energy authority similar to that granted the NRC in 1980. In accordance with the requirements of section 148, DOE now has the authority to withhold certain information related to atomic energy defense programs.

Mr. President, as I understand it, the intent of this technical amendment is simply the procedural requirements applicable to the withholding of unclassified information by the Department of Energy and the Nuclear Regulatory Commission pursuant to sections 147 and 148 of the Atomic Energy Act. As those provisions now stand, Congress has imposed certain reporting and judicial review requirements that differ based upon the Agency or Department withholding the information, rather than the type of information to be withheld. This amendment, if adopted—and I certainly support it—will cure this statutory inconsistency by establishing uniform requirements for the withholding of such information. As I also understand, this amendment would conform the language of section 148 to the language originally passed by the Senate.

Mr. President, I support the amendment and I am pleased to accept it. I will yield to anyone else wishing to address the amendment.

Mr. HART. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. Is all time yielded back on the amendment?

Mr. HART. I yield back the remainder of my time.

Mr. SIMPSON. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 837) was agreed to.

Mr. HART. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 838

(Purpose: To review and analyze the Loss-of-Fluid Test research program results)

Mr. McCLURE. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an unprinted amendment numbered 838.

Mr. McCLURE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

THE PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 6 after line 13, add the following new section: Of the amounts authorized to be used for the Loss-of-Fluid Test Facility in accordance with Section 101(a)(4) of this Act, for fiscal years 1982 and 1983, the Commission shall provide funding through contract with the organization responsible for the Loss-of-Fluid Test operations for a detailed technical review and analysis of research results obtained from the Loss-of-Fluid Test Facility research program. The technical review and analysis shall be for the purpose of developing and recommending to the Commission appropriate revisions to Appendix K to Part 50 of the Commission's regulations in accordance with the Loss-of-Fluid Test research results. The contract shall provide funding for not less than twenty man-years in each of fiscal years 1982 and 1983 to conduct the technical review and analysis.

Mr. McCLURE. Mr. President, nuclear safety is made up of many factors. Among these are basic research, development, and testing. Basic research, development, and testing provide the underpinnings of the verification required for the computer codes NRC uses to license nuclear powerplants and for the computer codes that industry uses in their design. The loss-of-fluid test facility is the premier facility in the world for doing major testing of the effectiveness of light water reactor emergency core cooling systems. After the Three Mile Island accident, the LOFT facility activities were promptly redirected to examine several problems that could be faced by operating nuclear plants in the event of a small break accident similar to that which occurred at Three Mile Island. The results of that testing at LOFT were new procedures for the operation of the main cooling pumps at commercial nuclear powerplants in the event of a break similar to that which occurred at Three Mile Island. The LOFT facility has proven to be invaluable in assisting in the post-TMI analysis that was done for small breaks and for the work necessary to establish correct responses for commercially licensed plants to similar types of events.

I am concerned, however, that the results of the testing at LOFT have not found their way into the licensing process.

The tests performed at LOFT thus far have confirmed that appendix K to 10 CFR 50, the criteria that NRC uses and has been using for the last 8 years to license the emergency core cooling systems at nuclear powerplants, is highly conservative.

Appendix K to 10 CFR 50 is the interim criteria that NRC specified for the licensing of emergency core cooling systems pending the availability of the data from the loft facility. This

criteria is highly prescriptive and in the absence of a scientific basis was the mortgage that was undertaken by the Federal Government to continue the licensing of nuclear powerplants. The mortgage has been virtually paid through the successful operation and testing at loft.

The intent of my amendment is to require that NRC incorporate the data that it has obtained as well as the lessons it has learned from the operation of LOFT into a revision of the existing appendix K to 10 CFR 50. I think this is necessary to establish the true safety margins that exist in the event that an emergency core cooling system would be required in the event of an accident. In this way the credibility of the licensing process will be enhanced through the proper quantifications of the margins of safety truly available from the safety systems and this should be a first attempt to move NRC to consider the way in which they incorporate their research and development results into licensing criteria.

Mr. President, I urge the adoption of my amendment.

The PRESIDING OFFICER. Who yields time?

Mr. SIMPSON. Mr. President, I am pleased to accept this amendment by my colleague from Idaho. I know how carefully he has followed this issue. Of course, there is excellent research work being done at the loss of fluid test facility (LOFT). Thus far, this research work has established confidence, based upon actual test results, that the Commission's emergency core cooling requirements in appendix K to part 50 of the NRC regulations are in fact very conservative models for plant behavior. The Senator's amendment would carry this important research work one step further by actually applying the LOFT test results to the development of appropriate revisions to the Commission's regulations.

Mr. President, I believe that this is a worthwhile effort and that it will lead to an improved and more accurate set of regulatory requirements. I commend the Senator from Idaho for this amendment, and I am pleased to accept it on behalf of the majority.

I yield to the Senator from Colorado for any comments.

Mr. HART. Mr. President, I support the arguments of the Senator from Wyoming and align myself with his position on this matter and urge the adoption of the amendment.

Mr. McCLURE. Mr. President, I yield back our time.

The PRESIDING OFFICER. Does the minority also yield back his time?

Mr. HART. I yield back my time.

Mr. McCLURE. I call for the question.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Idaho.

The amendment (UP No. 838) was agreed to.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SIMPSON. Mr. President, I move to lay that motion on the table. The motion to lay on the table was agreed to.

TOP AMENDMENT NO. 839

Mr. FORD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated. The legislative clerk read as follows:

The Senator from Kentucky (Mr. Ford) for himself, Mr. SIMPSON, Mr. HART, Mr. MITCHELL, Mr. CRANSTON, and Mr. LEVIN, proposes an unprinted amendment numbered 839.

Mr. FORD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment is as follows:

On page 15, after line 23, add a new section to read as follows:

Sec. —. (a) The Nuclear Regulatory Commission is authorized and directed to implement and accelerate the resident inspector program so as to assure the assignment of at least one resident inspector by the end of fiscal year 1982 at each site at which a commercial nuclear powerplant is under construction and construction is more than 15 percent complete.

(b) The Commission shall conduct a study of alternate concepts and existing programs for improving quality assurance and quality control performance in the construction of commercial nuclear powerplants. In conducting the study, the Commission shall obtain the comments of the public, licenseesholding construction permits and operating licenses for nuclear powerplants, and the Advisory Committee on Reactor Safeguards. The study shall include, but not be limited to, the following alternative concepts for improving quality assurance and quality control:

(1) adopting a more prescriptive approach to defining principal architectural and engineering criteria for the construction of commercial nuclear powerplants that would serve as a basis for quality assurance and quality control, inspection, and enforcement actions;

(2) requiring, as a condition of the issuance of construction permits for commercial nuclear powerplants, that the licensee demonstrate the capability of independently managing the effective performance of all quality assurance and quality control responsibilities for the plant;

(3) encouraging and obtaining more effective evaluations, inspections or audits of commercial nuclear powerplant construction by independent industry or institutional organizations, based upon best experience and practices;

(4) reexamining the Commission's organization and method for quality assurance development, review and inspection, with the objective of deriving improvements in the agency's program; and

(5) requiring, as a condition of the issuance of construction permits for commercial nuclear powerplants, that the licensee contract or make other arrangements with an independent inspector for auditing quality assurance responsibilities for the purpose of verifying quality assurance performance. An independent inspector is a third party who has no responsibilities for the design or construction of the plant.

The study shall also include a survey of representative sites at which quality assurance and quality control programs are operating satisfactorily, and an assessment of the reasons therefor.

(c) The Commission shall undertake a pilot program to review and evaluate programs underway that include one or more of the alternative concepts identified in subsection (b) for the purposes of assessing the feasibility and benefits of their implementation: *Provided*, That the pilot program shall include programs underway that use independent inspectors for auditing quality assurance responsibilities of the licensee for the construction of commercial nuclear powerplants, as described in paragraph (5) of subsection (2). The pilot program shall include at least three sites at which commercial nuclear powerplants are under construction. The Commission shall select at least one site at which quality assurance and quality control programs have operated satisfactorily, and at least two sites with remedial programs underway at which construction, quality assurance and quality control deficiencies have been identified in the past. The Commission may require any changes in existing quality assurance and quality control organizations and relationships that may be necessary at the selected sites to implement this pilot program.

(d) Not later than eighteen months after the date of enactment of this Act, the Commission shall submit a report to the Senate and the House of Representatives on the results of the study and the pilot program required by this section. The report shall include the recommendations of the Commission, including any necessary legislative changes, and a description of any administrative actions that the Commission has undertaken or intends to undertake, for improving quality assurance and quality control performance in the construction of nuclear powerplants.

Mr. FORD. Mr. President, the amendment I am offering is directed toward the growing problem of inadequate construction of nuclear facilities in the United States today, a problem caused by poor quality assurance/quality control programs on the part of the licensees and their contractors, and by poor safety inspection on the part of the Nuclear Regulatory Commission. The amendment attempts to establish for the first time procedures and mechanisms to correct this intolerable state of affairs.

At this moment, it is very possible that nuclear plants are being built in such a way that they present a danger to the public health and safety. Of utmost concern to me is that fact that two of them border on the Commonwealth of Kentucky and will impact heavily on my State if an accident should occur.

Perhaps the most recognized example is Diablo Canyon in California. At this reactor, sited near an earthquake faultline, blueprints for units one and two designating where supports should be built to withstand stress from earthquakes were switched. Consequently, if you can imagine such a thing, unit one supports have been put in the wrong place. The NRC voted in November to suspend Pacific Gas & Electric's fuel-loading and low-power operating license for unit one until the utility satisfactorily completes an ex-

tensive seismic design verification program. The NRC also wants the company to reexamine its quality assurance program.

At the Zimmer facility in Moscow, Ohio, the NRC's Chicago regional office failed to act on reports raised over a year ago, of faulty construction practices, including charges of improper pipe welding. Fortunately, the allegations were pursued by a concerned public interest group and last November both the Chairman of the NRC and the head of the Office of Inspector and Auditor admitted that the NRC had indeed been derelict in its duties, relying too heavily on the utilities to check the work of their contractors. Cincinnati Gas & Electric has been fined \$200,000 for a widespread breakdown in its quality assurance program. Among the rules violated were falsification of records supposed to supply evidence that quality work was done, and harassment and intimidation of quality control inspectors by construction workers.

Although significant construction deficiencies have not been identified, the fact that the lack of sufficient quality assurance could result in serious problems has prompted the NRC to require the establishment of a comprehensive quality confirmation program to determine the quality of plant systems important to nuclear safety. Deficiencies identified by these programs will require resolution prior to issuance of an operating license.

Zimmer, I might add, is just on the other side of the Ohio River from Kentucky.

Then, Mr. President, there is the matter of Marble Hill at Madison, Ind., 100 miles away from Zimmer and only 30 miles from Louisville, the largest city in Kentucky. For years I have been trying to make sure that construction work there was being done properly so that the facility would be the safest possible. Briefly, allegations were made at Marble Hill in early 1979 that concrete used in the reactor-containment building and in an auxiliary building was improperly patched and therefore substandard. After these claims were verified, the licensee attempted to improve its construction practices, but eventually had to shut down its safety-related work. Only after the insistence of myself and others did the NRC finally issue a stop-work injunction and initiate an investigation. Work was resumed earlier this year after about 1½-years' delay, but not until substantial improvements were required in the licensee's quality assurance and quality control programs.

In every one of these cases there is a clearly established pattern of fault. The utilities of this country simply must accept the serious responsibility of building safe nuclear facilities and must recognize the significant difference between building a coal-fired plant and a nuclear powered gener-

ator. Neither they nor their contractors can ignore the unique problem involved. Shortcuts cannot be taken; mistakes must be thoroughly corrected, not covered up. Management and workers on the site must realize that quality assurance/quality control programs are not established to harass them and impede their work. Finally, the NRC must inspect more closely the construction of nuclear plants. They must, in fact, be relentless in their oversight duties.

The amendment I offer today takes a stride toward the goal of safe commercial nuclear powerplant construction. First, it authorizes and directs the Nuclear Regulatory Commission to accelerate its resident inspector program so as to assure by the end of 1982 the assignment of at least one resident inspector at each site at which a plant is under construction and more than 15 percent complete.

Second, it directs the Commission to conduct a study of ways to improve quality assurance and quality control programs. In doing so, the NRC shall solicit the comments of the public, industry and the Advisory Committee on Reactor Safeguards. The study is to include, but not be limited to, the concepts of, first, adopting narrower definitions of principal architectural and engineering criteria that would serve as a basis for QA/QC, inspection and enforcement actions; second, requiring as a condition for the issuance of construction permits that the licensee demonstrate its capability to independently perform all QA/QC responsibilities; third, encouraging more effective inspections or audits of commercial nuclear facilities by independent industry and institutional organizations; fourth, reexamining the NRC's own organization and method for quality assurance development, review and inspection, with the objective of deriving improvements in the agency's programs; and fifth, requiring as a condition of the issuance of a construction permit, that the licensee contract or make other arrangements with an independent inspector for auditing quality assurance responsibilities for the purpose of verifying quality assurance performance.

Third, and finally, the Commission is directed to undertake a pilot program for assessing the feasibility and benefits of implementing one or more of the above-mentioned concepts, providing that the pilot program shall include the use of independent, third party inspectors for auditing quality assurance responsibilities of the licensee. The pilot program shall include at least three sites at which commercial nuclear power plants are under construction. One must be a site at which QA/QC programs have operated satisfactorily and two must be sites at which significant construction and QA/QC deficiencies have been identified in the past.

No later than 18 months after this legislation is enacted, the Commission

is to submit a report to the Congress on the results of the study and the pilot program. The report shall include the recommendations of the Commission, including any necessary legislative changes, and a description of any administrative changes that the Commission has undertaken or intends to undertake, for improving quality assurance and quality control performance in the construction of nuclear powerplants.

In addition to tightening QA/QC programs and upgrading the safety oversight role of the NRC, a direction in which, I am pleased to note, the agency is already moving, this amendment emphasizes a dimension I have long advocated—the participation of third parties. As I mentioned earlier, my efforts were successful in having independent engineers placed at Marble Hill to insure that previously unnoticed flawed concrete was properly repaired.

Increased inspections by independent industry and institutional organizations, and the use of independent inspectors for auditing all QA/QC verification responsibilities not only offer a system of checks and balances by providing a third layer of safety monitoring, they also perform another function—that of bolstering the public's confidence in nuclear energy. Problems such as those that have occurred at Diablo Canyon, Zimmer, and Marble Hill have further eroded whatever trust in nuclear industry and its regulators the public had left after Three Mile Island. If we are going to have nuclear energy in this country it must be safe—safely constructed, safely operated, and its waste must be safely disposed. Nothing less is acceptable. It is not too much to ask that the public health and welfare be protected to the maximum extent possible.

I believe my amendment is acceptable to the managers of the bill. It has been drafted in consultation with the Nuclear Regulatory Commission. Since the House has already held hearings on the problem of inadequate safety procedures at nuclear powerplant construction sites, I hope that the amendment will be retained in conference. I urge the adoption of my amendment.

Mr. President, I ask unanimous consent to have printed in the RECORD an article from the Lexington Herald-Leader of February 28, 1982.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

NUCLEAR PLANTS RADIATE CONCERN AROUND STATE

(By Carol Marie Cropper)

MENTOR.—An Ohio utility begins on Monday what could be the final step before it activates a long-delayed, \$1.25 billion nuclear plant on Kentucky's northern border.

But the probable completion this year of the first of five nuclear plants near Kentucky coincides with the virtual halt to the once-rapid expansion of America's nuclear power industry.

Members of the nuclear Regulatory Commission will be in Cincinnati on Monday to begin the final public hearings on whether the William H. Zimmer nuclear power station should be granted a license to begin operation.

If the NRC's answer is "yes," the Zimmer station, which looms across the Ohio River from this Campbell County town, could begin turning steam heated by a nuclear reaction into electricity as early as this summer. And thousands of Kentuckians will for the first time be close enough to a nuclear power plant that they may have to be evacuated in case of a nuclear accident. Utility spokesmen, however, say such an accident is highly unlikely.

Residents of parts of three Northern Kentucky counties—Campbell, Pendleton, and Bracken—will be within 10 miles of Zimmer, the area that would face evacuation in case of a serious nuclear accident.

Part of northern Fayette County and most of the counties northeast of Lexington are within a 50-mile radius of the plant, a zone where officials say food could be contaminated during a leak at Zimmer.

NRC estimates Zimmer could be licensed to begin low-level operations this summer, when it would become one of the few recent additions to the nation's list of operating nuclear generating plants.

Fifty-six nuclear power plant projects were canceled between fiscal 1975 and the end of 1981, according to the NRC. Soaring building costs combined with lower-than-expected electricity demands caused many utilities to reconsider plans to join the nuclear power boom of the 1960s, and NRC spokesman said.

Nevertheless, it is possible that Zimmer could be joined by as many as four other plants within 50 miles of Kentucky in the next few years.

Although Kentucky won't have any nuclear power plants, state Disaster and Emergency Services has made plans for dealing with potential problems at the five nearby plants:

Zimmer, near Moscow, Ohio, which will be operated by Cincinnati Gas & Electric Co.

Marble Hill, near Madison, Ind., and across the Ohio River from Trimble County, a \$4.3 billion two-unit electricity producer. The first unit is expected to open in 1986, with the second unit arriving in 1987.

Parts of Trimble and Oldham counties will be in the plant's 10-mile evacuation area. Almost 1 million Kentuckians, including Louisville and Frankfort residents, will be in the 50-mile zone.

Phipps Bend, north of Knoxville on the Tennessee-Virginia border. The Tennessee Valley Authority said it spend \$981 million on the planned two units before deciding last August to halt construction because of lower-than-expected growth in customer demand for electricity. If the plant is ever completed, parts of seven southeastern Kentucky counties—Harlan, Letcher, Knott, Pike, Perry, Leslie and Bell—will be in the 50-mile zone.

Hartsville, about 50 miles northeast of Nashville, near Hartsville, Tenn. In 1979, TVA deferred two of the four units, and the utility's directors are expected to decide at their March 4 meeting whether to defer the other two units. Part or all of nine Bowling Green-area counties—Warren, Logan, Simpson, Allen, Barren, Edmonson, Metcalfe, Monroe, and Cumberland—would be in the plant's 50-mile zone.

Clinch River, a government-industry experiment planned near Oak Ridge, Tenn. This new kind of nuclear power generator—a breeder reactor—was put on hold under the Carter administration, but President

Reagan supports the \$3.2 billion venture. If built, the plan would produce electricity at the same time it makes plutonium 239, which would be fuel to produce more electricity. The target opening date is September 1988. Parts of five Kentucky counties—Wayne, McCreary, Bell, Whitley and Knox—would be in the 50-mile radius.

Kentucky officially said "no" to nuclear power during former Gov. Julian Carroll's administration. Thomas E. Little, DES director of operations, said Carroll made it clear that nuclear plants were not wanted in Kentucky.

The no-nukes policy has continued under the Brown administration, he said, but the state has been powerless to stop construction of the two plants on its border and the other three plants nearby.

Kentucky tried unsuccessfully to prevent the NRC from issuing a construction permit at Marble Hill, but the state's position seemed related more to the plight of Kentucky coal than to concerns about the safety of Kentuckians.

John U. Bott Jr., nuclear regulation and affairs manager for Public Service Indiana, which is building the plant, said, "Their (Kentucky officials') contention was that we should use low-cost Kentucky coal."

Little added, "Let's face it. Nuclear plants don't burn coal."

The most visible evidence of the arrival of the nuclear age in the Ohio Valley is the Zimmer station's 479-foot water tower, which can be seen for miles along the Kentucky banks of the Ohio.

Reed Shaw, 70, of Mentor, whose hometown is in the plant's shadow, said he thinks he and his neighbors could not escape fast enough if there was a radiation leak.

Even if a leak never comes, Shaw said, Mentor residents already have lost. His 64-acre farm used to be worth \$100,000, he said. "Now, I can't get \$50,000 for it."

About 70 miles to the west in Trimble County—Bedford, the county seat and home to 800 people—is just eight miles from Marble Hill.

Jack Greenwood, editor of the Trimble Banner Democrat, said narrow roads would make evacuation impossible.

"I don't see any reason for the people of Trimble County or Kentucky to safeguard themselves from something that's bad that's going to benefit some other state," he said.

Not everyone in Bedford complains. L. E. Smith, who works at the local Chevron station, said the plant is providing jobs for local citizens and there's "nothing you can do about it no way."

Gen. Wilbur Buntin Jr., executive director of the state DES, said his staff has prepared evacuation plans for Kentuckians living near Zimmer and will develop similar plans for any other nuclear plant built within 50 miles of the state line.

Thick books describe the state's plans to evacuate the 29,000 people living in Zimmer's 10-mile zone to nearby Mason, Harrison, Grant and Boone counties.

Four rooms at the DES office building in Frankfort are equipped with phones to Zimmer, maps and a computer terminal printing out information such as the wind directions at Zimmer and the rate of radiation release. (If a dangerous radiation leak occurred, it probably would be a release into the air, DES officials say.)

But DES officials said the public's perception of the dangers of nuclear energy are exaggerated.

"I think a misconception that really causes the public a lot of problems is that a nuclear power plant is going to blow up and you're going to have to run for your life," Little said. "That is almost inconceivable."

Even if radiation leaked into the atmosphere, DES officials said, there would

almost certainly be time to evacuate people before they were contaminated by radioactive material.

"Radiation is just not as scary as a lot of people would have you believe," Little said.

The officials at Marble Hill and at Zimmer agreed.

Jeff Godsey, a 28-year-old staff engineer at Zimmer, pointed to yard after yard of buttons and warning lights in the control room and explained how the system is designed to detect and automatically begin correcting anything from a change in water pressure in the nuclear reactor to an increase in radiation levels leaving the plant's vents.

There is a provision for manual override and there are numerous combinations of buttons to push.

But the most interesting buttons are four red ones, two sitting on either side of the main reactor panel. Those buttons are a kind of emergency provision. If pushed, they shut down the reactor.

Godsey described how the pellets of radioactive uranium would be housed in metal rods, bundled inside a steel reactor vessel, how all that would be contained in one concrete enclosure that is housed inside the reinforced concrete reactor building.

At Marble Hill, the reactor building sits on 10 to 12 feet of concrete that was poured on top of a solid rock foundation, said Brad Bishop, media services supervisor for Public Service Indiana. The silo-shaped building that sits on that foundation and will house the nuclear reactor is built of steel with a 4-foot-thick concrete wall outside and two interior walls that add another 10-12 feet of reinforced concrete around the reactor, he said.

These buildings are designed to withstand earthquakes and tornadoes, plant officials said. They must be strong enough to survive the crash of a commercial jetliner, according to the NRC.

The safety features built into the two plants are obviously massive, expensive and intricate.

But nuclear power opponents and some of the Kentucky residents who will live near the plants point to problems at Three Mile Island and other, nuclear-power plants as proof that the safeguards can fail.

"They got a nasty surprise at Three Mile Island," said Henry W. Kendall, a physics professor at the Massachusetts Institute of Technology and one of the founders of the Union of Concerned Scientists, a group opposed to nuclear power. "Things that they thought were impossible were happening."

Past nuclear power plant accidents have not been caused by such dramatic events as earthquakes or bomb explosions but by breakdowns inside the plant that allowed radioactive steam or water to escape from the maze of pipes that circulate in the reactor building.

Nuclear power advocates argue that after 25 years of nuclear power plant operations, there has yet to be an accident that resulted in a single death.

Robert Gray, chairman of the board of directors of Save the Valley, Inc., a group made up primarily of Kentucky and Indiana residents that has opposed Marble Hill, argued that it was just a matter of time.

"There is a major nuclear accident out there. It's statistically very likely. . . . We will see dead bodies."

Kendall argues against the assertion that radiation from a nuclear power plant is not that dangerous. If the ultimate nuclear power disaster—a meltdown—occurred, Kentucky's 10-mile evacuation zone will not be enough, he said.

"In a major nuclear accident, every child that was within 50 miles downwind would be

likely to develop thyroid cancer. . . . The radiation effects extend downwind 300 to 400 miles from the plant. . . . to the extent where it would raise the incidence of cancer and birth defects."

Opponents also say Marble Hill and Zimmer may be especially accident-prone.

Both plants have been heavily criticized during their construction.

Construction of safety-related areas of the Marble Hill plant halted from August 1979 until April 1981 while the NRC investigated complaints of defective concrete construction at the plant. The NRC eventually decided there were no significant defects, but Marble Hill had to upgrade its quality control.

"We didn't have enough properly qualified people with sufficient nuclear construction experience to make sure the project was going along properly," Bott said.

Construction problems at Zimmer also have made headlines. The NRC admitted last year that an earlier investigation into such charges by its own agency was faulty. The NRC fined CG&E \$200,000 in November 1981 for failures in the quality assurance program at the plant. Last Wednesday, CG&E agreed to pay rather than appeal.

"We do agree that deficiencies existed in implementing our quality assurance program, and in exercising sufficient surveillance over our construction contractor, the Henry J. Kaiser Co., but we believe that we have fully corrected these deficiencies," CG&E President William Dickhoner said.

An NRC report released in 1981 rated both Zimmer and Marble Hill construction below average, but officials at both plants argued that those ratings were based on problems that have since been corrected.

Mary and Don Reder are two former schoolteachers who now spend their time representing Mentor in its fight against Zimmer. They will resume their battle Monday, when the hearings start again.

They will argue, as they have argued before, that the proposed evacuation plans to get Kentucky schoolchildren and farmers out of the Zimmer area will not work.

For people like the Reders, Buntin of the DES said, there is a solution.

"If I lived in that area and I was as much afraid of what's going on as, for instance, the Reders appear to be, then I'd simply move."

Mr. SIMPSON. Mr. President, I am pleased to accept and support this amendment and to join as a cosponsor. Indeed, over the past several months, the Commission has identified a number of quality assurance and quality control problems at several nuclear powerplant construction sites. I believe that this amendment provides an important step toward addressing these problems by strengthening NRC's resident inspector program and by exploring a number of alternatives to improve quality assurance performance.

First, the amendment requires that NRC have a least one resident inspector at each nuclear powerplant construction site by the end of fiscal year 1982.

Second, the amendment requires a study of existing programs and alternate concepts for improving quality assurance and quality control performance in the construction of nuclear powerplants. Five such alternate concepts are specified in the amendment.

Third, the amendment calls for a pilot program consisting of programs now underway to gain actual experience with one or more of these concepts at at least three construction sites.

The concepts that are required to be studied under the amendment include the development of a more precise approach to defining criteria for plant construction, similar to the technical specifications that are now developed for plant operation; and the requirement that a licensee demonstrate the ability to independently perform quality assurance and quality control responsibilities for the plant. Under the latter concept, the Commission would determine the point at which a licensee would be required to demonstrate this capability, and the means by which this capability would be demonstrated. One such means, for example, that would fit this concept is owner certification by the American Society of Mechanical Engineers, which can now be granted after the plant is 15 percent completed.

A third concept to be studied is the more effective use of inspections and audits by independent industry and institutional organizations. Such organizations might include the Institute of Electrical and Electronic Engineers, the American Society of Mechanical Engineers, and the Institute for Nuclear Power Operations. In fact, Mr. President, the Institute for Nuclear Power Operations has recently begun a program that provides for the establishment of criteria for evaluating nuclear powerplant construction quality assurance and quality control, and for audits to verify compliance with these criteria.

This industrywide program is a promising step toward improving quality control and quality assurance in the construction of nuclear powerplants, and may well be the best option for bringing much needed improvement to this area. I believe the industry is to be commended for this initiative, and I believe the Commission should pay particular attention to this concept in developing its requirements and recommendations in the area of quality assurance and quality control.

Finally, the amendment would require the study of the concepts of improving the Commission's organization for quality assurance review, development, and inspection, and of requiring the use of independent, third-party inspectors for auditing and verifying quality assurance performance. Programs now underway at several sites that involve the use of third-party inspectors for auditing quality assurance performance would be included as part of the pilot program.

Mr. President, I would like to provide one clarification on the selection of sites to be used for the pilot program. The amendment requires that at least one must be a site at which quality assurance and quality control

programs have operated satisfactorily, and at least two must be sites at which construction, quality assurance, and quality control deficiencies have been identified in the past. As I understand it, this requirement is intended to provide information on a range of sites, for the purpose of assessing past quality assurance performance, corrective measures that have been undertaken where deficiencies have been found, and the effectiveness and appropriateness of ongoing programs for third-party auditing, and other alternate concepts, at these sites.

This requirement is not intended to characterize sites as good or bad in terms of their present quality assurance programs. Thus, mere selection for the pilot program in either category should not be interpreted as an indication that a site has an acceptable or unacceptable quality assurance program. In addition, I believe it is the intent of the sponsors of the amendment that the amendment be implemented so as to avoid delays or disruptions in plant construction, particularly with respect to the pilot program.

Mr. President, I believe the amendment is an appropriate step toward correcting the types of quality assurance problems that we have seen in recent months, and I am pleased to co-sponsor the amendment.

I thank the distinguished Senator from Kentucky for his fine work on this amendment. I believe that he has made a most valuable and thoughtful contribution with the amendment, and he has been most cooperative and helpful on the issue as has his staff.

I have no further comments with regard to the amendment. I certainly endorse its approval.

Mr. MITCHELL. Mr. President, I rise as a cosponsor of the amendment introduced by Senator FORD which would strengthen the quality assurance and quality control programs at nuclear powerplants under construction.

The Ford amendment mandates that, by the end of fiscal year 1982, at least one resident inspector be assigned to each site at which a commercial nuclear powerplant is under construction and where construction is more than 15 percent complete.

The amendment also requires the NRC to conduct a comprehensive study of alternate concepts and existing programs for improving quality assurance and quality control performance in the construction of commercial powerplants.

Two of the alternate concepts which the NRC would be required to study are, one, obtaining more effective evaluations, inspections, or audits of powerplant construction by independent organizations; and two, requiring, as a condition of the issuance of construction permits, that the licensee contract or make other arrangements with an independent inspector to verify quality assurance performance.

The amendment would also provide for the establishment by the NRC of a quality assurance pilot program for at least three sites. The pilot program must include the alternate concepts under study. It must also include projects underway that use independent inspectors for auditing the quality assurance responsibilities of the utility.

The amendment is a forceful response to the continuing disclosures of design errors and construction mishaps at plant construction sites around the country. As NRC Chairman Palladino stated in a speech before the Atomic Industrial Forum:

Some utilities fall short of protecting their own best interests and meeting the high standards expected for nuclear power. Their deficiencies in quality assurance are inexcusable. There have been lapses of many kinds—in design analyses, resulting in built-in design errors; in poor construction practices; in falsified documents; in harassment of quality control personnel; and inadequate training of reactor operators.

The example of a lapse in quality assurance and quality control most often referred to is the discovery in November 1981 of numerous errors in the design and calculations for the Diablo Canyon project. But there have been others, as well, less publicized but equally important.

In late November 1981, the NRC proposed a fine of \$200,000 against the Cincinnati Gas & Electric Co., for sloppy quality assurance during construction of its \$1.25 billion Zimmer plant. In announcing the fine, James Keppler, NRC regional administrator, stated, "I can't tell you there aren't other Zimmers out there."

In January 1982, the NRC proposed a fine of \$500,000 against Boston Edison for alleged safety violations at its Pilgrim nuclear powerplant. The NRC staff reported the alleged violations reflected "a lack of management review and attention that is manifested by such problems in design, maintenance, and operating practices." Boston Edison was accused of failing for 2½ years to meet Federal standards on a system which is designed to remove explosive hydrogen gas from the reactor building in the case of an accident.

It is in the best interests of utilities, as Chairman Palladino stated, to meet the high quality assurance standards required of them. It pays to meet these standards because it costs if they are not met. But there is an inherent conflict of interest in this area that one cannot ignore. That is the conflict caused by the fact that the utility building the plant is also responsible for the plant's quality assurance. Cutting corners to save money on construction can often mean cutting corners on safety regulations.

The Ford amendment attempts to minimize this conflict of interest by upgrading and increasing NRC efforts in this critical area. The amendment provides a meaningful alternative

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the string of disclosures and the string of fines.

The amendment also provides quality assurance before the fact, in effect before the utility has spent a prodigious amount to build the plant. In the process, it may save the utilities a lot of headaches, expensive delays in construction time, and costly fines. More importantly, it will place safety before development, and thereby better protect the public health and safety.

● Mr. LEVIN. Mr. President, I would like to congratulate my colleague from Kentucky for proposing such a constructive amendment to the Nuclear Regulatory Commission authorization bill. As a cosponsor of this amendment, I would urge my colleagues to accept this prudent step.

One of the major problems facing the nuclear power industry is the increasing lack of public confidence in the safety of nuclear power. For years we were told that no accidents were possible—until accidents started occurring. Regulators told us their guidelines were foolproof—until it was discovered that major errors had occurred. I believe the amendment offered by Senator Ford could help both prevent mistakes and assure the public that quality control will be required. Under such a program, the utility building a nuclear plant, the NRC, which must license and regulate nuclear powerplants, and the public paying for and living next door to the plant can see if it meets all quality requirements.

In my State of Michigan there has been a certain amount of mistrust concerning the quality control of a nuclear plant. Those building plants have assured us that they will be safe. What better way to verify quality control than to have such a plant participate in a new system of independent inspectors?

The PRESIDING OFFICER. Do the mover and manager of the bill yield back their time?

Mr. HART addressed the Chair.

The PRESIDING OFFICER. Who yields time to the Senator from Colorado?

Mr. HART. Mr. President, I have time I think under the time agreement of my own on the bill or on this amendment.

The PRESIDING OFFICER. Does the Senator wish to use time on the bill?

Mr. SIMPSON. Mr. President, we are on the Ford amendment. There is a time agreement on the Ford amendment which is now being used.

The PRESIDING OFFICER. The Parliamentarian advises me that under the terms of the time agreement, the time for the Ford amendment is actually controlled by the Senator from Kentucky.

Mr. FORD. Mr. President, I yield such time as the distinguished Senator from Colorado might need of my 30 minutes.

The PRESIDING OFFICER. The Senator from Colorado recognized.

Mr. HART. I thank the Senator.

Mr. President, I am a cosponsor and strongly support this amendment offered by the distinguished Senator from Kentucky.

The amendment will begin the much-needed task of upgrading the quality control and quality assurance programs at nuclear powerplants under construction. I agree with him on the importance of this effort. I congratulate him for offering this amendment.

I align myself very strongly with it and urge its adoption.

Construction deficiencies, and inadequacies in licensees' quality assurance/quality control programs, have long plagued the U.S. commercial nuclear power program. The recent disclosure of serious construction errors at the Diablo Canyon powerplant, and the \$200,000 fine levied by NRC against Cincinnati Gas & Electric for having an inadequate QA/QC program at its Zimmer powerplant, indicate these problems have not disappeared and, in fact, may have gotten worse.

NRC Chairman Palladino strongly criticized the nuclear industry for construction deficiencies and inadequacies in its QA/QC programs. He said:

Public health and safety considerations as well as economic imperatives dictate use of the highest professional standards in building and operating a nuclear plant. When construction or operation falls below the highest standards, the entire industry is hurt. . . . A number of deficiencies at some plants have come to my attention which show a surprising lack of professionalism in the construction and preparation for operation of nuclear facilities. The responsibility for such deficiencies rests squarely on the shoulders of management. . . . If the nuclear industry does not do its part, no amount of regulatory reform will save it from the consequences of its own failures to achieve the quality of construction and plant operations it must have for its own well-being and for the safety of the public it serves. Based on quality assurance failures that have recently come to light, I am not convinced that all of the industry has been doing its part.

In addition to the lack of professionalism in some cases, noted by Chairman Paladino, the quality control efforts by utilities also will suffer from a flawed regulatory philosophy: An inherent conflict of interest arises because the utility constructing the powerplant, which naturally seeks to minimize construction costs, also has the responsibility for assuring and controlling the quality of construction—efforts that could increase the total cost of the project.

I support the Ford amendment because it seeks to minimize the inherent conflict of interest that results when the utility building the powerplant bears responsibility for assuring the quality of construction. In particular, the amendment directs the NRC to study alternate concepts for improving quality assurance and quality control in the construction of power-

plants. The study must specifically consider requiring, as a condition for construction permits, that the utility contract with an independent, third-party inspector for quality control verification.

Perhaps more important, the Ford amendment would establish a pilot program for at least three sites where powerplants are under construction to assess the benefits of using independent third-party inspectors to perform the utility's quality assurance and quality control verification responsibilities. The assessment under this pilot program is one that the Congress should have required the NRC to make long ago. I appreciate the work of the distinguished Senator from Kentucky in encouraging the Senate to address this weakness in the U.S. commercial nuclear power program. I urge the acceptance of this amendment.

Mr. FORD. Mr. President, I thank the distinguished Senator from Wyoming (Mr. SIMPSON) and the distinguished Senator from Colorado (Mr. HART) for their support of this amendment.

No two Senators and their staff could work any closer with us and our staff. I think we have an outstanding amendment here that heads us in the right direction as it relates to the safety of our nuclear generating facilities.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Does the Senator from Wyoming yield back his time as well?

Mr. SIMPSON. Mr. President, yes, I do.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kentucky.

The amendment (UP No. 839) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SIMPSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SYMMS. Mr. President, will the Senator yield me some time on the bill?

Mr. SIMPSON. Mr. President, I believe I have very limited time remaining on the bill.

May I have a review of that, please?

The PRESIDING OFFICER. The manager of the bill has 5 minutes and 42 seconds remaining on the bill itself.

Mr. SIMPSON. How much time does my colleague from Colorado have remaining?

The PRESIDING OFFICER. The Senator from Colorado has 30 minutes remaining.

Mr. HART. Mr. President, there apparently is some desire on the part of a number of Senators to speak under time on the bill. The Senator from Pennsylvania first requested time, and I am prepared to yield time to him. I

wonder if the Senator from Idaho could tell me how much time he is requesting?

Mr. SYMMS. About 5 minutes, I would say; 3 minutes might do it.

Mr. HART. I yield not to exceed 5 minutes to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. SYMMS. Mr. President, I wish to thank my good friend from Colorado for yielding me the 5 minutes.

I thank him and the distinguished chairman of the committee, the Senator from Wyoming, for their efforts to bring this bill to the full Senate.

Mr. President, I am in support of this bill.

There are a number of significant provisions in the bill, as reported by the Environment and Public Works Committee that I would like to mention briefly. I believe that these provisions will have a positive impact in terms of enhancing safety, and at the same time should result in real improvement, in regulatory efficiency in the nuclear powerplant licensing process.

First, the bill designates funding for several NRC safety programs. These include reactor safety research work on fast breeder reactors, including support for the licensing of the Clinch River Breeder Reactor; safety research and licensing review work on high-temperature, gas-cooled reactors; and research work related to the loss-of-fluid test facility. This facility, in particular, Mr. President, has provided extremely useful information to the Commission, the nuclear industry, and the public on the validity of the NRC's requirements for nuclear reactor emergency core cooling systems, and the bill would permit this valuable work to go forward over the next 2 years.

Second, the bill grants to the Commission the authority to issue interim operating licenses for new nuclear powerplants through 1983. I believe this provision is particularly essential to insure that there will not be unnecessary delays in the operation of new plants that are unrelated to significant safety issues. Even though there has been considerable fluctuation in the projected delays for these plants, the potential for costly and unnecessary delays remains a possibility until the present licensing backlog is removed. The bill, as reported by the committee, eliminates this potential in a responsible manner that assures the continued protection of the public health and safety.

Third, the bill would remove a requirement for advance hearings on certain power reactor license amendments that could serve as a source of costly delay and disruption of plant operation. This provision allows those license amendments that the Commission determines do not involve significant safety issues to be put into effect before any requested hearing is held. Again, this provision, while preserving

the opportunity for a hearing, assures that plant operations will not be disrupted in those cases where there is no serious safety question involved.

I believe that these budgetary and reform measures serve as an important first step in improving the efficiency and effectiveness of the nuclear regulatory process in this country, and I strongly support passage of the bill.

Mr. President, I yield back the remainder of my time.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HART. Mr. President, I yield 5 minutes to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 5 minutes.

THREE MILE ISLAND

Mr. SPECTER. I thank the distinguished Senator from Colorado for yielding me this time.

Mr. President, in the consideration of this bill I believe that a substantial analysis is required of the pending problems of Three Mile Island in the Commonwealth of Pennsylvania as they relate to the broader national aspects of the development of nuclear energy.

The incident at TMI on March 29, 1979, has adversely affected Pennsylvania in at least two ways: First, higher electric rates for both home and industry; and, second, an uneasiness about the safety of citizens living near nuclear-generating plants.

This has resulted in a depressed economy for the TMI area and stimulated an active concern about safety by groups of citizens.

Beyond the immediate impact of Three Mile Island on the Commonwealth of Pennsylvania, the Three Mile Island incident has had, I suggest, a serious effect on the development of nuclear energy around the Nation.

I believe it is imperative that an immediate answer be found for the problems at TMI if there is to be any realistic possibility of developing nuclear energy in this Nation.

An accident such as that at TMI could have happened anywhere, and it is only a matter of happenstance that it occurred in Pennsylvania. Had the nuclear industry anticipated such a problem I think there would have been a widespread movement to create an insurance fund with companies owning nuclear plants, contributing a small amount of money based on an insurance principle so that in the event of such an accident there would have been a fund to pay for cleanup.

That, unfortunately, was not done in advance. Once the accident occurred it is obviously difficult to get the industry to do retroactively what would have been much easier to do prospectively.

Senator HEINZ and I and others have introduced legislation in Congress, and Governor Thornburgh of Pennsylva-

nia has move ahead with an innovative plan. But any successful effort is going to require substantial participation by the Federal Government, and is going to require substantial participation and assistance by the Nuclear Regulatory Commission.

As we consider this bill, I think Congress should attend to the problem at TMI and work in a unified way to provide a national solution to that problem because it is realistically a national problem and one which has to be solved if there is to be further development of nuclear energy in the United States.

There must be appropriate assurances of safety, there must be appropriate assurances that in the event of accident there will be a proper response to see to it that those in the area are properly cared for and properly taken care of.

I thank the Senator from Colorado for yielding the time. Mr. President, I yield the floor.

UP AMENDMENT NO. 840

Mr. SIMPSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming (Mr. SIMPSON) proposes an unprinted amendment numbered 840.

Mr. SIMPSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 6, after line 13, add a new section 105 to read as follows:

"Sec. 105. Funds authorized to be appropriated under this Act shall be used by the Commission to expedite the establishment of safety goals for nuclear reactor regulation. The development of safety goals and accompanying methodologies for their application should be expedited to the maximum extent practicable and shall precede, unless the Commission decides otherwise, the issuance of other regulations contemplated by the Commission that could affect engineered safety features, siting requirements, or emergency planning."

Mr. SIMPSON. Mr. President, I am offering this amendment which, if adopted, will require the NRC to move forward expeditiously with the establishment of a safety goal for nuclear reactor regulation. Last year, this body adopted a similar provision as part of the NRC authorization bill for fiscal year 1981. Unfortunately, that provision was not enacted due to the failure of the House to act on that legislation.

As you know, Mr. President, an unprecedented number of new regulatory requirements for nuclear powerplants has resulted from the accident at Three Mile Island. Included among the major regulatory initiatives that the Commission has undertaken are rules to alter siting requirements,

expand the current design bases for nuclear reactors, and change emergency planning requirements. While I strongly support the NRC's efforts to upgrade these and other safety requirements, I am concerned that there is a persistent lack of criteria and objectives to provide a coherency and direction to the definition of new regulatory requirements and of their application to existing and future nuclear powerplants.

To assure reasonable protection of the health and safety of the public, the quality of the structures, systems, and components of nuclear powerplants must be designed, engineered, built, and operated in order to achieve the desired degree of performance.

We have this absence of a safety goal, and I think that inhibits and may preclude addressing the threshold question of whether a particular new requirement is necessary to achieve the desired level of safety and such determinations must be made on a case-by-case basis without clear and consistent guidance from the Commission on the standards that should be applied and we need to correct that.

Succinctly then, Mr. President, the best approach toward identifying the desired level of safety for nuclear power reactors is the establishment of a "safety goal." Indeed, the NRC's Lessons Learned Task Force, in its report following the accident at Three Mile Island, emphasized the importance of a safety goal in achieving a balanced regulatory perspective, a view echoed by the Kemeny and Rogovin reports as well. As recently as September of last year, the Commission's Advisory Committee on Reactor Safeguards, in commenting on the staff's proposed rule on reactor site criteria, reiterated its support for establishment of a safety goal when it stated that:

The decision on reactor site criteria should not be made in the absence of either some guiding safety philosophy or sufficiently specific design requirements for nuclear powerplants.

It is in light of these recommendations, Mr. President, that I am proposing that NRC move forward swiftly with the establishment of a safety goal. The amendment I offer today provides that, unless the Commission should decide otherwise, the development and promulgation of a safety goal should precede other major rule-making activities related to engineered safety features, siting requirements, or emergency planning. By placing high priority on the establishment of a safety goal and methods for its application, the NRC will then have laid the essential groundwork for the adoption of requirements related to engineered safety features, siting, and emergency planning.

I urge the support of the amendment.

Mr. HART addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, along with Senator SIMPSON in the past I have supported the goal of a safety goal which this amendment is directed toward.

To some extent that goal will provide a benchmark for NRC safety regulations and lead to a consistent regulatory scheme.

At the same time, perhaps I am not as sanguine as the Senator from Wyoming about how useful such a goal will be for two reasons: First, it is extremely difficult to quantify subjective assessments of comparative risks, and to determine how much risk we consider acceptable; and, second, even if the NRC can develop a quantified safety goal, it is equally difficult to apply that goal in specific regulatory decisions. How will some general assessment of acceptable risk, even in numerical terms, help the NRC to decide whether to require, for example, additional warning sirens for an emergency plan, additional training for a powerplant operator of an additional few inches of concrete in a containment wall? The simple answer to that question, Mr. President, is I just do not know.

I do think a safety goal will serve as a useful vehicle for debating "how safe is safe enough," the chronic nuclear power issue. Moreover, it will at least provide a general objective that we hope NRC's safety regulations will achieve.

In spite of those reservations, Mr. President, I endorse and support the amendment of the Senator from Wyoming and I urge its passage.

The PRESIDING OFFICER. Who yields time?

Mr. SIMPSON. I thank the Senator and yield back the remainder of my time on the amendment.

The PRESIDING OFFICER. Does the Senator from Colorado also yield back his time?

Mr. HART. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment (UP No. 840) was agreed to.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HART. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 841

Mr. SIMPSON. Mr. President, I send another amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Wyoming (Mr. SIMPSON) for himself and Mr. HART, proposes an unprinted amendment numbered 841.

Mr. SIMPSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 12, after line 19, insert a new section to read as follows:

Sec.—(a) The Atomic Energy Act of 1954, as amended, is amended by adding a new section 237 to read as follows:

"Sec. 237. Resident Inspectors.—

a. Notwithstanding any regulations promulgated by the President pursuant to Section 5724(a) of Title 5, U.S.C., appropriations or other funds available to the Nuclear Regulatory Commission for administrative expenses are available, under such regulations as the Commission may prescribe and to the extent considered necessary and appropriate, for reimbursement of all or part of the following expenses of a resident inspector of the Commission, relocating between two NRC duty stations, for whom the Government pays expenses of travel and transportation under Section 5724(a) of Title 5, U.S.C.—(1) Points or mortgage loan origination fees charged by mortgage lender to resident inspector on sale or purchase of a residence, not to exceed the lesser of \$8000 or 8 percent of the sale price of the residence (8 points); (2) Interest on, and other expenses of, a "bridge" or "swing" loan, limited to 180 days of interest, taken by the resident inspector on currently owned property to provide an equity advance to purchase a second property prior to the sale of the first property; (3) The cost of an owner's title insurance policy paid for by the resident inspector on a residence purchased by him.

b. The Commission is authorized to enter into contracts for the provision of relocation services to assist employee resident inspectors for whom the Government pays expenses of travel and transportation under Section 5724(a) of Title 5, of the United States Code, in relocating between duty stations, including assisting in the sale of employees' residences.

c. Notwithstanding the provisions of Section 638a of Title 31, the Nuclear Regulatory Commission may authorize the Executive Director for Operations to approve the use of Government-owned or leased vehicles located at resident inspection offices for transportation of resident inspectors between their domiciles and official duty stations, when public transportation is unavailable or impractical.

(b) Of the amounts authorized to be appropriated by this Act, the Commission may use up to \$1,162,000 in fiscal year 1982 and up to \$1,129,000 in fiscal year 1983 pursuant to the authority contained in subsection (a) of this section.

Mr. SIMPSON. Mr. President, one of the principal recommendations that each of the major investigations into the accident at Three Mile Island was that the Nuclear Regulatory Commission should expand its resident inspector program. That was a consistently threaded-through observation. The Congress responded by authorizing and appropriating funds for expanding this vital link in the Commission's improved safety program. The resident inspector provides a continuing Commission presence onsite at nuclear power reactors. These inspectors are well versed in their sites' characteris-

tics, nuclear technology, and the licensee's procedures and personnel. They monitor day-to-day activities and licensee performance and they are available to respond quickly to events which could affect public health and safety, both onsite and in the local area. The Commission's goal is to have a resident inspector at each operating power reactor and each reactor under construction by the end of fiscal year 1982.

The Commission insures impartiality of these inspectors; first, by relocating each inspector every 3 to 5 years and, second, by restricting certain activities of the inspector and the inspector's family to avoid even the appearance of a conflict of interest. These restrictive measures include the prohibition of family members from working for the licensee or the licensee's contractors, which are often the principal employers in the area, and the prohibition of other forms of contact with licensee or licensee contractor employees.

As a result of these requirements, as well as of NRC's difficulty in competing with private industry to provide salary, incentives, and other benefits, the Commission is experiencing difficulty in recruiting and retaining the highly trained and competent individuals needed to make the resident inspector program effective. Thus, the Commission may not be able to meet its goal of having an inspector at each operating power reactor and at each reactor under construction by the end of fiscal year 1982.

One major obstacle in meeting this objective is the financial cost involved in relocating, especially in light of very tight housing and financial markets. While some of these costs are reimbursable under current government statutes and regulations, a significant share must still be borne by the relocating inspector. A second problem area involves the costs of commuting between the resident inspector's residence and the nuclear reactor site. The resident inspector's commuting costs present a unique problem converse to those of other Federal employees because of several factors: First, the remoteness of many nuclear sites; second, the frequent unavailability of public transportation; and third, one of the restrictions placed on the inspector, which prohibit carpooling with licensee employees or using licensee-subsidized transportation.

It is to these two areas of concern—relocation costs and commuting costs—that the amendment is directed. The amendment, if adopted, would authorize the Commission to first, reimburse resident inspectors for mortgage loan origination fees, owner's title insurance, and "Bridge" loan expenses incurred in relocating between duty stations; second, contract with a "relocating service" to assist resident inspectors in relocating between duty stations; and third, provide resident inspectors with government transportation for commuting purposes between

their homes and duty stations. The amendment also places a cap on these reimbursements to assure they will not exceed \$1,162,000 in fiscal year 1982, and \$1,129,000 in fiscal year 1983.

So that is the purpose of the amendment. Throughout our entire deliberations, since I have been on this committee and subcommittee, both as ranking minority member and as chairman, the resident inspector became the single most important inspector at recreating and creating confidence in nuclear power generation.

I urge support of this amendment that would insure that the Commission will fully implement this vital safety and health program.

Mr. HART. Mr. President, I support and cosponsor the amendment by the Senator from Wyoming. The resident inspector's program is necessary to improve the protection of public health and safety, as outlined by the Senator from Wyoming. This provision removes some of the difficulty in attracting resident inspectors.

The NRC can meet its goal of having a resident inspector at every operating plant by the end of the fiscal year.

This is a worthwhile and important amendment. I urge its adoption. I yield back the remainder of my time.

The PRESIDING OFFICER. Does the Senator from Wyoming also yield back his time?

Mr. SIMPSON. I do yield back my time on that amendment, Mr. President.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment (UP No. 841) was agreed to.

Mr. SIMPSON. I move to reconsider the vote by which the amendment was agreed to.

Mr. HART. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SIMPSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. How does the Senator wish the time for this quorum call to be charged?

Mr. HART. Mr. President, I ask unanimous consent that the time for the quorum call not be charged against either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.
The bill clerk proceeded to call the roll.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COCHRAN). Without objection, it is so ordered.

Mr. SIMPSON. At this point, Mr. President, I ask unanimous consent that an amendment by the Senator from Pennsylvania (Mr. HEINZ) be in order to be offered when the Senate

resumes consideration of the pending business, which is S. 1207, but not prior to Monday, March 29.

I further ask unanimous consent that this agreement be subject to the minority leader's approval and may be vitiated by the minority leader at any time prior to the close of business tomorrow.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, I have no further amendments to this bill today. We shall return to its consideration as I have just suggested, when we shall take up two other amendments under the previous time agreement, also.

I appreciate the patience and cooperation of the ranking minority member of the subcommittee (Mr. HART).

Mr. President, at this time I believe we are able to return to the consideration of other business.

The PRESIDING OFFICER. Without objection, S. 1207 will be set aside.

REGULATORY REFORM

The PRESIDING OFFICER. The clerk will state the pending business.

The legislative clerk read as follows:

A bill (S. 1080) to amend the Administrative Procedure Act to require Federal agencies to analyze the effects of rules to improve their effectiveness and to decrease their compliance costs; to provide for a periodic review of regulations, and for other purposes.

The Senate resumed consideration of the bill.

Mr. TOWER. Mr. President, the economic recovery program as originally proposed by President Reagan consisted of four major goals: tax reduction; control of Government spending; a consistent monetary policy; and reduction in the burden of Government regulation. We have made and continue to make great strides in all of these areas. The Economic Recovery Tax Act of 1981, reductions in the growth rate of Federal spending, and more stabilized growth in the money supply through the annual monetary targets set by the Federal Reserve Board all are steps toward the goals mandated by the American people.

Today we continue our progress with consideration of the Regulatory Reform Act, S. 1080. While this legislation is not intended to be a comprehensive reform of the entire regulatory process. It focuses in depth on the procedures for rulemaking and for judicial review of agency actions. The provisions of S. 1080 are a positive step in alleviating one of the greatest concerns of American citizens in all walks of life—unnecessary and costly Government regulations. Too often these regulations have been propounded without appropriate consultation with those affected and without responsible analysis by the agencies involved. The regulatory analysis procedures of the

as no longer deployable, at a large waste of Federal dollars.

Finally, expenditure of R. & D. and procurement funds for any work connected with the ineffective interim basing mode dilutes and delays efforts to develop a survivable permanent basing system.

For these reasons, Mr. President, I believe it is militarily and fiscally prudent that any funding included in the MX budget request in fiscal year 1983 for work connected to the interim basing mode, and for the proposed procurement of nine missiles, be rejected by the Armed Services Committee and the Senate. I shall work with our colleagues toward this goal.

I am mindful that those who might oppose my position would argue that the interim basing mode is needed to demonstrate to the Soviets that the United States is serious about modernizing its land-based missile force, and that without interim MX deployment, our strategic position will worsen.

I believe strongly, however, that deployment of MX missiles in a basing mode which will not work would only demonstrate a weak defense policy and a wasteful investment strategy.

Mr. President, I have articulated these views in a letter I have sent today, to the chairman of our committee's strategic subcommittee (Mr. WARNER). I have urged him to support action in the strategic subcommittee to address these concerns.

I wish to share this letter with my colleagues, and ask unanimous consent that it be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,

COMMITTEE ON ARMED SERVICES,

Washington, D.C., March 22, 1982

HON. JOHN W. WARNER,

Chairman, Strategic Forces Subcommittee,
Russell Senate Office Building, Wash-
ington, D.C.

DEAR JOHN: In the past three years, we all have observed with growing frustration the nation's struggle to develop a satisfactory solution to the theoretical vulnerability of our intercontinental ballistic missile (ICBM) force. Sadly, I must conclude that we are no closer to solving that problem today than we were three years ago.

The latest proposal for procuring and basing the MX missile, embodied in the Fiscal 1983 defense budget request, represents a backward step. I believe its enactment actually will make us weaker militarily and far less able financially to fund needed defense programs.

The Fiscal 1983 (FY 83) proposal to procure nine MX missiles for about \$1.5 billion, and to devote much of the \$2.76 billion in requested research and development funds for work related to their interim basing, has several serious and fundamental flaws:

First, there has been ample expert testimony during the past five months that the interim basing mode is a military failure because it in no way reduces the vulnerability of our land-based missiles. To place 40% of our newest, proposed strategic nuclear asset, the MX missiles, in existing, non-surviving silos just repeats our present problem which

MX was supposed to solve—i.e. land based missile vulnerability.

In addition, the Air Force has testified that it is uncertain whether, when and at what cost, it would transfer MX missiles from the interim basing modes to a permanent deployment scheme. This raises the prospect that 40% of our most modernized ICBM capability would remain vulnerable, and in a militarily-inferior and neutralized position, even after MX deployment in a survivable system.

Thus, militarily, the interim basing mode makes no sense.

Second, fiscally, the interim basing mode makes no sense because its cost to the taxpayers for each surviving MX is about \$1.3-\$1.45 billion. This is immensely greater than the cost per surviving submarine-launched ballistic missile, and per surviving bomber, in the other two legs of our strategic deterrent TRIAD.

Third, from an arms control perspective, MX in the interim basing mode makes no sense because it dangerously reduces "crisis stability" and the threshold to nuclear war. It actually invites a preemptory strike by the Soviets, who might well feel tempted to eliminate our most threatening missiles before we could use them and it forces us to rely more heavily on a risky "launch on warning" policy, so as to "use, not lose" these MX.

Fourth, the Air Force has acknowledged that it is considering other, smaller missiles for deployment in the permanent, survivable basing mode. It also has said some changes in the current MX configuration, designed for the now-rejected multiple protective structure (MPS) basing, will be needed for permanent basing. Thus, any MX missiles procured before the final basing mode is selected could require redesign, at additional cost, or could be discarded outright as no longer deployable, at a large waste of federal dollars.

Fifth, expenditure of R&D and procurement funds for any work connected with the ineffective, interim basing mode, dilutes and delays efforts to develop a survivable, permanent basing system.

For these reasons, I believe it would be militarily and fiscally prudent for the Strategic Subcommittee to restructure the MX program. This can best be accomplished by eliminating any missile and basing mode R&D funding connected with the interim basing mode and pacing R&D to support a 1989 IOC for the permanent mode; by rejecting the proposed procurement of nine MX missiles in FY 83; and by establishing a 1989 IOC for an entire militarily credible system. I urge you to support an amendment in the Strategic subcommittee to accomplish these objectives.

I am mindful that those who might oppose our position would argue that the interim basing mode is needed to demonstrate to the Soviet Union that the United States is serious about modernizing its land-based missile force, and that without interim MX deployment, our strategic position will worsen. I believe strongly, however, that deployment of MX missiles, which could be changed or discarded, in a basing mode which will not work, would only demonstrate a weak defense policy and a wasteful investment strategy.

Thanks in advance for your consideration.
Sincerely,

CARL LEVIN,
U.S. Senator.

Mr. LEVIN. Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

REGULATORY REFORM

The PRESIDING OFFICER. The Senate will now resume consideration of S. 1080, which will be stated by title.

The legislative clerk read as follows:

A bill (S. 1080) to amend the Administrative Procedure Act to require Federal agencies to analyze the effects of rules to improve their effectiveness and to decrease their compliance costs; to provide for a periodic review of regulations, and for other purposes.

NUCLEAR REGULATORY COMMISSION AUTHORIZATIONS

TIME LIMITATION AGREEMENT

Mr. STEVENS. Mr. President, I now ask unanimous consent that the Senate proceed to the consideration of Calendar No. 141, S. 1207, authorization of appropriations for the Nuclear Regulatory Commission, under the following time agreement:

One hour on the bill, to be equally divided between the Senator from Wyoming (Mr. SIMPSON) and the Senator from Colorado (Mr. HART) or their designees.

Mr. ROBERT C. BYRD. Mr. President, has the bill been called up?

Mr. STEVENS. It has not been.

Mr. ROBERT C. BYRD. Has the clerk stated the title?

Mr. STEVENS. We have before the Senate another measure as pending business, unless it is displaced by this agreement, I say to the Senator from West Virginia.

Mr. ROBERT C. BYRD. I thought the distinguished Senator asked that the Senate proceed to the consideration of another bill.

Mr. STEVENS. No; I said, "under the following time agreement," which I have not yet read. If we do not obtain that time agreement, it is my understanding that we will remain on the other bill.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. STEVENS. I will resume. I indicated that there would be 1 hour, equally divided between the managers of the bill.

One hour on an amendment by Senators HART, SIMPSON, and MITCHELL, to prohibit the use of commercial spent fuel for nuclear explosive purposes.

Thirty minutes on an amendment by Senators FORD, SIMPSON, and HART on nuclear powerplant quality assurance.

Thirty minutes on a technical amendment by Senators HART and SIMPSON.

Thirty minutes on an amendment by Senators DOMENICI and SIMPSON on uranium mill tailings regulation.

Thirty minutes on an amendment by Senator SIMPSON to require the development of a safety goal.

Thirty minutes on an amendment by Senators SIMPSON and HART on resident inspectors.

Thirty minutes on an amendment by Senator McCLURE on the analysis of LOFT test results.

Thirty minutes on an amendment by Senator HART on safeguards information.

Thirty minutes on an amendment by Senator ABDNOR on uranium mill tailings at Edgemont, S. Dak.

Thirty minutes on an amendment by Senator HEINZ regarding Three Mile Island waste storage.

One hour on an amendment by Senator McCLURE on powerplants licensing.

Thirty minutes on all other amendments in the first degree.

Twenty minutes on all amendments in the second degree.

Ten minutes on any debatable motion, appeals, or points of order, if submitted to the Senate.

Also, that the agreement be in the usual form, with the following proviso: That the Senate dispose of all amendments to S. 1207 with the exception of the Hart, Simpson, and Mitchell amendment to prohibit the use of commercial spent fuel for nuclear explosive purposes, limited to 1 hour, and the Domenici and Simpson amendment on uranium mill tailings regulation, limited to 30 minutes during today's session.

Provided, further, that the Senate not resume consideration of S. 1207 prior to Monday, March 29.

Provided, further, that no call for the regular order will displace S. 1207.

Mr. President, that is the proposed time agreement. If it is agreed to, it is my understanding that if any rollcall votes are ordered today, they will be dealt with by agreement, after consultation with the minority leader, with the intent that they will be put over until another time. The precise time would have to be determined later.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object—

Mr. STEVENS. Mr. President, I add to that an omission, and I apologize to the minority leader, because it was left out of my version.

Provided, further, that the Senate resume consideration of S. 1207 following disposition of S. 1080, the regulatory reform bill, and that the only amendments to be in order to S. 1207 are the amendments identified in this agreement above.

I did state that we would not resume consideration of S. 1207 prior to

Monday, March 29, and that no call for the regular order would take S. 1207 down. That was part of my original request.

The PRESIDING OFFICER. The Senator is correct.

The minority leader is recognized.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object.

Mr. STEVENS. Mr. President, I say again to the distinguished minority leader there is no intention to have rollcall votes on these amendments today if they are ordered. The precise time at which those rollcall votes would take place that may be ordered today has not yet been determined with the managers of the bill, and we are unable to state with specificity as to the exact time when we would like to hold any rollcall votes which would be ordered today on amendments that are listed in this agreement.

Mr. ROBERT C. BYRD. Mr. President, I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the agreement follows:

Ordered. That when the Senate resumes consideration of S. 1207, a bill to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes, the following amendments be the only amendments in order: (1) an amendment to be offered by the Senator from Colorado (Mr. HART), for himself and the Senator from Wyoming (Mr. SIMPSON) and the Senator from Maine (Mr. MITCHELL), to prohibit the use of commercial spent fuel for nuclear explosive purposes, to be limited to 1 hour, to be equally divided and controlled by the Senator from Colorado (Mr. HART) and the manager of the bill; (2) an amendment to be offered by the Senator from New Mexico (Mr. DOMENICI), for himself and the Senator from Wyoming (Mr. SIMPSON), relative to uranium mill tailings regulation, to be limited to 30 minutes, to be equally divided and controlled by the Senator from New Mexico (Mr. DOMENICI) and the manager of the bill, and (3) an amendment to be offered by the Senator from Pennsylvania (Mr. HEINZ), to be limited to 30 minutes, to be equally divided and controlled by the Senator from Pennsylvania (Mr. HEINZ) and the manager of the bill; *Provided,* That the agreement on the Heinz amendment be subject to the approval of the minority leader and may be vitiated by the minority leader prior to the close of business on March 23, 1982.

Ordered further. That debate on the bill shall be limited to 1 hour, to be equally divided and controlled by the Senator from Wyoming (Mr. SIMPSON) and the Senator from Colorado (Mr. HART), or their designees.

Ordered further. That debate on any debatable motion, appeal, or point of order if submitted to the Senate shall be limited to 10 minutes, to be equally divided and controlled in the usual form; *Provided,* That no call for the regular order shall serve to displace S. 1207.

MARCH 22, 1982.

Mr. STEVENS. Mr. President, is it correct that S. 1207 is now the pending business before the Senate?

The PRESIDING OFFICER. The Senator is correct.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1207) to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

The Senate proceeded to the consideration of the bill.

Mr. STEVENS. Mr. President, it would be the leadership's intention to notify and we hope that the cloakrooms on both sides will notify the membership that we are now on S. 1207. There is a series of amendments that will be argued before the Senate today. We do not anticipate rollcall votes on those amendments today, but once they are disposed of and the time is yielded back they will be voted on at a later time without debate.

It is incumbent upon those who wish to be heard and involved to keep up with the development of the consideration of the Nuclear Regulatory Commission bill today.

It is our hope that with the exception of those two amendments this bill will be disposed of today with the exception of the time on the bill itself. The amendments listed in the agreement just agreed to with the cooperation of my good friend, the distinguished minority leader, are most, most controversial amendments and very technical.

We are hopeful that Senators will heed our call and come to the floor if they intend to be involved in the debate on the Nuclear Regulatory Commission Authorization Act of 1982.

Mr. ROBERT C. BYRD. Mr. President, I share the views that have just been expressed by the distinguished acting Republican leader.

Will he put in a quorum call and not charge it against anyone on the bill until some of the participants can arrive?

Mr. STEVENS. Yes; I think that is proper.

Mr. President, until the arrival of the managers of the bill, at which time we will take the quorum call off, I ask unanimous consent that there be a quorum call and that time not be charged on the agreement just entered into.

The PRESIDING OFFICER (Mr. ANDREWS). Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I am pleased to present for the consideration of the Senate S. 1207, a bill authorizing funds for the Nuclear Regulatory Commission for fiscal years 1982 and 1983.

As reported from the Committee on Environment and Public Works on May 8, this bill authorizes appropriations in the amount of \$495.7 million for fiscal year 1982, and \$530 million for fiscal year 1983.

I wish to note that this is the first year the committee has recommended a multiyear authorization for the NRC, and, based upon the detailed 2-year budget proposal submitted by the agency, it is the hope that this 2-year authorization will greatly enhance the agency's ability to plan for the future.

As for the particulars of the bill: The committee has recommended an authorization of \$495.7 million for fiscal year 1982—a reduction of 1 percent in the agency's 1982 budget request. That amount, which represents a real increase in fiscal year 1982 dollars of \$6.6 million, is to be divided among the four major program offices within the agency in the following manner: \$75.6 million to "Nuclear reactor regulation," \$67.4 million to "Inspection and enforcement," \$46.3 million to "Nuclear material safety and safeguards," and \$245.7 million to "Research," with the balance allocated for "Program technical support" and "Program direction and administration."

For fiscal year 1983, the committee has recommended an authorization of \$530 million—an amount equivalent to the NRC's 1983 budget request. Similarly, this amount is to be divided among the 4 major program offices in the following manner: \$78.3 million to nuclear reactor regulation, \$70.3 million to inspection and enforcement, \$48 million to nuclear material safety and safeguards, and \$270 million to research, with the balance going to program technical support and program direction and administration.

In addition to the general funding level set forth in this bill, the committee has further recommended that certain funds be earmarked for expenditure by the agency in four specific areas: First, the bill sets aside \$27 million for fast-breeder reactor safety research and licensing review work to be conducted in each fiscal year. These funds are to be used by the agency for the purpose of establishing a regulatory framework for the licensing of fast-breeder reactors.

Of the \$27 million specifically set aside by the committee, \$20.4 million has been earmarked for use by the Office of Research to expand its review of the safety aspects of fast-breeder technology. It is the intent of the committee that the NRC have the capability to license any breeder reactor intended to demonstrate the commercial workability of breeder technology. The funds set aside for this purpose would insure the NRC's li-

ensing review process will not stand as a barrier in the critical path toward operation of such a facility.

Second, the bill earmarks a total of \$10 million in fiscal years 1982-83 for the purposes of accelerating the agency's research activities in the area of high-temperature, gas-cooled reactors. Based upon testimony which was presented to the committee, Mr. President, it appears that high-temperature, gas-cooled reactors may have significant advantages over the current generation of light-water reactors, including greater safety margins, and reduced siting risks.

Accordingly, the committee recommended that \$10 million be set aside for the purpose of enabling the agency's regulatory program in that area to keep pace with industry and Government programs for the development of a large-scale, high-temperature, gas-cooled reactor.

Third, the bill earmarks a total of \$91 million to be used by the agency in fiscal years 1982-83 for the loss of fluid test facility research program, a program which focuses on the consequences of loss-of-coolant accidents in certain types of commercial reactors.

The committee concluded, based upon testimony presented by the agency, that this program should be continued through 1983 for the purpose of completing the testing program described in the LOFT special review group report, and valuable safety information can be obtained in this 2-year period as a result of such tests. Accordingly, the committee set aside \$91 million for that purpose.

Fourth, and very importantly, the bill earmarks \$11.3 million in fiscal years 1982-83 for the purpose of developing a nuclear data link system. Briefly, that system is designed to collect data at individual operating reactors, transmit the data to NRC's headquarters, and display the data in a uniform manner in order to enable the NRC to monitor the plant and independently assess plant conditions during an accident.

Several investigations of the Three Mile Island accident pointed out the lack of timely and accurate information available to NRC's headquarters personnel and, in particular, the serious shortcomings of an emergency communication system that relies upon people to determine and communicate critical technical plant data.

The committee has long supported efforts to improve NRC's ability to communicate with the licensee during an emergency, and has, accordingly, earmarked \$11.3 million for the nuclear data link proposal. The bill specifically provides, however, that the Commission shall not have more than \$1 million in fiscal years 1982-83 until the Commission has established a prototype data link system, and, upon assessing the results of the prototype, has submitted a report to Congress containing a Commission recommendation on implementing a specific

system for all operating nuclear powerplants.

Upon submitting its report, the NRC may then proceed with a complete system—a long-needed item in nuclear regulation.

Mr. President, there have been a number of developments since the committee reported the bill many months ago. Among those is the continuing growing need for reductions in the Federal budget. The Commission should bear a share of that burden, and for this reason I intend to offer an amendment that would reduce the level of authorizations in the bill for fiscal year 1982 by an additional \$10 million.

In addition, the amendment will provide adjustments in the allocation of funding among the major program categories in the agency's budget and for certain specified activities in the bill. I believe these changes are more in line with the Commission's spending plans and priorities, given our present budgetary constraints.

The bill also contains three amendments to the Atomic Energy Act set forth in title II. The first of those amendments, authorizing the NRC to grant interim operating licenses, addresses the problem of a backlog in licensing new nuclear powerplants. For the very first time it appears that the agency's hearing process for a number of nuclear powerplants has the potential for extending beyond the date when the plants will be ready to operate.

This backlog, which can be traced to NRC's diversion of resources from licensing activities to other safety concerns following the Three Mile Island accident, has the potential, if not addressed, to impose what the committee views as unacceptable financial costs upon utilities and their ratepayers.

Mr. President, there has been considerable study of these projected licensing delays for new nuclear powerplants. When NRC projected licensing delays in January 1981, the agency anticipated that 12 plants would be delayed a total of 90 months. A number of factors have changed those early projections of delay rather dramatically. First, I think it is very fair to say that some of the utility projections of plant construction completion were overly optimistic. Lengthening construction periods have, therefore, eliminated a portion of the expected delays.

Second, the Commission has done much to accelerate its licensing program, both by directing additional effort to licensing reviews and by adopting a number of administrative reforms to eliminate unnecessary delays in staff reviews and licensing hearings. I believe the Commission has been most responsive here, while preserving its paramount responsibility to protect the public health and safety. Third, several plants in the interim have now received their full operating

licenses, thereby eliminating any further delay potential in those cases. As a result, Mr. President, the Commission's latest report to the Congress on potential reactor licensing delays anticipates that only one plant will experience any delay, and that delay is expected to be limited to 2 months.

Mr. President, the result of this latest report from the Commission are most personally gratifying to me. Some may, therefore, suggest—if I might anticipate a bit—that we might no longer need that authority in the bill to issue interim operating licenses. I do not believe that is so. I do not believe that is the case for several reasons.

First, the present Commission projections of very limited delays assumes a very ambitious licensing schedule by the Commission for the next 2 years. If the Commission meets its present projections, it will license in each of the next 2 years more than twice the number of new reactor operating licenses than have ever been issued by NRC in a single year. Mr. President, I believe it is wise and appropriate to have the interim operating authority available as a backup over the next 2 years in the event the Commission's projected schedule proves to be overly optimistic.

Second, the interim operating authority provides a useful safeguard to avoid pressures that might otherwise exist to accelerate the licensing process for these plants at the expense of safety. Should problems arise in a given case that require further study, the availability of the interim licensing authority should remove any inordinate pressures to hurry the review of those issues in the hearing process as soon as possible to avoid a licensing delay. The availability of this authority should help assure that the Commission will give all these applications a thorough review without imposing unnecessary economic costs on the ratepayers. I believe this concept of using this authority as a safeguard in those few cases where it may be needed is entirely consistent with the committee's intent. In fact, the provision itself directs the Commission to take all appropriate administrative steps to minimize the need for issuing interim operating licenses under this authority.

Mr. President, for the foregoing reasons, the committee has recommended that the Atomic Energy Act be amended to permit the NRC through 1983 to issue interim operating licenses, prior to the completion of any required hearing.

The amendment set forth in this bill establishes, however, a very detailed procedural framework for granting such licenses that is patterned after a similar provision in the Atomic Energy Act that authorized the Commission to issue such licenses up until October 30, 1973. Briefly, the amendment provides that an applicant may petition the NRC for an interim operating li-

cense after the filing of the Advisory Committee on Reactor Safeguards report, the NRC staff safety report, the NRC staff environmental statement, and a State, local, or utility emergency preparedness plan. The NRC is required to provide notice of the petition and a 30-day period for public comment. This is a very critical and important part of the procedure. Upon expiration of the 30-day comment period, the NRC may issue the interim operating license if it determines that: first, all requirements of law other than the conduct or completion of any required hearing are met; second, there is reasonable assurance that interim operation of the facility in accordance with the terms of the license will provide adequate protection to the public health and safety and the environment, which is the sole mission of the Nuclear Regulatory Commission; and third, denial of the interim license will result in delay between the time when the facility is sufficiently completed to permit interim operation and the time when a final operating license would otherwise be issued.

The amendment further provides that an applicant's initial petition for interim operating license authority shall be limited to 5 percent power. Upon approval by the NRC of the applicant's petition for interim operation at 5 percent power, the applicant may then petition for interim operation at increased power levels. Separate petitions from the utility, notice and public comment periods, and determinations by the NRC are required, however, before the Commission can allow operation at each succeeding power level.

The amendment also includes a number of procedural safeguards to insure that the issuance of the interim operating license does not prejudice the outcome of the licensing hearing for the final operating license or prejudice the rights of any party to the hearing to raise any issue in the hearing and to have that issue decided. In addition, the amendment requires that any party to the hearing or any Licensing Board member conducting the hearing promptly notify the Commission of any information indicating that the terms and conditions of the interim operating license are not being met.

Moreover, the amendment provides that, if the applicant is not prosecuting its application for the final operating license with due diligence, the interim operating license shall be suspended.

Finally, as I mentioned earlier, the Commission is directed under the amendment to adopt those administrative remedies deemed necessary to minimize the need for issuance of interim operating licenses.

The second amendment recommended by the committee in this bill authorizes the NRC to issue amendments to licenses without first holding a

public hearing, where it determines that such amendments pose "no significant hazards consideration." Although the NRC has, for years, interpreted the Atomic Energy Act to authorize the issuance of such amendments without holding a prior hearing, a recent D.C. court of appeals decision, the Sholly decision, struck down the agency's interpretation of the act.

By including this amendment, the committee seeks to address the concern expressed by the Commission in its recent testimony that a requirement that the NRC grant a requested hearing prior to making effective a facility license amendment involving "no significant hazards consideration," could result in unnecessary disruption or delay in the operation of a nuclear powerplant and could impose unnecessary regulatory burdens upon the NRC that are not related to significant safety benefits.

It is for these reasons that the committee recommends that the Atomic Energy Act be amended to authorize the NRC to issue license amendments "posing no significant hazards consideration" without first holding a public hearing.

It should be noted that, in deciding whether a particular amendment poses "no significant hazards consideration," this amendment required that the NRC consult with the State in which the particular facility is located. The committee fully expects that consultation with the State will be the rule, rather than the exception, but in those instances where prior consultation is virtually impossible and the plant is threatened with shutdown unless the amendment is granted, the NRC has further options under this amendment.

In addition, it should be noted that the authority granted the NRC under this amendment will not take effect until the Commission has promulgated regulations establishing standards for determining whether an amendment to a license involves no significant hazards consideration.

Finally, the NRC is required, under title III of this bill, to promulgate regulations establishing criteria for providing or dispensing with prior notice and public comment on "no significant hazards consideration" determinations, and procedures for consultation on such determinations with the State in which the facility is located.

The third and final amendment to the Atomic Energy Act contained in this bill deals with the sabotage of nuclear facilities. Section 236 of the Atomic Energy Act now provides that any person who intentionally and willfully destroys or causes physical damage to, or attempts to destroy or cause physical damage to, a nuclear facility shall be fined up to \$10,000, imprisoned for not more than 10 years, or both.

That provision does not cover the situation in which a person intention-

ally and willfully interrupts a powerplant's operation by merely tampering with or improperly using, rather than physically damaging or destroying, the machinery, components, or controls of the plant. Because such acts could result in substantial replacement power costs to a utility and its customers, and may endanger the public health and safety, the committee recommends amendment of the Atomic Energy Act to include this situation.

This provision is essentially the same as an amendment to the 1981 NRC authorization bill accepted by the Senate, but not enacted as law.

That, briefly, is a summary of the measure proposed to the Senate. It has been considered now for the many weeks that it has been before the body. There are two amendments under the time agreement that will come up later.

At this moment I want to signify how much I appreciate the work of my colleague, the ranking minority member of this subcommittee, Senator GARY HART, my neighbor from Colorado. He has been extraordinarily supportive and helpful, as have his staff, and the full committee. The steady counsel of Senator STAFFORD should also be recognized, the chairman of the full committee, and the ranking member of the full committee, the Senator from West Virginia (JENNINGS RANDOLPH).

The entire staff, the majority and minority staffs, has been more than helpful, as I say, in the drafting, in the presentation, and in the amending process.

Mr. President, at this time I yield to my colleague from Colorado, Senator HART.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. HART. Mr. President, I join with the distinguished Senator from Wyoming, the chairman of the Senate Subcommittee on Nuclear Regulation, in urging the Senate to pass the NRC Authorization Act for fiscal years 1982 and 1983, as reported by the Environment and Public Works Committee. Needless to say, this bill represents many hours of negotiations among the members and staff of the committee to produce a bill the members could accept unanimously.

I think that is the important consideration as the full Senate undertakes to review this measure.

The Senator from Wyoming has very skillfully, fairly, and accurately described the provisions in the reported bill.

I will not repeat that effort. I would, however, like to discuss a provision in the bill that is of particular concern to me—the provision authorizing the NRC to grant interim operating licenses for new nuclear powerplants. The interim license authorized by this provision would allow a utility to operate its powerplant prior to the conduct or completion of an NRC hearing on granting a final operating license.

The provision contains several important restrictions on the NRC's authority to issue interim operating licenses. First, the initial interim operating license must be limited to power levels no greater than 5 percent of full-rated thermal power. Second, if a utility seeks an interim license to operate the reactor at power levels greater than 5 percent, it must formally petition the Commission to amend the interim operating license to allow the operation of the powerplant in staged increases at specific power levels set by the NRC.

Third, the NRC may issue an interim operating license at 5 percent power, or an amendment to the license for operation at greater power levels—but only if it finds three things: First, that in all respects other than the conduct or completion of any required hearing, the requirements of law are met. Second, that there is reasonable assurance that operation of the powerplant during the interim period will provide adequate protection to public health and safety and the environment. Third, that denial of the interim operating license will result in a delay between the date or which construction of the powerplant is completed, in the NRC's judgment, and the date the final operating license would otherwise issue.

In my view, this last requirement does not authorize the NRC to issue an interim license when the utility, by failing to make a reasonable effort to meet the requirements of the licensing process in a timely manner, substantially delays completion of that process. In other words, a utility should not be able to obtain an interim operating license by unreasonably delaying its application for a final operation license.

The final restriction in this provision is the automatic termination, on December 31, 1983, of the NRC's authority to grant interim operating licenses.

I recognize and strongly support the need for the public to have a meaningful opportunity to participate in NRC decisions on licensing nuclear powerplants for operation. Because of this, I have been extremely reluctant to accept legislative changes in the NRC's regulatory regime that could short circuit mechanisms for public participation. Because, however, this provision carefully circumscribes NRC's authority to grant an interim operating license to a utility prior to completion of a public hearing, I am willing to accept it.

Other committee members and I were persuaded the NRC needed limited authority to grant interim operating licenses to eliminate an estimated 79 months of licensing delay covering some 12 or 13 separate nuclear powerplants. This is the difference between the time when construction on a plant would be completed and the date on which the NRC would issue a final operating license. Indeed, representatives

of the nuclear industry painted a grim picture of increases in licensing delays as time went on, imposing additional costs of several billion dollars on utility ratepayers.

That presentation was 10 months ago. However, the most recent NRC report on license delays, issued 2 weeks ago, shows a dramatic decrease in license delays to only 2 months.

Several factors undoubtedly have contributed to the reduction in licensing delays. The NRC has implemented administrative changes in its regulatory processes. In addition, the nuclear industry in several cases was too overly optimistic in estimating the dates for completion of construction on several nuclear powerplants. For example, last spring Diablo Canyon had an estimated license delay of 12 months. Subsequent events revealed serious deficiencies in construction of the Diablo Canyon plant which pushed farther into the future the date for completion of construction and removed Diablo Canyon from the licensing delay category altogether.

Mr. President, the fact nevertheless remains that last spring the nuclear industry cried wolf with its estimates of licensing delays and demanded relief from the Congress. That wolf, if it ever existed, apparently does not exist now. Fortunately, the Environment and Public Works Committee carefully deliberated on what type of legislative relief it would grant the nuclear industry. It developed a reasonable provision that did not overreact to the nuclear industry's extreme claims. Indeed, because a utility must demonstrate the need for an interim operating license, and given the virtual elimination of licensing delays, it is very conceivable that the authority in this provision will never be invoked.

The experience with this provision should serve as a lesson for future decisions by the Congress on reform of the NRC's regulatory processes. While we should willingly consider reasonable proposals for regulatory reform, we should also avoid knee-jerk responses to cries of "wolf" similar to the one we heard from the nuclear industry last spring.

Mr. President, I again urge the Senate to pass this bill.

I return the perhaps excessive compliments to the Senator from Wyoming as to whatever efforts I have put into presenting this legislation on the floor of the Senate. The credit for what I think is a responsible and reasonable piece of legislation lies entirely with the Senator from Wyoming as the chairman of the subcommittee. He skillfully guided this measure through a very observant full committee of the Environment and Public Works Committee, and the able staff which has assisted him so well not only this year but in the past.

Once again I add my words of thanks to him and words of congratulations for his continuing fine effort.

Mr. SIMPSON. Mr. President, I thank the Senator from Colorado. I would certainly indicate that it was during his leadership as chairman, while I was ranking minority member, that I did learn about the observancy capabilities of our colleagues on not only the subcommittee but the full committee.

Mr. President, I ask unanimous consent that the following staff members be given floor privileges during debate on S. 1207: Jim Asselstine, Keith Glaser, Erich Bretthauer, Jim Curtiss, Heather Lancaster, Jim Davenport, and Barbara Magnuson.

I also ask unanimous consent that the following members of the Energy Committee staff be granted the privileges of the floor during consideration of S. 1207:

Chuck Trabandt and Paul Gilman.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTERIM OPERATING LICENSING PROVISIONS

Mr. MITCHELL. Mr. President, I rise to voice my concerns with the interim operating licensing provisions included in this legislation. The NRC authorization bill provides that interim operating licenses for nuclear powerplants may be granted prior to hearings for NRC final operating licenses.

It is important to gain a perspective on these provisions, and to see, precisely, what they were in response to. The reasons originally given for the need for interim operating licenses are manifold. But I believe the reason which has been the most effective is the notion, put forth by administration and industry officials, of a dilatory NRC bottling up its own licensing process. For the past year, "delay" has become the most prominent catchword in the debate over the NRC's licensing process.

Catchwords, like this one, are often ideas which become prominent because they are assumed to contain a high level of truth. The more often they are repeated, the more true they become. Delays in the licensing process, as the primary or only obstacle facing the construction of new plants, have been so widely referred to that they are now widely assumed to be true. It has been my concern throughout this debate that the issue of delay has gained a certain currency and legitimacy which is unwarranted. Since the time this legislation was first reported by the Senate Environment Committee, my concern about interim licenses has been shown to be justified.

It has become evident that the level of truth in the catchword "delay" makes it undeserving of the degree to which it is now assumed by the public.

When this legislation was first introduced, interim license proponents who supported the notion of massive delays were clearly abetted by NRC data on the number of months of delay in the licensing schedule, and the cost of those delays to the ratepayer. In its January 1981 report to the Congress,

the NRC predicted that, according to estimated construction completion dates provided by the utilities, 12 powerplants would face 90 cumulative months of delay during 1981 and 1982 due to the NRC licensing process. Although, as the NRC staff pointed out at the time, utility estimates on construction completion dates have been historically very optimistic, these figures were accepted as reliable at the time. Numerous sources stated that plants which stood idle also resulted in a cost to the Nation of upward of \$3 billion in higher utility rates.

Much has changed since the publication of the NRC's January 1981 report. The latest NRC report on delays in the licensing schedule for all pending operating license applications shows a total of 2 months of delay. It is fair to say that the total number of 90 cumulative months of delay has been erased. Much has also changed since allegations were first made regarding the cost of plants which sit idle. The Department of Energy began estimating the potential cost in April 1981. Since that time, the DOE figures have demonstrated two facts:

First, the original cost estimates provided by the industry were inherently inflated by the cost of capital carrying costs; second, they were exaggerated by the overstated number of months of delay and other cost assertions which the DOE regularly rejected.

The figures which were the basis of the interim license argument have been proven to be unrealistic in the case of delay figures, and hypothetical and overstated in the case of cost figures. The interim license argument implied that these figures exposed a permanent dilemma which demanded a permanent solution. The rapid change in the cost and delay figures dramatically weakens this argument. Present figures clearly show that the delays represented a temporary, curable passage in the NRC's licensing process.

Nevertheless, it is a passage which demands that a number of tough questions be answered by the industry. Instead of blaming delays solely on the NRC's licensing process, it is essential that the industry realize that reasons for delays also exist elsewhere, primarily in two areas. First, the delays caused by the NRC's licensing process were mainly the result of a manpower reallocation within the agency designed to meet the demands placed on it by the Three Mile Island accident. The accident there holds a valuable perspective for utility representatives who believe NRC regulations alone cause delays which in turn cause the ratepayer excessive costs; the cost of cleaning up the accident at TMI, estimated at between \$1 to \$1.3 billion, is a cogent reminder of other potential costs to the ratepayer and makes a case for more, not fewer, safety regulations.

Second, there are other, essentially economic reasons for the slowdown in powerplant licenses; primary among

them are financial problems and changing financial considerations, labor difficulties, and engineering complications. These are reasons which are in the hands of the utility owners, and are not attributable to the NRC.

It is important to note, too, that current efforts to "streamline" the NRC process, like interim licenses and other similar proposals, come at the expense of safety regulations. Such measures may ultimately harm, rather than help, the nuclear industry. Recent polls show that an increasing number of Americans are concerned about the health and safety implications of nuclear power, and it is imperative that we in Congress be responsive to these concerns. Present construction problems at the Diablo Canyon plant, along with similarly serious engineering complications at other plants across the country, make a strong argument for strengthening the NRC licensing process. They also make a strong case, as NRC Chairman Nunzio Palladino noted, for nuclear utility management "to reorient its thinking." As Chairman Palladino stated in a recent speech before the Atomic Industrial Forum:

Some utilities fall short of protecting their own best interests and meeting the high standards expected for nuclear power. Their deficiencies in quality assurance are inexcusable. There have been lapses of many kinds—in design analyses, resulting in built-in design errors; in poor construction practices; in falsified documents; in harassment of quality control personnel; and inadequate training of reactor operators. These practices must change if true regulatory reform is to take place . . .

Industry has the key role in the construction and safe operation of nuclear power plants. That is the fact. Not only public health and safety considerations, but economic imperatives dictate the highest professional standards in building and operating a nuclear plant. When construction or operation falls below the highest standards, the entire industry is hurt.

The Senate Environment Committee made a number of changes in the interim license provisions of the bill as it was originally introduced. These provisions strengthen the bill itself, and provide more reassurance to persons like myself that interim licenses will be granted only in the most severe instances. The Environment Committee bill requires that, prior to the issuance of interim licenses, determinations be made by the NRC that:

First. All legal requirements, other than those relating to hearings, are met.

Second. There is reasonable assurance that interim operation of the facility in accordance with the terms and conditions of the license will adequately protect the public health and safety and the environment; and

Third. Denial of the interim license will result in delay between the time the facility is sufficiently completed to permit interim operation and the time when a final operating license would

otherwise be issued before operation at each power level.

The bill also includes procedural safeguards to assure that the issuance of an interim license does not prejudice the outcome of the license hearing for the plant's final operating license or the rights of any party to the hearing. As well, the bill directs the NRC to adopt appropriate administrative remedies to minimize the need for the issuance of interim licenses.

I offered an amendment to the committee bill which further strengthens the interim licensing provisions. The bill, as introduced, allowed utilities to operate at full power under an interim license. My amendment provides for a step-by-step progression from initial fuel loading and low-power testing up to full-power levels.

To conclude, Mr. President, I find it distressing that the debate over interim licenses has focused almost entirely on nuclear development, and supposed obstacles to that development, rather than on nuclear safety. We do have an obligation to see that the process does not become bogged down needlessly while trivial items are discussed. This is not just an NRC or industry concern. It is a public concern.

But we have another obligation that must always take precedence. We have an obligation to insure that nuclear power does not endanger the public health and safety, and that those who may have legitimate questions and information about health and safety hazards are afforded an opportunity to participate in the licensing and license-amendment process. To meet this obligation, we must scrutinize more carefully the cost and delay figures provided to the Congress by the industry in the future. But we must also scrutinize more incisively the use of catchwords which, if they do not contain a high level of truth, have the ability to distort and mislead a national policy debate.

Mr. SIMPSON. Mr. President, I believe that the Senator from South Dakota has an amendment to propose. I yield to him for that purpose.

UP AMENDMENT NO. 834

Mr. ABDNOR. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from South Dakota (Mr. ABDNOR), for himself and Mr. PRESSLER, proposes an unprinted amendment numbered 834.

Mr. ABDNOR. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:
On page 15, after line 23, add a new section to read as follows:

SEC. (a) The Commission, in consultation with the Environmental Protection

Agency, the Department of Housing and Urban Development, the Department of Energy, the Tennessee Valley Authority, and the State of South Dakota, is authorized and directed to establish and coordinate a monitoring, engineering assessment and remedial action program for the management of byproduct material, as defined in section 11 e. (2) of the Atomic Energy Act of 1954, at offsite locations in the vicinity of the Edgemont, South Dakota, uranium mill site. Such program shall provide for necessary monitoring and engineering assessments at such locations and the establishment and performance of requirements for the management, including remedial action, of such byproduct material.

(b) In carrying out the monitoring, engineering assessment and remedial action program established by subsection (a), the Commission shall have lead responsibility for coordinating the monitoring, engineering assessment and remedial action program established by subsection (a) and, in consultation with the State of South Dakota, shall—

(1) establish general objectives and priorities for the program;

(2) review and approve a monitoring, engineering assessment and remedial action program for the locations described in subsection (a);

(3) assure that an approved monitoring, engineering assessment and remedial action program complies with the requirements of section 84 of the Atomic Energy Act of 1954, as amended, and conforms to the standards of general application for the protection of the public health, safety and the environment from radiological and nonradiological hazards associated with residual radioactive materials located at inactive uranium mill tailings sites and depository sites promulgated by the Administrator of the Environmental Protection Agency pursuant to section 275 a. of the Atomic Energy Act of 1954, as amended; and

(4) provide funding through contract for an approved monitoring and engineering assessment program at the locations described in subsection (a).

(c) Section 102(e) of the Uranium Mill Tailings Radiation Control Act of 1978 (92 Stat. 3025) is amended by adding a new paragraph (3) to read as follows:

"(3) Notwithstanding the one-year limitation contained in this section, the Secretary shall designate for remedial action any real property, or improvements thereon, in Edgemont, South Dakota that—

(A) is in the vicinity of the Tennessee Valley Authority uranium mill site in Edgemont, and

(B) is determined by the Commission to be contaminated with residual radioactive materials derived from that site.

In making the designations under this paragraph, the Secretary shall consult with the Administrator, the Commission and the State of South Dakota. The provisions of Title I of this Act shall apply to the remedial action at property designated under this paragraph, except that notwithstanding any other provision of this Act, the Secretary shall pay the full cost of such remedial action."

Mr. ABDNOR. Mr. President, on behalf of myself and Senator PRESSLER, I offer this amendment to give the Department of Energy (DOE) authority to take remedial action at designated property in the vicinity of the Tennessee Valley Authority (TVA) uranium mill site at Edgemont, S. Dak.

The Uranium Mill Tailings Act of 1978 was enacted to assist in the

cleanup of contaminated property on, and in the vicinity of, abandoned uranium mill sites. However, since TVA holds a source material license on the inactive mill site, Edgemont is excluded from compensation under the act.

Let me emphasize, Mr. President, that in 1980, both Houses of Congress adopted amendments to remedy the off-site tailings problem at Edgemont. Unfortunately, the amendments were attached to different bills and the provision was not enacted.

In fiscal year 1981, Congress made available funds to enable DOE to begin off-site remedial work. Lacking the statutory authority, DOE was unable to expend those funds.

Mr. President, this situation has imposed severe hardships on the citizens of Edgemont. Uranium mill tailings, which have been located in the foundations of several homes and in the yards of dozens of homes in the area, pose a serious health threat. In 1980, due to the high radon levels detected in the residential community, the Environmental Protection Agency (EPA) prohibited the Department of Housing and Urban Development (HUD) from engaging in Federal Housing Authority (FHA) loan transactions in Edgemont. The negative press the uranium mill tailings issue has provoked has had a significant economic impact on the community. Having been surveyed and studied for some 10 years, area residents feel that appropriate remedial action is long past due.

The Nuclear Regulatory Commission (NRC), in cooperation with TVA, the State of South Dakota and EPA, has nearly completed the preparation necessary to begin the actual remedial work. If enacted, this amendment will enable DOE to begin work on the remedial project during the next construction season.

Mr. President, I understand that this amendment has the support of the distinguished subcommittee chairman and ranking minority member, Mr. SIMPSON and Mr. HART.

I do thank both of these gentlemen for the cooperation and the help they have given me on this particular problem.

● Mr. PRESSLER. Mr. President, I wish to express my support for the amendment, of which I am a cosponsor, offered by my colleague from South Dakota. I have been working on the problem of procuring assistance in dealing with the mill tailings in Edgemont for some time now. It is gratifying to see that we are coming close to a resolution of this matter.

The radiation problem in the Edgemont area came to a head in March 1980, after the Department of Housing and Urban Development (HUD) gave the town notice that it would no longer insure housing mortgages for homes that were found to exceed the Environmental Protection Agency's (EPA's) radiation levels. At that time,

I personally visited Edgemont and spoke with area residents about the problem. I also offered several amendments during the 96th Congress to authorize this remedial action and appropriate funds, but, unfortunately, legal barriers have remained.

The source of the radiation in the town is a former uranium mill. Through EPA investigations, various houses in the Edgemont community were determined to have exceedingly high levels of radiation. It was found that some houses in the community had been built with mill tailings as backfill.

Throughout the Government's dealings with the community of Edgemont, there have been delays in securing remedial actions for the properties contaminated with uranium mill tailings. The Department of Energy has determined that it cannot proceed with the remedial actions necessary until Congress provides authorization. The Department also indicates that it is prepared to proceed soon after receiving statutory authority.

The purpose of this amendment is to grant the authority needed to begin this important task. I can assure my colleagues here that from my contacts with the people of Edgemont there is no question but that this amendment is very important to the well-being of the Edgemont community. I hope that this amendment will receive the support it merits, and urge my colleagues to readily adopt it.

Mr. SIMPSON. Mr. President, I am pleased to support the amendment by the distinguished Senator from South Dakota. As the sponsor of the amendment pointed out, this amendment is similar to one adopted last year by the Senate on the NRC authorization bill for fiscal year 1981. That measure failed due to inaction by the House.

Mr. President, the Edgemont situation is a unique one. We recognize that. Although the Edgemont site is an inactive uranium mill site, it was included in the remedial action program established by the Uranium Mill Tailings Radiation Control Act of 1978 because TVA held a current license from NRC for the mill. Although TVA is obligated and has agreed—this is important—to clean up the mill tailings on the Edgemont site, it has no legal responsibility for cleanup of the tailings at the offsite locations. As I understand the Senator's amendment, it would incorporate into the remedial action program of the Mill Tailings Act these offsite mill tailings locations. Also, the amendment would confirm the monitoring and engineering assessment program now underway by NRC that would precede the cleanup itself at these offsite locations.

Indeed, Mr. President, we appreciate the work of the Senator from South Dakota and his thoughtful response to an extraordinarily unique situation in his State.

Mr. ABDNOR. I think the Senator for that very thorough explanation.

That is exactly the way it has occurred and we appreciate his explanation of the amendment.

The PRESIDING OFFICER. Does the Senator from South Dakota move his amendment?

Mr. ABDNOR. I shall do that after the expiration of the time, Mr. President.

Mr. HART. Mr. President, this amendment would provide authority for the Department of Energy to begin work on remedial action for mill tailings at the Edgemont site, as the distinguished Senator from South Dakota has outlined. Although DOE is ready, it needs the authority to go forward. I agree with the case that the Senator has made to cleanup offsite mill tailings of Edgemont. It will reduce the public health and safety hazards that sites of this sort present in his State and in my State and, unfortunately, in too many States.

I join the Senator from Wyoming in endorsing and supporting the amendment.

Mr. ABDNOR. I thank the Senator from Colorado.

Mr. President, I move adoption of my amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from South Dakota (Mr. ABDNOR).

The amendment (UP No. 834) was agreed to.

Mr. SIMPSON. I move to reconsider the vote by which the amendment was agreed to, Mr. President.

Mr. McCLURE. I move to lay that motion on the table.

UP AMENDMENT NO. 835

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I send to the desk an amendment, and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wyoming (Mr. SIMPSON), for himself and Mr. HART, proposes an unprinted amendment numbered 835.

Mr. SIMPSON. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(1) On page 2, line 9, change "\$495,700,000" to "\$485,200,000".

(2) On page 2, line 11, change "\$75,610,000" to "\$85,100,000"; on page 2, line 14, change "\$6,500,000" to "an amount not to exceed \$6,500,000"; and on page 2, line 16, insert "an amount not to exceed" before the figure "\$1,000,000".

(3) On page 2, line 19, change "\$67,424,000" to "\$62,900,000"; on page 2, lines 22 and 23, insert the words "an amount not to exceed" before the figures "\$5,013,000" and "\$6,300,000".

(4) On page 3, line 18, change "\$46,257,000" to "\$38,500,000".

(5) On page 3, line 21, change "\$245,670,000" to "\$240,300,000"; on page 3, line 24, insert the words "an amount not to

exceed" before the figure "\$20,400,000"; on page 4, line 1, insert the words "an amount not to exceed" before the figures "\$3,500,000" and "\$4,500,000"; and on page 4, line 4, change "\$45,500,000" to "an amount not to exceed \$45,500,000".

(6) On page 4, line 7, change "\$19,095,000" to "\$21,900,000".

(7) On page 4, line 10, change "\$41,644,000" to "\$37,000,000".

(8) On page 7, line 15, strike "(2) the final safety evaluation report on the application by the Nuclear Regulatory Commission staff;" and insert in lieu thereof: "(2) the filing of the Initial Safety Evaluation Report by the Nuclear Regulatory Commission staff and the NRC staff's first supplement to the report prepared in response to the report of the Advisory Committee on Reactor Safeguards for the facility;"

(9) On page 9, line 7, strike "date on which a final operating license for such facility would otherwise issue under this Act," and insert in lieu thereof: "date when such facility would otherwise begin full power operation."

(10) On page 11, strike lines 5 and 6, and insert in lieu thereof:

"e. The authority to issue new interim operating licenses under this section shall expire on December 31, 1983."

(11) On page 11, lines 11, 19 and 21, insert "facility" before the word "license".

(12) On page 13, line 9, insert "or an interim operating license" after the word "license".

(13) On page 13, beginning on line 16, strike section 303.

(14) On page 15, beginning on line 16, strike section 304.

Mr. SIMPSON. Mr. President, this amendment makes a number of changes to the bill that are of a technical and clarifying nature. In addition, the amendment modifies certain portions of the bill to reflect changes that have occurred since the committee reported the bill last May.

First, the amendment provides an overall reduction in the level of spending authorized for the agency for fiscal year 1982 of \$10 million. This reduction reflects the present constraints on the Federal budget in general, and is more consistent with the amounts now appropriated to the NRC for fiscal year 1982.

Second, the amendment makes several adjustments in the allocation of the authorization of \$485,200,000 among the Commission's major program categories. These adjustments take into account the Commission's most recent estimates of budgetary needs in several areas, including the increased reactor licensing effort and licensing requirements for the Clinch River breeder reactor.

Third, the amendment makes three clarifying changes to the provision in the bill, section 201, granting the Commission the authority to issue interim operating licenses for new nuclear powerplants. The first of these changes makes it clear that a petition for an interim operating license may be filed after the issuance of the NRC staff's safety evaluation report and the supplement to that report prepared by the NRC staff in response to the report of the Advisory Committee

on Reactor Safeguards. There may well be supplements to the NRC staff's SER prepared after this point, and this change makes it clear that the interim operating license petition could precede these later supplements. The second of these clarifying changes more precisely defines the third test in the bill for the issuance of an interim operating license. Under that test, the Commission must find that there would be a licensing delay for the plant if the interim operating license were not issued. The revised test would permit issuance of the interim license if the Commission finds that there would otherwise be a delay between the expected date of plant completion and the expected date on which the plant would otherwise begin full-power operation. The third change makes it clear that the Commission's authority to issue new interim operating licenses expires on December 31, 1983, but that any interim licenses issued before that date may continue in effect beyond the end of 1983.

Fourth, the amendment makes a change to the provision in the bill, section 202, that authorizes the NRC to issue and to make immediately effective license amendments that involve no significant hazards consideration. This change makes it clear that this provision in section 189 of the Atomic Energy Act applies to facility licenses and not to materials licenses.

Fifth, the amendment deletes the requirement for the nuclear powerplant licensing study that is contained in section 303 of the bill.

After the committee adopted this provision, Mr. President, both the NRC and the Department of Energy began internal studies of the licensing process that are aimed at the development of nuclear powerplant licensing reform proposals early this year. The Commission has also agreed to establish an independent review group for the purpose of evaluating and reporting to the Commission on legislative and administrative proposals for reforming the licensing process. A focus of this review group's efforts will be the legislative and administrative reform proposals now being developed by the Commission's Internal Regulatory Reform Task Force, although the review group will be free to make other recommendations and comments to the Commission. The Commission is in the process of selecting individuals to serve on this review group who reflect a range of interests and perspectives and who have a detailed knowledge of, and direct experience with, the nuclear powerplant licensing process. We believe that the Commission's efforts to move forward with this independent review effort will achieve the purposes of section 303 of the bill and will avoid any unnecessary delay in the consideration of licensing reform issues by NRC or the administration. Therefore, section 303 of the bill is no longer needed.

Finally, Mr. President, the amendment strikes the provision in the bill, section 304, that requires DOE and NRC to enter into a memorandum of understanding regarding radioactive wastes from the Three Mile Island accident cleanup.

My colleague from Colorado and I were both involved in seeing that that was placed in the provision, and I am pleased to report that after the committee adopted that provision, the agencies completed their work on that memorandum of understanding. It is finished, and that provision is therefore no longer required.

That concludes the summary of the changes made by this technical amendment, and I move the adoption of the amendment.

Mr. HART. Mr. President, I fully support the effort of the floor manager and chairman of the committee in this matter. He has stated the case adequately, and I support the adoption of the amendment and endorse the proposal by the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. McCLURE. Mr. President, will the Senator from Wyoming yield to the Senator from Idaho?

Mr. SIMPSON. Mr. President, I yield to the Senator from Idaho.

Mr. McCLURE. I thank the Senator for yielding.

Mr. President, section 303 of the bill would establish an independent advisory panel to evaluate the effectiveness and efficiency of the current licensing process and to report its findings to the NRC and the Congress within 180 days of enactment. The section sets forth the specific procedures for establishment of the advisory panel by the NRC, including membership, expenses, the substantive focus of its efforts, and reporting requirements. The panel is exempted from certain requirements of the Federal Advisory Committee Act. The committee amendment would strike section 303 and remove the requirement for such an advisory panel.

Mr. President, at the time this provision was adopted, in early May of last year, the new administration was still in the formative stages in terms of both personnel and policies related to nuclear power. Since that time, however, the open positions at the NRC have been filled and the President has enunciated his nuclear power policy in a formal policy statement and in a series of related programmatic and policy actions at NRC and the Department of Energy. One essential element of the President's formal policy statement on nuclear power was the President's directive that the Secretary of Energy give immediate priority attention to recommending improvements in the nuclear regulatory and licensing process.

DOE has implemented that directive by forming a task force whose efforts are now well underway. That task force will also include representation

from the Office of Science and Technology Policy, and other appropriate executive agencies. It plans to consult in a meaningful fashion with industry, environmental and public interest groups, and State and local organizations. NRC also has embarked upon its own licensing reform task force. DOE will endeavor to work closely with NRC to enable the administration to propose a coordinated set of appropriate improvements in the licensing process well in advance of the timetable for the advisory panel contemplated by section 303.

Mr. President, it now is late in March and it appears likely that this bill probably will require a conference because of certain significant differences from the House-passed bill. As a result, it will probably be at least April, if not later in 1982, before any conference report on this legislation could be enacted. Consequently, the requirement for this independent advisory panel could lead to NRC and advisory panel action which could consume the balance of calendar year 1982 and certainly extend well beyond the adjournment of the 2d session of the 97th Congress. In that event, the report required of the advisory panel might not be considered by the Congress until calendar year 1983.

Mr. President, I commend the committee for the action that it has taken not only in the total legislation before us but also in the technical amendment now pending, and particularly with respect to the removal of the requirement for the advisory panel.

I take this time only to say that at the time this was put into the bill, it seemed an advisable thing to do, and as a matter of fact the other body has done so in their pending legislation.

I seek the statement of the Senator from Wyoming and the managers of the bill, when it goes to conference, what their attitude would be if the House keeps the advisory panel in their proposed legislation, as to whether or not the Senate conferees would strongly urge our position of removing the advisory panel.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I thank the Senator from Idaho for those points of clarification.

He, indeed, in my time here has followed the issue of regulation of the nuclear industry in more adept fashion than many, and I appreciate his assistance.

Mr. McCLURE. I assume that the Senator from Wyoming would seek to prevail, in the event of a conference with the House. If, indeed, they do not remove the advisory panel, as set forth in their legislation, and you should arrive at conference with them with legislation from the House with such an advisory panel, this amendment stating your position would be strongly held in the conference, I assume.

Mr. SIMPSON. Mr. President, in all ways I shall try to preserve the Senate's position on that.

Mr. McCLURE. I thank the Senator from Wyoming.

The PRESIDING OFFICER. Does the Senator from Wyoming yield time?

Mr. SIMPSON. I yield now to the Senator from Colorado.

The PRESIDING OFFICER. Will the Senator from Wyoming dispose of the amendment now pending?

Mr. SIMPSON. Yes. We do have an amendment before the body.

The PRESIDING OFFICER. There is an amendment before the body. The question is on agreeing to the amendment.

The amendment (UP No. 835) was agreed to.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HART. Mr. President, I move to lay that motion on the table.

The motion to lay the amendment on the table was agreed to.

Mr. SIMPSON. Mr. President, I yield to the Senator from Idaho.

UP AMENDMENT NO. 836

Mr. McCLURE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows: [The Senator from Idaho (Mr. McCLURE) proposes unprinted amendment No. 836.]

Mr. McCLURE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:
On page 12, after line 19, add a new section to read as follows:

Sec. — (a). Chapter 10 of the Atomic Energy Act of 1954, as amended, is amended by adding the following new section at the end thereof:

"SEC. 112. PSYCHOLOGICAL HEALTH AND WELL BEING.—

"Notwithstanding any other provisions of law, the Commission shall not be required to consider the effects of any of its actions on psychological health or well being."

"(b). The table of contents for such Chapter 10 is amended by adding the following new item at the end thereof:

"SEC. 112. PSYCHOLOGICAL HEALTH AND WELL BEING."

Mr. McCLURE. Mr. President, this amendment would reverse a judgment issued on January 7, 1982, by the U.S. Court of Appeals in the case of *Pane* against the U.S. Nuclear Regulatory Commission. In that judgment, the court ordered the NRC to prepare an environmental assessment of the effects of restart of Three Mile Island Unit One on "psychological health of neighboring residents and on the well-being of the surrounding communities." The court further ordered the NRC, if it finds such effects to be significant, to prepare a full environmental impact statement.

Finally, the court's order bars the NRC from making a decision on the restart of TMI-1 pending completion of the environmental assessment and, if necessary, an environmental impact statement.

Mr. President, I believe the court's judgment in the *Pane* case that psychological health and well-being must be considered by the NRC, pursuant to the National Environmental Policy Act, before the Commission may allow the restart of TMI-1 represents a totally incorrect reading of the requirements of NEPA.

In addition, I believe the court's judgment has potentially serious adverse consequences in the case of TMI-1 restart proceedings, in the Commission's other licensing actions, and in a variety of other actions by numerous Federal agencies. For these reasons, I believe the Congress should act promptly to reverse the court's judgment in this case by making it clear as a matter of law that the NRC is not required to consider the effects of any of its actions on psychological health or well-being.

Mr. President, the most immediate impact of the court's decision will be on the restart of TMI-1. The NRC staff has estimated that the preparation of an environmental assessment of psychological stress will require at least 6 months.

If, after preparing such an assessment, the NRC finds that psychological stress resulting from the restart of TMI-1 will be significant, the Commission must then prepare an environmental impact statement, which the NRC staff estimates will require an additional 6 months.

If the court imposes further procedural requirements on the NRC such as the requirement to conduct an adjudicatory hearing on the issue, as the court has done in at least one instance in the past, the hearing would likely require at least 6 more months.

Thus, it is entirely possible that 1½ years or more could be required to comply with the court's ruling. Such a delay in the restart of TMI-1 could very well jeopardize the commitments that have been made by the State public utility commissions in Pennsylvania and New Jersey to designate ratepayer funds for the cleanup of Three Mile Island unit two.

In any event, under present arrangements, such funds cannot actually be spent for cleanup until TMI/1 is restored to service.

Mr. President, this potential of the court's decision to delay further, or even to jeopardize, the clean-up of TMI-2 is only one of the possible consequences of this decision. The court's requirement that psychological stress be considered an environmental impact under NEPA may well extend to other NRC licensing actions, and to a wide range of actions by other Federal agencies.

In the case of NRC, at the time of the court's decision, the Commission

had rejected similar psychological stress arguments in six other proceedings. Two of these are proceedings for the issuance of new powerplant operating licenses.

Requiring the consideration of psychological stress in these cases would almost certainly delay the issuance of these licenses, and would very likely lead to a flood of psychological stress contentions in other pending and future NRC proceedings.

If the court's decision extends to other agencies as well, virtually every major construction or development project requiring Federal approval—from airports, to bridges and roads, to military installations—would become targets for psychological stress contentions under NEPA.

Mr. President, I do not believe that the Congress ever intended NEPA to require the consideration of psychological stress as an environmental impact—in a case such as the restart of Three Mile Island Unit One, in NRC's other licensing actions, or in the actions of other Federal agencies. My amendment would make this clear. I urge the adoption of the amendment.

Mr. President, appended to my statement is a list of psychological, or at least so-called, stress situations involving environmental impact statements under the court order where Federal funds are involved. I refer to the possibility of interstate highways, airports, low-income housing projects, section 404 permits under the Federal Water Pollution Control Act, Forest Service programs, Bureau of Reclamation projects, Corps of Engineers projects, energy projects, urban renewal-development activities, actions affecting historic sites, actions involving toxic substances, including pesticides.

Mr. President, the list goes on and on where the possibility of claims made by various persons with respect to so-called psychological stress would open such a tremendous Pandora's box that I think it is well for us to address that question now and immediately.

Mr. SIMPSON. Mr. President, may I say to my good friend, and neighbor, the distinguished Senator from Idaho, that I certainly agree with all of his comments, and I fully support the reasons that he has presented for his amendment.

I would even add an additional point. I am very troubled by the extremely subjective nature of the phrase "psychological health of neighboring residents and the well-being of the surrounding communities," to use the words of the court. Unlike the kinds of environmental impacts that are now routinely considered pursuant to NEPA, psychological health and well-being are not objectively determinable or measurable. I feel that the court's decision in the *Pane* case will lead the Commission, and perhaps other Feder-

al agencies as well, into a morass of speculation and subjective judgement.

This decision might well lead to protracted hearings in which competing panels of psychologists and psychiatrists argue about the state of mind of the community. Perhaps the decision may even require public referenda in cases where psychological stress is alleged.

Certainly, whatever means the Commission selects for assessing psychological health and well-being is likely to be challenged as inadequate, leading to further litigation and delay. I, for one, certainly share your view that this is something that was never intended by the Congress when it enacted the National Environmental Policy Act.

Mr. McCLURE. Mr. President, I appreciate the comments of the distinguished Senator from Wyoming, and I share the concerns that he has mentioned.

Mr. SIMPSON. Mr. President, there is one other comment that I should like to make about this amendment. As the Senator from Idaho knows, we are in a somewhat unusual situation with the Pane case. Although the court issued its two-page judgment on January 7, it has not yet seen fit to issue its opinions, which will explain the court's rationale and define the scope of the decision. We discussed this matter with the Commission in our budget hearing earlier this year.

Although several of the Commissioners expressed serious concerns about the Pane decision, particularly if it extends beyond the restart of TMI-1, the Commission was unable to provide us with an assessment of the precise scope and impacts of the decision.

Thus, as a consequence of the court's failure to complete its work in this case, the committee has not yet been able to assess the scope of the decision or its likely impact. Given the seriousness of legislating any changes to NEPA, some of our colleagues have urged postponing any legislative action until after the court's opinions become available and the committee is able to assess the scope and impact of the decision.

I therefore inquire of the sponsor of the amendment if he would be willing to withdraw the amendment at this time with the understanding that the committee would actively consider this matter—and in a very prompt manner—after the court issues its opinions in the Pane case.

Mr. McCLURE. Mr. President, I agree with my colleague that it is somewhat difficult to assess the impact of this case, and to arrive at an appropriate legislative solution, in the absence of the court's opinions.

I reluctantly agree to withdraw the amendment at this time if the distinguished chairman and ranking minority member of the Nuclear Regulation Subcommittee will assure me that the committee will hold hearings on this matter as soon as the court's opinions

are available, and that the committee will act expeditiously to report out any necessary corrective legislation using whatever legislative vehicle is available at that time to assure prompt enactment.

Mr. SIMPSON. Mr. President, I am pleased to provide those assurances to the distinguished Senator from Idaho and pledge to do so. I certainly believe that some legislation will be needed to correct the court's erroneous interpretation of NEPA in sufficient time to avoid unwarranted impacts on the Commission's licensing actions.

This approach will allow us to closely tailor the legislative solution to the problem. I also add that this matter has been discussed with the distinguished Senator from Vermont, the chairman of the Environment and Public Works Committee, and he stands by these assurances as well.

Mr. HART. Mr. President, although I am not yet convinced of the need for legislation in this case, I would certainly support the assurances made by the distinguished Senator from Wyoming that the committee will actively consider this matter, including the need for legislation, as soon as the court issues its opinions.

Mr. McCLURE. Mr. President, I thank my distinguished colleagues, and with those assurances on behalf of the committee, I withdraw the amendment at this time.

The PRESIDING OFFICER (Mr. ARMSTRONG). Without objection, the amendment is withdrawn.

UP AMENDMENT NO. 837

(Purpose: To amend the Atomic Energy Act of 1954)

Mr. HART. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Colorado (Mr. HART) proposes an unprinted amendment numbered 837.

Mr. HART. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 12, after line 19, add the following new section:

Sec. —. (a) Section 148a. (1) of the Atomic Energy Act of 1954, as amended, is amended by inserting immediately after "Secretary" a comma and the following: "with respect to atomic energy defense programs."

(b) Section 148 of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following new subsections:

"d. Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to subsection (a)(4)(B) of section 552 of title 5 of the United States Code.

"e. The Secretary shall prepare on a quarterly basis a report to be made available upon the request of any interested person, detailing the Secretary's application during that period of every regulation or order pre-

scribed or issued under this section. In particular, the report shall:

"(1) identify any information protected from disclosure pursuant to such regulation or order;

"(2) specifically state the Secretary's justification for determining that unauthorized dissemination of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons or theft, diversion, or sabotage of nuclear materials, equipment, or facilities, as specified under subsection a. of this section; and

"(3) provide justification that the Secretary has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security."

Mr. HART. Mr. President, I offer what I hope will be a noncontroversial amendment to section 148 of the Atomic Energy Act. Section 148, enacted last fall as part of the DOE National Security Programs Authorization Act of 1982 (Public Law 97-90), authorizes the Secretary of Energy to withhold from disclosure unclassified information pertaining to the design of production or utilization facilities, safeguards, and the design of atomic weapons.

As passed by the Senate, this provision included a subsection (c) that subjected to judicial review the Secretary's exercise of this authority, and a subsection (d) that directed the Secretary to publish quarterly a report detailing the application of every regulation or order prescribed or issued under the provision.

During conference with the House, these two subsections were dropped.

My amendment today would simply restore these two subsections to section 148. I urge Senate passage of this amendment for two reasons. First, without these two subsections, the Secretary of Energy can withhold information free from the public scrutiny necessary to guard against abuse of this authority. The withholding of information from the public is a serious business. We should at least insure an independent review of the Secretary's exercise of this authority. These subsections will do just that.

Second, restoring these two subsections to section 148 would carry out the stated intent of the Armed Services Committee, when it reported this section, to make this provision consistent with section 147 of the Atomic Energy Act. Section 147 grants the NRC similar authority to withhold information about safeguards for NRC-licensed facilities. The NRC provision, however, provides for judicial review of, and periodic public reports on, the NRC's exercise of its authority.

I urge the Senate to accept this amendment, and I hope my colleague from Wyoming will support this measure.

Mr. SIMPSON. Mr. President, I support the amendment offered by the distinguished Senator from Colorado.

In the 96th Congress, as part of the NRC fiscal year 1980 authorization, the NRC was given the authority to withhold certain narrowly-defined categories of safeguards information related to activities over which the NRC has jurisdiction. That authority is set forth in section 147 of the Atomic Energy Act.

In November 1981, section 148 was added to the Atomic Energy Act, extending to the Department of Energy authority similar to that granted the NRC in 1980. In accordance with the requirements of section 148, DOE now has the authority to withhold certain information related to atomic energy defense programs.

Mr. President, as I understand it, the intent of this technical amendment is simply the procedural requirements applicable to the withholding of unclassified information by the Department of Energy and the Nuclear Regulatory Commission pursuant to sections 147 and 148 of the Atomic Energy Act. As those provisions now stand, Congress has imposed certain reporting and judicial review requirements that differ based upon the Agency or Department withholding the information, rather than the type of information to be withheld. This amendment, if adopted—and I certainly support it—will cure this statutory inconsistency by establishing uniform requirements for the withholding of such information. As I also understand, this amendment would conform the language of section 148 to the language originally passed by the Senate.

Mr. President, I support the amendment and I am pleased to accept it.

I will yield to anyone else wishing to address the amendment.

Mr. HART. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. Is all time yielded back on the amendment?

Mr. HART. I yield back the remainder of my time.

Mr. SIMPSON. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 837) was agreed to.

Mr. HART. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 838

(Purpose: To review and analyze the Loss-of-Fluid Test research program results)

Mr. McCLURE. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an unprinted amendment numbered 838.

Mr. McCLURE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

THE PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 6 after line 13, add the following new section: Of the amounts authorized to be used for the Loss-of-Fluid Test Facility in accordance with Section 101(a)(4) of this Act, for fiscal years 1982 and 1983, the Commission shall provide funding through contract with the organization responsible for the Loss-of-Fluid Test operations for a detailed technical review and analysis of research results obtained from the Loss-of-Fluid Test Facility research program. The technical review and analysis shall be for the purpose of developing and recommending to the Commission appropriate revisions to Appendix K to Part 50 of the Commission's regulations in accordance with the Loss-of-Fluid Test research results. The contract shall provide funding for not less than twenty man-years in each of fiscal years 1982 and 1983 to conduct the technical review and analysis.

Mr. McCLURE. Mr. President, nuclear safety is made up of many factors. Among these are basic research, development, and testing. Basic research, development, and testing provide the underpinnings of the verification required for the computer codes NRC uses to license nuclear powerplants and for the computer codes that industry uses in their design. The loss-of-fluid test facility is the premier facility in the world for doing major testing of the effectiveness of light water reactor emergency core cooling systems. After the Three Mile Island accident, the LOFT facility activities were promptly redirected to examine several problems that could be faced by operating nuclear plants in the event of a small break accident similar to that which occurred at Three Mile Island. The results of that testing at LOFT were new procedures for the operation of the main cooling pumps at commercial nuclear powerplants in the event of a break similar to that which occurred at Three Mile Island. The LOFT facility has proven to be invaluable in assisting in the post-TMI analysis that was done for small breaks and for the work necessary to establish correct responses for commercially licensed plants to similar types of events.

I am concerned, however, that the results of the testing at LOFT have not found their way into the licensing process.

The tests performed at LOFT thus far have confirmed that appendix K to 10 CFR 50, the criteria that NRC uses and has been using for the last 8 years to license the emergency core cooling systems at nuclear powerplants, is highly conservative.

Appendix K to 10 CFR 50 is the interim criteria that NRC specified for the licensing of emergency core cooling systems pending the availability of the data from the loft facility. This

criteria is highly prescriptive and in the absence of a scientific basis was the mortgage that was undertaken by the Federal Government to continue the licensing of nuclear powerplants. The mortgage has been virtually paid through the successful operation and testing at loft.

The intent of my amendment is to require that NRC incorporate the data that it has obtained as well as the lessons it has learned from the operation of LOFT into a revision of the existing appendix K to 10 CFR 50. I think this is necessary to establish the true safety margins that exist in the event that an emergency core cooling system would be required in the event of an accident. In this way the credibility of the licensing process will be enhanced through the proper quantifications of the margins of safety truly available from the safety systems and this should be a first attempt to move NRC to consider the way in which they incorporate their research and development results into licensing criteria.

Mr. President, I urge the adoption of my amendment.

The PRESIDING OFFICER. Who yields time?

Mr. SIMPSON. Mr. President, I am pleased to accept this amendment by my colleague from Idaho. I know how carefully he has followed this issue. Of course, there is excellent research work being done at the loss of fluid test facility (LOFT). Thus far, this research work has established confidence, based upon actual test results, that the Commission's emergency core cooling requirements in appendix K to part 50 of the NRC regulations are in fact very conservative models for plant behavior. The Senator's amendment would carry this important research work one step further by actually applying the LOFT test results to the development of appropriate revisions to the Commission's regulations.

Mr. President, I believe that this is a worthwhile effort and that it will lead to an improved and more accurate set of regulatory requirements. I commend the Senator from Idaho for this amendment, and I am pleased to accept it on behalf of the majority.

I yield to the Senator from Colorado for any comments.

Mr. HART. Mr. President, I support the arguments of the Senator from Wyoming and align myself with his position on this matter and urge the adoption of the amendment.

Mr. McCLURE. Mr. President, I yield back our time.

The PRESIDING OFFICER. Does the minority also yield back his time?

Mr. HART. I yield back my time.

Mr. McCLURE. I call for the question.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Idaho.

The amendment (UP No. 838) was agreed to.

Mr. McCURE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SIMPSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 839

Mr. FORD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated. The legislative clerk read as follows:

The Senator from Kentucky (Mr. FORD) for himself, Mr. SIMPSON, Mr. HART, Mr. MITCHELL, Mr. CRANSTON, and Mr. LEVIN, proposes an unprinted amendment numbered 839.

Mr. FORD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 15, after line 23, add a new section to read as follows:

Sec. —. (a) The Nuclear Regulatory Commission is authorized and directed to implement and accelerate the resident inspector program so as to assure the assignment of at least one resident inspector by the end of fiscal year 1982 at each site at which a commercial nuclear powerplant is under construction and construction is more than 15 percent complete.

(b) The Commission shall conduct a study of alternate concepts and existing programs for improving quality assurance and quality control performance in the construction of commercial nuclear powerplants. In conducting the study, the Commission shall obtain the comments of the public, licenseesholding construction permits and operating licenses for nuclear powerplants, and the Advisory Committee on Reactor Safeguards. The study shall include, but not be limited to, the following alternative concepts for improving quality assurance and quality control:

(1) adopting a more prescriptive approach to defining principal architectural and engineering criteria for the construction of commercial nuclear powerplants that would serve as a basis for quality assurance and quality control, inspection, and enforcement actions;

(2) requiring, as a condition of the issuance of construction permits for commercial nuclear powerplants, that the licensee demonstrate the capability of independently managing the effective performance of all quality assurance and quality control responsibilities for the plant;

(3) encouraging and obtaining more effective evaluations, inspections or audits of commercial nuclear powerplant construction by independent industry or institutional organizations, based upon best experience and practices;

(4) reexamining the Commission's organization and method for quality assurance development, review and inspection, with the objective of deriving improvements in the agency's program; and

(5) requiring, as a condition of the issuance of construction permits for commercial nuclear powerplants, that the licensee contract or make other arrangements with an independent inspector for auditing quality assurance responsibilities for the purpose of verifying quality assurance performance. An independent inspector is a third party who has no responsibilities for the design or construction of the plant.

The study shall also include a survey of representative sites at which quality assurance and quality control programs are operating satisfactorily, and an assessment of the reasons therefor.

(c) The Commission shall undertake a pilot program to review and evaluate programs underway that include one or more of the alternative concepts identified in subsection (b) for the purposes of assessing the feasibility and benefits of their implementation: *Provided*, That the pilot program shall include programs underway that use independent inspectors for auditing quality assurance responsibilities of the licensee for the construction of commercial nuclear powerplants, as described in paragraph (5) of subsection (2). The pilot program shall include at least three sites at which commercial nuclear powerplants are under construction. The Commission shall select at least one site at which quality assurance and quality control programs have operated satisfactorily, and at least two sites with remedial programs underway at which construction, quality assurance and quality control deficiencies have been identified in the past. The Commission may require any changes in existing quality assurance and quality control organizations and relationships that may be necessary at the selected sites to implement this pilot program.

(d) Not later than eighteen months after the date of enactment of this Act, the Commission shall submit a report to the Senate and the House of Representatives on the results of the study and the pilot program required by this section. The report shall include the recommendations of the Commission, including any necessary legislative changes, and a description of any administrative actions that the Commission has undertaken or intends to undertake, for improving quality assurance and quality control performance in the construction of nuclear powerplants.

Mr. FORD. Mr. President, the amendment I am offering is directed toward the growing problem of inadequate construction of nuclear facilities in the United States today, a problem caused by poor quality assurance/quality control programs on the part of the licensees and their contractors, and by poor safety inspection on the part of the Nuclear Regulatory Commission. The amendment attempts to establish for the first time procedures and mechanisms to correct this intolerable state of affairs.

At this moment, it is very possible that nuclear plants are being built in such a way that they present a danger to the public health and safety. Of utmost concern to me is that fact that two of them border on the Commonwealth of Kentucky and will impact heavily on my State if an accident should occur.

Perhaps the most recognized example is Diablo Canyon in California. At this reactor, sited near an earthquake faultline, blueprints for units one and two designating where supports should be built to withstand stress from earthquakes were switched. Consequently, if you can imagine such a thing, unit one supports have been put in the wrong place. The NRC voted in November to suspend Pacific Gas & Electric's fuel-loading and low-power operating license for unit one until the utility satisfactorily completes an ex-

tensive seismic design verification program. The NRC also wants the company to reexamine its quality assurance program.

At the Zimmer facility in Moscow, Ohio, the NRC's Chicago regional office failed to act on reports raised over a year ago, of faulty construction practices, including charges of improper pipe welding. Fortunately, the allegations were pursued by a concerned public interest group and last November both the Chairman of the NRC and the head of the Office of Inspector and Auditor admitted that the NRC had indeed been derelict in its duties, relying too heavily on the utilities to check the work of their contractors. Cincinnati Gas & Electric has been fined \$200,000 for a widespread breakdown in its quality assurance program. Among the rules violated were falsification of records supposed to supply evidence that quality work was done, and harassment and intimidation of quality control inspectors by construction workers.

Although significant construction deficiencies have not been identified, the fact that the lack of sufficient quality assurance could result in serious problems has prompted the NRC to require the establishment of a comprehensive quality confirmation program to determine the quality of plant systems important to nuclear safety. Deficiencies identified by these programs will require resolution prior to issuance of an operating license.

Zimmer, I might add, is just on the other side of the Ohio River from Kentucky.

Then, Mr. President, there is the matter of Marble Hill at Madison, Ind., 100 miles away from Zimmer and only 30 miles from Louisville, the largest city in Kentucky. For years I have been trying to make sure that construction work there was being done properly so that the facility would be the safest possible. Briefly, allegations were made at Marble Hill in early 1979 that concrete used in the reactor-containment building and in an auxiliary building was improperly patched and therefore substandard. After these claims were verified, the licensee attempted to improve its construction practices, but eventually had to shut down its safety-related work. Only after the insistence of myself and others did the NRC finally issue a stop-work injunction and initiate an investigation. Work was resumed earlier this year after about 1½-years' delay, but not until substantial improvements were required in the licensee's quality assurance and quality control programs.

In every one of these cases there is a clearly established pattern of fault. The utilities of this country simply must accept the serious responsibility of building safe nuclear facilities and must recognize the significant difference between building a coal-fired plant and a nuclear powered gener-

ator. Neither they nor their contractors can ignore the unique problem involved. Shortcuts cannot be taken: mistakes must be thoroughly corrected, not covered up. Management and workers on the site must realize that quality assurance/quality control programs are not established to harass them and impede their work. Finally, the NRC must inspect more closely the construction of nuclear plants. They must, in fact, be relentless in their oversight duties.

The amendment I offer today takes a stride toward the goal of safe commercial nuclear powerplant construction. First, it authorizes and directs the Nuclear Regulatory Commission to accelerate its resident inspector program so as to assure by the end of 1982 the assignment of at least one resident inspector at each site at which a plant is under construction and more than 15 percent complete.

Second, it directs the Commission to conduct a study of ways to improve quality assurance and quality control programs. In doing so, the NRC shall solicit the comments of the public, industry and the Advisory Committee or Reactor Safeguards. The study is to include, but not be limited to, the concepts of, first, adopting narrower definitions of principal architectural and engineering criteria that would serve as a basis for QA/QC, inspection and enforcement actions; second, requiring as a condition for the issuance of construction permits that the licensee demonstrate its capability to independently perform all QA/QC responsibilities; third, encouraging more effective inspections or audits of commercial nuclear facilities by independent industry and institutional organizations; fourth, reexamining the NRC's own organization and method for quality assurance development, review and inspection, with the objective of deriving improvements in the agency's programs; and fifth, requiring as a condition of the issuance of a construction permit, that the licensee contract or make other arrangements with an independent inspector for auditing quality assurance responsibilities for the purpose of verifying quality assurance performance.

Third, and finally, the Commission is directed to undertake a pilot program for assessing the feasibility and benefits of implementing one or more of the above-mentioned concepts, providing that the pilot program shall include the use of independent, third party inspectors for auditing quality assurance responsibilities of the licensee. The pilot program shall include at least three sites at which commercial nuclear power plants are under construction. One must be a site at which QA/QC programs have operated satisfactorily and two must be sites at which significant construction and QA/QC deficiencies have been identified in the past.

No later than 18 months after this legislation is enacted, the Commission

is to submit a report to the Congress on the results of the study and the pilot program. The report shall include the recommendations of the Commission, including any necessary legislative changes, and a description of any administrative changes that the Commission has undertaken or intends to undertake, for improving quality assurance and quality control performance in the construction of nuclear powerplants.

In addition to tightening QA/QC programs and upgrading the safety oversight role of the NRC, a direction in which, I am pleased to note, the agency is already moving, this amendment emphasizes a dimension I have long advocated—the participation of third parties. As I mentioned earlier, my efforts were successful in having independent engineers placed at Marble Hill to insure that previously unnoticed flawed concrete was properly repaired.

Increased inspections by independent industry and institutional organizations, and the use of independent inspectors for auditing all QA/QC verification responsibilities not only offer a system of checks and balances by providing a third layer of safety monitoring, they also perform another function—that of bolstering the public's confidence in nuclear energy. Problems such as those that have occurred at Diablo Canyon, Zimmer, and Marble Hill have further eroded whatever trust in nuclear industry and its regulators the public had left after Three Mile Island. If we are going to have nuclear energy in this country it must be safe—safely constructed, safely operated, and its waste must be safely disposed. Nothing less is acceptable. It is not too much to ask that the public health and welfare be protected to the maximum extent possible.

I believe my amendment is acceptable to the managers of the bill. It has been drafted in consultation with the Nuclear Regulatory Commission. Since the House has already held hearings on the problem of inadequate safety procedures at nuclear powerplant construction sites, I hope that the amendment will be retained in conference. I urge the adoption of my amendment.

Mr. President, I ask unanimous consent to have printed in the RECORD an article from the Lexington Herald-Leader of February 28, 1982.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

NUCLEAR PLANTS RADIATE CONCERN AROUND STATE

(By Carol Marie Cropper)

MENTOR.—An Ohio utility begins on Monday what could be the final step before it activates a long-delayed, \$1.25 billion nuclear plant on Kentucky's northern border.

But the probable completion this year of the first of five nuclear plants near Kentucky coincides with the virtual halt to the once-rapid expansion of America's nuclear power industry.

Members of the nuclear Regulatory Commission will be in Cincinnati on Monday to begin the final public hearings on whether the William H. Zimmer nuclear power station should be granted a license to begin operation.

If the NRC's answer is "yes," the Zimmer station, which looms across the Ohio River from this Campbell County town, could begin turning steam heated by a nuclear reaction into electricity as early as this summer. And thousands of Kentuckians will for the first time be close enough to a nuclear power plant that they may have to be evacuated in case of a nuclear accident. Utility spokesmen, however, say such an accident is highly unlikely.

Residents of parts of three Northern Kentucky counties—Campbell, Pendleton, and Bracken—will be within 10 miles of Zimmer, the area that would face evacuation in case of a serious nuclear accident.

Part of northern Fayette County and most of the counties northeast of Lexington are within a 50-mile radius of the plant, a zone where officials say food could be contaminated during a leak at Zimmer.

NRC estimates Zimmer could be licensed to begin low-level operations this summer, when it would become one of the few recent additions to the nation's list of operating nuclear generating plants.

Fifty-six nuclear power plant projects were canceled between fiscal 1975 and the end of 1981, according to the NRC. Soaring building costs combined with lower-than-expected electricity demands caused many utilities to reconsider plans to join the nuclear power boom of the 1960s, and NRC spokesmen said.

Nevertheless, it is possible that Zimmer could be joined by as many as four other plants within 50 miles of Kentucky in the next few years.

Although Kentucky won't have any nuclear power plants, state Disaster and Emergency Services has made plans for dealing with potential problems at the five nearby plants:

Zimmer, near Moscow, Ohio, which will be operated by Cincinnati Gas & Electric Co.

Marble Hill, near Madison, Ind., and across the Ohio River from Trimble County, a \$4.3 billion two-unit electricity producer. The first unit is expected to open in 1986, with the second unit arriving in 1987.

Parts of Trimble and Oldham counties will be in the plant's 10-mile evacuation area. Almost 1 million Kentuckians, including Louisville and Frankfort residents, will be in the 50-mile zone.

Phipps Bend, north of Knoxville on the Tennessee-Virginia border. The Tennessee Valley Authority said it spend \$981 million on the planned two units before deciding last August to halt construction because of lower-than-expected growth in customer demand for electricity. If the plant is ever completed, parts of seven southeastern Kentucky counties—Harlan, Letcher, Knott, Pike, Perry, Leslie and Bell—will be in the 50-mile zone.

Hartsville, about 50 miles northeast of Nashville, near Hartsville, Tenn. In 1979, TVA deferred two of the four units, and the utility's directors are expected to decide at their March 4 meeting whether to defer the other two units. Part or all of nine Bowling Green-area counties—Warren, Logan, Simpson, Allen, Barren, Edmonson, Metcalfe, Monroe, and Cumberland—would be in the plant's 50-mile zone.

Clinch River, a government-industry experiment planned near Oak Ridge, Tenn. This new kind of nuclear power generator—a breeder reactor—was put on hold under the Carter administration, but President

Reagan supports the \$3.2 billion venture. If built, the plan would produce electricity at the same time it makes plutonium 239, which would be fuel to produce more electricity. The target opening date is September 1988. Parts of five Kentucky counties—Wayne, McCreary, Bell, Whitley and Knox—would be in the 50-mile radius.

Kentucky officially said "no" to nuclear power during former Gov. Julian Carroll's administration. Thomas E. Little, DES director of operations, said Carroll made it clear that nuclear plants were not wanted in Kentucky.

The no-nukes policy has continued under the Brown administration, he said, but the state has been powerless to stop construction of the two plants on its border and the other three plants nearby.

Kentucky tried unsuccessfully to prevent the NRC from issuing a construction permit at Marble Hill, but the state's position seemed related more to the plight of Kentucky coal than to concerns about the safety of Kentuckians.

John U. Bott Jr., nuclear regulation and affairs manager for Public Service Indiana, which is building the plant, said, "Their (Kentucky officials') contention was that we should use low-cost Kentucky coal."

Little added, "Let's face it. Nuclear plants don't burn coal."

The most visible evidence of the arrival of the nuclear age in the Ohio Valley is the Zimmer station's 479-foot water tower, which can be seen for miles along the Kentucky banks of the Ohio.

Reed Shaw, 70, of Mentor, whose hometown is in the plant's shadow, said he thinks he and his neighbors could not escape fast enough if there was a radiation leak.

Even if a leak never comes, Shaw said, Mentor residents already have lost. His 64-acre farm used to be worth \$100,000, he said. "Now, I can't get \$50,000 for it."

About 70 miles to the west in Trimble County—Bedford, the county seat and home to 800 people—is just eight miles from Marble Hill.

Jack Greenwood, editor of the Trimble Banner Democrat, said narrow roads would make evacuation impossible.

"I don't see any reason for the people of Trimble County or Kentucky to safeguard themselves from something that's bad that's going to benefit some other state," he said.

Not everyone in Bedford complains. L. E. Smith, who works at the local Chevron station, said the plant is providing jobs for local citizens and there's "nothing you can do about it no way."

Gen. Wilbur Buntin Jr., executive director of the state DES, said his staff has prepared evacuation plans for Kentuckians living near Zimmer and will develop similar plans for any other nuclear plant built within 50 miles of the state line.

Thick books describe the state's plans to evacuate the 29,000 people living in Zimmer's 10-mile zone to nearby Mason, Harrison, Grant and Boone counties.

Four rooms at the DES office building in Frankfort are equipped with phones to Zimmer, maps and a computer terminal printing out information such as the wind directions at Zimmer and the rate of radiation release. (If a dangerous radiation leak occurred, it probably would be a release into the air, DES officials say.)

But DES officials said the public's perception of the dangers of nuclear energy are exaggerated.

"I think a misconception that really causes the public a lot of problems is that a nuclear power plant is going to blow up and you're going to have to run for your life," Little said. "That is almost inconceivable."

Even if radiation leaked into the atmosphere, DES officials said, there would

almost certainly be time to evacuate people before they were contaminated by radioactive material.

"Radiation is just not as scary as a lot of people would have you believe," Little said.

The officials at Marble Hill and at Zimmer agreed.

Jeff Godsey, a 28-year-old staff engineer at Zimmer, pointed to yard after yard of buttons and warning lights in the control room and explained how the system is designed to detect and automatically begin correcting anything from a change in water pressure in the nuclear reactor to an increase in radiation levels leaving the plant's vents.

There is a provision for manual override and there are numerous combinations of buttons to push.

But the most interesting buttons are four red ones, two sitting on either side of the main reactor panel. Those buttons are a kind of emergency provision. If pushed, they shut down the reactor.

Godsey described how the pellets of radioactive uranium would be housed in metal rods, bundled inside a steel reactor vessel, how all that would be contained in one concrete enclosure that is housed inside the reinforced concrete reactor building.

At Marble Hill, the reactor building sits on 10 to 12 feet of concrete that was poured on top of a solid rock foundation, said Brad Bishop, media services supervisor for Public Service Indiana. The silo-shaped building that sits on that foundation and will house the nuclear reactor is built of steel with a 4-foot-thick concrete wall outside and two interior walls that add another 10-12 feet of reinforced concrete around the reactor, he said.

These buildings are designed to withstand earthquakes and tornadoes, plant officials said. They must be strong enough to survive the crash of a commercial jetliner, according to the NRC.

The safety features built into the two plants are obviously massive, expensive and intricate.

But nuclear power opponents and some of the Kentucky residents who will live near the plants point to problems at Three Mile Island and other, nuclear-power plants as proof that the safeguards can fail.

"They got a nasty surprise at Three Mile Island," said Henry W. Kendall, a physics professor at the Massachusetts Institute of Technology and one of the founders of the Union of Concerned Scientists, a group opposed to nuclear power. "Things that they thought were impossible were happening."

Past nuclear power plant accidents have not been caused by such dramatic events as earthquakes or bomb explosions but by breakdowns inside the plant that allowed radioactive steam or water to escape from the maze of pipes that circulate in the reactor building.

Nuclear power advocates argue that after 25 years of nuclear power plant operations, there has yet to be an accident that resulted in a single death.

Robert Gray, chairman of the board of directors of Save the Valley, Inc., a group made up primarily of Kentucky and Indiana residents that has opposed Marble Hill, argued that it was just a matter of time.

"There is a major nuclear accident out there. It's statistically very likely. . . . We will see dead bodies."

Kendall argues against the assertion that radiation from a nuclear power plant is not that dangerous. If the ultimate nuclear power disaster—a meltdown—occurred, Kentucky's 10-mile evacuation zone will not be enough, he said.

"In a major nuclear accident, every child that was within 50 miles downwind would be

likely to develop thyroid cancer. . . . The radiation effects extend downwind 300 to 400 miles from the plant . . . to the extent where it would raise the incidence of cancer and birth defects."

Opponents also say Marble Hill and Zimmer may be especially accident-prone.

Both plants have been heavily criticized during their construction.

Construction of safety-related areas of the Marble Hill plant halted from August 1979 until April 1981 while the NRC investigated complaints of defective concrete construction at the plant. The NRC eventually decided there were no significant defects, but Marble Hill had to upgrade its quality control.

"We didn't have enough properly qualified people with sufficient nuclear construction experience to make sure the project was going along properly," Bott said.

Construction problems at Zimmer also have made headlines. The NRC admitted last year that an earlier investigation into such charges by its own agency was faulty. The NRC fined CG&E \$200,000 in November 1981 for failures in the quality assurance program at the plant. Last Wednesday, CG&E agreed to pay rather than appeal.

"We do agree that deficiencies existed in implementing our quality assurance program, and in exercising sufficient surveillance over our construction contractor, the Henry J. Kaiser Co., but we believe that we have fully corrected these deficiencies," CG&E President William Dickhoner said.

An NRC report released in 1981 rated both Zimmer and Marble Hill construction below average, but officials at both plants argued that those ratings were based on problems that have since been corrected.

Mary and Don Reder are two former schoolteachers who now spend their time representing Mentor in its fight against Zimmer. They will resume their battle Monday, when the hearings start again.

They will argue, as they have argued before, that the proposed evacuation plans to get Kentucky schoolchildren and farmers out of the Zimmer area will not work.

For people like the Reders, Buntin of the DES said, there is a solution.

"If I lived in that area and I was as much afraid of what's going on as, for instance, the Reders appear to be, then I'd simply move."

Mr. SIMPSON. Mr. President, I am pleased to accept and support this amendment and to join as a cosponsor. Indeed, over the past several months, the Commission has identified a number of quality assurance and quality control problems at several nuclear powerplant construction sites. I believe that this amendment provides an important step toward addressing these problems by strengthening NRC's resident inspector program and by exploring a number of alternatives to improve quality assurance performance.

First, the amendment requires that NRC have a least one resident inspector at each nuclear powerplant construction site by the end of fiscal year 1982.

Second, the amendment requires a study of existing programs and alternate concepts for improving quality assurance and quality control performance in the construction of nuclear powerplants. Five such alternate concepts are specified in the amendment.

Third, the amendment calls for a pilot program consisting of programs now underway to gain actual experience with one or more of these concepts at at least three construction sites.

The concepts that are required to be studied under the amendment include the development of a more precise approach to defining criteria for plant construction, similar to the technical specifications that are now developed for plant operation; and the requirement that a licensee demonstrate the ability to independently perform quality assurance and quality control responsibilities for the plant. Under the latter concept, the Commission would determine the point at which a licensee would be required to demonstrate this capability, and the means by which this capability would be demonstrated. One such means, for example, that would fit this concept is owner certification by the American Society of Mechanical Engineers, which can now be granted after the plant is 15 percent completed.

A third concept to be studied is the more effective use of inspections and audits by independent industry and institutional organizations. Such organizations might include the Institute of Electrical and Electronic Engineers, the American Society of Mechanical Engineers, and the Institute for Nuclear Power Operations. In fact, Mr. President, the Institute for Nuclear Power Operations has recently begun a program that provides for the establishment of criteria for evaluating nuclear powerplant construction quality assurance and quality control, and for audits to verify compliance with these criteria.

This industrywide program is a promising step toward improving quality control and quality assurance in the construction of nuclear powerplants, and may well be the best option for bringing much needed improvement to this area. I believe the industry is to be commended for this initiative, and I believe the Commission should pay particular attention to this concept in developing its requirements and recommendations in the area of quality assurance and quality control.

Finally, the amendment would require the study of the concepts of improving the Commission's organization for quality assurance review, development, and inspection, and of requiring the use of independent, third-party inspectors for auditing and verifying quality assurance performance. Programs now underway at several sites that involve the use of third-party inspectors for auditing quality assurance performance would be included as part of the pilot program.

Mr. President, I would like to provide one clarification on the selection of sites to be used for the pilot program. The amendment requires that at least one must be a site at which quality assurance and quality control

programs have operated satisfactorily, and at least two must be sites at which construction, quality assurance, and quality control deficiencies have been identified in the past. As I understand it, this requirement is intended to provide information on a range of sites, for the purpose of assessing past quality assurance performance, corrective measures that have been undertaken where deficiencies have been found, and the effectiveness and appropriateness of ongoing programs for third-party auditing, and other alternate concepts, at these sites.

This requirement is not intended to characterize sites as good or bad in terms of their present quality assurance programs. Thus, mere selection for the pilot program in either category should not be interpreted as an indication that a site has an acceptable or unacceptable quality assurance program. In addition, I believe it is the intent of the sponsors of the amendment that the amendment be implemented so as to avoid delays or disruptions in plant construction, particularly with respect to the pilot program.

Mr. President, I believe the amendment is an appropriate step toward correcting the types of quality assurance problems that we have seen in recent months, and I am pleased to cosponsor the amendment.

I thank the distinguished Senator from Kentucky for his fine work on this amendment. I believe that he has made a most valuable and thoughtful contribution with the amendment, and he has been most cooperative and helpful on the issue as has his staff.

I have no further comments with regard to the amendment. I certainly endorse its approval.

Mr. MITCHELL. Mr. President, I rise as a cosponsor of the amendment introduced by Senator Ford which would strengthen the quality assurance and quality control programs at nuclear powerplants under construction.

The Ford amendment mandates that, by the end of fiscal year 1982, at least one resident inspector be assigned to each site at which a commercial nuclear powerplant is under construction and where construction is more than 15 percent complete.

The amendment also requires the NRC to conduct a comprehensive study of alternate concepts and existing programs for improving quality assurance and quality control performance in the construction of commercial powerplants.

Two of the alternate concepts which the NRC would be required to study are, one, obtaining more effective evaluations, inspections, or audits of powerplant construction by independent organizations; and two, requiring, as a condition of the issuance of construction permits, that the licensee contract or make other arrangements with an independent inspector to verify quality assurance performance.

The amendment would also provide for the establishment by the NRC of a quality assurance pilot program for at least three sites. The pilot program must include the alternate concepts under study. It must also include projects underway that use independent inspectors for auditing the quality assurance responsibilities of the utility.

The amendment is a forceful response to the continuing disclosures of design errors and construction mishaps at plant construction sites around the country. As NRC Chairman Palladino stated in a speech before the Atomic Industrial Forum:

Some utilities fall short of protecting their own best interests and meeting the high standards expected for nuclear power. Their deficiencies in quality assurance are inexcusable. There have been lapses of many kinds—in design analyses, resulting in built in design errors; in poor construction practices; in falsified documents; in harassment of quality control personnel; and inadequate training of reactor operators.

The example of a lapse in quality assurance and quality control most often referred to is the discovery in November 1981 of numerous errors in the design and calculations for the Diablo Canyon project. But there have been others, as well, less publicized but equally important.

In late November 1981, the NRC proposed a fine of \$200,000 against the Cincinnati Gas & Electric Co., for sloppy quality assurance during construction of its \$1.25 billion Zimmer plant. In announcing the fine, James Keppler, NRC regional administrator, stated, "I can't tell you there aren't other Zimmers out there."

In January 1982, the NRC proposed a fine of \$500,000 against Boston Edison for alleged safety violations at its Pilgrim nuclear powerplant. The NRC staff reported the alleged violations reflected "a lack of management review and attention that is manifested by such problems in design, maintenance, and operating practices." Boston Edison was accused of failing for 2½ years to meet Federal standards on a system which is designed to remove explosive hydrogen gas from the reactor building in the case of an accident.

It is in the best interests of utilities, as Chairman Palladino stated, to meet the high quality assurance standards required of them. It pays to meet these standards because it costs if they are not met. But there is an inherent conflict of interest in this area that one cannot ignore. That is the conflict caused by the fact that the utility building the plant is also responsible for the plant's quality assurance. Cutting corners to save money on construction can often mean cutting corners on safety regulations.

The Ford amendment attempts to minimize this conflict of interest by upgrading and increasing NRC efforts in this critical area. The amendment provides a meaningful alternative to

the string of disclosures and the string of fines.

The amendment also provides quality assurance before the fact, in effect before the utility has spent a prodigious amount to build the plant. In the process, it may save the utilities a lot of headaches, expensive delays in construction time, and costly fines. More importantly, it will place safety before development, and thereby better protect the public health and safety.

● Mr. LEVIN. Mr. President, I would like to congratulate my colleague from Kentucky for proposing such a constructive amendment to the Nuclear Regulatory Commission authorization bill. As a cosponsor of this amendment, I would urge my colleagues to accept this prudent step.

One of the major problems facing the nuclear power industry is the increasing lack of public confidence in the safety of nuclear power. For years we were told that no accidents were possible—until accidents started occurring. Regulators told us their guidelines were foolproof—until it was discovered that major errors had occurred. I believe the amendment offered by Senator Ford could help both prevent mistakes and assure the public that quality control will be required. Under such a program, the utility building a nuclear plant, the NRC, which must license and regulate nuclear powerplants, and the public paying for and living next door to the plant can see if it meets all quality requirements.

In my State of Michigan there has been a certain amount of mistrust concerning the quality control of a nuclear plants. Those building plants have assured us that they will be safe. What better way to verify quality control than to have such a plant participate in a new system of independent inspectors?●

The PRESIDING OFFICER. Do the mover and manager of the bill yield back their time?

Mr. HART addressed the Chair.

The PRESIDING OFFICER. Who yields time to the Senator from Colorado?

Mr. HART. Mr. President, I have time I think under the time agreement of my own on the bill or on this amendment.

The PRESIDING OFFICER. Does the Senator wish to use time on the bill?

Mr. SIMPSON. Mr. President, we are on the Ford amendment. There is a time agreement on the Ford amendment which is now being used.

The PRESIDING OFFICER. The Parliamentarian advises me that under the terms of the time agreement, the time for the Ford amendment is actually controlled by the Senator from Kentucky.

Mr. FORD. Mr. President, I yield such time as the distinguished Senator from Colorado might need of my 30 minutes.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. HART. I thank the Senator.

Mr. President, I am a cosponsor and strongly support this amendment offered by the distinguished Senator from Kentucky.

The amendment will begin the much-needed task of upgrading the quality control and quality assurance programs at nuclear powerplants under construction. I agree with him on the importance of this effort. I congratulate him for offering this amendment.

I align myself very strongly with it and urge its adoption.

Construction deficiencies, and inadequacies in licensees' quality assurance/quality control programs, have long plagued the U.S. commercial nuclear power program. The recent disclosure of serious construction errors at the Diablo Canyon powerplant, and the \$200,000 fine levied by NRC against Cincinnati Gas & Electric for having an inadequate QA/QC program at its Zimmer powerplant, indicate these problems have not disappeared and, in fact, may have gotten worse.

NRC Chairman Palladino strongly criticized the nuclear industry for construction deficiencies and inadequacies in its QA/QC programs. He said:

Public health and safety considerations as well as economic imperatives dictate use of the highest professional standards in building and operating a nuclear plant. When construction or operation falls below the highest standards, the entire industry is hurt * * * A number of deficiencies at some plants have come to my attention which show a surprising lack of professionalism in the construction and preparation for operation of nuclear facilities. The responsibility for such deficiencies rests squarely on the shoulders of management * * * If the nuclear industry does not do its part, no amount of regulatory reform will save it from the consequences of its own failures to achieve the quality of construction and plant operations it must have for its own well-being and for the safety of the public it serves. Based on quality assurance failures that have recently come to light, I am not convinced that all of the industry has been doing its part.

In addition to the lack of professionalism in some cases, noted by Chairman Paladino, the quality control efforts by utilities also will suffer from a flawed regulatory philosophy: An inherent conflict of interest arises because the utility constructing the powerplant, which naturally seeks to minimize construction costs, also has the responsibility for assuring and controlling the quality of construction—efforts that could increase the total cost of the project.

I support the Ford amendment because it seeks to minimize the inherent conflict of interest that results when the utility building the powerplant bears responsibility for assuring the quality of construction. In particular, the amendment directs the NRC to study alternate concepts for improving quality assurance and quality control in the construction of power-

plants. The study must specifically consider requiring, as a condition for construction permits, that the utility contract with an independent, third-party inspector for quality control verification.

Perhaps more important, the Ford amendment would establish a pilot program for at least three sites where powerplants are under construction to assess the benefits of using independent third-party inspectors to perform the utility's quality assurance and quality control verification responsibilities. The assessment under this pilot program is one that the Congress should have required the NRC to make long ago. I appreciate the work of the distinguished Senator from Kentucky in encouraging the Senate to address this weakness in the U.S. commercial nuclear power program. I urge the acceptance of this amendment.

Mr. FORD. Mr. President, I thank the distinguished Senator from Wyoming (Mr. SIMPSON) and the distinguished Senator from Colorado (Mr. HART) for their support of this amendment.

No two Senators and their staff could work any closer with us and our staff. I think we have an outstanding amendment here that heads us in the right direction as it relates to the safety of our nuclear generating facilities.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Does the Senator from Wyoming yield back his time as well?

Mr. SIMPSON. Mr. President, yes, I do.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kentucky.

The amendment (UP No. 839) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SIMPSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SYMMS. Mr. President, will the Senator yield me some time on the bill?

Mr. SIMPSON. Mr. President, I believe I have very limited time remaining on the bill.

May I have a review of that, please?

The PRESIDING OFFICER. The manager of the bill has 5 minutes and 42 seconds remaining on the bill itself.

Mr. SIMPSON. How much time does my colleague from Colorado have remaining?

The PRESIDING OFFICER. The Senator from Colorado has 30 minutes remaining.

Mr. HART. Mr. President, there apparently is some desire on the part of a number of Senators to speak under time on the bill. The Senator from Pennsylvania first requested time, and I am prepared to yield time to him. I

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wonder if the Senator from Idaho could tell me how much time he is requesting?

Mr. SYMMS. About 5 minutes, I would say; 3 minutes might do it.

Mr. HART. I yield not to exceed 5 minutes to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. SYMMS. Mr. President, I wish to thank my good friend from Colorado for yielding me the 5 minutes.

I thank him and the distinguished chairman of the committee, the Senator from Wyoming, for their efforts to bring this bill to the full Senate.

Mr. President, I am in support of this bill.

There are a number of significant provisions in the bill, as reported by the Environment and Public Works Committee that I would like to mention briefly. I believe that these provisions will have a positive impact in terms of enhancing safety, and at the same time should result in real improvement, in regulatory efficiency in the nuclear powerplant licensing process.

First, the bill designates funding for several NRC safety programs. These include reactor safety research work on fast breeder reactors, including support for the licensing of the Clinch River Breeder Reactor; safety research and licensing review work on high-temperature, gas-cooled reactors; and research work related to the loss-of-fluid test facility. This facility, in particular, Mr. President, has provided extremely useful information to the Commission, the nuclear industry, and the public on the validity of the NRC's requirements for nuclear reactor emergency core cooling systems, and the bill would permit this valuable work to go forward over the next 2 years.

Second, the bill grants to the Commission the authority to issue interim operating licenses for new nuclear powerplants through 1983. I believe this provision is particularly essential to insure that there will not be unnecessary delays in the operation of new plants that are unrelated to significant safety issues. Even though there has been considerable fluctuation in the projected delays for these plants, the potential for costly and unnecessary delays remains a possibility until the present licensing backlog is removed. The bill, as reported by the committee, eliminates this potential in a responsible manner that assures the continued protection of the public health and safety.

Third, the bill would remove a requirement for advance hearings on certain power reactor license amendments that could serve as a source of costly delay and disruption of plant operation. This provision allows those license amendments that the Commission determines do not involve significant safety issues to be put into effect before any requested hearing is held. Again, this provision, while preserving

the opportunity for a hearing, assures that plant operations will not be disrupted in those cases where there is no serious safety question involved.

I believe that these budgetary and reform measures serve as an important first step in improving the efficiency and effectiveness of the nuclear regulatory process in this country, and I strongly support passage of the bill.

Mr. President, I yield back the remainder of my time.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HART. Mr. President, I yield 5 minutes to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 5 minutes.

THREE MILE ISLAND

Mr. SPECTER. I thank the distinguished Senator from Colorado for yielding me this time.

Mr. President, in the consideration of this bill I believe that a substantial analysis is required of the pending problems of Three Mile Island in the Commonwealth of Pennsylvania as they relate to the broader national aspects of the development of nuclear energy.

The incident at TMI on March 29, 1979, has adversely affected Pennsylvania in at least two ways: First, higher electric rates for both home and industry; and, second, an uneasiness about the safety of citizens living near nuclear-generating plants.

This has resulted in a depressed economy for the TMI area and stimulated an active concern about safety by groups of citizens.

Beyond the immediate impact of Three Mile Island on the Commonwealth of Pennsylvania, the Three Mile Island incident has had, I suggest, a serious effect on the development of nuclear energy around the Nation.

I believe it is imperative that an immediate answer be found for the problems at TMI if there is to be any realistic possibility of developing nuclear energy in this Nation.

An accident such as that at TMI could have happened anywhere, and it is only a matter of happenstance that it occurred in Pennsylvania. Had the nuclear industry anticipated such a problem I think there would have been a widespread movement to create an insurance fund with companies owning nuclear plants, contributing a small amount of money based on an insurance principle so that in the event of such an accident there would have been a fund to pay for cleanup.

That, unfortunately, was not done in advance. Once the accident occurred it is obviously difficult to get the industry to do retroactively what would have been much easier to do prospectively.

Senator HEINZ and I and others have introduced legislation in Congress, and Governor Thornburgh of Pennsylva-

nia has move ahead with an innovative plan. But any successful effort is going to require substantial participation by the Federal Government, and is going to require substantial participation and assistance by the Nuclear Regulatory Commission.

As we consider this bill, I think Congress should attend to the problem at TMI and work in a unified way to provide a national solution to that problem because it is realistically a national problem and one which has to be solved if there is to be further development of nuclear energy in the United States.

There must be appropriate assurances of safety, there must be appropriate assurances that in the event of accident there will be a proper response to see that those in the area are properly cared for and properly taken care of.

I thank the Senator from Colorado for yielding the time. Mr. President, I yield the floor.

UP AMENDMENT NO. 840

Mr. SIMPSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming (Mr. SIMPSON) proposes an unprinted amendment numbered 840.

Mr. SIMPSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 6, after line 13, add a new section 105 to read as follows:

"Sec. 105. Funds authorized to be appropriated under this Act shall be used by the Commission to expedite the establishment of safety goals for nuclear reactor regulation. The development of safety goals and accompanying methodologies for their application should be expedited to the maximum extent practicable and shall precede, unless the Commission decides otherwise, the issuance of other regulations contemplated by the Commission that could affect engineered safety features, siting requirements, or emergency planning."

Mr. SIMPSON. Mr. President, I am offering this amendment which, if adopted, will require the NRC to move forward expeditiously with the establishment of a safety goal for nuclear reactor regulation. Last year, this body adopted a similar provision as part of the NRC authorization bill for fiscal year 1981. Unfortunately, that provision was not enacted due to the failure of the House to act on that legislation.

As you know, Mr. President, an unprecedented number of new regulatory requirements for nuclear powerplants has resulted from the accident at Three Mile Island. Included among the major regulatory initiatives that the Commission has undertaken are rules to alter siting requirements,

expand the current design bases for nuclear reactors, and change emergency planning requirements. While I strongly support the NRC's efforts to upgrade these and other safety requirements, I am concerned that there is a persistent lack of criteria and objectives to provide a coherency and direction to the definition of new regulatory requirements and of their application to existing and future nuclear powerplants.

To assure reasonable protection of the health and safety of the public, the quality of the structures, systems, and components of nuclear powerplants must be designed, engineered, built, and operated in order to achieve the desired degree of performance.

We have this absence of a safety goal, and I think that inhibits and may preclude addressing the threshold question of whether a particular new requirement is necessary to achieve the desired level of safety and such determinations must be made on a case-by-case basis without clear and consistent guidance from the Commission on the standards that should be applied and we need to correct that.

Succinctly then, Mr. President, the best approach toward identifying the desired level of safety for nuclear power reactors is the establishment of a "safety goal." Indeed, the NRC's Lessons Learned Task Force, in its report following the accident at Three Mile Island, emphasized the importance of a safety goal in achieving a balanced regulatory perspective, a view echoed by the Kemeny and Rogovin reports as well. As recently as September of last year, the Commission's Advisory Committee on Reactor Safeguards, in commenting on the staff's proposed rule on reactor site criteria, reiterated its support for establishment of a safety goal when it stated that:

The decision on reactor site criteria should not be made in the absence of either some guiding safety philosophy or sufficiently specific design requirements for nuclear powerplants.

It is in light of these recommendations, Mr. President, that I am proposing that NRC move forward swiftly with the establishment of a safety goal. The amendment I offer today provides that, unless the Commission should decide otherwise, the development and promulgation of a safety goal should precede other major rule-making activities related to engineered safety features, siting requirements, or emergency planning. By placing high priority on the establishment of a safety goal and methods for its application, the NRC will then have laid the essential groundwork for the adoption of requirements related to engineered safety features, siting, and emergency planning.

I urge the support of the amendment.

Mr. HART addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, along with Senator SIMPSON, in the past I have supported the idea of a safety goal which this amendment is directed toward.

To some extent that goal will provide a benchmark for NRC safety regulations and lead to a consistent regulatory scheme.

At the same time, perhaps I am not as sanguine as the Senator from Wyoming about how useful such a goal will be for two reasons: First, it is extremely difficult to quantify subjective assessments of comparative risks, and to determine how much risk we consider acceptable; and, second, even if the NRC can develop a quantified safety goal, it is equally difficult to apply that goal in specific regulatory decisions. How will some general assessment of acceptable risk, even in numerical terms, help the NRC to decide whether to require, for example, additional warning sirens for an emergency plan, additional training for a powerplant operator of an additional few inches of concrete in a containment wall? The simple answer to that question, Mr. President, is I just do not know.

I do think a safety goal will serve as a useful vehicle for debating "How safe is safe enough," the chronic nuclear power issue. Moreover, it will at least provide a general objective that we hope NRC's safety regulations will achieve.

In spite of those reservations, Mr. President, I endorse and support the amendment of the Senator from Wyoming and I urge its passage.

The PRESIDING OFFICER. Who yields time?

Mr. SIMPSON. I thank the Senator and yield back the remainder of my time on the amendment.

The PRESIDING OFFICER. Does the Senator from Colorado also yield back his time?

Mr. HART. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment (UP No. 840) was agreed to.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HART. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 841

Mr. SIMPSON. Mr. President, I send another amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Wyoming (Mr. SIMPSON) for himself and Mr. HART, proposes an unprinted amendment numbered 841.

Mr. SIMPSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 12, after line 19, insert a new section to read as follows:

Sec.— (a) The Atomic Energy Act of 1954, as amended, is amended by adding a new section 237 to read as follows:

"Sec. 237. Resident Inspectors.—

a. Notwithstanding any regulations promulgated by the President pursuant to Section 5724(a) of Title 5, U.S.C., appropriations or other funds available to the Nuclear Regulatory Commission for administrative expenses are available, under such regulations as the Commission may prescribe and to the extent considered necessary and appropriate, for reimbursement of all or part of the following expenses of a resident inspector of the Commission, relocating between two NRC duty stations, for whom the Government pays expenses of travel and transportation under Section 5724(a) of Title 5, U.S.C.—(1) Points or mortgage loan origination fees charged by mortgage lender to resident inspector on sale or purchase of a residence, not to exceed the lesser of \$8000 or 8 percent of the sale price of the residence (8 points); (2) Interest on, and other expenses of, a "bridge" or "swing" loan, limited to 180 days of interest, taken by the resident inspector on currently owned property to provide an equity advance to purchase a second property prior to the sale of the first property; (3) The cost of an owner's title insurance policy paid for by the resident inspector on a residence purchased by him.

b. The Commission is authorized to enter into contracts for the provision of relocation services to assist employee resident inspectors for whom the Government pays expenses of travel and transportation under Section 5724(a) of Title 5, of the United States Code, in relocating between duty stations, including assisting in the sale of employees' residences.

c. Notwithstanding the provisions of Section 638a of Title 31, the Nuclear Regulatory Commission may authorize the Executive Director for Operations to approve the use of Government-owned or leased vehicles located at resident inspection offices for transportation of resident inspectors between their domiciles and official duty stations, when public transportation is unavailable or impractical."

(b) Of the amounts authorized to be appropriated by this Act, the Commission may use up to \$1,182,000 in fiscal year 1982 and up to \$1,129,000 in fiscal year 1983 pursuant to the authority contained in subsection (a) of this section.

Mr. SIMPSON. Mr. President, one of the principal recommendations that each of the major investigations into the accident at Three Mile Island was that the Nuclear Regulatory Commission should expand its resident inspector program. That was a consistently threaded-through observation. The Congress responded by authorizing and appropriating funds for expanding this vital link in the Commission's improved safety program. The resident inspector provides a continuing Commission presence onsite at nuclear power reactors. These inspectors are well versed in their sites' characteris-

tics, nuclear technology, and the licensee's procedures and personnel. They monitor day-to-day activities and licensee performance and they are available to respond quickly to events which could affect public health and safety, both onsite and in the local area. The Commission's goal is to have a resident inspector at each operating power reactor and each reactor under construction by the end of fiscal year 1982.

The Commission insures impartiality of these inspectors; first, by relocating each inspector every 3 to 5 years and, second, by restricting certain activities of the inspector and the inspector's family to avoid even the appearance of a conflict of interest. These restrictive measures include the prohibition of family members from working for the licensee or the licensee's contractors, which are often the principal employers in the area, and the prohibition of other forms of contact with licensee or licensee contractor employees.

As a result of these requirements, as well as of NRC's difficulty in competing with private industry to provide salary, incentives, and other benefits, the Commission is experiencing difficulty in recruiting and retaining the highly trained and competent individuals needed to make the resident inspector program effective. Thus, the Commission may not be able to meet its goal of having an inspector at each operating power reactor and at each reactor under construction by the end of fiscal year 1982.

One major obstacle in meeting this objective is the financial cost involved in relocating, especially in light of very tight housing and financial markets. While some of these costs are reimbursable under current government statutes and regulations, a significant share must still be borne by the relocating inspector. A second problem area involves the costs of commuting between the resident inspector's residence and the nuclear reactor site. The resident inspector's commuting costs present a unique problem converse to those of other Federal employees because of several factors: First, the remoteness of many nuclear sites; second, the frequent unavailability of public transportation; and third, one of the restrictions placed on the inspector, which prohibit carpooling with licensee employees or using licensee-subsidized transportation.

It is to these two areas of concern—relocation costs and commuting costs—that the amendment is directed. The amendment, if adopted, would authorize the Commission to first, reimburse resident inspectors for mortgage loan origination fees, owner's title insurance, and "Bridge" loan expenses incurred in relocating between duty stations; second, contract with a "relocating service" to assist resident inspectors in relocating between duty stations; and third, provide resident inspectors with government transportation for commuting purposes between

their homes and duty stations. The amendment also places a cap on these reimbursements to assure they will not exceed \$1,162,000 in fiscal year 1982, and \$1,129,000 in fiscal year 1983.

So that is the purpose of the amendment. Throughout our entire deliberations, since I have been on this committee and subcommittee, both as ranking minority member and as chairman, the resident inspector became the single most important inspector at recreating and creating confidence in nuclear power generation.

I urge support of this amendment that would insure that the Commission will fully implement this vital safety and health program.

Mr. HART. Mr. President, I support and cosponsor the amendment by the Senator from Wyoming. The resident inspector's program is necessary to improve the protection of public health and safety, as outlined by the Senator from Wyoming. This provision removes some of the difficulty in attracting resident inspectors.

The NRC can meet its goal of having a resident inspector at every operating plant by the end of the fiscal year.

This is a worthwhile and important amendment. I urge its adoption. I yield back the remainder of my time.

The PRESIDING OFFICER. Does the Senator from Wyoming also yield back his time?

Mr. SIMPSON. I do yield back my time on that amendment, Mr. President.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment (UP No. 841) was agreed to.

Mr. SIMPSON. I move to reconsider the vote by which the amendment was agreed to.

Mr. HART. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SIMPSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. How does the Senator wish the time for this quorum call to be charged?

Mr. HART. Mr. President, I ask unanimous consent that the time for the quorum call not be charged against either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll. The bill clerk proceeded to call the roll.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COCHRAN). Without objection, it is so ordered.

Mr. SIMPSON. At this point, Mr. President, I ask unanimous consent that an amendment by the Senator from Pennsylvania (Mr. HEINZ) be in order to be offered when the Senate

resumes consideration of the pending business, which is S. 1207, but not prior to Monday, March 29.

I further ask unanimous consent that this agreement be subject to the minority leader's approval and may be vitiated by the minority leader at any time prior to the close of business tomorrow.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, I have no further amendments to this bill today. We shall return to its consideration as I have just suggested, when we shall take up two other amendments under the previous time agreement, also.

I appreciate the patience and cooperation of the ranking minority member of the subcommittee (Mr. HART).

Mr. President, at this time I believe we are able to return to the consideration of other business.

The PRESIDING OFFICER. Without objection, S. 1207 will be set aside.

REGULATORY REFORM

The PRESIDING OFFICER. The clerk will state the pending business.

The legislative clerk read as follows:

A bill (S. 1080) to amend the Administrative Procedure Act to require Federal agencies to analyze the effects of rules to improve their effectiveness and to decrease their compliance costs; to provide for a periodic review of regulations, and for other purposes.

The Senate resumed consideration of the bill.

Mr. TOWER. Mr. President, the economic recovery program as originally proposed by President Reagan consisted of four major goals: tax reduction; control of Government spending; a consistent monetary policy; and reduction in the burden of Government regulation. We have made and continue to make great strides in all of these areas. The Economic Recovery Tax Act of 1981, reductions in the growth rate of Federal spending, and more stabilized growth in the money supply through the annual monetary targets set by the Federal Reserve Board all are steps toward the goals mandated by the American people.

Today we continue our progress with consideration of the Regulatory Reform Act, S. 1080. While this legislation is not intended to be a comprehensive reform of the entire regulatory process. It focuses in depth on the procedures for rulemaking and for judicial review of agency actions. The provisions of S. 1080 are a positive step in alleviating one of the greatest concerns of American citizens in all walks of life—unnecessary and costly Government regulations. Too often these regulations have been propounded without appropriate consultation with those affected and without responsible analysis by the agencies involved. The regulatory analysis procedures of the

1/1982

Ninety-seventh Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-fifth day of January,
one thousand nine hundred and eighty-two*

An Act

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

AUTHORIZATION OF APPROPRIATIONS

SECTION 1. (a) There are hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954 (42 U.S.C. 2017) and section 305 of the Energy Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal years 1982 and 1983 to remain available until expended, \$485,200,000 for fiscal year 1982 and \$513,100,000 for fiscal year 1983 to be allocated as follows:

(1) Not more than \$80,700,000 for fiscal year 1982 and \$77,000,000 for fiscal year 1983 may be used for "Nuclear Reactor Regulation", of which an amount not to exceed \$1,000,000 is authorized each such fiscal year to be used to accelerate the effort in gas-cooled thermal reactor preapplication review, and an amount not to exceed \$6,000,000 is authorized each such fiscal year to be used for licensing review work for a fast breeder reactor plant project. In the event of a termination of such breeder reactor project, any unused amount appropriated pursuant to this paragraph for licensing review work for such project may be used only for safety technology activities.

(2) Not more than \$62,900,000 for fiscal year 1982 and \$69,850,000 for fiscal year 1983 may be used for "Inspection and Enforcement".

(3) Not more than \$42,000,000 for fiscal year 1982 and \$47,059,600 for fiscal year 1983 may be used for "Nuclear Material Safety and Safeguards".

(4) Not more than \$240,300,000 for fiscal year 1982 and \$257,195,600 for fiscal year 1983 may be used for "Nuclear Regulatory Research", of which—

(A) an amount not to exceed \$3,500,000 for fiscal year 1982 and \$4,500,000 for fiscal year 1983 is authorized to be used to accelerate the effort in gas-cooled thermal reactor safety research;

(B) an amount not to exceed \$18,000,000 is authorized each such fiscal year to be used for fast breeder reactor safety research; and

(C) an amount not to exceed \$57,000,000 is authorized for such two fiscal year period to be used for the Loss-of-Fluid Test Facility research program.

In the event of a termination of the fast breeder reactor plant project, any unused amount appropriated pursuant to this para-

graph for fast breeder reactor safety research may be used generally for "Nuclear Regulatory Research".

(5) Not more than \$21,900,000 for fiscal year 1982 and \$20,197,800 for fiscal year 1983 may be used for "Program Technical Support".

(6) Not more than \$37,400,000 for fiscal year 1982 and \$41,797,000 for fiscal year 1983 may be used for "Program Direction and Administration".

(b) The Nuclear Regulatory Commission may use not more than 1 percent of the amounts authorized to be appropriated under subsection (a)(4) to exercise its authority under section 31 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2051(a)) to enter into grants and cooperative agreements with universities pursuant to such section. Grants made by the Commission shall be made in accordance with the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501 et seq.) and other applicable law. In making such grants and entering into such cooperative agreements, the Commission shall endeavor to provide appropriate opportunities for universities in which the student body has historically been predominately comprised of minority groups.

(c) Any amount appropriated for a fiscal year to the Nuclear Regulatory Commission pursuant to any paragraph of subsection (a) for purposes of the program office referred to in such paragraph, or any activity that is within such program office and is specified in such paragraph, may be reallocated by the Commission for use in a program office referred to in any other paragraph of such subsection, or for use in any other activity within a program office, except that the amount available from appropriations for such fiscal year for use in any program office or specified activity may not, as a result of reallocations made under this subsection, be increased or reduced by more than \$500,000 unless—

(1) a period of 30 calendar days (excluding any day in which either House of Congress is not in session because of an adjournment of more than 3 calendar days to a day certain or an adjournment sine die) passes after the receipt, by the Committee on Energy and Commerce and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works of the Senate, of notice submitted by the Commission containing a full and complete statement of the reallocation proposed to be made and the facts and circumstances relied upon in support of such proposed reallocation; or

(2) each such committee, before the expiration of such period, transmits to the Commission a written notification that such committee does not object to such proposed reallocation.

AUTHORITY TO RETAIN CERTAIN AMOUNTS RECEIVED

SEC. 2. Moneys received by the Nuclear Regulatory Commission for the cooperative nuclear research program and the material access authorization program may be retained and used for salaries and expenses associated with such programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended.

AUTHORITY TO TRANSFER CERTAIN AMOUNTS TO OTHER AGENCIES

Sec. 3. From amounts appropriated to the Nuclear Regulatory Commission pursuant to section 1884, the Commission may transfer to other agencies of the Federal Government sums for salaries and expenses for the performance by such agencies of activities for which such appropriations of the Commission are made. Any sums so transferred may be merged with the appropriation of the agency to which such sums are transferred.

LIMITATION ON SPENDING AUTHORITY

Sec. 4. Notwithstanding any other provision of this Act, no authority to make payments under this Act shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

**AUTHORITY TO ISSUE LICENSES IN ABSENCE OF EMERGENCY
PREPAREDNESS PLANS**

Sec. 5. Of the amounts authorized to be appropriated under section 1, the Nuclear Regulatory Commission may use such sums as may be necessary, in the absence of a State or local emergency preparedness plan which has been approved by the Federal Emergency Management Agency, to issue an operating license (including a temporary operating license under section 192 of the Atomic Energy Act of 1954, as amended by section 11 of this Act) for a nuclear power reactor, if it determines that there exists a State, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned.

NUCLEAR SAFETY GOALS

Sec. 6. Funds authorized to be appropriated under this Act shall be used by the Nuclear Regulatory Commission to expedite the establishment of safety goals for nuclear reactor regulation. The development of such safety goals, and any accompanying methodologies for the application of such safety goals, should be expedited to the maximum extent practicable to permit establishment of a safety goal by the Commission not later than December 31, 1982.

LOSS-OF-FLUID TEST FACILITY

Sec. 7. Of the amounts authorized to be used for the Loss-of-Fluid Test Facility in accordance with section 1884 for fiscal years 1982 and 1983, the Commission shall provide funding through contract with the organization responsible for the Loss-of-Fluid Test operations for a detailed technical review and analysis of research results obtained from the Loss-of-Fluid Test Facility research program. The contract shall provide funding for not more than twenty man-years in each of fiscal years 1982 and 1983 to conduct the technical review and analysis.

NUCLEAR DATA LINK

Sec. 8. (a) Of the amounts authorized to be appropriated under this Act for the fiscal years 1982 and 1983, not more than \$200,000 is authorized to be used by the Nuclear Regulatory Commission for—

(1) the acquisition (by purchase, lease, or otherwise) and installation of equipment to be used for the "small test prototype nuclear data link" program or for any other program for the collection and transmission to the Commission of data from licensed nuclear reactors during abnormal conditions at such reactors; and

(2) the conduct of a full and complete study and analysis of--
(A) the appropriate role of the Commission during abnormal conditions at a nuclear reactor licensed by the Commission;

(B) the information which should be available to the Commission to enable the Commission to fulfill such role and to carry out other related functions;

(C) various alternative means of assuring that such information is available to the Commission in a timely manner; and

(D) any changes in existing Commission authority necessary to enhance the Commission response to abnormal conditions at a nuclear reactor licensed by the Commission.

The small test prototype referred to in paragraph (1) may be used by the Commission in carrying out the study and analysis under paragraph (2). Such analysis shall include a cost-benefit analysis of each alternative examined under subparagraph (C).

(b)(1) Upon completion of the study and analysis required under subsection (a)(2), the Commission shall submit to Congress a detailed report setting forth the results of such study and analysis.

(2) The Commission may not take any action with respect to any alternative described in subsection (a)(2)(C), unless a period of 60 calendar days (excluding any day in which either House of Congress is not in session because of an adjournment of more than 3 calendar days to a day certain or an adjournment sine die) passes after the receipt, by the Committee on Energy and Commerce and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works of the Senate, of notice submitted by the Commission containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action.

INTERIM CONSOLIDATION OF OFFICES

Sec. 9. (a) Of the amounts authorized to be appropriated pursuant to paragraph 6 of section 1(a), such sums as may be necessary shall be available for interim consolidation of Nuclear Regulatory Commission headquarters staff offices.

(b) No amount authorized to be appropriated under this Act may be used, in connection with the interim consolidation of Nuclear Regulatory Commission offices, to relocate the offices of members of the Commission outside the District of Columbia.

THREE MILE ISLAND

Sec. 10. (a) No part of the funds authorized to be appropriated under this Act may be used to provide assistance to the General Public Utilities Corporation for purposes of the decontamination, cleanup, repair, or rehabilitation of facilities at Three Mile Island Unit 2.

(b) The prohibition contained in subsection (a) shall not relate to the responsibilities of the Nuclear Regulatory Commission for monitoring or inspection of the decontamination, cleanup, repair, or rehabilitation activities at Three Mile Island and such prohibition shall not apply to the use of funds by the Nuclear Regulatory Commission to carry out regulatory functions of the Commission under the Atomic Energy Act of 1954 with respect to the facilities at Three Mile Island.

(c) The Nuclear Regulatory Commission shall include in its annual report to the Congress under section 307(c) of the Energy Reorganization Act of 1974 (42 U.S.C. 5877(c)) as a separate chapter a description of the collaborative efforts undertaken, or proposed to be undertaken, by the Commission and the Department of Energy with respect to the decontamination, cleanup, repair, or rehabilitation of facilities at Three Mile Island Unit 2.

(d) No funds authorized to be appropriated under this Act may be used by the Commission to approve any willful release of "accident-generated water", as defined by the Commission in NUREG-0683 ("Final Programmatic Environmental Impact Statement" p. 1-23), from Three Mile Island Unit 2 into the Susquehanna River or its watershed.

TEMPORARY OPERATING LICENSES

SEC. 11. Section 192 of the Atomic Energy Act of 1954 (42 U.S.C. 2242) is amended to read as follows:

"SEC. 192. TEMPORARY OPERATING LICENSE —

"a. In any proceeding upon an application for an operating license for a utilization facility required to be licensed under section 103 or 104 b. of this Act, in which a hearing is otherwise required pursuant to section 189 a., the applicant may petition the Commission for a temporary operating license for such facility authorizing fuel loading, testing, and operation at a specific power level to be determined by the Commission, pending final action by the Commission on the application. The initial petition for a temporary operating license for each such facility, and any temporary operating license issued for such facility based upon the initial petition, shall be limited to power levels not to exceed 5 percent of rated full thermal power. Following issuance by the Commission of the temporary operating license for each such facility, the licensee may file petitions with the Commission to amend the license to allow facility operation in staged increases at specific power levels, to be determined by the Commission, exceeding 5 percent of rated full thermal power. The initial petition for a temporary operating license for each such facility may be filed at any time after the filing of: (1) the report of the Advisory Committee on Reactor Safeguards required by section 182 b.; (2) the filing of the initial Safety Evaluation Report by the Nuclear Regulatory Commission staff and the Nuclear Regulatory Commission staff's first supplement to the report prepared in response to the report of the Advisory Committee on Reactor Safeguards for the facility; (3) the Nuclear Regulatory Commission staff's final detailed statement on the environmental impact of the facility prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and (4) a State, local, or utility emergency preparedness plan for the facility. Petitions for the issuance of a temporary operating license, or for an amendment to such a license allowing operation at a specific power level greater than that authorized in the initial temporary operating

license, shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the temporary operating license or the amendment thereto. The Commission shall publish notice of each such petition in the Federal Register and in such trade or news publications as the Commission deems appropriate to give reasonable notice to persons who might have a potential interest in the grant of such temporary operating license or amendment thereto. Any person may file affidavits or statements in support of, or in opposition to, the petition within thirty days after the publication of such notice in the Federal Register.

"b. With respect to any petition filed pursuant to subsection a. of this section, the Commission may issue a temporary operating license, or amend the license to authorize temporary operation at each specific power level greater than that authorized in the initial temporary operating license, as determined by the Commission, upon finding that—

"(1) in all respects other than the conduct or completion of any required hearing, the requirements of law are met;

"(2) in accordance with such requirements, there is reasonable assurance that operation of the facility during the period of the temporary operating license in accordance with its terms and conditions will provide adequate protection to the public health and safety and the environment during the period of temporary operation; and

"(3) denial of such temporary operating license will result in delay between the date on which construction of the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the temporary operating license, and the date when such facility would otherwise receive a final operating license pursuant to this Act.

The temporary operating license shall become effective upon issuance and shall contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for the extension thereof. Any final order authorizing the issuance or amendment of any temporary operating license pursuant to this section shall recite with specificity the facts and reasons justifying the findings under this subsection, and shall be transmitted upon such issuance to the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate. The final order of the Commission with respect to the issuance or amendment of a temporary operating license shall be subject to judicial review pursuant to chapter 155 of title 28, United States Code. The requirements of section 189 a. of this Act with respect to the issuance or amendment of facility licenses shall not apply to the issuance or amendment of a temporary operating license under this section.

"c. Any hearing on the application for the final operating license for a facility required pursuant to section 189 a. shall be concluded as promptly as practicable. The Commission shall suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence. Issuance of a temporary operating license under subsection b. of this section shall be without prejudice to the right of any party to raise any issue in a hearing required pursuant to section 189 a.; and failure to assert any ground for denial or limitation of a

temporary operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license. Any party to a hearing required pursuant to section 189 a. on the final operating license, for a facility for which a temporary operating license has been issued under subsection b., and any member of the Atomic Safety and Licensing Board conducting such hearing, shall promptly notify the Commission of any information indicating that the terms and conditions of the temporary operating license are not being met, or that such terms and conditions are not sufficient to comply with the provisions of paragraph (2) of subsection b.

"d. The Commission is authorized and directed to adopt such administrative remedies as the Commission deems appropriate to minimize the need for issuance of temporary operating licenses pursuant to this section.

"e. The authority to issue new temporary operating licenses under this section shall expire on December 31, 1983."

OPERATING LICENSE AMENDMENT HEARINGS

SEC. 12. (a) Section 189 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2239(a)) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2)(A) The Commission may issue and make immediately effective any amendment to an operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this Act.

"(B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

"(C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located."

(b) The authority of the Nuclear Regulatory Commission, under the provisions of the amendment made by subsection (a), to issue and to make immediately effective any amendment to an operating

license shall take effect upon the promulgation by the Commission of the regulations required in such provisions.

QUALITY ASSURANCE

SEC. 13. (a) The Nuclear Regulatory Commission is authorized and directed to implement and accelerate the resident inspector program so as to assure the assignment of at least one resident inspector by the end of fiscal year 1982 at each site at which a commercial nuclear powerplant is under construction and construction is more than 15 percent complete. At each such site at which construction is not more than 15 percent complete, the Commission shall provide that such inspection personnel as the Commission deems appropriate shall be physically present at the site at such times following issuance of the construction permit as may be necessary in the judgment of the Commission.

(b) The Commission shall conduct a study of existing and alternative programs for improving quality assurance and quality control in the construction of commercial nuclear powerplants. In conducting the study, the Commission shall obtain the comments of the public, licensees of nuclear powerplants, the Advisory Committee on Reactor Safeguards, and organizations comprised of professionals having expertise in appropriate fields. The study shall include an analysis of the following:

(1) providing a basis for quality assurance and quality control, inspection, and enforcement actions through the adoption of an approach which is more prescriptive than that currently in practice for defining principal architectural and engineering criteria for the construction of commercial nuclear powerplants;

(2) conditioning the issuance of construction permits for commercial nuclear powerplants on a demonstration by the licensee that the licensee is capable of independently managing the effective performance of all quality assurance and quality control responsibilities for the powerplant;

(3) evaluations, inspections, or audits of commercial nuclear powerplant construction by organizations comprised of professionals having expertise in appropriate fields which evaluations, inspections, or audits are more effective than those under current practice;

(4) improvement of the Commission's organization, methods, and programs for quality assurance development, review, and inspection; and

(5) conditioning the issuance of construction permits for commercial nuclear powerplants on the permittee entering into contracts or other arrangements with an independent inspector to audit the quality assurance program to verify quality assurance performance.

For purposes of paragraph (5), the term "independent inspector" means a person or other entity having no responsibility for the design or construction of the plant involved. The study shall also include an analysis of quality assurance and quality control programs at representative sites at which such programs are operating satisfactorily and an assessment of the reasons therefor.

(c) For purposes of—

(1) determining the best means of assuring that commercial nuclear powerplants are constructed in accordance with the

applicable safety requirements in effect pursuant to the Atomic Energy Act of 1954; and

(2) assessing the feasibility and benefits of the various means listed in subsection (b);

the Commission shall undertake a pilot program to review and evaluate programs that include one or more of the alternative concepts identified in subsection (b) for the purposes of assessing the feasibility and benefits of their implementation. The pilot program shall include programs that use independent inspectors for auditing quality assurance responsibilities of the licensee for the construction of commercial nuclear powerplants, as described in paragraph (5) of subsection (b). The pilot program shall include at least three sites at which commercial nuclear powerplants are under construction. The Commission shall select at least one site at which quality assurance and quality control programs have operated satisfactorily, and at least two sites with remedial programs underway at which major construction, quality assurance, or quality control deficiencies (or any combination thereof) have been identified in the past. The Commission may require any changes in existing quality assurance and quality control organizations and relationships that may be necessary at the selected sites to implement the pilot program.

(d) Not later than fifteen months after the date of the enactment of this Act, the Commission shall complete the study required under subsection (b) and submit to the United States Senate and House of Representatives a report setting forth the results of the study. The report shall include a brief summary of the information received from the public and from other persons referred to in subsection (b) and a statement of the Commission's response to the significant comments received. The report shall also set forth an analysis of the results of the pilot program required under subsection (c). The report shall be accompanied by the recommendations of the Commission, including any legislative recommendations, and a description of any administrative actions that the Commission has undertaken or intends to undertake, for improving quality assurance and quality control programs that are applicable during the construction of nuclear powerplants.

LIMITATION ON USE OF SPECIAL NUCLEAR MATERIAL

SEC. 14. Section 57 of the Atomic Energy Act of 1954 (42 U.S.C. 2077) is amended by adding at the end thereof the following new subsection:

"e. Special nuclear material, as defined in section 11, produced in facilities licensed under section 103 or 104 may not be transferred, reprocessed, used, or otherwise made available by any instrumentality of the United States or any other person for nuclear explosive purposes."

RESIDENT INSPECTORS

SEC. 15. Of the amounts authorized to be appropriated under section 1, the Nuclear Regulatory Commission shall use such sums as may be necessary to conduct a study of the financial hardships incurred by resident inspectors as a result of (1) regulations of the Commission requiring resident inspectors to relocate periodically from one duty station to another; and (2) the requirements of the Commission respecting the domicile of resident inspectors and

respecting travel between their domicile and duty station in such manner as to avoid the appearance of a conflict of interest. Not later than 90 days after the date of the enactment of this Act, the Commission shall submit to the Congress a report setting forth the findings of the Commission as a result of such study, together with a legislative proposal (including any supporting data or information) relating to any assistance for resident inspectors determined by the Commission to be appropriate.

SABOTAGE OF NUCLEAR FACILITIES OR FUEL

SEC. 16. Section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284) is amended to read as follows:

"SEC. 236. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.—

"a. Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause physical damage to—

"(1) any production facility or utilization facility licensed under this Act;

"(2) any nuclear waste storage facility licensed under this Act;

or

"(3) any nuclear fuel for such a utilization facility, or any spent nuclear fuel from such a facility,

shall be fined not more than \$10,000 or imprisoned for not more than ten years, or both.

"b. Any person who intentionally and willfully causes or attempts to cause an interruption of normal operation of any such facility through the unauthorized use of or tampering with the machinery, components, or controls of any such facility, shall be fined not more than \$10,000 or imprisoned for not more than ten years, or both."

DEPARTMENT OF ENERGY INFORMATION

SEC. 17. (a) Section 148 a. (1) of the Atomic Energy Act of 1954 (42 U.S.C. 2168(a)(1)) is amended by inserting after "Secretary" the following: ", with respect to atomic energy defense programs."

(b) Section 148 of the Atomic Energy Act of 1954 (42 U.S.C. 2168) is amended by adding at the end thereof the following new subsections:

"d. Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to section 552(a)(4)(B) of title 5, United States Code.

"e. The Secretary shall prepare on a quarterly basis a report to be made available upon the request of any interested person, detailing the Secretary's application during that period of each regulation or order prescribed or issued under this section. In particular, such report shall—

"(1) identify any information protected from disclosure pursuant to such regulation or order;

"(2) specifically state the Secretary's justification for determining that unauthorized dissemination of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons, or theft, diversion, or sabotage

of nuclear materials, equipment, or facilities, as specified under subsection a.; and

"(3) provide justification that the Secretary has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security."

STANDARDS AND REQUIREMENTS UNDER SECTION 275

SEC. 18. (a) Section 275 of the Atomic Energy Act of 1954 is amended—

(1) by striking in subsection a. "one year after the date of enactment of this section" and substituting "October 1, 1982" and by adding the following at the end thereof: "After October 1, 1982, if the Administrator has not promulgated standards in final form under this subsection, any action of the Secretary of Energy under title I of the Uranium Mill Tailings Radiation Control Act of 1978 which is required to comply with, or be taken in accordance with, standards of the Administrator shall comply with, or be taken in accordance with, the standards proposed by the Administrator under this subsection until such time as the Administrator promulgates such standards in final form.";

(2) by striking in subsection b. (1) "eighteen months after the enactment of this section, the Administrator shall, by rule, promulgate" and inserting in lieu thereof the following: "October 31, 1982, the Administrator shall, by rule, propose, and within 11 months thereafter promulgate in final form,";

(3) by adding the following at the end of subsection b. (1): "If the Administrator fails to promulgate standards in final form under this subsection by October 1, 1983, the authority of the Administrator to promulgate such standards shall terminate, and the Commission may take actions under this Act without regard to any provision of this Act requiring such actions to comply with, or be taken in accordance with, standards promulgated by the Administrator. In any such case, the Commission shall promulgate, and from time to time revise, any such standards of general application which the Commission deems necessary to carry out its responsibilities in the conduct of its licensing activities under this Act. Requirements established by the Commission under this Act with respect to byproduct material as defined in section 11 e. (2) shall conform to such standards. Any requirements adopted by the Commission respecting such byproduct material before promulgation by the Commission of such standards shall be amended as the Commission deems necessary to conform to such standards in the same manner as provided in subsection f. (3). Nothing in this subsection shall be construed to prohibit or suspend the implementation or enforcement by the Commission of any requirement of the Commission respecting byproduct material as defined in section 11 e. (2) pending promulgation by the Commission of any such standard of general application.";

(4) by adding the following new subsection at the end thereof: "f. (1) Prior to January 1, 1983, the Commission shall not implement or enforce the provisions of the Uranium Mill Licensing Requirements published as final rules at 45 Federal Register 65521

to 65,38 on October 3, 1980 (hereinafter in this subsection referred to as the "October 3 regulations"). After December 31, 1982, the Commission is authorized to implement and enforce the provisions of such October 3 regulations (and any subsequent modifications or additions to such regulations which may be adopted by the Commission), except as otherwise provided in paragraphs (2) and (3) of this subsection.

"(2) Following the proposal by the Administrator of standards under subsection b, the Commission shall review the October 3 regulations, and, not later than 90 days after the date of such proposal, suspend implementation and enforcement of any provision of such regulations which the Commission determines after notice and opportunity for public comment to require a major action or major commitment by licensees which would be unnecessary if—

"(A) the standards proposed by the Administrator are promulgated in final form without modification, and

"(B) the Commission's requirements are modified to conform to such standards.

Such suspension shall terminate on the earlier of April 1, 1984 or the date on which the Commission amends the October 3 regulations to conform to final standards promulgated by the Administrator under subsection b. During the period of such suspension, the Commission shall continue to regulate byproduct material (as defined in section 11 e. (2)) under this Act on a licensee-by-licensee basis as the Commission deems necessary to protect public health, safety, and the environment.

"(3) Not later than 6 months after the date on which the Administrator promulgates final standards pursuant to subsection b. of this section, the Commission shall, after notice and opportunity for public comment, amend the October 3 regulations, and adopt such modifications, as the Commission deems necessary to conform to such final standards of the Administrator.

"(4) Nothing in this subsection may be construed as affecting the authority or responsibility of the Commission under section 84 to promulgate regulations to protect the public health and safety and the environment."

(b) Section 108(a) of the Uranium Mill Tailings Radiation Control Act of 1978 is amended by adding the following new paragraph at the end thereof:

"(3) Notwithstanding paragraphs (1) and (2) of this subsection, after October 31, 1982, if the Administrator has not promulgated standards under section 275 a. of the Atomic Energy Act of 1954 in final form by such date, remedial action taken by the Secretary under this title shall comply with the standards proposed by the Administrator under such section 275 a. until such time as the Administrator promulgates the standards in final form."

(2) The second sentence of section 108(a)(2) of the Uranium Mill Tailings Radiation Control Act of 1978 is repealed.

AGREEMENT STATES

Sec. 19. (a) Section 274 c. of the Atomic Energy Act of 1954 is amended by adding the following at the end thereof: "In adopting requirements pursuant to paragraph (2) of this subsection with respect to sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in section 11 e. (2), the State may

adopt alternatives (including, where appropriate, site-specific alternatives) to the requirements adopted and enforced by the Commission for the same purpose if, after notice and opportunity for public hearing, the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 275. Such alternative State requirements may take into account local or regional conditions, including geology, topography, hydrology and meteorology."

(b) Section 204(h)(3) of the Uranium Mill Tailings Radiation Control Act of 1978 is amended by inserting the following before the period at the end thereof: "Provided, however, That, in the case of a State which has exercised any authority under State law pursuant to an agreement entered into under section 274 of the Atomic Energy Act of 1954, the State authority over such byproduct material may be terminated, and the Commission authority over such material may be exercised, only after compliance by the Commission with the same procedures as are applicable in the case of termination of agreements under section 274 j) of the Atomic Energy Act of 1954."

AMENDMENT TO SECTION 84

SEC. 20. Section 84 of the Atomic Energy Act of 1954 is amended by adding the following at the end thereof:

"c. In the case of sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in section 11 e. (2), a licensee may propose alternatives to specific requirements adopted and enforced by the Commission under this Act. Such alternative proposals may take into account local or regional conditions, including geology, topography, hydrology and meteorology. The Commission may treat such alternatives as satisfying Commission requirements if the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 275."

EDGEMONT

SEC. 21. Section 102(e) of the Uranium Mill Tailings Radiation Control Act of 1978 is amended by adding the following at the end thereof:

"(3) The Secretary shall designate as a processing site within the meaning of section 101(6) any real property, or improvements thereon, in Edgemont, South Dakota, that—

"(A) is in the vicinity of the Tennessee Valley Authority uranium mill site at Edgemont (but not including such site), and
"(B) is determined by the Secretary to be contaminated with residual radioactive materials.

In making the designation under this paragraph, the Secretary shall consult with the Administrator, the Commission and the State of South Dakota. The provisions of this title shall apply to the site so designated in the same manner and to the same extent as to the sites designated under subsection (a) except that, in applying such provisions to such site, any reference in this title to the date of the enactment of this Act shall be treated as a reference to the date of the enactment of this paragraph and in determining the State share under section 107 of the costs of remedial action, there shall be credited to the State, expenditures made by the State prior to the date of the enactment of this paragraph which the Secretary determines would have been made by the State or the United States in carrying out the requirements of this title."

ADDITIONAL AMENDMENTS TO SECTIONS 84 AND 275

Sec. 22. (a) Section 84 a. (1) of the Atomic Energy Act of 1954 is amended by inserting before the comma at the end thereof the following: ", taking into account the risk to the public health, safety, and the environment, with due consideration of the economic costs and such other factors as the Commission determines to be appropriate."

(b) Section 275 of the Atomic Energy Act of 1954 is amended—

(1) in subsection a., by inserting after the second sentence thereof the following new sentence: "In establishing such standards, the Administrator shall consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate."; and

(2) by adding at the end of subsection b. (1) the following new sentence: "In establishing such standards, the Administrator shall consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate."

URANIUM SUPPLY

Sec. 23. (a)(1) Not later than 12 months after the date of enactment of this section, the President shall prepare and submit to the Congress a comprehensive review of the status of the domestic uranium mining and milling industry. This review shall be made available to the appropriate committees of the United States Senate and the House of Representatives.

(2) The Comprehensive review prepared for submission under paragraph (1) shall include—

(A) projections of uranium requirements and inventories of domestic utilities;

(B) present and future projected uranium production by the domestic mining and milling industry;

(C) the present and future probable penetration of the domestic market by foreign imports;

- (D) the size of domestic and foreign ore reserves;
- (E) present and projected domestic uranium exploration expenditures and plans;
- (F) present and projected employment and capital investment in the uranium industry;
- (G) an estimate of the level of domestic uranium production necessary to ensure the viable existence of a domestic uranium industry and protection of national security interests;
- (H) an estimate of the percentage of domestic uranium demand which must be met by domestic uranium production through the year 2000 in order to ensure the level of domestic production estimated to be necessary under subparagraph (G);
- (I) a projection of domestic uranium production and uranium price levels which will be in effect both under current policy and in the event that foreign import restrictions were enacted by Congress in order to guarantee domestic production at the level estimated to be necessary under subparagraph (G);
- (J) the anticipated effect of spent nuclear fuel reprocessing on the demand for uranium; and
- (K) other information relevant to the consideration of restrictions on the importation of source material and special nuclear material from foreign sources.

(b)(1) Chapter 14 of the Atomic Energy Act of 1954 is amended by adding the following new section at the end thereof:

"SEC. 170B. URANIUM SUPPLY.—

"a. The Secretary of Energy shall monitor and for the years 1983 to 1992 report annually to the Congress and to the President a determination of the viability of the domestic uranium mining and milling industry and shall establish by rule, after public notice and in accordance with the requirements of section 181 of this Act, within 9 months of enactment of this section, specific criteria which shall be assessed in the annual reports on the domestic uranium industry's viability. The Secretary of Energy is authorized to issue regulations providing for the collection of such information as the Secretary of Energy deems necessary to carry out the monitoring and reporting requirements of this section.

"b. Upon a satisfactory showing to the Secretary of Energy by any person that any information, or portion thereof obtained under this section, would, if made public, divulge proprietary information of such person, the Secretary shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18, United States Code.

"c. The criteria referred to in subsection a. shall also include, but not be limited to—

"(1) an assessment of whether executed contracts or options for source material or special nuclear material will result in greater than 37½ percent of actual or projected domestic uranium requirements for any two-consecutive-year period being supplied by source material or special nuclear material from foreign sources;

"(2) projections of uranium requirements and inventories of domestic utilities for a 10 year period;

"(3) present and probable future use of the domestic market by foreign imports;

"(4) whether domestic economic reserves can supply all future needs for a future 10 year period;

"(5) present and projected domestic uranium exploration expenditures and plans;

"(6) present and projected employment and capital investment in the uranium industry;

"(7) the level of domestic uranium production capacity sufficient to meet projected domestic nuclear power needs for a 10 year period; and

"(8) a projection of domestic uranium production and uranium price levels which will be in effect under various assumptions with respect to imports.

"d. The Secretary of Energy, at any time, may determine on the basis of the monitoring and annual reports required under this section that source material or special nuclear material from foreign sources is being imported in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the United States uranium mining and milling industry. Based on that determination, the United States Trade Representative shall request that the United States International Trade Commission initiate an investigation under section 201 of the Trade Act of 1974 (19 U.S.C. 2251).

"e. (1) If, during the period 1982 to 1992, the Secretary of Energy determines that executed contracts or options for source material or special nuclear material from foreign sources for use in utilization facilities within or under the jurisdiction of the United States represent greater than 37 1/2 percent of actual or projected domestic uranium requirements for any two-consecutive-year period, or if the Secretary of Energy determines the level of contracts or options involving source material and special nuclear material from foreign sources may threaten to impair the national security, the Secretary of Energy shall request the Secretary of Commerce to initiate under section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) an investigation to determine the effects on the national security of imports of source material and special nuclear material. The Secretary of Energy shall cooperate fully with the Secretary of Commerce in carrying out such an investigation and shall make available to the Secretary of Commerce the findings that lead to this request and such other information that will assist the Secretary of Commerce in the conduct of the investigation.

"(2) The Secretary of Commerce shall, in the conduct of any investigation requested by the Secretary of Energy pursuant to this section, take into account any information made available by the Secretary of Energy, including information regarding the impact on national security of projected or executed contracts or options for source material or special nuclear material from foreign sources or whether domestic production capacity is sufficient to supply projected national security requirements.

"(3) No sooner than 3 years following completion of any investigation by the Secretary of Commerce under paragraph (1), if no recommendation has been made pursuant to such study for trade adjustments to assist or protect domestic uranium production, the Secretary of Energy may initiate a request for another such investigation by the Secretary of Commerce."

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

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Calendar No. 370

97TH CONGRESS
1ST SESSION

H. R. 2330

IN THE SENATE OF THE UNITED STATES

NOVEMBER 9 (legislative day, NOVEMBER 2), 1981

Received; placed on the calendar

AN ACT

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. (a) There is hereby authorized to be appro-
4 priated to the Nuclear Regulatory Commission in accordance
5 with the provisions of section 261 of the Atomic Energy Act
6 of 1954 (42 U.S.C. 2017) and section 305 of the Energy
7 Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal
8 years 1982 and 1983 to remain available until expended,

S/ 485,200,000

S/ 530,000,000

1 \$485,873,000 for fiscal year 1982 and \$513,100,000 for
2 fiscal year 1983 to be allocated as follows:

3 (1) Not more than ^{85,100,000} \$74,097,800 for fiscal year
4 1982 and ^{78,280,000} \$76,714,400 for fiscal year 1983, may be
5 used for "Nuclear Reactor Regulation", of which an
6 amount not to exceed \$1,000,000 is authorized each
7 said fiscal year to be used to accelerate the effort in
8 gas-cooled thermal reactor preapplication review.

S-provide
6,500,000
for preliminary
review work
for fast breeder
reactor plant
project

9 (2) Not more than ^{62,900,000} \$61,513,400 for fiscal year
10 1982 and ^{70,270,000} \$62,564,600 for fiscal year 1983 may be
11 used for "Inspection and Enforcement".

S-provide
funds for
Washoe Data
Link System

12 (3) Not more than \$17,591,000 for fiscal year
13 1982 and \$17,630,200 for fiscal year 1983 may be
14 used for "Standards Development".

See sec 5a
3200,000
small test
prototype
model data
link system

15 (4) Not more than ^{38,500,000} \$45,766,000 for fiscal year
16 1982 and ^{48,020,000} \$47,059,600 for fiscal year 1983 may be
17 used for "Nuclear Material Safety and Safeguards".

18 (5) Not more than ^{240,300,000} \$227,301,200 for fiscal year
19 1982 and ^{270,150,000} \$247,136,400 for fiscal year 1983 may be
20 used for "Nuclear Regulatory Research", of which an
21 amount not to exceed \$3,500,000 for fiscal year 1982
22 and \$4,500,000 for fiscal year 1983 is authorized to be
23 used to accelerate the effort in gas-cooled thermal re-
24 actor safety research.

S - 20,400,000
for fast breeder
reactor safety
research

S - 45,500,000 each year
for LFT

5-21,900,000

1 (6) Not more than \$18,757,200 for fiscal year
2 1982 and *5-20,610,000* \$20,197,800 for fiscal year 1983 may be
3 used for "Program Technical Support".

37,000,000

4 (7) Not more than \$40,846,400 for fiscal year
5 1982 and *42,650,000* \$41,797,000 for fiscal year 1983 may be
6 used for "Program Direction and Administration".

7 (b) The Commission may use not more than 1 per
8 centum of the amounts authorized to be appropriated under
9 paragraph (5) of subsection (a) to exercise its authority under
10 section 31 a. of the Atomic Energy Act of 1954 to enter into
11 grants and cooperative agreements with universities pursuant
12 to that section. Grants made by the Commission shall be
13 made in accordance with the Federal Grants and Cooperative
14 Agreements Act of 1977 and other applicable law. [In making
15 such grants and entering into such cooperative agreements,
16 the Commission shall endeavor to provide appropriate oppor-
17 tunities for universities in which the student body has histori-
18 cally been predominately comprised of minority groups.]

*This sentence
not in
Senate bill*

19 (c)(1) Not more than \$500,000 of the amount appropri-
20 ated for a fiscal year to the Nuclear Regulatory Commission
21 under any paragraph of subsection (a) for purposes of the
22 program specified in that paragraph may be used by the
23 Commission in that fiscal year for purposes of a program re-
24 ferred to in any other paragraph of subsection (a), and the
25 amount available from appropriations for a fiscal year for

*Substantive
name in
Senate bill*

1 purposes of any program specified in any paragraph of sub-
2 section (a) may not be reduced for that fiscal year by more
3 than \$500,000.

4 (2) The limitations on reprogramming contained in para-
5 graph (1) shall not apply where the Commission submits to
6 the Committee on Interior and Insular Affairs and the Com-
7 mittee on Energy and Commerce of the United States House
8 of Representatives and to the Committee on Environment
9 and Public Works of the United States Senate a notification
10 containing a full and complete statement of the action pro-
11 posed to be taken and the facts and circumstances relied on
12 in support of such proposed action, and if—

13 (A) each such committee, before the expiration of
14 a thirty-day period, transmits to the Commission a
15 written notification that the committee does not object
16 to the proposed action; or

17 (B) a thirty-day period passes during which no
18 such committee transmits to the Commission a written
19 notification that the committee disapproves of the pro-
20 posed action.

21 The thirty-day period referred to in this paragraph shall com-
22 mence upon the receipt by each such committee of the notice
23 referred to in the preceding sentence. In computing such
24 period there shall not be taken into account any day in which
25 either House of Congress is not in session because of an ad-

1 jourment of more than three calendar days to a day certain
2 or an adjournment sine die. Each committee referred to in
3 this paragraph may approve or disapprove a proposal of the
4 Commission under this paragraph in such manner as such
5 committee deems appropriate.

6 SEC. 2. Moneys received by the Commission for the co-
7 operative nuclear research programs may be retained and
8 used for salaries and expenses associated with those pro-
9 grams, notwithstanding the provisions of section 3617 of the
10 Revised Statutes (31 U.S.C. 484), and shall remain available
11 until expended.

*Compt
extended
this provision
to the material
needs authorizing
program*

12 SEC. 3. During the fiscal years 1982 and 1983, trans-
13 fers of sums from salaries and expenses of the Nuclear Regu-
14 latory Commission may be made to other agencies of the
15 United States Government for the performance of work for
16 which the appropriation is made, and in such cases the sums
17 so transferred may be merged with the appropriation so
18 transferred.

Sec. 103

19 SEC. 4. Notwithstanding any other provision of this
20 Act, no authority to make payments hereunder shall be effec-
21 tive except to the extent or in such amounts as are provided
22 in advance in appropriation Acts.

Sec. 104

23 SEC. 5. (a) Except as provided in subsection (b), of the
24 amounts authorized to be appropriated under this Act for the
25 fiscal years 1982 and 1983, not more than \$200,000 may be

*Nuclear
data &
system
Sec 101(a)(2)*

1 used by the Nuclear Regulatory Commission for the acqui-
2 tion (by purchase, lease, or otherwise) and installation of
3 equipment to be used for the "small test prototype nuclear
4 data link" program or for any other program for the collec-
5 tion and transmission to the Commission of data from li-
6 censed nuclear reactors during abnormal conditions at such
7 reactors.

8 (b)(1) The limitation contained in subsection (a) shall not
9 apply to equipment for which the Commission prepares and
10 submits to Congress a specific acquisition and installation
11 proposal unless either House of Congress rejects such pro-
12 posal within sixty calendar days of such submission.

13 (2) A proposal may be submitted to the Congress under
14 paragraph (1) only after the Commission has conducted a full
15 and complete study and analysis of the issues involved and
16 prepared a detailed report setting forth the results of such
17 study and analysis. Such proposal shall be accompanied by
18 such report and by a concise statement, based on the report,
19 setting forth the reasons and justification for the proposal.

20 (3) The study and analysis referred to in paragraph (2)
21 shall include, at a minimum, an examination of—

22 (A) the appropriate role of the Commission during
23 abnormal conditions at a nuclear reactor licensed by
24 the Commission;

1 (B) the information which should be available to
2 the Commission to enable the Commission to fulfill
3 such role and to carry out other related functions;

4 (C) various alternative means of assuring that
5 such information is available to the Commission in a
6 timely manner; and

7 (D) any changes in existing Commission authority
8 necessary to enhance the Commission response to ab-
9 normal conditions at a nuclear reactor licensed by the
10 Commission.

11 The study shall include a cost-benefit analysis of each alter-
12 native examined under subparagraph (C).

13 SEC. 6. Of the amounts authorized to be appropriated
14 by this Act for the fiscal year 1982, not more than
15 ^{45,500,000} \$30,000,000 may be used to continue tests at the Loss-of-
16 Fluid Test Facility.

17 SEC. 7. (a) Of the amounts authorized to be appropri-
18 ated pursuant to paragraph (7) of subsection 1(a), such sums
19 as may be necessary shall be available for interim consolida-
20 tion of Nuclear Regulatory Commission headquarters staff of-
21 fices in the District of Columbia and, to the extent necessary,
22 in Bethesda, Maryland.

23 (b) No amount authorized to be appropriated under this
24 Act may be used, in connection with the interim consolida-
25 tion of Nuclear Regulatory Commission offices, to relocate

1 the offices of members of the Commission outside of the Dis-
2 trict of Columbia.

3 SEC. 8. Of the amounts authorized to be appropriated
4 under section 1, the Nuclear Regulatory Commission may
5 use such sums as may be necessary, in the absence of a State
6 or local emergency preparedness plan which has been ap-
7 proved by the Federal Emergency Management Agency, to
8 issue an operating license (including a temporary operating
9 license under section of 12 this Act) for a nuclear power re-
10 actor, if it determines that there exists a State, local, or util-
11 ity plan which provides reasonable assurance that public
12 health and safety is not endangered by operation of the facili-
13 ty concerned.

14 SEC. 9. No funds authorized to be appropriated under
15 this Act may be used by the Commission to promulgate or
16 publish a safety goal for nuclear reactor regulation until
17 public hearings have been conducted by the Commission re-
18 specting the establishment of such safety goal. Development
19 of a safety goal for nuclear reactor regulation should be expe-
20 dited, to the maximum extent practicable, so as to allow for
21 the establishment of a safety goal by the Commission no later
22 than December 31, 1981.

23 SEC. 10. (a) No part of the funds authorized to be ap-
24 propriated under this Act may be used to provide assistance
25 to the General Public Utilities Corporation for purposes of

if sec. 302

*Sec. 106 -
no reg. of
public
hearing*

*Not in
State
bill*

1 the decontamination, cleanup, repair, or rehabilitation of
2 facilities at Three Mile Island Unit 2.

3 (b) The prohibition contained in subsection (a) shall not
4 relate to the responsibilities of the Nuclear Regulatory Com-
5 mission for monitoring or inspection of the decontamination,
6 cleanup, repair, or rehabilitation activities at Three Mile
7 Island and such prohibition shall not apply to the use of funds
8 by the Nuclear Regulatory Commission to carry out regula-
9 tory functions of the Commission under the Atomic Energy
10 Act of 1954 with respect to the facilities at Three Mile
11 Island.

12 (c) Of the amounts authorized to be appropriated under
13 section 1 for the Office of Nuclear Materials, Safety and
14 Safeguards, such sums as may be necessary shall be used by
15 the Nuclear Regulatory Commission to promptly enter into a
16 memorandum of understanding with the Department of
17 Energy specifying interagency procedures for the disposition
18 of radioactive materials resulting from the cleanup of Three
19 Mile Island Unit 2, except those materials approved for dis-
20 position prior to the effective date of this Act. Nothing in
21 such memorandum of understanding shall alter or impair any
22 authority or responsibility of the Secretary of Energy or the
23 Nuclear Regulatory Commission as provided under the
24 Energy Reorganization Act of 1974 or under any other pro-
25 vision of law.

1 SEC. 11. (a) Of the amounts authorized to be appropri-
2 ated under section 1 the Nuclear Regulatory Commission
3 may use such sums as may be necessary to issue and make
4 immediately effective amendments to a license for nuclear
5 power reactors upon a determination by the Commission that
6 the amendment involves no significant hazards consideration.
7 Such an amendment may be issued and made immediately
8 effective—

9 (1) in advance of the conduct and completion of
10 any required hearing, and

11 (2) after notice to the State in which the facility is
12 located.

13 The Commission shall consult with such State, when practi-
14 cable, before issuance of the amendment: *Provided*, That
15 such consultation shall not be construed to delay the effective
16 date of any amendment issued as provided in this section. In
17 all other respects the amendment shall meet the requirements
18 of the Atomic Energy Act of 1954.

19 (b) The Commission shall periodically (but not less fre-
20 quently than every thirty days) publish notice of amendments
21 issued, or proposed to be issued, as provided in this section.
22 Each such notice shall include all amendments issued, or pro-
23 posed to be issued, since the date of publication of the last
24 such periodic notice. The notice shall, with respect to each
25 amendment or proposed amendment (1) identify the nuclear

1 power reactor concerned, and (2) provide a brief description
2 of the amendment. Nothing in this subsection shall be con-
3 strued to delay the effective date of any amendment issued as
4 provided in this section.

5 (c) The Commission shall promulgate, within ninety
6 days from the effective date of this Act, standards for deter-
7 mining whether an amendment to a license involves no sig-
8 nificant hazards consideration. Such standards shall be pro-
9 mulgated in accordance with the provisions of section 553 of
10 title 5 of the United States Code.

11 SEC. 12. (a) Of the amounts authorized to be appropri-
12 ated under section 1, the Nuclear Regulatory Commission
13 may use such sums as may be necessary to issue temporary
14 operating licenses for nuclear power reactors as provided in
15 section 192 of the Atomic Energy Act of 1954, except that
16 such temporary operating licenses may be issued—

17 (1) in advance of the conduct or completion of any
18 hearing required by section 192 or by section 189 of
19 such Act, and

20 (2) without regard to subsection (d) of such sec-
21 tion 192 and the finding required by subsection (b)(3)
22 of that section.

23 All hearings conducted as provided in section 192 in connec-
24 tion with the issuance of such a temporary operating license
25 (or conducted in connection with any amendment of a tempo-

cf. sec. 301

*cf. sec. 201
192 section
operating
license*

1 rary operating license), and the record established in any
2 such hearings, shall be treated as part of, and consolidated
3 with, the hearings and hearing record required under section
4 189 of such Act for issuance of the final operating license
5 where the Commission determines that such consolidation
6 will reduce duplication of effort and expedite the issuance of
7 the final operating license.

8 (b) A temporary operating license issued as provided in
9 this section may initially authorize fuel loading, testing, and
10 operation of the reactor at a specific power level, determined
11 by the Commission, which does not exceed 5 per centum of
12 the rated full thermal power. Pursuant to such license, and in
13 accordance with the procedures and requirements of subsec-
14 tion (a), the Commission may thereafter permit operation of
15 the reactor at power levels, determined by the Commission,
16 which exceed the 5 per centum limitation set forth in the
17 preceding sentence.

18 SEC. 13. (a) Such sums as may be necessary may be
19 used by the Nuclear Regulatory Commission to establish an
20 independent Temporary Advisory Panel (hereinafter in this
21 section referred to as the "Advisory Panel") to carry out the
22 purposes of this section. The Advisory Panel shall consist of
23 members selected by the Commission and shall include repre-
24 sentatives of the National Governors' Association, State
25 agencies that regulate rates charged consumers for the use of

1 electric energy, representatives of the nuclear power indus-
2 try, and representatives from the general public who repre-
3 sent citizen or environmental organizations. Members of the
4 Advisory Panel shall serve without pay. While away from
5 their homes or regular places of business in the performance
6 of services for the Advisory Panel, members of the Panel
7 shall be allowed travel expenses, including per diem in lieu of
8 subsistence, in the same manner as persons employed inter-
9 mittently in Government service are allowed expenses under
10 section 5703 of title 5 of the United States Code. The Fed-
11 eral Advisory Committee Act (5 U.S.C. App.) shall not
12 apply to the establishment and operation of the Panel.

13 (b)(1) The Advisory Panel established under subsection
14 (a) shall evaluate—

15 (A) the effectiveness of the nuclear powerplant li-
16 censing process in assuring that the requirements of
17 the Atomic Energy Act of 1954 and the National En-
18 vironmental Policy Act of 1969 are met in the licens-
19 ing of nuclear powerplants;

20 (B) the efficiency of the nuclear powerplant licens-
21 ing process and the potential for delays in the licensing
22 of nuclear powerplants, including the extent to which
23 there exists unnecessary duplication of effort in the li-
24 censing of nuclear powerplants;

1 (C) the extent to which there exists stability and
2 predictability in the licensing process for nuclear
3 powerplants; and

4 (D) the opportunity for public participation in the
5 nuclear powerplant licensing process.

6 (2) The evaluation under paragraph (1) shall include, but
7 shall not be limited to, an examination of—

8 (A) the manner in which need-for-power determi-
9 nations are made concerning proposed nuclear power-
10 plants by Federal and State agencies under Federal
11 and State law and the extent to which there are dupli-
12 cating or overlapping requirements and procedures re-
13 specting these determinations;

14 (B) the effect, if any, which the issuance by
15 States of early site permits for nuclear powerplants
16 would have on the nuclear powerplant licensing proc-
17 ess, including—

18 (i) the issues which should be considered in
19 the issuance of such permits,

20 (ii) the duration of such permits,

21 (iii) the relationship between State decisions
22 under an early site permit process and Federal re-
23 quirements under the Atomic Energy Act of
24 1954, and

1 (iv) the effect which such permits should
2 have upon subsequent licensing decisions by the
3 Commission; and

4 (C) the extent to which States may determine the
5 suitability of sites for the location of nuclear power-
6 plants and relationship between such State determina-
7 tions and the design and operation standards and re-
8 quirements imposed under the Atomic Energy Act of
9 1954.

10 (c) The Advisory Panel established under subsection (a)
11 shall commence its evaluation under subsection (b) within
12 sixty days after enactment of this Act, and within one hun-
13 dred and eighty days after enactment of this Act the Adviso-
14 ry Panel shall prepare a final report setting forth the results
15 of the evaluation, including an assessment of deficiencies in
16 the present nuclear powerplant licensing process and recom-
17 mendations for any needed administrative or legislative
18 changes to the process. The report shall be submitted to the
19 Nuclear Regulatory Commission and to the Committee on
20 Interior and Insular Affairs and the Committee on Energy
21 and Commerce of the United States House of Representa-
22 tives, and to the Committee on Environment and Public
23 Works of the Senate. The Advisory Panel shall terminate
24 upon submission of such report.

1 (d)(1) Within thirty days of the submission of the report
2 of the Advisory Panel under subsection (c), the Commission
3 shall provide to the committees named in subsection (c)—

4 (A) the Commission's views on the findings, con-
5 clusions, and recommendations set forth in the report
6 of the Advisory Panel; and

7 (B) a report by the Commission recommending
8 legislative and administrative actions to improve the
9 filing, review, and issuance of construction permits, op-
10 erating licenses, and license amendments for a facility
11 for which an application is filed on or after October 1,
12 1981, under the Atomic Energy Act of 1954, as
13 amended. Such report by the Commission shall include,
14 but not be limited to, the same evaluations of the li-
15 censing process required of the Temporary Advisory
16 Panel under subsection (b) of this section.

17 (2) Such sums as may be necessary may be used by the
18 Commission to commence within sixty days after enactment
19 of this Act and prepare the report required by subsection
20 (d)(1)(A) of this section.

21 SEC. 14. No funds authorized to be appropriated under
22 this Act may be used by the Commission to approve any
23 willful release of radioactive water resulting from the acci-

1 dent at the Three Mile Island Nuclear Reactor Numbered 2
2 into the Susquehanna River or its watershed.

Passed the House of Representatives November 5, 1981.

Attest: EDMUND L. HENSHAW, JR.,
Clerk.

By W. RAYMOND COLLEY,
Deputy Clerk.

Calendar No. 370

97TH CONGRESS
1ST SESSION

H. R. 2330

AN ACT

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

NOVEMBER 9 (legislative day, NOVEMBER 2), 1981

Received, placed on the calendar

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kansas (Mr. GLICKMAN) that the House suspend the rules and agree to the resolution (H. Res. 202), as amended.

The question was taken (and two-thirds having voted in favor thereof), the rules were suspended and the resolution, as amended, was agreed to.

The title was amended so as to read: "Resolution expressing the sense of the House of Representatives that the Administrator of the Federal Aviation Administration should submit to the Committee on Science and Technology a preliminary system and subsystem description and a projection of funding requirements with respect to the modernization and replacement of the Federal Aviation Administration air traffic control en route computer system."

A motion to reconsider was laid on the table.

AUTHORIZATIONS FOR NONPERFORMING ARTS FUNCTIONS FOR THE KENNEDY CENTER

Mr. FARY. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3377) authorizing appropriations to the Secretary of the Interior for services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. FARY).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 3377, with Mr. GLICKMAN in the chair.

The Clerk read the title of the bill.

The CHAIRMAN, Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Illinois (Mr. FARY) will be recognized for 30 minutes, and the gentleman from Minnesota (Mr. STANGELAND) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Illinois (Mr. FARY).

Mr. FARY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, H.R. 3377 amends the John F. Kennedy Center Act to authorize appropriations in the amount of \$4,544,000 to the Secretary of the Interior for services necessary to the nonperforming arts functions of the John F. Kennedy Center for the fiscal year ending September 30, 1982.

Section 6 of the John F. Kennedy Center Act, as amended, provides that—

The Secretary of the Interior, acting through the National Park Service, shall

provide maintenance, security, information, interpretation, janitorial, and all other services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts.

With the adoption of that language in 1972. The Congress recognized that the Kennedy Center functions both as a Performing Arts Center and as a Presidential memorial similar to the Lincoln Memorial and the Jefferson Memorial, and that those so-called nonperforming arts functions comparable to other Presidential memorials should be funded by appropriations to the Interior Department. Subsequent acts of the Congress have amended that subsection to provide funds through fiscal year 1981. H.R. 3377 would provide authorization through the fiscal year ending September 30, 1982, in the amount of \$4,544,000, or for 1 additional year.

Mr. Chairman, in 10 years of operation, the Kennedy Center has gained international recognition as one of the most successful performing arts institutions in the world. Its record of artistic, educational, and public service programing documents how well the Center has succeeded as a living memorial to the late President Kennedy. The record set, thus far, by the Kennedy Center is indeed worthy of those words spoken by President Kennedy which are now carved into the river facade of the Center:

I look forward to an America which will reward achievement in the Arts as we reward achievement in business or statecraft. I look forward to an American which will steadily raise the standard of artistic accomplishment and which will steadily enlarge cultural opportunities for all of our citizens. And I look forward to an America which commands respect throughout the world not only for its strength but for its civilization as well.

Since its opening, the Kennedy Center has focused on broad national participation in the performing arts. Its performances and attendance figures since 1971 total more than 9,000 performances, with audiences exceeding 14 million.

Mr. Chairman, under section 4 of its authorizing legislation, signed by President Eisenhower in 1958, the Kennedy Center is charged by Congress with wide-ranging responsibilities for performing arts, public service, and educational programing. During the past year, the Kennedy Center allocated more than \$2 million raised from private sources to carry out programing mandated by Congress and to provide broad public access to the Center and its activities. Private funding contributed significantly to extensive programing for young audiences at the Center and around the country and made possible a calendar of free events throughout the year, including symposia, lectures, theater and musical performances, and exhibitions. During the past year, 478 free public service events were presented at the Kennedy Center. Audience attendance for these events totaled approximately 200,000.

Last, Mr. Chairman, as a memorial to the late President Kennedy, the Center has welcomed nearly 22 million visitors, and is now classified as one of the most popular tourist attractions in the Nation's Capital. Visitors' services provided by the Park Service include operation of two information booths, two slide projection shows, and rooftop tours. Additional visitors' services are provided by volunteers from the Friends of the Kennedy Center who are responsible for conducting the tours and operating the souvenir stands. The services provided by the Friends of the Kennedy Center are provided free of charge.

Mr. Chairman, the John F. Kennedy Center for the Performing Arts is the sole living memorial to the late President Kennedy. This legislation is clearly in the national interest; it will enable us to maintain the Center as a fitting memorial for millions of Americans and for visitors from all parts of the world. Last, the amount of \$4,544,000 requested in this legislation is identical to that requested in Senate bill, S. 1209, which is at the Speaker's desk, and further, identical to those funds requested by the administration in its budget request to the Congress.

In conclusion, I would like to commend the chairman of the Committee on Public Works and Transportation, the gentleman from New Jersey (Mr. HOWARD); and the ranking minority member of the full committee, the gentleman from California (Mr. CLAUSEN); and the ranking minority member of the subcommittee on public buildings and grounds, the gentleman from Minnesota (Mr. STANGELAND), for their time and effort spent in bringing this legislation to the floor.

□ 1245

Mr. Chairman, I yield such time as he may consume to the chairman of the Committee on Public Works and Transportation, the gentleman from New Jersey (Mr. HOWARD).

(Mr. HOWARD asked and was given permission to revise and extend his remarks.)

Mr. HOWARD. Mr. Chairman, I want to commend the gentleman from Illinois (Mr. FARY), chairman of the Subcommittee on Public Buildings and Grounds, for his leadership in presenting this legislation to the House today. I also want to commend the gentleman from California (Mr. CLAUSEN), the ranking minority member on the full committee, and the gentleman from Minnesota (Mr. STANGELAND), the ranking minority member on the Subcommittee on Public Buildings and Grounds, for their support and hard work on this legislation.

Mr. Chairman, H.R. 3377, authorizing \$4,544,000 to the Secretary of Interior to carry out nonperforming arts functions at the John F. Kennedy Center for the Performing Arts for the fiscal year ending September 30,

1982, is virtually identical to S. 1209, currently pending on the Speaker's desk. The funds contained in both measures are the same as those requested by the administration in their budget submission to the Congress. Further, such funds are minimal in order to keep this memorial to a former President operating at the same quality level as other monuments and memorials in the Nation's Capital.

The Kennedy Center functions as a Center for the Performing Arts, a memorial in honor of the late President Kennedy, and a facility for lectures, meetings, and civic activities. The first two functions are primary. The Center has become an important showcase for the performing arts in America and has added immeasurably to the life of Washington.

Mr. Chairman, the Kennedy Center is an integral part of the Washington scene. Tourists have made the Center one of the busiest sightseeing attractions in Washington, and over 20 million tourists have now visited and toured the Center. Visitation at the Center for 1980 was 4.5 million and is projected to reach 5.2 million in 1982. Visitors' services are provided by volunteers from the friends of the Kennedy Center who are responsible for conducting the tours and operating the souvenir stands.

It is apparent that President Kennedy's vision and interest in the arts are being shared by a growing number of citizens all over the Nation for the cultural activities which it provides. It is in the vital interest of us all to maintain the integrity of this magnificent living memorial.

I urge my colleagues to support H.R. 3377.

Mr. STANGELAND. Mr. Chairman, I yield myself such time as I may consume.

(Mr. STANGELAND asked and was given permission to revise and extend his remarks.)

Mr. STANGELAND. Mr. Chairman, as ranking Republican on the Public Buildings and Grounds Subcommittee, I rise in strong support of H.R. 3377, legislation authorizing appropriations for services necessary for the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts here in Washington, D.C.

This measure would authorize funding for essential, nonperforming arts functions for the Kennedy Center during this current fiscal year. In his remarks, the distinguished chairman of our subcommittee has eloquently pointed out that these services and functions, including normal maintenance, upkeep and security, must be performed to preserve this important National Arts Center and living memorial to the late President Kennedy.

The legislation we are now considering will provide for a very modest increase over fiscal year 1981 funding levels and is needed to cover escalating costs for these services due to the in-

flationary pressures we have experienced over the past year. Recognizing the importance of adequate maintenance for this National Arts Center and Presidential memorial, the House Public Works and Transportation Committee approved this bill with overwhelming bipartisan support. Additionally, the Office of Management and Budget has stated that this bill complies with President Reagan's budget.

I would like to emphasize that this legislation deals, specifically, with the issue of providing the National Park Service with the needed funding for regular janitorial services and upkeep, maintenance, security, and tourist information functions for the center. Other issues that have previously been associated with the Kennedy Center are not addressed in this legislation and should not be confused with the need to provide this essential funding.

I urge all Members to support H.R. 3377.

● Mr. CLAUSEN. Mr. Chairman, I would just like to echo the sentiments of my distinguished colleagues on the Public Works and Transportation Committee and urge all Members of the House to support this legislation authorizing funds for the nonperforming arts functions of the Kennedy Center. As has been previously mentioned, the Kennedy Center is one of the most visited tourist attractions here in our Nation's capital. Millions of people from around the world have come to Washington to see this spectacular, living memorial to the late President Kennedy. Since this is such a vital part of our national heritage, it is important that we do all in our power to maintain this memorial for future generations.

H.R. 3377 is a very straightforward authorization bill providing an estimated \$4.5 million for the ongoing nonperforming arts functions of the center, such as routine maintenance, upkeep and interpretative services. For the reasons I have mentioned, it is my hope that all of my colleagues lend their support to this legislation. By so doing, an important tribute to President John F. Kennedy will be preserved. ●

Mr. STANGELAND. Mr. Chairman, I have no further requests for time, and yield back the balance of my time.

Mr. FARY. Mr. Chairman, I yield back the balance of my time.

Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to. Accordingly the Committee rose; and the Speaker pro tempore (Mr. ALXANDER) having assumed the chair, Mr. GLICKMAN, Chairman of the Committee of the Whole House on the State of the Union, reported that that committee, having had under consideration the bill (H.R. 3377), authorizing appropriations to the Secretary of the Interior for services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Per-

forming Arts, and for other purposes, had come to no resolution thereon.

GENERAL LEAVE

Mr. FARY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

AUTHORIZING APPROPRIATIONS FOR THE NUCLEAR REGULATORY COMMISSION

Mr. UDALL. Mr. Speaker, pursuant to the provisions of House Resolution 217, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2330) to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2330, with Mr. GLICKMAN in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

The gentleman from Arizona (Mr. UDALL) will be recognized for 15 minutes; the gentleman from New Mexico (Mr. LUJAN) will be recognized for 15 minutes; the gentleman from New York (Mr. OTTINGER) will be recognized for 15 minutes, and the gentleman from California (Mr. MOORHEAD) will be recognized for 15 minutes.

The Chair recognizes the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Chairman, I yield myself 6 minutes.

(Mr. UDALL asked and was given permission to revise and extend his remarks.)

Mr. UDALL. Mr. Chairman, I am pleased that today the House is giving consideration to a bill authorizing appropriations for the Nuclear Regulatory Commission for fiscal year 1982 and fiscal year 1983. The Udall-Dingell-Lujan-Broyhill substitute bill (H.R. 4255) is a fair and timely compromise that deserves prompt legislative action.

Deliberately, the substitute bill does not address many of the tough nuclear policy issues at hand; that is not the

purpose of the authorization process. Separate nuclear policy legislation is progressing through the committees of jurisdiction, and provides a more appropriate context for debating nuclear waste issues, proliferation policy, and licensing reform.

I hope, therefore, that my colleagues will resist the temptation to offer amendments likely to impede the passage of this bill.

Mr. Chairman, before summarizing the key provisions in the substitute bill, let me briefly relate the history that lead to this compromise agreement.

On April 10, 1981, the Interior Committee favorably reported its version of H.R. 2330. The Energy and Commerce Committee, after a sequential referral, reported a different version of the bill on June 9, 1981.

The differences between the two committees were, in fact, quite substantial. For example, the Energy and Commerce Committee approved several controversial changes in the licensing process for nuclear power plants that had not been previously approved by the Interior Committee. Subsequent to the filing of their separate reports, the committees worked together to develop a mutually acceptable vehicle for orderly House action; and, we believe we have found such a vehicle in the substitute bill H.R. 4255.

The substitute includes a compromise agreement on all differences between the two committees, thereby precluding the need for any committee amendments during this floor debate. The bill enjoys the support of the nuclear industry. Major environmental and safe energy groups do not oppose the substitute and are not lobbying for changes in the licensing provisions.

Tracking the recommendations of the Interior Committee, H.R. 4255 authorizes a total appropriation for the NRC of \$485,873,000 during fiscal year 1982, and \$513,100,000 during fiscal year 1983. This is the first time that the NRC authorization has been placed on a 2-year cycle. The authorization levels in the substitute bill are approximately 3 percent less than the total amount requested by the Commission in the Reagan budget for fiscal year 1982, and approximately 3.3 percent less than the agency requested for fiscal year 1983. These percentages translate into budget cuts of \$14,827,000 in fiscal year 1982 and a reduction of \$16,900,000 in fiscal year 1983.

The proposed substitute places restrictions on the amounts and uses of funds available to the Commission for the nuclear data link program; and, limits the availability of funds during fiscal year 1982 for the continuation of tests at the LOFT facility.

Responding to the alleged possibility that, at various times during the next couple of years, a few nuclear plants may sit idle awaiting completion of their NRC licensing proceedings, the substitute bill will allow the issuance

of full power temporary operating licenses (TOLS). Under the substitute, a temporary license would first be limited to no more than 5 percent of a reactor's rated full thermal power. Subsequently, and contingent upon utility application and Commission approval, the plant could be allowed to operate at levels up to and including full power.

The H.R. 4255 compromise also provides the Commission and the nuclear industry with some relief from the Court of Appeals November 19, 1980 decision in the Sholly case (*Steven Sholly, et al. v. NRC, et al.*, U.S.C.A. D.C. Cir., No 80-1691). The substitute bill authorizes the Commission to issue license amendments, effective upon issuance, without holding a prior hearing, upon a determination that the amendment involves no significant hazards consideration.

Mr. Chairman, let me close with some observations about the current state of the Nuclear Regulatory Commission and the commercial nuclear industry.

There is no doubt that these are hard times for the nuclear industry. Electric utilities, among the Nation's most capital-intensive industries, are particularly vulnerable to today's high interest rates. The situation is even worse for those utilities in the midst of building nuclear plants due to the financing of these projects with their inherently large up-front capital costs.

Visible manifestations of the nuclear industry's financial straits abound: Some utilities are canceling nuclear projects already underway; new plant orders have not been placed for several years and are not likely in the foreseeable future; utilities are deciding to stretch out their reactor construction schedules; utility bonds are being down-graded; and, investor confidence in nuclear utilities is eroding, in part because a \$1 billion accident resulted from a stuck open valve.

Another consequence of nuclear's economic woes is the tendency to blame the regulators for an inordinate share of the problem. While I am among the first to criticize the agency when it fails to do its job, I think it is a bum rap to say as the administration does that:

The Federal government has created a regulatory environment that is forcing many utilities to rule out nuclear power as a source of new generating capacity, even when their consumers may face unnecessarily high electric rates as a result.

This attitude can only make it more difficult for the Commission and the NRC staff to fulfill its regulatory mission.

While it is unfair to blame NRC for the preponderance of problems facing the nuclear industry, the regulatory system is not working as it should. It seems to me that the agency to some degree may suffer from an identity crisis resulting from the many confused and conflicting signals being sent by its numerous critics.

The purpose of the authorization bill before us today, therefore, is to provide the Commission with some badly needed guidance and direction. The bill is an even-handed compromise that will give the Commission and staff a clear congressional statement about the course that should be followed over the next 2 years; namely, get on with the job, but with great caution.

Mr. Chairman, that concludes my opening remarks. There are several points that I would like to develop in greater detail, so I ask unanimous consent to advise and extend my remarks.

TWO-YEAR AUTHORIZATION

For the first time, and building upon an Interior Committee initiative from the last Congress, H.R. 4255 is a 2-year authorization for both fiscal year 1982 and fiscal year 1983. The Interior Committee believes that inherent in this 2-year authorization is the potential for significant reduction in the congressional legislative workload without impairing the ability of Congress to exercise effectively its jurisdiction over the NRC and the regulation of the commercial nuclear industry. Also, the proposed substitute will promote more coherent fiscal planning and program and policy continuity at the NRC.

Mr. Chairman, let me assure my colleagues that the NRC authorization levels for fiscal year 1983 contained in the substitute bill are not the result of pulling numbers from a hat. In testimony before the Interior Committee, the Commission described the following internal budget process the agency went through in developing its authorization request:

This process included detailed office submissions for both fiscal years (that is fiscal year 1982 and fiscal year 1983) based on the guidance provided in the PPPG. All of the office submissions were subjected to successive reviews by the Office of the Controller, the Budget Review Group headed by the Deputy Director for Operations, the EDO and the Commission prior to submission to the Office of Management and Budget. At each review step, the office directors were encouraged to discuss their requirements and to advise the reviewers of any impacts that proposed changes on their fiscal year 1982 budget request might have on fiscal year 1983. Through the EDO level, equal attention was given to both budget year and the outyear estimates.

The Commission, having gone through the process of developing and reviewing a 2-year budget request, supports a 2-year authorization.

The Interior Committee recommended a 2-year authorization for the NRC with full understanding that there will always be greater uncertainty with regard to the funding requirements of the second year of the 2-year cycle vis-a-vis the first year of the cycle. With this in mind, a reprogramming procedure is provided in the substitute bill that will enable the NRC and the Congress to work together to reallocate authorized funds in the event circumstances change during the authoriza-

tion period. In addition, the option is always available to the Commission to request a supplemental authorization of appropriations; and the Congress can amend the authorizing legislation.

RECOMMENDED FUNDING LEVEL

Amidst current talk of the need for additional massive cuts in Federal spending, H.R. 4255 authorizes about 3 percent less each year than the amount recommended for NRC by President Reagan. I would have preferred the larger 5-percent reduction recommended by my Subcommittee on Energy and the Environment. I must note that it is unfortunate that at a time of fiscal belt-tightening imposed primarily upon those of our citizens least able to afford it, that the administration has seen fit to further subsidize the nuclear industry.

The Commission's budget could readily be reduced another \$20 million were it not for their having to devote effort to licensing of the Clinch River breeder reactor. This expenditure would be bad enough if this technological dinosaur were actually going to be built and operated. But, President Reagan's nuclear policy notwithstanding, it is unlikely that Clinch River will ever exist and, therefore, requiring NRC staff to devote resources at this time to licensing this machine merely compounds the folly. The administration's unwise focus on Clinch River and reprocessing is but one of the many manifestations that the nuclear technology, whatever its potential, is beyond rational direction.

Clinch River and reprocessing are not relevant to our foreseeable needs. The best course of action is to place these technologies on the back burner while devoting primary emphasis to insuring the safety and reliability of the current generation of light water reactors. Similarly, the administration's recent proposals for nuclear plant licensing reform are unlikely to have significant effect on those reactors already online or in the licensing pipeline. I would hope the administration will recognize these realities as it develops more specific proposals.

Mr. Chairman, it seems to me—and I am reiterating a point I have made before—that for the next several years the most important and difficult tasks facing the Nuclear Regulatory Commission will be to assure the safety of operating reactors and to issue licenses for the reactors under construction in a manner that is efficient and takes the proper account of lessons of Three Mile Island, and other places.

The authorization levels and policy in H.R. 4255 provide a legislative framework for achieving this objective.

TEMPORARY OPERATING LICENSES

I have reluctantly supported the compromise provisions in H.R. 4255 which will allow issuance of a temporary operating license (TOL) for a nuclear powerplant prior to completion of hearings required by the Atomic Energy Act on the matter of whether

the plant is in fact in compliance with the Commission's regulations. I have agreed to this measure because it builds upon section 192 of the Atomic Energy Act and contains safeguards in the form of several requirements for detailed Commission review before interim operation is allowed.

From the time NRC first requested authority to issue interim licenses, the underlying rationale has been that in the wake of the accident at Three Mile Island, the NRC staff had turned from licensing to questions raised by the accident. As a result, the licensing schedules purportedly fell behind construction schedules and we were faced with a situation where it was projected that plants would be ready to operate prior to the projected completion date of the OL hearing. I think that experience is now showing that plants have not been ready to operate on the anticipated dates, and that there is little foundation to the fear of plants lying idle prior to completion of established licensing procedures.

I simply am not as confident as the majority of my colleagues seem to be that the reactor safety situation is so well in hand that we can afford to shortcut the nuclear regulatory process. On the other hand, I am not in a position to say unnecessary licensing delays will never occur, and I consequently have worked with Chairman DINGELL, Mr. LUJAN, and Mr. BROYHILL to craft a compromise temporary operating license provision subject to the understanding that there will be thorough Commission review in every instance involving issuance of an OL prior to completion of hearings.

I hope that the Commission, in carrying out its responsibilities under this compromise will not succumb to what may appear to it to be irresistible political pressures. Nor should the Commission close its eyes to situations where safety is not as assured as the Commission believes it should be. The Commissioners and NRC staff should realize that in the event of an accident resulting in whole or in part from insufficient scrutiny by the NRC, the Commission will be called to account. In such circumstances, the Commission should expect little sympathy from Congress or the general public for excuses, irrespective of any person's current belief as to the wisdom of expediting the licensing process.

SHOLLY DECISION

Section 11 of H.R. 4255 provides NRC and the nuclear industry with relief from the court of appeals decision in Sholly against NRC. In this decision the court interpreted the Atomic Energy Act (section 189a) to require the NRC, upon request, to hold a hearing on every operating license amendment application, even when the Commission determines that the amendment entails no significant hazards consideration. The ruling reverses nearly 20 years of NRC administrative practice, and has the poten-

tial to get the Commission mired in insignificant regulatory matters.

An effect of the section 11 compromise is to allow the Commission to approve licensing amendments for nuclear power reactors, upon a determination by the Commission that the amendment involves no significant hazards consideration, in advance of public notice of that action.

In supporting this compromise provision, I subscribe to the view that NRC should exercise with great care the new authority to issue immediately effective license amendments in advance of public notice. I urge NRC to employ as an operating presumption that whenever practicable public notice of the filing of an amendment will be given before the amendment is made effective. In my view, this presumption should be especially strong in the case of license amendments, such as the venting of krypton gas involved in the Sholly case, that are in practice irreversible, because in such cases failure to provide notice will effectively deny members of the public their right to any hearing.

The substitute bill directs NRC to promulgate standards for determining whether or not an amendment to a license involves no significant hazards consideration. In my view, the purpose of these standards is to define a threshold determination of the nature of the issues raised by the proposed amendment, rather than attempting to reach a conclusion on the merits of those issues. The latter conclusion should result from, rather than precede, the hearing process in those cases in which a hearing is requested.

NUCLEAR DATA LINK

Reiterating the strong position taken by the Interior Committee, the substitute bill (H.R. 4255) restricts Nuclear Data Link funding far below the levels requested by NRC. Broad-based criticism of the data link has been brought to my attention by members of the Advisory Committee on Reactor Safeguards, individual NRC Commissioners, and the nuclear industry. While I would be among the first to agree that NRC must have easy access to any technical data that is needed to fulfill its regulatory mission—particularly in emergencies—the need for the NDL, as currently envisioned by NRC staff, is poorly defined and ill-conceived. During this time of massive across-the-board Federal budget cuts, the \$11.3 million requested for the data link is a prime area for belt-tightening at the NRC.

LOSS-OF-FLUID TEST FACILITY

Funds for the continuation of tests at the LOFT facility (loss-of-fluid test facility) are limited to \$30 million during fiscal year 1982 by the substitute bill. This amount is about \$15 million less than the amount requested by NRC for that test program. The LOFT provision in H.R. 4255 is identical to one reported by the Interior Committee in its version of H.R. 2330,

and is based in large part on a recommendation from the Advisory Committee on Reactor Safeguards (ACRS). The ACRS wrote in its February 1981 report to the Congress on the NRC safety research program in fiscal year 1982:

We recommend therefore that the NRC test program in LOFT be terminated by the end of fiscal year 1982, and that the budget for fiscal year 1982 not exceed \$30.0 million. This budget will, in our opinion, allow an orderly termination of the program and will at the same time make possible completion of the significant tests under consideration. (From NUREG-0751, page 19).

In a July 1981 report to the NRC Commissioners, the ACRS reaffirmed the view expressed earlier in its report to Congress and added a strongly held view that there exists:

An urgent need to transfer the funds thereby made available (that is, made available by the termination of the LOFT test program by the end of fiscal year 1982) to other safety research programs which would contribute much more effectively to reactor safety. (From NUREG-0795, page 17).

Just last month, another group of technically competent nuclear experts came to a conclusion about LOFT similar to that reached previously by the ACRS. This second group, known as the reactor safety research review group, was established to report to the President's Nuclear Safety Oversight Committee. The review group, chaired by Prof. Norman Rasmussen, made the following comments in its final report:

The LOFT program has been a success in that it answered satisfactorily the major question of reactor safety for which it was designed, but it does not directly address the key safety problems that are apparent today. The review group is reluctant to suggest termination of a facility with such a capable staff and one that represents a large capital investment.

But the expense of its operation leans to the conclusion that it is no longer a cost-effective facility. It is unlikely to uncover any major new safety issue. The review group has identified a number of high priority areas in which research results are badly needed, and for which the resources saved through phasing out LOFT should be applied. (Report of the Reactor Safety Research Review Group to the President's Nuclear Safety Oversight Committee, September 1981, page II-2).

The review group concluded that the LOFT program should be phased out in an orderly manner.

The substitute bill makes no statement with regard to LOFT expenditures in fiscal year 1983. The fact that H.R. 4255 is silent on the question of LOFT expenditures in fiscal year 1983 means neither that the Interior Committee, nor the sponsors of the substitute bill, have agreed that LOFT tests should be continued beyond fiscal year 1982.

For myself, I think the LOFT program has served a useful function during the nearly 20 years it has been in progress. But now, the time has come for phasing out the test series by the end of fiscal year 1982. Approxi-

mately 1,000 people are now working on LOFT at the Idaho national engineering lab; and I am aware of the concern that the termination of LOFT will lead to the breakup of this valuable human resource. While such a brain drain may occur, I suspect it can be avoided by creative personnel management from an administration committed to the revitalization and expansion of commercial nuclear power. In any event, there can be no sufficient justification for dragging out the duration of the LOFT test series at the expense of higher priority reactor safety research.

EMERGENCY PLANNING

The substitute bill authorizes NRC to issue reactor operating licenses, under certain conditions, in the absence of federally approved offsite emergency plans. This provision continues the emergency planning and preparedness policy established by section 109 of Public Law 96-295 (the fiscal year 1980 NRC Authorization Act), but extends the deadline for full compliance.

In the interest of keeping the legislative history intact, I remind my colleagues that Congress, spurred on by recommendations of the major inquiries into the TMI accident, enacted in Public Law 96-295 a provision requiring the existence of a federally approved State emergency plan as a condition for receiving a reactor operating license. At the time this licensing requirement was mandated, specific recognition was given the fact that a grace period should be provided to State and local governments to upgrade their existing plans. Also, additional time was needed for the Federal Government to get its house in order to the point where NRC and the Federal Emergency Management Agency could effectively coordinate their efforts to establish criteria for acceptable State and local plans, and then certify the adequacy of such plans. Nonetheless, the intent of Congress was, and remains, as clearly stated in the conference report accompanying Public Law 96-295 that—

(Ultimately every nuclear plant will have applicable to it a state emergency response plan that provides reasonable assurance that the public health and safety will not be endangered in the event of an emergency at such plant requiring protective action. (From the Conference Report No. 96-1070, p. 28).

RESIDENT INSPECTOR PROGRAM

Finally, let me say a few words about the NRC's resident inspector program which the Commission has called the heart of its nuclear reactor regulation efforts. This relatively new program is intended to place a full-time NRC inspector onsite at each plant under construction; two inspectors at each operating or preoperational site that has at least two units; and, at least one inspector at each operating or preoperational site with one reactor. I am impressed that resident inspectors significantly enhance the

agency's ability to monitor licensee's compliance with the Commission's regulations on a day-to-day basis. I am pleased, therefore, that H.R. 4255 authorizes in full the increase requested by NRC to cover personnel expenses due to expansion of the resident inspector program. Based on Interior Committee oversight of this program, I think there is merit to increasing to two or three the number of resident inspectors stationed at each site.

I must make clear, however, that the benefits of the resident inspector program do not compensate for my growing unease about the adequacy of quality assurance and control by NRC and its licensees over nuclear plant construction.

That concludes my remarks, Mr. Chairman. I urge my colleagues to approve the substitute bill without debilitating amendments.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. OTTINGER), and will protect the time of the gentleman from New Mexico (Mr. LUJAN).

Mr. OTTINGER. Mr. Chairman, I yield myself such time as I may consume.

(Mr. OTTINGER asked and was given permission to revise and extend his remarks.)

Mr. OTTINGER. Mr. Chairman, I rise in support of H.R. 2330, as amended by the substitute. I would like to commend my colleague, the chairman of the Committee on Interior and Insular Affairs, the minority member of my subcommittee, and the minority member of the full committee, for working out a successful compromise on what was a number of fairly controversial issues.

H.R. 2330 was originally introduced in the House on March 4 of this year by the distinguished chairman of the Committee on Interior and Insular Affairs, the gentleman from Arizona. As introduced, H.R. 2330 provided the Nuclear Regulatory Commission with an authorization of appropriations for fiscal years 1982-83. Although the bill was reported by the Committee on Interior and Insular Affairs with a substitute text, it remained, in essence, a simple 2-year authorization with an across-the-board reduction in authorizations, limitations on expenditures for the nuclear data link program and the loss of fluid test facility, a directive on the interim consolidation of the Commission headquarters staff in the District of Columbia, and a prohibition on the use of any funds authorized by the bill for the actual decontamination, cleanup, repair, or rehabilitation of the Three Mile Island unit 2, nuclear power reactor.

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Under the rules of the House, H.R. 2330 was then sequentially referred to the Committee on Energy and Commerce on June 4, 1981. The bill was ordered by the Committee on Energy

and Commerce with an amendment in the nature of a substitute. The reported bill restored the funds cut by the Committee on Interior and Insular Affairs, included a directive on the interim consolidation of the staff as well as a number of specific directives on the use of funds affecting such issues as the licensing process, emergency preparedness plans, the Commission's safety goal, and the Commission's relationship with the Department of Energy regarding the disposition of radioactive materials resulting from the cleanup of the damaged Three Mile Island Unit 2 nuclear reactor. Consequently, the differences in the bill as reported by each committee were numerous and substantial.

Despite the fundamental nature of the disagreements in the bill as reported by each committee, the House has before it today a compromise which has been agreed to by the chairmen and ranking minority members of the Committee on Interior and Insular Affairs and the Committee on Energy and Commerce and each committee's relevant subcommittee. This compromise, introduced into the House as H.R. 4255, resolves all issues in disagreement in the bill as reported by each committee and avoids the necessity of having each committee offer, as separate amendments, each item in disagreement, thus greatly facilitating floor consideration of this bill.

The compromise provides a total authorization of \$485,873,000 for fiscal year 1982 and \$513,100,000 for fiscal year 1983, which is approximately \$15 million below the amount requested for fiscal year 1982 and approximately \$17 million below the amount sought for fiscal year 1983. Most of this reduction is to be absorbed by a reduction in funding for the nuclear data link program, which is to be limited to a prototype system until the Congress has an opportunity to review the need for a full scale system. This, however is, in my opinion, a very promising system. The work on it ought to go forward expeditiously under the authorization that is provided. The bill also limits the funds available for the operation of the loss of fluid test-facility. Funds are provided to the Commission for the purpose of consolidating the headquarters staff offices in the District of Columbia.

There are three provisions in the bill which deserve special consideration. Section 8 authorizes the Commission to use such funds as may be necessary to issue an operating license, including a temporary operating license, in the absence of a State or local emergency preparedness plan which has been approved by the Federal Emergency Management Agency, if it determines that there exists a State, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by the operation of the nuclear power reactor in question.

The purpose of this section is to clarify certain legal ambiguities in the

NRC's emergency planning regulations regarding the question of whether the Nuclear Regulatory Commission, in the absence of a Federal Emergency Management Agency approved State or local emergency preparedness plan, could issue an operating license if it determines that there exists such a plan which provides reasonable assurance that the public health and safety will not be endangered by the operation of the facility. This section restates the position contained in section 109 of Public Law 96-296 by clarifying that the Commission does have the authority to make an independent determination, in the absence of a plan approved by the Federal Emergency Management Agency, that there does exist a plan, proposed by either the affected State or local government or utility, which provides reasonable assurances that the public health and safety will not be endangered by the operation of the facility.

Section 11 of the bill authorizes the Commission to use such funds as may be necessary to issue and make immediately effective amendments to a license for a nuclear power reactor upon the determination by the Commission that the amendment involves no significant hazards consideration, and may do so in advance of the conduct and completion of any required hearing and after notice to the State in which the facility is located. The Commission is directed, when practicable, to consult with the State in which the affected facility is located before the issuance of an amendment, provided that such consultation does not delay the effective date of any such amendment, which, in all other respects, is to meet the requirements of the Atomic Energy Act of 1954. The Commission is directed to publish in the Federal Register periodically, but not less frequently than 30 days, notice of amendments issued, or proposed to be issued, which such notice is to include all amendments issued, or proposed to be issued, since the date of publication of the last periodic notice. The section also, specifies that certain information is to be included in the Commission's notice.

Also added was a directive to the Commission to promulgate within 90 days from the effective date of the act, standards for determining whether a license amendment involves no significant hazards consideration. This section is a modification of a provision contained in the Committee on Energy and Commerce reported bill.

The question of the Commission's authority to issue and make immediately effective license amendments which involve no significant hazards consideration was raised as a result of a decision by the U.S. Court of Appeals for the District of Columbia Circuit, in Sholly against Nuclear Regulatory Commission, as my friend, the gentleman from Arizona (Mr. UDALL) has indicated. This decision held that section 189(a) of the Atomic Energy

Act requires that the Commission conduct a hearing on any amendment to a license, even if the Commission determines that the amendment involves no significant hazards consideration. It should be noted that the authority given the Commission to issue such amendments prior to a hearing by this provision does not dispense with the requirement that the hearing be held. In giving the authority to the Commission to issue and make immediately effective license amendments which involve no significant hazards consideration, for the period of this authorization, the sponsors of this proposal expect the Commission to construe this authority narrowly, not simply because it prejudices a decision under appeal but also because the suspension of the requirements for notice and especially public hearings prior to the issuance of a license or an amendment could be a major abridgment of the public's rights, and should be carefully limited in its use. The authority given the Commission under this provision is discretionary, and is granted with the expectation that it will only be used in exceptional cases, with notice and the opportunity for hearings, presumed to be the rule rather than the exception.

The same principle is expected to be applied with respect to the authority given to the Commission under subsection 11(b), in that the Commission should operate on the assumption that notice of the filing of an amendment should be given before the amendment is made effective, and the instances when notice is not given is to be the exception. This is particularly true in the case of license amendments, such as the venting of krypton gas raised in the Sholly case, where the result is irreversible and where the failure to provide advance notice effectively deprives the public of any right to object to or to appeal the decision. Moreover, the requirement that amendments be published in the Federal Register is to be the minimum notification requirement, for the Commission and the applicant are free to provide notice through additional mechanisms which serve the purpose of keeping the public fully informed.

In regard to the requirements in subsection 11(c), relating to the promulgation of standards for determining when an amendment involves no significant hazards consideration, it is expected that the Commission will remember that the function of such standard is to assist the Commission in deciding when an amendment will take effect prior to the conduct of the required hearing. Under the provision, the hearing is still required to be held, upon request, only in such cases the hearing will be held after the amendment has been issued. The purpose of the standard, therefore, is not to establish the criteria for deciding the issue raised by the amendment or to judge whether the amendment should be issued at all, but is instead to con-

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stitute a threshold determination regarding the nature of the issues raised by the proposed amendment. A decision of the merits of the issue is to result from, rather than precede, the hearing itself. Moreover, any finding by the staff regarding the question of whether a proposed amendment involves a significant hazards consideration or not should not carry any connotation on the merits of the amendment. As with subsection 11(b), this provision should be implemented in a manner which protects the right of the public to a hearing before the approval of any license amendment where the effects are irreversible.

Section 12 of the bill, as amended, gives the Commission the authority to issue temporary operating licenses in accordance with the provisions of section 192 of the Atomic Energy Act of 1954, except that such temporary operating license may be issued: First, in advance of the conduct of completion of any hearing required in section 192 or by section 189 of such act; and second, without regard to subsection (d) of section 192 and the findings required by subsection (b)(3) of section 192. Any hearing held in connection with the requirement of section 192 and the record of such hearing is to be treated as part of and consolidated with the hearing and record required under section 189 whenever the Commission determines that such consolidation will reduce duplication and expedite the resolution of the licensing proceeding. Any temporary license issued pursuant to this section may initially authorize fuel loading, testing and operation of the reactor at a power level which does not exceed 5 percent of its rated full thermal power. The applicant may thereafter request an amendment to the temporary operating license to operate at higher power levels, and the Commission is given the authority to review and approve such requests.

I would like to emphasize that before this authority may be exercised, there have to be full safety reviews and the environmental impact statement must be completed.

Section 12 of H.R. 4255 is based upon section 6 of H.R. 2330 as reported by the Committee on Energy and Commerce. As a part of the compromise, it was agreed that the Commission's authority to issue temporary operating licenses would be limited initially to authorizing only fuel loading, testing and power operation at no more than 5 percent of the reactor's rated full thermal power, and that any operation at greater power levels would require subsequent consideration and determination by the Commission, in accordance with the procedures and requirements of subsection (a). And that is very important.

Section 12 of the amended bill is an extraordinary provision, and it is essential that its scope be fully understood. First, the authority to issue temporary operating licenses, even

limited to only 5 percent of the reactor's rated power level, is discretionary. The Commission decides when the exercise of this authority is necessary, and, as one of the sponsors of this provision, I can state that I expect the authority granted by this provision will be used rarely, if at all, and only in situations in which delay would otherwise occur in the operation of a completed powerplant. This provision is in response to a temporary situation which resulted from the need to divert staff attention away from licensing activities in order to comprehend the lessons from the accident at the Three Mile Island Unit 2 nuclear power reactor, and to incorporate those lessons into the regulations governing the licensing and operation of nuclear power reactors.

The time required to accomplish this objective took longer than expected. While this review was being conducted, construction of planning nuclear powerplants continued, with the result that it appeared that some powerplants would be finished and ready to operate before the completion of the licensing process. While there is clearly a debate about the actual extent of the anticipated delays and of the resulting costs to stockholders and ratepayers from the carrying and financing charges accumulating while the reactor sits idle awaiting licensing, the potential of such an occurrence in a number of instances required action to avoid such consequences. It is now clear, however, from hearings held by the Government Operations Committee chaired by the gentleman from Connecticut (Mr. MOFFETT), that the extent of the problem was overstated, resulting from the Commission's reliance upon the applicants' projected date for the completion of construction rather than an independent determination by the Commission. It now appears that in fact no plants will be delayed. Nonetheless, delays in a few instances may become unavoidable, and it is only in these instances when it is expected that the Commission might exercise the authority provided under this section. Certainly, it is not expected that the Commission will use this authority in regard to any proceeding relating to the licensing of any reactor beyond the 11 identified in the Commission's report as expected to experience possible delays.

A second point which needs to be emphasized is that the criteria for issuing a temporary operating license is exactly the same as required for issuing a normal operating license. All of the findings which must be made in regard to the granting of an operating license must still be made in regard to the issuance of a temporary operating license, and they must be made with the same degree of confidence. The Commission will still be held to the same standard and, if challenged, must be able to demonstrate in court, if necessary, that it made all the required findings in the balance of the

conduct or completion of any required hearing. Thus, the standard to which the Commission is ultimately accountable is, in itself, a deterrent against the potential abuse of the authority provided in section 12.

A third point which should be noted is the fact that the compromise limits the initial temporary operating license to a power level of only 5 percent of its rated thermal capacity. Thus there will be a gradual phase-in of the reactor, and operating at a power level greater than 5 percent will require an amendment to the initial temporary operating license, thus requiring a further Commission review. I should also note that, because of the extraordinary nature of this authority, only the Commissioners themselves are expected to exercise this authority and not the Commission staff. Moreover, it is expected that, before exercising this power, the Commissioners will make an independent estimate of the construction completion date to determine that, in the absence of action by the Commission under the authority provided by this section, there will be an actual delay in the initial operation of the plant. Such delay, in and of itself, does not constitute sufficient grounds for the exercise of this authority, for the Commission must be able to determine that all the requirements for the issuance of a normal operating license, including all the findings relating to the protection of the public health and safety and the environment and the resolution of all site specific safety issues have been met and that the facility is in compliance with all applicable regulations. It should be emphasized that issuance of a temporary operating license in advance of the conduct or completion of any hearing does not obviate the requirement that full hearings be promptly held and the application for a permanent operating license be pursued diligently.

Moreover, under the provisions of section 192, the Nuclear Regulatory Commission is directed to suspend any temporary operating license whenever it determines that the applicant is not pursuing the normal operating license with due diligence and vigor.

Mr. Chairman, H.R. 2330, as amended by the substitute, represents a reasonable compromise that respects the interests and the concerns of both the Committee on Interior and Insular Affairs and the Committee on Energy and Commerce, and I urge its passage.

I would like to thank the chairman of the Committee on Interior and Insular Affairs, the gentleman from Arizona (Mr. UDALL) and the ranking minority member of that committee, the gentleman from New Mexico (Mr. LUJAN) for their leadership and cooperation in obtaining this compromise. Additionally, I would like to thank the chairman of my own Committee on Energy and Commerce, the gentleman from Michigan (Mr. DINGELL) and the

ranking minority member of the full committee, the gentleman from North Carolina, and the ranking minority member of the Subcommittee on Energy Conservation and Power, the gentleman from California (Mr. MOORHEAD) for their contribution and cooperation.

The CHAIRMAN. The time of the gentleman from New York (Mr. OTTINGER) has expired.

The Chair recognizes the gentleman from California (Mr. MOORHEAD) for 15 minutes.

Mr. MOORHEAD. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 2330 as amended by the language contained in H.R. 4255.

This legislation authorizing vital funding for activities undertaken by the Nuclear Regulatory Commission is a consensus bipartisan bill. H.R. 4255 can be considered as a significant first step in streamlining the licensing procedures of nuclear powerplants consistent with necessary safety considerations.

H.R. 4255 among other things provides for interim licenses subject to health and safety requirements. Interim licenses, where appropriate, will play a significant role in solving the serious backlog of the licensing process at the Nuclear Regulatory Commission. DOE and the utility industry calculates this provision will save electric consumers up to \$2 billion in replacement power costs and over 200,000 barrels a day in oil-equivalent fuel consumption.

The NRC is authorized—but not required—to issue temporary operating licenses to delayed plants only where environmental and safety reviews have been completed, such as the staff safety evaluation report, environmental impact statement, and Advisory Committee on Reactor Safeguards report.

The temporary operating license may be issued in advance of the final operating license hearing, but not prior to completion of public participation on the environmental impact statement. Under the Atomic Energy Act, the final operating license hearing is discretionary in uncontested cases and public hearings are held at the construction permit stage.

The temporary operating license must initially limit operation to fuel loading or 5 percent power levels, but may authorize step-by-step progression to higher power levels upon request to the Commission on a case-by-case basis, as under current procedures for final operating licenses.

Temporary operating licenses would be subject to such limits, durations, and conditions as NRC may impose.

NRC's temporary authority to issue such licenses expires September 30, 1983.

Eleven plants may request temporary licenses in order to avoid 63 months of delay and over \$1 billion in

higher replacement power costs to consumers by the end of 1983, according to utility estimates. Another 57 plants scheduled to be completed by the mid-1980's may be caught in NRC's "pancaked" licensing logjam unless the temporary licensing authority is granted.

Additional licensing reforms will remove non-safety-related technical roadblocks to more efficient Federal regulation of nuclear powerplants.

Another very important part of this legislation is contained in section 13 of H.R. 4255. Section 13 sets up an independent advisory panel representing the public, industry, and the States to study the licensing process with an emphasis on streamlining the licensing process. This panel is required to work with the NRC in order to submit conclusions and recommendations to the Congress. The French and the Japanese can license a nuclear powerplant in less than 7 years. It takes us about twice that time. Obviously there is room for improvement. We can do the job quicker without sacrificing safety and health concerns. Like many areas of regulatory reform, this legislation gives the Congress an opportunity to make necessary regulation much more efficient. The fruits of our labor will certainly be reduced power bills, reduced consumption of foreign oil, and a more rational and efficient use of scarce capital. I urge my colleagues to support H.R. 4255.

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At this time, Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. CORCORAN).

(Mr. CORCORAN asked and was given permission to revise and extend his remarks.)

Mr. CORCORAN. Mr. Chairman, I rise in strong support of H.R. 2330, the fiscal years 1982 and 1983 authorization for the Nuclear Regulatory Commission. This 2-year authorization legislation authorizes approximately \$1 billion and is slightly under the administration request. H.R. 2330 was reported by the Interior and Insular Affairs Committee on April 10 and by the Energy and Commerce Committee on June 9. Agreement on a compromise bill by the leadership of the two committees was indicated on July 23 with the introduction of H.R. 4255, which is essentially the language that the House now has under consideration.

More important than the funds authorized by this bill, H.R. 2330 incorporates several important policy initiatives, and I commend the two committees for the adoption of this bipartisan compromise. As a member of the Energy Conservation and Power Subcommittee and the Energy and Commerce Committee, I would especially like to urge the support of my colleagues for this bill because of two important provisions.

First, section 11 of H.R. 4255 would allow the NRC to grant routine license

amendments without prior notice if it determines that such amendments involve no hazard to the public health and safety. This provision would overturn a decision last year by the U.S. Court of Appeals for the District of Columbia Circuit, Sholly against NRC, which held that a public hearing must be held prior to issuance of an amendment to an operating license even if the Commission determines that it would involve no hazard to the public. The NRC has recommended legislative relief along the lines of this bill to preclude the problems that would be created if Sholly were allowed to stand.

Second, section 12 of H.R. 4255 would permit the NRC to authorize temporary operation of a nuclear power plant, once all safety and environmental reviews are finished and all that remains outstanding is completion of the final public hearing at the end of the procedural process involved. It is important to note that NRC is not required to grant such interim operating licenses.

These two provisions taken together should go a long way in granting the NRC the authority to adopt a reasonable approach in its licensing procedures without eliminating public hearings and environmental reviews. At a time when French and Japanese require nuclear plant leadtimes of about 7 years as contrasted to the 12 to 15 years that seems to be required in the United States, these provisions are necessary and reasonable. I might also note that these provisions are in line with the President's October 8 nuclear power statement.

Mr. Chairman, I strongly urge the adoption of the language contained in H.R. 4255 as the House considers H.R. 2330.

The CHAIRMAN. What the Chair will do at this time, if it is satisfactory, is recognize the gentleman from California (Mr. CLAUSEN) for 15 minutes, representing the minority on the Interior and Insular Affairs Committee.

Mr. CLAUSEN. Mr. Chairman, I yield myself such time as I may consume.

(Mr. CLAUSEN asked and was given permission to revise and extend his remarks.)

Mr. CLAUSEN. Mr. Chairman, I rise to present a statement on behalf of myself and the ranking minority member, the gentleman from New Mexico (Mr. LUJAN), as well as the other minority members of the Interior and Insular Affairs Committee. I generally want to commend all of those that have been involved in both of the committees for the coordinated and comprehensive effort they have put forth to bring about what I think is a very satisfactory compromise.

Mr. Chairman, I rise today in support of H.R. 4255, the proposed authorization bill for the Nuclear Regulatory Commission for fiscal years 1982 and 1983. This bill is the result of a considerable amount of negotiation

between members of the Interior Committee and the Energy and Commerce Committee. It includes key provisions on various matters which were addressed in the two different versions of the original bill, H.R. 2330, which these committees reported in April and June respectively.

H.R. 4255 contains a 3-percent reduction in funding below the amount requested in the administration's budget for both 1982 and 1983. It contains a \$30 million limitation on the funding of tests at the loss of fluid test facility (LOFT) during fiscal year 1982. You will note that H.R. 4255 is silent on fiscal year 1983 funding. Various recommendations have been made by such groups as the Advisory Committee on Reactor Safeguards (ACRS) to terminate these tests. I think it would be more prudent to wait until that time draws closer to make a decision on termination. We have made a major investment in the LOFT tests and further testing may be necessary in the years ahead. I am amazed at the large number of personnel involved, but I am not ready to close down this important operation.

Funding for the proposed nuclear data link program has been reduced from \$11.3 million to \$200,000. I agree with this major reduction and urge the Commission to review its other expenditures to see where other cuts can be made to overfunded programs.

H.R. 4255 contains authority which will allow the Commission to issue a temporary operating license (TOL) to a nuclear powerplant prior to the completion of hearings on the question of whether or not that plant is in compliance with the Commission's regulations. NRC has requested this authority and we have been assured that it will not be employed unless absolutely necessary and unless all safety considerations have been taken into account.

Another provision in H.R. 4255 grants NRC the authority to approve an amendment to a nuclear power reactor license in advance of public hearings where that amendment involves no significant hazards consideration. This provision will relieve NRC of the unreasonable requirements imposed on it by the court of appeals decision last year in the case of Steven Sholly, et al. against NRC, et al. The court held that NRC must hold a hearing whenever requested, even when the Commission determines that the hearing involves no significant hazards consideration. H.R. 4255 also directs NRC to promulgate standards for determining whether or not an amendment involves no significant hazards consideration.

Thank you, Mr. Chairman. I urge the passage of H.R. 4255 and hope my colleagues will not attempt to load it up with extraneous amendments tomorrow.

Mr. UDALL. Mr. Chairman, I have no requests for time and I reserve the balance of my time.

Mr. MOORHEAD. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas (Mr. COLLINS).

(Mr. COLLINS of Texas asked and was given permission to revise and extend his remarks.)

Mr. COLLINS of Texas. Mr. Chairman, I rise in support of this Nuclear Regulatory Commission authorization legislation because it makes strong strides toward licensing and regulatory reforms that are essential. The U.S. domestic nuclear industry is moribund in large part because of our adversarial, legalistic, cumbersome, and acrimonious regulatory labyrinth. The proposals for change in H.R. 2330 should begin to remedy our current situation where 12 to 13 years are required to license a nuclear plant in the United States while only 7 to 8 are needed to do the same work in Europe and Japan.

Consumers have been burdened and inflation has been fueled by the interminable delays that the Federal nuclear regulatory structure fosters. It can cost a utility, and therefore consumers, up to \$320,000 a day for as long as the company has to keep a completed plant out of operation because of bureaucratic and institutional delays. In Texas, the Comanche Peak unit 1 can expect a 10-month delay during 1981 and 1982. As a result of these kinds of delays, the electricity consuming public has had to bear \$2.5 billion in costs directly related to licensing delays.

This NRC legislation seeks to deal with this licensing problem I am so concerned about in three important ways. First, it allows the NRC to issue interim operating licenses to plants even though the entire hearings process is incomplete. This is an improvement directed at eliminating delays caused by endless hearings even though all environmental and safety reviews have been finished.

Second, the authorization modifies the effects of Sholly against the Nuclear Regulatory Commission decided last year by the U.S. court of Appeals here in the District of Columbia. Sholly would have required the NRC to hold a hearing upon request on any license amendment even though it does not involve a safety-related issue. When you consider that the NRC has allowed over 1,600 license amendments during the last 4 years where no safety issue was concerned, it becomes clear that unless Sholly is modified we will be in an acute delay quagmire that makes the present backlog look mild.

Third, the NRC will be required to conduct a study to determine how the time required for licensing can be cut in half. I normally look askance of studies because they are an excellent way to get nothing done. In this case, however, we need to make a concerted effort to streamline what is an admittedly cumbersome and almost unworkable system. Congress should monitor the progress and results of this study

carefully and see to it that its constructive proposals are implemented.

Because I am so concerned about the reactor licensing delay problem, I would like to focus first on the magnitude of the problem and then briefly discuss in more detail some of the reasons for the malfunction of the nuclear regulatory structure.

There are 68 nuclear plants operating today that produce 12,000 megawatts, or 12 percent of the U.S. electrical output in 1980. Nuclear generation actually exceeded generation with oil this last summer. Eighty-nine more plants are now being built or possess low power licenses while 11 more are in preconstruction stages. The Department of Energy projects that 22 percent of the Nation's electricity will be nuclear-generated by 1990. Because of the energy resource that this nuclear capacity represents, we are behooved to strangle it with regulatory delays that serve no safety or environmental purpose. Another reason for getting rid of excessive delay is that each day a plant is kept out of service, we burn more foreign oil than we would otherwise have to. In 1979, we backed out 1.92 million barrels of oil per day that would have cost consumers \$21.25 billion. By 1990, nuclear output will back out 3.7 million barrels of crude oil a day. There is wide consensus that electrical generation must move to baseloading with coal and uranium through the rest of this century. If we are, as it has been projected, to have 36 percent of new generation capacity be nuclear and 48 percent be coal, we must move ahead with licensing reforms such as these in H.R. 2330.

I want to share with my colleagues some of my impressions of the causes of licensing delays. Look first at the situation we now have. Because of NRC redirection of staff resources and other idiosyncrasies of our system, there is a licensing backlog that will delay the startup of 13 plants for as much as 90 months. This delay will cost consumers upwards toward \$8 billion in replacement fuel and carrying costs. Another 11 plants which have sought construction licenses and will likely be delayed as well.

In a statement this year before Congress, scientists and engineers for secure energy made the statement that:

It is essential that this country find means to more sensibly and prudently license commercial nuclear reactors.

We find ourselves trying to get out of this licensing mess because we have a system that provides incentives for delay. The licensing procedure consists of numerous appeals, tiers of authority, multitudes of hearings, many of which relate only peripherally to reactor design and safety, and public interventions. When this obfuscatory structure is combined with the high capital and interest cost associated with nu-

clear construction, an untenable circumstance is created.

The nuclear regulatory mechanism is composed of numerous different elements, none of which are necessarily coordinated with each other. The NRC, EPA, State utility commissions and environmental quality agencies—even zoning and transportation authorities at the local level share regulatory jurisdiction. The issues that are raised range from health protection to the regulation of utility companies. We thus have a fragmented, uncoordinated system.

At the Federal level, the NRC is an agency originally set up to deal with narrow technical issues when it took over from the Atomic Energy Commission. The irony is that the NRC is being asked to make social decisions. A good example of this is the responsibility the Commission has to establish criteria for what constitutes an adequate level of protection for the public from nuclear-related hazards. Congress has essentially left the establishment of these criteria to the NRC with the result being administrative trial and error. To further muddy the waters, decisions by the NRC are often reversed by Federal courts, with the result being messy regulation that discourages the nuclear option and costs consumers billions.

We need to separate political and technical issues in the licensing process. For example, generic issues of safety and construction criteria should be settled in separate forums from the case-by-case plant licensing hearings allowing for ongoing review. Technical questions should then be settled using that framework as a guide in the context of individual plant licensing. The current system is fraught with an uneven application of criteria for public safety associated with different energy technologies. A more workable approach would establish a uniform system of standards for all technologies. This would prevent the same generic questions from being tried over and over again in each licensing proceeding.

Another delay source has to do with the abuse of the regulatory system by intervenors. Although important issues have been raised by intervenors, their participation most often takes the form of opposition to regulatory decisions. This opposition is usually of the special interest, politically oriented variety. The vast majority of people who may be affected by nuclear power never really achieves input into the health protection criteria issue.

At the base of the public participation problem is the failure of the regulatory system to ferret out the political issues from the technical ones. The result is the use of the system by intervenors as a forum for political and social conflict. The public bears the cost, of the resulting delay as I mentioned before, of \$2.5 billion which does not include the price of needlessly imported crude oil.

The reason for the frustration we have experienced with public participation should be clear. It was thought, upon setting up the system, that anti-nuclear activists' interests were beyond the scope of the licensing process. In fact, the intervenors use technical objections to try to influence broader goals one of which is to cause financial distress in the nuclear utility applying for an operating license. The result has been to chill the development of nuclear power because of the attending uncertainty.

We need to make more reforms than the current legislation allows, but this is a constructive step in the right direction of getting the licensing process back on track and effecting regulatory reforms that will be forthcoming in the future.

● Mr. MOFFETT. Mr. Chairman, when the House considers the Nuclear Regulatory Commission reauthorization later this week, I intend to offer an amendment to strike the provision in the bill which permits interim operation of new nuclear plants before the safety hearings are completed. Mr. MARKEY of Massachusetts will join me in that effort.

I believe many Members are familiar with the debate which lies behind this provision and our effort to remove it from the legislation. For nearly a year, the nuclear industry has waged an intensive campaign to convince the American people and the Members of this body that burdensome regulatory procedures at the NRC are preventing new nuclear plants from beginning operations. They have repeatedly insisted in statements to this body and to committees of the House that up to 13 plants are being delayed by the NRC licensing process—at a cost ranging up to \$3 billion, according to the industry.

Those claims simply are not true. If the House endorses this interim operating authority, it will do so only because it is acceding to the wishes of an industry that has grossly exaggerated the delay caused by the licensing process and has seriously and repeatedly misled the Congress and the American people about the status of specific new nuclear powerplants. Endorsement of this provision by the House will in effect reward the industry for having misled the House. We would be fulfilling the industry's wishlist without any regard for the facts with respect to the question of delays in nuclear powerplant operations.

I assure my colleagues that I am not making these strong statements based simply on my own observations. These conclusions are based on an extensive investigation conducted by the subcommittee which I chair and on a report of the full Government Operations Committee which resulted from that subcommittee investigation. That report concludes in no uncertain terms that the industry has grossly exaggerated the delay caused by NRC safety hearings and it concludes that the in-

terim operating license proposal is a "remedy without a reason."

That full committee report was approved October 7 by a voice vote. I am proud that the report was passed without dissent and with the active support of several members of the minority, including ranking minority member FRANK HORTON and ranking subcommittee member JOEL DECKARD. That report is being filed and should be available in printed form prior to consideration of our amendment. I urge my colleagues to read that report prior to casting your votes on this amendment. If you keep an open mind about the facts and read this report, I believe you will conclude, as we have, that this interim operating power is an inappropriate device and should be removed from this bill. I will be saying more about our amendment as the week goes on, but I strongly urge careful consideration of the Government Operations Committee report entitled "Licensing Speedup, Safety Delay: NRC Oversight" and I ask for your support for our amendment to H.R. 2330. ●

● Mr. DANNEMEYER. Mr. Chairman, I rise in support of H.R. 4255, the compromise substitute between the Energy and Interior Committee versions of H.R. 2330, the original bill to reauthorize the Nuclear Regulatory Commission. The most important policy-related changes incorporated in the measure before the House relate to the licensing process for nuclear powerplants. While I would have preferred the stronger provisions in the bill as reported from the Energy and Commerce Committee, the compromise nonetheless moves in the direction of addressing the problem posed by excessive delays in the regulatory process. Specifically—

The bill authorizes, but does not require, the NRC to grant interim operating licenses in advance of the completion of the hearing process, but only in carefully defined situations.

The bill overturns the Sholly Federal court case wherein a district court ruled that public hearings would be required even for routine, technical amendments to plant licenses of a non-safety-related nature.

Finally, the bill requires the NRC to report to Congress within 6 months of the date of enactment of the bill with a comprehensive study on improvements to the licensing process. Upon receipt of the study, the Congress must move expeditiously to enact major and substantive changes in the regulatory process to reduce the time it takes at present to bring a new nuclear powerplant on line.

I want to take this opportunity to relate to my colleagues the case histories of the Diablo Canyon and San Onofre nuclear facilities as examples of the problems of the present regulatory process. Both projects will provide substantial energy for my region of southern California. Nuclear-gener-

ated power is especially important to California because of the pollution problems of the Los Angeles Basin, which make fossil-fuel-fired generating plants environmentally unacceptable.

Pacific Gas & Electric Co. first received permission from State, local and Federal officials to move forward with Diablo Canyon over 14 years ago. The two-unit facility will generate more than 2 million kilowatts of electricity when fully operational, a 20-percent increase in the capacity of the present system. This level of power output is the equivalent of 55,000 barrels of oil per day, or 20 million barrels per year. This quantity of oil represents fully 1 percent of our daily consumption of imported petroleum. The financial savings from the power to be generated by Diablo Canyon on this basis total \$640 million per year.

Despite the need for this facility, the Columbia Institute for Political Research reported in August of this year in a fact sheet on Diablo Canyon that an application for an operating license for the two reactors has been pending since 1973. Yet, the NRC does not project issuance of an operating license for unit 1 until at least January 1982, if not later. Even if the operating license is issued next year, it will have been 9 years since the first filing and 8 years after the hearing process first began. Unit 1 was completed in January of this year and Unit 2 has been complete since June. The weight of the regulatory process is only partially conveyed by the fact that the hearing record transcript now spans over 100,000 pages. The Columbia Institute study points to several factors as contributing to unnecessary delay: NRC staff unpreparedness, failure to impose discipline on hearing boards, and inadequate control of activities not critical to the path of license issuance.

The study goes on to state,

The cost of the delay to the consumers of California will be at least \$500 million, and it could be much higher. These delays also could impair the reliability of the region's electrical generating capacity and affect the area's economic vitality.

The Department of Energy estimates that the cost of replacement power alone is \$333 million due to these delays. The utility estimates that the costs of delay for both units 1 and 2, reach \$83 million per month, or around \$1 billion per year, when capital costs are included. All of this at a time when the residents of California are paying fully 30 percent more than the national average for our electrical needs. The report concludes that the extent of the delays cannot be justified on the grounds of safety or environmental concerns.

The story is the same for the San Onofre facility in my area.

On April 9, 1981, the Southern California Edison Co. testified before the Interior and Insular Affairs Subcommittee on Energy and the Environ-

ment in connection with that panel's hearings on NRC operating licenses. The utility identified specific problems with the regulatory process that parallel the problems and recommendations of the Columbia study on Diablo Canyon. The estimates are that delays at San Onofre for units 2 and 3 total \$3 million in costs per day; \$500,000 in carrying costs such as interest on borrowed funds, and \$1 million per day for each unit in replacement costs for energy that could be generated by San Onofre. A Department of Energy report issued in July 1980 calculated that the energy savings from the two new units will be 77,100 barrels of imported oil per day—a \$3 million per day savings for the consumers of southern California.

The testimony detailed a 25-month aggregate licensing delay. Within the past year alone, the San Onofre project has been rescheduled twice. Clearly, any delay due to unnecessary regulatory business delays the realization of the substantial energy and financial savings—not to mention environmental benefits—of these nuclear power facilities.

Accordingly, the modest regulatory reforms in the bill now before us must be adopted without further weakening changes through amendments. In fact, more comprehensive changes are in order, and are in fact, quite "doable".

Just last month, the dean of the John F. Kennedy School of Government at Harvard University submitted a report prepared under contract to the President's Nuclear Safety Oversight Committee entitled, "Governance of Nuclear Power." In it, the following statement appears in the concluding section,

In general, proposals to streamline the licensing process seem to be right and reasonable. By reducing unnecessary red tape and freeing regulatory resources to focus on unresolved issues, these efforts could cut a 12-year process by as much as one-third. (In France, the total elapsed time from decision to operation of a standard plant was 6 years for the reactors at the Tricastin plant—without evident sacrifice of safety.) Such a result could improve the cost and safety performance of the enterprise, now and in the future.

In conclusion, Mr. Chairman, I strongly believe that the action we will take with the passage of H.R. 4255 must be only the first step in the process of nuclear regulatory reform in the 97th Congress. ●

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Mr. MOORHEAD. Mr. Chairman, I have no further requests for time, and I reserve the balance of my time.

Mr. CLAUSEN. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. UDALL. Mr. Chairman, I yield back the balance of my time.

Mr. MOORHEAD. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time has expired.

Mr. UDALL. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. BINGHAM) having assumed the chair, Mr. GLICKMAN, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2330) to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes, had come to no resolution thereon.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 3364

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent that my name be removed from the list of cosponsors of H.R. 3364.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

ISOLATE AN INTERNATIONAL OUTLAW

(Mr. WYDEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. WYDEN. Mr. Speaker, when I saw Libyan leader Muammar Qadhafi celebrating at the death of Egyptian President Anwar Sadat, I was sickened.

I was sickened even more when I contemplated that the United States has tolerated—even patronized—Colonel Qadhafi, despite international thuggery.

It occurred to me, as I believe it has to millions of Americans, that the time has come for the United States to do more than wring its hands. The time has come for us to move to isolate Qadhafi from the world community of responsible nations.

That he is an international outlaw is beyond question.

Qadhafi has sent hit squads of assassins to kill not only Libyan exiles—and potential rivals, but American diplomats and foreign heads of state.

Qadhafi maintains some 16 training camps to educate and nurture terrorism to export throughout the world. He has harbored some of the world's most notorious outlaws.

Qadhafi has interfered in the internal politics of neighboring nations, such as Chad and now the Sudan, for the sole purpose of fomenting instability and chaos.

And if no direct link between Qadhafi and President Sadat's assassination is uncovered, it is safe to say at least Qadhafi encouraged the assassination.

9/28/81

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Nunzio J. Palladino, Chairman
Victor Gilinsky
Peter A. Bradford
John F. Ahearne
Thomas M. Roberts



In the Matter of
COMMONWEALTH EDISON COMPANY
(Dresden Nuclear Power Station,
Unit 1)

Docket No. 50-10

SERVED SEP 28 1981

MEMORANDUM AND ORDER
(CLI-81-25)

This matter involves a request for hearings by several persons and groups (Petitioners) 1/ with regard to Commonwealth Edison's (CECo) proposal to chemically decontaminate Dresden, Unit One. On January 8, 1981, the Commission asked the staff, CECo and the petitioners to brief three questions regarding the scope and format of any hearing on this proposal. Briefs have been received from all participants and are summarized below. For the reasons discussed below, the Commission has decided to establish an Atomic Safety and Licensing Board to determine whether the petitioners have standing, and has provided guidance on the conduct of a hearing should the Licensing Board determine that one is required.

1/ Petitioners are Citizens for a Better Environment, Prairie Alliance, Illinois Safe Energy Alliance, Kay Drey, Bridget Rorem, and Marilyn Shineflug.

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I.

A. Background

On December 19, 1974, CECO submitted a proposal for the chemical decontamination of the interior surfaces of the Dresden 1 Primary Coolant System. The NRC staff completed its review of that proposal on December 9, 1975 and concluded that the program could be conducted with reasonable assurance that the health and safety of the public would not be endangered. Specifically, the staff found:

The chemical decontamination of the Dresden 1 primary coolant system will be performed entirely within a closed decontamination system. The system has been designed so that no chemical or radiological waste will be released to the environment from the decontamination process. All waste generated in the process will be either solidified for offsite burial at a licensed burial ground or reprocessed for reuse onsite. The solid wastes produced are similar in type and quantity to those handled routinely at the site. Therefore, no adverse environmental impacts are anticipated due to the decontamination...

We have concluded, based on the considerations discussed above, that:

(1) because the chemical cleaning does not involve a significant increase in the probability or consequences of accidents previously considered and does not involve a significant decrease in a safety margin, the cleaning project does not involve a significant hazard consideration; (2) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner; and (3) such activities will be conducted in compliance with the Commission's regulations and the issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public.

While the staff noted that its review had identified three items as unresolved, the staff authorized initiation of the chemical decontamination program in anticipation that these items would be

successfully resolved as specified. 2/

On November 14, 1979, CECO requested two changes to its Appendix A Technical Specifications in order to support the chemical cleaning of the Dresden 1 primary system. These changes concern (1) deletion of the requirement to maintain primary containment integrity during the chemical cleaning outage when all fuel is removed from the reactor and containment; and (2) exclusion of the radioactive liquid storage tanks which are inside seismically qualified structures from the above grade storage curie limitation. On July 8, 1980, Petitioners requested a hearing on the environmental impact statement related to decontamination

2/ These items and the manner in which they were to be completed follow:

1. The testing program will be completed and the results submitted for the review and approval of the NRC staff prior to performing the proposed chemical cleaning.
2. A pre-service inspection program for the primary coolant boundary will be formulated and submitted for our review and approval prior to returning the reactor to service.
3. Post-cleaning surveillance program which includes additional surveillance specimens and a specimen withdrawal and examination schedule will be submitted for our review and approval prior to returning the reactor to service.

By early 1980, CECO had completed satisfactorily the three open items.

of Dresden 1 3/ and "on the application for amendment to CECo's operating license for Dresden 1, necessary for the said decontamination."

On January 8, 1981, the Commission asked the staff, CECo, and Petitioners to brief three questions regarding the scope and format of any hearing on this proposal.

The participants' responses to the Commission's questions are summarized below.

Question (a):

What, if any, license modifications in addition to the two Technical Specification changes sought by CECo are required for decontamination?

3/ On March 19, 1979, Ms. Kay Drey requested that an environmental impact statement be prepared on the decontamination of Dresden 1. On September 20, 1979, the Illinois Safe Energy Alliance requested public hearings on the decontamination of Dresden 1 based on the lack of assurance that the NRC would issue an environmental impact statement. These requests were treated as requests for action under 10 CFR 2.206. By petition dated March 13, 1980, Mr. Robert Goldsmith, on behalf of Citizens for Better Environment, and Prairie Alliance supported Ms. Drey's petition requesting preparation of an environmental impact statement. On June 26, 1980, the Director issued his decision under 10 CFR 2.206. Although the results of the staff review indicated that the chemical decontamination of Dresden 1 would not significantly affect the quality of the human environment, the Director decided that an environmental impact statement should be prepared due to the significant interest and concern expressed by members of the public. The Director thus denied requests for hearings by the Illinois Safe Energy Alliance on the ground that these requests were premised on the failure of the NRC to prepare an environmental impact statement. This environmental impact statement was issued on October 17, 1980. On July 8, 1980 Citizens for a Better Environment, Prairie Alliance, Ms. Kay Drey, Ms. Bridget Rorem, Illinois Safe Energy and Ms. Marilyn Shineflug again requested a hearing on the impact statement as well as on the amendments necessary for decontamination. This request is dealt with in this Memorandum and Order.

Staff states that it will seek a license modification which will provide reasonable assurance that arrangements exist for the acceptance of solidified decontamination waste at either the Beatty, Nevada or Hanford, Washington low-level waste burial sites. In addition, staff may seek a license amendment for a program of post-decontamination inspection of metal specimens (coupons) which will be placed in various parts of the primary system prior to decontamination. However, staff does not expect to seek a license modification for the selection and placement of those metal specimens. Staff does not expect to seek any other license modification prior to decontamination. CECO adopted staff's position on this issue. Petitioners did not suggest any license amendments at this time because they do not want to prejudice their ability to file contentions if they are required to submit an additional petition to intervene.

Question (b):

What, if any, license modifications are required for a resumption of operation?

Staff interprets this question to be directed to license modifications required for a resumption of operation on account of the ~~chemical~~ decontamination and not to other license modifications required ~~for~~ start up but not related to decontamination. At this time staff expects that no further license modifications will be required because it believes that the post-decontamination monitoring requirements do not satisfy the criteria for imposing technical specifications. CECO agrees with staff's position, but emphasizes that it would be impracticable to address restart issues in a hearing on the chemical decontamination because of the uncertainties introduced by the

large number of other pending actions on modifications required for restart but unrelated to decontamination. 4/ Petitioners state that they will probably not raise specific technical specifications or other license modifications for return to commercial operation. However, they may wish to raise issues regarding the environmental implications of the decontamination upon Dresden's capability to return to service and the evaluation of alternatives to the return to service.

Question (c):

If license modifications are required for both decontamination and return to operation, how should the hearing be structured?

Staff believes that a prior hearing is not required because the proposed chemical decontamination does not present a significant hazards consideration. Accordingly, staff believes that any pre-amendment hearing would be at the discretion of the Commission and, thus, could be structured at the discretion of the Commission. If a hearing is granted, staff recommends that the petitioners should be required to participate jointly as a single party. Moreover, because five of the six petitioners have not established their standing on the face of their petition, they should be directed to set forth their interests with particularity to allow a determination of their standing to participate. ~~As to the scope of~~ any hearing, staff would include those matters directly related to the environmental impact and safety of the proposed decontamination. This would include an inquiry into whether there is

4/ These include review of the high pressure coolant injection design, modification of the reactor protection system, installation of a reactor recirculation pump trip, environmental qualification of equipment, implementation of applicable TMI action plan requirements, and modifications arising from the Systematic Evaluation Program.

reasonable assurance that follow-up requirements can be developed to monitor the effects of the decontamination on the integrity of materials in Dresden, Unit One. However, such inquiry should not require an examination of post-decontamination technical specifications, if any.

CECo believes that the Commission has already decided to conduct a hearing, and suggests that if Sholly v. NRC (D.C. Cir. Nos. 80-1691, 80-1783, and 80-1784, filed Nov. 19, 1980) is reversed, the chemical decontamination can be initiated prior to the end of that hearing because staff has made a determination of no significant hazards consideration. As to the scope of the hearing, CECO believes it should address the chemical cleaning and necessarily related issues including waste disposal and post-cleaning follow-up requirements. In addition, they suggest that since an environmental impact statement has been prepared, it should be presented at the hearing. However, CECO believes there will be no need to discuss alternatives if the Licensing Board initially finds that the proposed decontamination will have no significant impact on the human environment and also finds that the proposal does not give rise to unresolved conflicts concerning alternative uses of available resources. Finally, CECO believes that the decontamination should be heard separately from the restart because the complexity of other modifications would render impracticable the consideration of any restart issues at this time.

Regarding procedural details, CECO agrees that petitioners should be consolidated as a single party. Moreover, because one petitioner has established standing on the face of her petition, CECO believes it would be redundant and unnecessary to require the other petitioners to establish their interest in the proceeding.

Petitioners also recommend that restart be left for a separate proceeding, and would limit this proceeding to license modifications and all environmental issues related to decontamination.

II.

The following discussion provides guidance on the conduct of any hearing which may be required.

Procedural Matters

A. Timing of Hearing

A hearing is required if the petitioners satisfy the Commission's criteria for intervention. Petitions for hearings have been received, and Section 189a. of the Atomic Energy Act of 1954, as amended ("Act"), provides that the Commission shall conduct a hearing at the request of persons whose interest may be affected. If the petitioners are found to have standing and come forward with at least one litigable contention, the only remaining question is whether or not that hearing must be concluded prior to initiation of the proposed decontamination. Staff and CECO believe that a prior hearing is not required because staff has made a finding of no significant hazards consideration. Petitioners contend that staff's finding is immaterial because, in their view, Section 189a. of the Atomic Energy Act of 1954 requires the NRC to provide a prior hearing if it is requested.

The Commission has interpreted Section 189a. of the Atomic Energy Act of 1954, as amended, to provide that neither prior notice nor a prior hearing is required in situations where staff makes a "no significant hazards consideration" finding. In this case, the staff has

not yet issued its determination of whether the proposed technical specification changes raise a significant hazards consideration. However, unless there is a reversal of the staff's previous indication that approval of the chemical decontamination does not involve a significant hazards consideration, an adjudicatory hearing need not be held prior to issuance of these amendments. We understand that the staff has prepared an updated Safety Evaluation Report. By copy of this Order, the Director, Office of Nuclear Reactor Regulation is directed promptly to issue a decision on whether the proposed amendments present "no significant hazards consideration" and to include in that decision all supporting documentation.

The Licensing Board, which will be established pursuant to this Order, need not wait for the Director to issue his decision before initiating a proceeding to determine which petitioners, if any, have standing. If the Board determines that some of the petitioners have satisfied the intervention criteria, it shall initiate a hearing. However, if the Director determines that the proposed licensing modifications present "no significant hazards consideration," then the decontamination may be initiated prior to the conclusion of any hearing.

6. Parties

The primary issue here is the treatment of the petitioners. Commission practice requires each party to separately establish standing. 10 CFR 2.714. Intervention may also be granted as a matter of discretion according to specific criteria. ^{5/} Participation by a person who is not a party is at the discretion of the presiding

^{5/} Portland General Electric Co., et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976).

officer and can only take the form of a limited appearance. 10 CFR 2.715. Moreover, the rules do not provide for the consolidation of petitioners who are not admitted as parties for the purposes of participation as a single party. The rules provide for the consolidation of parties only. 10 CFR 2.715a. Accordingly, the Licensing Board shall determine which petitioners have standing and shall then consolidate those petitioners for treatment as a single party.

Scope of the Hearing

A. Matters Unrelated to Decontamination

If a hearing is initiated, the Commission believes that only decontamination related matters should be considered. As CECO states, many other modifications must be completed before the plant can return to operation. The Commission did not intend to address these other matters in this context.

B. Scope of the Hearing

The Commission believes that the scope of any hearing should include the proposed license amendments, and any health, safety or environmental issues fairly raised by them. We believe that this scope is consistent with the requirements of the Atomic Energy Act and NRC Commission. See Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-516, 12 NRC 419, 426 (1980). As a practical matter, this formulation of the scope may result in the same scope of proceeding as the staff's directly related test, but will avoid arguments over the "directness" of the relation between the proposal and an identified safety issue. Similarly, the proposed formulation avoids arguments over whether a safety issue is "necessarily related" to the proposal.

C. License Modifications

The scope of a hearing must be broad enough to include any issues related to the proposed license modifications. However, because we believe that the hearing should be limited to decontamination related issues, there is no need to now consider license modifications which may be required for a resumption of operation. Regarding the need for license amendments to conduct the decontamination, the participants have identified only the two Technical Specification changes sought by CECO and a license requirement regarding arrangements for waste disposal contemplated by the staff. The scope of any hearing held on this matter will encompass these proposed license changes. In addition, the Commission expects the Licensing Board to follow usual practice regarding consideration of the need for other license modifications.

Request for Hearing on the EIS

In response to the request for a hearing on the EIS, neither the Atomic Energy Act, the National Environmental Policy Act, ^{6/} nor the Commission's regulations require that there be a hearing on an environmental impact statement. Thus, a Commission decision to hold public hearings on this document would be made pursuant to 10 CFR 2.104, indicating that the Commission had found that such hearings are required in the public interest. The Commission does not so find.

Given that the staff has concluded that the decontamination project will have no significant impact on the human environment, members of the NRC staff held a public meeting on the Draft Environmental Statement in

^{6/} Vermont Yankee Nuclear Power Corp. v. NRC, 435 U.S. 519, 548 (1978).

Morris, Illinois on August 14, 1980, and the Final Environmental Statement reflected the comments from that meeting as well as all of the written comments submitted to the NRC, the Commission finds that the public interest does not require a hearing on the Final Environmental Statement.

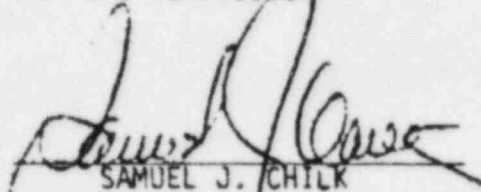
III.

Pursuant to the Atomic Energy Act of 1954, as amended, and Part 2 of the Commission's rules of practice, the Commission directs the Chairman of the Atomic Safety and Licensing Board Panel to appoint an Atomic Safety and Licensing Board to rule on the Petitions for Public Hearings filed by the Petitioners. If that Board determines a hearing is required, the Board is instructed to conduct an adjudicatory hearing in accordance with 10 CFR Part 2, subpart G and the guidance provided in this Memorandum and Order.

Moreover, pursuant to 10 CFR 2.785(a)(2), the Commission directs the Chairman of the Atomic Safety and Licensing Appeal Panel to appoint an Atomic Safety and Licensing Appeal Board for this proceeding, and authorizes that Board to exercise the authority and perform the functions which would otherwise have been exercised and performed by the Commission in this proceeding, subject to the possibility of later review pursuant to 10 CFR 2.786. The Appeal Board will be designated pursuant to 10 CFR 2.787 and notice as to membership will be published in the Federal Register.

It is so ORDERED.

For the Commission



SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.

this 28th day of September, 1981.

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RULEMAKING ISSUE
(Notation Vote)

August 28, 1981

SECY-81-366A

For: The Commissioners
From: William J. Dircks
Executive Director for Operations

Subject: DRAFT REGULATIONS TO IMPLEMENT ANTICIPATED
LEGISLATION ON (1) INTERIM OPERATING AUTHORITY
AND (2) NO SIGNIFICANT HAZARDS CONSIDERATION
(THE "SHOLLY AMENDMENT")

Purpose: To inform the Commission of draft regulations to
implement anticipated legislation, now in the
reported NRC FY 1982 authorization bills, which
would, among other things, authorize the NRC to
(1) issue interim operating licenses and (2) issue
requested operating license amendments, involving
no significant hazards consideration, prior to
the conduct of any hearing.

Discussion: There are now pending in the Congress NRC author-
ization bills, containing the provisions discussed
above, much of the substance of which the Commis-
sion previously requested in legislative proposals.
The Committee reports on the bills encourage the
Commission to begin preparing its implementing
regulations even prior to the enactment of the
provisions. (The legislative background in this
regard is in Enclosure 1 and Tab A to Enclosure 2).
We have, therefore, prepared draft regulations to
implement the anticipated legislation even before
its passage.

Contacts:
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RULEMAKING ISSUE
(Affirmation)

August 28, 1981

SECY-81-366A

For: The Commissioners

From: William J. Dircks
Executive Director for Operations

Subject: DRAFT REGULATIONS TO IMPLEMENT ANTICIPATED
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The Commission could, under its interim operating license authority, authorize the fuel loading, testing, and operation (at a specific power level) of a nuclear power reactor. In practical terms, a utility may petition the Commission to grant an interim operating license when its application for the final operating license is the subject of a contested hearing. The statutory procedures for the use of this authority are set forth in the implementing amendments to Parts 50 and 2 in Enclosure 2. These procedures are fully described in the explanatory statement (at the beginning of Enclosure 2) which accompanies the amendments.

The regulations implementing the "Sholly Amendment" are in Enclosures 3 and 4. Enclosure 3 gives the standards for determining whether an amendment to a license involves no significant hazards consideration. Enclosure 4 gives the criteria for providing or dispensing with prior notice and public comment on such a determination, as well as the procedures for the required consultation with the State in which the facility is located. A full description of these amendments appears at the beginning of each of these enclosures.

Recommendations:

That the Commission:

- (a) Review the rules in Enclosures 2, 3, and 4 and advise the staff of its comments.
- (b) Note that:
 1. When the bill on interim operating licenses and no significant hazards consideration is enacted into law, the staff will inform the Commission. If the legislation requires no substantive change in the draft regulations in this paper, the staff will so inform the Commission and request the Secretary to schedule them for approval at an early affirmation/discussion session. If, however, the legislation as enacted requires substantive changes in the draft regulations, the staff will submit revised regulations to the Commission for approval at an early affirmation/discussion session. In any event, the enclosures to SECY-81-366 will be updated and resubmitted to the Commission when the legislation is

enacted. (A draft regulation on standards for determining whether an amendment to a license involves no significant hazards consideration was published previously as a proposed rule in the Federal Register (45 F.R. 20491, March 28, 1980). See SECY-79-660. Enclosures 3 and 4 to this paper supersede SECY-81-366, the staff's earlier proposed final regulation on the standards for a finding of no significant hazards consideration.)

2. As now drafted, the authority under the amended Section 192, with respect to interim operating licenses, would expire on December 31, 1983.
3. The draft regulations on interim operating licenses and no significant hazards consideration have been prepared as final rules which would be made effective 30 days after publication in the Federal Register.
4. The draft regulation on criteria for public notice and comment on a proposed determination that a license amendment involves no significant hazards consideration and procedures for State consultation has been prepared as a proposed rule which would be issued for 30-days' public comment.
5. The background statement which accompanies the draft regulation on interim operating licenses includes a Commission finding that general notice of proposed rulemaking and public participation therein are unnecessary since the regulations implement the new statutory provisions in Pub.L. 97-XXX, and that, accordingly, good cause exists for making them effective 30 days after the date of publication in the Federal Register.
6. The draft regulation on interim operating licenses would invite all interested persons who desire to submit written comments or suggestions on the amendments to do so within 30 days after the date of publication in the Federal Register.

7. An analysis of the impact of the legislation, if any, on the resources of the Commission and the affected persons will be provided to the Commission when the legislation is enacted, as will a revised value-impact statement (see Enclosure F of SECY-81-366) and a revised analysis of the factors contained in the criteria for the periodic systematic review of regulations (Enclosure H of SECY-81-366).
8. The Director of the Office of Nuclear Reactor Regulation will be directed to provide the Committee on Environment and Public Works with a monthly report, requested by the Committee, on the Commission's determinations on no significant hazards consideration.
9. Under 10 CFR 51.5, preparation of an environmental impact statement, or a negative declaration, or an impact appraisal is not necessary, since these regulations are nonsubstantive and insignificant from the standpoint of environmental impact.
10. The draft regulations contain no new or amended requirements for recordkeeping, reporting, plans or procedures, applications, or any other type of information collection.
11. The draft regulations contain the requisite Regulatory Flexibility Act certification.
12. Appropriate Congressional Committees will be informed of the rules after the Commission has acted, and a public announcement will be issued when the rules are filed with the Office of the Federal Register.
13. All known interested persons will receive by direct mail a copy of the notices of final and proposed rulemaking.
14. The Chairman of the Atomic Safety and Licensing Appeal Panel and the Chairman

of the Atomic Safety and Licensing Board
Panel concur in the recommendations of
this paper.



William J. Dircks
Executive Director for Operations

Enclosures:

1. Summary of legislative status.
2. Rule amending 10 CFR Parts 50 and 2 to implement the interim operating license authority in Pub.L. 97-xxx. Tab A - Text of section 192, as it would be amended by S. 1207, as reported.
3. Amendments to 10 CFR Parts 2 and 50 to implement the Sholly Amendment. (Standards for no significant hazards consideration determination.)
4. Amendments to 10 CFR Parts 2 and 50 to implement the Sholly Amendment (criteria for public notice and comment and procedures for State consultation).

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Wednesday, September 16, 1981.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT September 9, 1981, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an open meeting during the week of September 21, 1981. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

DISTRIBUTION

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Commission Staff Offices
Exec Dir for Operations
Exec Legal Director
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Enclosure 1

SUMMARY OF LEGISLATIVE STATUS

The Senate and House presently have before them S. 1207, as reported, (Senate Report 97-113) and H.R. 4255, (the compromise Udall-Dingell NRC authorization bill which will be taken to the House floor) respectively. They deal, in relevant part, with interim operating licensing and the so-called Sholly amendment. Either bill, if enacted, will require implementing regulations. Both the Senate and House versions of the amendment arising from Sholly v. NRC, 651 F.2d. 780 (1980), rehearing denied, 651 F.2d 792 (1980), specifically require implementation of standards on no significant hazards consideration within 90 days after passage of the legislation. Moreover, the House Committee on Energy and Commerce's report on H.R. 2330 (the earlier version of the NRC authorization bill from which H.R. 4255, the compromise bill, originates) states that "the Committee expects that the Commission will promptly act, prior to the effective date of this authorization, to establish expedited procedures . . . in connection with the issuance of any temporary operating license, . . . under the requirements of section 192 of the Atomic Energy Act." (H. Rep. 97-22 Part 2, June 9, 1981, at p. 11). Similar language in the Senate report encourages the Commission to begin preparing its proposed standards implementing the Sholly amendment "as soon as possible, even prior to the enactment of this provision." (S. Rep. 97-113, May 15, 1981, at p. 15.)

Though the Senate and House versions are not far apart, we have chosen to use the Senate version as the basis for preparing the draft regulations because it was available before H.R. 4255, the compromise bill, and, in any event,

would require somewhat more implementing regulations than H.R. 4255. If S. 1207 is enacted into law in its present form, after Congress returns in September, the enclosed draft regulations could be affirmed by the Commission, for they need only minor conforming adjustments with respect to insertion of material not now available. If H.R. 4255 is passed, again only minor changes would have to be made to these draft regulations. These could be made quickly, and the Commission could act promptly.

As regards interim operating licensing authority, the circumstances under which a utility may file a petition for such a license and the conditions under which the Commission may exercise such authority are prescribed in Section 201 of S. 1207.

S. 1207 and its accompanying legislative history clearly contemplate that the detailed procedural framework established in the legislation is a useful and needed safeguard to govern the Commission's actions in exercising the authority and to preserve for the public a meaningful right to participate in licensing decisions.

S. 1207 would effectively overrule the Sholly decision by authorizing the Commission to issue and make immediately effective an amendment to a license upon determining that the amendment involves no significant hazards consideration, even though NRC has before it a request for a hearing from an interested person. It also directs the Commission to promulgate regulations establishing:

1. Standards for determining whether an amendment to a license involves no significant hazards consideration;
2. Criteria for providing or dispensing with prior notice and public comment on such a determination; and
3. Procedures for consultation on such a determination with the State in which the facility involving the amendment is located.

The Commission already has before it standards for making no significant hazards consideration determinations (SECY-81-366 (June 9, 1981)). These standards, previously issued as a proposed rule (see SECY-79-660), can be promulgated as a final rule as specified in Enclosure 3. (Note that Enclosures 3 and 4 substitute for the final rule in SECY-81-366.) Enclosures 3 and 4 differ from the proposed Federal Register notice accompanying SECY-81-366 in that they have separated, in accordance with the intent of H.R. 4255, the standards for the making of a no significant hazards consideration determination from the criteria for providing or dispensing with prior notice and comment on such a determination.

Enclosure 2

NUCLEAR REGULATORY COMMISSION
10 CFR Parts 50 and 2
Interim Operating Licenses

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Final Rule.

SUMMARY: The Commission has adopted amendments to its regulations in 10 C.F.R. Part 50, "Domestic Licensing of Production and Utilization Facilities," and to its "Rules of Practice for Domestic Licensing Proceedings" in 10 C.F.R. Part 2, to reflect the enactment of interim operating licensing authority on _____, 1981. The new authority amended section 192 of the Atomic Energy Act of 1954, as amended (the Act) to authorize the NRC to issue interim operating licenses for nuclear power plants. Section 192, initially added to the Act on June 2, 1972, authorized the Atomic Energy Commission to issue temporary operating licenses for nuclear power reactors under certain prescribed circumstances. The authority under the original section 192 expired, however, on October 30, 1973. To the extent that the amended section 192 is in substance the same as the original section, the implementing regulations in the amendments to Parts 50 and 2 likewise are similar in substance to the now expired regulations which were published in 1972 to implement the section initially. The amendments to Parts 50 and 2 set out below are designed to conform Commission

Attention: Docketing and Service Branch. Copies of comments received on the proposed rulemaking may be examined and copied for a fee in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Thomas F. Dorian, Esq., Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492-8690.

SUPPLEMENTARY INFORMATION:

Introduction

On _____, Congress passed Pub. L. _____ to authorize appropriations for NRC and for other purposes. Among other things, the legislation directs NRC to promulgate regulations which establish (a) standards for determining whether an amendment to a license involves no significant hazards consideration, (b) criteria for providing or dispensing with prior notice and public comment on such a determination and (c) procedures for consulting on such a determination with the State in which the facility of the licensee requesting the amendment is located. The legislation also authorizes NRC to issue and make immediately effective an amendment to a license upon a determination that the amendment involves no significant hazards consideration, even though NRC has before it a request for a hearing by an interested person.

This proposed rulemaking and request for comments responds to the statutory directive that NRC expeditiously promulgate regulations for (1) providing or dispensing with prior notice and public comment on whether or not a license amendment involves no significant hazards consideration (item (b) above), and (2) providing for consultation on such a determination with the State in which the facility is located (item (c) above). The new legislation, affected prior legislation, and NRC's current regulations and practice are discussed in the statement of considerations accompanying the final regulations NRC is publishing today in this issue of the Federal Register as the first document in this separate part. The final regulations specify the standards for determining whether an amendment to an operating license or construction permit for a commercial power reactor or production or utilization facility involves no significant hazards consideration (item (a) above).

A. Criteria for Providing or Dispensing with Prior Notice and Public Comment

The statutory requirement that the Commission promulgate criteria for providing or dispensing with prior notice and public comment on whether or not a proposed license amendment involves no significant hazards consideration was explained by the Senate Committee on Environment and Public Works in its report on S.1207, the Senate bill which eventually became Pub. L. _____.

The Committee stated:

The requirement in section 301 that the Commission promulgate criteria for providing or dispensing with prior notice and public

comment on a proposed determination that a license amendment involves no significant hazards consideration reflects the intent of the Committee that, wherever practicable, the Commission should publish notice of, and provide for public comment on, such a proposed determination. The Commission has advised the Committee that in some cases the need to issue the proposed amendment will arise quickly, and failure to act on the amendment may result in the shut-down or derating of the plant. The Committee recognizes that the need to act promptly in such situations may foreclose the opportunity for prior public notice and comment. However, in all other cases, the Committee expects the Commission to exercise its authority in a manner that will provide for prior public notice and comment. (Emphasis added.) Senate Report No. 97-113, May 15, 1981, at p. 15.

The Commission has considered two alternatives in formulating proposed regulations to implement the Congressional mandate. Under the first alternative, the Commission would normally issue a notice requesting public comment, on the question of whether a request for an amendment involves no significant hazards consideration, when the amendment request is received. In addition, the licensee could make its views about the issue of no significant hazards consideration known to the Commission when it files its application. This alternative is procedurally simple and, as Congress expects, allows the public and the licensee to comment at an early stage on the no significant hazards consideration issue. In addition, this alternative provides an opportunity for the Commission's staff to analyze the comments before a determination is made on no significant hazards consideration. Its principal disadvantage is the fact that in numerous instances the staff would have to await public comments before it could make routine and simple determinations.

Under the second alternative, the Commission would notice an amendment request after its staff had made a proposed determination about no

significant hazards consideration. This alternative also complies with the Congressional intent since it allows the public to comment on the proposed determination. Its key disadvantage is that the determination may take time--this period coupled with the waiting period for public comment before the ultimate finding on the merits of the amendment itself could be made, may, in numerous instances, put the staff in the position of making the requisite safety determinations and acting on an amendment request at the 11th hour in order to avoid derating or shutting-down the plant, thereby foreclosing meaningful public comment. In addition, this alternative suffers from the appearance that the Commission's staff has prejudged the no significant hazards determination.

Based on the above considerations, the Commission proposes to select the first alternative. Accordingly, it proposes to amend its regulations in 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities" to require publication in the Federal Register of a notice of receipt of an application for an amendment to an operating license or construction permit with a request for public comment on whether the amendment request involves no significant hazards consideration, as defined in 10 CFR 50.92(b). Thirty days will normally be provided for public comment on the no significant hazards question.

If the Commission receives a request for a hearing during this comment period, the Commission would not act on the hearing request until after it has made the determination on no significant hazards consideration. If the person requesting a hearing meets the provisions for intervention called for

in 10 CFR 2.714, the Commission normally would hold a hearing only after it issues an amendment, unless it determines that a significant hazards consideration is involved. If a significant hazards consideration is involved, the Commission would issue a notice of proposed action under § 2.105, providing an opportunity for a prior hearing. The Commission may also hold a prior hearing in any case in which it finds that it is in the public interest to do so.

If the Commission receives an amendment request where the need to issue the proposed amendment arises quickly, and failure to act on the amendment may result in the shut-down or derating of the plant, it would normally proceed to publish in the Federal Register a notice of receipt for public comment on the issue of no significant hazards consideration, but would not delay its analysis of the issue to await public comments. In an extraordinary case, when it does not have time to publish a notice of receipt under § 50.91, it will publish a notice of issuance under § 2.106, as described below. In these instances, if it determines that there is no significant hazards consideration and makes the requisite safety findings, it will issue the amendment but, as noted above, a hearing, if requested, may be held after issuance of the amendment. On the other hand, if the Commission determines that there is a significant hazards consideration, it will, under § 2.105, normally provide thirty-days' prior notice of proposed action on the requested amendment in order to afford an opportunity for interested persons to request a hearing on the determination. (This notice could be issued at any time after issuance of the notice for public comment on the issue of no significant hazards consideration.)

Of course, the Commission retains its separate authority to impose amendments on licensees without prior notice and hearing if it finds that the public health, safety or interest so requires. See 10 CFR 2.202(f) and 2.204.

Under the new provisions, the Commission would, in effect, normally provide prior notice for public comment as to the issue of no significant hazards consideration on all requests for amendments to certain operating licenses and construction permits. Presently, under §2.106(a)(2) it provides notice after the fact by publishing notices of issuance for all these license amendments. In addition, it proposes to amend §2.106(a)(2) by providing for notice of issuance of an amendment only when (1) it has made a determination that an amendment request involves a significant hazards consideration and it has published a notice of proposed action under §2.105 providing an opportunity for a public hearing; or (2) it has received public comment about the issue of no significant hazards consideration on a requested amendment under the previously published notice for public comment; or (3) it has had to act quickly on the amendment request in order to avoid the shut-down or derating of the plant.

To provide a practical basis for implementing the new legislation, for amendments requested before the effective date of the final regulation on which the Commission has not acted by that date, the Commission proposes to keep its present procedures in Part 2, providing notice of proposed action and opportunity for a hearing under § 2.105, where appropriate, and notice of issuance under § 2.106. In addition, it would use the State consultation procedures, described below, for these amendment requests.

B. State Consultation

As noted above, the Commission is also required to promulgate regulations which prescribe procedures for Commission consultation with the situs State on a determination that an amendment to the facility license involves no significant hazards consideration. The Senate Committee on Environment and Public explained this requirement in its Report, cited earlier, as follows:

The requirement complements the directive in section 202 that the Commission, in determining whether an amendment involves no significant hazards consideration, shall consult with the situs State. The Committee expects that the procedures for State consultation will include the following elements:

- (1) The State would be notified of a licensee's request for an amendment;
- (2) The State would be advised of the NRC's evaluation of the amendment request;
- (3) The NRC's proposed determination on whether the license amendment involves no significant hazards consideration would be discussed with the State and the NRC's reasons for making that determination would be explained to the State;
- (4) The NRC would listen to and consider any comments provided by the State official designated to consult with the NRC; and
- (5) The NRC would make a good faith attempt to consult with the State prior to issuing the license amendment.

At the same time, however, the procedures for State consultation would not:

- (1) Give the State a right to veto the proposed NRC determination;
- (2) Give the State a right to a hearing on the NRC determination before the amendment becomes effective;
- (3) Give the State the right to insist upon a postponement of the NRC determination or issuance of the amendment; or
- (4) Alter present provisions of law that reserve to the NRC exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

In requiring the NRC to exercise good faith in consulting with a State in determining whether a license amendment involves no significant hazards consideration, the Committee recognizes that a

limited number of cases may arise when the NRC, despite its good faith efforts, cannot contact a responsible State official for purposes of prior consultation. Inability to consult with a responsible State official following good faith attempts should not prevent the NRC from making effective a license amendment involving no significant hazards consideration, if the NRC deems it necessary to avoid the shut-down of a power plant. Id., at p. 16.

The Commission believes that the Committee's explanation is quite specific. Accordingly, the Commission proposes to adopt the elements of the Committee's recommended procedure in this proposed rule. The Commission notes two points made by the Committee. First, though the Commission intends to give careful consideration to the comments provided to it by the affected State on the no significant hazards question, the State comments are advisory to the Commission; the Commission remains responsible for making the final administrative decision on the question. Second, State consultation does not alter present provisions of law that reserve to the Commission exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

Paperwork Reduction Act

This proposed rule contains no new or amended requirements for recordkeeping, reporting, plans or procedures, applications or any other type of information collection.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not

have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Since these companies are dominant in their service areas, this rule does not fall within the purview of the Act.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and section 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 50 is contemplated.

PART 2 -- RULES OF PRACTICE FOR
DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 reads as follows:

AUTHORITY: Secs. 161p and 181, Pub.L. 83-703, 68 Stat. 950 and 953. (42 U.S.C. 2201(p) and 2231; sec. 191, as amended, Pub.L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, as amended, Pub.L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841); 5 U.S.C. 552; unless otherwise noted. Sections 2.200 - 2.206 also issued under sec. 186, Pub.L. 83-703, 68 Stat. 955 (42 U.S.C. 2236) and sec. 206, Pub.L. 93-438, 88 Stat. 1246 (43 U.S.C. 5846). Sections 2.800 - 2.808 also issued under 5 U.S.C. 553.

2. In § 2.106, paragraph (a)(2) is revised to read as follows:^{1/}

§ 2.106 Notice of issuance.

(a) The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will cause to be published in the Federal Register notice of, and will inform the State and local officials specified in § 2.104(a) of the issuance of:

* * * * *

(2) An amendment of a license for a facility of the type described in § 50.21(b) or § 50.22 of this chapter, or a testing facility, [whether or not] where the Commission has received public comment under § 50.91, or where it has had to act quickly to avoid the shut-down or derating of the facility and has not published a notice under § 50.91, or for which a notice of proposed action has been published previously [published], if the amendment request was received after [effective date of final regulation]. If the amendment request was received before [effective date of final regulation], the Commission will provide this notice and use these information procedures, whether or not a notice of proposed action has been published previously.

^{1/} Additions are underscored and deletions are in brackets.

PART 50 -- DOMESTIC LICENSING OF
PRODUCTION AND UTILIZATION FACILITIES

3. The authority citation for Part 50 reads as follows:

AUTHORITY: Secs. 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246 (42 U.S.C., 5841, 5842, 5846), unless otherwise noted. Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.91 also issued under Pub.L. _____, _____ Stat. _____ (____ U.S.C. ____). Sections 50.100-50.102 issued under sec. 186, 68 U.S.C. 955 (42 U.S.C. 2236). For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §50.54 (i) issued under section 161i, 68 Stat. 949 (42 U.S.C. 2201(i)), §§50.70, 50.71 and 50.78 issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)), and the Laws referred to in the Appendices.

4. A new §50.91 is proposed to be added to Part 50 to read as follows:

§50.91 Public notice and comment; State consultation.

(a) With respect to applications received after [effective date of final rule], as soon as practicable after receipt of the application for an amendment to an operating license or construction permit for a production or utilization facility which is of a type described in § 50.21(b) or § 50.22,

or which is a testing facility, the Commission will normally publish in the Federal Register a notice of receipt of the application. The notice will (i) identify the facility concerned, (ii) briefly describe the requested amendment, and (iii) provide a 30-day comment period (unless for good reason it provides a shorter period) on the question of whether, pursuant to the criteria in § 50.92(b), the amendment involves no significant hazards consideration. The Commission will consider any public comments on the no significant hazards consideration question, unless failure to act quickly on the amendment may result in the shut-down or derating of the plant. The licensee requesting the amendment can make its views, if any, about the issue of no significant hazards consideration, known to the Commission when it files its application for the amendment.

(b) The Commission will provide for State consultation on its determination about no significant hazards consideration as follows:

(1) Each licensee applying for an amendment to a construction permit or operating license shall notify the State in which the licensee's facility is located of the licensee's request for an amendment by providing to that State a copy of the application, and shall indicate on the application that it has done so.

(2) After its evaluation of the amendment request, the Commission will discuss with the State its proposed determination on no significant hazards consideration, including its reasons for making the determination. The Commission will consider any comments of the State official designated to consult with it in its determination on no significant hazards consideration. After it issues the requested amendment, the Commission will send the State a copy of the amendment, appending its evaluation.

(3) For all amendment requests received before [effective date of final rule] but not issued and for all amendment requests received after [effective date of final rule], the Commission will make a good faith attempt to consult with the State before issuing the license amendment. If failure to act quickly on the amendment, however, may result in the shut-down or derating of the plant, the Commission may dispense with prior State consultation.

(c) The State consultation procedures in paragraph (b) of this section do not give the State a right:

(1) To veto the Commission's proposed determination;

(2) To a hearing on the determination before the amendment becomes effective; or

(3) To insist upon a postponement of the determination or issuance of the amendment.

Dated at Washington, D.C. this ____ day of _____, 1981.

For the Nuclear Regulatory Commission.

Samuel J. Chilk
Secretary for the Commission

Enclosure 3

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Standards for Determining Whether License Amendments
Involve No Significant Hazards Consideration

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Final Rule.

SUMMARY: As required by the NRC Authorization Act for Fiscal Year 1982, NRC is amending its regulations to specify standards for determining whether amendments to operating licenses or construction permits for certain facilities involve no significant hazards consideration.

EFFECTIVE DATE: [Effective date is 30 days following publication in the FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Thomas F. Dorian, Esq., Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492-8690.

SUPPLEMENTARY INFORMATION:

Introduction

On _____, Congress passed Pub. L. _____ to authorize appropriations for NRC and for other purposes. Among other things, the legislation directs NRC to promulgate, within 90 days of enactment, regulations which establish (a) standards for determining whether an amendment to a license involves no significant hazards consideration, (b) criteria for providing or dispensing with prior notice and public comment on such a determination, and (c) procedures for consultation on such a determination with the State in which the facility of the licensee requesting the amendment is located.

Proposed regulations to specify standards for determining whether an amendment to an operating license or construction permit for a commercial power reactor or large production of utilization facility involves no significant hazards consideration (item (a) above) were published for comment in the Federal Register by the Commission on March 28, 1980 (45 FR 20491). The Commission is now promulgating these regulations in final form. Since the proposed rule was published before the new legislation was enacted, the final rule takes account not only of the new legislation but also the public comments received on the proposed rule. In addition, affected prior legislation as well as Commission regulations and practice are discussed as background information.

Simultaneously with the promulgation of these final standards, the Commission, as required by the new legislation, is publishing a proposed rule which

contains criteria for providing or dispensing with prior notice and public comment on a determination as to whether an amendment to a license involves no significant hazards consideration (item (b) above). Regulations are also proposed which specify procedures for consultation on such a determination with the State in which the facility of the licensee requesting the amendment is located (item (c)). These proposed rules appear in this issue of the Federal Register as the second document in this separate part.

A. Affected Legislation and Regulations

Before enactment of the new legislation, section 189a. of the Atomic Energy Act of 1954, as amended (the Act), provided that upon thirty-days' notice published in the Federal Register the Commission may issue an operating license, or an amendment to an operating license, or an amendment to a construction permit, for a facility licensed under section 103 or 104b. of the Act, or a testing facility licensed under section 104c., without a public hearing if no hearing was requested by any interested person. Section 189a. also permitted the Commission to dispense with such thirty-days' notice and Federal Register publication with respect to the issuance of an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration.

The Commission's regulations implementing section 189a. with respect to no significant hazards consideration are contained in 10 CFR Parts 2 and 50, "Rules of Practice for Domestic Licensing Proceedings" and "Domestic Licensing of Utilization Facilities," respectively. The regulations

provide for prior notice of proposed action on an application for an amendment when a no significant hazards consideration determination is not made and provide opportunity for interested members of the public to request a hearing. See 10 CFR 2.105(a)(3) and 50.91. Hence, if a requested license amendment is found to involve a significant hazards consideration, the amendment will not normally be issued until after any required hearing is completed.

In addition, § 50.58(b) provides for thirty-days' notice and opportunity for a hearing on an application for a construction permit for a production, utilization or testing facility, for an operating license, or for an amendment to a construction permit or operating license. A hearing after the notice is required only on (a) an application for a construction permit or (b) on an operating license or an amendment to a construction permit or operating license, when requested by a person whose interest may be affected. The provision also provides that if the Commission determines that no significant hazards consideration is presented by an application for an amendment to a construction permit or operating license, it may dispense with the notice. Thus, a determination that a proposed license amendment does or does not present a "significant hazards consideration" significantly affects the public hearing and notice requirements. However, the regulations until now have not defined the term "significant hazards consideration."

The Commission's practice with regard to license amendments involving no significant hazards consideration (unless, as a matter of discretion, prior

notice was given) was to issue the amendment and then publish in the Federal Register a notice of issuance. See 10 CFR 2.106(a). In such cases, interested members of the public who wished to object to the amendment and request a hearing could do so, but a request for hearing did not, by itself, suspend the effectiveness of the amendment.

B. The Sholly Decision and the New Legislation

The Commission's practice of not providing an opportunity for a prior hearing on a license amendment not involving significant hazards considerations was held to be improper in Sholly v. NRC, 651 F.2d 780 (1980), rehearing denied, 651 F.2d 792 (1980), cert. granted ____ (Sholly). In that case the U.S. Court of Appeals for the District of Columbia Circuit ruled that, under section 189a. of the Act, NRC must hold a prior hearing before an amendment to a construction permit or operating license for a production, utilization or testing facility can become effective, if there has been a request for hearing (or an expression of interest in the subject matter of the proposed amendment which is sufficient to constitute a request for a hearing). A prior hearing, said the Court, is required even when NRC has made a finding that a proposed amendment involves no significant hazards consideration and has determined to dispense with prior publication in the Federal Register. At the request of the Commission and the Department of Justice, the Supreme Court has agreed to review the Court of Appeal's interpretation of section 189a. of the Act.

The Court's decision did not involve and has no effect upon the Commission's authority to order immediately effective amendments, without prior notice or hearing, when the public health, safety, or interest, or the common defense and security so requires. See, Administrative Procedure Act, § 9(b), 5 U.S.C. § 558(c), section 161 of the Act, and 10 CFR 2.202(f) and 2.204. Similarly, the Court did not alter existing law with regard to the Commission's pleading requirements, which are designed to enable the Commission to determine whether a person requesting a hearing is, in fact, an "interested person" within the meaning of section 189a.; that is, whether the person has demonstrated standing and identified one or more issues to be litigated. See, BPI v. Atomic Energy Commission, 502 F.2d 424, 428 (D.C. Cir. 1974), where the Court stated that, "Under its procedural regulations it is not unreasonable for the Commission to require that the prospective intervenor first specify the basis for his request for a hearing."

However, NRC believed that legislation was needed to change the result reached by the Court in Sholly because of the implications of the requirement that NRC grant a requested hearing before it could issue a license amendment involving no significant hazards consideration. Since most requested license amendments involve no significant hazards consideration and are routine in nature, hearings on such amendments could result in unnecessary disruption or delay in the operations of nuclear power plants and could impose unnecessary regulatory burdens upon NRC and the nuclear industry that are not related to significant safety matters. Subsequently, on March 11, 1981, the Commission submitted proposed legislation to Congress (introduced as S.912) that would expressly authorize NRC to issue a license amendment

involving no significant hazards consideration before holding a hearing requested by an interested person.

The Congressional response is contained in Sections ____ and ____ of Pub. L. _____. Specifically, in pertinent part, Section [202] of that law amends section 189a. of the Act by adding the following with respect to license amendments involving no significant hazards consideration:

The Commission is authorized to issue and to make immediately effective an amendment to a license upon a determination by the Commission that the amendment involves no significant hazards consideration, notwithstanding the pendency before it of a request for a hearing from any person. In determining under this subsection whether an amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility is located. The authority under this subsection to issue and to make immediately effective an amendment to a license shall take effect upon the promulgation by the Commission of standards for determining whether an amendment to a license involves no significant hazards consideration.

Section [301] of Pub. L. _____ provides that:

For the purpose of implementing the amendment to section 189a. of the Atomic Energy Act of 1954 contained in section 202 of this Act, the Nuclear Regulatory Commission, within ninety days of enactment of this Act, shall promulgate regulations establishing standards for determining whether an amendment to a license involves no significant hazards consideration, criteria for providing or dispensing with prior notice and public comment on such determinations, and procedures for consultation on such determinations with the State in which the facility is located.

Thus, as noted above, the legislation authorizes NRC to issue and make immediately effective an amendment to a license upon a determination that the amendment involves no significant hazards consideration, even though NRC

has before it a request for a hearing from an interested person. At the same time, however, the Senate Committee on Environment and Public Works, in its report on S. 1207, the Senate bill, made it clear that it expects NRC to exercise its authority under section [202] "only in the case of amendments not involving significant safety questions." See Senate Report No. 97-113, May 15, 1981, at p. 14. Moreover, the Committee stressed

its strong desire to preserve for the public a meaningful right to participate in decisions regarding the commercial use of nuclear power. Thus, the provision does not dispense with the requirement for a hearing, and the NRC, if requested [by an interested person], must conduct a hearing after the license amendment takes effect.
Id.

It should be also noted that Section [301], in pertinent part, separates the standards for determining whether an amendment involves no significant hazards consideration (now used with respect to prior noticing and opportunity for hearing) from the criteria for providing or dispensing with prior notice and public comment on this determination.

In directing NRC to promulgate the regulations within 90 days after enactment, the Senate Report notes the following:

Recognizing that the rulemaking process often can take a significant period of time, the Committee encourages the Commission to begin preparing its proposed standards as soon as possible, even prior to enactment of this provision. In that regard, the Committee notes that the Commission has already issued for public comment rules including standards for determining whether an

amendment involves no significant hazards consideration. [45 FR 20491, March 28, 1980] The Committee believes that the Commission should be able to build upon this past effort, and it expects the Commission to act expeditiously in promulgating the required standards within the time specified in section 301. Id., at p. 15.

Therefore, the Commission is promulgating as a final rule the proposed standards for determining whether an amendment to a license involves no significant hazards consideration. Simultaneously, the Commission is publishing for thirty-days' comment (as mentioned before) a proposed rule to establish (a) criteria for providing or dispensing with prior notice and public comment on such a determination and (b) procedures for consulting the requisite State on such a determination.

C. Final Rule on Standards for Determining Whether an Amendment to an Operating License or Construction Permit Involves No Significant Hazards Consideration

The Commission's final rule on standards for determining whether an amendment involves no significant hazards consideration completes its actions on the notice of proposed rulemaking (discussed above), which was issued in response to a petition for rulemaking (PRM 50-17) submitted by letter to the Secretary of the Commission on May 7, 1978, by Mr. Robert Lowenstein. The petitioner requested that 10 CFR Part 50 of the Commission's regulations be amended with respect to the procedures for issuance of amendments to operating licenses for production and utilization facilities.

The petitioner's proposed amendments to the regulations would have required that the staff take into consideration (in determining whether a proposed

amendment to an operating license involves no significant hazards consideration) whether operation of the plant under the proposed license amendment would (1) substantially increase the probability or consequences of a major credible reactor accident or (2) decrease the margins of safety substantially below those previously evaluated for the plant and below those approved for existing licenses. Further, the petitioner proposed that, if the staff reaches a negative conclusion as to both of these standards, the proposed amendment must be considered not to involve a significant hazards consideration.

In issuing the proposed rule, the Commission sought to improve the licensing process by specifying in the regulations standards as to the meaning of "no significant hazards consideration." These standards would apply to amendments to operating licenses, as requested by the petition for rulemaking, and also to construction permits, to whatever extent considered appropriate. In the statement of considerations which accompanied the proposed rule, the Commission explained, however, that it did not agree with the petitioner's proposed standards because of the limitation to "major credible reactor accidents" and the failure to include accidents of a type different from those previously evaluated.

During the past several years the Commission's staff has been guided in reaching its determinations with respect to "no significant hazards consideration" by staff standards and examples of amendments likely to involve, and not likely to involve, significant hazards considerations. These have proven useful to the staff, and the Commission employed them in developing

the proposed rule. The notice of proposed rulemaking contained revised standards to be incorporated into Part 50, and the statement of considerations contained examples of amendments to a construction permit or operating license that are considered likely and not likely to involve a significant hazards consideration. It should be noted that the examples are directly applicable to operating power reactors and only indirectly applicable to construction permits and production facilities. The standards proposed were whether the license amendment would (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any evaluated previously, or (3) involve a significant reduction in a margin of safety.

Nine individuals submitted comments regarding the proposed amendments. The comments are part of the public record and may be examined at and copied for a fee at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. A summary of and response to the comments is available for examination and copying for a fee at the Public Document Room.

A number of commenters recommended, in regard to the second criterion in the proposed rule, that a threshold level for accident consequence (for example, the limits in 10 CFR Part 100) be established to eliminate insignificant types of accidents from prenoticing. This comment was not accepted. Setting a threshold level for accident consequence could eliminate a group of amendments with respect to accidents which have not been previously evaluated or

which, if previously evaluated, may turn out to have more severe consequences than previously evaluated.

It is possible, for example, that there may be a class of license amendments sought by a licensee which, while designed to improve or increase safety may, on balance, involve a significant hazards consideration because they result in operation of a reactor with a reduced safety margin due to other factors or problems (i.e., the net effect is a reduction in safety of some significance). Such amendments typically are also proposed by a licensee as an interim or final resolution of some significant safety issue that was not raised or resolved before issuance of the operating license; and, based on evaluation of the new safety issue, they may result in a reduction of a safety margin believed to have been clear and present when the license was issued. In this instance, the presence of the new safety issue in the review of the proposed amendment, at least arguably, could prevent a finding of no significant hazards consideration, even though the issue would ultimately be satisfactorily resolved by the issuance of the amendment. Accordingly, the Commission has added to the statement of considerations a new example (vii) in the class of amendments considered likely to involve a significant hazards consideration.

In addition, the Senate Committee on Environment and Public Works commented upon the Commission's proposed rule before it reported S. 1207. It stated:

The Committee recognizes that reasonable persons may differ on whether a license amendment involves a significant hazards consideration. Therefore, the Committee expects the Commission to develop and promulgate standards that, to the maximum extent practicable draw a clear distinction between license amendments

that involve a significant hazards consideration and those that involve no significant hazards consideration. The Committee anticipates, for example, that consistent with prior practice, the Commission's standards would not permit a "no significant hazards consideration" determination for license amendments to permit reracking of spent fuel pools. Id., at p. 15.

Accordingly, a new example (viii), fitting somewhat indirectly into the standards, has been added to the statement of considerations to make clear that spent fuel pool rerackings are specifically considered likely to involve a significant hazards consideration.

The Committee also stated that:

It expects that the Commission, to the extent practicable, will develop and promulgate standards that can be applied with ease and certainty. In addition, the determination of "no significant hazards consideration" should represent a judgment on the nature of the issues raised by the license amendment rather than a conclusion about the merits of those issues. Id.

This statement alluded to the point that the proposed rule contained criteria to determine whether an amendment requires prior notice which were the same as standards to determine the merits of whether a requested amendment should be granted. In this context, one commenter suggested that application of the criteria with respect to prior noticing in many instances will necessarily require the resolution of substantial factual questions which largely overlap the issues which bear on the merits of the license amendment. The implication of the comment was that the Commission at the prenoticing stage could lock itself into a decision on the merits. Conversely, the commenter stated that the staff, in using the no significant hazards consideration standards,

was reluctant to give prior notice of amendments because its determination about the notice might be viewed as constituting a negative connotation on the merits. Also of concern was the point that the Commission, under the current regulations as well as under the proposed rule, could avoid notice entirely after making a determination of no significant hazards consideration.

In any event, the legislation has made moot the comment by separating the criteria for public notice and comment on no significant hazards consideration determinations from the standards for making a determination about no significant hazards consideration. Under the legislation the Commission would not use the same criteria for notice and comment as it would for the standards on no significant hazards consideration determination. As fully described in the accompanying proposed rule on criteria for notice and comment, using the criteria, the Commission normally would prenotice for comment about the issue of no significant hazards consideration all requests for amendments; it would use the standards in § 50.92(b) to determine whether to issue a requested amendment and whether, under § 2.105, to issue notice of proposed action and provide opportunity for a hearing.

The Commission has left the proposed rule intact to the extent that the rule states standards with respect to the meaning of "no significant hazards consideration." The standards in the final rule are substantially identical to those in the proposed rule, though the attendant language has been revised

to make the determination somewhat simpler, as well as easier to use and understand.

Based on comments received, the examples of amendments likely to involve, and not likely to involve, significant hazards considerations have been revised to ensure that determinations on hazards considerations do not prejudge the ultimate safety findings, i.e., that the no significant hazards consideration determinations are not identical to the conclusions in the final staff reviews of the merits of the types of license amendments addressed by the examples. To supplement the standards that are being incorporated into the NRC regulations, the examples will be incorporated into procedures of the Office of Nuclear Reactor Regulation, a copy of which will be placed in the Commission's Public Document Room.

Examples of amendments that are considered likely to involve significant hazards considerations are listed below. (A seventh and eighth example have been added, as previously discussed.)

(i) A significant relaxation of the criteria used to establish safety limits.

(ii) A significant relaxation of the bases for limiting safety system settings or limiting conditions for operation.

(iii) A significant relaxation in limiting conditions for operation not accompanied by compensatory changes, conditions, or actions that maintain a commensurate level of safety.

(iv) Renewal of an operating license.

(v) For a nuclear power plant, an increase in authorized maximum core power level.

(vi) A change to technical specifications involving a significant unreviewed safety question.

(vii) A change in plant operation designed to improve safety but which, in fact, allows plant operation with safety margins of some significance reduced from those believed to have been present when the license was issued.

(viii) Reracking of a spent fuel storage pool.

Examples of amendments that are considered not likely to involve significant hazards consideration are listed below:

(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, the analytical methods used to demonstrate conformance with the technical

specifications and regulations are not significantly changed, and NRC has previously found such methods acceptable.

(iv) A relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a prior review and that satisfaction of the criteria are essentially self-evident.

(v) A relief granted upon satisfactory completion of construction from an operating restriction that was imposed because the facility construction was not yet completed satisfactorily. This is intended to involve only restrictions where it is essentially self-evident whether construction has been completed satisfactorily.

(vi) A change which either increases the probability or consequences of a previously-analyzed accident or reduces a safety margin but for which the results of the change are clearly within regulatory acceptance criteria: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

(vii) A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

(viii) An extension of the date, in a construction permit, for the completion of construction.

(ix) A change to a license to reflect a minor adjustment in ownership shares among co-owners already shown in the license.

Finally, as directed by the Committee on Environment and Public Works, the Commission will provide to it a monthly report on the Commission's determinations on no significant hazards consideration.

Paperwork Reduction Act

This final rule contains no new or amended requirements for recordkeeping, reporting, plans or procedures, applications or any other type of information collection.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Since these companies are dominant in their service areas, this rule does not fall within the purview of the Act.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that the following amendments to Title 10, Chapter I, Code of Federal Regulations, 10 CFR Part 50, are published as a document subject to codification.

PART 2 -- RULES OF PRACTICE FOR
DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 reads as follows:

AUTHORITY: Secs. 161p and 181, Pub.L. 83-703, 68 Stat. 950 and 953. (42 U.S.C. 2201(p) and 2231; sec. 191, as amended, Pub.L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, as amended, Pub.L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841); 5 U.S.C. 552; unless otherwise noted. Sections 2.200 - 2.206 also issued under sec. 186, Pub.L. 83-703, 68 Stat. 955 (42 U.S.C. 2236) and sec. 206, Pub.L. 93-438, 88 Stat. 1246 (43 U.S.C. 5846). Sections 2.800 - 2.808 also issued under 5 U.S.C. 553.

2. In § 2.105, paragraph (a)(3) is revised, paragraphs (a)(4) through (a)(8) are redesignated as paragraphs (a)(5) through (a)(9), and a new paragraph (a)(4) is added to read as follows:^{1/}

§2.105 Notice of proposed action.

(a) If a hearing is not required by the Act or this Chapter, and if the Commission has not found that a hearing is in the public interest, it will

^{1/} Additions to the currently effective regulation are underscored and deletions are within brackets. Changes to the proposed amendments that were published in the Federal Register on March 28, 1980, 45 FR 20491, are indicated with a line in the margin and with arrows (→←). Before publishing in the Federal Register, the arrows, underscores, brackets, the material in the brackets and within the arrows, and this footnote will be deleted.

prior to acting thereon, cause to be published in the FEDERAL REGISTER a notice of proposed action with respect to an application for:

* * * * *

(3) An amendment of a license specified in paragraph (a) → [(1) or] ← (2) of this section and which involves a significant hazards consideration.

(4) An amendment to an operating license or to a construction permit for a production or utilization facility licensed under sections 103 or 104b. of the Act or a testing facility licensed under section 104c. when the Commission in its analysis, using the standards in §50.92(b) of this chapter, determines that there is a significant hazards consideration;
or ***

* * * * *

PART 50 - DOMESTIC LICENSING OF
PRODUCTION AND UTILIZATION FACILITIES

3. The authority citation for Part 50 is revised to read as follows:

AUTHORITY: Secs. 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246 (42 U.S.C., 5841, 5842, 5846), unless otherwise noted. Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). → Section 50.92 also issued under Pub.L. _____, _____ Stat. _____ (____ U.S.C. _____). ← Sections 50.100-50.102 issued under sec. 186, 68 U.S.C. 955 (42 U.S.C. 2236). For the purposes of

sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §50.54 (i) issued under section 161i, 68 Stat. 949 (42 U.S.C. 2201(i)), §§50.70, 50.71 and 50.78 issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)), and the Laws referred to in the Appendices.

(4) In § 50.58, paragraph (b) is revised to read as follows:

§50.58 Hearings and report of the Advisory Committee on Reactor Safeguards.

* * * * *

(b) The Commission will hold a hearing, after at least 30-days' notice and publication once in the FEDERAL REGISTER, on each application for a construction permit for a production or utilization facility which is of a type described in §50.21(b) or §50.22 or which is a testing facility. When a construction permit has been issued for such a facility following the holding of a public hearing and an application is made for an operating license or for an amendment to a construction permit or operating license, the Commission may hold a hearing after at least 30-days' notice and publication once in the FEDERAL REGISTER. [or,] In the absence of a request [therefor] for a hearing by any person whose interest may be affected, the Commission may issue an operating license or an amendment to a construction permit or operating license without a hearing, upon 30-days' notice and publication once in the FEDERAL REGISTER of its intent to do so. If the Commission finds that no significant hazards consideration is presented by an application for an amendment to a construction permit or operating license, ~~using~~ using

the standards in §50.92(b), ← (i) it may dispense with notice [and publication] of proposed action under § 2.105 of this chapter and → (ii) it may issue the amendment, notwithstanding the pendency before it of a request for hearing from any person. ←

5. Section 50.91 is redesignated as §50.92 and revised to read as follows:

→ § 50.92 [50.91] ← Issuance of amendment.

(a) In determining whether an amendment to a license or construction permit will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of initial licenses or construction permits to the extent applicable and appropriate.

(b) → The Commission will determine ← that a proposed amendment to an operating license or construction permit involves no significant hazards consideration, → unless it finds that ← operation of the facility in accordance with the proposed amendment would:

- (1) Involve a significant increase in the probability or consequences of an accident from any accident previously evaluated;
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.

→ (c) If the Commission determines that the application involves the material alteration of a licensed facility, → it will issue a construction permit → before it issues [will be issued prior to the issuance of] ← the amendment to the license.

→ (d) If the Commission determines that the amendment involves a significant hazards consideration, [the Commission] it ← will give notice of its proposed action pursuant to § 2.105 of this chapter before acting [thereon] on the amendment. The notice will be issued as soon as practicable after the application has been docketed.

Dated at Washington, D.C. this _____ day of _____, 1981.

For the Nuclear Regulatory Commission.

Samuel J. Chilk
Secretary for the Commission

Enclosure 4

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Criteria for Notice and Public Comment and Procedures for State
Consultation on License Amendments Involving
No Significant Hazards Consideration

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Proposed Rule.

SUMMARY: The NRC is proposing to amend its regulations to specify criteria for providing or dispensing with prior notice and public comment on determinations about whether amendments to operating licenses or to construction permits for certain facilities involve no significant hazards consideration. It is also proposing procedures for consultation on these determinations with the State in which the facility of the licensee requesting the amendment is located.

DATES: Comment period expires _____. (30 days following publication in the FEDERAL REGISTER). Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Written comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555,

regulations and procedures to the new interim operating licensing authority.

DATE: [Effective date is 30 days following publication in the FEDERAL REGISTER.] Comments on the amendments are invited from all interested persons within 30 days of publication of this notice in the FEDERAL REGISTER.

ADDRESS: All interested persons who desire to submit written comments or suggestions for consideration in connection with the amendments should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch by [30 days after publication in the Federal Register]. Copies of comments received on the amendments may be examined in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William C. Parler, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492-7527.

SUPPLEMENTARY INFORMATION:

Background

Following the March 1979 accident at the Three Mile Island nuclear power plant, the NRC devoted principal attention to evaluating the accident and its implications for the safe regulation of nuclear power in

this country, and to developing the necessary regulatory improvements for presently operating nuclear power plants. During this period, construction continued on those nuclear power plants with construction permits, although only very limited NRC effort was applied to preparing and completing the necessary safety review and hearing requirements for the issuance of operating licenses for these facilities. Largely as a result of this situation, it became apparent in late 1980 that delays would be experienced between the time when construction of some of these plants would be sufficiently completed to allow fuel loading and the start of operation, and the time when all requirements for the issuance of an operating license, including the hearing requirements of the Atomic Energy Act, would be met.

Under the Atomic Energy Act of 1954, as amended (the Act), no person may operate a nuclear power plant without first obtaining an operating license from the NRC. A formal on-the-record evidentiary hearing must be held - and a decision rendered on the basis of that record - if requested by any person whose interest may be affected, before the Commission may issue an operating license. Prior to the enactment of Pub. L. 97-XXX, however, the Commission lacked the authority to authorize fuel loading and low-power operation and testing on the basis of its safety and environmental evaluation; it was required instead to await authorization in the course of the hearing process (see 10 C.F.R. § 50.57(c)).

Even with the administrative changes to the licensing process designed to reduce the time required to complete the license process for these plants, the potential for licensing delays remained for some of the plants scheduled to be completed in 1981 and 1982. Although there are

uncertainties as to the precise costs of the projected licensing delays for these plants, the estimates, even if limited only to the cost of replacement power, indicate that the cost to the utilities and to their ratepayers will be in the range of tens of millions of dollars a month for each completed plant.

In order to relieve the burden of these delays, on March 18, 1981, the Commission submitted a legislative proposal to amend the Act to authorize the Commission to issue an interim operating license for a nuclear power plant, authorizing fuel loading and low-power operation and testing, in advance of the conduct or completion of an on-the-record evidentiary hearing on contested issues relating to the final operating license. Pub. L. 97-XXX, is the final legislative product of the Commission's proposal.

General

The interim operating licensing authority could be used in any proceeding upon an application for an operating license for a utilization facility required to be licensed under section 103 or 104b. of the Act, in which a hearing is otherwise required under section 189a. of the Act on the final operating license for the facility. Pending final action by the Commission on the application for the final operating license for the facility, the applicant may petition the Commission for an interim operating license for such facility authorizing fuel loading, testing and operation at a specific power level to be determined by the Commission. The initial petition, however, would be limited to power levels not to exceed 5 per centum of the nuclear facility's rated full power. After the

interim operating license is issued, the utility licensee may file one or more additional petitions with the Commission to allow facility operation in staged increases in power level beyond the initial 5 per centum limitation. All authorizations for interim operating licenses under section 192 and these implementing regulations shall be pursuant to a final order of the Commission itself. Any such action lies within the discretion of the Commission. The present authority and procedures in § 50.57(c) of the regulations (under which a presiding Atomic Safety and Licensing Board may, on motion, and after a decision based on the evidentiary record or upon agreement of the parties to the contested proceeding, authorize the issuance of a fuel load or low-power and testing license) remain available, however, and are not affected at all by these regulations implementing section 192 of the Act.

The circumstances under which petitions may be filed and conditions under which the Commission may exercise such authority are as prescribed in section ___ of Public Law 97-XXX. These provisions are reflected in the implementing amendments to Parts 50 and 2 set out below. In essence, these amendments establish a detailed procedural framework for considering and issuing interim operating licenses. Section 192, as amended, and its accompanying legislative history clearly contemplate that such procedures are useful and needed safeguards to govern the Commission's actions in exercising the new authority and to preserve for the public a meaningful right to participate in licensing decisions.

New § 50.57(d) of 10 CFR Part 50

A new § 50.57(d) has been added to reflect the substance of the interim operating licensing authority granted by Public Law-XXX and the special provisions which must be satisfied before the Commission exercises this authority. Pursuant to section ___ of Public Law 97-XXX and § 50.57(d), the following requirements are applicable to a petition for and the issuance of an interim operating license and amendments thereto:

- * A petition for the issuance of an interim operating license cannot be filed with the Commission until the Advisory Committee on Reactor Safeguards (ACRS) report, the NRC staff Safety Evaluation Report, the NRC staff environmental statement, and a State, local or utility emergency plan have been filed. In the case of the NRC staff Safety Evaluation Report, according to the legislative history (S. Rep. No. 97-113, May 15, 1981, at p. 12), the petition for an interim operating license may be submitted to the Commission after the filing of the initial Safety Evaluation Report and the staff's supplement to the report prepared in response to the ACRS report for the plant.

- * The initial petition for an interim operating license is limited by section 192 to power levels not to exceed 5 per centum of the facility's rated full thermal power. After the interim operating license is issued, however, the utility licensee may file petitions with the Commission to amend the interim license to allow the facility to operate at specific power levels exceeding 5 per centum of rated full thermal power. The latter levels could be up to and include full-power in those cases in which the Commission determines that such action is necessary. In all instances, action on such petitions shall be authorized pursuant to a final order of the Commission itself which shall reflect the basis

for the findings required by section 192. Moreover, such actions lie within the sound discretion of the Commission itself.

* Following the issuance of an interim operating license, subsequent petitions from the utility, notice and public comment periods on each petition, and the determinations by the NRC called for by section 192 (and implemented in this new § 50.57(d)) are required before the Commission can allow operation, by amending the interim operating license, at power levels beyond the initial 5 per centum low-power testing level.

* Before issuing an interim operating license or amending the license to allow operation at succeeding power levels, NRC must provide notice of the request for such authority and a 30-day period for public comment.

* Upon the expiration of the 30-day comment period, the Commission may issue the interim operating license, or amend the license to allow interim operation at power levels in excess of the initial license limitation, as the case may be, if the Commission itself determines that: (1) all requirements of law other than the conduct of completion of any required hearing on the final operating license are met; (2) in accordance with such requirements, there is reasonable assurance that interim operation of the facility in accordance with the terms and conditions of the license will provide adequate protection to the public health and safety and the environment; and (3) denial of the interim operating license will result in delay between the time when the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the interim operating license, and the time when a final operating license for the facility would otherwise be issued. For

petitions to amend the interim operating license to permit operation at power levels in excess of 5 per centum of the facility's rated full thermal power, the Commission's findings must, of course, be directed to operation at the increased power levels which would be authorized by the amendment.

* Any final Commission order authorizing the issuance of an interim operating license pursuant to section 192 (i.e., as distinguished from an order which may be issued by a presiding Atomic Safety and Licensing Board under paragraph (c) of § 50.57) of the Act shall recite with specificity the reasons justifying the findings required by that section and § 50.57(d). The order must be sent upon issuance to the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives and the Committee of Environment and Public Works of the Senate.

* The interim operating license will contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for its extension. Section 192 provides that the authority shall expire on December 31, 1983.

* The Commission will suspend the interim operating license if it finds that the applicant is not prosecuting the application for the final operating license (and on which a hearing under section 189a. is being conducted) with due diligence.

for the Issuance of Interim Operating Licenses for Utilization Facilities Pursuant to Section 192."

Subpart C simply adds procedural requirements to 10 C.F.R. Part 2 which are needed to carry out the interim operating licensing authority in section 192 of the Act and implemented in § 50.57(d) of 10 C.F.R. Part 50. Unlike the hearing on the final operating license, the interim operating licensing process is subject neither to the hearing requirements of section 189a. of the Act nor to the requirements of subparts A or G of the Rules of Practice in 10 C.F.R. Part 2. Subpart C provides all of the necessary procedural guidance regarding requests for, and Commission authorization of, interim operating licenses. Briefly, subpart C provides:

- * For the petition for an interim operating license to be filed in the form of a written motion. The written motion, with supporting affidavits, shall be served on all parties to the proceeding for the issuance of the final operating license.

- * The initial petition shall be limited to power levels not to exceed 5 per centum of full power. Following the issuance of the interim operating license, the licensee may file subsequent petitions with the Commission to amend the interim operating license in staged increases at specific power levels in excess of the initial 5 per centum limitation.

- * The subpart provides general guidance on the contents and requirements for affidavits which may be filed in support of or in opposition to petitions for the issuance, or the amendment, of interim operating licenses.

* The rules provide for prompt publication of notice of both petitions for an interim operating license and for amending such license with a 30-day period for public comment. They provide that the notice shall inform interested persons how they can go about obtaining access to the petition and its supporting affidavits. Such access is needed so that such persons might, as the rules also provide, file responsive affidavits to the petition. The rules do not specify a time after the 30-day public comment period for Commission action on the petition. In keeping with the purpose of the interim operating license authority, the rules provide that the Commission will act as expeditiously as possible on petitions for interim operating licenses and for amendments to such licenses.

* Issuance of an interim operating license or amendment thereto shall be pursuant to a final order of the Commission itself which recites the reasons called for in section 192 of the Act and § 50.57(d) of this chapter. The final order of the Commission shall be subject to judicial review under section 189b. of the Act.

* The rules restate the procedural safeguards in section 192 to assure that the issuance of the interim operating license does not prejudice the outcome of the licensing hearing for the final operating license for that plant or prejudice the rights of any party to the hearing to raise any proper issue in that hearing and to have that issue decided. Moreover, the rules require, as does section 192, that any party to the final operating license hearing, or any licensing board member conducting such hearing, promptly notify the Commission of any information made available as part of that hearing that the terms and conditions of the interim operating license are not being met, or that

they are insufficient to provide reasonable assurance that operation of the facility during the period of the interim operating license will provide adequate protection to the public health and safety and the environment.

Finally, the rules state that the Commission will assert its best efforts to adopt appropriate administrative remedies to minimize the need for the issuance of interim operating licenses.

Since the amendments which follow implement in the Commission's regulations new statutory provisions in Public Law 97-XXX, the Commission has found that general notice of proposed rulemaking and public participation therein are unnecessary and impracticable, and that good cause exists for making the amendments effective 30 days after the date of publication in the Federal Register.

The Commission invites all interested persons who desire to submit written comments or suggestions for consideration in connection with the amendments to send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 30 days after the date of publication of this notice in the Federal Register. Consideration will be given to such comments with the view to possible further amendments, if warranted. Copies of comments received by the Commission may be examined at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Parts 2 and 50, are published as

a document subject to codification to be effective 30 days after the date of publication in the Federal Register.

1. In § 50.57 of 10 CFR Part 50, a new paragraph (d) is added to read as follows:

§ 50.57 Issuance of operating license.

* * * * *

(d)(1) An applicant for an operating license, in a case where a hearing is required in a pending proceeding for the final operating license for a facility required to be licensed under section 103 or 104b. of the Act, may petition the Commission by a written motion, pursuant to section 192 of the Act and this paragraph (d) for an interim operating license for such facility authorizing fuel loading, testing, and operation at a specific power level to be determined by the Commission, pending final action by the Commission on the application for the final operating license.

(2) The initial petition for an interim operating license for each such facility may be filed at any time after the filing of: (i) the report of the Advisory Committee on Reactor Safeguards required by subsection 182b. of the Act; (ii) the final safety evaluation report on the application by the regulatory staff; (iii) the regulatory staff's final detailed statement on the environmental impact of the facility prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; and (iv) a State, local, or utility emergency preparedness plan for the facility.

(3) The initial petition for an interim operating license for each such facility, and any interim operating license issued for such facility

based upon the initial petition, shall be limited initially to power levels not to exceed 5 per centum of the facility's rated full thermal power.

(4) Following issuance by the Commission of the interim operating license for each such facility, the licensee may petition the Commission to amend the license to allow facility operation in staged increases at specific power levels, to be determined by the Commission, exceeding 5 per centum of the facility's rated full thermal power.

(5) Petitions for the issuance of an interim operating license, or for an amendment to such a license allowing operation at a specific power level greater than that authorized in the initial interim operating license, shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the interim operating license or the amendment thereto.

(6) The Commission shall publish notice of each such petition in the Federal Register and in such trade or news publications as the Commission deems appropriate to give reasonable notice to persons who might have a potential interest in the grant of such interim operating license or amendment thereto. The notice shall inform such persons of the arrangements for their access to the petition and supporting affidavits. Any person may file affidavits in support of, or in opposition to, the petition within thirty days after the publication of such notice in the Federal Register.

(7) With respect to any such petition, the Commission may issue an interim operating license, or subsequently amend the license to authorize interim operation at a specific power level greater than that authorized

in the initial interim operating license, as determined by the Commission, upon finding that:

(i) in all respects other than the conduct or completion of any required hearing, the requirements of law are met;

(ii) in accordance with such requirements, there is reasonable assurance that operation of the facility during the period of the interim operating license in accordance with its terms and conditions will provide adequate protection to the public health and safety and the environment during the period of interim operation; and

(iii) denial of such interim operating license will result in delay between the date on which construction of the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the interim operating license, and the date on which a final operating license for such facility would otherwise be issued under the Act.

(8) Any final Commission order authorizing the issuance of any interim operating license pursuant to section 192 of the Act and this paragraph shall recite with specificity the reasons justifying the findings required by that section and this paragraph, and shall be transmitted upon such issuance to the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(9) The interim operating license shall become effective upon issuance and shall contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for the extension thereof. The Commission shall suspend the

interim operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence.

(10) The authority under section 192 of the Act and this paragraph shall expire on December 31, 1983.

(Authority: (§§ 161, 192, 68 Stat. 948, ____ Stat. ____, 42 U.S.C. 2201 and ____.)

2. A new subpart C is added to 10 C.F.R. Part 2 to read as follows:
Subpart C - Procedures Applicable to Proceedings for the Issuance of Interim Operating Licenses for Utilization Facilities Pursuant to Section 192.

(Authority: The provisions of this subpart C issued under §§ 161, 192, 68 Stat. 948, ____ Stat. ____, 42 U.S.C. 2201 and ____.

§ 2.300 Scope of subpart.

This subpart prescribes the procedures applicable in any proceeding upon an application for an operating license for a utilization facility required to be licensed under section 103 or 104b. of the Act, in which a hearing is otherwise required pursuant to section 189a., in which the applicant, pursuant to section 192 of the Act and § 50.57(d) of this chapter, petitions the Commission for an interim operating license for such facility authorizing fuel loading, testing, and operation at a specified power level to be determined by the Commission, pending action

by the Commission on the application for the final operating license for the facility.

§ 2.301 Filing of petition and accompanying affidavits.

(a) Any petition filed by an applicant for an interim operating license for each such facility shall be in the form of a written motion. The motion, including the accompanying affidavits, shall be served on all parties to the proceeding for the issuance of the final operating license. Any such petition may be filed at any time after the availability of the documents called for by section 192 of the Act and § 50.57(d) of this chapter.

(b) The initial petition for an interim operating license for each such facility shall, in accordance with section 192 of the Act and § 50.57(d) of this chapter, be limited initially to power levels not to exceed 5 per centum of the facility's rated full thermal power. A licensee, following issuance by the Commission of the interim operating license for each such facility, may file subsequent petitions with the Commission to amend the interim operating license to allow facility operation in staged increases at specific power levels, to be determined by the Commission, exceeding 5 per centum of the facility's rated full thermal power.

§ 2.302 Contents of affidavits.

The applicant's petition for an interim operating license shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the interim

operating license or the amendment thereto. Any such affidavit and any affidavit filed in response thereto shall state separately the specific facts and arguments and include the exhibits upon which the person relies. The facts asserted in any affidavit filed shall be sworn to or affirmed by persons having knowledge thereof, and a statement to this effect shall affirmatively appear in the affidavit. Except under unusual circumstances, such persons should be those who would be available to orally substantiate the facts asserted as the Commission deems appropriate. Any such affidavit shall be accompanied by a list of documents relied on to support the facts stated in the affidavit and the place where such documents, other than those issued by the Commission's staff, are available for inspection.

§ 2.303 Notice of petition.

The Commission shall promptly publish notice of each petition for issuance of an interim operating license and any subsequent petitions for amendments thereto in the Federal Register and in such trade or news publications as the Commission deems appropriate to give reasonable notice to persons who might have a potential interest in the grant of such interim operating license or amendment thereto. The notice shall inform such persons of the arrangements for their access to the petition and supporting affidavits. Any person may file affidavits in support of, or in opposition to, the petition within 30 days after the publication of such notice in the Federal Register. The Commission thereafter will act as expeditiously as possible to reach a determination on such petitions.

§ 2.304 Responsive affidavits.

Responsive affidavits in opposition to the petition shall be accompanied by a short and concise statement of the material facts as to which it is contended that there exists a substantial issue concerning the issuance of the interim operating license or amendment thereto. Any responsive affidavit and any accompanying statement shall be served on all parties to the proceeding for the issuance of the final operating license.

§ 2.305 Commission authorization.

(a) Issuance of an interim operating license or amendment thereto shall be pursuant to a final order of the Commission itself which recites the reasons for such authorization as called for in section 192 of the Act and § 50.57(d) of this chapter.

(b) The requirements of section 189a. of the Act with respect to the issuance or amendment of facility licenses shall not apply to the issuance or amendment of such an interim operating license. Thus, neither subpart A nor subpart G of this part applies to the consideration of a petition for the issuance or amendment of such an interim operating license.

(c) The final order of the Commission with respect to the issuance of an interim operating license shall be subject to judicial review pursuant to the Act of December 29, 1950, as amended (Ch. 1189, 64 Stat. 1129).

§ 2.306 Hearing on the final operating license.

(a) Issuance of an interim operating license under section 192 of the Act and § 50.57(d) of this chapter shall be without prejudice to the right of any party to a proceeding for the issuance of the final operating license to raise any issue in a hearing required pursuant to section 189a. of the Act. Failure to assert any ground for denial or limitation of such an interim operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license.

(b) Any hearing on the application for the final operating license for a facility required pursuant to section 189a. of the Act shall be concluded as promptly as practicable. The Commission shall suspend the interim operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence.

§ 2.307 Notification to the Commission.

Any party to a hearing required pursuant to section 189a. of the Act on the final operating license for a facility for which an interim operating license has been issued under section 192 of the Act and § 50.57(d) of this chapter, and any member of the Atomic Safety and Licensing Board conducting such hearing, shall promptly notify the Commission of any information made available as part of such hearing that:

(a) the terms and conditions of the interim operating license are not being met, or that

(b) such terms and conditions are not sufficient to provide reasonable assurance that operation of the facility will provide adequate

protection to the public health and safety and the environment during the period of the facility's interim operation.

§ 2.308 Administrative remedies.

The Commission shall assert its best efforts to adopt such administrative remedie^s as it deems appropriate to minimize the need for the issuance of interim operating licenses pursuant to section 192 of the Act and § 50.57(d) of this chapter.

Dated at Washington, D.C., this _____ day of _____, 1981.

For the Nuclear Regulatory Commission.

Samuel J. Chilk
Secretary to the Commission

Tab A to Enclosure (2,

Interim operating license language from S.1207, as reported:

SEC. 201. Section 192 of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"SEC. 192. INTERIM OPERATING LICENSE. -

"a. In any proceeding upon an application for an operating license for a utilization facility required to be licensed under section 103 or 104 b. of this Act, in which a hearing is otherwise required pursuant to section 189 a., the applicant may petition the Commission for an interim operating license for such facility authorizing fuel loading, testing, and operation at a specific power level to be determined by the Commission, pending final action by the Commission on the application. The initial petition for an interim operating license for each such facility, and any interim operating license issued for such facility based upon the initial petition, shall be limited initially to power levels not to exceed 5 per centum of rated full thermal power. Following issuance by the Commission of the interim operating license for each such facility, the licensee may file petitions with the Commission to amend the license to allow facility operation in staged increases at specific power levels, to be determined by the Commission, exceeding 5 per centum of rated full thermal power. The initial petition for an interim operating license for each such facility may be filed at any time after the filing of: (1) the report of the Advisory Committee on Reactor Safeguards required by subsection 182 b.;(2) the final safety evaluation

report on the application by the Nuclear Regulatory Commission staff; (3) the Nuclear Regulatory Commission staff's final detailed statement on the environmental impact of the facility prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (83 Stat. 853); and (4) a State, local or utility emergency preparedness plan for the facility. Petitions for the issuance of an interim operating license, or for an amendment to such a license allowing operation at a specific power level greater than that authorized in the initial interim operating license, shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the interim operating license or the amendment thereto. The Commission shall publish notice of each such petition in the Federal Register and in such trade or news publications as the Commission deems appropriate to give reasonable notice to persons who might have a potential interest in the grant of such interim operating license or amendment thereto. Any person may file affidavits in support of, or in opposition to, the petition within thirty days after the publication of such notice in the Federal Register.

"b. With respect to any petition filed pursuant to subsection a. of this section, the Commission may issue an interim operating license, or amend the license to authorize interim operation at each specific power level greater than that authorized in the initial interim operating license, as determined by the Commission, upon finding that--

"(1) in all respects other than the conduct or completion of any required hearing, the requirements of law are met;

"(2) in accordance with such requirements, there is reasonable assurance that operation of the facility during the period of the interim operating license in accordance with its terms and conditions will provide adequate protection to the public health and safety and the environment during the period of interim operation; and

"(3) denial of such interim operating license will result in delay between the date on which construction of the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the interim operating license, and the date on which a final operating license for such facility would otherwise issue under this Act.

The interim operating license shall become effective upon issuance and shall contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for the extension thereof. Any final order authorizing the issuance of any interim operating license pursuant to this section shall recite with specificity the reasons justifying the findings under this subsection, and shall be transmitted upon such issuance to the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate. The final order of the Commission with respect to the issuance of an interim operating license shall be subject to judicial review pursuant to the Act of December 29, 1950, as amended (ch. 1189, 64 Stat. 1129)."

The requirements of section 189 a. of this Act with respect to the

issuance or amendment of facility licenses shall not apply to the issuance or amendment of an interim operating license under this section.

"c. Any hearing on the application for the final operating license for a facility required pursuant to section 189 a. shall be concluded as promptly as practicable. The Commission shall suspend the interim operating license if it find that the applicant is not prosecuting the application for the final operating license with due diligence. Issuance of an interim operating license under subsection b. of this section shall be without prejudice to the right of any party to raise any issue in a hearing required pursuant to section 189 a.; and failure to assert any ground for denial or limitation of an interim operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license. Any party to a hearing required pursuant to section 189 a. on the final operating license for a facility for which an interim operating license has been issued under subsection b., and any member of the Atomic Safety and Licensing Board conducting such hearing, shall promptly notify the Commission of any information made available as part of such hearing, that the terms and conditions of the interim operating license are not being met, or that such terms and conditions are not sufficient to comply with the provisions of paragraph (2) of subsection b.

"d. The Commission is authorized and directed to adopt such administrative remedies as the Commission deems appropriate to minimize the need for issuance of interim operating licenses pursuant to this section.

"e. The authority under this section shall expire on December 31, 1983."