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PRICE-ANDERSON NEGOTIATED RULEMAKING - POSITION STATEMENT OF THE NRC STAFF

Introduction

For purposes of the negotiated rulemaking required by Section 19 of the Price-Anderson Amendments Act of 1988 ("Amendments Act")(Appendix A), the following statement sets forth the position of the U.S. Nuclear Regulatory Commission staff ("NRC Staff") on the issue of whether the Commission should enter into indemnity agreements with persons licensed by the Commission or by an Agreement State for the manufacture, production, possession, or use of radioisotopes or radiopharmaceuticals for medical purposes ("radiopharmaceutical licensees"). The Commission has designated Mr. Stuart A. Treby, Assistant General Counsel for Rulemaking and Fuel Cycle, to serve as its negotiator in this proceeding.

Interest and Scope

Under Section 81 of the Atomic Energy Act of 1954, as amended (the "Act"), the Commission is authorized to issue licenses for the medical use of byproduct material. The Commission has under license approximately 1800 medical institutions, 500 private practitioners, 20 mobile medical services, 300 teletherapy services, 100 in-vitro blood testing labs, 40 nuclear pharmacies, 10 radiopharmaceutical manufacturers, and 10 manufacturers of sealed sources for medical purposes.

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Under section 170a. of the Act, financial protection and government indemnity are mandatory for activities involving the construction and operation of production and utilization facilities (The part of the Atomic Energy Act, commonly known as "Price-Anderson" is attached as Appendix B. This appendix is a copy of the pertinent sections of the Act showing comparative text before and after the Amendments Act.) Section 170a. also provides the Commission with the discretion to require financial protection of, and to extend indemnity coverage to, other activities licensed by the Commission. The Commission has only exercised this discretionary authority to require financial protection of, and extend indemnity coverage to, certain persons licensed to possess or use plutonium in plutonium processing and fuel fabrication activities.

Agreement States Section 170a. of the Act limits the Commission's authority to require financial protection of, and extend indemnity coverage to, persons licensed under sections 53, 63, 81, 103, 104, or 185 of the Act. Section 274b. of the Act authorizes the Commission to enter into an agreement with any State ("Agreement State") providing for the discontinuance of the Commission's regulatory authority with respect to (1) byproduct materials, (2) source material, and (3) special nuclear material in quantities not sufficient to form a critical mass. The Commission has entered into such agreements with 29 States. Within the Agreement States, the licensing of the medical use of byproduct material is within the authority of the State and not the Commission. Agreement State licensees are not licensed under sections 53, 63, 81, 103, 104, or 185 of the Act, and the Commission does not have the

legal authority under section 170 of the Act to require financial protection of, and extend indemnity to, "radiopharmaceutical licensees" of an Agreement State. Although the Amendments Act does not provide any explicit authorization for the Commission to indemnify Agreement State licensees, the scope of the negotiated rulemaking under Section 19 of that Act extends to "persons licensed by the Commission or by an Agreement State..." Emphasis added. The NRC staff believes that the legislative history of the Amendments Act is ambiguous on whether Section 19 provides the Commission with the implied authority to indemnify Agreement State licensees. Resolution of this ambiguity will be required if indemnification is found necessary. However, the NRC Staff recommends that the negotiating committee first address the issue of whether indemnification is necessary for any type of "radiopharmaceutical licensee," and defer consideration of the statutory authority issue until later in the proceeding.

NARM Naturally-occurring and accelerator-produced radioactive materials (NARM) are also used in medical applications. Because the Commission has no licensing or other regulatory jurisdiction over NARM for medical use, any personal injury or property damage caused by the accidental release of such radioactive material would not arise out of, or result from, a "nuclear incident" under the Act and, therefore, could not result in "public liability" as that term is defined in the Act. Thus, such damage would not be covered by an indemnity agreement executed by a "radiopharmaceutical licensee" with the Commission, and is not within the scope of the negotiated rulemaking.

Scope of Liability The scope of the negotiated rulemaking should be consistent with the type of liability covered under the Price-Anderson Act. The Price-Anderson Act limits indemnification to "public liability," which is any legal liability arising out of, or resulting from, a "nuclear incident." This is an occurrence within the United States causing bodily injury, sickness, disease, death, loss of or damage to property, or loss of use of property resulting from source, special nuclear, or by product material. Public liability does not include the workmen's compensation claims of employees at the site of, and in connection with, the activity where the nuclear incident occurs; claims arising out of an act of war; or claims for loss of, damage to, or loss of use of property which is located at the site of, and used in connection with, the licensed activity where the nuclear incident occurs. Furthermore, the legislative history of Section 19 of the Amendments Act indicates that claims arising from malpractice or misadministration, or product liability, should not be within the scope of the rulemaking.

Scope of Licensees Covered The types of licensees within the scope of the rulemaking should be determined first, by reference to Section 19 of the Amendments Act, and second, by requests for participation in the rulemaking proceeding. The NRC staff anticipates that the following types of licensees would be eligible for consideration in this rulemaking --

- o manufacturers of radiopharmaceuticals or radioisotopes for medical use



- o medical users (e.g. those licensees such as private practitioners, clinics, hospitals, or laboratories who use radioisotopes or radiopharmaceuticals for medical purposes)
- o nuclear pharmacies

If indemnification is provided to any of these facilities, the Price-Anderson Act would also extend indemnification coverage to the transportation of radioactive materials to, and from, such facilities.

Amount of Coverage and Financial Protection If it is determined that the Commission should indemnify "radiopharmaceutical licensees" licensed pursuant to section 81 of the Atomic Energy Act of 1954, as amended, Section 170c. of the Act requires that the Commission must provide indemnity coverage in the amount of \$500,000,000. The scope of the rulemaking should include consideration of whether coverage in such amount is warranted, and if not, what amount of coverage would be appropriate.

Furthermore, pursuant to section 170b. of the Act, the Commission may require that such licensees have and maintain some amount of financial protection of the type specified in that section, such as self-insurance. The scope of the negotiated rulemaking should include consideration of whether such licensees should have and maintain some amount of financial protection, and if so, what amount would be appropriate.

Under section 170f., the Commission is authorized to collect a fee from all persons with whom an indemnity agreement is executed. If it develops that the Commission should indemnify "radiopharmaceutical licensees," the scope of the negotiated rulemaking must include consideration of the amount of the fee to be charged to such licensees.

Nature and extent of risk to public health and safety

For the interests potentially affected by this rulemaking, the NRC staff has identified the number of licenses issued by the Commission, and has estimated the byproduct material inventory at typical licensee facilities (see Table I). The regulation of emissions of radioactive materials in normal operations by the facilities of concern identified above (manufacturers, medical users, or pharmacies) is governed primarily by the Commission's regulations in 10 CFR Part 20. Compliance with these regulations is designed to prevent adverse health effects from the release of radioactive materials from normal operations.

Based on the estimate of the inventories in Table I, the short half-lives of most of the radioisotopes in those inventories, and the likelihood of an accident at the facility of a "radiopharmaceutical licensee", the NRC staff believes that there is no undue risk to public health and safety from the "radiopharmaceutical licensee" activities.

The NRC staff would note that it is not aware of any instance where a "radiopharmaceutical licensee" has been held liable to date for damages due to the release of radioactive materials through normal operations or under accident conditions.

#### Insurance Availability for the Medical Uses of Radioisotopes

Two types of radioisotopes are used in the diagnosis and treatment of various medical conditions -- sealed sources and radiopharmaceuticals. Sealed sources are manufactured by about 10 U.S. companies licensed by the Commission or Agreement States. These companies purchase commercial general liability (CGL) insurance from Medmarc, an industry-owned and controlled risk retention group comprising over 400 companies manufacturing in-vitro and medical device products. Although CGL insurance policies contain a "broad-form nuclear exclusion" provision for damages resulting from a "nuclear facility", this provision would not exclude coverage for offsite bodily injury or property damage arising out of radioisotopic exposure from "radiopharmaceutical licensees", because they do not fall within the definition of "nuclear facility".

Sealed source manufacturers are relatively small companies. However, radiopharmaceutical manufacturers are divisions within some of the larger pharmaceutical companies in the world such as Squibb, Hoffman-LaRoche, and DuPont. The radiopharmaceutical business of these companies is but a small

percentage of their overall sales. While it is difficult to obtain specific information, the NRC staff understands that most of these manufacturers self-insure both their third party liability and product liability risks. A few of these companies also buy excess insurance above their self-insurance limits. The one exception of which the NRC staff is aware, however, is Mallinckrodt, one of the larger radiopharmaceutical manufacturers which also operates a number of radiopharmacies. Mallinckrodt maintains CGL insurance.

In addition to the radiopharmaceutical manufacturers, the radiopharmaceutical industry also includes radiopharmacies. These facilities receive bulk shipments of radiopharmaceuticals from manufacturers and repackage them into patient doses. There are approximately 125 of these facilities nationwide. Although some of the radiopharmacies may currently be purchasing CGL insurance for their activities, none of the property-casualty insurance companies that the NRC staff recently contacted is writing, or has ever been approached to write, CGL policies with radiopharmacies. A number of these insurers did express an interest, however, in evaluating whether to write this type of coverage. In fact, there are excess and speciality insurance markets that exist to specifically underwrite this type of risk. It is for this very reason that the nuclear liability insurance pools will not offer nuclear liability insurance to radiopharmacies. The pools' philosophy is to not offer nuclear liability insurance to a particular company or segment of an industry if insurance can be purchased from conventional markets. The NRC staff has been informed by the insurance companies it contacted that most hospitals and

clinics using radioisotopes to diagnose and treat patients are purchasing CGL insurance policies.

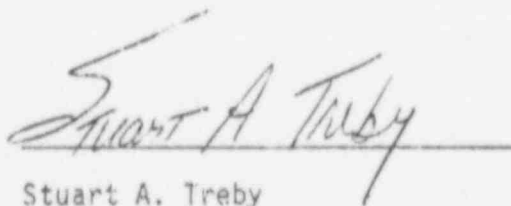
#### Position

The regulation of emissions of radioactive materials in normal operations by the facilities of concern identified above (manufacturers, medical users, or pharmacies) is governed by the Commission's regulations in 10 CFR Part 20. Compliance with these regulations is designed to prevent adverse health effects from the release of radioactive materials from normal operations.

Based on the estimate of the inventories in Table I, the short half-lives of most of the radioisotopes in those inventories, and the likelihood of an accident at the facility of a "radiopharmaceutical licensee," the NRC staff believes that there is no undue risk to public health and safety from "radiopharmaceutical licensee" activities. Furthermore, even in the unlikely event that such an accident occurs, any potential liability for offsite damage resulting from such an accident would be within the insurance coverage that the NRC staff believes is available. Therefore, it is the NRC staff position that it is not necessary to extend the government indemnification coverage of Section 170a. of the Act to "radiopharmaceutical licensees."

One of the primary objectives of the Price-Anderson Act was to remove the deterrent to private sector participation in atomic energy activities presented by the threat of potentially enormous high liability claims in the

event of a catastrophic nuclear accident. The NRC staff believes that this objective retains its vitality for application to the issue of whether "radiopharmaceutical licensees" should be indemnified. In addition to demonstrating that commercial insurance is unavailable, the NRC staff believes that those supporting indemnification must also demonstrate that indemnification is necessary to maintain participation in the radiopharmaceutical industry in order to ensure that the public will not be deprived of radiopharmaceuticals. In this regard, the NRC staff would note that it is not aware of any instance where a "radiopharmaceutical licensee" ceased operation because of the threat of uninsurable liability.

A handwritten signature in cursive script, reading "Stuart A. Treby", is written over a horizontal line.

Stuart A. Treby

NRC Negotiator

NRC TABLE I.

ACTIVE NRC RADIOPHARMACEUTICAL LICENSES BY PROGRAM CODE

Estimate of Curies in Inventory at a Typical License\*

Program Code	Total (September 1988)		Readily Dispersible							Not Readily Dispersible						
			Other													
			Tc-99m	I-131	I-125	H-3	C-14	diag.	Mo-99	I-125	Ir-192	Cs-137	RA-226	Sr-90	Co-60	Other
o 01100	43	Academic Type A Broad Scope			.1	10	1			.1						.1
o 02110	114	Medical Type A Broad Scope	1	.1	.1	10	1	.1	1	.1	.1	.1	.1			.1
o 02120	1418	Full service community hospital	.1	.1				.1	1	.1	.1	.1				
o 02121	15	Limited service community hospital	.1	.1					.1							
o 02200	243	Full service private practice	.1						.1							
o 02201	213	Limited service private practice	.1						.1							
o 02209	77	Limited service private practice (35.31)						.001								
o 02210	52	Sr-90 Eye applicator													.01	
o 02220	20	Mobile nuclear medicine	1	.1				.1	1							
o 02300	251	Teletherapy														10000
o 02500	45	Nuclear Pharmacy	10	1				1	10							
o 02510	2	Suppliers for program code 02209						.1								
o 02511	4	Radiopharmaceuticals supplier	1	1					1							
o 02512	1	Radiopharmaceuticals, generators, kits supplier	1000	100				100	1000							
o 02513	9	Source and device supplier								100	100	10				

\* These are order of magnitude estimates by NRC staff. Amounts less than 0.1 curie are not reported unless that is the only one for a program code.

PUBLIC LAW 100-408

SEC. 19. NEGOTIATED RULEMAKING ON FINANCIAL PROTECTION FOR RADIOPHARMACEUTICAL LICENSEES.

(a) RULEMAKING PROCEEDINGS.--

(1) PURPOSE.- The Nuclear Regulatory Commission (hereafter in this section referred to as the "Commission") shall initiate a proceeding, in accordance with the requirements of this section, to determine whether to enter into indemnity agreements under section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) with 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), and 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 (hereafter in this section referred to as "radiopharmaceutical licensees").

(2) FINAL DETERMINATION.- A final determination with respect to whether radiopharmaceutical licensees, or any class of such licensees, shall be indemnified pursuant to section 170 of the Atomic Energy Act 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" (42 Fed. Reg. 30708, July 15, 1982).

(2) DESIGNATION OF CONVENER.- Within 30 days after 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 convener for such negotiations.



(3) SUBMISSION OF THE 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 AND 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.

THE PRICE-ANDERSON ACT, AS REVISED BY PUB. L. 100-XXX

[Comparative Text]1/

"Price-Anderson Amendments Act of 1988"

[42 U.S.C. 2014]

SEC. 11. DEFINITIONS.-- The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this Act:

\* \* \* \* \*

j. The term "extraordinary nuclear occurrence" means 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 Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines to be substantial, and which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines has resulted or will probably result in substantial damages to persons offsite or property offsite. Any determination by the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, that such an event has, or has not, occurred shall be final and conclusive, and no other official or any court shall have power or jurisdiction to review any such determination. The Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, shall establish criteria in writing setting forth the basis upon which such determination shall be made. As used in this subsection, "offsite" means away from "the location" or "the contract location" as defined in the applicable Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, indemnity agreement, entered into pursuant to section 170.

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1/ Additions are underscored; deletions are [bracketed-and-lined-through].

k. The term "financial protection" means the ability to respond in damages for public liability and to meet the costs of investigating and defending claims and settling suits for such damages.

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m. The term "indemnitor" means (1) any insurer with respect to his obligations under a policy of insurance furnished as proof of financial protection; (2) any licensee, contractor or other person who is obligated under any other form of financial protection, with respect to such obligations; and (3) the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, with respect to any obligation undertaken by it in an indemnity agreement entered into pursuant to section 170.

\* \* \* \* \*

q. The term "nuclear incident" means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, 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: Provided, however, That as the term is used in [subsect~~ion~~] section 170 l., it shall include any such occurrence outside the United States: And provided further, That as the term is used in [subsect~~ion~~] section 170 d., it shall include any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States: And provided further, That as the term is used in [subsect~~ion~~] section 170 c., it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to chapters 6, 7, 8, and 10 of this Act, which is used in connection with the operation of a licensed stationary production or utilization facility or which moves outside

the territorial limits of the United States in transit from one person licensed by the Nuclear Regulatory Commission to another person licensed by the Nuclear Regulatory Commission.

\* \* \* \* \*

s. The term "person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

t. The term "person indemnified" means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in [subsection] section 170 c., and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Secretary of Energy [Commission] or any project to which indemnification under the provisions of [subsection] section 170 d. has been extended or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.

\* \* \* \* \*

w. The term "public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of

a State, in the course of responding to a nuclear incident or precautionary evacuation), except: (i) claims under State or Federal workmen's compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (ii) claims arising out of an act of war; and (iii) whenever used in subsections [170] a., c., and k. of section 170, claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. "Public liability" also includes damage to property of persons indemnified: Provided, That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

\* \* \* \* \*

dd. The terms "high-level radioactive waste" and "spent nuclear fuel" have the meanings given such terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

ee. The term "transuranic waste" means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater than 10 nanu-  
curies per gram, or in such other concentrations as the Nuclear Regulatory Commission may prescribe to protect the public health and safety.

ff. The term "nuclear waste activities", as used in section 170, means activities subject to an agreement of indemnification under subsection d. of such section, that the Secretary of Energy is authorized to undertake, under this Act or any other law, involving the storage, handling, transportation, treatment, or disposal of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, including (but not limited to) activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164 (93 Stat. 1265).

gg. The term "precautionary evacuation" means an evacuation of the public within a specified area near a nuclear facility, or the transportation route in the case of an accident involving transportation of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste to or from a production or utilization facility, if the evacuation is --

(1) the result of any event that is not classified as a nuclear incident but that poses imminent danger of bodily injury or property damage from the radiological properties of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste, and causes an evacuation; and

(2) initiated by an official of a State or a political subdivision of a State, who is authorized by State law to initiate such an evacuation and who reasonably determined that such an evacuation was necessary to protect the public health and safety.

hh. The term "public liability action", as used in section 170, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 170, and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.

jj. LEGAL COSTS.-- As used in section 170, the term "legal costs" means the costs incurred by a plaintiff or a defendant in initiating, prosecuting, investigating, settling, or defending claims or suits for damage arising under such section.



[42 U.S.C. 2210]

SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY. --

a. REQUIREMENT OF FINANCIAL PROTECTION FOR LICENSEES.-- Each license issued under section 103 or 104 and each construction permit issued under section 185 shall, and each license issued under section 53, 63, or 81 may, for the public purposes cited in [sub]section 2 i. [~~of the Atomic Energy Act of 1954, as~~ amended], have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Nuclear Regulatory Commission (in this section referred to as the "Commission") in the exercise of its licensing and regulatory authority and responsibility shall require in accordance with subsection [170] b. to cover public liability claims. Whenever such financial protection is required, it may be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection [170] c. The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.

b. AMOUNT AND TYPE OF FINANCIAL PROTECTION FOR LICENSEES.-- (1) The amount of primary financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: [(1)] (A) the cost and terms of private insurance, [(2)] (B) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and [(3)] (C) the nature and purpose of the licensed activity: Provided, That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of primary financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources (excluding the amount of private liability insurance available under the industry retrospective rating plan required in this subsection). Such primary financial protection may include private insurance, private contrac-

tual indemnities, self insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. [~~in prescribing such terms and conditions for~~] The Commission shall require licensees that are required to have and maintain primary financial protection equal to the maximum amount of liability insurance available from private sources to maintain, in addition to such primary financial protection, [the Commission shall, by rule initially prescribe, not later than twelve months from the date of enactment of this Act, include, in determining such maximum amount, private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: Provided, That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such primary financial protection: And provided further, That the maximum amount of the standard deferred premium [which] that may be charged a licensee following any nuclear incident under such a plan [shall be not less than \$2,000,000 nor more than \$5,000,000] shall not be more than \$63,000,000 (subject to adjustment for inflation under subsection t.), but not more than \$10,000,000 in any 1 year, for each facility for which such licensee is required to maintain the maximum amount of primary financial protection: And provided further, That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs (excluding legal costs subject to subsection o.(1)(D), payment of which has not been authorized under such subsection) arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission. [The Commission is authorized to establish a maximum amount which the aggregate deferred premiums charged for each facility within one calendar year may not exceed,--The Commission may establish amounts less than the standard premium for individual facilities taking into account



~~such factors as the facility's size, location, and other factors pertaining to the hazard.]~~

(2)(A) The Commission may, on a case by case basis, assess annual deferred premium amounts less than the standard annual deferred premium amount assessed under paragraph (1) --

(i) for any facility, if more than one nuclear incident occurs in any one calendar year; or

(ii) for any licensee licensed to operate more than one facility, if the Commission determines that the financial impact of assessing the standard annual deferred premium amount under paragraph (1) would result in undue financial hardship to such licensee or the ratepayers of such licensee.

(B) In the event that the Commission assesses a lesser annual deferred premium amount under subparagraph (A), the Commission shall require payment of the difference between the standard annual deferred premium assessment under paragraph (1) and any such lesser annual deferred premium assessment within a reasonable period of time, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the standard annual deferred premium assessment under paragraph (1) would become due.

(3) The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property

or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.

(4)(A) In the event that the funds available to pay valid claims in any year are insufficient as a result of the limitation on the amount of deferred premiums that may be required of a licensee in any year under paragraph (1) or (2), or the Commission is required to make reinsurance or guaranteed payments under paragraph (3), the Commission shall, in order to advance the necessary funds--

(i) request the Congress to appropriate sufficient funds to satisfy such payments; or

(ii) to the extent approved in appropriation Acts, issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Commission and the Secretary of the Treasury.

(B) Except for the funds appropriated for purposes of making reinsurance or guaranteed payments under paragraph (3), any funds appropriated under subparagraph (A)(i) shall be repaid to the general fund of the United States Treasury from amounts made available by standard deferred premium assessments, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the funds appropriated under such subparagraph are made available.

(C) Except for the funds appropriated for purposes of making reinsurance or guaranteed payments under paragraph (3), redemption of obligations issued under subparagraph (A)(ii) shall be made by the Commission from amounts made available by standard deferred premium assessments. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury by taking into consideration the average market yield on outstanding marketable obligations to the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31,

United States Code, and the purposes for which securities may be issued under such chapter are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by the Secretary of the Treasury under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

c. INDEMNIFICATION OF LICENSEES BY NUCLEAR REGULATORY COMMISSION.-- The Commission shall, with respect to licenses issued between August 30, 1954, and August 1, 2002, [1987,] for which it requires financial protection of less than \$560,000,000, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed \$500,000,000 excluding costs of investigating and settling claims and defending suits for damage: Provided, however, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed \$60,000,000. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 2002, [1987,] the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 2002 [1987].

d. INDEMNIFICATION OF CONTRACTORS BY DEPARTMENT OF ENERGY.-- (1)(A) In addition to any other authority the [Commission] Secretary of Energy (in this section referred to as the "Secretary") may have, the Secretary shall, [the Commission-is-authorized] until August 1, 2002, [1987, to] enter into agreements of indemnification with [its-contractors-for-the-construction-or-operation-of-production-or-utilization-facilities-or-other] any person who may conduct activities under a contract[s] with the Department of Energy [for-the benefit-of-the-United-States-involving-activities-under] that involve the risk of public liability [for-a-substantial-nuclear-incident] and that are not sub-

ject to financial protection requirements under subsection b. or agreements of indemnification under subsection c. or k.

(B)(i)(I) Beginning 60 days after the date of enactment of the Price-Anderson Amendments Act of 1988, agreements of indemnification under subparagraph (A) shall be the exclusive means of indemnification for public liability arising from activities described in such subparagraph, including activities conducted under a contract that contains an indemnification clause under Public Law 85-804 entered into between August 1, 1987, and the date of enactment of the Price-Anderson Amendments Act of 1988.

(II) The Secretary may incorporate in agreements of indemnification under subparagraph (A) the provisions relating to the waiver of an issue or defense as to charitable or governmental immunity authorized in subsection n.(1) to be incorporated in agreements of indemnification. Any such provisions incorporated under this subclause shall apply to any nuclear incident arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A).

(ii) Public liability arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A) that are funded by the Nuclear Waste Fund established in section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222) shall be compensated from the Nuclear Waste Fund in an amount not to exceed the maximum amount of financial protection required of licensees under subsection b.

(2) In [such] agreements of indemnification entered into under paragraph (1), the Secretary [the-Commissioner] may require [its] the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary [Commissioner] shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, [4R-the-amount-of-\$500,000,000,-excluding-costs-of-investigating-and-settling-claims-and-defending-suits-for-damage 4R] to the full extent of the aggregate public liability [for-all] of the persons indemnified [4R-corrected-with-such-contract-and] for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary. [4--Provided,-That-this-amount-of-indemnity-shall-be-reduced-by-the

~~amount-that-the-financial-protection-required-shall-exceed-\$60,000,000+-Pre-  
vided-further,-That]~~

(3)(A) Notwithstanding paragraph (2), if the maximum amount of financial protection required of licensees under subsection b. is increased by the Commission, the amount of indemnity, together with any financial protection required of the contractor, shall at all times remain equal to or greater than the maximum amount of financial protection required of licensees under subsection b.

(B) The amount of indemnity provided contractors under this subsection shall not, at any time, be reduced in the event that the maximum amount of financial protection required of licensees is reduced.

(C) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person, shall be deemed to be amended, on the date of the enactment of the Price-Anderson Amendments Act of 1988, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection on such date.

(4) Financial protection under paragraph (2) and indemnification under paragraph (1) shall be the exclusive means of financial protection and indemnification under this section for any Department of Energy demonstration reactor licensed by the Commission under section 202 of the Energy Reorganization Act of 1974 (42 U.S.C. 5842).

(5) In [in] the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the [Commission] Secretary under this subsection shall not exceed \$100,000,000.

(6) The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Secretary [Commission].

(7) A contractor with whom an agreement of indemnification has been executed under paragraph (1)(A) and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this subsection, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense



founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.

e. LIMITATION ON AGGREGATE PUBLIC LIABILITY.-- (1) The aggregate public liability for a single nuclear incident of persons indemnified, [including the reasonable costs of investigating and settling claims and defending suits for damage] including such legal costs as are authorized to be paid under subsection o.(1)(D), shall not exceed --

(A) in the case of facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the maximum amount of financial protection required of such facilities under subsection b. (plus any surcharge assessed under subsection o.(1)(E));

(B) in the case of contractors with whom the Secretary has entered into an agreement of indemnification under subsection d., the maximum amount of financial protection required under subsection b. or the amount of indemnity and financial protection that may be required under paragraph (3) of subsection d., whichever amount is more; and

(C) in the case of all other licensees of the Commission required to maintain financial protection under this section --

(i) [~~{1}-the-sum-of~~] \$500,000,000 together with the amount of financial protection required of the licensee [~~or contractor~~]; or  
(ii) [~~{2}~~] if the amount of financial protection required of the licensee exceeds \$60,000,000, [~~such aggregate liability shall not exceed the sum of~~] \$560,000,000 or the amount of financial protection required of the licensee, whichever amount is more. [~~greater~~ Provided, That]

(2) In [~~the~~] the event of a nuclear incident involving damages in excess of [~~that~~] the amount of aggregate public liability under paragraph (1), the Congress will thoroughly review the particular incident in accordance with the procedures set forth in section 170 f., and will in accordance with such procedures, take whatever action is [~~deemed~~] determined to be necessary [and

appropriate] (including approval of appropriate compensation plans and appropriation of funds) to provide full and prompt compensation to [protect] the public for all public liability claims resulting from [the-consequences-of] a disaster of such magnitude. [---And-provided-further,-That]

(3) No provision of paragraph (1) may be construed to preclude the Congress from enacting a revenue measure, applicable to licensees of the Commission required to maintain financial protection pursuant to subsection b., to fund any action undertaken pursuant to paragraph (2).

(4) With [with] respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection [170] d. is applicable, such aggregate public liability shall not exceed the amount of \$100,000,000, together with the amount of financial protection required of the contractor.

f. COLLECTION OF FEES BY NUCLEAR REGULATORY COMMISSION.-- The Commission or the Secretary, as appropriate, is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be \$30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 103: Provided, That the Commission or the Secretary, as appropriate, is authorized to reduce the fee for such facilities in reasonable relation to increases in financial protection required above a level of \$60,000,000. For facilities licensed under section 104, and for construction permits under section 185, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 104, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than \$100 per year.

g. USE OF SERVICES OF PRIVATE INSURERS.-- In administering the provisions of this section, the Commission or the Secretary, as appropriate, shall use, to the maximum extent practicable, the facilities and services of private

insurance organizations, and the Commission or the Secretary, as appropriate, may contract to pay a reasonable compensation for such services. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5), as amended, upon a showing by the Commission or the Secretary, as appropriate, that advertising is not reasonably practicable and advance payments may be made.

h. CONDITIONS OF AGREEMENTS OF INDEMNIFICATION.-- The agreement of indemnification may contain such terms as the Commission or the Secretary, as appropriate, deems appropriate to carry out the purposes of this section. Such agreement shall provide that, when the Commission or the Secretary, as appropriate, makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission or the Secretary, as appropriate, shall collaborate with any person indemnified and may approve the payment of any claim under the agreement of indemnification, appear through the Attorney General on behalf of the person indemnified, take charge of such action, and settle or defend any such action. The Commission or the Secretary, as appropriate, shall have final authority on behalf of the United States to settle or approve the settlement of any such claim on a fair and reasonable basis with due regard for the purposes of this Act. Such settlement shall not include expenses in connection with the claim incurred by the person indemnified.

i. COMPENSATION PLANS.-- (1) After any nuclear incident [~~which will probably require payments by the United States under this section or which will probably result in~~] involving damages that are likely to exceed the applicable amount of aggregate public liability [claims in excess of \$500,000,000,] under subparagraph (A), (B), or (C) of subsection e.(1), the Secretary or the Commission, as appropriate, shall --

(A) make a survey of the causes and extent of damage; and

(B) expeditiously submit a report [which shall forthwith be reported] setting forth the results of such survey to the [Joint Committee] Congress, to the Representatives [Congressmen] of the affected districts, [and] to the Senators of the affected States, and[ ] [except for informa-



tion that will [which-would] cause serious damage to the national defense of the United States) [and-all-final-findings-shall-be-made-available] to the public, to the parties involved, and to the courts. [The-Commission shall-report-to-the-Joint-Committee-by-April-1, 1958, and-every-year year-thereafter-on-the-operations-under-this-section.]

(2) Not later than 90 days after any determination by a court, pursuant to subsection o., that the public liability from a single nuclear incident may exceed the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection e.(1) the President shall submit to the Congress --

(A) an estimate of the aggregate dollar value of personal injuries and property damage that arises from the nuclear incident and exceeds the amount of aggregate public liability under subsection e.(1);

(B) recommendations for additional sources of funds to pay claims exceeding the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection e.(1), which recommendations shall consider a broad range of possible sources of funds (including possible revenue measures on the sector of the economy, or on any other class, to which such revenue measures might be applied);

(C) 1 or more compensation plans, that either individually or collectively shall provide for full and prompt compensation for all valid claims and contain a recommendation or recommendations as to the relief to be provided, including any recommendations that funds be allocated or set aside for the payment of claims that may arise as a result of latent injuries that may not be discovered until a later date; and

(D) any additional legislative authorities necessary to implement such compensation plan or plans.

(3)(A) Any compensation plan transmitted to the Congress pursuant to paragraph (2) shall bear an identification number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

(B) The provisions of paragraphs (4) through (6) shall apply with respect to consideration in the Senate of any compensation plan transmitted to the Senate pursuant to paragraph (2).

(4) No such compensation plan may be considered approved for purposes of subsection e.(2) unless between the date of transmittal and the end of the first period of sixty calendar days of continuous session of Congress after the date on which such action is transmitted to the Senate, the Senate passes a resolution described in paragraph (6) c. this subsection.

(5) For the purpose of paragraph (') of this subsection --

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day calendar period.

(6)(A) This paragraph is enacted --

(i) As an exercise of the rulemaking power of the Senate and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions described by subparagraph (B) and it supersedes other rules only to the extent that it is inconsistent therewith; and

(ii) with full recognition of the constitutional right of the Senate to change the rules at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(B) For purposes of this paragraph, the term "resolution" means only a joint resolution of the Congress the matter after the resolving clause of which is as follows: "That the \_\_\_\_\_ approves the compensation plan numbered \_\_\_\_\_ submitted to the Congress on \_\_\_\_\_, 19 \_\_\_\_", the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one compensation plan.

(C) A resolution once introduced with respect to a compensation plan shall immediately be referred to a committee (and all resolutions with respect to the same compensation plan shall be referred to the same committee) by the President of the Senate.

(D)(i) If the committee of the Senate to which a resolution with respect to a compensation plan has been referred has not reported it

at the end of twenty calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration with respect to such compensation plan which has been referred to the committee.

(ii) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same compensation plan), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(iii) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same compensation plan.

(E)(i) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(ii) Debate on the resolution referred to in clause (i) of this subparagraph shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(F)(i) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution or motions to proceed to the consideration of other business, shall be decided without debate.

(ii) Appeals from the decision of the Chair relating to the application of the rules of the Senate to the procedures relating to a resolution shall be decided without debate.

j. CONTRACTS IN ADVANCE OF APPROPRIATIONS.-- In administering the provisions of this section, the Commission or the Secretary, as appropriate, may make contracts in advance of appropriations and incur obligations without regard to sections 1341, 1342, 1349, 1350, and 1351, and subchapter II of chapter 15, of title 31, United States Code [~~section 3679 of the Revised Statutes, as amended~~].

k. EXEMPTION FROM FINANCIAL PROTECTION REQUIREMENT FOR NONPROFIT EDUCATIONAL INSTITUTIONS.-- With respect to any license issued pursuant to section 53, 63, 81, 104a., or 104c. for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection [170] a. With respect to licenses issued between August 30, 1954, and August 1, 2002, [~~1987~~] for which the Commission grants such exemption:

(1) 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 indemnity for all persons indemnified in connection with each nuclear incident shall not exceed \$500,000,000, [~~excluding cost of investigating and settling claims and defending suits for damage~~] including such legal costs of the licensee as are approved by the Commission;

(2) 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

(3) 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.

Any licensee may waive an exemption to which it is entitled under this subsection. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 2002, [1987] the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 2002 [1987].

[1-The-Commission-is-authorized-until-August-1-1977-to-enter-into-an agreement-of-indemnification-with-any-person-engaged-in-the-design-development, construction, operation, repair, and maintenance or use of the nuclear-powered ship authorized by section 716 of the Merchant Marine Act, 1936, and designated the "nuclear ship Savannah"--in-any-such-agreement-of-indemnification the Commission may require such person to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising from a nuclear incident in connection with such design, development, construction, operation, repair, maintenance or use and shall indemnify the person indemnified against such claims above the amount of the financial protection required, in the amount of \$500,000,000 excluding costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with each nuclear incident--Provided, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed \$60,000,000.]

1. PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS.-- (1) Not later than 90 days after the date of the enactment of the Price-Anderson Amendments Act of 1988, the President shall establish a commission (in this



subsection referred to as the "study commission") in accordance with the Federal Emergency Committee Act (5 U.S.C. App.) to study means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under subsection e.(1) --

(2)(A) The study commission shall consist of not less than 7 and not more than 11 members, who --

(i) shall be appointed by the President; and

(ii) shall be representative of a broad range of views and interests.

(B) The members of the study commission shall be appointed in a manner that ensures that not more than a mere majority of the members are of the same political party.

(C) Each member of the study commission shall hold office until the termination of the study commission, but may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(D) Any vacancy in the study commission shall be filled in the manner in which the original appointment was made.

(E) The President shall designate 1 of the members of the study commission as chairperson, to serve at the pleasure of the President.

(3) The study commission shall conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under subsection e.(1), and shall submit to the Congress a final report setting forth --

(A) recommendations for any changes in the laws and rules governing the liability or civil procedures that are necessary for the equitable, prompt, and efficient resolution and payment of all valid damage claims, including the advisability of adjudicating public liability claims through an administrative agency instead of the judicial system;

(B) recommendations for any standards or procedures that are necessary to establish priorities for the hearing, resolution, and payment of claims when awards are likely to exceed the amount of funds available within a specific time period; and

(C) recommendations for any special standards or procedures necessary to decide and pay claims for latent injuries caused by the nuclear incident.

(4)(A) The chairperson of the study commission may appoint and fix the compensation of a staff of such persons as may be necessary to discharge the responsibilities of the study commission, subject to the applicable provisions of the Federal Advisory Committee Act (5 U.S.C. App.) and title 5, United States Code.

(B) To the extent permitted by law and requested by the chairperson of the study commission, the Administrator of General Services shall provide the study commission with necessary administrative services, facilities, and support on a reimbursable basis.

(C) The Attorney General, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency shall, to the extent permitted by law and subject to the availability of funds, provide the study commission with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the study commission.

(D) The study commission may request any Executive agency to furnish such information, advice, or assistance as it determines to be necessary to carry out its functions. Each such agency is directed, to the extent permitted by law, to furnish such information, advice or assistance upon request by the chairperson of the study commission.

(E) Each member of the study commission may receive compensation at the maximum rate prescribed by the Federal Advisory Committee Act (5 U.S.C. App.) for each day such member is engaged in the work of the study commission. Each member may also receive travel expenses, including per diem in lieu of subsistence under sections 5702 and 5703 of title 5, United States Code.

(F) The functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.) that are applicable to the study commission, except the function of reporting annually to the Congress, shall be performed by the Administrator of General Services.

(5) The final report required in paragraph (3) shall be submitted to the Congress not later than the expiration of the 2-year period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1988.

(6) The study commission shall terminate upon the expiration of the

2-month period beginning on the date on which the final report required in paragraph (3) is submitted.

m. COORDINATED PROCEDURES FOR PROMPT SETTLEMENT OF CLAIMS AND EMERGENCY ASSISTANCE.-- The Commission or the Secretary, as appropriate, is authorized to enter into agreements with other indemnitors to establish coordinated procedures for the prompt handling, investigation, and settlement of claims for public liability. The Commission or the Secretary, as appropriate, and other indemnitors may make payments to, or for the aid of, claimants for the purpose of providing immediate assistance following a nuclear incident. Any funds appropriated to the Commission or the Secretary, as appropriate, shall be available for such payments. Such payments may be made without securing releases, shall not constitute an admission of the liability of any person indemnified or of any indemnitor, and shall operate as a satisfaction to the extent thereof of any final settlement or judgment.

n. WAIVER OF DEFENSES AND JUDICIAL PROCEDURES.-- (1) With respect to any extraordinary nuclear occurrence to which an insurance policy or contract furnished as proof of financial protection or an indemnity agreement applies and which --

(A) [~~it~~] arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility, [~~or~~]

(B) [~~it~~] arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from a production or utilization facility, [~~or~~]

(C) [~~it~~] during the course of the contract activity arises out of or results from the possession, operation, or use by a [~~Commission~~] Department of Energy contractor or subcontractor of a device utilizing special nuclear material or byproduct material,

(D) arises out of, results from, or occurs in the course of, the construction, possession, or operation of any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition



of the license a requirement that the licensee have and maintain financial protection under subsection a.,

(E) arises out of, results from, or occurs in the course of, transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a., or

(F) arises out of, results from, or occurs in the course of nuclear waste activities.

the Commission or the Secretary, as appropriate, may incorporate provisions in indemnity agreements with licensees and contractors under this section, and may require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, which waive (i) any issue or defense as to conduct of the claimant or fault of persons indemnified, (ii) any issue or defense as to charitable or governmental immunity, and (iii) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof [~~but in no event more than twenty years after the date of the nuclear incident~~]. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. When so incorporated, such waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified. Such waivers shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages, nor shall such waivers apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant. The waivers authorized in this subsection shall, as to indemnitors, be effective only with respect to those obligations set forth in the insurance policies or the contracts furnished as proof of financial protection and in the indemnity agreements. Such waivers shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection

afforded under (i) the terms of insurance policies or contracts furnished as proof of financial protection, or indemnity agreements, and (ii) the limit of liability provisions of subsection [170] e.

(2) With respect to any public liability action arising out of or resulting from a nuclear incident [an-extraordinary-nuclear-occurrence], the United States district court in the district where the nuclear incident [the-extraordinary-nuclear-occurrence] takes place, or in the case of a nuclear incident [an-extraordinary-nuclear-occurrence] taking place outside the United States, the United States District Court for the District of Columbia, shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant or of the Commission or the Secretary, as appropriate, any such action pending in any State court (including any such action pending on the date of the enactment of the Price-Anderson Amendments Act of 1988) or United States district court shall be removed or transferred to the United States district court having venue under this subsection. Process of such district court shall be effective throughout the United States. In any action that is or becomes removable pursuant to this paragraph, a petition for removal shall be filed within the period provided in section 1446 of title 28, United States Code, or within the 30-day period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1988, whichever occurs later.

(3)(A) Following any nuclear incident, the chief judge of the United States district court having jurisdiction under paragraph (2) with respect to public liability actions (or the judicial council of the judicial circuit in which the nuclear incident occurs) may appoint a special caseload management panel (in this paragraph referred to as the "management panel") to coordinate and assign (but not necessarily hear themselves) cases arising out of the nuclear incident, if --

(i) a court, acting pursuant to subsection c., determines that the aggregate amount of public liability is likely to exceed the amount of primary financial protection available under subsection b. (or an equivalent amount in the case of a contractor indemnified under subsection d.);  
or

(ii) the chief judge of the United States district court (or the judicial council of the judicial circuit) determines that cases arising out of the nuclear incident will have an unusual impact on the work of the court.

(B)(i) Each management panel shall consist only of members who are United States district judges or circuit judges.

(ii) Members of a management panel may include any United States district judge or circuit judge of another district court or court of appeals, if the chief judge of such other district court or court of appeals consents to such assignment.

(C) It shall be the function of each management panel --

(i) to consolidate related or similar claims for hearing or trial;

(ii) to establish priorities for the handling of different classes of cases;

(iii) to assign cases to a particular judge or special master;

(iv) to appoint masters to hear particular types of cases, or particular elements or procedural steps of cases;

(v) to promulgate special rules of court, not inconsistent with the Federal Rules of Civil Procedure, to expedite cases or allow some equitable consideration of claims;

(vi) to implement such other measures, consistent with existing law and the Federal Rules of Civil Procedure, as will encourage the equitable, prompt, and efficient resolution of cases arising out of the nuclear incident; and

(vii) to assemble and submit to the President such data, available to the court, as may be useful in estimating the aggregate damages from the nuclear incident.

o. PLAN FOR DISTRIBUTION OF FUNDS.— Whenever the United States district court in the district where a nuclear incident occurs, or the United States District Court for the District of Columbia in case of a nuclear incident occurring outside the United States, determines upon the petition of any indemnitor or other interested person that public liability from a single

nuclear incident may exceed the limit of liability under the applicable limit of liability under subparagraph (A), (B), or (C) of subsection [170] e.(1):

(A) [(1)] Total payments made by or for all indemnitors as a result of such nuclear incident shall not exceed 15 per centum of such limit of liability without the prior approval of such court;

(B) [(2)] The court shall not authorize payments in excess of 15 per centum of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pursuant to [subparagraph (3) of this subsection (e)] subparagraph (C); and

(C) [(3)] The Commission or the Secretary, as appropriate, shall, and any other indemnitor or other interested person may, submit to such district court a plan for the disposition of pending claims and for the distribution of remaining funds available. Such a plan shall include an allocation of appropriate amounts for personal injury claims, property damage claims, and possible latent injury claims which may not be discovered until a later time and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds. Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission or the Secretary, as appropriate, any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States.

[(4)-the-Commission-shall, within ninety days after a court shall have made such determination, deliver to the Joint Committee a supplement to

~~the report prepared in accordance with subsection 170-4, of this Act setting forth the estimated requirements for full compensation and relief of all claimants, and recommendations as to the relief to be provided.]~~

(D) A court may authorize payment of only such legal costs as are permitted under paragraph (2) from the amount of financial protection required by subsection b.

(E) If the sum of public liability claims and legal costs authorized under paragraph (2) arising from any nuclear incident exceeds the maximum amount of financial protection required under subsection b., any licensee required to pay a standard deferred premium under subsection b.(1) shall, in addition to such deferred premium, be charged such an amount as is necessary to pay a pro rata share of such claims and costs, but in no case more than 5 percent of the maximum amount of such standard deferred premium described in such subsection.

(2) A court may authorize the payment of legal costs under paragraph (1)(D) only if the person requesting such payment has --

(A) submitted to the court the amount of such payment requested; and

(B) demonstrated to the court --

(i) that such costs are reasonable and equitable; and

(ii) that such person has --

(I) litigated in good faith;

(II) avoided unnecessary duplication of effort with that of other parties similarly situated;

(III) not made frivolous claims or defenses; and

(IV) not attempted to unreasonably delay the prompt settlement or adjudication of such claims.

p. REPORTS TO CONGRESS.-- (1) The Commission and the Secretary shall submit to the Congress by August 1, 1998, [1983,-a] detailed reports concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.



(2) Not later than April 1 of each year, the Commission and the Secretary shall each submit an annual report to the Congress setting forth the activities under this section during the preceding calendar year.

g. LIMITATION ON AWARDING OF PRECAUTIONARY EVACUATION COSTS.-- No court may award costs of a precautionary evacuation unless such costs constitute a public liability.

r. LIMITATION OF LIABILITY OF LESSORS.-- No person under a bona fide lease of any utilization or production facility (or part thereof or undivided interest therein) shall be liable by reason of an interest as lessor of such production or utilization facility, for any legal liability arising out of or resulting from a nuclear incident resulting from such facility, unless such facility is in the actual possession and control of such person at the time of the nuclear incident giving rise to such legal liability.

s. LIMITATION ON PUNITIVE DAMAGES.-- No court may award punitive damages in any action with respect to a nuclear incident or precautionary evacuation against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident or evacuation.

t. INFLATION ADJUSTMENT.-- (1) The Commission shall adjust the amount of the maximum standard deferred premium under subsection b.(1) not less than once during each 5-year period following the date of the enactment of the Price-Anderson Amendments Act of 1988, in accordance with the aggregate percentage change in the Consumer Price Index since --

(A) such date of enactment, in the case of the first adjustment under this subsection; or

(B) the previous adjustment under this subsection.

(2) For purposes of this subsection, the term "Consumer Price Index" means the Consumer Price Index for all urban consumers published by the Secretary of Labor.