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November 7, 1988

WRITER'S DIRECT DIAL NO.:

(202) 861-1726

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Negotiated Rulemaking Proceeding on Indemnification of Certain Radiopharmaceutical Licensees, 53 Fed. Reg. 40233, October 14, 1988

Dear Mr. Secretary:

In the Federal Register of October 14, 1988, 53 Fed. Reg. 40233, the Nuclear Regulatory Commission ("NRC") announced that it would conduct, pursuant to Section 19 of the Price-Anderson Amendments Act of 1988, Pub. L. 100-408, 102 Stat. 1066, a negotiated rulemaking proceeding to determine whether there should be federal indemnification program for certain radiopharmaceutical licensees. The notice invited any person who desired to participate in the proceeding to notify you of its intent to do so. This letter serves as notification that the National Association of Nuclear Pharmacies ("NANP") intends to participate in the negotiated rulemaking proceeding.

NANP is a nonprofit corporation organized under the laws of the District of Columbia whose members constitute a substantial portion of for-profit nuclear pharmacies in the United States.

In compliance with the requirements of the Federal Register notice, accompanying this letter is a position paper which addresses all of the issues outlined in that notice.

As further required, a copy of this letter and the position paper are being sent to Mr. Howard S. Bellman, the designated convenor.

D510

The undersigned will represent NANP in this proceeding.

Respectfully submitted,

Alvin J. Lorman
Ann Kelly Pollock

Attorneys for the National
Association of Nuclear Pharmacies

AJL/mt

enclosure

cc: Mr. Howard S. Bellman (w/enclosures)
(By Federal Express)

BEFORE THE U.S. NUCLEAR REGULATORY COMMISSION

STATEMENT OF POSITION OF THE NATIONAL ASSOCIATION OF NUCLEAR PHARMACIES ON THE NEED FOR FEDERAL INDEMNIFICATION FOR RADIOPHARMACEUTICAL LICENSEES

November 7, 1988

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BEFORE THE U. S. NUCLEAR REGULATORY COMMISSION

Statement of Position of the National Association of Nuclear Pharmacies on the Need for Federal Indemnification for Radiopharmaceutical Licensees

I. INTRODUCTION

This paper articulates the position of the National Association of Nuclear Pharmacies ("NANP") on the need for federal indemnification for certain radiopharmaceutical licensees.[1/] The NANP believes a program of federal indemnification for nuclear pharmacies must be adopted because these licensees currently face substantial uninsured liabilities that may arise from low-level, Nuclear Regulatory Commission ("NRC")-approved radiation emissions that occur in the course of their operations. These licensees are also uninsured for radiation emissions that may exceed NRC limitations. The absence of adequate insurance deprives the public of an appropriate source of recovery should damages occur.

This proceeding is being conducted pursuant to Section 19 of the Price-Anderson Amendments Act of 1988, 102 Stat. 1066, Pub. L. No. 100-408 (hereinafter "the Act".)[2/] Section 19 directs the

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1/ Radiopharmaceutical licensees are defined as "persons licensed by the Commission under section 81, 104(a), or 104(c) of the Atomic Energy Act of 1954 (42 U.S.C. 2111, 2134(a), 2134(c)) or by a State under section 274(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2021(b)) for the manufacture, production, possession or use of radioisotopes or radiopharmaceuticals for medical purposes." Price-Anderson Amendments Act of 1988, § 19.

2/ Generally, the Price-Anderson Amendments Act of 1988 reauthorizes until August 1, 2002 certain provisions of the Atomic Energy Act of 1954 relating to the public liability of commercial power plants. Such facilities are required to maintain, as a condition of their license from the NRC, financial protection sufficient to protect against public

footnote continues

NRC to initiate a proceeding to determine whether to enter into indemnity agreements with radiopharmaceutical licensees under section 170 of the Atomic Energy Act of 1954. The Act further directs that in making this determination, the Commission is to conduct, to the extent consistent with the provisions of the Act, a negotiated rulemaking in accordance with the recommendations of the Administrative Conference of the United States in Recommendation No. 82-4, "Procedures for Negotiating the Proposed Regulations," published at 1 C.F.R. § 305.82-4. Sec. 19(b)(1). The convenor of the proceeding, Mr. Howard S. Bellman, is then to submit to the NRC not later than seven months from the date of enactment of the Act recommendations for a proposed rule regarding whether the NRC should enter into indemnity agreements with radiopharmaceutical licensees and, if so, the terms and conditions of such indemnification. Sec. 19(b)(3). The NRC is to publish the recommendations of the convenor as a notice of proposed rulemaking within thirty (30) days of submission if the convenor recommends that indemnity be provided, Sec. 19(b)(4), and is to make a final determination with respect to the question within eighteen (18) months of the date of the enactment of the Act. Sec. 19(a)(2).

The NRC initiated the proceeding and issued a Federal Register notice on October 14, 1988, in which it directed

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continued footnote
liability claims arising from a nuclear incident. The Act further directs the NRC to enter into indemnification agreements and sets a cap on liability for claims arising from a nuclear incident. Presently, the cap is set at approximately $7 billion.

interested parties to present a "detailed written position statement" on issues presented therein. 53 Fed. Reg. 40233. This position paper accordingly addresses all of the specific issues listed by the NRC in the Federal Register notice.

By way of introduction and to place the issues in perspective, however, this paper first describes what radiopharmaceuticals are and how radiopharmaceuticals work as well as describes the day-to-day operations of a nuclear pharmacy. Also, by way of background, this paper summarizes the legislative history of Section 19. This paper then provides a discussion of the issues identified by the NRC, outlining the evidence on the issues of liability and insurance which the NANP believes conclusively demonstrates that federal indemnification of nuclear pharmacies is warranted because insurance is not available. This paper concludes by presenting other facts which the NANP believes are pertinent to the indemnification issue and by proposing the parameters of the federal indemnification program that should be adopted.

II. RADIOPHARMACEUTICALS AND NUCLEAR PHARMACIES

A. Radiopharmaceuticals - General Discussion

Radiopharmaceuticals are radioactive compounds used for the diagnosis and therapeutic treatment of human disease. Each year, millions of patients are diagnosed or treated with radiopharmaceuticals. Because they are injected or ingested into the human body, radiopharmaceuticals contain relatively small amounts

of radioactive materials which generally decay over a period of hours.

Almost 95% of all radiopharmaceuticals are used for diagnostic purposes. Radiopharmacology has played a significant role in diagnostic medicine by providing more information about human disease, primarily through the use of imaging techniques. In addition to alerting physicians to abnormal growths and tumors in the bone, spinal cord, thyroid, lungs, liver and other organs, radiopharmaceutical technology can aid in diagnosing a wide range of diseases such as emphysema, hepatitis, and arthritis.

While the vast majority of radiopharmaceuticals are used in diagnosis, it is anticipated that their use in the treatment of disease, particularly cancer, will increase. Currently, a substantial percentage of patients with thyroid cancers benefit from radioiodine therapy.

Radiopharmaceuticals are made up of two components, one which is radioactive and one which is non-radioactive. The radioactive component of a radiopharmaceutical emits radiation which permits its detection or measurement by radiation detection devices; it is through this detection that imaging may be accomplished. The non-radioactive component provides the radiopharmaceutical with distinctive chemical or physical properties which influence tissue distribution. Thus, depending on the characteristics of the non-radioactive compound, different organs can be targeted for imaging.

Unlike traditional, non-radioactive pharmaceuticals, radiopharmaceuticals cannot be compounded in advance and be stored

on a shelf in a pharmacy. The amounts of radioactive material in radiopharmaceuticals are small and have relatively short half-lives.[3/] Therefore, most radiopharmaceuticals must be prepared on the day of the procedure in which it will be used. A copy of an informative booklet prepared by the American College of Nuclear Physicians entitled, "What is Nuclear Medicine" provides more information and is included in Exhibit A.

B. Day-to-day Operations of a Commercial Nuclear Pharmacy

Nuclear pharmacies procure, prepare, and dispense radiopharmaceuticals. They are usually located within a 2-3 hour drive of the location at which the radiopharmaceutical will be administered. Nuclear pharmacies must be licensed as medical distributors of radiopharmaceutical drug products by the NRC or by an Agreement State,[4/] as well as be licensed as pharmacies in the state in which they are located. Pharmacists must receive proper training and be authorized users of radioactive materials.

The day-to-day operations of nuclear pharmacies are similar in many ways to the operations of traditional pharmacies. The radioactive nature of the materials used in a nuclear pharmacy, however, require special treatment and handling, preparation and dispensing.

3/ The term "half-life" refers to the period of time it takes a radiopharmaceutical to decay to half of its original value.

4/ An Agreement State is any state which the NRC has entered into an agreement with under Section 274(b) of the Atomic Energy Act, as amended, 42 U.S.C. § 2021(b). The agreement gives the state limited authority to license and inspect certain nuclear facilities and requires the state to assert its best efforts to assure that its regulatory program for protection against radiation hazards will be consistent with the NRC's program. 10 C.F.R. § 8.4(j).

As with traditional pharmacies, prescriptions for radiopharmaceuticals may be transmitted to the nuclear pharmacy by telephone or in writing. Radiopharmaceuticals are prescribed according to units of radioactivity, which are measured in millicuries or microcuries. Because these drugs are prepared in advance of administration, the calculations must account for the loss of radioactivity by radioactive decay. Before patient administration, doses are assayed in a radionuclide dose calibrator to assure the accuracy of the dose.

Nuclear pharmacies produce their products from radioactive elements, some of which are volatile and gaseous. Typically, however, the source of the radioactive material used in a nuclear pharmacy is a generator which the radiopharmacy purchases from a radiopharmaceutical manufacturer. A generator consists of a longer-lived "parent" radioactive material which is contained in a "column" made of alumina. As the parent material decays, a new radioactive element is created; this is the "daughter element" which is used by the nuclear pharmacist in the preparation of a nuclear pharmaceutical product. The daughter element is separated from the parent element through a process known as "elution," in which the column is washed with a solution to remove the daughter from the column. After the daughter element is separated from the column, it is checked for the presence of contaminants. Once purity is assured, a non-radioactive pharmaceutical agent is added. The type of agent used depends on the purpose for which the radiopharmaceutical will be administered, as certain agents target certain organs. Once the

agent has been added, quality control is performed to assure radiochemical purity.

At this point, individual dosages are drawn from the vial into the syringe through which the radiopharmaceutical will be administered. The dosage is also assayed for radioactivity in a radionuclide dose calibrator. The syringe is tagged with the prescription number, the name of the radiopharmaceutical product and the time of calibration. The syringe is then placed into a leaded container, or "pig," in which it is transported to the place of administration. Pigs are labeled in a manner similar to the syringes.

Federal regulations set forth the "maximum permissible concentrations" ("MPC's")[5/] which may be released, but as will be discussed below, MPC's which meet federal standards may not protect the nuclear pharmacy from liability. In fact, after a court decision in 1985 in which a radiopharmaceutical licensee was found to be subject to liability for radioactive emissions meeting federal standards, the NANP began the effort which resulted in the enactment of Section 19 of the Price-Anderson Amendments Act of 1988.

5/ Maximum permissible concentrations are the limitations on permissible exposures to radiation for both workers and the general public. The regulations specify maximum permissible concentrations of some 400 different radionuclides (including those commonly utilized in nuclear medicine) in air or water in "restricted" (i.e., on-site) areas and in releases to "unrestricted" (i.e., public or off-site) areas. See 10 C.F.R. § 20.101-106 and App. B (1988).

III. THE LEGISLATIVE HISTORY OF SECTION 19

The purposes of the Price-Anderson Act are to ensure that adequate funds will be available to compensate the public in the event of a nuclear incident[6/] and to encourage the development and use of nuclear energy. In those areas where private insurance is inadequate to cover the liability that would result from a nuclear incident covered under the Act, the Act makes possible the continuation of programs involving nuclear material which are important to the nation's health and welfare.

On March 27, 1987, a representative of the NANP testified before a joint hearing of the House Subcommittee on Energy and Environment of the Committee on Interior and Insular Affairs and the House Subcommittee on Energy and Power of the Committee on Energy and Commerce to explain the need to include a program of federal indemnification for nuclear pharmacies in H.R. 1414, the Price-Anderson Amendments Act of 1987. On April 2, 1987 the House Subcommittee on Energy and Environment of the Committee on Interior and Insular Affairs unanimously adopted an amendment that provided federal indemnification to nuclear pharmacies. After further deliberation, however, on May 6, 1987, the full Committee reported the bill to the House without the amendment.[7/]

6/ A "nuclear incident" is "any occurrence, including an extraordinary nuclear occurrence . . . causing . . . bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material. See 42 U.S.C. § 2014(q).

7/ The full Committee action was explained in the Committee's report. H.R. Rep. No. 100-104, Part 1, 100th Cong., footnote continues

The Senate Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works unanimously adopted an amendment on July 24, 1987 that would create a program of federal indemnification for nuclear pharmacies. The full Committee adopted the amendment without objection in its August 4, 1987 markup.[8/]

The Senate bill containing the amendment, S. 1865, was not considered further by the Senate. Rather, on March 16, 1988, the Senate voted on the House-passed bill, H.R. 1414. During the course of that debate, Senator John Breaux (D-La) introduced the amendment to provide for federal indemnification for nuclear pharmacies and it was agreed to. 134 Cong. Rec. S2337-23341 (March 16, 1988). The Senate then returned its amended version of the House bill to the House. The House then again amended and passed H.R. 1414 on August 2, 1988. One of the House amendments was Section 19. The Senate then repassed on August 5, 1988, H.R. 1414 as amended by the House. All of the pertinent sections of the Congressional reports and debates are included in Exhibit B.

Even though Congress considered many different amendments before adopting Section 19, the NANP believes that the

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continued footnote
1st Sess., pp. 20-21 (May 21, 1987). Other Congressmen disagreed with this disposition of the issue. H.R. Rep. No. 100-104, Part 3, 100th Cong., 1st Sess., p. 69-70 (July 22, 1987) (additional views of Bill Richardson).

8/ The provision contained in the Senate bill, S. 1865, the Price-Anderson Amendments Act of 1987, was explained in the Senate Report. S. Rep. No. 100-218, 100th Cong., 1st Sess., p. 18 (November 12, 1987).

Congressional reports and debate on this issue provide some direction for the proceeding and make certain findings which are relevant to the issues involved. In enacting Section 19 of the Price-Anderson Amendments Act of 1988, Congress first found that nuclear pharmacies do provide a valuable medical service to millions of Americans each year. See H.R. Rep. No. 100-104, Part 1, 100th Cong., 1st Sess., p. 20-21 (May 21, 1987) ("The Committee recognizes the valuable role played by the radiopharmaceuticals in modern medicine. . ."). Congress believed that the provision on radiopharmaceutical products is necessary to the maintenance of the high standard of health care enjoyed in the United States and the continued improvement of that standard. See 134 Cong. Rec. H6132 (Aug. 2, 1988) (Statement of Rep. Huckaby), 134 Cong. Rec. S10932 (Aug. 5, 1988) (Statement of Sen. Symms), 134 Cong. Rec. S2337-8 (March 16, 1988) (Statement of Sen. Breaux).

Second, Congress determined that the critical question to be resolved through the negotiated rulemaking is the question of whether insurance is available to cover the potential liability nuclear pharmacies face. See 134 Cong. Rec. S10932 (August 5, 1988) (Statement of Sen. McClure) ("The compromise approach now in the bill provides for a negotiated rulemaking process to resolve the critical question of the availability of private insurance for radiopharmaceutical licensees."); 134 Cong. Rec. S10933 (August 5, 1988) (Statement of Sen. Breaux) ("The central issue in the debate with respect to this provision involves whether these licensees have or can obtain adequate commercial insurance to protect

against the liability claims associated with a potential nuclear incident."). Congress generally acknowledged the fact that the evidence indicated that insurance was not available to these licensees for these types of claims. See H.R. Rep. No. 100-104, Part 1, 100th Cong., 1st Sess., p. 21 (May 21, 1987); 134 Cong. Rec. S10934 (August 4, 1988) (Statement of Sen. Breaux).

Finally, in addressing the insurance concern and because nuclear pharmaceuticals play an important role in health care, Congress found that the NRC needed to ensure that all nuclear pharmacies are appropriately indemnified or insured against their liabilities arising out of nuclear incidents. See 134 Cong. Rec. S10933 (August 5, 1988) (Statement of Sen. Simpson); H.R. Rep. No. 100-104, Part 1, 100th Cong., 1st Sess., p. 21 (May 21, 1987) ("The Committee expects the NRC to monitor the effects of the insurance crisis on nuclear pharmacies and to exercise its discretionary authority or to recommend additional legislation if necessary to ensure that the full benefits of nuclear medicine remain available to the public."). Congress determined that some type of relief was necessary for nuclear pharmacies and ultimately acknowledged by the enactment of Section 19 that Price-Anderson indemnification should be the vehicle by which this relief should be provided.

IV. DISCUSSION OF ISSUES LISTED BY THE NRC

In this section of its position paper, the NANP addresses the identified listed by the NRC in the Federal Register notice an-

nouncing the negotiated rulemaking proceeding. 53 Fed. Reg. 40235 (October 14, 1988).

A. The Representative of the Person or Organization Who Will Participate in the Proceeding.

The NANP will be represented by the law firm of Baker & Hostetler.

B. The Nature of the Person's Interest That May be Affected by the Rulemaking.

The NANP is an organization whose members primarily consist of independent commercial nuclear pharmacies located across the country. NANP members account for a substantial number of all for-profit nuclear pharmacies in the U.S. As with other regulated industries, commercial nuclear pharmacies are affected economically by the decisions of governmental authorities by which they are regulated. Commercial nuclear pharmacies are regulated by the NRC, by Agreement States, by the Food and Drug Administration ("FDA") and by the Department of Transportation ("DOT").

At the present, the NRC has decided not to exercise its discretionary authority to indemnify nuclear pharmacies under the Price-Anderson Act. See 42 U.S.C. § 2210(a). The decision of the NRC has not changed despite the fact that commercial nuclear pharmacies now face substantial liability. Recent court decisions and the unavailability of insurance coverage have made the issue of whether the Price-Anderson Act should cover the liability of commercial nuclear pharmacies one of paramount concern to the members of the NANP and to other users of radiopharmaceuticals. Nuclear pharmacies could be put out of business if they are

subject to billion dollar class action lawsuits for which they have no insurance. Therefore, without appropriate action, the economic future of commercial nuclear pharmacies and their ability to provide these life-saving drugs to the public is jeopardized.

c. The Nature and Extent of the Risk to Public Health and Safety Posed by the Activity of Concern.

Commercial nuclear pharmacies have an excellent safety record. Indeed, at the present time, no third-party claims involving the nuclear nature of the practice have been brought against any nuclear pharmacies in the NANP. The NANP believes that this excellent record reflects the safe nature and low risk of the activities in which they are involved.

Personal injury cases involving exposure to radiation emissions, however, have been brought against other licensees. For example, in Silkwood v. Kerr-McGee, Corp., 464 U.S. 238 (1984), the United State Supreme Court upheld a jury verdict in favor of the plaintiff for actual damages of $505,000 and punitive damages of $10 million for injuries caused by the escape of plutonium from the defendant's facility. Most of the cases to date have involved exposure to radiation emissions exceeding NRC regulations.

Today, however, it has been held that radiopharmaceutical licensees may incur third-party liability claims for damages allegedly resulting from emissions of radioactive materials at or below levels permitted by federal regulations. It is this potential liability, which is discussed more fully below, that is of concern to NANP members. Whether or not low-level radiation emissions present a risk to public health and

safety and whether this risk is substantial is a question of fact in each case that may be brought against a radiopharmaceutical licensee.

D. Whether Financial Protection for Such Risk is Available to Licensees from Commercial Sources

No commercial insurer will provide to a nuclear pharmacy an insurance policy which covers at a reasonable cost the risk of environmental claims involving low-level radiation emissions. The NRC has conceded that, "commercial liability insurance appears to be unavailable for radiopharmacies." Letter of Lando W. Zech, Jr., Chairman, United States Nuclear Regulatory Commission to the Honorable J. Bennett Johnston, Chairman, Committee on Energy and Natural Resources, U.S. Senate, dated November 9, 1987.

The exclusions contained in typical insurance policies prevent any coverage from attaching in the case of damage caused by a release of radioactive materials. In addition to the exclusions themselves, correspondence from both major insurance brokers and companies states that these typical exclusions do, in fact, work to preclude coverage. Copies of some of this correspondence are included in Exhibit C.

During the Congressional debate on Price-Anderson, evidence was submitted regarding the insurance problem, including letters from two reputable and experienced insurance brokers, Daniel E. Dumbauld, President of the Daniel-James Insurance Agency, Inc., and Mr. William D. Charles of Alexander and Alexander Inc. in Phoenix, Arizona. They stated that nuclear risk coverage is not available to nuclear pharmacies. In addition, an NANP member asked its present insurer to advise it regarding

coverage. The insurer stated that, "In the opinion of management, release of radioactivity resulting in BI or PD . . . is not covered under the above captioned policy."

Moreover, commercial insurance carriers refuse to write specialized coverage, also called environmental impairment liability ("EIL") coverage, for NANP members at reasonable rates. Indeed, in the May 25, 1987 issue of the National Underwriter, C. Clarke Imbler, Senior Vice President, Secretary an Treasurer of the Alliance of American Insurers, stated, "a viable insurance market for environmental impairment liability ("EIL") or other pollution coverages is nearly extinct."

E. The Position of the Person on Whether a Proposed Rule on Indemnification of Radiopharmaceutical Licensees, or Any Class Thereof, is Necessary, and a Rationale for the Position.

The NANP believes a program of federal indemnification for nuclear pharmacies is necessary so that these licensees may continue to provide life-saving drugs to the public. The rationale for this position is set forth in detail below.

1. Plaintiffs are alleging damages in the billions of dollars for injuries resulting from low-level radiation emissions from radiopharmaceutical licensee facilities.

NANP members became concerned about their potential liabilities after the holding of the court in Bennett v. Mallinckrodt, Inc., 698 S.W. 2d 855 (Mo. Ct. App. 1985), cert. den., 106 S.Ct. 2903 (1986). In Bennett v. Mallinckrodt, the plaintiffs alleged that they were representatives of a class who had worked or would work adjacent to a radiopharmaceutical processing plant operated by Mallinckrodt, a radiopharmaceutical licensee. The

plaintiffs alleged injury to their physical and mental health from exposure to radioactive emissions released from the plant. The plaintiffs sought damages on three theories of common law: negligence, assault and battery, and strict liability for "ultra-hazardous activities." Mallinckrodt filed a motion to dismiss, arguing that the plaintiffs' action was barred, among other things, by the federal preemption doctrine.

The lower court stated that the test for determining whether the preemption doctrine applied in the nuclear energy field was (1) whether there was an irreconcilable conflict between the federal and state standards, or (2) whether the imposition of a state standard would frustrate the objectives of the federal law. Id. at 859, citing Silkwood v. Kerr-McGee, 104 S. Ct. 614 (1984). The lower court found that the plaintiffs' complaint stated a cause of action and held that:

> even if Mallinckrodt cannot reduce its radiation emissions below the federal standards, Missouri can decide that, as between Mallinckrodt and the plaintiffs, Mallinckrodt ought to bear the cost of compensating those injuries that could have been prevented with a theoretical emission rate lower than the rate approved by the NRC. . . . Mallinckrodt can continue to meet federal standards, and, if found wanting by state standards, simply pay the piper.

Id. at 860.

The United States Supreme Court declined Mallinckrodt's petition for certiorari in June, 1986. Therefore, the question of whether radiopharmaceutical licensees face third-party liability claims for damages allegedly due to low-level

radiation emissions within federal standards has been decided in the affirmative.

In Bennett v. Mallinckrodt, the plaintiffs have demanded $1 billion from the radiopharmaceutical licensee for their injuries. The existence of this $1 billion ad damnum clause in Bennett v. Mallinckrodt, coupled with the substantial defense costs which the defendants have already paid in that case, indicates that the liabilities facing radiopharmaceutical licensees may indeed be great. There are studies on the effects of low dose radiation which show that radiation emissions may induce cancer, cause genetic defects, result in cell depletion of bone marrow, impair fertility or cause sterility. While the merits of studies may be called into doubt, the question of causation remains one of fact which must be decided by a jury. Therefore, particularly with the Bennett v. Mallinckrodt suit as a precedent, it is likely that radiopharmaceutical licensees will, at least, incur substantial defense costs in litigation to continue their operations. On the other hand, if these studies are sound and the question of causation is proved in favor of injured plaintiffs, public claims will need to be paid. Either way, the absence of insurance to cover these costs as well as any claims creates the need for a program of federal indemnification.

2. Nuclear pharmacies cannot effectively insure against liabilities resulting from low-level radioactive emissions.

As explained above in Section IV(D) of this paper, commercial insurance is unavailable to nuclear pharmacies for this risk at a reasonable cost. The NANP has also explored all the

other options suggested by the NRC and found them not to be viable for nuclear pharmacies.

First, in response to an inquiry from an NANP member in August, 1986, American Nuclear Insurers, a risk insurance pool providing coverage to nuclear utility companies indemnified under Price-Anderson, responded that it does not insure general liability risks for products and processes associated with companies involved in the compounding and dispensing of radiopharmaceuticals. A copy of this correspondence is included in Exhibit D. American Nuclear Insurers only insures liability risks of utilities with catastrophic nuclear risk exposure.

Several other alternatives have been suggested by the NRC, including the establishment of a captive insurance company, establishment of a risk retention group or purchasing group, obtaining a security bond, obtaining a letter of credit, depositing securities or cash in trust or escrow accounts, and other forms of self-insurance. These insurance alternatives for nuclear pharmacies are not feasible because the industry does not make sufficient profits to self-insure against third-party claims which may be asserted. For example, one company operating approximately 85 pharmacies made profits of only $17,000 per pharmacy in 1986. For all operations combined, the company's profits were only 1.5% of gross revenues. Nuclear pharmacies and other similarly situated licensees, such as hospital nuclear medicine departments, are end users of by-product nuclear material. These licensees are not in a position to pay the large

damage awards or even the attorneys' fees attendant upon class action suits.

3. The study upon which the NCR relied in concluding Price-Anderson indemnification is not warranted is outdated and inapplicable to nuclear pharmacies.

One of the reasons that the NRC has not exercised its discretionary authority under Price-Anderson for nuclear pharmacies is because it believes that the possibility that a serious incident resulting in substantial liability would occur with low-level radioactive materials utilized by these licensees is remote. This conclusion is based on estimates of liability prepared in 1980 by the Oak Ridge National Laboratory and by NRC. In congressional testimony, the NRC relied on a 1980 study of accident scenarios that could result in third party liability claims and concluded that Price-Anderson indemnification for radiopharmaceutical licensees was not warranted. Specifically, the Commission stated:

> In 1976, the Commission considered whether to exercise its discretionary authority and require financial protection for materials licensees in general and in particular, those persons licensed to possess or use plutonium in plutonium processing and fuel fabrication facilities. After studying the issue, the Commission decided to exercise its discretionary authority by requiring financial protection of, and extending indemnity to, certain of these plutonium licensees.
>
> Based on work performed for NRC by the Oak Ridge National Laboratory (ORNL), NRC staff refinement of that work, and an in-house staff study of this question, the staff informed the Commission in 1980 that, in its view, no apparent need existed to extend Price-Anderson to other classes of materials licensees. This

> conclusion was based in part on the fact that the amount of radioactive material handled by these licensees would not result in accident scenarios that could involve third party liability claims greater than the amount of nuclear liability insurance then available to fuel cycle licensees. While radiopharmacies and similar licensees that handle small quantities of radioactive material were not specifically examined, this conclusion, based on licensees possessing much larger and potentially more hazardous inventories of material, would appear to be at least equally valid for the licensees of smaller inventories.

Testimony of Lando W. Zech, Jr., Chairman, U.S. Nuclear Regulatory Commission, before the Subcommittee on Energy and the Environment and the Subcommittee on Energy and Power, United States House of Representatives, March 27, 1987 (emphasis added).

For several reasons, the NRC's use of the 1980 ORNL study does not support the conclusion that indemnification for radiopharmaceutical licensees is not warranted. First, this study did not attempt to quantify the liability faced by radiopharmaceutical licensees resulting from their low-level radiation emissions. Instead, in the absence of a study, the NRC inappropriately looked to studies done concerning other licensees and extrapolated the results of those studies to arrive at the conclusion that federal indemnification should not be extended to radiopharmaceutical licensees.

Second, in the 1980 study, the NRC concluded that a Price-Anderson extension was unnecessary because $140 million worth of commercially available insurance would cover all other licensees. The problem with this conclusion is that many radiopharmaceutical licensees, particularly nuclear pharmacies, do

not have access to the $140 million of insurance (now $160 million of insurance) available through insurance pools. The NRC conclusion with regard to this issue was clearly made in the absence of information on the availability of insurance to radiopharmaceutical licensees.

Finally, the estimates of liability in the study are, at this point, clearly outdated. At the very least, the damage estimates should be revised to take into account the costs of inflation, particularly increased costs in medical care. The 1980 ORNL study cannot accurately provide the basis for assessing the liability and risks facing radiopharmaceutical licensees at the present time, particularly in light of existing claims.

4. Congress intended for the NRC to use its discretionary authority under the Price-Anderson Act to provide indemnification to nuclear pharmacies.

The NRC has argued in the past that Congress never intended the Commission to provide indemnification to licensees that handle low levels of radioactivity such as radiopharmaceutical licensees. The NRC quotes the legislative history to the original Price-Anderson Act:

> It is not expected that ordinarily the Commission will use the authority given . . . however, there may be rare instances in which the licensee of a facility may have larger quantities of materials or such quantities of specially dangerous or hazardous materials as to warrant the imposition of the provisions of this bill.

S. Rep. No. 295, 85th Cong., 1st Sess., p. 19, May 19, 1957.

The Price-Anderson Act requires the Commission to agree to "indemnify and hold harmless the licensee and other persons indemnified . . . from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee."[9/] 42 U.S.C. § 2210(c). An examination of the terms used in this section, as defined in the Atomic Energy Act, demonstrates that Congress never intended to limit the provision of indemnification to licensees incurring liabilities resulting from catastrophic nuclear accidents. Rather, from the start, Congress realized that indemnification might be provided for licensees incurring liabilities arising from even low-level radiation emissions.

The indemnification provided by the federal government under Price-Anderson covers "public liability arising from nuclear incidents" which exceeds financial protection requirements. See 42 U.S.C. § 2210(c). The Atomic Energy Act defines the term "public liability" as "any legal liability arising out of or resulting from a nuclear incident," although certain liabilities are excepted.[10/] See 42 U.S.C. § 2014(w). The term "nuclear incident" is therefore critical to determining those liabilities for which indemnification can be provided under the

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9/ The Commission has discretion to require financial protection of byproduct licensees; financial protection for commercial licensees and medical therapy, research and development licensees is mandatory. See 42 U.S.C. § 2210(a).

10/ Certain workers compensation claims, claims arising out of an act of war and claims for loss of, or damage to, or loss of use of property located at the site of and used in connection with the licensed activity where the nuclear incident occurs are not covered by Price-Anderson indemnification. See 42 U.S.C. § 2014(w).

Price-Anderson Act. "Nuclear incident" is defined as "any occurrence, including an extraordinary nuclear occurrence, . . . bodily injury, sickness, disease, or death, or loss of or damage to property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or by-product material . . . " See 42 U.S.C. § 2014(q).

This definition states clearly that the term "nuclear incident" includes not only extraordinary nuclear occurrences,[11/] but also includes conditions arising out of or resulting from the very nature of nuclear materials, including by-product materials, whether it be the radioactive, toxic, explosive or the otherwise hazardous quality of the material which results in liability. There is with no requirement that the liability for which indemnification is provided arise out of or result from only high levels and/or sudden emission of or exposure to radiation.

The language of the statute itself thus makes clear that indemnification was intended to be provided for liabilities incurred due to the very nature of nuclear materials, and was not to be limited to liabilities incurred due to catastrophic nuclear occurrences. As explained in the legislative history of the amendments to the definition of "nuclear incident," the definition was designed to "protect the public against any form of damage

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11/ An "extraordinary nuclear occurrence" is, "any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the Commission determines to be substantial, and which the Commission determines has resulted or will probably result in substantial damages to persons offsite or property offsite." See 42 U.S.C. § 2014(j).

arising from the special dangerous properties of the materials used in the atomic energy program." See S. Rep. No. 296, 85th Cong., 1st Sess., reprinted in 1957 U.S. Code Cong. and Ad. News, 1803, 1817. Further, although it was assumed that most incidents for which indemnification would be provided would be "happenings which could be pinpointed in time -- such as a runaway reactor or an inadvertent exposure to radiation, it was not thought that an incident would have to occur within any relatively short period of time." Id. Thus, the possibility that indemnification would be provided for licensees incurring liabilities resulting from, for example, low-level radiation emissions over a course of time was contemplated by the Congress and provided for in the statute.

The provision in the Act which sets a limit on liability for non-profit educational institutions who maintain nuclear reactors also defeats any contention that the Act is not intended to provide indemnification to licensees handling lesser amounts of radioactivity. See 42 U.S.C. § 2210(k). Under this provision, the total individual liability for such institutions for any one nuclear incident is $250,000. The NRC is obligated to indemnify the educational institution for liability above this amount. The total cap on liability for any nuclear incident involving such a non-profit educational institution is also limited. Thus, the Act expressly provides indemnity to licensees which are not commercial power plants.

Moreover, the legislative history of the original Price-Anderson Act has limited authority today in view of the reauthorizations that have occurred since its enactment in 1957.

Indeed, indemnification under the Price-Anderson Act today for those intended to be indemnified in 1957 bears practically no resemblance to the indemnification program then in place. Nor do the reasons why Price-Anderson indemnification was established for those first licensees currently remain valid.

The only legislative history which is relevant to the extension of indemnification to radiopharmaceutical licensees is that surrounding the enactment of section 19 of the Price-Anderson Act Amendments of 1988. As previously stated, this legislative history clearly demonstrates the intent of Congress to establish a program of federal indemnification for radiopharmaceutical licensees if insurance is available.

F. Other Facts Pertinent to the Indemnification Issue

1. The NRC Has Authority to Indemnify Licensees Located in Agreement States.

If the NRC determines that indemnification of radiopharmaceutical licensees is warranted, all such licensees, including those licensed by Agreement States, can be indemnified by the NRC pursuant to the authority granted in Section 170 of the Atomic Energy Act[12/] or Section 19 of the Price-Anderson Amendments Act of 1988.

The legislative history of the original Price-Anderson Act clearly shows that Congress intended to grant the Commission a broad mandate to provide indemnification to, among

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12/ The NRC has recognized on at least one occasion that under section 170 of the Atomic Energy Act, it is authorized to apply Price-Anderson indemnification to any category of licensee whenever it deems advisable. See 50 Fed. Reg. 23960 (June 7, 1985).

others, by-product material licensees. See S. Rep. 296, 85th Cong., 1st Sess., reprinted in 1957 U.S. Code Cong. and Ad. News 1803, 1820. Accordingly, Section 170 permits the Commission to provide indemnification for all licensing categories: commercial; medical therapy, research and development; construction permits; special nuclear material, domestic distribution of source material; and domestic distribution of by-product material. Because Agreement States must establish their licensing standards pursuant to applicable federal laws and regulations (see 42 U.S.C. § 2021(o)), it cannot be argued that those radiopharmaceutical licensees which are licensed by Agreement States fall into a category different from those listed in section 170.

Congress reaffirmed its intent to grant the Commission full authority in this area when it enacted the Price-Anderson Amendments Act of 1988. This Act directs the Commission to consider indemnification for persons licensed by the Commission as by-product licensees, for persons licensed as medical therapy, research and development licensees and for persons licensed by an Agreement State. The term "radiopharmaceutical licensee" is defined to include all of these licensees. See Price-Anderson Amendments Act of 1988, § 19(a)(1). It is thus clear that Congress intends that any indemnification the NRC determines to provide be afforded to all radiopharmaceutical licensees, including those licensed by Agreement States, which, after all, face the same risks as NRC licensees.

The legislative history of the Price-Anderson Amendments Act of 1988 provides further confirmation that Congress intended that all radiopharmaceutical licensees be adequately insured or indemnified against liabilities arising from nuclear incidents. As Senator Simpson stated during the floor debates, the Act:

> contains a process whereby the Nuclear Regulatory Commission is directed to ensure that all radiopharmaceutical licensees are appropriately indemnified or insured against their liabilities arising out of nuclear incidents.

134 Cong. Rec. S10933 (Aug. 5, 1988) (Statement of Sen. Simpson). This sentiment was reiterated by Senator Breaux:

> This [Amendment] directs the NRC to ensure that these licensees, including nuclear pharmacies, hospital nuclear medicine departments, radiopharmaceutical manufacturers and others, have sufficient liability protection in the event of a nuclear incident.
>
> . . .
>
> It is clear that the Commission has the authority to indemnify radiopharmaceutical licensees, including those located in Agreement States, under existing law.

134 Cong. Rec. S10934 (Aug. 5, 1988) (Statement of Sen. Breaux).

In entering into agreements with Agreement States, the NRC has not delegated all of its authority over to the licensees to the states. The legislative history of Section 274 of the Atomic Energy Act, 42 U.S.C. § 2021, leaves no doubt that Congress intended to permit qualified states to assume only certain of the regulatory duties traditionally performed by the

Commission with respect to by-product, source and special nuclear materials. The objectives of this section have been described as to:

> "turn over" to individual States, as they become ready, certain defined areas of regulatory jurisdiction. Certain areas, as to which interstate, national, or international considerations may be paramount, would be excluded.

S. Rep. No. 870, 86th Cong., 1st Sess. (1959).

Accordingly, Section 274 of the Atomic Energy Act, 42 U.S.C. §2021, sets forth the manner in which duties may be delegated to a state pursuant to an agreement with the NRC. Subsection (b) expressly limits the regulatory obligations which may be assumed by a state to those included in Subchapters V (Special Nuclear Material), VI (Source Material), VII (By-product Material) and section 2201 (General Duties of the NRC). Congress, however, did not include among the obligations delegable to an Agreement State those contained in Subchapter XIII, which authorizes the Commission to provide indemnification to licensees. Thus, the discretion and authority to indemnify all licensees remains with the Commission, notwithstanding the fact that other aspects of a licensees' activities may be regulated by a state pursuant to an agreement with the Commission.

2. <u>A Program of Federal Indemnification Would Not Take Away Incentives to Protect the Public Health and Safety.</u>

A program of federal indemnification would uphold Congress's carefully constructed federal regulatory scheme by denying state court claims that establish, through ad hoc jury verdicts, safety standards at variance with the federal standards.

Federal indemnification would not jeopardize the public health and safety. Radiopharmaceutical licensees are presently subject to a wide array of health and safety standards promulgated by the NRC that are very rigorous. In order to enforce compliance with these comprehensive regulations, Congress has authorized the NRC to impose stiff civil penalties, to revoke licensees, and to seek injunctive relief for regulatory violations. Furthermore, Congress has authorized criminal sanctions for willful violations of the statutory scheme and the regulations promulgated thereunder. See generally 42 U.S.C. § 2771-2284. In addition to these sanctions, a requirement that radiopharmaceutical licensees pay a deductible amount as part of an indemnification scheme could provide an additional incentive to licensees to act in the public interest.

V. THE FEDERAL INDEMNIFICATION PROGRAM SUGGESTED BY THE NANP

The NANP intends to propose in this proceeding a program of federal indemnification similar to the existing program for non-profit educational institutions operating research reactors. See 42 U.S.C. § 2210(k). The federal indemnification program would apply to all nuclear pharmacies, whether licensed by the NRC or by Agreement States.

At the appropriate time in this proceeding, the NANP plans to submit a detailed written proposal establishing a program of federal indemnification for nuclear pharmacies. Provisionally, the NANP believes that like the indemnification program for non-profit educational institutions, there should be a "deductible"

amount per incident that each licensed entity would pay. As in the statute, the amount of the deductible should be fixed, perhaps as adjusted for inflation. In addition to the deductible, nuclear pharmacies could be obligated to pay the NRC at the time of licensure a licensure renewal fee for this program. All fees should be based on the costs to NRC of administering the program. The NANP believes that these costs will be minimal and that adequate personnel could be allocated to commence and administer the program on an ongoing basis.

Nuclear pharmacies entering into indemnification agreements with the NRC would waive all defenses they might assert in subsequent public liability actions, as do all other NRC licensees that are subject to indemnification. As under current law, punitive damages would not be recovered out of federal indemnification funds. Finally, the costs of defending third party liability actions should be included in the Price-Anderson indemnification, as they are for most other NRC licensees.

VI. CONCLUSION

The NANP advocates a federal indemnification program so nuclear pharmacies may continue to provide to the public the benefits of life-saving radiopharmaceuticals. Nuclear pharmacies are deserving of federal indemnification because of the valuable medical services they provide to millions of patients each year. Indeed, these drug products have become increasingly important to health care since they first became available for commercial use in 1954. In the drug industry, there is precedent for special

programs and recognition being given to particularly valuable medical services. For example, in 1986, Congress set up a vaccine compensation program to assist vaccine manufacturers in dealing with their significant liabilities and insurance situation. Similar accommodation should be made for nuclear pharmacies so that they may continue to provide these life-saving drugs.

Unlike other industry segments, nuclear pharmacies cannot obtain insurance for their environmental exposure risk because of the existence of nuclear and pollution exclusions in all commercial insurance policies. These entities are thus situated similarly to the companies involved in nuclear power for which Price-Anderson was originally developed. Limited federal indemnification is likewise necessary to encourage and promote the development of nuclear medicine. Without an indemnification program, the availability of radiopharmaceuticals will be jeopardized. A federal indemnification program will not only provide assistance to the licensees themselves but will ultimately benefit the public interest by making possible the continued availability of these drugs.

EXHIBIT A

What Is Nuclear Medicine?

This brochure was prepared by the American College of Nuclear Physicians under a contract from The Department of Energy.

The material was prepared with the support of the U.S. Department of Energy (DOE) Grant No. DE-FG 07-80, ID 12151. However, any opinions, findings, conclusions or recommendations expressed herein are those of the authors and do not necessarily reflect the views of DOE.

What is Nuclear Medicine?

Nuclear Medicine is the medical specialty that uses small amounts of radioactive materials for *diagnosis*, and somewhat larger amounts for *treatment* of diseases. The emphasis in all Nuclear Medicine departments is on diagnosis of disease. An estimated 80 to 100 million Nuclear Medicine procedures are performed yearly in the United States.

How Does Nuclear Medicine Differ from X-Rays or from Computerized Tomography (CT) Scans?

In x-ray or CT examinations, an x-ray tube passes radiation through the patient's body. In Nuclear Medicine imaging the source of radioactivity is not in the machine but inside the patient for a short period of time. Special types of equipment, such as counters, scanners and gamma cameras, are used to detect this radiation.

Who Practices Nuclear Medicine?

Nuclear Medicine is practiced only by qualified, licensed physicians who are assisted by trained technologists and are supported by specially trained physicists and pharmacists.

What is a Radionuclide?

A radionuclide is a radioactive chemical element which gives off energy in the form of radiation.

What is a Radiopharmaceutical?

A radiopharmaceutical is a drug or chemical substance containing a radionuclide. Each radiopharmaceutical is designed to concentrate in a certain organ. The organ can then be imaged with the radiation given off by the radionuclide, and disease processes detected.

What Training is Required of Physicians in Nuclear Medicine?

Physicians who practice Nuclear Medicine must first receive a medical degree and have at least two more years of training in a medical specialty other than Nuclear Medicine. A further two years of training in Nuclear Medicine is then required during which special instruction is given in physics, radiopharmaceuticals and radiation biology, as well as patient evaluation, radionuclide therapy and diagnostic studies. Emphasis is given to cost-effective approaches to patient care.

After successful completion of these four years of post-doctoral training, a physician may take the certifying examination given by the American Board of Nuclear Medicine. Subspecialty certifications available to physicians with other qualifications include Nuclear Radiology and Isotopic Pathology.

What Training is Given to the Technologists Who Perform Tests in Nuclear Medicine?

Nationally approved training programs for Nuclear Medicine technologists have been in existence for many years. These include training in radiation safety, the correct handling of radioactive materials, and techniques of performing Nuclear Medicine tests. On completion of high school and two more years of study and hospital training, the student must pass an examination to be identified as a Registered Nuclear Medicine Technologist.

What Training is Received by Other Professionals Who Provide Nuclear Medicine Services?

Leading universities and teaching hospitals provide specialized training to (1) physicists, who assure the reliability and quality of the instruments used in the performance of tests; (2) pharmacists, who specialize in providing reliable and safe radiopharmaceuticals for patient tests; and (3) radiochemists, who develop and improve the radiopharmaceuticals.

What Kinds of Nuclear Medicine Tests Are Performed?

There are two kinds of Nuclear Medicine tests: *in vitro* (in the test tube) procedures, involving analysis of blood and urine specimens using radiochemicals, and *in vivo* (in the body) procedures, in which trace amounts of radiopharmaceuticals are given directly to a patient to evaluate function of an organ or to image it.

Both types of procedures have proven to be extremely useful, with minimal patient discomfort and risk, and of moderate cost to the patient. With *in vitro* tests, patients receive no radiation at all.

How Are In Vitro Tests Useful?

In vitro Nuclear Medicine procedures have replaced many chemical tests which are more complex and less accurate measures of substances in body fluids. For example, Nuclear Medicine techniques for measuring thyroid hormone production have made possible the detection of underactivity of the thyroid in newborn babies, allowing prompt treatment and saving many children from mental retardation.

Radioimmunoassay (RIA) is a special type of *in vitro* procedure which combines the use of radiochemicals and antibodies to detect hormones, vitamins and drugs in a patient's blood. Amounts of these substances as small as one part in a trillion can be identified. One example is the use of RIA to monitor the amount of digitalis, a potent heart medicine, in the blood of patients with heart disease.

The importance of RIA in medicine was recognized in 1977 when the Nobel Prize in Medicine was awarded for RIA development.

What Are Some Examples of In Vivo Tests?

Imaging of Thyroid Nodules: Detection of Cancer

All types of iodine collect in normal thyroid tissue, but cancers of the thyroid gland do not collect radioactive iodine as completely as normal thyroid. Therefore, a radionuclide scan or camera image of the thyroid gland which reveals an area of decreased radioactive iodine activity may suggest that cancer is present, and indicates the need for appropriate treatment.

Liver and Spleen Imaging: Detection of Tumor, Abscess and Cirrhosis

Injected technetium-99m colloid is taken up by cells in the liver and spleen. Excellent images of these organs can be obtained quickly. Areas of tumor or abscess are revealed as blank spots. In the presence of known cancer elsewhere this screening method may be very cost effective. Knowing that cancer has spread to the liver may indicate the need for therapy other than surgery.

Bone Imaging: Detection of Bone Cancer, Infection and Fracture

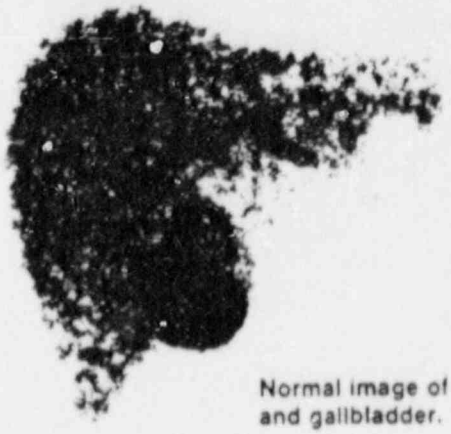
Bone imaging with a technetium-99m phosphate compound is more sensitive than an x-ray in detecting spread of cancer to bones. If no metastases (cancerous lesions) are seen, treatment for a primary tumor may be planned with assurance that spread has not occurred. If metastases are present, other treatment is indicated.

The radiation dose from this study is so small that this procedure is used in young children, for the earliest possible diagnosis of bone infection (often invisible on x-rays). Furthermore, the entire skeleton is clearly seen and the radiation dose to the patient is much lower than with comparable x-ray studies.

Abnormal bone image showing knee infection.

Gallbladder Imaging: Diagnosis of Gallbladder Attack

Imaging of a radiopharmaceutical that concentrates in the bile shows whether the gallbladder is blocked or inflamed. Thus, surgery can be avoided in patients whose abdominal pain is not related to gallbladder disease. This study is both faster and more accurate than x-ray diagnosis.



Normal image of liver and gallbladder.

Cardiac Imaging: Determination of Heart Function or Areas of Injury

A rapid "movie" of heart action can be made, either by passage through the heart of a single intravenous injection of a radionuclide or by repeated imaging after blood cells have been labeled with technetium-99m. This "movie" shows doctors the effects of injury on the motion of heart chamber walls and also provides a mathematical measurement of the efficiency of heart contraction. This technique is risk-free, so it may replace the more expensive and hazardous cardiac catheterization (insertion of tubes into the heart).

Lung Imaging: Detection of Clots (pulmonary emboli)

Tiny technetium-99m particles or aggregates demonstrate the distribution of blood flow to the lungs, providing a sensitive, noninvasive indicator of obstruction to the arteries of the lung. Inhalation of xenon-133 gas demonstrates the distribution of air in the patient's lung and any obstruction of air sacs. The combination of these tests permits sensitive and specific diagnosis of clots in the lung. Such clots, coming from other places in the body, kill many Americans every year. If it is diagnosed early, this condition can be treated effectively.

What is the Role of Nuclear Medicine in Cancer Management?

1. **Diagnosis:** It is useful for determining the location of a cancer if the primary site is unknown.

2. **Staging:** It is extremely sensitive for detecting spread of cancer to bone, liver and brain. This information aids in the choice of proper treatment.

3. **Treatment of thyroid cancers:** Since many thyroid cancers retain some ability to concentrate iodine, although less than that of the normal thyroid, oral doses of radioiodine may be used to destroy areas of residual or recurrent tumor.

4. **Follow-up of treatment:** By showing changes in the number or size of cancer lesions, radionuclide imaging provides an indication for continuation or change in treatment.

What Is An Example of Radionuclide Treatment?

Most radionuclide treatment is of thyroid disease. Because radioactive iodine concentrates in functioning thyroid tissue, moderate amounts may be used to treat an overactive thyroid (a potentially life-threatening disease) without significant side effects.

This treatment technique is simple, safe, and cost-effective, and may eliminate the need for surgery and/or hospitalization.

Is the Radiation Used in Diagnostic Nuclear Medicine Procedures Dangerous to the Patient?

There are no observable harmful effects from the radiation received, at the levels used in diagnostic Nuclear Medicine procedures.

Everyone is constantly exposed to radiation from space, from the earth, and from carbon and potassium atoms in his or her body. It is part of our natural surroundings. The negligible effect of the radiation around us was demonstrated in a recent study. It showed that although Denver, Colorado residents are exposed to higher levels of natural radiation, due to altitude and mineral deposits, they have less cancer than residents of New York City.

With most Nuclear Medicine procedures a patient receives about the same dose of radiation as that acquired in a few months of "normal living." Radiation from Nuclear Medicine tests is usually much lower than that from diagnostic x-ray tests. For example, bone imaging by Nuclear Medicine techniques gives one-tenth the radiation of an x-ray bone survey.

How is Radiation Exposure of Patients Kept to a Minimum?

Because of his or her special training the Nuclear Medicine physician is able to select the most appropriate examination for the patient's particular medical problem, and thereby avoid any unnecessary radiation exposure. The physician is trained to balance the radiation dose to the patient against the value of the information to be gained from the examination.

How Is Radiation Exposure of Nuclear Medicine Physicians and Techologists Controlled?

All persons working with radioactive substances are required to wear devices to measure radiation. Exposures are measured continuously and recorded monthly. A lifetime record of exposure is maintained. Although allowable limits for such exposures are set by the federal government, in practice actual exposure is far below these limits.

Does Nuclear Medicine Produce Radioactive Wastes?

The practice of Nuclear Medicine produces waste materials contaminated with small amounts of radioactivity. These wastes consist of paper, syringes, needles, bottles, linen and discarded chemicals. In one year the Nuclear Medicine Department of an average-size hospital generates about one large room-full of this contaminated waste material.

Most of the wastes generated through Nuclear Medicine procedures contain very short-lived radioactive materials. These can be safely stored on the premises until the radiation disappears sufficiently for them to be disposed of as ordinary trash.

The remaining radioactive waste produced by hospitals, research facilities and manufacturers of radiopharmaceuticals used in Nuclear Medicine must be disposed of at licensed facilities. If the manufacturers were to be prevented from disposing of radioactive wastes they would have to stop making radiopharmaceuticals for diagnosis and treatment.

Are There Adequate Facilities Available for Disposal of Low-Level Wastes?

Presently there are only three licensed sites in the United States for disposal of low-level radioactive wastes; three other sites formerly in operation have been closed. The governors of the three states with disposal facilities for radioactive waste are not willing to continue accepting all the low-level waste generated in this country, and have clearly indicated the need for new disposal sites to be developed through national coordination.

Is Anything Being Done About The Waste Problem?

The federal Low-Level Radioactive Waste Policy Act of 1980 provides for developing new disposal facilities by regional groupings of states.

This system appears workable, and the states are now discussing how to put it into effect.

It is important to remember that if no action is taken, there is a real possibility that the benefits of Nuclear Medicine could be interrupted.

For answers to other questions concerning Nuclear Medicine, contact the Nuclear Medicine specialist at your hospital or write:

American College of Nuclear Physicians
Suite 700
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

EXHIBIT B

Documents in Exhibit B

1. H.R. Rep. No. 100-104, Part 1, 100th Cong., 1st Sess, pp. 19-21 (May 21, 1987)

2. H.R. Rep. No. 100-104, Part 3, 100th Cong., 1st Sess, pp. 69-70 (July 22, 1987)

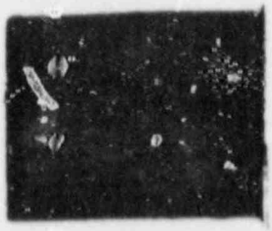
3. S. Rep. No. 100-218, 100th Cong., 1st Sess., p. 18 (November 12, 1987)

4. 134 Cong. Rec. S2301, S2337-S2341 (March 16, 1988)

5. 134 Cong. Rec. H6113, H6122-H6134 (August 2, 1988)

6. 134 Cong. Rec. S.10929-S10935 (August 5, 1988)

100TH CONGRESS
1st Session | HOUSE OF REPRESENTATIVES | REPT. 100-104
Part 1



PRICE-ANDERSON AMENDMENTS ACT OF 1987

MAY 21, 1987.—Ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 1414]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 1414) to amend the Price-Anderson provisions of the Atomic Energy Act of 1954 to extend and improve the procedures for liability and indemnification for nuclear incidents, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 3, strike line 6 and insert in lieu thereof: "adding after 'and costs' the following: '(excluding legal costs subject to subsection c. (1)(D), payment of which has not been authorized in accordance with such subsection o. (1)(D))' ".

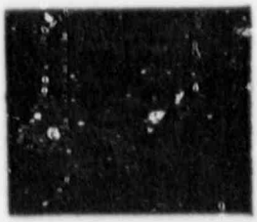
Page 13, line 3, strike "excluding the costs" and all that follows through "damage," on line 4 and insert the following: "including such legal costs as are authorized to be paid under subsection o. (1)(D),".

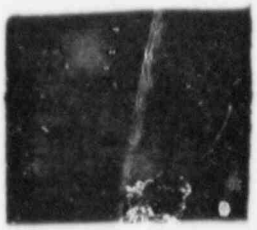
Page 26, insert after line 18 the following new subsection:

(d) LEGAL COSTS.—

(1) PAYMENT CRITERIA.—Section 170 o. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(o)), as previously amended by this Act, is further amended by—

(A) inserting after the subsection designation the following: "PLAN FOR DISTRIBUTION OF FUNDS.—(1)";





the caseload arising out of the accident will have an unusual impact on the court. Only U.S. district judges or circuit judges are eligible to serve on the panel. The panel may consolidate claims, assign cases, appoint special masters, promulgate special rules of court consistent with the Federal Rules of Civil Procedure, implement measures encouraging efficient resolution of cases, and submit damage estimates to the President.

M. PUNITIVE DAMAGES

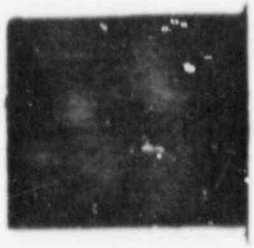
The current Act does not expressly state whether a court may award punitive damages in connection with a claim arising out of a nuclear incident. Nor does the Act expressly state whether private financial protection funds or government indemnity funds could be used to pay punitive damages if imposed. In 1984, in *Silkwood v. Kerr-McGee Corporation*, 464 U.S. 238, the U.S. Supreme Court resolved the first of these two issues when it held that the Atomic Energy Act, as amended by the Price-Anderson Act, does not prevent a court from imposing punitive damages under state tort law. The Court did not address the second issue, however, whether private financial protection or government indemnity funds available under the Price-Anderson Act could be used to pay a punitive damage award.

During the 99th Congress, the Subcommittee on Energy and the Environment approved an amendment to H.R. 3653 that would have prohibited use of either private financial protection or government indemnity funds available under the Act to pay punitive damage awards. The purpose of this amendment was to prevent the limited funds available for compensating actual injuries from being used to pay punitive awards. A serious question arose, however, whether the amendment subjected NRC licensees and DOE contractors to *unlimited* liability for punitive damages, thereby undermining one of the primary tenets of the Act. Accordingly, the Committee subsequently agreed to eliminate the amendment, thus restoring current law on the issue. Notwithstanding this action, the Committee remains opposed to punitive damage awards in connection with claims arising under the Price-Anderson Act because such awards could have the effect of diminishing the limited funds available to compensate actual injuries.

N. NUCLEAR PHARMACIES

Nuclear pharmacies prepare and dispense radiopharmaceuticals—radioactive drugs used to diagnose and treat diseases. Because radiopharmaceuticals are compounded with byproduct material within the meaning of section 11 e. of the Atomic Energy Act of 1954, the manufacture and possession of radiopharmaceuticals are regulated either by the NRC or by "agreement" states under section 274 of the Atomic Energy Act.

The NRC has discretionary authority under section 170 a. of the existing Price-Anderson Act to require financial protection of, to indemnify, and to limit the liability of byproduct licensees, including nuclear pharmacies. The NRC has not exercised this authority, however, because it believes the amount and type of radioactive material handled by nuclear pharmacies would not result in public



liability in excess of available insurance. Indeed, radiopharmaceuticals contain extremely small amounts of radioactivity which decays naturally over a period of hours.

The NRC and this Committee are not aware of a single instance in which a nuclear pharmacy has been held liable for personal injuries or property damage resulting from radioactive emissions from a nuclear pharmacy. In the case of *Mallinckrodt, Inc.* v. *Bennett*, 698 S.W. 2d 854 (Mo. Ct. App. 1985), *cert. denied* 106 S. Ct. 2903 (1986), however, the Missouri Court of Appeals held that a radiopharmaceutical processing plant could be sued for damages resulting from radioactive emissions from such a plant. Although the *Mallinckrodt* case still has not been tried on the merits, nuclear pharmacies fear the Missouri decision exposes them to substantial liability. A spokesman for the nuclear pharmacies testified they are unable to insure against such liability.

The Subcommittee on Energy and the Environment adopted, but the Full Committee did not approve, an amendment to H.R. 1414 that would have: (1) required the NRC to indemnify nuclear pharmacies for any public liability in excess of $500,000 arising from nuclear incidents involving radiopharmaceuticals; (2) exempted nuclear pharmacies from Price-Anderson financial protection requirements; and (3) prohibited suits against nuclear pharmacies for public liability from emissions of radioactive materials at levels permitted by the NRC.

The NRC has testified that the Subcommittee amendment is neither necessary nor appropriate. The Commission noted that it has discretionary authority under section 170 a. of the existing Price-Anderson Act to require financial protection of nuclear pharmacies and other byproduct licensees. The legislative history of this provision makes it clear that Congress intended the NRC to exercise this authority only in "rare instances in which the licensee of the facility may have large quantities of materials or such quantities of especially dangerous or hazardous materials as to warrant the imposition of the provisions" of the Price-Anderson Act. A spokesman for the nuclear pharmacies testified that radiopharmaceuticals contain only "extremely small amounts of radioactivity" and the NRC has concluded that the amount of radioactive materials possessed by nuclear pharmacies could not result in the public liability of a magnitude warranting the extraordinary provisions of the Act.

Moreover, the Subcommittee amendment would have drastically increased the number of licensees indemnified by the NRC from about 145 to nearly 8,000. It would have required the federal government to indemnify all nuclear pharmacies or nuclear medicine departments of hospitals or clinics even though two-thirds of these institutions are regulated by the states rather than the federal government. Finally, it would have preempted state tort law by expressly prohibiting suits for damages resulting from emissions of radioactive materials at levels permitted by the NRC, despite the policy of only interfering with state tort law to the minimum extent necessary—a principle which has been embodied in the Price-Anderson Act for the last 30 years.

For the foregoing reasons, the Committee disapproved even a narrower substitute to the Subcommittee amendment. The Committee recognizes the valuable role played by the radiopharmaceu-

ticals in modern medicine and the difficulties presently faced by nuclear pharmacies in obtaining liability insurance. Nonetheless, the Committee is not convinced that the Price-Anderson Act should be used to address a problem of insurance availability that does not stem from the potential for a catastrophic nuclear accident. The Committee expects the NRC to monitor the effects of the insurance crisis on the nuclear pharmacies and to exercise its discretionary authority or to recommend additional legislation if necessary to ensure that the full benefits of nuclear medicine remain available to the public.

O. LENGTH OF EXTENSION

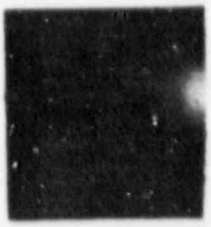
H.R. 1414 extends the NRC and DOE's authority to enter into indemnity agreements under subsections c., d., and k. for an additional 10 years, until August 1, 1997. The length of extension is based upon the precedent set in the original Price-Anderson Act and followed in both the 1965 and 1975 extensions. Moreover, NRC has testified that the current generation of nuclear power plants will begin to be decommissioned around 1997. Unless additional nuclear power plants are ordered before then, the number of plants available to contribute deferred premiums to the compensation fund will decrease, thereby shrinking the aggregate amount of money available to compensate the public. This situation presents serious questions about the future operation of the deferred premium system which the Committee did not address but which will need to be considered before the Price-Anderson Act is extended beyond August 1, 1997.

VI. EXPLANATION OF COMMITTEE AMENDMENTS

LEGAL COSTS

As introduced, H.R. 1414 would have prohibited payment of the costs of investigating, settling, and defending claims out of financial protection maintained pursuant to subsection 170 b. of the existing law. The Committee adopted an amendment to the bill to permit payment of these costs from financial protection, but only under certain circumstances. The Committee accomplished this result by amending subsection 170 o. (1) of the existing law, which authorizes the U.S. district court having jurisdiction over claims subject to the Price-Anderson Act to allocate available compensation funds among claimants and to control payments whenever such court determines that public liability for a single nuclear incident may exceed the limit on liability established under subsection 170 e.

The Committee amendment adds a new subparagraph (D) to subsection o. (1) that expressly governs payment of "legal costs," which are defined by the amendment as the costs incurred by either claimants or defendants in initiating, prosecuting, investigating, settling or defending claims or suits for damage arising under the Price-Anderson Act.



The court's authority to control payment of legal costs under the amendment arises only when the court's current authority under subsection 170 o. to allocate funds and control payments arises—

100TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 100-104
Part 3

PRICE-ANDERSON AMENDMENTS ACT OF 1987

JULY 22, 1987.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

together with

ADDITIONAL AND SUPPLEMENTAL VIEWS

[To accompany H.R. 1414]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1414) to amend the Price-Anderson provisions of the Atomic Energy Act of 1954 to extend and improve the procedures for liability and indemnification for nuclear incidents, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

ADDITIONAL VIEWS OF CONGRESSMAN BILL RICHARDSON

I have a particular concern that was not part of the Committee on Energy and Commerce discussions on Price Anderson in the 100th Cong ess although it has been brought to the attention of the Subcommittee on Energy and Power in the past. I appreciate the opportunity to share my concern over whether certain NRC by-product material licensees, nuclear pharmacies and hospital nuclear medicine departments should be covered under the Price Anderson Act. There has been a growing number of cases involving exposure to radiation coupled with the unavailability of commercial insurance that is creating a disincentive for these licensees to continue to provide these drugs to millions of Americans each year. Recent court decisions would subject nuclear pharmacies and hospital nuclear medicine departments to tort liability even where these licensees fully comply with NRC regulations. General liability insurance policies uniformly exclude damages resulting from pollution hazards and nuclear materials and access to the nuclear insurance pools.

The current law provides NRC with discretionary authority to include these licensees under the Act in 42 U.S.C. 2210(a). Price Anderson coverage is consistent with the policy goals of the Act. People alleging claims against these licensees will not be compensated if nuclear pharmacies and hospital nuclear medicine departments have no insurance or monies out of which claims may be paid. Without liability limits within which these licensees may operate, the development of nuclear medicine may be severely impaired.

What is not necessary for these licensees is coverage under Price Anderson for medical malpractice and product liability claims—those risks are presently covered by commercial insurance. The concern arises from the absence of coverage for claims that have arisen or will arise out of nuclear incidents or other events which result in the release of low level radioactive emissions. These emissions may occur in an explosion at a licensed facility, in an accident where radiopharmaceuticals are being transported or in the course of operations without any negligence on the part of the licensee.

The NRC has opposed the inclusion of such a provision in the past stating that the budgetary impact of the amendment could not be accurately assessed but would be substantial. However, I believe that the NRC has overestimated the scope of the proposed program. Claims for misadministration, medical malpractice or product liability would not be covered. The number of licensees covered could be less than half of the 7,800 licensees envisioned by the NRC. Moreover, all the costs of administering the program could be passed on to the license. I fear that the real reason that NRC has not acted on this issue is that it has not recognized that prob-

lem exists. It would be helpful if the NRC revisited this issue in the context of Price Anderson to provide an answer to the insurance problem which jeopardizes the future of nuclear medicine.

Nuclear pharmacies and hospital nuclear medicine departments, despite their excellent safety record, would welcome the inclusion of a uniform federal rule and Price-Anderson coverage as a prerequisite to providing these health care services. I appreciate the opportunity to express my concern on this issue.

BILL RICHARDSON.

Calendar No. 435

100TH CONGRESS
1st Session

SENATE

REPORT
100-218

PRICE-ANDERSON ACT AMENDMENTS OF 1987

NOVEMBER 12, 1987.—Ordered to be printed

Mr. BURDICK, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 1865]

The Committee on Environment and Public Works reports an original bill (S. 1865) to amend the Price-Anderson provisions of the Atomic Energy Act of 1954 to extend and improve the procedures for the protection of the public from nuclear accidents and recommends that the bill do pass.

I. GENERAL STATEMENT

This legislation, the Price-Anderson Act Amendments of 1987 (amending section 170 of the Atomic Energy Act of 1954, as amended, and related sections) extends and improves the procedures for compensating the public in the event of a nuclear incident arising from activities of Nuclear Regulatory Commission (NRC) licensees and Department of Energy (DOE) contractors involved in DOE's high-level nuclear waste program.

The bill increases the amount of funds that would be immediately available without the need for further Congressional action to compensate the public for damages resulting from nuclear incidents at large commercial nuclear power plants or as a result of activities involving DOE high-level waste contractors, sets forth the procedures to be followed with respect to damages that exceed this amount of available funds, including the procedures for Congressional review, and extends for thirty years the authority of the NRC and DOE to bring new licensees or high-level waste contractors within the coverage of the Price-Anderson system.

pended, then the President would be required to submit such determinations to the Congress.

Upon the submission of such determinations, the President also would be required to submit one or more plans for an alternate method for the determination and satisfaction of public liability from the nuclear incident. Once these communications are submitted to Congress, and after introduction in the form of joint resolutions, procedures parallel to those for the consideration of the Presidential funding plan would apply to the consideration of the Presidential plans for the suspension of the adjudication of claims and the establishment of alternative methods of determining compensation. However, (1) the time for Congressional review of the resolution for the suspension of the adjudication of claims would be limited to 45 days in Committee and 50 hours of floor debate; and (2) the time for review of the suggested alternative would be limited to 150 days in Committee and 100 hours of floor debate.

If Congress were to pass the first resolution, suspending further court adjudication of claims, but did not subsequently pass the second resolution within 180 days of its introduction, then the suspension of further court adjudications would be lifted at the expiration of that period.

SECTION 106: NONPROFIT EDUCATIONAL AND NUCLEAR PHARMACY LICENSEES

Section 106 amends section 170 k. of the Atomic Energy Act of 1954, as amended, which currently requires the NRC to indemnify certain non-profit educational licensees for public liability and limits public liability to the amount of such indemnification.

This section extends by thirty years the requirement that the NRC exempt non-profit educational licensees from the requirements of financial protection, and the authority to enter into agreements with such licensees. As under existing law, such licensees are to be indemnified from public liability in excess of $250,000 arising from nuclear incidents, in the amount of $500,000,000. Aggregate liability is limited to $500,000,000.

The provisions of current law are exteneded to licenses issued for medical and related activities to persons operating nuclear pharmacies or hospital medicine department. It is the Committee's intent that "related activites" include the manufacture of the radiopharmaceuticals provided to persons operating nuclear pharmacies or hospital medicine departments. This section also states that such indemnification agreements would not cover public liability for, or preclude claims arising out of, the administration or misadminstration of radiopharmaceutical dispensed by nuclear pharmacies or nuclear medicine departments of hospitals in the course of diagnosis or therapy.

SECTION 107: WAVIER OF DEFENSES

Section 107 amends section 170 n. of the Atomic Energy Act of 1954, as amended, which requires the waiver of various defense in the event of an extraordinary nuclear occurrence.

The bill generally preserves the provisions of current law regarding various circumstances in which the waiver of defenses is re-

PRICE-ANDERSON AMENDMENTS ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of H.R. 1414, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1414) to amend the Price-Anderson provisions of the Atomic Energy Act of 1954 to extend and modify the procedures for liability and indemnification for nuclear incidents.

The Senate proceeded to the consideration of the bill.

QUOROM CALL

Mr. BYRD. Mr. President, I suggest the absence of a quorum. This will be a live quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk called the roll, and the following Senator answered to their names:

[Quorum No. 13]

Bingaman	Cranston	Proxmire
Breaux	Fowler	Sarbanes
Bumpers	Heinz	Shelby
Burdick	Johnston	
Byrd	Metzenbaum	

The ACTING PRESIDENT pro tempore. A quorum is not present.

The clerk will call the names of the absent Senators.

Mr. BYRD. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators, and I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from New Jersey (Mr. BRADLEY), the Senator from Tennessee (Mr. GORE) and the Senator from Illinois (Mr. SIMON) are necessarily absent.

I also announce that the Senator from Delaware (Mr. BIDEN) and the Senator from Hawaii (Mr. MATSUNAGA) are absent because of illness.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 71, nays 24, as follows:

[Rollcall Vote No. 53 Leg.]

YEAS—71

Adams	Byrd	Dole
Baucus	Chiles	Domenici
Bentsen	Cochran	Durenberger
Bingaman	Cranston	Exon
Boren	Danforth	Ford
Boschwitz	Daschle	Fowler
Bu[illegible]	DeConcini	Garn
Bumpers	Dixon	Glenn
Burdick	Dodd	Graham
Chafee	Exon	Roth
Cohen	Ford	Rudman
Conrad	Garn	Sanford
D'Amato	Glenn	Sarbanes
Danforth	Gore	Sasser
Daschle	Graham	Shelby
DeConcini	Harkin	Simpson
Dixon	Hatch	Stafford
Dodd	Heflin	Stennis
Durenberger	Heinz	Stevens
Evans	Hollings	Thurmond
Exon	Inouye	Trible
Ford	Johnston	Warner
Fowler	Kassebaum	Weicker
Garn	Kasten	Wilson
Glenn	Kennedy	
Graham	Lautenberg	
Gramm	Leahy	
Harkin	Levin	
Hatch	Lugar	
Hatfield	Matsunaga	
Heflin	McClure	
Heinz	Melcher	
Hollings	Metzenbaum	
Humphrey	Mikulski	
Inouye	Mitchell	
Johnston	Moynihan	
Kassebaum	Nunn	
Kasten	Packwood	
Kennedy	Pell	
Lautenberg	Pressler	
Leahy	Pryor	
Levin	Reid	
Lugar	Riegle	
Matsunaga	Rockefeller	

NAYS—24

Armstrong	Hecht	Nickles
Bond	Helms	Packwood
Chafee	Humphrey	Pressler
Cohen	Kasten	Quayle
Conrad	Kennedy	Simpson
D'Amato	McCain	Stevens
Evans	McConnell	Thurmond
Gramm	Murkowski	Trible
Hecht	Nickles	Wallop
Helms	Packwood	Weicker
Humphrey	Quayle	Wilson

NOT VOTING—5

Biden	Gore	Simon
Bradley	Matsunaga	

So the motion was agreed to.

The ACTING PRESIDENT pro tempore. A quorum is present.

PRICE-ANDERSON ACT AMENDMENTS

The Senate continued with the consideration of the bill (H.R. 1414).

Mr. BYRD. Mr. President, what is the pending matter before the Senate?

The ACTING PRESIDENT pro tempore. H.R. 1414 is pending before the Senate.

Mr. JOHNSTON. Mr. President, today we are beginning consideration of legislation to reauthorize and extend the Price-Anderson Act. The Price-Anderson Act provides a system for public compensation in the event of a nuclear accident. This legislation is long overdue. I urge the Senate to act quickly on this legislation so that it is not delayed any further.

The Price-Anderson Act provides a unique benefit to the public in the form of swift, assured compensation in the event of a catastrophic nuclear accident. To be sure, our Nation's nuclear facilities—commercial power reactors and facilities of the Department of Energy—have an enviable safety record. But if a serious accident were to occur, the resulting damage could be very, very expensive.

The Price-Anderson system is a comprehensive, compensation-oriented system of liability insurance for DOE contractors and NRC licensees operating nuclear facilities. Under Price-Anderson, a form of no-fault insurance is in effect at each facility where there is risk of a nuclear accident. In the event of a catastrophic accident, the operating entity—a utility or DOE contractor—would accept all liability for injuries caused by the accident and would waive traditional legal defenses. The issues in court would simply be to establish causation and the extent of the damages. Damages determined by the court would then be paid, quickly and without question.

Under current law, the aggregate amount of damages that could be paid to the victims of a catastrophic nuclear accident is limited to just over $7 million in the case of an accident at a commercial reactor and to $500 million in the case of DOE facilities. Compensation above these limits would be available only if Congress enacts a law providing for such compensation. Today, it is universally recognized that these limits are too low. But the limits are written into the law, so the law needs to be changed to reflect current costs.

Moreover, currently there is no authority to provide insurance under the Price-Anderson system for new reactor licensees and new or renewed DOE contracts. The authority to indemnify new licensees or contractors under Price-Anderson Act expired on August 1, 1987.

Of course, the Federal Government will not shut down its essential national security activities simply because it cannot indemnify its contractors under the Price-Anderson system. Work for the Department of Energy will continue.

So there is an urgent need to extend and reauthorize the Price-Anderson Act not to protect the contractors or the nuclear utilities but to protect the public. Public protection in the case of a catastrophic nuclear accident is far superior under a renewal of the Price-Anderson system. In the absence of Price-Anderson for DOE contractor activities, compensation for victims would be less predictable, less timely, and potentially inadequate compared to the compensation that is available under the current system. For that reason, I have asked and made sure that the legislation before us will require the Department of Energy to go back and indemnify all of its contractors under Price-Anderson, even those who have been indemnified under the authority of Public Law 85-804 in the meantime.

Let me address briefly the specific provisions of the legislation before the Senate. H.R. 1414, as passed by the House, would replace the existing limit on liability under Price-Anderson to about $7 billion, a tenfold increase over the limits of existing law. In the event that damages were greater than $7 billion, a compensation plan would be submitted to the Congress by the President. In the case of an accident involving nuclear waste, the $7 billion limit would be lifted automatically if Congress failed to act within a year. H.R. 1414 will extend Price-Anderson authority for 10 years for NRC licensees and for 12 years for DOE contractors.

Personally, I would prefer to extend the act for longer. The bill reported by the Energy and Natural Resources Committee would extend Price-Anderson for 30 years, so at the appropriate time, I may offer an amendment to so extend H.R. 1414.

Let me take a minute to address some concerns I have about one

sumably be payable from the permanent judgment appropriation. 31 U.S.C. 1304 (1982). Most judgments against the United States are paid from the judgment appropriation.

Until the Federal Government or the person indemnified provided to a person with a valid judgment for public liability the funds necessary to satisfy that judgment, the person indemnified would remain responsible for satisfying that judgment. A person indemnified is subject to action by a claimant for a valid judgment until that judgment is satisfied.

It is expected that use of the judgment appropriation or further action by claimants against persons indemnified will not be necessary. In enacting this legislation, Congress is pledging that funds up to the specified limits will be provided to satisfy public liability as adjudicated by the courts.

If the system works as intended, there should be no delay between the rendering of a valid judgment against an indemnified person and the provision of funds by the Federal Government—either by DOE through the use of appropriated funds, or by the Congress through a supplemental appropriation—to honor its indemnity contracts for the funds necessary to satisfy that judgment. In this manner both the claimant and the person indemnified would receive the compensation and financial protection anticipated.

The purpose of this legislation is to provide the public and the DOE contractors with certainty as to how much compensation will be provided, under what conditions, and who will be providing it. With respect to valid claims resulting from Price-Anderson indemnified activities that are less that the aggregate limit on public liability, Congress is not preserving for itself the discretion to decide, during the appropriations process after an accident, the appropriate level of compensation for that accident. To preserve this discretion would undercut the very purpose of this legislation.

The House bill included some language that could create confusion as to whether or not Congress would in fact be obligated to appropriate the required funds. Because it appears that everyone's intent is that there be no such discretion, this amendment eliminates that potentially confusing language.

Although I have described the process as it would apply in the event of an incident arising out of a contractual activity undertaken by a person indemnified by DOE, the process would be the same as if the accident arose out of an activity to which an indemnity agreement with the NRC applied, except that NRC appropriated funds would initially be used, if available.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. BREAUX. I am happy to yield.

Mr. CHILES. This does not raise any budget point of order problem. I ask the Senator.

Mr. BREAUX. This is an agreement that we worked out with his staff in taking out the subject to appropriations language.

Mr. President, if there is no further debate on the amendment, I urge adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Louisiana [Mr. JOHNSTON].

The amendment (No. 1668) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1669

(Purpose: to encourage the continued use and availability of radioisotopes for medical purposes)

Mr. BREAUX. 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 Louisiana [Mr. BREAUX] proposes an amendment numbered 1669.

Mr. BREAUX. 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 19, delete lines 7 through 13, and insert in lieu thereof the following:

"U.S.C. 2210 (k), as amended, is amended to read as follows:

"(k) EXEMPTION FROM REQUIREMENTS OF FINANCIAL PROTECTION.—

"(1) With respect to any license issued pursuant to section 53, 63, 81, 104(a), or 104(c) for the conduct of—

"(A) educational activities to a person found by the Commission to be a nonprofit educational institution, or

"(B) under byproduct material licenses issued by the Commission or by an Agreement State to a person for the conduct of medical and related activities if operating nuclear pharmacies or hospital nuclear medicine departments,

the Commission shall exempt such licensee from the financial protection requirement of subsection 170 a.

"(2) With respect to licenses issued pursuant to paragraph (1) of this subsection between August 30, 1954, and August 1, 1997, for which the Commission grants such exemption:

"(A) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of $250,000 arising from nuclear incidents. The aggregate indemnify for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, including such legal costs of the licensee as are approved by the Commission.

"(B) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs, and

"(C) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the licensee in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

"(3) No contract of indemnification entered into by the Commission pursuant to paragraph (2) of this subsection for the conduct of activities described in subparagraph (1)(B) of this subsection shall provide indemnification of public liability for, or preclude claims arising out of, the administration or misadministration of radio-pharmaceuticals dispensed by nuclear pharmacies or nuclear medicine departments of hospitals or clinics in the course of diagnosis or therapy.

"(4) With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 1997, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 1997.

"(5) Any licensee may waive an exemption to which it is entitled under this subsection."

Mr. BREAUX. Mr. President, the amendment that I have proposed to the Senate is really quite simple. It is essentially the same amendment that was unanimously adopted by the Environment and Public Works Committee. The amendment deals with what are known as nuclear pharmacies. The amendment in essence says that the Nuclear Regulatory Commission, the NRC, shall enter into indemnification agreements with persons who are operating nuclear pharmacies, or hospital nuclear medicine departments. The indemnification under this amendment shall provide coverage for such persons from public liability under Price-Anderson up to $500 million. The indemnifying party is responsible for the first $250,000 in liability.

I would note, first of all, that we did not in our committee create a new liability regime especially for nuclear pharmacies. What we did in the committee, and what we proposed to the Senate through this amendment, is to treat nuclear pharmacies in the same manner as the current law treats nonprofit education institutions that are handling certain radioactive materials. When all the fancy arguments are made, the policy behind this recommendation is really quite simple.

The purpose of Price-Anderson is to encourage certain uses of nuclear materials for the benefit of mankind, while simultaneously affording the public with certain protections. We believe that the benefits to be derived from radiopharmaceuticals, which are used extensively in the diagnosis of, and therapy for, a broad array of medical problems, speak in favor of this

type of protection that is afforded only under the Price-Anderson system.

As set forth more fully in our committee's report—Senate Report 100-218—nuclear pharmacies provide radioisotopes to hospitals and the medical profession for the diagnosis and treatment of various diseases and injuries. The use of these radiopharmaceuticals is widespread and essential for many activities in modern medicine.

Information and evidence presented to the Environment and Public Works Committee indicated that nuclear pharmacies licensed by the NRC are unable to obtain adequate private insurance to cover liability in the event of a nuclear incident involving such materials. In fact, the NRC itself, in a November 9, 1987 letter to Senators JOHNSTON and MCCLURE stated that commercial insurance is simply not available to radiopharmacies.,

In our view, this situation is completely analogous to the situation faced by nuclear utilities and contractors which led to the development of Price-Anderson in the 1950's. We believed that it was important to address this situation and to take steps which ensure a continued supply of these vitally important medical products.

It is important to note up front, Mr. President, that claims arising from the administration or misadministration of radiopharmaceuticals during diagnosis or therapy would not be covered by the amendment. Thus, this amendment does not provide Federal indemnification or limited liability for malpractice suits against physicians, hospitals, or nuclear pharmacies using or dispensing radiopharmaceuticals. Similarly, it does not provide indemnification or limited liability for product liability suits against manufacturers, hospitals, or nuclear pharmacies dispensing radiopharmaceuticals. The scope of the coverage provided by this provision is limited to releases of such materials as a result of activities other than patient diagnosis or therapy.

Mr. President, I have read that this amendment is designed to overturn a decision rendered in the Missouri Court of Appeals, styled *Bennett v. Mallinckrodt*, 698 S.W. 2d 854 (Mo.Ct.App. 1985), cert. den., 106 S.Ct. 2903 (1986) (hereinafter referred to as the Mallinckrodt decision or Mallinckrodt). This is not true, and I would like to take a moment to discuss that case.

Mallinckrodt is a Missouri case involving a suit for damages based on alleged injuries from routine radioactive releases from a radiopharmaceutical processing plant. In this case, the plaintiff's complaint was dismissed by the trial court in response to the defendant's motion to dismiss. As ground for dismissal, the trial court stated that it lacked subject matter jurisdiction and that the complaint failed to state a claim upon which relief could be granted. The Missouri Court of Appeals reversed the trial court's judgment and remanded the case for a trial and judgment on the merits.

Even though the Missouri Court of Appeals could have reversed the case on narrow procedural grounds, the court proceeded to discuss the merits of the case. And, although the court found "that States are precluded from regulating the safety aspects of nuclear development and of hazardous nuclear materials," it also stated that the existence of Price-Anderson, and its structure, laid the groundwork for the following propositions:

First, as is the case with other manufacturers, producers, and operators functioning in a regulated field, Mallinckrodt is not guaranteed absolute isolation from the consequences of its act through compliance with Federal regulation;

Second, State law remedies, in whatever form they might take, are available to those injured by nuclear incidents; and

Third, States may be preempted from setting their own emission standards, but they are not preempted from compensating injured citizens.

Obviously, one of the implications of Mallinckrodt on NRC and agreement State licensees who operate nuclear pharmacies and hospital nuclear medicine departments is that they may be held liable under State tort law for injuries resulting from radiation exposure, even though they may not have violated any Commission or applicable State regulations. That this is the result of Mallinckrodt should be no surprise. The Price-Anderson Act relies on the application of State tort law for any determination of damages.

But, Price-Anderson does not affect those tort laws to the extent that it puts limits on liability and provides a system of Federal indemnification for various nuclear related activities. In this sense, the amendment adopted by the Environment and Public Works Committee, and the amendment before the Senate, adds not one new element to the existing Price-Anderson system and does not overturn the basic holding of Mallinckrodt.

Mr. President, another criticism of this amendment is that it simply involves too many licensees, and will prove burdensome to the NRC. I think I have heard that this amendment will involve the issuance of indemnities to over 7,800 licensees nationwide. I think that the NRC, which is the source for that estimate is, quite simply, wrong. In its responses to House and Senate committees that have inquired about this matter, the NRC based its estimate of covered licenses on the number of licenses it has issued to individual practitioners and double counted licensees who offer different nuclear medicine services at the same site.

In this respect, the language of the amendment is quite clear. The amendment only covers persons conducting medical and related activities of operating nuclear pharmacies or hospital nuclear medicine departments. In our committee report we indicated that the "related activities" addressed by the amendment only included the manufacture of the radiopharmaceuticals, since the intent of the provision is to remove barriers to the production and distribution of these items.

Under this interpretation of the amendment, we believe that the actual number of licensees that would be covered is less than half of the NRC estimate, some 3,650 licensees. Of these, only about 150 constitute nuclear pharmacies, and the vast majority of the rest are hospitals, many of which are not private but are operated by State and county governments.

In any event, it seems to us that the basic policy question is not dependent upon the number of licensees, but on the beneficial uses for which this very special material is utilized.

Mr. President, another argument raised against the amendment is that it would require the Federal Government to indemnify activities licensed by State agencies. This argument, we think, fails to make clear that the NRC plays a large role in so-called agreement State licensee activities.

First, the NRC must delegate its authority to these States under section 274 of the Atomic Energy Act. There are currently 29 of these so-called agreement States.

Second, the NRC controls agreement State licensee activity by allowing the State to apply no less stringent regulations than those in effect for NRC licensees. In this way, the NRC sets uniform minimum Federal standards for byproduct material licensees and does, in a practical sense, license their activities. In lieu of these facts, it is erroneous to suggest that the Federal Government might be responsible for incidents about which the NRC is unaware and does not permit.

There are two additional arguments, Mr. President, that have been raised against this amendment that I would like to quickly dispose of.

The first is that this amendment will result in an inordinate drain on Commission resources and because the risk of liability is very small, we should not commit substantial resources to the effort. Again, we respectfully disagree with the Commission.

We believe that the indemnity agreement could be made a part of the license agreement. Byproduct material licenses are renewed, on the average, every 3 years at a cost of approximately $1,400 to each NRC licensee and up to $2,200 for each agreement State licensee. In addition, amendments to byproduct material licenses cost $230.

If we assume that each covered license will need an amendment, and we accept our figure of approximately 3,650 licensees, that would make available $839,500 to cover the cost of execution of a standard form. If, on the other hand, the indemnity arrangement was made a part of the license renewal process, that would make available some $8.03 million.

The second is that the Commission already has the discretion to provide these indemnities, but has determined that it is not necessary. It is true that the Commission, in 1980, conducted a study to determine whether it should exercise its discretionary authority to indemnify certain of its licensees, including hospital and medical licensees. And based upon that 1980 staff study and talks with people at the Oak Ridge National Laboratory, NRC Chairman Zech, in March 27, 1987 testimony before the House Interior and Insular Affairs Committee, maintained that Price-Anderson indemnities should not be extended to nuclear pharmacies and hospital nuclear pharmacy departments.

However, the 1980 study did not examine the risks to which nuclear pharmacies might be exposed and most unfortunately, the premise of the 1980 NRC staff study in deciding that such indemnifications were unnecessary contained the assumption that 140 million dollars worth of insurance was available to licensees that handle small quantities of nuclear material. Clearly, from the information made available to our committee, this assumption as applied to nuclear pharmacies and hospital nuclear medicine departments is fanciful, at best.

Nuclear pharmacies and hospital nuclear medicine departments have been denied entrance to nuclear risk pools, such as American Nuclear Insurors, which provide insurance to nuclear facilities. For example, ANI has told these licensees that they would only consider providing coverage to entities that handle 6,000 or more curies of radioactive material at a single time. Nuclear pharmacies and hospital nuclear medicine departments simply do not have access to specialized nuclear risk pools nor may they obtain insurance commercially or through the development of a captive company, as the NRC has just recently admitted.

I would also say again to my colleagues, that the whole concept of Price-Anderson is to provide those individuals and corporations—that cannot get insurance and are involved in the nuclear industry providing services that are needed in this country—that Price-Anderson provides them that type of coverage by restricting the amount of liability they can be exposed to.

We do it for contractors who do work for the Department of Energy. We have just handled that particular subject area. We do it for the other licensees of the Nuclear Regulatory Commission whose use of nuclear materials we want to encourage.

This amendment would extend the Price-Anderson concept to nuclear pharmacies or hospital nuclear medicine departments.

I would be the last person to come to the floor of this Senate and say to a private industry that we are going to protect them from any kind of liability if they could acquire private insurance to cover their actions. The simple fact is that they cannot get insurance. How do we know that? We know it because of the testimony that was presented to the committee.

In fact, the Nuclear Regulatory Commission—not this Senator, not anybody else, but the Nuclear Regulatory Commission—in a November 9, 1987, letter to Senators JOHNSTON and MCCLURE, stated very clearly that commercial insurance is simply not available to radiopharmacies. If it were, I would not be offering the amendment. If they could go into the private sector and purchase insurance to cover this type of activity, there would be no need for this amendment. But the fact is otherwise. The fact is that they cannot get the type of insurance that is needed to conduct a business that is in the national interest.

I want to make clear that the amendment in no way establishes new claims. It in no way provides any kind of protection for claims arising from product liability suits.

Mr. JOHNSTON. Mr. President, will the Senator yield.

Mr. BREAUX. I yield.

Mr. JOHNSTON. As the Senator knows, I have had some misgivings about this amendment.

However, let me ask the Senator, first: Would this create a precedent for anything other than radiopharmaceuticals—for example, x-ray technicians, if they ask for the same release? Would that necessarily be a precedent for them?

Mr. BREAUX. I say to my senior colleague that the answer to that question is, "No." We are limiting it to the limited class of licensees that have come before the Senate and have made their case, that private insurance is not available, and it is limited to the specific language of the amendment.

Mr. JOHNSTON. I further ask my colleague: There is some thought that if this protection is to be extended, there ought to be some fee for this. I am in no position to say what the size of the fee should be, but would it be possible that if it does appear to be an appropriate thing to do, perhaps in the conference committee some fee could be added? I am not asking the Senator to agree to that; but, really, what I am asking him is, would there be flexibility in conference on those kinds of questions?

Mr. BREAUX. I say to the senior Senator from Louisiana that the answer to that question is, "Yes."

Mr. JOHNSTON. Mr. President, there are a number of matters here that I think are of concern. But, considering the fact that my colleague has indicated that there would be flexibility in conference, and keeping in mind his statement that there has been some showing that private insurance is not available, I would not object to the matter at this time.

Mr. BREAUX. I thank the distinguished senior Senator from Louisiana.

I yield to the Senator from Idaho.

Mr. McCLURE. Mr. President, I am a little puzzled and more than a little concerned about the amendment.

I do not believe I intend to oppose the amendment. I do want to look at some of the consequences that may flow from adoption of the amendment. I guess that is the best way I can say it, and I invite the response of the distinguished Senator from Louisiana, the author of the amendment.

I think one of the problems we have is that we have not had hearings on it and have not had an opportunity in our committee to develop the basic background on information with respect to it.

I do not intend to be critical of the Senator from Louisiana. It is just that some of the questions I have in my mind, I have not had the opportunity to explore.

The Senator from Louisiana is correct, that there is some showing that private insurance is not available. I believe that is rather basic to the approach that is taken here, because I think it would be fair to say that if private insurance were available, we would not be taking this action.

Am I correct?

Mr. BREAUX. I stated that in my opening comment. I would not be here offering the amendment if there were any showing that private insurance was available to cover the type of activity. The only reason we are here is that it has been shown, in this narrow area of the industry of nuclear pharmaceuticals, that there is no available private insurance.

Mr. McCLURE. I thank the Senator.

I think it should be noted that this amendment is not limited to the manufacturers of radiopharmaceuticals. It includes other users, such as nuclear medicine departments. There are those in the nuclear medicine departments who fear that the extension of Federal indemnity for those programs in their areas may also lead to the imposition of Federal standards for nuclear medicine practitioners, including certification of individual doctors and technicians.

Does the Senator from Louisiana see that as a potential problem?

Mr. BREAUX. Let me respond to the Senator by saying one thing and then trying to directly respond.

No. 1, it is important to note what the indemnification does not cover. It does not cover product liability. If the manufacturer makes a product that is found to be negligently made or improperly made, this indemnification would not cover product liability suits. It also does not cover the use of the radiopharmaceuticals which would amount to malpractice. If they use it in the way that is negligent making them guilty of malpractice, this indemnification would also not cover the

malpractice claims against manufacturers or those who administer the product.

When these people get their license, they have to meet certain standards from the NRC and these standards are set by Federal rules and regulations. And that is already the case as far as this industry is concerned.

Mr. McCLURE. Would I be correct in saying that this amendment really is the outgrowth of the Mallinckrodt case, a case in which that were preliminary findings of liability?

Mr. BREAUX. If the Senator will allow me to respond, I say that the amendment has absolutely nothing to do with the case the Senator from Idaho has just mentioned. My understanding of that case is it set the precedent that allowed individuals to sue in State courts for activities that caused them injury by nuclear pharmaceuticals. Our amendment does not affect that at all. If that is the law, they can sue under State courts. Our amendment does not affect that.

Our amendment only goes to the question of indemnification for injuries or damage as a result of their activities for which they cannot get coverage and liability insurance. It does not affect the Mallinckrodt case which is the premise as I understand it that you can bring an action in a State court even though it is a federally licensed activity.

Mr. McCLURE. The reason I asked that question is I know of no other cases that are pending in this field. I do not know of any crisis that has yet come to the industry. I think it is a problem that this industry has but it is not singular to radiopharmaceuticals. It is not singular to the pharmaceutical industry.

I think what we are really facing here is a stort reform question more perhaps than it is a radiopharmaceutical question by itself.

Mr. BREAUX. What brings the Senator to the floor with this amendment is a showing that I think is unquestioned and uncontested that there is a certain activity in this country that should be encouraged, that is, to the production of radiopharmaceuticals, medicines for the treatment of very serious illnesses, that that activity has been shown to us to be uninsurable because it deals with nuclear activities. We should encourage the continuation of that activity.

I submit this amendment is only to encourage the continuation of that activity which I am fearful would not continue because they cannot buy private insurance.

Mr. McCLURE. I think that may well indicate the basis of the problem which is not the nature of the materials but the nature of this tort claims system in this country in which the threat of liability brings about a response on the part of the insurance company that says "We do not know what is going to happen in this area, because of the proliferation of claims which have not even started yet, but we are fearful and therefore we are not going to insure you," leaving a perfectly legitimate and necessary function in our society uncovered by insurance. If that is the case and I believe that is probably the case here, we have a fundamental tort liability question and we are only dealing with one very small segment of that large problem.

Mr. BREAUX. Let me respond to the Senator's point by saying this, that these companies can get private insurance for other activities, even though they are risky and there is potential damage and the result of those damages is very, very serious. They can get coverage in these other areas, but when they are dealing with the nuclear aspect of it, there is always a nuclear exclusion. So the problem really is narrow in the sense that they can get private insurance but not when they are trying to get it for coverage of nuclear medicine activities.

Mr. McCLURE. That can well be, and if it is true, then I think what we see is the other side of that threat picture that we will be setting a precedent that invites eventual indemnification of NRC byproduct materials licensees. If it is really that specific, then I suspect it is going to direct itself toward all of those activities and if we do not, then I think we are certainly going to be hit with that particular kind of effect. If it is not limited just to those, then I think we see the beginning of a Federal indemnification program for all activities which are thought to be important to the public interest. That is something I think we should be very, very careful about doing.

I am persuaded, however, that there is a problem here. I am a little concerned that if we enter into these provisions, we may have stimulated rather than retarded lawsuits. We now have "Uncle Deep Pockets" standing in line or ready for almost unlimited access. I know that is not quite true and I have overstated that because it is limited, but it will stimulate the likelihood of claims against these manufacturers, distributors, and users of these products, because there is now behind it and assured response.

I believe that the assured response is important in these other areas. I am not all certain we ought to be extending it into this area. However, I am persuaded by those who are involved in the industry that if we want to keep several in it and benefit from the opportunities of some kinds of competition in development of products, in the distribution and the use of products, we better find a solution to their problem.

There are very few involved in it. It is a relatively small industry, and we need all of the competition we can stimulate in that area for all of the benefits of that potential competition.

I guess I can say that unless it proceeds further in on of the two directions I have discussed there really is no danger. The exposure is relatively small. The impact upon government is very small while the impact upon the industry might be very large.

But I could not avoid the necessity in my own mind of raising at least the issues which have been raised here as to what this may mean or imply with respect to other activities either the NRC related activities or their licensees and, second, what it may or may not mean with respect to tort liability in medically related fields.

I really fear the latter because we have an explosion of tort liability in this country that must be dealt with sometime. This is only a miniscule part of that total problem.

But I certainly am not going to oppose the Senator's amendment. If there are others who have similar concerns I know that they will express them between now and the time that this goes to conference.

The amendment was offered on the House side, as I recall, and was not adopted on the other side, although it was a close vote. Therefore, there may be a predisposition either to be opposed to it or to support it in view of the Senate's action, but, certainly there will be another opportunity for those who are concerned about its ramifications to express those before we get through with the conference on this legislation.

Mr. BREAUX. I appreciate the Senator's comments and discussion for the RECORD. I think it is important to note.

I conclude with: No. 1, we have an up-front liability of up to the first $250,000, that they would have to eat themselves individually;

Second, we have a cap on the Price-Anderson coverage of $500 million.

The third point I would make is with regard to the comments of the Senator from Idaho about liability and the whole question of liability and where we are going. That is really why we have Price-Anderson. We have Price-Anderson because of the potential plethora of lawsuits against the nuclear industry that was so potentially high that we could not get private insurance. So we created Price-Anderson back in 1954 to really cover it way back then. Here we are in 1988 saying it is still needed. So we still have that problem that requires us to have a Government indemnification for a certain type of activity that is deemed to be in the national interest, nuclear power, and radiopharmaceuticals in addition to producing power, produce life-saving techniques with regard to disease control. It is a function that we should encourage, and I think this amendment does encourage it, and without it I think we are doing grave damage to that industry we need to have.

Mr. REID. Mr. President, I rise in strong support of the Price-Anderson Amendments Act to extend the nuclear liability system. Authority expired on August 1, 1987 for the Nuclear Reg-

ulatory Commission to include future reactors in the Price-Anderson system and for the Department of Energy to indemnify its nuclear contractors under Price-Anderson. Obviously the purposes for which Price-Anderson were created—to ensure prompt and full compensation to the public in the event of a nuclear accident and to encourage the use of nuclear power applications—are compromised without extension.

But, I am distressed about efforts to remove a critical provision in this legislation designed to provide the public with as much protection as possible to the hazards of nuclear waste. To date, we have amassed 333,000 cubic meters of defense-related wastes and 9,700 cubic meters of commercially generated wastes. The storage itself is suspect, from crowded spent fuel pools at nuclear reactor sites in high density urban areas to leaking steel tanks on large government-operated reservations.

Amendments to the Nuclear Waste Policy Act of 1982, enacted in December, direct the Department of Energy to site and develop a nuclear waste repository at Yucca Mountain, NV. A Monitored Retrievable Storage facility is authorized as well. DOE also plans to begin receiving defense wastes at the Waste Isolation Pilot Plant in southeastern New Mexico later this year. Of all hazardous materials transported annually—approximately 1.5 billion tons—only 3 percent of the total is classified as nuclear. And, less than 1 percent of that amount is spent fuel or nuclear waste. But, should the repository, the MRS and WIPP open, unprecedented shipments of these highly toxic wastes will occur. DOE estimates that up to 3,000 shipments per year will go to the repository, 3,000 shipments will go to the MRS each year, and 1,450 shipments will be sent to the Waste Isolation Pilot Plant. Every State is potentially affected once the waste disposal program becomes operational. It is very likely that the greatest potential threat to the public health and safety in the entire nuclear waste issue may be the transportation of radioactive waste.

No one can be sure of the consequences of an accident involving a major release of radioactivity. However, there is no doubt that if a nuclear accident occurs, the effects would be catastrophic. One Nuclear Regulatory Commission study of worst case accident scenarios found that if even 1 percent of the contents of a spent fuel cask were to escape in an urban area, thousands of latent cancer fatalities could result and billions of dollars in decontamination costs. In short, the costs involved are astronomical.

Given the fact that Yucca Mountain may, by default, be the burial ground for thousands of tons of nuclear waste, the provisions pertaining to the nuclear waste disposal program in the Price-Anderson legislation before us warrant our support. This legislation establishes unlimited liability for nuclear waste accidents, unless Congress approves an alternative "full and prompt" victim compensation scheme within a year after receiving a compensation plan from the President. The Price-Anderson system must cover all aspects of the Federal waste program, including storage, handling, transportation, disposal, treatment and research.

Mr. President, I am strongly opposed to attempts to alter this provision for budgetary reasons. The public deserves no less.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Louisiana.

The amendment (No. 1669) was agreed to.

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

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

The motion to lay on the table was agreed to.

PRESIDENT REAGAN'S VETO OF THE CIVIL RIGHTS RESTORATION ACT

Mr. KENNEDY. Mr. President, later today, the White House is expected to announce that President Reagan has vetoed the Civil Rights Restoration Act.

This veto is a kick in the teeth of civil rights. It is the most regrettable and least justifiable of all the Reagan vetoes.

Attorney General Ed Meese and Assistant Attorney General Brad Reynolds have served President Reagan and the Nation badly. They are distorting the meaning of the bill, pandering to the Republican right, and engaging in an unseemly effort to escalate their longstanding anti-civil rights vendetta, by undermining some of America's greatest civil rights achievements.

The President of the United States is supposed to be the President of all the people. This veto is a sad, sad commentary on the current state of the party of Lincoln at its highest levels.

It is also an unjustified affront to millions of women, blacks, hispanics, elderly, and disabled Americans and other minorities. They deserve a government that stands up for them against discrimination, and that steadfastly refuses to become an accomplice to injustice by granting Federal funds to those who engage in bias.

This Republican administration has never met a civil rights bill it didn't dislike. The opponents of this measure are the same diehard adversaries of every past advance in civil rights. They pay lip service to the concept of equal justice under law, but they never practice what they preach.

We know them by their deeds and not their words. They advocated tax credits for segregated schools. They opposed extension of the Voting Rights Act. They delayed enactment of the Martin Luther King holiday bill. And they are resisting every effort in this Congress to strengthen the fair housing laws, and enact more effective economic sanctions against apartheid in South Africa.

This veto is especially deplorable because the bill is precisely what it says it is—a restoration act. Nothing—nothing—contained in this legislation confers any civil right that did not exist before the Supreme Court's notorious decision in the Grove City College case in 1984.

For many, many years before that decision, discrimination because of race, sex, age, or handicap had been prohibited in programs receiving Federal aid. That was the intent of Congress when the great civil rights laws of the 1960's and 1970's were written into the statute books, and that is our intent today—nothing more, but certainly nothing less.

The truth is, the same enemies of civil rights who tried to block those past historic laws are seeking another turn at bat.

They are misusing a single unfortunate decision by the Supreme Court as an excuse to roll back the clock on 20 years of progress on civil rights. The opponents of civil rights struck out in their previous times at bat, and they do not deserve to get on base today in the final inning of this anti-civil rights administration.

President Reagan's so-called alternative proposal is a sham. It would wink at flagrant bias, and enshrine blatant discrimination financed by the Federal Government.

It would open gaping new loopholes in our civil rights laws, and permit thousands of corporations, colleges, and universities to engage in racism, sex discrimination, and other forms of bias while continuing to receive Federal dollars.

The overwhelming majority of Protestant, Catholic, and Jewish denominations in America support this legislation.

It is a travesty of the noble role and progressive social conscience of religion in America that a few institutions of the right wing are now seeking greater leeway to discriminate, while continuing to receive Federal aid.

I urge the Senate and House to override this shameful veto. Federal tax dollars should not be used in any way, shape, or form to subsidize discrimination.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

Mr. DELAY. Mr. Speaker, I am appalled at the continued human rights abuses by the Sandinistas in Nicaragua. When I visited that country a few weeks ago, I witnessed brutal repression by the Sandinista security forces. I saw innocent citizens, waiting to march in a democratic demonstration, ruthlessly beaten and thrown in police jeeps, merely because they desired to march for freedom. This incident, only one of many, is a blatant abuse of human rights and is horrifying.

The repression continues. The Washington Post woke up and has finally found the new draft system that the Sandinistas went on last week, another of their forced recruitment rampages to abduct Nicaraguan youths into military service. In the towns of San Rafael del Sur and Masachapa, the people were repressed after protesting the capture of 180 young Nicaraguans for forced military service. This is just another example of how the Sandinistas, cordon off many homes and go house to house dragging young people out and forcing them into the Communist's military service. When I was in Nicaragua, I heard many stories of how the Sandinistas raid nightclubs and other places that young people frequent in an attempt to beef up their military forces. Youths that do not cooperate, of course, are added to the evergrowing numbers of political prisoners. These are disgusting human rights abuses, much worse than the closing of La Prensa and Radio Catolica.

Mr. Speaker, we've given peace a chance. It's time to give human rights and freedom a chance.

SOVIET SUPPORT FOR DEFENSE AUTHORIZATION BILL

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, the President should veto the Defense authorization bill. If the President needed a reason, all he had to do was listen to at least one leftwing Democrat who spoke here this afternoon. To defend his position that the Defense bill should be signed, who did this leftwing Democrat quote? Why, he quoted a Soviet spokesman.

That is right, he quoted a Soviet spokesman. That alone should tell us more than we need to know about the Defense bill. It is a bill that suggests the best defense is weakness. That may be the leftwing Democratic position, but it should not be the Reagan position. I say, Mr. President, veto at least one bad bill.

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PROVIDING FOR MOTION TO TAKE H.R. 1414, PRICE-ANDERSON AMENDMENTS ACT OF 1987, FROM SPEAKER'S TABLE AND DISAGREE TO SENATE AMENDMENTS NUMBERED 1 THROUGH 15 AND CONCUR IN SENATE AMENDMENT NUMBERED 16 WITH AN AMENDMENT

Mr. DERRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 502 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 502

Resolved, That upon the adoption of this resolution, it shall be in order to take from the Speaker's table the bill (H.R. 1414) to amend the Price-Anderson provisions of the Atomic Energy Act of 1954 to extend and improve the procedures for liability and indemnification for nuclear incidents, with Senate amendments thereto, and to consider, any rule of the House to the contrary notwithstanding, the following motion: that the House disagrees to Senate amendments numbered 1 through 15 and concurs in Senate amendment number 16 with an amendment printed in the report of the Committee on Rules accompanying this resolution. Said motion shall be debatable for not to exceed one hour, to be equally divided and controlled by the majority party and the minority party, shall not be subject to a demand for a division of the question, and the previous question shall be considered as having been ordered on said motion to final adoption without intervening motion.

The SPEAKER pro tempore (Mr. DURBIN). The gentleman from South Carolina (Mr. DERRICK) is recognized for 1 hour.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Ohio (Mr. LATTA), and pending that I yield myself such time as I may consume.

(Mr. DERRICK asked and was given permission to revise and extend his remarks.)

Mr. DERRICK. Mr. Speaker, House Resolution 502 is a rule providing for disposition of H.R. 1414, the Price-Anderson Amendments Act. The rule makes it in order to call up H.R. 1414 with the Senate amendments to that bill and to consider a motion that the House disagree to Senate amendments numbered 1 through 15 and agree to Senate amendment No. 16 with an amendment printed in the Rules Committee report accompanying this resolution. That amendment is a complete substitute for the bill. The rule waives all points of order against this motion and provides for 1 hour of debate on the motion, with the time equally divided between the majority and minority party. The rule provided that the motion is not subject to a demand for a division of the question and that the previous question is considered as having been ordered without intervening motion.

Mr. Speaker, Price-Anderson is the law dealing with liability for damages that would occur in the case of a significant nuclear accident. It provides both for quick and sure payment for damages suffered by citizens as a result of a nuclear accident and for limits on the liability incurred by the commercial nuclear power industry or by the operators of Department of Energy defense nuclear facilities. In the absence of Price-Anderson the operations of the nuclear industry would be severely curtailed, our national security efforts would be handicapped, and our citizens would not be assured of payments for damages resulting from a nuclear accident that we hope will never occur.

Price-Anderson expired on August 1, 1987. Its protections remain in place for existing nuclear powerplants and Department of Energy defense nuclear facility operations contracts in effect prior to that date, but it is crucial to extend Price-Anderson so that those protections are available for any new nuclear power plants and for newly signed DOE contracts.

The House passed H.R. 1414, which reauthorizes Price-Anderson, last July 30 by a 396-17 vote. The Senate passed the bill this past March 18, with 16 amendments. Since that time there have been a series of discussions which have yielded agreement among all the interested parties on 99 percent of the bill. Because there is agreement on all of the most important issues in the bill, and because some of those agreements could evaporate if the bill were sent to conference, Chairman MO UDALL of the Interior Committee and Chairman JOHN DINGELL of the Energy and Commerce Committee, have, with my full support, requested this rule which will allow them simply to offer a substitute for the bill which embodies the agreed upon provisions and what we hope will be a compromise on the remaining provision that the Senate will see fit to accept. I should add that the Senators with responsibility for managing this matter in the Senate are in agreement with this procedure.

We are pursuing this approach because we cannot afford to take the chance on going to conference and getting bogged down for so long that we fail to enact a bill by the end of this Congress. That is a real possibility since we have less than 6 weeks left scheduled in this Congress. If we fail to enact a bill, we will cause serious problems for our defense nuclear effort. Two major DOE weapons research and production facility contracts expire on September 30 and a new contract for the critical Savannah River plant, a facility in my district that is the United States' only source of weapons grade plutonium and tritium, is under negotiation right now. Without Price-Anderson, the signing of these new contracts is in doubt.

of 1954 (42 U.S.C. 2210) and if so, the terms and conditions of such indemnification, shall be rendered by the Commission within 18 months of the date of the enactment of this Act.

(b) NEGOTIATED RULEMAKING.—

(1) ADMINISTRATIVE CONFERENCE GUIDELINES.—For the purpose of making the determination required under subsection (a), the Commission shall, to the extent consistent with the provisions of this Act, conduct a negotiated rulemaking in accordance with the guidance provided by the Administrative Conference of the United States in Recommendation 82-4, 'Procedures for Negotiating Proposed Regulations' (47 Fed. Reg. 30708, July 15, 1982).

(2) DESIGNATION OF CONVENER.—Within 30 days of the date of the enactment of this Act, the Commission shall designate an individual or individuals recommended by the Administrative Conference of the United States to serve as a convener for such negotiations.

(3) SUBMISSION OF RECOMMENDATIONS OF THE CONVENER.—The convener shall, not later than 7 months after the date of the enactment of this Act, submit to the Commission recommendations for a proposed rule regarding whether the Commission should enter into indemnity agreements under section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) with radiopharmaceutical licensees and, if so, the terms and conditions of such indemnification. If the convener recommends that such indemnity be provided for radiopharmaceutical licensees, the proposed rule submitted by the convener shall set forth the procedures for the execution of indemnification agreements with radiopharmaceutical licensees.

(4) PUBLICATION OF RECOMMENDATIONS AS PROPOSED RULE.—If the convener recommends that such indemnity be provided for radiopharmaceutical licensees, the Commission shall publish the recommendations of the convener submitted under paragraph (3) as a notice of proposed rulemaking within 30 days of the submission of such recommendations under such paragraph.

(5) ADMINISTRATIVE PROCEDURES.—To the extent consistent with the provisions of this Act, the Commission shall conduct the proceeding required under subsection (a) in accordance with section 553 of title 5, United States Code.

SEC. 20. EFFECTIVE DATE.

(a) Except as provided in subsection (b), the amendments made by this Act shall become effective on the date of the enactment of this Act and shall be applicable with respect to nuclear incidents occurring on or after such date.

(b)(1) The amendments made by section 11 shall apply to nuclear incidents occurring before, on, or after the date of the enactment of this Act.

(2)(A) Section 234A of the Atomic Energy Act of 1954 shall not apply to any violation occurring before the date of the enactment of this Act.

(B) Section 223 c. of the Atomic Energy Act of 1954 shall not apply to any violation occurring before the date of enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Arizona [Mr. UDALL] will be recognized for 30 minutes and the gentleman from New York [Mr. LENT] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Arizona [Mr. UDALL].

Mr. UDALL. Mr. Speaker, three different committees are involved in this important legislation, and there is a total of 1 hour for debate. I will manage 10 minutes and will yield 10 minutes each to the managers for the Committee on Energy and Commerce and the Committee on Science, Space, and Technology, if that is agreeable, at the appropriate time.

Mr. Speaker, I yield myself 3 minutes.

(Mr. UDALL asked and was given permission to revise and extend his remarks, and include extraneous matter.)

Mr. UDALL. Mr. Speaker, the Price-Anderson Act has served this Nation well for 31 years. The act ensures that adequate funds will be available to compensate the public in the event of a nuclear accident. It streamlines the claims process to ensure speedy compensation for victims; and it provides a mechanism to ensure that these funds are available regardless of the financial health of the responsible party.

Although the Price-Anderson Act is permanent authority, the key to Price-Anderson coverage—the authority of the Nuclear Regulatory Commission and the Department of Energy to enter into indemnification agreements with their licensees and contractors—expired last year, on August 1, 1987.

All nuclear powerplants now operating or under construction are already covered by Price-Anderson, so missing the August 1987 deadline has had no effect on the commercial power program. The Government's defense program, however, is another matter. Several of the contracts under which private firms do work for the Government's Nuclear Defense Program have expired since last August. These include contracts for the operation of the Lawrence Livermore Laboratory in California, the Los Alamos Laboratory in New Mexico, Brookhaven Laboratory in New York, the Portsmouth, OH, uranium enrichment plant, and the Nevada test site. Many more defense contracts will expire this fall, including contracts for important nuclear weapons production work in Pinellas, FL, and Savannah River, SC.

Without authority to indemnify contractors under Price-Anderson, the Government has had to indemnify them under Public Law 85-804, which frankly is not as good as Price-Anderson. For one reason, many accidents covered by Price-Anderson are not covered by Public Law 85-804. Price-Anderson requires the Government to compensate victims even if the accident was caused by a subcontractor or supplier rather than the prime contractor. Public Law 85-804 does not. For another reason, it is harder for victims to collect under Public Law 85-804 than under Price-Anderson. Price-Anderson requires the contractor to waive many legal defenses; Public Law 85-804 does not.

Mr. Speaker, we have been down a long and difficult road with this bill. My committee began hearings on it over 4 years ago. We were within one amendment of bringing it to the floor in the last Congress but failed. After a lot of hard work by three committees, we were able to bring a good bill to the House floor last year. By the overwhelming vote of 398 to 17, the House passed the bill on July 30 of last year. The Senate adopted the House bill in April with only seven amendments. Since then we have tried to resolve the remaining differences through informal discussions. From these discussions we have developed the pending substitute. At this point, I would like to submit for the RECORD a list of the differences between the House and Senate and how the substitute resolves those differences.

A whole year has passed since the House approved this bill. We cannot afford further delay. Already one contractor, DuPont, which has run the Savannah River Plant since Harry Truman told DuPont the Nation's security depended on it, has refused to renew its contract. DuPont cited Congress' failure to renew Price-Anderson as one reason for its decision. The General Electric Co., which runs the Pinellas, FL, plant has announced it will not renew its contract unless Congress renews Price-Anderson by September 1.

In addition, if there is an accident at a nuclear powerplant or a Government defense plant before Congress acts, the public will be assured of only about $720 million or $500 million, respectively, in compensation instead of over $7 billion, as provided by this bill.

Mr. Speaker, I urge my colleagues to adopt the motion.

Mr. Speaker, I would like to address a concern that has been raised about the interpretation of section 13 of the bill. That section simply provides that the lessor in a sale-and-leaseback financing transaction does not become liable under Price-Anderson merely on the basis of the lessor's equity interest. The section confirms existing law. It was added to the bill to give assurance to companies financing nuclear powerplants through sale-and-leaseback transactions that they would not assume the liability for an accident at a nuclear powerpant just because they have a financial relationship with the licensed operator of the plant.

Section 13 speaks only of sale-and-leaseback transactions involving "facilities" because the only examples of such transactions presented to the committee at the time involved nuclear powerplants. It has since come to our attention that the fuel rods used in nuclear powerplants often are financed through sale-and-leaseback transactions. While section 13 does not expressly refer to sale-and-leaseback transactions involving nuclear fuel or other materials, it should not be read as making fuel lessors liable. Such a result would be inconsistent with existing law, which section 13 does not change.

SUMMARY OF AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1414

(1) CIVIL AND CRIMINAL PENALTIES AMENDMENT

Senate amendment: Authorizes civil fines up to $100,000 per violation per day for violating DOE safety rules, and criminal fines of up to $25,000 per violation per day and prison terms up to 2 years ($50,000 fines and 5 year terms for repeat offenders) for willful violation of DOE safety rules.

House bill: Authorized a study of penalties but did not impose penalties.

Substitute: Accepts Senate amendment with a conforming amendment striking the House study.

(2) LIMITATION ON WASTE ACCIDENT LIABILITY AMENDMENT

Senate amendment: Strikes the House bill's special provisions waiving liability limits on nuclear waste accidents. Waste accidents would be subject to the same limit on liability as other DOE-contractor accidents and utility accidents (over $7 billion).

House bill: Limits liability for all nuclear accidents (waste accidents, other DOE-contractor accidents and utility accidents) to over $7 billion, but waives the limit for waste accidents if damages exceed the limit and if Congress does not enact a compensation plan within one year after the President submits the plan.

Substitute: Accepts Senate amendment.

(3) RADIOPHARMACIES AMENDMENT

Senate amendment: Exempts NRC and state licensees making or dispensing nuclear medicine from insurance requirements and requires NRC to indemnify all such licensees for liability over $250,000, up to $500 million.

House bill: No provision.

Substitute: Requires the NRC to conduct a rulemaking to determine whether to indemnify radiopharmacies under existing authority.

(4) SOVEREIGN IMMUNITY AMENDMENT

Senate amendment: Allows victims to sue the Government under Price-Anderson for nuclear waste accidents caused by DOE.

House bill: No provision, thus preserving current law which permits suits under Price-Anderson only against private parties and suits against the Government only under the Federal Tort Claims Act.

Substitute: Rejects Senate amendment.

(5) EXPEDITED PROCEDURES AMENDMENT

Senate amendment: Establishes expedited procedures for House and Senate to consider Presidential plan to compensate liability exceeding the $7 billion limit. These procedures limit committee consideration to 20 calendar days.

House bill: No provision.

Substitute: Accepts expedited procedures for the Senate; rejects expedited procedures for the House.

(6) LENGTH OF EXTENSION AMENDMENT

Senate amendment: Extends the Price-Anderson Act for both DOE contractors and NRC licensees for 20 years.

House bill: Extends Price-Anderson for DOE contractors for 12 years and NRC licensees for 10 years.

Substitute: Compromises at 15 years for both DOE contractors and NRC licensees.

(7) RETROACTIVITY AMENDMENT

Senate: Applies the new Price-Anderson amendments to DOE contracts executed after the prior Act expired last August.

House bill: No provision.

Substitute: Adopts alternative amendment requiring all DOE nuclear contracts to be covered by Price-Anderson as amended.

Mr. Speaker, I reserve the balance of my time.

Mr. LENT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this legislation to authorize and extend the Price-Anderson Act does exactly what Congress intended when it enacted the Price-Anderson Act in 1957—it ensures that adequate funds will be available to compensate the public for injuries resulting from nuclear activities. H.R. 1414, as passed, increases the amount of funds available to the public in the unlikely event of an accident from $720 million to $7 billion. Nuclear accident liability of contractors indemnified by the Department of Energy, which is now limited to $500 million, would also be increased to $7 billion.

Furthermore, due to the fact that defendants are required under the Price-Anderson compensation system to waive defenses to which they would otherwise be entitled, payment of compensation would be expedient.

This legislation, furthermore, restores the Department of Energy's authority to indemnify nuclear defense contractors and the Nuclear Regulatory Commission's authority to include new commercial nuclear plants in the Price-Anderson insurance system. This authority which expired on August 1, 1987, will help preserve the nuclear energy option and assist the DOE in its negotiations with qualified contractors to continue nuclear defense activities.

For these reasons and the fact that the House amendment to this legislation extend the Price-Anderson coverage for 15 years, I urge my colleagues to vote for the amendment.

□ 1315

Mr. SHARP. Mr. Speaker, I yield 3 minutes to the gentleman from South Carolina [Mr. DERRICK].

Mr. DERRICK. Mr. Speaker, I would like to enter into a colloquy with the gentleman from Indiana [Mr. SHARP].

Mr. Speaker, I would like to ask the gentleman from Indiana a question about section 17 of the proposed substitute. The Senate version of Price-Anderson would give the Secretary of Energy the authority to impose civil penalties on DOE nuclear contractors who violate DOE safety regulations. The Senate version does however exempt seven specified nonprofit DOE contractors from any such civil penalties and grants the Secretary the discretion to remit any penalty imposed on other contractors. My concern is that Clemson University, the University of South Carolina, and the Medical University of South Carolina plan to be involved in work at the Savannah River Laboratory under the new Savannah River Plant contract, but that they will not be able to enter into a contract without assurances that they will not be subject to any monetary penalties.

My understanding is that section 17 of your substitute includes language that will be part of section 234Ab(2) of the Atomic Energy Act and provides that the Secretary of Energy shall promulgate a rule determining whether nonprofit educational institutions should receive an automatic remission of civil penalties. Is it the intent of the authors of this substitute that the Secretary will promulgate a rule immediately so that universities like Clemson, U.S.C., and the Medical University of South Carolina will know in advance whether they will be subject to monetary penalties.

Mr. SHARP. Mr. Speaker, if the gentleman will yield, that is correct. The substitute directs the Secretary to determine whether nonprofit educational institutions should be granted automatic remission of civil penalties.

Under the Senate provision, the Secretary's authority to initiate a civil penalty proceeding is discretionary. Further, the Secretary may take a variety of factors into consideration—such as a contractor's prior safety record—in determining whether to compromise, modify, or remit any such penalty.

Thus, the Senate provision already provides the Secretary with significant discretion. Under the circumstances, I think it is reasonable for the House to direct the Secretary to undertake a rulemaking to determine whether nonprofit educational institutions should receive automatic remission of civil penalties.

Mr. DERRICK. I thank the gentleman from Indiana. I want to express my appreciation to Chairman SHARP, Chairman UDALL and Chairman DINGELL, for working with me to arrive at this compromise language. It does not expand the exemptions from civil penalties beyond what is provided in the Senate version, it merely calls for the Secretary to disclose in advance whether he will exercise authority granted him by the Senate provision to remit any monetary penalty. This is a fairly minor modification to the Senate provision, but I feel very strongly that it is an important modification that is crucial to the enactment of this legislation.

Mr. LENT. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. MOORHEAD], the ranking minority member of the Subcommittee on Energy and Power.

Mr. MOORHEAD. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I wish to begin by thanking my colleagues who have worked on bringing this legislation to the floor today. I am referring in particular to Mr. DINGELL and Mr. SHARP from the Energy and Commerce Committee and Mr. UDALL and Mr. LUJAN from the Interior Committee.

There is an urgent need to pass legislation to reauthorize and extend the Price-Anderson Act as well as provide the public the additional benefits of H.R. 1414.

Congress enacted the Price-Anderson Act in 1957: First, to ensure that adequate funds would be available to compensate the public for injuries resulting from nuclear activities; and second, to remove the threat of unlimited liability for a nuclear accident which was deterring private industry from participating in nuclear activities. It is true that the Nation's nuclear power reactors and DOE nuclear facilities have an enviable safety record. However, if there were a nuclear accident the resulting damage could be extremely costly.

The Price-Anderson Act provides a comprehensive system of compensation for potential victims of a nuclear accident that is swift and more beneficial than compensation they would receive under today's tort law. The act, by placing a limitation on overall liability and by channeling all liability regardless of fault to the reactor which has an accident, assures the availability of substantial funds to provide prompt compensation to the public. With 112 reactors currently covered by the Price-Anderson Act, the nuclear industry would have to pay up to $720 million in compensation for an accident. H.R. 1414 would increase this compensation to approximately $7 billion. Nuclear accident liability of contractors indemnified by DOE is limited to $500 million by the Price-Anderson Act. H.R. 1414 requires DOE to indemnify all contractors conducting nuclear activities up to $7 billion.

In addition, in the case of a serious nuclear accident involving substantial off-site contamination, defendants are required under the present act to waive all defenses. This makes it easier for plaintiffs to recover.

However, the Price-Anderson's compensation system for new reactors and nuclear indemnification authority for DOE nuclear contractors expired August 1, 1987. While authority exists under current law for DOE indemnification of contractors, compensation for victims would be less predictable, less timely, and potentially inadequate compared to Price-Anderson compensation. One important difference is that current law does not require indemnified contractors to waive their legal defenses following an extraordinary nuclear occurrence. Public protection in the case of a nuclear accident is far superior under a renewal of the Price-Anderson system.

H.R. 1414, as passed by the Senate, was amended in several significant ways. I believe that with an appropriate compromise this bill will not only extend the needed Price-Anderson authority but improve the protection offered the public.

The most significant Senate amendment is section 4(c) of Senate-passed H.R. 1414. With this amendment the Secretary of Energy would be treated as a Government contractor for purposes of determining the Federal Government's potential liability in connection with certain activities relating to the storage and disposal of radioactive waste. I strongly oppose this amendment since it could be read as permitting the United States to be sued under the same terms and conditions as would be applied to one of its contractors. Such a waiver would ignore the liability scheme established by the Federal Tort Claims Act. Accordingly, this amendment is opposed by the Justice Department and the administration.

I also oppose the special exemptions from the financial protection requirements that the Senate-passed bill provides to licenses held by nuclear pharmacies and nuclear medicine departments. This special interest legislation would further require the NRC to indemnify such licensees for liability in excess of $250,000 up to $500 million. Such treatment of these particular licensees is inconsistent with the legislative history of the Price-Anderson Act concerning the financial protection requirements and would unduly burden the NRC with an increase in the number of licensees indemnified from about 145 to nearly 8,000. Instead of this Senate amendment, I support the proposed House amendment which requires the Nuclear Regulatory Commission to determine by negotiated rulemaking whether to enter into indemnity agreements with radiopharmaceutical licensees. I understand that the NRC has indicated that the materials at issue here contain extremely small amounts of radioactivity which for the most part decays naturally over a period of hours. This certainly questions the need to provide special legislation for these particular licensees.

I do oppose the Senate amendments to H.R. 1414 that authorize fines up to $100,000 per violation per day for violating DOE nuclear safety rules and criminal fines up to $25,000 per violation and prison terms up to 2 years.

I, furthermore, support the compromise proposal to extend Price-Anderson for both DOE contractors and NRC licensees for 15 years. This extension is longer than that proposed by H.R. 1414. This additional period will help provide needed stability to the nuclear energy option as well as DOE contracting activities.

To conclude, this legislation with the House amendment would extend the Price-Anderson coverage, provide additional coverage benefits to the public, preserve for the Secretary of energy the protection offered by the Federal Tort Claims Act and avoid unnecessary special treatment of nuclear pharmacies and hospital nuclear medicine departments.

I urge my colleagues to vote for the amendment.

Mr. UDALL. Mr. Speaker, I yield 10 minutes to the gentlewoman from Tennessee [Mrs. LLOYD].

(Mrs. LLOYD asked and was given permission to revise and extend her remarks and include extraneous matter.)

Mrs. LLOYD. Mr. Speaker, I rise in support of the substitute.

The Senate's 16 amendments to H.R. 1414, in most instances, brought the legislation closer to the original recommendations of the Committee on Science, Space, and Technology, as reflected in House Report 100-104, part 2. Therefore, what the Senate did, overall, was to improve the bill.

The compromises and improvements to the Senate's recommendations that are included in this substitute retain much of what the Senate recommended as amendments. Therefore, the substitute moves closer to the original position of the Science Committee, and is also an improvement in the legislation.

For example, the Science Committee in two Congresses recommended that the act be extended for a longer period than 10 years. The Senate recommended 20 years and the substitute before us today increases the period to 15 years. This improves the bill.

Another example is that the Science Committee did not recommend the provision included in the House bill which would have treated nuclear waste contractors differently than other DOE contractors. The Senate struck this House provision and the substitute agrees with the Senate amendment.

Mr. Speaker, the substitute text to H.R. 1414 resolves 9 principle issues which have arisen due to the 16 amendments of the Senate. Chairman ROE and I concur in the resolution of eight of these issues, and must dissent in the resolution of one issue. The substitute takes the following action:

First, splits the difference on the period of extension and sets it at 15 years;

Second, deletes a House provision requiring, for the first time, appropriations to pay Government liabilities under the act;

Third, strikes a Senate provision, which was likely to invite a Presidential veto, requiring that Government employees to considered as contractors for Price-Anderson purposes;

Fourth, accepts a Senate amendment making the limit on liability the same for all DOE nuclear activities;

Fifth, allows the Senate to retain expedited procedures but strikes them for the House;

Sixth, compromises on 11 years as the appropriate deadline for the Congress to receive the reports of the DOE and NRC;

Seventh, requires DOE nuclear contractors to be indemnified only under Price-Anderson.

Eighth, requires as a compromise, NRC to conduct a rulemaking proceeding to determine the need to bring nuclear pharmacies under Price-Anderson coverage;

Ninth, adds civil and criminal penalties to DOE's enforcement authority over its contractors.

Although Chairman ROE and I have agreed in principle to all of these

amendments in the substitute, the last one on civil penalties is not good law. We tend to agree with the executive branch that such penalties are not necessary, and possibly detrimental to the unique relationship between DOE and its laboratory operators needed to ensure safety. However, I believe the Senate provision, as well as the provision in the substitute, is flexible enough to permit broad discretion on the part of the Secretary either not to impose a civil penalty, and, if imposed, to allow the Secretary to modify or remit the penalty in whole or in part. Therefore, the civil penalty authority should not be harmful in and of itself.

The objectionable part of the civil penalty provision is section 17(d) of the substitute, which creates exemptions to the applicability of the Secretary's authority to levy civil penalties. This provision is poorly drafted, is unfair to certain contractors, is detrimental to broad industry participation in operating the laboratory system, and is anticompetitive in effect.

The substitute text in section 17(d) names some of the existing nonprofit and nominal profit contractors as exempt from any civil penalties. Although we find it rather peculiar to list any exemption to a provision thought necessary by the Senate to promote public safety, we can understand the perceived need to exempt some contractors because of the potential detriment to the DOE/laboratory relationship. Two competing goals have to be reconciled, and the Senate chose this flawed approach.

First of all, naming a specific person, as is done in section 17(d), to be exempt from the law, is in itself improper. The law should have general applicability and, any exemptions should be cast in terms of classes of people. But I am willing to live with this shortcoming as long as the list names everyone in the class. Unfortunately, the substitute does not name everyone in the contractor class who is either a nonprofit or educational institution.

Second, neither the Senate or the Interior or Commerce Committees have identified any good reason for discriminating against some of the nonprofit or educational contractors, such as Stanford University, Oak Ridge Associated Universities, Southeastern Universities Research Association, and there may be others that DOE has yet to identify. These contractors were left off the list because they weren't known to the Senate at the time the amendment was agreed to.

Third, the exemption provision in the substitute gives the exempted contractors unfair advantage over possible competing contractors when the laboratory contract is due for renewal. This occurs because successor contractors are not covered under the exemption. It is an advantage to be exempt from such a contingent liability and this fact will obviously be a factor in any bid to run a national laboratory.

Fourth, the fact that potential competitors will not have the exemption will have a distinct chilling effect on possible competitors. Those capable contractors who might otherwise be brought into the laboratory system will not be inclined to apply. The exemption list would, therefore, tend to be anticompetitive, preserving the status quo at the expense of the ability of the Government to find and choose the best operating contractors for the laboratories.

Having identified these problems, I sought the advice of the laboratories and the Department of Energy. There were no surprises in the responses, and, for purposes of brevity, I include only the DOE response in the RECORD at the end of my remarks. I will provide the laboratory responses to those who may be interested.

In summary, the laboratories with the exemptions wanted to preserve them. DOE didn't approve of the civil or criminal penalty provisions but thought that it had sufficient flexibility to administratively deal with the problems. I agree, but this is certainly no excuse for the Congress to enact poorly drafted legislation.

Because of the adamant position of the Senate regarding this provision, Mr. ROSE and I prepared an amendment which I thought called for minimal changes in its scope and form. Essentially, the amendment would add the three known contractors fitting the class of exemptees, and also add their successors, if they also fit the class; that is, nonprofits or educational institutions. This was rejected by the Senate, and, as a result, by the other two House committees of jurisdiction. My colleagues on the other two House committees did not wish to risk jeopardizing the expedient enactment of this law because of the Senate's threatened rejection of my amendment. I believe it would have been healthy to force the Senate to deal with this issue.

There is a second problem with this substitute that has only recently been identified. I admit that it is a new issue and has not been fully considered by any committee of jurisdiction. However, its importance is not diminished by this oversight, especially considering that a chief purpose of the Price-Anderson Act is to protect the public.

Mr. Speaker, the substitute includes a substantial disincentive to assuring public safety that I believe should be eliminated.

The Science Committee has authorized the development in the Department of Energy of a new generation of nuclear reactor that promises to be a "fail safe" reactor. All the accidents considered by the Nuclear Regulatory Commission for current generation reactors would be foreclosed in this new generation reactor; foreclosed in the sense that gravity or other physical phenomena prevent the accident from occurring in the first place. This technology is precisely what this country needs to meet public demands, to fight the acid rain problem, to respond to the CO_2 problem, and to rekindle our Nation's nuclear energy option.

What we should be saying through this substitute bill is, "The Congress does not intend to discourage utilities from purchasing inherently safe reactors." This substitute bill is a 15-year reauthorization and these new reactors could be available within a decade. But the bill, as currently written, would discourage any utility from buying these reactors.

The bill authorizes the NRC to assess a $63 million retrospective premium against each reactor licensee in the event of an accident. One of the attractions of the modular reactor concept is that a utility would be able to buy smaller increments of capacity to better meet customer demands. If eight of these modular reactors were, over a period of years, added to a system so as to constitute a single 1,200-megawatt electric plant, then a utility might be faced with a total assessment of $504 million, instead of a single $63 million assessment for a single, current generation reactor.

This, obviously, would be a substantial disincentive for utilities to purchase the passively safe, modular reactors, instead of the larger sized, current generation reactors.

I agree that this issue is a relatively new one. The NRC has said, in the letter included below, that we have identified a real problem that can only be handled by the Congress. The solution I proposed is to give NRC the authority to treat a group of modular, inherently safe reactors as a single facility for purposes of the retrospective premium. I believe this issue could have easily, and without controversy, been resolved by my amendment.

Once again, my counterparts on the other two committees of jurisdiction opposed adding a new issue to the bill at this late date, despite their agreement that we certainly do not want to discourage utilities from purchasing inherently safe reactors. They feared that the Senate might not agree and they did not consider the issue to be critical at this point in time. I disagreed because I believe we do not have to let expediency rule over common sense and good lawmaking.

Faced with two important deficiencies with the substitute, I elected to bring my amendments to the attention of the Rules Committee, but I regret that they declined to make my amendments in order for presentation to this body.

I must reemphasize that the proposed substitute text contains 98 percent of what I believe to be appropriate policies to protect the public, assure continued operation of the national laboratory system, and enhance safety both in the commercial sector

and at the national laboratories. It is unfortunate that I cannot give the bill my 100-percent commitment. Nevertheless, considering that the overwhelming percentages involved invoke good sense, the substitute is an acceptable compromise for overall passage.

I support the adoption of the substitute.

NUCLEAR REGULATORY COMMISSION,
Washington, DC, August 2, 1988.

Hon. MARILYN LLOYD,
Chairman, Subcommittee on Energy Research and Development, Committee on Science, Space, and Technology, House of Representatives, Washington, DC.

DEAR MADAM CHAIRMAN: I am responding to your letter of July 19, 1988, in which you sought the Commission's views on modifying H.R. 1414, the bill which would reauthorize the Price-Anderson Act, to eliminate a potential disincentive for utilities to purchase modular, advanced reactor units.

H.R. 1414 as currently written includes authorization in proposed new section 170b(2)(A) for the Commission to make "case by case" adjustments to retrospective premium requirements in certain circumstances. We believe that a serious legal question could arise from this provision as to whether the Commission may provide by rule that a group of reactors be treated as a single reactor for the purposes of meeting the financial requirements. More importantly, even if the Commission were to exercise its authority to require less than the maximum deferred premium for modular advanced power plants, the difference would still have to be paid eventually under 170b(2)(B). We also agree with the view that those considering use of modular reactors could be discouraged by the potential of significantly broader financial exposure than they would incur by choosing a single reactor to generate the same megawatts of power.

On review of the draft amendment you propose, our opinion is that it would remove from H.R. 1414 the potential disincentive that you have identified. We agree that the amendment would give the Commission authority to define by regulation the potential recipients of this treatment and thus to control whether or not the disincentive would be eliminated for any class of modular reactors. However, unless the Commission took such action, it appears to us that the terms of the draft amendment could be sufficient for any licensee of a modular advanced nuclear power plant to claim a statutory right to a single-reactor treatment provided that the power plant has arguably significant passive safety features and is within the wattage limit.

I hope that this response will be helpful to you. The General Counsel or designated members of his staff are available to assist you or your staff further in this matter.

Sincerely,

LANDO W. ZECH, Jr.

THE SECRETARY OF ENERGY,
Washington, DC, July 28, 1988.

Hon. ROBERT A. ROE,
Chairman, Committee on Science, Space, and Technology, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your letter of July 13, 1988 regarding the impact of Senate Amendment No. 13 to H.R. 1414, the "Price-Anderson Amendments Act of 1987". Both the House and Senate have worked hard in the past several years to renew Price-Anderson and that objective is now within reach. I hope that final consideration will take place in the next several weeks, and urge that action be completed on this needed legislation.

The expiration of the Act last August has jeopardized the Department's future working relationships with its contractors: relationships with an established history of cooperation which have served our national security interests and protected the public well for decades. The uncertainty of Price-Anderson coverage can only continue to discourage contractors of the highest caliber and quality from such working relationships with the Department.

We share your concerns about the impact of the civil penalties provision on the Department's working relationships with its contractors. Although we also share the objective of ensuring that DOE contractors conform their conduct to the highest standard of safety and care, it remains our opinion that the inclusion of a civil penalties provision undermines the trust and dedicated partnerships, which thus far have achieved our national security goals. We are convinced that the Department has the authority and discretion to enforce safety standards and that the mutuality of interests the Department shares with its contractors is the best guarantor that the high standards of safety will be met.

I have enclosed answers to most of the questions you raised in your letter. Because of the uncertainty as to the final outcome of the Bill and the newness of the provision, the Department does not yet have all of the answers you are seeking. I will keep you informed as the Department attempts to analyze the intent and practical ramifications of civil penalties on our national security.

I hope that the enclosed will aid you in completing House action on Price-Anderson, as the absence of coverage is surely a greater threat to our national well-being than this provision. I urge prompt action and stand ready to assist in any way I can.

Yours truly,

JOHN S. HERRINGTON.

QUESTIONS AND ANSWERS

Question 1a. Please list those Department of Energy (DOE) contractors which currently have Price-Anderson indemnity?

Answer. Attachment 1 lists the DOE management and operating contractors which currently have Price-Anderson indemnity.

Attachment 2 lists the DOE management and operating contractors that have been extended the indemnification coverage under Public Law 85-804 since Price-Anderson coverage expired.

ATTACHMENT 1—U.S. DEPARTMENT OF ENERGY M&O DATA BASE STANDARD REPORT NO. 2

Awardee Org. Rec. Doc	Activity Name Award Office	Expiration Date Program Office
Allied-Signal Inc. 7/01/90	Kansas City Plant, KS	12/31/91 DP
Battelle Memorial Institute 1/	Pacific Northwest Laboratory, RL	9/30/92 EE
E.I. Du Pont de Nemours & Co. 3/30/88	Savannah River Laboratory and SR	9/30/89 DP
EG&G Idaho, Inc. 3/30/90	Idaho National Engineering Lab. ID	9/30/91 NE
General Electric Co. 3/30/89	Knolls Atomic Power Laboratory, NY	9/30/90 NE
General Electric Co. 3/30/87	Pinellas Plant, FL	9/30/88 DP
Kaiser Engineers Hanford Co. 1/30/88	Engineer Construction Contract, RL	7/29/92 DP
M-K-Ferguson of Idaho Co. 1/	M-K Construction, ID	12/31/88 NE
Martin Marietta Energy Systems, 1/30/88	ORGDP, ORNL, Y-12 Production, OR	9/30/89 DP
Mason & Hanger-Silas Mason Co. 12/31/90	Pantex Plant, TX	9/30/91 DP
Monsanto Research Corp. 1/	Mound Plant, OH	9/30/88 DP
Rockwell International Corp. 1/ 1/87	Rocky Flats Plant, CO	12/31/88 DP

ATTACHMENT 1—U.S. DEPARTMENT OF ENERGY M&O DATA BASE STANDARD REPORT NO. 2—Continued

Awardee Org. Rec. Doc	Activity Name Award Office	Expiration Date Program Office
Rockwell International Corp. 1/ 10/30/90	Energy Technology Eng. Ctr., CA	12/31/91 DP
Sandia Corp. AT&T Technologies, 10/31/87	Sandia Laboratory, NM	9/30/88 DP
University of Chicago 1/ 10/31/87	Argonne National Laboratory, IL	9/30/88 NE
West Valley Nuclear Services Co., Inc. 10/31/90	West Valley Project, NY	9/30/91 EM
Westinghouse Electric Corp. 1/ 10/31/87	Bettis Atomic Power Laboratory, PA	9/30/88 NE
Westinghouse Electric Corp. 1/ 10/31/89	Waste Isolation Pilot Plant, NM	9/30/90 EM
Westinghouse Hanford Co. 1/ 10/31/87	Hanford Operations, Richland, WA	9/30/88 DP
Westinghouse Idaho Nuclear Co. 10/31/88	Idaho Chemical Processing Plant, ID	9/30/89 NE
Westinghouse Materials Co. 1/ 10/31/90	Feed Materials Production Center, OH	9/30/91 DP

ATTACHMENT 2

The following have been granted indemnification under Public Law 85-804:

University of California, Lawrence Livermore National Laboratory, Los Alamos National Laboratory.

Associated Universities, Inc.: Brookhaven National Laboratory.

EG&G Energy Measurements Inc.: Nevada Test Site.

Martin Marietta Energy Systems, Portsmouth Gaseous Diffusion Plant.

QUESTIONS AND ANSWERS

Question 1c. If the purpose of the amendment is to promote public safety, what public policy reason exists for distinguishing between the contractors exempted in Senate amendment number 13 and the other DOE contracts?

Answer. Public safety is best promoted and achieved through mutuality of interests and goals shared by the Department and its contractors, through the highest safety standards being set and willingly agreed to, and by authority to replace those contractors if these goals are not met. We believe this applies to all contractors without distinction.

Question 1d. Has any contractor refused Price-Anderson indemnity when it has been offered? If so, please explain.

Answer. No, not in the past. However, contractors have expressed concerns over the lack of Price-Anderson and the potential future provisions of Price-Anderson.

2. Senate amendment number 13 to H.R. 1414 would allow DOE to assess civil penalties against a contractor. The amendment also exempts certain contractors and the laboratories they manage by name from the provisions of this section. Given the change in the law as stated in Senate amendment number 13:

a. Do you agree, or disagree, that Senate amendment number 13 appears to favor those institutions which are listed, not only for the benefits under the existing contract, but vis-a-vis others who might compete for the contract at the time of renewal. Please explain your answer.

b. Do you interpret the Senate passed civil penalty provisions to be discretionary as to the imposition of penalties on any DOE contractor? Please explain.

c. Does the Senate exemption to the civil penalties section include all DOE contractors that are comparable to the named contractors in regard to the type of work performed by a laboratory, and in regard to the financial relationship a contractor has with DOE? If there are other contractors who are comparable to those listed, please name them.

1. Should an exemption apply only to those contractors that currently have Price-Anderson indemnity? Should successor contractors also be exempted?

2. Should the exemption apply to those contractors that currently have contracts with DOE with no Price-Anderson indemnity but that DOE would expect to give indemnity to once H.R. 1414 is enacted?

3. Does DOE have authority or will it with the passage of H.R. 1414, to promulgate by rulemaking exemptions for a particular type of contractor? Any, or any not?

Answer 2a through 3. The Senate civil penalty provision gives the Secretary the discretionary authority to impose civil penalties on DOE contractors, except those listed as exempt if they are covered by a Price-Anderson indemnity clause and have violated a nuclear safety rule, regulation, or order issued by the Secretary under the Atomic Energy Act of 1957, as amended. The Senate provision empowers the Secretary to compromise, modify, or remit such penalties with or without conditions and to prescribe regulations as he may deem necessary to implement the provision. Although the listing of specific exempt contractors appears to favor the listed institutions, the Secretary has sufficient discretion to ensure that other similarly constituted contractors doing similar work would not be at a competitive disadvantage in contractual negotiations.

There are DOE contractors absent from the exemption list that presently are engaged in work comparable to the work conducted by the listed contractors. For example, Stanford University is engaged in work conducted at the Stanford Linear Accelerator Center (SLAC) that is similar to the work conducted at Fermilab. While Fermilab is listed as exempt from civil penalties, SLAC is not. The Department could provide equitable treatment to entities such as SLAC either on a case-by-case basis or through rulemaking.

Question 2.g. Should specific classes of contractors, e.g., non-profit educational institutions, be exempted from an assessment of a civil penalty? Why, or why not? If DOE were to exempt certain types of contractors from the civil penalties provisions, what class of contractors would DOE most likely exempt?

Answer. There should not be distinctions drawn between classes of contractors for purposes of accountability. The Senate provision does provide Secretarial discretion, specifically providing, that in determining the amount of the penalty, the Secretary shall take into account the ability of the contrator to pay, the effect on the contractor's ability to continue to do business, history of prior violations, degree of culpability, and such other matters as justice may require.

DOE's initial evaluation would thus tend toward a case-by-case review rather than exemption by class of contractor.

Question 3.b. Does DOE make periodic safety inspections of the DOE laboratories?

Answer. Yes. The DOE safety appraisal program combines routine onsite inspection and surveillance by the DOE Operations Office with periodic technical safety appraisals by the Headquarters Office of the Assistant Secretary for Environment, Safety and Health. This program encompasses the DOE laboratories as part of the overall DOE complex. More specifically, the Operations Offices in the field have responsibility to perform safety inspections and functional appraisals of the contractor's operations in all safety disciplines, i.e., nuclear facility safety, reactor safety, criticality safety, fire protection, quality assurance, radiological protection, industrial hygiene, etc. These appraisals are conducted at a frequency dependent upon the hazard level of the contractor operations to be appraised. Thus, high hazard facilities would be appraised on a more frequent basis than moderate or low hazard facilities.

The Assistant Secretary for Environment, Safety and Health, has oversight responsibility for the Department on all operations. In fulfilling this responsibility, the Office of Environment, Safety and Health performs Functional Appraisals of field activities in all safety disciplines and Technical Safety Appraisals (TSA's), which are documented, multidiscipline appraisals of selected Department reactors and nuclear facilities. These TSA's assure proper Department-wide application of particular safety elements, nuclear industry lessons learned, and appropriate licensed facility requirements while stressing the Department's ultimate goal of striving for excellence.

TSA's are conducted on an infrequent basis once every few years. DOE has recently initiated an onsite resident inspector program reporting directly to the Headquarters ES&H management. In this way, oversight safety inspections are done by individuals on a daily basis and multidisciplinary teams on a more extended schedule.

Question 3.c. What rules, regulations, or orders presently address nuclear safety for DOE contractors? Please explain.

Answer. The safety requirements for the Department's nuclear operations are specified in the DOE Orders. Some of the major Orders are provided in Attachment 1. These Orders provide minimum requirements which have to be followed in the operation of the Department's reactors and nuclear facilities. The Operations Offices in the field also provide DOE Order Supplements to the contractor. These supplements reflect the need to meet the DOE Order requirements and provide additional detailed requirements related to the specific operations at a particular site.

ATTACHMENT 1

DOE Order No. and Title:

5480.1B—Environment, Safety, and Health Program for Department of Energy Operations.

5480.2—Hazardous and Radioactive Mixed Waste Management.

5480.3—Safety Requirements for the Packaging of Fissile and Other Radioactive Material.

5480.4—Environmental Protection, Safety, and Health Protection Standards.

5480.5—Safety of Nuclear Facilities.

5480.6—Safety of Department of Energy Owned Reactors.

5480.7—Fire Protection.

5480.8—Contractor Occupational Medical Program.

5480.9—Construction Safety and Health Program.

5480.10—Industrial Hygiene Program.

5480.11—Requirements for Radiation Protection.

5480.12—Prevention, Control, and Abatement of Environmental Pollution.

5480.13—Aviation Safety.

5000.3—Unusual Occurrence Reporting System.

5481.1B—Safety Analysis and Review System.

5482.1B—Environment, Safety and Health Appraisal Program.

5483.1A—Occupational Safety and Health Program for Government-Owned, Contractor-Operated Facilities.

5484.1—Environmental Protection, Safety, and Health Protection Information Reporting Requirements.

5610.3—Program to Prevent Accidental or Unauthorized Nuclear Explosive Detonations.

5700.6B—Quality Assurance.

5500.2—Emergency Planning, preparedness, and Response for DOE Operations.

5500.3—Reactor and Nonreactor Nuclear Facility Emergency Planning, Preparedness, and Response for Department of Energy Operations.

5500.4—Public Affairs Policy and Planning Requirements for Emergencies.

6430.1—General Design Criteria.

1324.2—Records Disposition.

1330.2—Uniform Contractor Reporting System.

5700.3B—Major System Acquisition Procedures.

Question 3.d. What procedure does DOE use to determine if a contractor is in violation of a DOE rule, regulation, or order relating to nuclear safety? What type of process is given to a contractor before a contractor may be penalized under existing authority?

Answer. The Department determines whether a contractor is in violation of a DOE rule, regulation, or order relating to nuclear safety in several ways. First, the contractor operations are reviewed early in the design stage prior to construction to assure that facilities are sited and designed in accordance with the DOE Order requirements. Secondly, prior to initial operation, the facilities design is again reviewed against DOE Order requirements. This review focuses on the safety analyses performed for the facility operations and ensures that: (1) the analyses are complete and accurate, (2) the analyses identify systems important to safety, (3) the design and operation of the facility is in accordance with the DOE Orders, and (4) the safety envelope of the facility is defined through Technical Specifications or Operational Safety requirements. In each of these reviews, a determination of compliance with the DOE Order requirements is made and appropriate changes to the facility design and/or operation are performed without penalty to the contractor.

Thirdly, during facility operations, the Department ensures compliance with its requirements and the approved safety envelope of the facility through inspections and appraisals, as discussed in the answer to Question #3.b., and through reporting requirements imposed on the contractor through the DOE Orders. On the latter, the contractor must report unusual events and occurrences that occur in Department facilities. These reports describe the event, occurrence and corrective action. If through the DOE appraisal or reporting process DOE determines that DOE requirements or the safety envelope of the facility are violated, then the Department can take action to limit operations or shut down the facility.

Penalties against the contractor for failing to comply with DOE Order requirements are established in two ways. One method used is to reduce the Award Fee given to the contractor each year based upon his performance. Since safety is one of the performance elements, poor safety performance by the contractor could result in a reduced rating and reduce award fee. The second method which can be utilized is to cancel the contract or not award the contractor the contract for managing the particular site when the existing contract is completed. In both of these methods, the contractor can provide information to substantiate his performance.

Question 3.e. What types of violations relating to nuclear safety has DOE found at its laboratories?

Answer. The most frequent areas that are not in compliance are training, documentation, procedural compliance, and quality assurance.

Question 11. How does DOE currently mandate compliance when it identifies a violation relating to nuclear safety at a DOE laboratory?

Answer. If through the DOE appraisal or reporting process, DOE determines that DOE requirements or the safety envelope of the facility are violated, then the Department can take action to limit operations or shut down the facility until corrective actions are taken. Also, penalties against the contractor can be imposed as discussed in the answer to Question #3 d.

□ 1330

Mr. LENT. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from New Mexico (Mr. LUJAN), the ranking minority member of the Committee on Interior and Insular Affairs.

Mr. LUJAN. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I have some serious reservations about this legislation. I do not know what I can do about it at this point since we are considering this in a closed rule. I would have voted against the rule had we had a recorded vote on it.

I am concerned because we are taking a tremendous leap in the limit of liability under the Price-Anderson Act. The current law, Mr. Speaker, provides that each utility shall pay $5 million per reactor in case there is an accident.

We began by looking at whether we should double that amount of liability as a limit, and we looked at that for a long time. All of a sudden something happened, and it went from $10 million to $63 million per reactor. That amounts to some $7 billion of total liability that all 112 reactors in this country are responsible for.

That may be a lot of fun in Congress to throw around figures like $63 million and $7.2 billion in total liability. I am not sure that the rest of the country understands what those figures are, and I am not sure that we understand what those figures are all about.

Mr. Speaker, the rate-paying public is going to have to pay these amounts of money. Because of the closed rule, Mr. Speaker, we are not to consider anything less than the $63 million per reactor.

There is one redeeming feature in this legislation, Mr. Speaker, and that is that a portion of this bill is likely to extend the benefits of the Price-Anderson Act to radio pharmaceutical licensees, persons, or entities who manufacture, produce, possess, or use radio isotopes or radio pharmaceuticals for medical practices. These medicines help physicians to detect abnormal growths and tumors in the bone, spinal cord, thyroid, lungs, liver, and other organs.

This compromise legislation, although not totally to my liking, at least goes a little bit in the proper way in that it provides a process by which the Nuclear Regulatory Commission can ensure that the benefits of Price-Anderson are extended to this radio pharmaceutical licensee. So there are some benefits to this legislation.

There are a couple of other features, however, Mr. Speaker, that should be in this legislation that are not. It was necessary to exempt from the civil liabilities provision certain laboratories or certain people that operate laboratories for the Federal Government. Among those are Livermore out in California, Los Alamos, Sandia in my home district, and those were exempted from civil liability provisions.

However, it does not make any sense that three national laboratories were included and three others were left out, and the committee was rather adamant that we leave them out. It really does not make any sense to take these three which are operated by consortiums of universitities and make them subject to civil liability provisions. So that should have been changed in the committee, and why they were so adamant about it is beyond me.

The final thing is the question of modular reactors. We all know and everybody knows that the future of nuclear power lies in small, inherently safe reactors, and these can be built in steps.

What we have done is that each module now has the responsibility for $63 million, so that as we move along and add these modules and make those reactors a little larger, we begin to multiply those limits of $63 million by the number of modules added on. The reasons they said they would not include this in the legislation and at least give us a limited open rule of some kind so that we could put these on was that we had not had any hearing on that.

Mr. Speaker, let me hope that for next year we can have hearings and maybe look at this legislation in the final year.

Mr. UDALL. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. MURPHY).

Mr. MURPHY. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I reluctantly rise in support of the substitute for H.R. 1414. As the gentleman from New Mexico pointed out, we have had a long 2 years in arriving at this point. However, we have arrived.

The Price-Anderson legislation was originally designed, and this reenactment is designed, so that we can continue our competition in the world for the world energy resources.

We must have nuclear power so long as the rest of the world engages in it also. We must remain competitive and we must use every energy resource we have in our own Nation to become energy independent.

This legislation sets forth that it is the policy of the Congress that at least for the next 15 years that we may rely for some portions of our energy resources on nuclear power. We would provide that we increase the liability of each plant, as the gentleman pointed out, from $5 million per plant reactor to $63 million, quite an increase.

But I would point out to my colleague from New Mexico that what we likewise do at the same time is keep the first tier of insurance at $160 million, which is what each plant must provide and each company must provide in their first tier of liability.

Coming from the early State in our country which has had an experience with Price-Anderson, the Commonwealth of Pennsylvania at Three Mile Island, I can tell my colleagues that the claims were settled far less than the $160 million of liability in the first tier. The total claims were settled in the amount of $48 million, far less than that provided in the first tier of coverage.

I believe that this measure has worked for us since 1957 in protecting the American public and assuring that we can take advantage of our energy resources, and that it will work for the next 15 years, and therefore I support the measure.

Mr. SHARP. Mr. Speaker, I yield myself 3 minutes.

(Mr. SHARP asked and was given permission to revise and extend his remarks.)

Mr. SHARP. Mr. Speaker, I am pleased to speak in favor of the motion for a compromise bill responding to the Senate's legislation to renew the Price-Anderson Act. I must begin by thanking Chairman UDALL, the gentleman from South Carolina, Mr. BUTLER DERRICK, and Chairman DINGELL, for their tireless efforts to enact this important legislation. I also would like to thank Chairman ROE and the minority for their cooperation and contributions.

The effort to renew Price-Anderson has been lengthy and sometimes difficult. In fact, it was over a year ago that the Price-Anderson Act expired, for the first time since its enactment in 1957. Fortunately, both the nuclear utility industry and the Department of Energy contractors who rely on Price-Anderson have been able to make do without the act's protections on an interim basis, pending the conclusion of this legislation effort.

However, as the session draws to a close, the need to renew the Price-Anderson Act has become pressing. First and foremost, this legislation is important to the public. There are 110 nuclear reactors in operation today, many of them run by utilities which do a good job of producing essential power supplies at reasonable cost. Safety is the constant goal in these operations, and I hope that we never see an accident of the magnitude the Price-Anderson Act was designed to respond to.

However, should there be an accident, it is essential that the Price-Anderson Act's protections be available to the public. In the case of a relatively small utility accident such as Three Mile Island, the act's public compensation scheme provides a ready, proven system for responding to the immediate needs of families forced to evacuate their homes.

In the case of a larger accident, this legislation makes up to $7 billion available to compensate the public for personal and property damage, and improves the procedures for compensating damages in excess of that amount. The new $7 billion compensation fund represents a tenfold increase over the amount under the old act, and is far more in line with current economic realities than the existing $700 million limit.

Moreover, the Price-Anderson Act and this renewal legislation provides the public with a significantly easier road to recovery in court. Under normal tort law procedures, accident victims often must prove negligence against large corporations. Few ordinary citizens have the resources, or the ability to await compensation, that would be required in order to bring suit against a major utility. This bill retains the Price-Anderson Act's unique no-fault system, which enables victims to bypass the more onerous aspects of tort litigation.

I am aware that some of my colleagues are disappointed that the $7 billion compensation responsibility imposed on the utility industry is not greater, or indeed that any liability limit was retained. I too supported a higher figure, and fought in the Interior Committee for a higher amount. While I understand this sentiment, I strongly believe that it should not prevent Members concerned about the public's welfare from supporting this bill. There simply is no substitute for the combined advantages of the large, assured compensation fund and the ease of recovery afforded under the traditional Price-Anderson Act and improved upon in this bill.

In addition, this bill clarifies the Price-Anderson Act's application to accidents involving high-level nuclear waste, and guarantees $7 billion in compensation for the public. The Department of Energy currently oversees the storage of vast amounts of defense waste, and over the course of this renewal of the act may begin disposing of waste from commercial generators in the repository now under development.

Similarly, the bill increases from $500 million to $7 billion the amount of compensation provided for victims of an accident involving DOE defense production facilities. Great strides have been made toward improving the oversight and safety of these essential components of our defense system, but the recognition of problems at these facilities only underscores the need for adequate compensation in the event of an accident.

With respect to the Department of Energy's defense operations, is it absolutely essential that we enact this renewal legislation as soon as possible. Private companies now negotiating with DOE have warned that they will not sign contracts without Price-Anderson's indemnification authority. These contracts concern facilities which are of critical importance to our weapons program, such as the Pinellas plant in Florida, the Savannah River plant in South Carolina, and Brookhaven National Laboratory in the New York.

Finally, I would like to speak briefly to three amendments we are proposing to the Senate under this bill and to the procedure we are using today. It has been nearly a year since the House reported its bill, and 4 months since the Senate reported a bill. The two bills are substantially similar, and many of the differences have not been difficult to resolve. However, three of the amendments the Senate attached to the House bill are noteworthy, and have been modified somewhat in the substitute we are voting on today.

First, the substitute proposes an even split between the House and Senate provision on the length of the act's renewal. The House favored the traditional 10-year renewal, while the Senate proposed to extend the act for 20 years. The substitute would renew the act for 15 years, and I am satisfied this is a fair result.

The second amendment I would like to address is the Senate's civil penalties provision. As my colleagues may recall, I supported an amendment, which the House did not adopt, to permit DOE to impose civil penalties on contractors that violate safety regulations. The Senate's inclusion of a similar provision has required the House to consider the matter for a second time, and the substitute bill would largely recede to the Senate on this point. While the provision is less stringent than I would prefer, I believe the compromise the substitute is valuable and worthy of our support.

The third Senate provision I would like to address, the question of indemnifying nuclear pharmacies, has proven particularly controversial. I am pleased that in developing the substitute, we reached informal agreement with our colleagues in the Senate who are most concerned with this topic. I have not supported extending a Federal indemnity to this industry, and have grave reservations about committee Government funds in this manner. However, in the interest of moving the legislation, I am willing to support the compromise, which directs the Nuclear Regulatory Commission to conduct a negotiated rulemaking on the issue. I note that the compromise does no more than require the Commission to consider the matter, and that it clearly reserves the final decision to the Commission's sole discretion.

Finally, while the procedure set forth in the rule is somewhat unusual, I feel it is the best avenue at this late date in the session to ensuring that a Price-Anderson bill is enacted this year. This approach has been coordinated with, and is supported by, both the majority and the minority on the Interior and Commerce Committees.

I recognize that this bill may not be ideal from anyone's point of view. However, I think we should take satisfaction from the fact that it is very good, solid renewal of a much needed law. The Price-Anderson Act has served both the public and private industry involved in our energy and defense sectors well. This bill introduces many important improvements to the Price-Anderson Act, and we can ill afford to risk letting it lapse any longer.

I thank my colleagues for their attention and urge them to support this important legislation.

□ 1345

Mr. LENT. Mr. Speaker, I yield 5 minutes to the gentleman from Alaska (Mr. YOUNG), the ranking member of the Committee on Interior and Insular Affairs.

(Mr. YOUNG of Alaska asked and was given permission to revise and extend his remarks.)

Mr. YOUNG of Alaska. Mr. Speaker, I rise in strong support of H.R. 1414, the Price-Anderson Amendments Act, and ask that the House do the only responsible thing and pass the bill without delay.

The bill would increase tenfold the level of protection to those who might be affected in the unlikely event of a nuclear accident, and that in itself is reason enough for support.

But this bill is needed for other reasons. It has been exactly 1 year since the authority of the NRC and the Department of Energy to enter into agreements with their licenses and contractors ran out. That means that while we have an existing program for prompt settlement of claims resulting from a commercial nuclear energy facility accident, our Nation's ability to conclude agreements with contractors who conduct programs related to our national security is in jeopardy. This bill would resolve this insecurity in the arsenal, of democracy, while increasing the level of protection for citizens of the United States.

Perhaps most importantly, the enactment into law of this bill will send a strong signal to U.S. consumers of electricity—residential and business—that our Nation is open for business and ready to compete.

This Nation—the greatest engine of human material, spiritual and intellectual growth in the history of man—has led the world in freeing man from the burden of his own or an animal's back through the efficient delivery of energy. We need more energy resources for the 21st century. Yes, we

need conservation—the wise use of resources goes without argument, and is central to our future.

But many see this as the solution to all of our problems. They are dead wrong, and their shortsightedness threatens our Nation's ability to compete in the next century.

A nation without energy is like a body without energy—withering and dying. We need nuclear. We need coal. We need hydro. We need to open the coastal plain of the Arctic National Wildlife Refuge in Alaska. We need everything we can, if we expect to compete.

Nuclear is clean, it's efficient. It's safe, and with this bill, we will guarantee its safety to the public.

Oil and gas should not be used to produce electricity. They are best used as a transportation fuel to grease the wheels of a huge nation on the move.

As electrical production increases to meet the needs of an electronic communication society, we should not be sending money to Canada to buy it. We need to have a safe, practical energy supply system. Nuclear power gives us that, and H.R. 1414 insures it. I urge Members to support this bill—our future demands it.

Mr. Speaker, Shoreham, Comanche part 2 and WPPSS 3 are tombstones of the nuclear age, some people say.

The argument over the legitimacy of powerplants began before they were proposed. It may never end. But one thing is indisputable: Anywhere from $3 to $5 billion is tied up in each of the 10 reactors in the United States are substantially finished but sit idly by because they lack regulatory approval.

That is a lot of money going to waste. Now, as the environment seems to be suffering more and more than ever from our relentless combustion of fossile fuels, witness the greenhouse effects, the acidic lakes, the widening swaths of dead trees, Americans must ask themselves whether they really want to allow these emission-free powerplants to remain mausoleums. This is not a debate over nuclear power per se. This question is whether we should put more money into this power source or indeed whether we should have put any money into it at all. Even if the answer to this question is "no" and sometimes we may lean in that direction, as some on this House floor may, it is foolish to allow those plants to stand idle. They represent $40 billion of underutilized assets at a time when the country cannot afford to squander its financial resources and they can contribute a modest but meaningful reduction to the amount of fossile fuels that we burn over the next four decades. True, some of these plants may pose environmental and safety risks on their own. But the potential dangers must be weighed against the risk of not employing such ready assets when excessive use of fossile fuels could one day mean the end of life as we know it on Earth.

With what Chernobyl has instilled in our memories, the dangers from combustion of fossile fuels may not seem so dramatic, but they nevertheless are starkly real. That is why the financial and environmental gains to be achieved by starting up our idle nuclear reactors seems compelling. I suggest that we take the wraps off the Shoreham and the other 10 plants sitting idly by and use those resources which we have spent to develop the needed energy in this country. We need our fossil fuels for propulsion, we need them for transportation, but we need nuclear power for the future generations.

I yield back the balance of my time.

Mr. UDALL. Mr. Speaker, I have no further requests for time, and I reserve the balance of my time.

Mr. SHARP. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. ECKART].

(Mr. ECKART asked and was given permission to revise and extend his remarks.)

Mr. ECKART. Mr. Speaker, I rise in strong opposition to H.R. 1414, the Price-Anderson Amendments Act of 1988.

Yesterday, I received, as I'm sure all of you probably did, a letter from the American Nuclear Energy Council [ANEC], strongly urging me to support the compromise bill before us today. And it's no wonder. ANEC, as it indicated on this letter, represents over 100 orgnizations with an interest in nuclear power—read that economic interest—like utility companies, architect-engineers, and uranium mining companies.

And it's because the conference report on H.R. 1414 protects their economic interests—not necessarily the economic interests of the average American taxpayer, or the health and environmental interests of American citizens—that we should reject this legislative product.

In fact, this attempt at a compromise with the other body remains as fatally flawed as the version that passed this House last summer, and in some cases, it is even worse.

VICTIM COMPENSATION

H.R. 1414 still fails to provide full compensation to victims in the event of a nuclear accident. Instead, this bill raises the liability limit of the nuclear industry to approximately $7 billion, and gives the victim a promise that simply means that the "check is in the mail."

If Congress can't, with the time we have for careful consideration and planning now, before a nuclear accident, come up with a plan to provide for full compensation, I fail to see how anyone could reasonable believe we'll be able to do it in the atmosphere of confusion and recrimination that is sure to follow after a nuclear accident.

And, to make matters worse, this compromise bill does not include the House-passed provisions that would have made sure that victims of nuclear waste accidents, at least, could receive full compensation. The House-passed version of H.R. 1414 set up special procedures that would have waived the $7 billion liability limit if Congress failed to enact a compensation plan within on year after the President submitted his proposal for above-limit compensation. Under the previous House language, all valid claims from nuclear waste accidents would have been paid by from the nuclear waste fund. The House should reject this weakening of its version of the bill.

TAXPAYER PROTECTION—TAXPAYER RIPOFF

H.R. 1414 leaves the Federal treasury, and thus the American taxpayer, as the most likely source of compensation beyond the liability limit. And how much more money than $7 billion might a catastrophic nuclear accident cost? It is a taxpayer ripoff.

In 1982, the Sandia National Laboratories, using a computer model to analyze meteorological, population, and economic data, estimated a wide variety of accident consequences for each of the nuclear powerplant sites in the United States. The study concluded that, in a worst-case scenario, more than 100,000 people could die and economic damages could exceed $100 billion at some locations.

In 1987, the GAO estimated that the financial damages from a catastrophic nuclear accident under average weather conditions could reach $15 billion. The study noted that severe weather conditions, such as heavy rain, could increase these costs by 10 times.

A February 1987 NRC analysis of a potential fuel core meltdown accident at a plant with a GE Mark I containment structure estimated up to 30 million people could be exposed to radiation, with approximately 20,000 latent cancer deaths and $12 billion in off-site property damage alone. Analysis was done of a hypothetical accident at the Peachbottom Plant near York, PA.

ATTORNEYS' FEES

Like last year's House-passed bill, the compromise bill before us today would still allow the nuclear industry's attorneys' fees to be paid out of the limited compensation fund in the event of a nuclear accident. What's the matter with that? Let's use Three Mile Island as an example.

As we all know, the major test of the Price-Anderson system so far was the Three Mile Island accident in March 1979. Since 1979, a total of approximately $48 million has been paid out of TMI's licensee's first tier—$160 million primary insurance coverage—financial protection. That total breaks down like this: $40 million in public damage claims; $8 million in attorneys' fees.

That means that, out of the total amount paid out of the first tier of the compensation system for Three Mile Island so far, approximately 17 percent has been paid in attorneys' fees!

And 17 percent of $7 billion is almost $1.2 billion—$1.2 billion could compensate a lot of public damage claims, a fact which becomes very important when you remember we're dealing with a limited compensation fund.

But if paying out 17 percent of the available public compensation fund doesn't bother you, let me make another point. Allowing payment of industry attorneys out of the compensation pool means that victims pay twice.

The general populace, those most at risk of suffering damages from a nuclear accident, can't afford to keep fancy attorneys on retainer to plead their cases for them. After an accident, they're going to be hiring attorneys on a contingency fee basis.

This means, of course, that accident victims will be paying their lawyers out of their damage awards—this is the first time the compensation they receive will be decreased.

The second time comes because the compensation pool established to compensate their damages, the harm caused to the public, will also be used to pay the lawyers defending the guys that caused the harm.

Out of their own pockets. In effect, the victims have to pay both sets of lawyers. I don't think this comports with what the spirit of this law should be, and I don't think this is justice.

Mr. Speaker, this compromise version of H.R. 1414 provides inadequate protection to the potential victims of a catastrophic nuclear accident, and it is fundamentally unfair to the American taxpayer. I urge its defeat.

It perpetuates the most egregious form of corporate welfare imaginable.

It should be defeated.

Mr. LENT. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. BILIRAKIS].

(Mr. BILIRAKIS asked and was given permission to revise and extend his remarks.)

Mr. BILIRAKIS. I thank the gentleman for yielding this brief time to me.

Mr. Speaker, I rise in strong support of this legislation principally because it is fundamental to continue to meet the energy needs of this country.

Mr. LENT. Mr. Speaker, I yield such time as he may consume to the gentleman from Washington [Mr. MORRISON].

(Mr. MORRISON of Washington asked and was given permission to revise and extend his remarks.)

Mr. MORRISON of Washington. Mr. Speaker, I rise in opposition to the bill.

Mr. Speaker, I want to express my appreciation for the hard work you and our colleagues have done to put together this compromise amendment, and I agree with most of the provisions included in this legislation. However, I cannot agree with putting a limitation on nuclear waste accident liability, and I'd like to take this opportunity to explain why.

First of all, I think it is reasonable to set a limit on liability for nuclear power generation facility as the utilities involved have only one source of income, that is through ratepayers. We all know that power rates usually must work their way through public utility commissions who aren't about to approve the concept of unlimited liability for their constituents. Furthermore, the probability of a serious nuclear accident caused by powerplant operation is extremely remote. The history of our nuclear industry shows that, even in the case of Three Mile Island, the Price-Anderson liability cap was more than adequate.

High level nuclear waste is a different story. It is the property of the Government. And because there is no history of transportation, handling, and disposal of this waste, the potential for accident is unknown. I can understand that some of my colleagues contend if we extend unlimited liability to nuclear waste activities it will set the precedent for there being no limits on the liability for commercial reactors and other Federal contractor activities. I disagree with that proposition because high level nuclear waste disposal activities are distinct from all other nuclear matters covered by this act. They are the only activities under complete Federal supervision at every stage of the process.

I believe there should be unlimited liability coverage to protect the health and safety of the public against high level nuclear waste accidents, and therefore must oppose the passage of H.R. 1414.

Mr. ROE. Mr. Speaker, I rise in support of the substitute.

The Senate's 16 amendments to H.R. 1414, in most instances, brought the legislation closer to the original recommendations of the Committee on Science, Space, and Technology, as reflected in House Report 100-104, part 2. Therefore, what the Senate did, overall, was to improve the bill.

The compromises and improvements to the Senate's recommendations that are included in the substitute, retain much of what the Senate recommended as amendments. Therefore, the substitute move, closer to the original position of the Science Committee, and is also an improvement in the legislation.

For example, the Science Committee in two Congresses recommended that the act be extended for a longer period than 10 years. The Senate recommended 20 years and the substitute before us today increases the period to 15 years. This improves the bill.

Another example is that the Science Committee did not recommend the provision included in the House bill which would have treated nuclear waste contractors differently from other DOE contractors. The Senate struck this House provision and the substitute agrees with the Senate amendment.

Mr. Speaker, the substitute tend to H.R. 1414 resolves nine principle issues which have arisen due to the 16 amendments of the Senate. I concur in the resolution of eight of these issues, and must dissent in the resolution of one issue. The substitute takes the following action—

First, splits the difference on the period of extension and sets it at 15 years;

Second, deletes a House provision requiring, for the first time, appropriations to pay government liabilities under this act;

Third, strikes a Senate provision, which was likely to invite a presidential veto, requiring that Government employees be considered as contractors for Price-Anderson purposes.

Fourth, accepts a Senate amendment making the limit on liability the same for all DOE nuclear activities.

Fifth, allows the Senate to retain expedited procedures but strikes them for the House;

Sixth, compromises on 11 years as the appropriate deadline for the Congress to receive the reports of the DOE and NRC;

Seventh, requires DOE nuclear contractors to be indemnified only under Price-Anderson;

Eighth, requires, as a compromise, NRC to conduct a rulemaking proceeding to determine the need to bring nuclear pharmacies under Price-Anderson coverage; and

Ninth, adds civil and criminal penalties to DOE's enforcement authority over its contractors.

Although I have agreed in principle to all of these amendments in the substitute, the last one on civil penalties is not good law. I tend to agree with the executive branch that such penalties are not necessary, and possibly detrimental to the unique relationship between DOE and its laboratory operations needed to ensure safety. However, I believe the Senate provision, as well as the provision in the substitute, is flexible enough to permit broad discretion on the part of the Secretary either not to impose a civil penalty, and, if imposed, to allow the Secretary to modify or remit the penalty in whole or in part. Therefore, the civil penalty authority should not be harmful in and of itself.

The objectionable part of the civil penalty provision is section 17(d) of the substitute, which creates exemptions to the applicability of the Secretary's authority to levy civil penalties. This provision is poorly drafted, is unfair to certain contractors, is detrimental to broad industry participation in operating the laboratory system, and is anticompetitive in effect.

The substitute text in section 17(d) names some of the existing nonprofit and nonviral profit contractors as exempt from any civil penalties. Although I find it rather peculiar to list any exemption to a provision thought necessary by the Senate to promote public safety, I can understand the perceived need to exempt some contractors because of the potential detriment to the DOE/laboratory relationship. Two competing goals have to be reconciled, and the Senate chose the flawed approach.

First of all, naming a specific person, as is done in section 17(d), to be exempt from the law, is in itself improper. The law should have general applicability and, any exemptions should be cast in terms of classes of people. But I am willing to live with this shortcoming as long as the list names everyone in the class. Unfortunately, the substitute does not name everyone in the contractor class who is either a nonprofit or educational institution.

Second, neither the Senate or the Interior or Commerce Committees have identified any good reason for discriminating against some of the nonprofit or educational contractors, to wit, Stanford University, Oak Ridge Associated Universities, Southeastern Universities Research Association, and there may be others that DOE has yet to identify. These contractors were left off the list because they weren't known to the Senate at the time the amendment was agreed to.

Third, the exemption provision in the substitute gives the exempted contractors unfair advantage over possible competing contractors

when the laboratory contract is due for renewal. This occurs because successor contractors are not covered under the exemption. It is an advantage to be exempt from such a contingent liability and this fact will obviously be a factor in any bid to run a national laboratory.

Fourth, the fact that potential competitors will not have the exumption will have a disunct chilling effect on possible competitors. Those capable contractors who might otherwise be brought into the laboratory system will not be inclined to apply. The exemption list would, therefore, tend to be anticompetitive, preserving the status quo at the expense of the ability of the Government to find and choose the best operating contractors for the laboratories.

Having identified these problems, I sought the advice of the laboratories and the Department of Energy. There were no surprises in the responses, and, for purposes of brevity, I include only the DOE response in the RECORD at the end of my remarks. I will provide the laboratory responses to those who may be interested.

In summary, the laboratories with the exemptions wanted to preserve them. DOE didn't approve of the civil or criminal penalty provisions but thought that it had sufficient flexibility to administratively deal with the problems. I agree, but this is certainly no excuse for the Congress to enact poorly drafted legislation.

Because of the adamant position of the Senate regarding this provision, I prepared an amendment which I thought called for minimal changes in its scope and form. Essentially, my amendment would add the three known contractors fitting the class of exemptees, and also add their successors, if they also fit the class, that is, nonprofits or educational institutions. This was rejected by the Senate, and, as a result, by the other two House committees of jurisdiction. My colleagues on the other two House committees did not wish to risk jeopardizing the expedient enactment of this law because of the Senate's threatened rejection of my amendment. I believe it would have been healthy to force the Senate to deal with this issue.

There is a second problem with this substitute that has only recently been identified. I admit that it is a new issue and has not been fully considered by any committee of jurisdiction. However, its importance is not diminished by this oversight, especially considering that a chief purpose of the Price-Anderson Act is to protect the public.

Mr. Speaker, the substitute includes a substantial disincentive to assuring public safety that I believe should be eliminated.

The Science Committee has authorized the development in the Department of Energy of a new generation of nuclear reactor that promises to be a fail-safe reactor. All the accidents considered by the Nuclear Regulatory Commission for current generation reactors would be foreclosed in this new generation reactor; foreclosed in the sense that gravity or other physical phenomena prevent the accident from occurring in the first place. This technology is precisely what this country needs to meet public demands, to fight the acid rain problem, to respond to the CO_2 problem, and to rekindle our Nation's nuclear energy option.

What we should be saying through this substitute bill is, "The Congress does not intend to discourage utilities from purchasing inherently safe reactors." The substitute bill is a 15-year reauthorization and these new reactors could be available with a decade. But the bill, as currently written, would discourage any utility from buying these reactors.

The bill authorizes the NRC to assess a $63 million retrospective premium against each reactor licensee in the event of an accident. One of the attractions of the modular reactor concept is that a utility would be able to buy smaller increments of capacity to better meet customer demands. If eight of these modular reactors were, over a period of years, added to a system so as to constitute a single 1,200-megawatt electric plant, then a utility might be faced with a total assessment of $504 million, instead of a single $63 million assessment for a single, current generation reactor.

This, obviously, would be a substantial disincentive for utilities to purchase the passively safe, modular reactors, instead of the larger sized, current generation reactors.

I agree that this issue is a relatively new one. The NRC has said in the letter included below, that we have identified a real problem that can only be handled by the Congress. The solution I proposed is to give NRC the authority to treat a group of modular, inherently safe reactors as a single facility for purposes of the retrospective premium. I believe this issue could have easily, and without controversy, been resolved by my amendment.

Once again, my counterparts on the other two committees of jurisdiction opposed adding a new issue to the bill at this late date, despite their agreement that we certainly do not want to discourage utilities from purchasing inherently safe reactors. They feared that the Senate might not agree and they did not consider the issue to be critical at this point in time. I disagreed because I believe we do not have to let expediency rule over common sense and good lawmaking.

Faced with two important deficiencies with the substitute, I elected to bring my amendments to the attention of the Rules Committee, but I regret that they declined to make my amendments in order for presentation to this body.

I must reemphasize that the proposed substitute text contains 98 percent of what I believe to be appropriate policies to protect the public, assure continued operation of the national laboratory system, and enhance safety both in the commercial sector and at the national laboratories. It is unfortunate that I cannot give the bill my 100 percent commitment. Nevertheless, considering that the overwhelming percentages involved invoke good sense, the substitute is an acceptable compromise for overall passage.

I support the adoption of the substitute.

Mr. HUCKABY. Mr. Speaker, I would like to make a few brief remarks about the legislation currently before the House. This bill will reauthorize the Price-Anderson Act, and significantly improve the protections previously afforded to all citizens from the hazards associated with this Nation's nuclear program. The legislation also provides a process by which the Nuclear Regulatory Commission will likely extend the act to radiopharmaceutical licensees. Radiopharmaceutical licensees, including nuclear pharmacies, hospital nuclear medicine departments and radiopharmaceutical manufacturers, currently, make available radioactive drugs in unit doses. These important drugs are necessary for the maintenance for the high standard of health care all citizens in our country presently enjoy. Each year, millions of Americans are diagnosed through the use of these drugs. In addition, researchers are making great progress with these drugs in reducing abnormal cells to acceptable levels in children with luxemia and other serious diseases.

The ability of radiopharmaceutical licensees to maintain operations in the future is in serious questions because of recent State tort law decisions which expose them to law suits for damages allegedly due to low level radiation emission, even emissions within NRC guidelines. From the evidence presented to the Interior and Insular Affairs Committee, I am convinced that the potential liability faced by these radiopharmaceutical licensees can realistically force them out of business because they cannot obtain insurance for the nuclear risk. As with the vaccine industry, the unwillingness of the commercial insurance industry to provide coverage creates the need for Federal intervention so the standard of healthcare may be sustained.

It is my understanding that despite the evidence submitted to the committee by the radiopharmaceutical licensees themselves, there is some question as to whether or not commercial insurance is available for this risk. For this reason, the process that would be put in place by this legislation will allow a final determination on the insurance question to be made in 18 months from the date of enactment. An independent convener will make an initial determination that can only be reversed by the Commission in the event that clear and convincing evidence supporting such a reversal is subsequently developed. It is not anticipated that the Commission will do work that duplicates efforts undertaken in the negotiated rulemaking process. I am fully confident that, after the Commission has had an opportunity to fully explore the commercial insurance market, coverage under the act will be extended to radiopharmaceutical licensees. I particularly commend Chairmen UDALL and SHARP for affording this unique process by which this issue can be finally and swiftly resolved. I urge adoption of the legislation.

Mr. SKAGGS. Mr. Speaker, earlier today, the House passed a bill to renew the Price-Anderson Act. I voted in favor of that renewal, as I did for an earlier version of this bill last year, because it offers better assurances than we currently have that victims of nuclear accidents would receive prompt and full compensation, and because it would better protect the taxpayer from picking up the tab in the event of a nuclear catastrophe.

However, I would like to stress to my colleagues that, while the bill is an improvement over current law, it still lacks several measures which would significantly improve incentives for safer operation of nuclear facilities. Lacking these measures, today's bill will provide us better insurance if a nuclear accident occurs, but it won't give us any better assurances that one won't.

In particular, the bill before us today does not include the Sharp-Wyden amendment to hold contractors at Department of Energy [DOE] nuclear facilities liable for damages caused by gross negligence or willful misconduct on the part of their corporate management. Nor does it contain the Waxman amendment assigning nuclear waste transporters unlimited liability for gross negligence or willful mis-

conduct and requiring them to carry reasonable amounts of insurance.

Under current law these transferees and DOE contractors are entirely shielded from liability. This indemnification acts to remove from play the normal safety incentives that the rest of our economy relies on and lives with. Common sense tells us that a firm with some limited liability, with some corporate funds at stake, is going to be more concerned about safety than one that won't have to pay a dime in the event of a major accident. It is a real shame these amendments were not included in the bill.

Because of the greatly increased insurance this bill offers, I voted for it. Americans need the added protections it offers both potential accident victims and the taxpayer. However, the safety gaps I've mentioned leave this bill incomplete, and I intend to continue to work to make our country's DOE and commercial plants as safe as possible.

Mr. SWIFT. Mr. Speaker, I rise in opposition to the substitute. This is the only opportunity that Congress will have to deal with nuclear liability for the next 15 years. We should do it right, and unfortunately the substitute fails in that regard.

I regret that I must oppose this substitute. I joined most of my colleagues in voting for final passage of the House bill last year—although even that bill had many flaws. Unfortunately, the substitute that has come back from the negotiations with Senate exacerbates those flaws.

Of particular concern to me is the fact that the substitute does not contain the House provisions establishing special procedures to compensate the victims of a nuclear waste accident which exceed the liability limit. These provisions, which were based on legislation which I introduced, were the result of a compromise in the House that took over a year to craft. The Senate, which struck the nuclear waste dump to Nevada, now says to Nevada—and to all States where nuclear waste might be transported—"don't count on compensation if there is a major accident involving this material."

Mr. Speaker, in my view the bill that passed the House was the minimally acceptable Price-Anderson bill. The Senate has returned to us a package that falls short of the House bill, and I cannot support that.

Mr. MARKEY. Mr. Speaker, I rise in support of H.R. 1414, the Senate amendments to the Price-Anderson Amendments Act. This version of the Price-Anderson legislation is a substitute for the version passed by the House 1 year ago. While many of us would have preferred tougher provisions on liability and a shorter extension period, this legislation makes several significant improvements in the underlying act. It represents a suitable compromise for those of us concerned with ensuring that the public be compensated for damages resulting from an accident at a nuclear powerplant.

Price-Anderson was first enacted in 1957 and was twice modified and extended before it expired 1 year ago. There is no less pressing need now, in 1988, to have in place a system which provides compensation for personal injuries or property damage resulting from a nuclear accident. H.R. 1414 provides such protection while beginning to diminish the special treatment that the nuclear power industry has received from the Federal Government since its inception.

The legislation we are considering today takes steps in the direction of shattering the myth that nuclear power is an infant industry which must receive special protection from the Federal Government. H.R. 1414 puts a greater burden on the nuclear industry to ensure that its operations are safe by hitting the nuclear industry in the place it understands best—the wallet. Let me cite three examples.

First, the bill before us today raises the liability limit on the nuclear industry tenfold, from $710 million to $7.1 billion. In a perfect world, there would be no limit on the amount for which the industry should be liable. In such a world it would be recognized that an energy industry which has received 40 years of Government subsidies, provides only a tiny percentage of our overall energy mix, and earns mega-profits, ought to be turned out on its own and held responsible for the damage it might inflict, just like any other industry. A tenfold increase in the liability limit should tell the nuclear industry that its days of wine and roses are coming to an end.

Second, the legislation increases the one-time assessed premium which nuclear utilities must pay in the event of an accident. These premiums rise from $5 to $63 million, and, most significantly, are indexed to the inflation rate. These provisions tell the industry that it must pay a significant share of the costs of an accident which exceeds its primary insurance coverage. It tells the industry that it will not have the benefit of inflation eroding the value of that coverage. This indexing provision held up consideration of this legislation for over a year. Its inclusion in the final version is a prime example of how the special economic protection that the industry has thus far received is coming to an end.

Third, H.R. 1414 also contains provisions from the amendment offered last year by the gentleman from Oregon [Mr. WYDEN] which puts into place civil penalties of up to $100,000 per day for DOE contractors who violate safety regulations. These provisions make the statement to DOE contractors that their free ride is over, that strict safety standards must be met in this, the most dangerous technology ever known.

The legislation before us may not be a perfect vehicle—the playing field is still tilted toward the nuclear industry since, of all industries operating in this country, it alone will benefit from a liability cap. But by increasing that liability tenfold, by indexing the cap to inflation, and by making contractors pay large penalties for safety violations, we are saying that ultimately, the field will be level. And the nuclear industry will have to play on its own, with no special protection and no special rules.

Mr. SYNAR. Mr. Speaker, I commend my colleagues who have labored so hard and so long to develop this renewal of the Price-Anderson Act. Having worked with them as the bill was considered on this floor and by a number of committees of the House last year, I know and respect the dedication and sincere desire to fashion a responsible bill that they have demonstrated throughout the process.

However, upon reviewing the vehicle before us today, I must conclude that it misses the mark, and I cannot support it. While there are several troublesome provisions contained in this bill, I will focus my comments on what I consider to be the major weakness of the bill—the lack of any real accountability for contractors who operate DOE nuclear facilities.

H.R. 1414 continues the policy of the expired Price-Anderson law which holds contractors harmless for all damages resulting from nuclear accidents, even those which result from their own gross negligence or willful misconduct. By removing this element of financial liability, a crucial incentive for contractor safety and responsibility is lost.

Moreover, it enables contractors at DOE nuclear facilities to enjoy a protected status which is unwarranted and inconsistent with Federal policy in other areas.

No other Federal law provides such sweeping protections for contractors as the Price-Anderson Act. Most other laws offer no protection for gross negligence or willful misconduct.

These include Superfund, the Clean Water Act, the Outer Continental Shelf Lands Act of 1978, and the Swine Flu Act.

Response action contractors under Superfund are not even covered for damages resulting from such negligence. Yet, there is no lack of qualified bidders for clean up contracts.

Even Public Law 85-804, which provides financial protection for contractors engaged in nuclear and ultrahazardous activities for the Defense Department, exposes those contractors to unlimited liability for damages to their own and Government property which result from their own bad faith or willful misconduct.

In fact, only 2 months ago, this body passed, on voice vote, the Commercial Space Launch Act Amendments of 1988. While it provided full indemnification, without limit, for companies involved in commercial space launch accidents, it excludes indemnification for accidents resulting from willful misconduct.

There is no rational argument why the same contractors who will perform nuclear and ultrahazardous work for the Defense Department and will engage in the commercial space industry without indemnification for costs of damages resulting from gross negligence or willful misconduct, oppose efforts to be held accountable for gross negligence and willful misconduct under the Price-Anderson Act.

The superfluity of such total exemption for responsibility is underscored by the fact that prior to adoption of the first Price-Anderson Act in 1957, many of the same contractors who are in the business today, including General Electric, Babcock and Wilcox, the University of Chicago and the University of California at Berkeley, operated under indemnity agreements with the Atomic Energy Commission which excluded damages resulting from egregious behavior. It is not clear why such contractors must be less accountable today than they were 30 years ago.

However, throughout the course of our consideration of this issue, the DOE and its contractors have strongly resisted any type of accountability amendment. They claim that contractor fees are small and do not warrant taking on any risk. In fact, some contractors have threatened to walk away from their contracts if an accountability proviso is enacted.

The contractors' threat to walk, which has been offered by many as the rationale for exempting the contractors from all liability, has been shown to be a bluff. The Price-Anderson Act expired over 1 year ago. Yet, since that

time, a number of contractors have renewed their contracts to operate DOE nuclear facilities without the protection of Price-Anderson indemnification and operating contracts which are still being competed have not lacked for bidders.

It should also be noted that contractors' fees are not as small as they would have us believe. They operate under cost plus contracts, and many contractors are receiving millions of dollars in profits for supplying a small number of people to manage a facility.

But a discussion of contractors profits is not relevant to the issue before us.

Whether a fee is $1 or $10 million, citizens and communities have a right to expect that contractors will manage these sensitive facilities responsibly and carefully, and—at the very least—will not engage in gross negligence or knowingly violate regulations.

How can a contractor take the approach that because it doesn't make a certain amount of money, it cannot be responsible even such a minimal standard of performance?

Why should the taxpayers be the ones to bear the costs of patently unsafe practices and activities?

The provisions in H.R. 1414, which give the Secretary of Energy the discretion to impose civil monetary penalties upon contractors for violations of DOE regulations, and exempt a broad class of nonprofit organizations from such penalties, are an unacceptable substitute for effective financial accountability.

In closing, there is nothing radical about a proposal that a corporation or any other institution should be responsible for its actions, and has an obligation to stockholders, citizens, and communities to conduct its business responsibly and safely.

We all have industries in our district which are crucial to the well-being of our States and the Nation. In my district farming, ranching, and oil and gas production are crucial industries. Yet, the individuals and companies who participate in those ventures are responsible for their own actions. No one excuses them from liabilities resulting from their own gross negligence or willful misconduct, and they don't expect to be. This is a basic tenet that we are all taught from grade school, and is a standard of our judicial system.

We should apply the same standards to contractors who operate our government nuclear facilities. Contractors should expect no more, and our citizens deserve no less.

Mr. Speaker, because it lacks adequate contractor accountability provisions, I urge my colleagues to vote against the passage of this legislation.

Mr. LENT. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SHARP. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. UDALL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time and ask for a vote.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The question is on the motion offered by the gentleman from Arizona [Mr. UDALL].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ECKART. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 346, nays 54, not voting 31, as follows:

[Roll No. 251]

YEAS—346

[illegible]an	Dannemeyer	Houghton
	Darden	Hoyer
[illegible]r	Davis (MI)	Hubbard
[illegible]son	de la Garza	Huckaby
[illegible]ews	DeLay	Hughes
Annunzio	Derrick	Hunter
Anthony	DeWine	Hutto
Applegate	Dickinson	Hyde
Archer	Dicks	Inhofe
Armey	Dingell	Ireland
Aspin	DioGuardi	Jacobs
Badham	Dixon	Jeffords
Baker	Dorgan (ND)	Jenkins
Ballenger	Doman (CA)	Johnson (CT)
Barnard	Dreier	Jones (NC)
Bartlett	Dwyer	Jones (TN)
Barton	Dyson	Kanjorski
Bateman	Early	Kasich
Bates	Edwards (OK)	Kennedy
Bellenson	Emerson	Kennelly
Bennett	English	Kleczka
Bereuter	Erdreich	Kolbe
Berman	Espy	Konnyu
Bevill	Fascell	Kostmayer
Bilbray	Fawell	Kyl
Billrakis	Fazio	LaFalce
Billey	Feighan	Lagomarsino
Boehlert	Fields	Lancaster
Boggs	Fish	Lantos
Boland	Flake	Leach (IA)
Bonior	Flippo	Lehman (CA)
Bonker	Florio	Lehman (FL)
Borski	Foglietta	Lent
Bosco	Ford (MI)	Levin (MI)
Bouchet	Frenzel	Levine (CA)
Brennan	Frost	Lewis (CA)
Brooks	Gallegly	Lewis (FL)
Broomfield	Gallo	Lightfoot
Brown (CA)	Gaydos	Livingston
Brown (CO)	Gejdenson	Lloyd
Bruce	Gekas	Lott
Bryant	Gephardt	Lowery (CA)
Buechner	Gibbons	Lujan
Bunning	Gilman	Luken, Thomas
Burton	Gingrich	Lukens, Donald
Bustamante	Glickman	Lungren
Byron	Gordon	MacKay
Callahan	Goodling	Madigan
Campbell	Grandy	Manton
Cardin	Grant	Markey
Carper	Gray (PA)	Marlenee
Carr	Green	Martin (IL)
Chandler	Gregg	Martin (NY)
Chapman	Guarini	Martinez
Chappell	Gunderson	Matsui
Cheney	Hall (OH)	Mavroules
Clarke	Hall (TX)	Mazzoli
Clement	Hamilton	McCandless
Clinger	Hammerschmidt	McCloskey
Coats	Hansen	McCollum
Coble	Harris	McCrery
Coelho	Hastert	McCurdy
Coleman (MO)	Hatcher	McEwen
Coleman (TX)	Hayes (IL)	McGrath
Collins	Hefley	McHugh
Combest	Hefner	McMillan (NC)
Conte	Henry	McMillen (MD)
Cooper	Herger	Meyers
Coughlin	Hiler	Mfume
Courter	Holloway	Miller (OH)
Craig	Hopkins	Miller (WA)
Crane	Horton	Mineta
Moakley	Rider	Schiff
Molinari	Rinaldo	Solomon
Mollohan	Ritter	Spratt
Montgomery	Roberts	Staggers
Moody	Robinson	Stallings
Moorhead	Rodino	Stangeland
Morella	Roe	Stenholm
Murphy	Rogers	Stratton
Murtha	Rostenkowski	Stump
Myers	Roth	Sundquist
Nagle	Roukema	Swindall
Natcher	Rowland (CT)	Tallon
Neal	Rowland (GA)	Tauke
Nelson	Saiki	Tauzin
Nichols	Sawyer	Thomas (CA)
Nielson	Saxton	Thomas (GA)
Nowak	Schaefer	Torres
Oakar	Schneider	Torricelli
Olin	Schuette	Towns
Ortiz	Schulze	Traxler
Owens (UT)	Sensenbrenner	Udall
Oxley	Sharp	Upton
Packard	Shaw	Valentine
Parris	Shays	Vander Jagt
Pashayan	Shumway	Visclosky
Patterson	Shuster	Volkmer
Payne	Sisisky	Vucanovich
Pease	Skaggs	Walgren
Penny	Skeen	Walker
Pepper	Skelton	Watkins
Perkins	Slattery	Waxman
Petri	Slaughter (NY)	Weber
Pickett	Slaughter (VA)	Weldon
Pickle	Smith (FL)	Whittaker
Porter	Smith (IA)	Whitten
Price	Smith (NE)	Williams
Pursell	Smith (NJ)	Wise
Quillen	Smith (TX)	Wolf
Rahall	Smith, Denny (OR)	Wortley
Rangel	Smith, Robert (NH)	Wylie
Ravenel	Smith, Robert (OR)	Yatron
Ray	Snowe	Young (AK)
Regula		Young (FL)
Rhodes		
Richardson		

NAYS—54

Atkins	Hochbrueckner	Sabo
AuCoin	Johnson (SD)	Savage
Coyne	Jontz	Scheuer
DeFazio	Kastenmeier	Schroeder
Dellums	Kildee	Schumer
Donnelly	Leland	Sikorski
Downey	Lewis (GA)	St Germain
Durbin	Lowry (WA)	Stark
Dymally	Miller (CA)	Stokes
Eckart	Morrison (CT)	Swift
Edwards (CA)	Morrison (WA)	Synar
Evans	Mrazek	Traficant
Frank	Oberstar	Vento
Gonzalez	Obey	Weiss
Goodling	Owens (NY)	Wheat
Hawkins	Panetta	Wolpe
Hayes (IL)	Pelosi	Wyden
Hertel	Roybal	Yates

NOT VOTING—31

Bentley	Lloyd (TN)	Mica
Biaggi	Garcia	Michel
Boulter	Gray (IL)	Rose
Boxer	Kaptur	Russo
Clay	Kemp	Spence
Conyers	Kolter	Studds
Crockett	Latta	Sweeney
Daub	Leath (TX)	Taylor
Davis (IL)	Lipinski	Wilson
Dowdy	Mack	
Foley	McDade	

□ 1414

Mr. KASTENMEIER changed his vote from "yea" to "nay."

Mr. MARLENEE, Ms. SLAUGHTER of New York, Mr. WAXMAN, and Mr. KENNEDY changed their vote from "nay" to "yea."

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was placed on the table.

Bentsen	Harkin	Nickles
Boschwitz	Hatch	Nunn
Bradley	Hatfield	Packwood
Breaux	Hecht	Pell
Bumpers	Heflin	Pressler
Burdick	Heinz	Proxmire
Byrd	Hollings	Pryor
Chafee	Humphrey	Quayle
Cohen	Inouye	Reid
Cochran	Johnston	Riegle
Cohen	Kanes	Rockefeller
Conrad	Kassebaum	Roth
D'Amato	Kasten	Rudman
Danforth	Kennedy	Sanford
Daschle	Kerry	Sarbanes
DeConcini	Lautenberg	Shelby
Dixon	Leahy	Simon
Dodd	Levin	Simpson
Dole	Lugar	Specter
Durenberger	Mathias	Stafford
Evans	McCain	Stennis
Exon	McClure	Stevens
Ford	McConnell	Thurmond
Fowler	Melcher	Trible
Garn	Metzenbaum	Wallop
Glenn	Mikulski	Warner
Gore	Mitchell	Weicker
Graham	Moynihan	Wilson
Grassley	Murkowski	

NAYS—3

Domenici	Gramm	Helms

NOT VOTING—5

Biden	Sasser	Wirth
Chiles	Symms	

So the concurrent resolution (S. Con. Res. 63), as amended, was agreed to.

The preamble was agreed to.

The concurrent resolution, and the preamble, are as follows:

S. CON. RES. 63

Whereas the perpetuation of individual poverty, the lack of trade and economic opportunities, the shortage of capital for investment, the absence of adequate transportation and communication facilities, and inadequate educational opportunities and health care facilities have long plagued the countries of Central America and have long militated against the prosperous and peaceful development of this crucial region of the Western Hemisphere;

Whereas significant progress continues to be made toward reliance on democratic institutions and initiatives for the orderly reconciliation of differences, both of which can lead to political stability and provide the foundation for economic growth;

Whereas economic prosperity and free and open societies lead to peaceful relationships with neighboring countries;

Whereas a condition of economic success is inevitably the removal of political hindrances such as armed conflict, repression, and the denial of basic political, social and economic rights;

Whereas all conditions indicate this is a propitious time for a renewed effort to formulate and implement plans for economic growth and development in Central America;

Whereas chances for the success of such a plan will be greatly enhanced if the formulation is accomplished through the initiative, and at the direction, of the involved Central American countries themselves; and

Whereas it would be in the enlightened self-interest of the United States to encourage and assist in the formulation and implementation of a regional economic development and recovery program for Central America: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the President should—

(1) encourage and assist, as requested, the Central American countries of Costa Rica, El Salvador, Guatemala, Honduras, Belize, and Nicaragua in their planning and formulation of a comprehensive long-range plan for their economic recovery and development, including the needed infrastructure, educational system, and monetary institutions to provide for the growth of opportunities for all people of Central America; and

(2) assist in the implementation of said plan, and encourage other countries in other parts of the world to join in extending such assistance to those Central American countries that have made—

(A) substantial progress toward peaceful relations and peacekeeping mechanisms as generally set forth in proposals currently being discussed by the presidents of the Central American countries of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua and, for purposes of this clause, progress in peaceful relations may be measured by efforts to achieve—

(i) national reconciliation, including a general amnesty for all political and related offenses in countries where there are armed conflicts, and dialog with all nonmilitary internal opposition groups,

(ii) a cease fire,

(iii) a free, fair, and open electoral process, with provision for the regular and periodic scheduling of elections,

(iv) the suspension of all military assistance from extraregional governments to irregular or insurgent forces,

(v) a prohibition upon the use of the territory of a Central American country to allow, directly or indirectly, individuals, organizations, or groups to attempt to destabilize the governments of other Central American countries,

(vi) arms control and reduction,

(vii) the establishment of a verification mechanism which provides for unimpeded onsite inspection,

(viii) continued dialogue among the governments of the five Central American countries for the purpose of evaluating implementation of the peace process; and

(ix) the undertaking of economic and cultural agreements to facilitate and accelerate development; and

(B) substantial progress toward an open political system in the spirit of the present negotiations of the several Central American countries, and such progress in political systems may be measured by verifiable efforts to achieve—

(i) respect for democratic principles and political pluralism,

(ii) constitutional guarantees of, and actual protection for, individual civil liberties,

(iii) adherence to constitutional practices and procedures, including total civilian control over the military,

(iv) guaranteed freedom of speech, freedom of the press, freedom of religion, and freedom of assembly,

(v) safeguards of property rights and provision for economic self-determination,

(vi) a free, fair, and open electoral process, with provision for the regular and periodic scheduling of elections; and

(vii) a fair and impartial court system for the administration of justice and law enforcement.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

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

The motion to lay on the table was agreed to.

TIME LIMITATION AGREEMENT

Mr. BYRD. Mr. President, I ask unanimous consent that on a message from the House on H.R. 1414 there be a time limitation of not to exceed 5 minutes, to be equally divided between Mr. JOHNSTON and Mr. MCCLURE.

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

PRICE-ANDERSON AMENDMENTS ACT

Mr. BYRD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 1414.

The PRESIDING OFFICER (Mr. SANFORD) laid before the Senate the amendment of the House of Representatives to the amendment of the Senate numbered 16 to the bill (H.R. 1414) to amend the Price-Anderson provisions of the Atomic Energy Act of 1954 to extend and improve the procedures for liability and indemnification for nuclear incidents.

(The amendment of the House is printed in the RECORD of August 2, 1988, beginning at page H6114.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, last evening Senator METZENBAUM raised a question about one of the House amendments. In his view it permitted the Department of Energy to authorize nonprofit universities to deal in nuclear defense matters with very little supervision and without proper attention to safety.

Over the evening, Mr. President, we sought and received from the Secretary of Energy a letter which fully satisfies Senator METZENBAUM's concerns.

It states as follows:

DEAR SENATOR METZENBAUM: I am writing to you to clarify our intentions in implementing the provisions of Section 234A (b)(2) of the Atomic Energy Act of 1954 as that Act would be amended section 17 of H.R. 1414, a bill currently pending before the Senate. Specifically, I refer to the language requiring the Secretary, when implementing section 234A, to determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty under this section.

The Department will not be able to issue any proposed rules under this section with respect to automatic remission of penalties assessed to nonprofit educational institutions before the spring of 1989. Further, we will continue to inspect, at least annually, all nuclear safety facilities operated for the Department of Energy.

The letter goes on with some other assurances. But based upon this, Mr. President, Senator METZENBAUM is able to assure that these institutions will be inspected for safety and that no new rules will be issued until the next administration.

Mr. President, I ask unanimous consent that a copy of this letter be printed in the RECORD.

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

THE SECRETARY OF ENERGY,
Washington, DC, August 3, 1988.

Hon. HOWARD METZENBAUM,
U.S. Senate, Washington, DC.

DEAR SENATOR METZENBAUM: I am writing to you to clarify our intentions in implementing the provisions of Section 234A(b)(2) of Atomic Energy Act of 1954 as that Act would be amended section 17 of H.R. 1414, a bill currently pending before the Senate. Specifically, I refer to the language requiring the Secretary, when implementing section 234A, to "determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty under this section."

The Department will not be able to issue any proposed rules under this section with respect to automatic remission of penalties assessed to nonprofit educational institutions before the spring of 1989. Further, we will continue to inspect, at least annually, all nuclear safety facilities operated for the Department of Energy. This practice is also consistent with the guidance we have received from the fiscal year 1989 Energy and Water Development Appropriations Act that all nonprofit educational institutions under contract with the Department in activities to be covered under the Price-Anderson Act will be inspected annually to ensure that they are in full compliance with all rules, regulations or orders related to nuclear safety.

Yours truly,

JOHN S. HERRINGTON.

Mr. JOHNSTON. Mr. President, today I hope we will take final action on legislation to reauthorize and extend the Price-Anderson Act. The Price-Anderson Act provides a system for public compensation in the event of a nuclear accident.

This legislation is long overdue. It was first passed by the House a year ago, and amended by the Senate in March. We now have before us House amendments to the Senate amendments to H.R. 1414.

The compromise is not perfect, but I believe it is acceptable. As with all compromises, it does not make everyone completely happy. But it is a responsible piece of legislation, and I hope the Senate will act on it quickly.

The Price-Anderson Act provides a unique benefit to the public in the form of swift, assured compensation in the event of a catastrophic nuclear accident. To be sure, our Nation's nuclear facilities—commercial power reactors and facilities of the Department of Energy—have an enviable safety record. But if a serious accident were to occur, the resulting damage could be very, very expensive.

The Price-Anderson system is a comprehensive, compensation-oriented system of liability insurance for DOE contractors and NRC licensees operating nuclear facilities. Under Price-Anderson, a system of no-fault insurance is established for each facility where there is risk of a nuclear accident. In the event of a catastrophic accident, the operating entity—a utility or DOE contractor—would accept all liability for injuries caused by the accident and would waive traditional legal defenses. The issues in court would simply be to establish causation and the extent of the damages. Damages determined by the court would then be paid quickly and without question.

Under current law, the aggregate amount of damages that could be paid to the victims of a catastrophic nuclear accident is limited to just over $700 million in the case of an accident at a commercial reactor and to $500 million in the case of DOE facilities. Compensation above these limits would be available only if Congress enacted a law providing for such compensation. Today, it is universally recognized that these limits are too low. But the limits are written into the law, so the law needs to be changed to reflect current costs.

Moreover, currently there is no authority to provide insurance under the Price-Anderson system for new reactor licensees and new or renewed DOE contracts. The authority to indemnify new licensees or contractors under Price-Anderson Act expired on August 1, 1987.

Of course, the Federal Government will not shut down its essential national security activities simply because it cannot indemnify its contractors under the Price-Anderson system. Work for the Department of Energy will continue.

The Department of Energy has the authority by which to indemnify its contractors, so the work will get done. The difference is that the unique public protection features of the Price-Anderson Act would not be available.

So there is an urgent need to extend and reauthorize the Price-Anderson Act not to protect the contractors or the nuclear utilities but to protect the public. Public protection in the case of a catastrophic nuclear accident is far superior under a renewal of the Price-Anderson system. In the absence of Price-Anderson for DOE contractor activities, compensation for victims would be less predictable, less timely, and potentially inadequate compared to the compensation that is available under the current system.

Let me address briefly the specific provisions of the legislation before the Senate. H.R. 1414, with House amendments to the Senate amendments, would replace the existing limit on liability under Price-Anderson to about $7 billion, a tenfold increase over the limits of existing law. In the event that damages were greater than $7 billion, a compensation plan would be submitted to the Congress by the President.

H.R. 1414 will extend Price-Anderson authority for 15 years for both NRC licensees and DOE contractors. This represents a compromise between the Senate and House. The House would have extended the act for 10 years and the Senate would have extended the act for 20 years.

The bill also contains the Senate provision to impose civil and criminal penalties for violations of Department of Energy regulations with a House modification. The civil and criminal penalty provision was developed by the Committee on Energy and Natural Resources to address our members' concerns that DOE contractors be held to the highest of safety standards.

The modification adopted by the House directs the Secretary to conduct a rulemaking to determine if nonprofit universities should receive automatic remission of penalties. The Senate provision already authorizes the Secretary, when assessing penalties, to take into consideration the violator's ability to pay. The House modification clarifies this authority by directing the Secretary to conduct a rulemaking.

I believe that this is an acceptable modification. It is not intended to provide a loophole in the penalties provision and I do not believe that it will. I believe that the amendment simply clarifies what is already contained in the Senate amendment.

The bill contains a new provision from the House to require the Nuclear Regulatory Commission to conduct a negotiated rulemaking to determine whether there should be Price-Anderson coverage for nuclear pharmacies. This provision replaces the Senate amendment that had extended Price-Anderson coverage to these NRC licensees. The House did not believe that nuclear pharmacies should be included in Price-Anderson without further evidence that it was necessary and appropriate. Accordingly, the House adopted this new provision to have the NRC thoroughly review the situation and report to Congress on it.

The last remaining major difference between the House and Senate versions of the bill is the Senate amendment to provide Price-Anderson coverage when the Secretary of Energy or DOE employees actually physically undertake work involving nuclear waste. The purpose of this amendment was to be absolutely sure that all potential accidents would be covered under the Price-Anderson indemnity provisions. The House rejected this amendment because they did not feel it was necessary.

Personally, I am satisfied that we have covered all bases. The Department of Energy has told me that in fact no Federal employees would ever actually carry out any of the activities involving a nuclear risk at these DOE facilities. It is my understanding that all work done by the Department involving a nuclear risk is actually carried out by contractor employees. Therefore, any actions carried out by these contractor employees would be covered under the indemnity provisions of Price-Anderson.

All in all, I believe that H.R. 1414, as now amended by the House, is a good piece of legislation. It is not perfect, but it is acceptable. It retains the essential provisions of the Price-Anderson Act as originally enacted in 1957, and it contains new improvements to the existing law. Therefore, I urge my

colleagues to adopt this bill without further amendment.

Mr. DOMENICI. Mr. President, Congress enacted the Price-Anderson Act in 1957 to:

First, ensure that adequate funds would be available to compensate the public for injuries resulting from nuclear activities; and

Second, remove the threat of unlimited liability for a nuclear accident that was deterring private industry from participating in nuclear activities.

The Price-Anderson system is a comprehensive, compensation-oriented system of liability insurance for Department of Energy contractors and Nuclear Regulatory Commission licensees operating nuclear facilities.

Most importantly, Price-Anderson provides a no-fault system for equitable, efficient, reliable, and comprehensive compensation to the public in the event of an accident. The channeling of liability to a single entity and the waiver of defenses insures that protracted litigation will be avoided.

Price-Anderson is a model for bringing order and predictability to a situation where high potential liabilities exist.

Price-Anderson has been fulfilling its intended purpose of providing prompt financial protection to the public and removing a deterrent to private sector participation in the nuclear energy field.

Unfortunately, the Price-Anderson Act expired last August. Although, DOE contractors and NRC licensees under existing contracts remain covered, NRC no longer has the authority to indemnify new licensees and DOE has lost its ability to enter into new indemnity agreements.

The need for Price-Anderson today is essentially the same as in 1957. The amount of private insurance available is inadequate to cover the potential damage and personal injury claims that would result from a catastrophic nuclear accident.

In the absence of Price-Anderson, compensation to victims of a nuclear accident would likely to be seriously limited.

We need to reauthorize the Price-Anderson Act. H.R. 1414 would reauthorize Price-Anderson, and I support that.

However, Mr. President, I do have a concern about the bill now before us.

When the bill was considered in the Senate, it was amended to include a provision that Senator JOHNSTON proposed on my behalf to provide Price-Anderson coverage when the Secretary of Energy or DOE employees undertake work involving nuclear waste. It would have treated DOE employees involved in nuclear waste work as if they were contractors for the purposes of Price-Anderson.

The Johnston-Domenici amendment would have allowed claims involving the waste activities of DOE employees to be compensated according to the same procedures and from the same sources of funds as other claims arising from nuclear waste activities of the Department of Energy.

The amendment provided an important protection for New Mexico, since the Nation's first underground nuclear waste repository, the waste isolation pilot plant, is located in New Mexico. DOE contractors at WIPP will be covered under H.R. 1414, and the amendment would have extended that protection to the activities that are carried out by the Department of Energy itself, rather than a contractor.

Although the Senate adopted this amendment, the House refused to accept it. The House has repeatedly rejected this amendment, arguing that it is not needed. I believe it is needed.

Mr. President, in order to continue to provide adequate protection to the public, Price-Anderson needs to be reauthorized. H.R. 1414 contains many protections for the public. However, I regret that the Senate did not insist that the final bill extend to the Department of Energy the same protections under Price-Anderson that are afforded to DOE contractors for nuclear waste activities.

Mr. BINGAMAN. Will the distinguished Senator from Louisiana yield for a question?

Mr. JOHNSTON. Yes. I will be happy to yield to my colleague from the State of New Mexico for a question.

Mr. BINGAMAN. As you know, the House of Representatives did not accept the Senate amendment to H.R. 1414 that would have provided Price-Anderson coverage when the Secretary of Energy, or his employees, physically undertake work involving nuclear waste. The purpose of this Senate amendment was to be absolutely sure that all potential accidents at the waste isolation pilot plant in New Mexico would be covered under the Price-Anderson indemnity provisions.

It is my understanding that the House did not accept this amendment because they did not feel it was necessary. The House, I understand, is confident that such a circumstance will never arise.

Let me state at the outset that I still believe in this amendment. I understand, however, that compromises are necessary in order to enact a complicated piece of legislation such as Price-Anderson. I believe that Price-Anderson is a very important piece of legislation. Price-Anderson provides unique protections to the public in the unlikely event of a nuclear accident, and I am anxious to see it reauthorized and extended without any further delay. Therefore, I am willing to recede to the House on this amendment, so long as I am assured that the people of my State will be protected.

It is my understanding all work done by the Department of Energy involving a nuclear risk is actually carried out by contractor employees. As such, any actions carried out by these contractor employees would be covered under the indemnity provisions of the Price-Anderson Act. Furthermore, in a potential accident involving nuclear waste would be the responsibility of the contractors working for the Department of Energy at the affected facility. Under Price-Anderson, liability for an accident would be channeled to the operator of the facility—the prime contractor—and the indemnity provisions of the act would kick in.

Is that also the Senator's understanding of how Price-Anderson would work in the unlikely event of an accident at one of these DOE owned, contractor-operated facilities?

Mr. JOHNSTON. Yes, that is my understanding.

Mr. BINGAMAN. It is further my understanding that no Federal employees would ever actually physically carry out any of the activities involving a nuclear risk at these DOE facilities. In fact, I understand that Federal employees at these facilities only oversee program and policy development. Federal employees at these facilities manage the contractor employees; however, they do not actually physically carry out any work involving a nuclear risk.

Is that also the understanding of the Senator?

Mr. JOHNSTON. Yes, that is my understanding as well.

Mr. BINGAMAN. I have only one further question. As I understand the way the Price-Anderson Act works, the indemnity coverage under the act would also apply to any transportation of nuclear waste to or from the waste isolation pilot plant. As with other DOE activities involving a nuclear risk, any transport of nuclear materials would be carried out by contractors to the Department of Energy. In the case of WIPP, the Department of Energy has made a commitment to the State of New Mexico under the terms of the 1982 supplemental stipulated agreement that Federal employees will not be used to carry out the transportation of waste to or from the WIPP facility. It is my full understanding that this commitment will be fulfilled by the Department of Energy, so that the people of New Mexico will be fully protected.

Is this also the understanding of the Senator from Louisiana?

Mr. JOHNSTON. Yes, that is my understanding. Let me just say also that I fully understand the concerns of my colleague from New Mexico, and I appreciate his efforts to clear this matter up so that the public protection provisions of Price-Anderson can be reauthorized and extended without further delay.

Mr. BINGAMAN. I thank the Senator.

Mr. McCLURE. Mr. President, for well over 30 years the Price-Anderson nuclear indemnification system has served this Nation well. I speak today in support for early Senate action

the measure before us, H.R. 1414. The bill reflects the considerable effort that has been made over the last 2 years by many of our colleagues, including Senators JOHNSTON, SIMPSON, BURDICK, STAFFORD, and BRADLEY. This effort is reflected in the extensive debate that took place in this body during its consideration by the Senate.

As I described earlier, the Price-Anderson system provides a unique, but much needed, no-fault mechanism for prompt, assured compensation of victims in the event of a catastrophic nuclear accident, if such accident were to occur at any of our commercial nuclear powerplants or at any Department of Energy nuclear facility.

The mechanism, Mr. President, that is embodied in Price-Anderson consists of two elements. First, there is a no-fault insurance scheme, under which the operating entity involved in a nuclear accident accepts all liability for that accident—often referred to as umbrella coverage. In return, the operating entity also agrees to waive all traditional tort defenses in court settlement of the claims. As a consequence, the court's task is greatly reduced to one of simply establishing causation and the extent of damages.

The second element, the quid pro quo to the operator accepting all liability and waiving his defenses, is a limitation on liability. It is possible to see that limit at a relatively high value, by the pooling of premiums by all commercial nuclear powerplants, or, in the case of DOE facilities, by a broad Federal indemnity provision. This limit is substantially augmented under H.R. 1414, compared to current law.

From the victim's perspective, H.R. 1414 does an admirable job. The amount of compensation made available to any victim increases over tenfold compared to the present Price-Anderson scheme. If a catastrophic nuclear incident were to occur, this legislation makes $7 billion—indexed for inflation—readily available to the victims, whether the incident were to occur at a nuclear powerplant, or at a Department of Energy nuclear facility, or during the course of disposal of nuclear waste. Furthermore, if claims were to exceed the $7 billion, the President and Congress would step in to provide additional funds.

Failure to reauthorize Price-Anderson would result in substantially less protection for the public in the event of an accident. Compensation would be less predictable, less timely, and potentially inadquate compared to the compensation that would be available under Price-Anderson.

For considerable time this measure has been tied up in discussions between the Senate and House on a matter not related to the basic thrust of Price-Anderson. I am relieved that the leadership of the various committees involved in this legislation have been able to resolve the issue of radiopharmaceutical insurance in a manner preferable, in my opinion, to the original version passed by the Senate. The compromise approach now in the bill provides for a negotiated rulemaking process to resolve the critical question of the availability of private insurance for radiopharmaceutical licensees. Maintaining the viability of nuclear medicine is vital to the practice of medicine in many hospitals across the Nation and, thus, to the health of many Americans.

The bill before us represents extensive discussions with the House. It is a good bill that has been approved by the other body. It is a realistic and responsible bill. It is one that the Congress should consider expeditiously so that it can be enacted into law sooner rather than later.

Mr. President, I ask unanimous consent that a letter from Secretary Herrington to Senator JOHNSTON, dated August 3, 1988, urging expeditious Senate passage of this measure, be included in the RECORD at this point.

THE SECRETARY OF ENERGY,
Washington, DC, August 3, 1988.

Hon. HOWARD METZENBAUM,
U.S. Senate, Washington, DC.

DEAR SENATOR METZENBAUM: I am writing to you to clarify our intentions in implementing the provisions of Section 234A(b)(2) of the Atomic Energy Act of 1954 as that Act would be amended section 17 of H.R. 1414, a bill currently pending before the Senate. Specifically, I refer to the language requiring the Secretary, when implementing section 234A, to "determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty under this section."

The Department will not be able to issue any proposed rules under this section with respect to automatic remission of penalties assessed to nonprofit educational institutions before the spring of 1989. Further, we will continue to inspect, at least annually, all nuclear safety facilities operated for the Department of Energy. This practice is also consistent with the guidance we have received from the fiscal year 1989 Energy and Water Development Appropriations Act that all nonprofit educational institutions under contract with the Department in activities to be covered under the Price-Anderson Act will be inspected annually to ensure that they are in full compliance with all rules, regulations or orders related to nuclear safety.

Yours truly,

JOHN S. HERRINGTON.

● Mr. SYMMS. Mr. President, I would like to make a few brief remarks about the legislation currently before the Senate. This bill will reauthorize the Price-Anderson Act, and significantly improve the protections previously afforded to all citizens from the hazards associated with this Nation's nuclear program. The legislation also provides a process by which the Nuclear Regulatory Commission will likely extend the act to radiopharmaceutical licensees. Radiopharmaceutical licensees, including nuclear pharmacies, hospital nuclear medicine departments and radiopharmaceutical manufacturers, currently make available radioactive drugs in unit doses. These important drugs are necessary for the maintenance for the high standard of health care all citizens in our country presently enjoy. Each year, millions of Americans are diagnosed through the use of these drugs. In addition, researchers are making great progress with these drugs in reducing abnormal cells to accepable levels in children with leukemia and other serious diseases.

The ability of radiopharmaceutical licensees to maintain operations in the future is in serious question because of recent State tort law decisions which expose them to lawsuits for damages allegedly due to low level radiation emission, even emissions within NRC guidelines. From the evidence presented to the Environment and Public Works Committee, I am convinced that the potential liability faced by these radiopharmaceutical licensees can realistically force them out of business because they cannot obtain insurance for the nuclear risk. As with the vaccine industry, the unwillingness of the commercial insurance industry to provide coverage creates the need for Federal intervention so the standard of healthcare may be sustained.

It is my understanding that despite the evidence submitted to the committee by the radiopharmaceutical licensees themselves, there is some question as to whether or not commercial insurance is available for this risk. For this reason, the process that would be put in place by this legislation will allow a final determination on the insurance question to be made 18 months from the date of enactment. An independent convener will make an initial determination that can only be reversed by the Commission in the event that clear and convincing evidence supporting such a reversal is subsequently developed. It is not anticipated that the Commission will do work that duplicates efforts undertaken in the negotiated rulemaking process. I am fully confident that, after the Commission has had an opportunity to fully explore the commercial insurance market, coverage under the act will be extended to radiopharmaceutical licensees. I particularly commend the distinguished subcommittee chairman for affording this unique process by which this issue can be finally and swiftly resolved. I urge adoption of the legislation.●

Mr. BURDICK. Mr. President, today the Senate is considering for the second time H.R. 1414, the Price-Anderson Amendments Act of 1987. Last spring, we passed a version of this bill which establishes a method for determining compensation and liability in the event of a nuclear accident. The House has looked to our amendments and we have been involved in lengthy negotiations to reach significant compromises which are contained in this bill we have currently before us. The basic protections for the public in the event of a nuclear accident, however,

have not been altered. The essential elements of the Senate bill have been retained.

One of the significant compromises on which I would like to comment involves the issue of indemnity for radiopharmaceutical licensees, including nuclear pharmacies, hospital nuclear medicine departments, and radiopharmaceutical manufacturers. An amendment on this critical and important health care issue was first introduced by my able colleague and subcommittee chairman, and I congratulate him for his excellent work on this issue.

Under the compromise provision currently before us, the NRC is directed to undertake a negotiated rulemaking in order to determine whether and under what terms and conditions radiopharmaceutical licensees should receive the benefits of the law. Through this negotiated rulemaking process, the radiopharmaceutical licensees will be able to make their case before the NRC and an independent convenor. I am quite convinced in view of the evidence presented before this committee that Price-Anderson indemnification should be extended to these licensees because they can not obtain adequate private insurance for their substantial potential liabilities. When this evidence is before the NRC in an appropriate proceeding such as the one this bill calls for, I believe the Commission will use Price-Anderson to ensure that these licensees have adequate coverage. The benefits to be derived from radiopharmaceuticals, which are used extensively in the diagnosis of, and therapy for, a broad array of medical problems, are substantial. The use of radiopharmaceuticals is widespread and essential for many activities in modern medicine.

Another change made by the House that I would like to note deleted the Senate provision which would have allowed victims of a nuclear incident to bring suit against the Federal Government, under the same terms and conditions as against an indemnified contractor, when the Department of Energy actually handled nuclear waste. In its explanation of the rejection of this amendment, the House included a summary which stated that the rejection of the Senate amendment preserved current law "which permits suits under Price-Anderson only against private parties and suits against the Government only under the Federal Tort Claims Act."

Mr. President, I would like to clarify that the House's explanation is true only for suits against DOE. The rejection of the Senate amendment does not affect the waiver of sovereign immunity of the Federal Government that would occur in the event of an extraordinary nuclear occurrence involving a Federal licensee of the Nuclear Regulatory Commission, where such waiver is required by the indemnity agreement with the NRC.

In closing, I urge the swift adoption of this compromise legislation. The public should receive the benefits of the Price-Anderson Act—a tenfold increase in the funds that would be available in the event of a major nuclear accident—as soon as possible.

Mr. SIMPSON. Mr. President, I simply want to add a few brief remarks in support of this legislation, the Price-Anderson reauthorization bill. This effort has been a long, long time coming—we have toiled hard on this legislation for over 3 years, and all sides have produced a remarkable piece of work.

As we all know, nuclear issues can most often be so controversial and polarizing—making it all the more difficult to achieve consensus, particularly in an election year such as this. But we have set aside partisan politics, and the work that was done here in the Senate was done with a true spirit of cooperation. All of my Senate colleagues—including BENNETT JOHNSTON, JIM MCCLURE, QUENTIN BURDICK, and BOB STAFFORD—have contributed mightily to this effort. But I should like to pay a special tribute to my subcommittee chairman, JOHN BREAUX, for this, his first of what I am sure will be many responsible nuclear initiatives that he has spearheaded for the Environment and Public Works Committee. He is such a capable gentleman and a delight to work with. He and his staff, Tim Smith and Paul Carrothers, have done yeoman work and this bill is a remarkable tribute to the legislative skills of Senator BREAUX. Tim Smith has moved on to other fields of endeavor. He has served well. He will be greatly missed. We wish him well. Jim Curtiss of my staff deserves tremendous praise. Whatever legislative successes I have accomplished in this arena—are directly attributed to him. He is truly superb.

In addition, we found that same spirit of cooperation from our good colleagues on the House side, led by our loved and respected friend, MO UDALL, the strong firm and fair JOHN DINGELL, the bright and thoughtful PHIL SHARP, and the steady and highly regarded BOB ROE. This is an effort that I am most pleased to have been a part of—and this legislation truly deserves broad support here in the Senate.

Before I conclude, I should comment just briefly on one of the more controversial and difficult issues in this legislation, the provision directing the NRC to undertake a negotiated rulemaking on the issue of whether to extend Price-Anderson indemnity to radiopharmaceutical licensees. Nuclear medicine plays a vital role in maintaining the public health and welfare. Radiopharmaceuticals aid in the diagnosis of many serious human diseases. Imaging agents used on the brain and the cardiovascular system are the two most frequently administered diagnostic agents. Moreover, in future years, it is anticipated that radiopharmaceutical technology will become more common, particularly in the treatment of cancer. Currently, a substantial percent of patients with thyroid cancers benefit from radioiodine therapy. In addition, advanced research using radionuclide therapy now shows promise in reducing growing cancer cells to acceptable levels.

This bill will encourage and promote the development and use of nuclear medicine because it contains a process whereby the Nuclear Regulatory Commission is directed to ensure that all radiopharmaceutical licensees are appropriately indemnified or insured against their liabilities arising out of nuclear incidents. I wish to commend our committee and subcommittee chairmen for their outstanding leadership and efforts to insure that this issue is appropriately addressed in the context of this legislation.

We have fashioned an approach here—the negotiated rulemaking process—that was originally recommended by the Administrative Conference of the United States. This provision relies in large measure on that approach. Two points of clarification, though: Under this provision, the convenor is required to come back with a recommended rule for publication by the NRC, even though there may not be complete consensus in the working group. And second, the NRC, if it chooses may, under this provision—consistent with the recommendation of the Administrative Conference of the United States—exempt the process from the Federal Advisory Committee Act.

Again, Mr. President, I sincerely congratulate all of my colleagues who have been associated with this effort—and urge all of my other colleagues to contribute their support to this initiative.

Mr. BINGAMAN. Mr. President, I rise today to express my support for extending the provisions of the Price-Anderson Act. The Price-Anderson Act is extremely important because it establishes a system for compensating victims of accidents of nuclear power plants, facilities operated by contractors for the Department of Energy, and research reactors operated by universities and private businesses. First enacted in 1957 through the leadership of Senator Clinton Anderson, the Price-Anderson provisions have since been extended twice. The current provisions expired last year, therefore requiring the extension.

Basically, the Price-Anderson Act provides a form of no-fault insurance to the public in the event of a major nuclear accident with damages in the hundreds of millions or perhaps billions of dollars. Liability is channeled to the facility operator where the accident occurs. A limited pool of funds to pay damages is identified and payments are made without setting the issue of negligence. State law determines the cause and extent of the alleged damages and the facility operator pays the court approved damage

from the pool of funds until the limit is reached. Thereafter, the Congress must step in if further compensation is warranted.

The Price-Anderson Act allows the Energy Department to indemnify—protect against damage claims—the numerous firms, universities and other organizations that operate DOE nuclear facilities under contract. Damage to the public caused by accidents at those facilities would automatically be compensated by DOE.

In New Mexico, the extension of DOE's Price-Anderson authority is essential to the continued involvement of the private sector in the Government's nuclear activities. The legislation covers the activities of both Sandia and Los Alamos National Laboratories. Neither AT&T Technologies, Inc., nor the University of California, operators of Sandia and Los Alamos respectively, would have been able to participate in this program had it not been for the Government's indemnity protection.

The new provisions we consider today are particularly important because they provide a tenfold increase, from $700 million to $7 billion, in the maximum amount of money that would be available for quick disbursement to victims of such accidents at nuclear facilities. Additionally, the bill provides for stiff civil penalties, for violations of safety rules by DOE contractors. Additional fines, and prison sentences ranging up to 5 years, could be imposed on corporate officials who commit knowing and willful safety violations. I am pleased that the bill includes a provision I fought for in the Senate Energy Committee to exempt our national laboratories, such as Los Alamos and Sandia, from these penalties due to the limited research and development activities they perform.

In order to preserve the important protections provided by Price-Anderson, I urge my colleagues to vote in support of this legislation.

Mr. BREAUX. Mr. President, I am very pleased to rise today in strong support of H.R. 1414, the Price-Anderson Amendments Act. This legislation is of great importance in providing assured protection for our citizens from the hazards associated with this Nation's nuclear program. The path to enactment of this legislation has been long, and occasionally rocky, but a great many dedicated Members of both the Senate and the House have worked hard to resolve a number of thorny issues and produce the significant legislation before us today.

I would like to make a few comments, Mr. President, on two specific provisions of H.R. 1414. Section 13 of the bill deals with the issue of lessor liability by adding to the Atomic Energy Act a new subsection 170(r) relating to the sales and leasebacks of interests in nuclear facilities. Sale and leaseback transactions represent an additional source of financing for existing nuclear facilities which can provide significant benefits both to the utility and to its ratepayers. Such benefits arise from the lower cost of capital inherent in such transactions and from the leveling of utility revenue requirements. The continuation of these benefits warrants inclusion of this section so that existing and prospective investors providing equity for such transactions may do so free from concern that they may thereby become subject to legal liability arising from nuclear incidents.

The lease must be "bona fied." In other words, this section will not protect any NRC licensees who enter into a lease transaction as lessor solely for the purpose of avoiding its obligations in respect of nuclear incidents. This section will protect any person who acquires an interest in a nuclear facility and leases such interest as a part of a lease transaction. Where such lessor is a trust, the beneficiaries of the trust and the trustees, as well as the trust, will not be subject to any legal liability. Similarly, where the lessor is a partnership or other entity, the members of or interest holders in such partnership or other entity, as well as such partnership or other entity, will not be subject to any legal liability. Under current law the lessor of a facility is not required to be licensed by the NRC and is therefore not subject to the obligations of NRC licensees. This section further clarifies that lessors are not liable for any other liabilities—under Federal or State law—relating to a nuclear incident.

The second section of which I would particularly like to comment, Mr. President, is section 19 regarding a negotiated rulemaking on the issue of financial protection for radiopharmaceutical licensees. This provision directs the NRC to ensure that these licensees, including nuclear pharmacies, hospital nuclear medicine departments, radiopharmaceutical manufacturers and others, have sufficient liability protection in the event of a nuclear incident. These licensees serve a vital public health role, and it is crucial that Congress make certain that these licensees have insurance so that they may continue to provide the benefits of these lifesaving drugs. Without adequate insurance, the availability of radiopharmaceuticals may be jeopardized, as the availability of vaccines was jeopardized when vaccine manufacturers were unable to protect against the enormous potential liability exposure associated with providing those vital drugs.

The central issue in the debate with respect to this provision involves whether these licensees have or can obtain adequate commercial insurance to protect against liability claims associated with a potential nuclear incident. I have found the evidence presented to me to be compelling that such insurance may be unavailable. For that reason, I have been and continue to be in favor of extending the indemnification provisions in this act to radiopharmaceutical licensees. However, in the interest of resolving differences with our colleagues in the other body and moving forward with this important legislation, I am supporting the negotiated rulemaking provision contained in section 19. Under the process in this bill, an independent convenor will look to the evidence on the issue of the availability or lack thereof of insurance, and will submit recommendations to the Commission on whether and under what conditions to indemnify these licensees.

The mechanics of this provision are straightforward. Within 30 days of enactment of this legislation, the Commission will designate the convenor from among individuals recommended by the Administrative Conference of the United States. The convenor will identify individuals representing nuclear pharmacies, radiopharmaceutical manufacturers, hospital nuclear medicine departments, and other radiopharmaceutical licensees and affected interests as appropriate. The convenor shall gather testimony and is encouraged to call upon experts in the field. Within 7 months of enactment of this act, the convenor shall submit recommendations to the NRC. Even in the event that a consensus is not reached among the parties to the negotiation, the convenor is required to submit recommendations that include a proposed resolution to the issue. The NRC shall publish the recommendations of the convenor as a proposed rule. Within 18 months after enactment of this act, the NRC shall publish a final rule.

It is clear that the Commission has the authority to indemnify radiopharmaceutical licensees, including those located in agreement States, under existing law. While the authority to make the final decision on the merits of the proposed rule recommended by the convenor continues to rest with the Commission, the Commission should carefully weigh the recommendations of the convenor and should implement these recommendations in the absence of compelling evidence to indicate that these recommendations are unwarranted.

If the convenor determines that insurance is, in fact, unavailable, it is expected that indemnification shall be provided. Likewise, it is not intended that the Commission may decline to provide coverage on the grounds that the risks involved from these operations are so slight that no insurance is needed. It is my hope that this process moves swiftly and results in a solution that will allow the licensees involved in nuclear medicine around the country to continue to provide their needed products and services. I certainly encourage my colleagues to join me in supporting this legislation today.

Mr. JOHNSTON. Mr. President, I move that we recede en bloc from

Senate amendments 1 through 15 and concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Louisiana.

The motion was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. JOHNSTON. I thank all Senators especially Senator METZENBAUM.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I know it may appear frustrating to some of our colleagues to have so many recesses as we had yesterday but conferences are being conducted with respect to the DOD appropriations bill and I believe as a result of those conferences we have had, which have necessitated the recesses that in the long run we will find that the action on the DOD appropriations bill has been expedited, at least to some degree, and I hope that after another brief recess this morning we can proceed with the DOD appropriations bill.

I suggest to all Senators that this will be a full day, there will be rollcall votes, and I hope that they will schedule their day accordingly.

ORDER FOR RECESS

Mr. BYRD. Mr. President, I ask unanimous consent that following the remarks of the distinguished Republican leader the Senate stand in recess for 20 minutes.

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

The Republican leader.

DEPARTURE OF DR. CHIEN

Mr. DOLE. Mr. President, I am certain that many of our colleagues are aware that Dr. Fredrick Chien and his wife Julie will be leaving Washington to return to Taipei in the next week. Dr. Chien has served ably as Taiwan's representative to the United States for the past 5 years.

I know that many Senators and Members of Congress and their staffs have had the opportunity to consult with Dr. Chien and his colleagues on political and economic issues. Dr. Chien's comprehensive knowledge of trade and economic issues, coupled with his openness and ready understanding, have helped to create a highly positive atmosphere between Members of Congress and the people of Taiwan. Taiwan is the fifth largest trading partner of the United States.

There have been many issues that have divided Taiwan and the United States in the past 5 years. But Dr. Chien's positive contributions to resolving those issues have helped to guarantee the harmonious relationship between Taiwan and the United States. Dr. Chien has helped to place the day-to-day issues of trade in the broader political and moral context of the relationship between the United States and Taiwan.

Dr. Chien has represented the interests of his country in a highly professional and thoughtful way. Many of our colleagues know that he has also helped to represent and to explain to his Government the views of Members of the U.S. Congress.

I ask unanimous consent that an editorial in the Free China Journal entitled "A Career Diplomat at Work" be printed in the RECORD.

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

(From the Free China Journal, Jan. 12, 1988)

A CAREER DIPLOMAT AT WORK

It is fair to say that the substantive relations between the Republic of China and the United States have developed well and steadily over the past three years. Although issues of greater, and lesser, importance sometimes threatened this smooth progress they were generally addressed in the spirit of mutual cooperation.

In contrast to this agreeable situation, the international community's expectations of increased mainland China trade, Communist China's current policy of more trade openings to the world, and Peking's increasing activities on international scene, pose more direct challenges and difficulties to the ROC.

It is in spite of such mounting communist pressures, that the ROC's cultural, economic, scientific, and other ties with the U.S. have grown even stronger. Washington has even publicly expressed its determination to support the ROC's legal status and interests in the Asian Development Bank.

Against this background, it is well understood here that President Ronald Reagan's longtime friendship with the people and government of the Republic of China is a major ingredient in the sparkling relationship. However, Dr. Fredrick Chien, representative of the ROC Coordination Council for North American Affairs, is a central factor in making it all work—especially via his pioneering work to establish a mutually acceptable association between the officials of the two countries, outside the framework of the formal diplomatic practice.

Since his appointment to his current position in 1983, Chien has been maintaining an active, yet deliberately low-profile approach in seeking meaningful enrichment of the substantive relations between Taipei and Washington. Some observers have characterized him as too adroit a diplomat, too well trained in international politics to directly challenges Washington's fundamental policies toward Communist China even though these are not generally appealing to the ROC. Chien has, instead, convinced the White House and Congress that good ROC-U.S. relations are very much in the U.S. interest, apart from any Washington relationship with Communist China. A January 5 editorial in the local China News noted in this connection: "His tactful separation of Taipei-Washington and Peking-Washington ties when more delicate issues are involved also helps bail him out of some thorny situations."

The absence of formal diplomatic relations prevents ROC official access to U.S. foreign policy makers; yet, Chien directs a corps of young and capable aides to use whatever opportunities and channels may arise to increase their association with various U.S. counterparts and congressional staff.

Chien has also left his footprints across the U.S., in his efforts to establish friendships with local politicians, scholars, and the media. In all his speeches, he speaks of the mutual benefits of good ROC-U.S. relations.

Chien's personal style, approach, sincerity, and breadth of knowledge, observers agree, are the basic elements in the excellent rapport he has established with his U.S. counterparts. At home, as a result of these same qualities, he is among the most prominent and respected diplomats.

The members of the Foreign Affairs Committee of the ROC Legislative Yuan gathered January 6 to hear Chien's report on the development of ROC relations with the U.S. Such legislative sessions in this country often feature very harsh interpellations, resulting in embarrassed officials and administrators. However, according to local news reports, the committee members, instead of grilling Chien ruthlessly, acclaimed his valuable achievements during his three years service in the United States. This legislative honor is highly unusual for any ROC public official. It testifies to the quality of Chien's efforts over the past three years.

If international politics is ruled by the art of possibility, Chien has exerted to the utmost to open new and rewarding vistas for ROC-U.S. substantive relations.

Mr. DOLE. Mr. President, I yield to the distinguished Senator from Maine.

Mr. COHEN. Mr. President, I rise to join my colleagues in commending the diplomatic service and achievements of Dr. Fredrick F. Chien, for the past 5½ years. Dr. Chien has ably served as representative of the Coordination Council for North American Affairs in the United States, the unofficial Embassy of Taiwan. Recently, Dr. Chien was promoted to a super-Cabinet position in which he will hold the dual offices of Minister of State and Chairman of the Council for Economic Planning and Development. On August 12, Dr. Chien will leave his post to return to Taipei to assume his new duties.

Fredrick Chien is admirably qualified to assume his new responsibilities. He is an accomplished student of American culture, economics, and political affairs. He received his masters and doctorate degrees from Yale University. He has been immersed these past several years in economic matters, primarily trade issues involving the United States and Taiwan.

It is my understanding that one of the primary responsibilities that Dr. Chien will assume as chairman of the council will be United States-Taiwan trade relations. I wish him well in this capacity and hope that his ideas and suggestions will serve as an impetus for continued improvement of the United States-Taiwan trade picture. I am confident that Fred Chien will do his best to promote fair and friendly trade between our two countries.

In closing, Mr. President, Dr. Chien has done much to promote and nurture the strong and deep friendship

EXHIBIT C

DANIEL-JAMES INSURANCE AGENCY, INC.
360 THREE MEADOWS DR. ☐ P.O. BOX 428 ☐ PERRYSBURG, OH 43551 ☐ TEL (419) 874-1974
"The Positive Difference"

July 9, 1987

Senator John Breaux
HART SENATE OFFICE BUILDING
Washington, DC

RE: RADIO PHARMACEUTICALS

Senator Breaux:

Over the past 12 to 14 years I have had very "hands on" experience in attempting to insure various entities dealing with radioactive pharmaceuticals. This letter will serve to define some of the difficulties we now face in attempting to secure adequate insurance protection for our clients.

I mention Syncor International Corporation as I believe they are now the largest retailer of radioactive pharmaceuticals. In their infancy, they operated under the banner of Pharmatopes, Inc. At that time, approximately 1975, radioactive pharmaceuticals were relatively unknown. We had and still have, extreme difficulty in educating the commercial insurance market as to exactly what services these radio-pharmacies perform. The insurance industry is very very concerned about the magnitude of the radioactivity generated by the product of the pharmacies.

We have on numerous occasions attempted to explain the low radioactivity levels measured within any radio pharmacy. In most cases, the commercial insurance carrier did not even want to hear the explanation because they had concluded in their own mind that some sort of an "explosion" was eminent.

Consequently, we have never been able to delete the exclusion pertaining to nuclear explosion from any commercial insurance contract that we have written for the various radio-pharmacies around the country.

For the same above reasons, we have been unsuccessful in deleting any exclusions in the insurance contracts dealing with pollution be it gradual emission or sudden and accidental as relates nuclear explosion. Please keep in mind, that this

period of time covers approximately 13 years and in that period of time we insured Pharmatopes, which has ultimately grown into Syncor International Corporation as well as Syncor's major national competitor, which was ultimately purchased by Syncor, and other small radio-pharmacies.

Another significant difficulty we have faced is the apparent inability for the radio-pharmacies to qualify for any insurance coverage through the nuclear insurance pools. I have not seen it in writing, but apparently there is a minimum exposure limitation measured in curries of exposure at which level the nuclear pools will respond.

Since radio-pharmacies typically deal in the range of two to five curries of exposure, they emit radioactive levels that are too low for review and acceptance by the nuclear pools. Since there is no response on the part of any of the pools, we are forced to rely totally upon the commercial insurance marketplace.

It has become very apparent over the years that the commercial insurance marketplace is not willing to treat these standard exclusions in the policy that may pertain to a type of radioactive exposure. I know this refusal is widespread since we have received phone calls from radio-pharmacies throughout the country. I am sure prior to making those phone calls, they had searched the marketplace very extensively themselves.

We have been able to respond to the basic needs of these clients only because we have a very thorough understanding of exactly what tasks are performed by radio-pharmacies. We were ultimately able to educate several commercial insurance markets as to the minimal amount of exposure actually generated by a radio-pharmacy. However, we are yet unable to resolve the issues of the standard exclusions for the gradual emission of pollution and nuclear explosion.

It is my desire that this letter will assist in more clearly defining the significant problem faced by radio-pharmacies in securing adequate insurance protection.

Sincerely,

Dan

Daniel E. Dumbauld, CPIA, CIC
President

kaf

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Plaza Tower
2300 North 44th Street
Eighth Floor
Phoenix, Arizona 85008
Telephone (602) 468-3200

Direct Line: (602) 468-3223

Alexander & Alexander

April 8, 1988

The Honorable Morris K. Udall, Chairman
Committee on Interior & Insular Affairs
United States House of Representatives
235 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am a representative of Alexander & Alexander of Arizona, Inc. We are a part of Alexander & Alexander Services, Inc. serving clients in more than 70 countries as a leading international brokerage, risk management and human resource management consulting company.

Our 17,000 employees plan, place and service all types of insurance and risk management programs on behalf of commercial businesses, governmental entities, associations and individuals.

The National Health Care Division of Alexander & Alexander Services, Inc. is involved in the insurance and risk management programs of over 800 hospitals, HMO's, clinics and doctor's groups.

The problem of the nuclear pharmacies and nuclear medicine departments of hospitals has been brought to my attention. After researching the matter with representatives of our National Health Care Division, I am writing to you to confirm the fact that nuclear risk coverage is not available to nuclear pharmacies or nuclear medicine departments in hospitals in the State of Arizona.

To the best of my knowledge, there is simply no available market for such coverage in Arizona with the effect that the nuclear pharmacies and hospitals are exposed to lawsuits for damages for low level radiation risks for which they could not obtain insurance.

Very truly yours,

ALEXANDER & ALEXANDER
OF ARIZONA, INC.

William D. Charles

William D. Charles
Account Executive

eh/Udall

EXHIBIT D

syncor

The National
Pharmaceutical
Service Network

August 20, 1986

Mr. John Quaptrocchi
American Nuclear Insurers
The Exchange
270 Farmington
Farmington, CT 06032

Dear Mr. Quaptrocchi:

I would like to thank you for taking the time to discuss the possibility of Syncor International Corporation obtaining Comprehensive General Liability insurance from your company.

To recap our discussion, you stated that American Nuclear Insurers does not insure general liability risk for products and processes associated with companies involved in the compounding and dispensing of radiopharmaceuticals (nuclear based drugs). You stated that American Nuclear Insurers only insures liability risk of companies who have a catastrophic nuclear risk exposure and basically these are utilities and companies who use a nuclear reactor in their everyday business. You further explained that Syncor's nuclear risk was from an isotope exposure, which your company does not consider to be of a catastrophic potential. Your company's policy is to leave the insuring of Radiopharmaceutical Companies Comprehensive Liability risk with conventional risk insurers (Hartford, Aetna, etc.).

Again I would like to thank you for sharing your thoughts and American Nuclear Insurers' underwriting policy with us.

Very truly yours,

Robert A. Krulisky

Robert A. Krulisky
Treasurer

RAK/wp

cc: Ann Pollock

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