107TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 107–299
Part 1

PRICE-ANDERSON REAUTHORIZATION ACT OF 2001

NOVEMBER 19, 2001.—Ordered to be printed

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

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 2983]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2983) to extend indemnification authority under section 170 of the Atomic Energy Act of 1954, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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99–006

AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Price-Anderson Reauthorization Act of 2001".

SEC. 2. EXTENSION OF INDEMNIFICATION AUTHORITY.

(a) INDEMNIFICATION OF NUCLEAR REGULATORY COMMISSION LICENSEES.—Section 170 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(c)) is amended—

(1) in the subsection heading, by striking "LICENSES" and inserting "LICENSEES"; and

(2) by striking "August 1, 2002" each place it appears and inserting "August 1, 2017".

(b) INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.—Section 170 d.(1)(A) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by striking "August 1, 2002" and inserting "August 1, 2017".

(c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL INSTITUTIONS.—Section 170 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(k)) is amended by striking "August 1, 2002" each place it appears and inserting "August 1, 2017".

SEC. 3. MAXIMUM ASSESSMENT.

Section 170 b.(1) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)(1)) is amended—

(1) in the second proviso of the third sentence—

(A) by striking "$63,000,000" and inserting "$94,000,000"; and

(B) by striking "$10,000,000 in any 1 year" and inserting "$15,000,000 in any 1 year (subject to adjustment for inflation under subsection t.)"; and

(2) in subsection t.—

(A) by inserting "total and annual" after "amount of the maximum";

(B) by striking "the date of the enactment of the Price-Anderson Amendments Act of 1988" and inserting "July 1, 2001"; and

(C) by striking "such date of enactment" and inserting "July 1, 2001".

SEC. 4. DEPARTMENT OF ENERGY LIABILITY LIMIT.

(a) INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.—Section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended by striking paragraph (2) and inserting the following:

"(2) INDEMNIFICATION AGREEMENTS.—In an agreement of indemnification entered into under paragraph (1), the Secretary—

"(A) may require the contractor to provide and maintain the financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity; and

"(B) shall indemnify the persons indemnified against such liability above the amount of the financial protection required, in the amount of $10,000,000,000 (subject to adjustment for inflation under subsection t.), in the aggregate, for all persons indemnified in connection with the contract and for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.".

(b) CONTRACT AMENDMENTS.—Section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended by striking paragraph (3) and inserting the following:

"(3) CONTRACT AMENDMENTS.—All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person under this section shall be deemed to be amended, on the date of enactment of the Price-Anderson Reauthorization Act of 2001, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection.".

(c) LIABILITY LIMIT.—Section 170 e.(1)(B) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(1)(B)) is amended—

(1) by striking "the maximum amount of financial protection required under subsection b. or"; and

(2) by striking "paragraph (3) of subsection d., whichever amount is more" and inserting "paragraph (2) of subsection d.".

SEC. 5. INCIDENTS OUTSIDE THE UNITED STATES.

(a) AMOUNT OF INDEMNIFICATION.—Section 170 d.(5) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(5)) is amended by striking "$100,000,000" and inserting "$500,000,000".

(b) LIABILITY LIMIT.—Section 170 e.(4) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is amended by striking "$100,000,000" and inserting "$500,000,000".

SEC. 6. REPORTS.

Section 170 p. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) is amended by striking "August 1, 1998" and inserting "August 1, 2013".

SEC. 7. INFLATION ADJUSTMENT.

Section 170 t. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(t)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by adding after paragraph (1) the following:

"(2) ADJUSTMENT.—The Secretary shall adjust the amount of indemnification provided under an agreement of indemnification under subsection d. not less than once during each 5-year period following July 1, 2001, in accordance with the aggregate percentage change in the Consumer Price Index since—

"(A) that date, in the case of the first adjustment under this paragraph; or

"(B) the previous adjustment under this paragraph.".

SEC. 8. PRICE-ANDERSON TREATMENT OF MODULAR REACTORS.

Section 170 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) is amended by adding at the end the following new paragraph:

"(5)(A) For purposes of this section only, the Commission shall consider a combination of facilities described in subparagraph (B) to be a single facility having a rated capacity of 100,000 electrical kilowatts or more.

"(B) A combination of facilities referred to in subparagraph (A) is 2 or more facilities located at a single site, each of which has a rated capacity of 100,000 electrical kilowatts or more but not more than 300,000 electrical kilowatts, with a combined rated capacity of not more than 1,300,000 electrical kilowatts.".

SEC. 9. APPLICABILITY.

The amendments made by sections 3, 4, and 5 do not apply to a nuclear incident that occurs before the date of enactment of this Act.

SEC. 10. PROHIBITION ON ASSUMPTION BY UNITED STATES GOVERNMENT OF LIABILITY FOR CERTAIN FOREIGN ACCIDENTS.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended by adding at the end the following new subsection:

"u. PROHIBITION ON ASSUMPTION OF LIABILITY FOR CERTAIN FOREIGN ACCIDENTS.—Notwithstanding this section or any other provision of law, no officer of the United States or of any department, agency, or instrumentality of the United States Government may enter into any contract or other arrangement, or into any amendment or modification of a contract or other arrangement, the purpose or effect of which would be to directly or indirectly impose liability on the United States Government, or any department, agency, or instrumentality of the United States Government, or to otherwise directly or indirectly require an indemnity by the United States Government, for nuclear accidents occurring in any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which, as of September 11, 2001, had been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961, section 6(j)(1) of the Export Administration Act of 1979, or section 40(d) of the Arms Export Control Act to have repeatedly provided support for acts of international terrorism).".

SEC. 11. TRANSPORTATION OF NUCLEAR MATERIALS.

(a) AMENDMENT.—Chapter 14 of the Atomic Energy Act of 1954 (42 U.S.C. 2201–2210b) is amended by adding at the end the following new section:

"SEC. 170C. TRANSPORTATION OF NUCLEAR MATERIALS.—

"a. The Nuclear Regulatory Commission shall establish a system to ensure that—

"(1) with respect to activities by any party pursuant to a license issued under this Act, each vehicle transporting materials described in subsection b. in the United States—

"(A) from a facility licensed by the Nuclear Regulatory Commission;

"(B) from a facility licensed by an agreement State; or

"(C) from a country with whom the United States has an agreement for cooperation under section 123,

carries a manifest describing the type and amount of materials being transported;

"(2) each individual driving or traveling with such a vehicle has been subject to a security background check by appropriate Federal entities; and

"(3) no such vehicle transports such materials to a destination other than a facility licensed by the Nuclear Regulatory Commission or an agreement State under this Act or other appropriate Federal facility, or to a destination outside the United States in a country with whom the United States has an agreement for cooperation under section 123.

"b. Except as otherwise provided by the Commission by regulation, the materials referred to in subsection a.(1) are byproduct materials, source materials, special nuclear materials, high-level radioactive waste, spent nuclear fuel, transuranic waste, and low-level radioactive waste (as defined in section 2(16) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(16)))."

(b) REGULATIONS.—Not later than 1 year after the date of the enactment of this Act, and from time to time thereafter as it considers necessary, the Nuclear Regulatory Commission shall issue regulations identifying radioactive materials that, consistent with the protection of public health and safety and the common defense and security, are appropriate exceptions to the transportation requirements of section 170C of the Atomic Energy Act of 1954, as added by subsection (a) of this section.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect upon the issuance of regulations under subsection (b).

(d) TABLE OF SECTIONS AMENDMENT.—The table of sections for chapter 14 of the Atomic Energy Act of 1954 is amended by adding at the end the following new item:
"Sec. 170C. Transportation of nuclear materials.".

SEC. 12. NUCLEAR FACILITY THREATS.

(a) STUDY.—The President, in consultation with the Nuclear Regulatory Commission and other appropriate Federal, State, and local agencies and private entities, shall conduct a study to identify the types of threats that pose an appreciable risk to the security of the various classes of facilities licensed by the Nuclear Regulatory Commission under the Atomic Energy Act of 1954. Such study shall take into account, but not be limited to—

(1) the events of September 11, 2001;

(2) an assessment of physical, cyber, biochemical, and other terrorist threats;

(3) the potential for attack on facilities by multiple coordinated teams of a large number of individuals;

(4) the potential for assistance in an attack from several persons employed at the facility;

(5) the potential for suicide attacks;

(6) the potential for water-based and air-based threats;

(7) the potential use of explosive devices of considerable size and other modern weaponry;

(8) the potential for attacks by persons with a sophisticated knowledge of facility operations;

(9) the potential for fires, especially fires of long duration; and

(10) the potential for attacks on spent fuel shipments by multiple coordinated teams of a large number of individuals.

(b) SUMMARY AND CLASSIFICATION REPORT.—Not later than 180 days after the date of the enactment of this Act, the President, shall transmit to the Congress and the Nuclear Regulatory Commission a report—

(1) summarizing the types of threats identified under subsection (a); and

(2) classifying each type of threat identified under subsection (a), in accordance with existing laws and regulations, as either—

(A) involving attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person, or otherwise falling under the responsibilities of the Federal Government; or

(B) involving the type of risks that Nuclear Regulatory Commission licensees should be responsible for guarding against.

(c) FEDERAL ACTION REPORT.—Not later than 90 days after the date on which a report is transmitted under subsection (b), the President, shall transmit to the Congress a report on actions taken, or to be taken, to address the types of threats identified under subsection (b)(2)(A). Such report may include a classified annex as appropriate.

(d) REGULATIONS.—Not later than 270 days after the date on which a report is transmitted under subsection (b), the Nuclear Regulatory Commission shall issue regulations, including changes to the design basis threat, to ensure that licensees address the threats identified under subsection (b)(2)(B).

(e) PHYSICAL SECURITY PROGRAM.—The Nuclear Regulatory Commission shall establish an operational safeguards response evaluation program that ensures that the physical protection capability and operational safeguards response for sensitive nuclear facilities, as determined by the Commission consistent with the protection

of public health and the common defense and security, shall be tested periodically through Commission approved or designed, observed, and evaluated force-on-force exercises to determine whether the ability to defeat the design basis threat is being maintained. For purposes of this subsection, the term "sensitive nuclear facilities" includes at a minimum commercial nuclear power plants, including associated spent fuel storage facilities, spent fuel storage pools and dry cask storage at closed reactors, independent spent fuel storage facilities and geologic repository operations areas, category I fuel cycle facilities, and gaseous diffusion plants.

(f) CONTROL OF INFORMATION.—In carrying out this section, the President and the Nuclear Regulatory Commission shall control the dissemination of restricted data, safeguards information, and other classified national security information in a manner so as to ensure the common defense and security, consistent with chapter 12 of the Atomic Energy Act of 1954.

SEC. 13. INDUSTRIAL SAFETY RULES FOR DEPARTMENT OF ENERGY NUCLEAR FACILITIES.

Section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended by adding at the end the following new paragraph:

"(8)(A) It shall be a condition of any agreement of indemnification entered into under this subsection that the indemnified party comply with regulations issued under this paragraph.

"(B) Not later than 180 days after the date of the enactment of this paragraph, the Secretary shall issue industrial health and safety regulations that shall apply to all Department of Energy contractors and subcontractors who are covered under agreements entered into under this subsection for operations at Department of Energy nuclear facilities. Such regulations shall provide a level of protection of worker health and safety that is substantially equivalent to or identical to that provided by the industrial and construction safety regulations of the Occupational Safety and Health Administration (29 CFR 1910 and 1926), and shall establish civil penalties for violation thereof that are substantially equivalent to or identical to the civil penalties applicable to violations of the industrial and construction safety regulations of the Occupational Safety and Health Administration. The Secretary shall amend regulations under this subparagraph as necessary.

"(C) Not later than 240 days after the date of the enactment of this paragraph, all agreements described in subparagraph (B), and all contracts and subcontracts for the indemnified contractors and subcontractors, shall be modified to incorporate the requirements of the regulations issued under subparagraph (B). Such modifications shall require compliance with the requirements of the regulations not later than 1 year after the issuance of the regulations.

"(D) Enforcement of regulations issued under subparagraph (B), and inspections required in the course thereof, shall be conducted by the Office of Enforcement of the Office of Environment, Safety, and Health of the Department of Energy. The Secretary shall transmit to the Congress an annual report on the implementation of this subparagraph.".

SEC. 14. UNREASONABLE RISK CONSULTATION.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended by adding at the end the following new subsection:

"v. UNREASONABLE RISK CONSULTATION.—Before entering into an agreement of indemnification under this section with respect to a utilization facility, the Nuclear Regulatory Commission shall consult with the Assistant to the President for Homeland Security (or any successor official) concerning whether the location of the proposed facility and the design of that type of facility ensure that the facility provides for adequate protection of public health and safety if subject to a terrorist attack.".

SEC. 15. FINANCIAL ACCOUNTABILITY.

(a) AMENDMENT.—Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended by adding at the end the following new subsection:

"w. FINANCIAL ACCOUNTABILITY.—(1) Notwithstanding subsection d., the Attorney General may bring an action in the appropriate United States district court to recover from a contractor of the Secretary (or subcontractor or supplier of such contractor) amounts paid by the Federal Government under an agreement of indemnification under subsection d. for public liability resulting from conduct which constitutes intentional misconduct of any corporate officer, manager, or superintendent of such contractor (or subcontractor or supplier of such contractor).

"(2) The Attorney General may recover under paragraph (1) an amount not to exceed the amount of the profit derived by the defendant from the contract.

"(3) No amount recovered from any contractor (or subcontractor or supplier of such contractor) under paragraph (1) may be reimbursed directly or indirectly by the Department of Energy.

"(4) Paragraph (1) shall not apply to any nonprofit entity conducting activities under contract for the Secretary.

"(5) No waiver of a defense required under this section shall prevent a defendant from asserting such defense in an action brought under this subsection.

"(6) The Secretary shall, by rule, define the terms 'profit' and 'nonprofit entity' for purposes of this subsection. Such rulemaking shall be completed not later than 180 days after the date of the enactment of this subsection.".

(b) EFFECTIVE DATE.—The amendment made by this section shall not apply to any agreement of indemnification entered into under section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) before the date of the enactment of this Act.

SEC. 16. CIVIL PENALTIES.

(a) REPEAL OF AUTOMATIC REMISSION.—Section 234A b. (2) of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(b)(2)) is amended by striking the last sentence.

(b) LIMITATION FOR NONPROFIT INSTITUTIONS.—Subsection d. of section 234A of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(d)) is amended to read as follows:

"d. Notwithstanding subsection a., a contractor, subcontractor, or supplier described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code shall not be subject to a civil penalty for a violation under subsection a. in excess of the amount of any discretionary fee paid to such contractor, subcontractor, or supplier under the contract under which such violation occurs.".

(c) EFFECTIVE DATE.—The amendments made by this Act shall not apply to any violation of the Atomic Energy Act of 1954 occurring under a contract entered into before the date of the enactment of this Act.

PURPOSE AND SUMMARY

The purpose of H.R. 2983, the Price-Anderson Reauthorization Act of 2001, is to reauthorize the authorities under the Act for a term of fifteen years. The legislation also contains provisions dealing with nuclear security and other miscellaneous matters.

BACKGROUND AND NEED FOR LEGISLATION

Enacted in 1957 to encourage the development of the nuclear industry, the Price-Anderson Act (PAA) provides for compensation of injured parties in the event of a nuclear accident and sets a maximum liability amount per accident. The Act requires Nuclear Regulatory Commission (NRC) licensees to maintain financial protection to cover public liability claims resulting from a nuclear incident. PAA also requires indemnification of companies engaged in Department of Energy (DOE) contractual activity that involves the risk of a nuclear incident.

With respect to the nuclear power industry, the PAA requires that reactor operators obtain primary financial protection equal to the maximum amount of available liability insurance from private insurance markets. Currently, American Nuclear Insurers (ANI) offers $200 million in insurance coverage per reactor, per incident. For losses that exceed the $200 million primary insurance limit, the Act requires that all nuclear operators participate in a retrospective rating program (using each operator's own funds) set at $88 million per reactor, per incident. Thus, the total amount of financial protection available for a nuclear incident is approximately $9.5 billion—$200 million in primary insurance, plus $88 million for each of the 106 reactors participating in the program. The reactor operators are indemnified for any financial liability that exceeds $9.5 billion. Should liability exceed this amount, the Act anticipates Congress would provide additional funds.

With respect to DOE contractors that engage in nuclear activities, the Act requires that the Department fully indemnify claims for public liability up to the maximum liability amount of $9.5 bil-

lion, except that the Secretary may also require that a contractor provide an appropriate level of financial protection.

All existing NRC-licensed nuclear reactors "grandfathered" under Price-Anderson, and protections under the Act continue regardless of whether reauthorization occurs before August of 2002. However, new nuclear plants seeking NRC licenses after August 2002 will not receive PAA protections until reauthorization occurs. Similarly, without reauthorization, PAA protections will not be available for new DOE contracts after August 2002, and coverage will expire for current DOE contractors when existing contracts expire after August 2002. Pursuant to the 1988 amendments, DOE and NRC were required to provide reports to Congress concerning the need for continuation or modifications of the PAA.

HEARINGS

The Subcommittee on Energy and Air Quality held a hearing on Tuesday, March 27, 2001, on National Energy Policy: Nuclear Energy. The Subcommittee received testimony from: Anna Aurilio, Legislative Director, U.S. PIRG; Senator Pete V. Domenici of New Mexico; C. Randy Hutchinson, Senior Vice President, Business Development, Entergy Nuclear, on behalf of: the Nuclear Energy Institute; Mary J. Hutzler, Director, Office of Integrated Analysis and Forecasting, Energy Information Administration; John R. Longenecker, Longenecker & Associates, Inc., Management Consultants; William D. Magwood, Director, Office of Nuclear Energy, Science and Technology, U.S. Department of Energy; Edward F. Sproat, III, Vice President of International Programs, Exelon Corporation; Alfred C. Tollison, Jr., Executive Vice President, Institute of Nuclear Power Operations; Dr. William D. Travers, Executive Director for Operations, U.S. Nuclear Regulatory Commission.

The Subcommittee on Energy and Air Quality held a hearing on Wednesday, June 27, 2001, on Hydroelectric Relicensing and Nuclear Energy. The Subcommittee received testimony from: Anna Aurilio, Legislative Director, U.S. PIRG; The Honorable Richard Meserve, Chairman, U.S. Nuclear Regulatory Commission; Mr. William Magwood, Director, Office of Nuclear Energy, Science and Technology, U.S. Department of Energy; Mr. Marvin Fertel, Senior Vice President of Business Operations, Nuclear Energy Institute; Mr. Jack Skolds, Chief Operating Officer, Exelon Nuclear; Mr. George Davis, Director of Government Programs, Nuclear Systems, Westinghouse Electric Company; Mr. Laurence Parme, General Atomics; Dr. E. Womack, President, BMX Technology, Inc, on behalf of: Energy Contractors Price Anderson Group; Mr. John Quattrocchi, Senior Vice President of Underwriting, American Nuclear Insurers; Mr. Ronald Shems, Attorney, Shems, Dunkiel PLLC, on behalf of: Vermont Agency of Natural Resources; The Honorable Curtis Hebert, Chairman, Federal Energy Regulatory Commission, Accompanied by: Mr. J. Mark Robinson, Director, Office of Energy Projects, Ms. Kristina Nygaard, Associate Counsel for Energy Projects, Office of General Counsel; Mr. Barry Hill, Director, Government Accounting Office, accompanied by: Mr. Charles S. Cotton, Assistant Director, Ms. Erin Barlow, Senior Analyst, Natural Resources and Environment; Mr. John Prescott, Vice President of Generation, Idaho Power Company; Ms. S. Birnbaum, Director of Government Affairs, American Rivers.

The Subcommittee on Energy and Air Quality held a hearing on Thursday, September 6, 2001, on the Reauthorization of the Price-Anderson Act. The Subcommittee received testimony from: The Honorable Francis Blake, Deputy Secretary, U.S. Department on Energy.

COMMITTEE CONSIDERATION

On Thursday, October 4, 2001, the Subcommittee on Energy and Air Quality met in open markup session and approved H.R. 2983, The Price-Anderson Reauthorization Act of 2001, for full committee consideration, as amended, by a voice vote. On Wednesday, October 31, 2001, the full committee met in open markup session and favorably ordered reported H.R. 2983, as amended, by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following record votes were taken in connection with ordering H.R. 2983 reported. A motion by Mr. Tauzin to order H.R. 2983 reported to the House, as amended, was agreed to by a voice vote.

COMMITTEE ON ENERGY AND COMMERCE -- 107TH CONGRESS
ROLL CALL VOTE # 23

BILL: H.R. 2983, The Price-Anderson Reauthorization Act of 2001

AMENDMENT: An amendment by Mr. Markey, #7, to require a utilization facility to provide evidence to the Nuclear Regulatory Commission that it has sought insurance coverage from the private insurance market to cover the risk of nuclear accidents, and has been denied such coverage.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 5 yeas to 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell		X	
Mr. Bilirakis		X		Mr. Waxman			
Mr. Barton		X		Mr. Markey	X		
Mr. Upton				Mr. Hall			
Mr. Stearns		X		Mr. Boucher			
Mr. Gillmor				Mr. Towns		X	
Mr. Greenwood		X		Mr. Pallone			
Mr. Cox				Mr. Brown			
Mr. Deal				Mr. Gordon		X	
Mr. Largent		X		Mr. Deutsch		X	
Mr. Burr		X		Mr. Rush		X	
Mr. Whitfield				Ms. Eshoo			
Mr. Ganske				Mr. Stupak			
Mr. Norwood				Mr. Engel		X	
Mrs. Cubin				Mr. Sawyer		X	
Mr. Shimkus		X		Mr. Wynn		X	
Mrs. Wilson		X		Mr. Green		X	
Mr. Shadegg		X		Ms. McCarthy	X		
Mr. Pickering				Mr. Strickland		X	
Mr. Fossella				Ms. DeGette			
Mr. Blunt				Mr. Barrett		X	
Mr. Davis				Mr. Luther	X		
Mr. Bryant		X		Ms. Capps	X		
Mr. Ehrlich		X		Mr. Doyle		X	
Mr. Buyer		X		Mr. John			
Mr. Radanovich		X		Ms. Harman	X		
Mr. Bass		X					
Mr. Pitts							
Ms. Bono		X					
Mr. Walden		X					
Mr. Terry							

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held oversight hearings and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 2983 is to reauthorize the Price-Anderson Act indemnification authority until August 1, 2017.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2983, the Price-Anderson Reauthorization Act of 2001, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 15, 2001.

Hon. W.J. "BILLY" TAUZIN,
Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2983, the Price-Anderson Reauthorization Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lisa Cash Driskill.

Sincerely,

BARRY B. ANDERSON,
(For Dan L. Crippen, Director.)

Enclosure.

H.R. 2983—Price-Anderson Reauthorization Act of 2001—As ordered reported by the House Committee on Energy and Commerce on October 31, 2001

Summary: H.R. 2983 would make several changes to laws governing nuclear facilities. Specifically, the bill would reauthorize the Price-Anderson Act through August 1, 2017. That act provides a framework for liability coverage in the event of a nuclear accident. H.R. 2983 also would require the Department of Energy (DOE) to

apply health and safety standards that are substantially similar to those imposed by the Occupational Health and Safety Administration (OSHA) at the nuclear facilities it operates. In addition, H.R. 2983 would require the Nuclear Regulatory Commission (NRC) to issue rules relating to enhanced security at nuclear facilities and the transportation of nuclear materials. Last, the bill would establish new civil penalties for noncompliance with health and safety standards and repeal the exemption from paying civil penalties for noncompliance with the Price-Anderson Act by nonprofit DOE contractors.

CBO estimates that the reauthorization of the Price-Anderson Act would have no effect on the federal budget, primarily because any payments by the federal government in connection with a nuclear accident would require additional legislation (i.e., Price-Anderson does not automatically trigger any such potential payments).

Assuming the availability of appropriated funds, we estimate that implementing H.R. 2983 would cost $3 million over the 2002–2006 period, for new health and safety regulations and inspectors at DOE. Because the NRC is authorized to offset its costs through fees, the net budgetary effects for studies relating to the strengthening security requirements at nuclear facilities and for transportation of nuclear materials would be negligible.

Finally, the bill could result in an increase in governmental receipts if additional civil penalties are collected, so pay-as-you-go procedures would apply to H.R. 2983. CBO estimates, however, that any increase in receipts would be less than $500,000 a year.

H.R. 2983 would impose both intergovernmental and private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA). The bill would increase the cost of existing mandates on NRC licensees by increasing the total and annual retrospective premium that can be assessed under the Price Anderson Act in the event of a nuclear accident. In addition, the bill would authorize the NRC to issue new security regulations for transporting nuclear materials and for operating nuclear facilities.

CBO estimates that the cost of complying with the intergovernmental mandates in the bill would be unlikely to exceed the threshold as defined in UMRA ($56 million in 2001, adjusted annually for inflation). The bill would impose no other costs on state, local, or tribal governments.

The cost to comply with the private-sector mandates imposed by the bill would depend in large part on future actions of the NRC regarding the operation of nuclear facilities. As a result, CBO cannot determine whether the aggregate direct costs to privately owned nuclear facilities of complying with all of the mandates in the bill would exceed the annual threshold specified by UMRA ($113 million in 2001, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2983 is shown in the following table. The costs of this legislation fall within budget functions 270 (energy) and 050 (defense).

Basis of estimate: For this estimate, CBO assumes that H.R. 2983 will be enacted in 2001, and that amounts estimated to be authorized by the bill will be appropriated each year.

Price-Anderson Act reauthorization

H.R. 2983 would reauthorize the Price-Anderson Act through August 1, 2017. That act provides a framework for the structure of liability coverage in the event of a nuclear accident. CBO estimates that its reauthorization would have no effect on the budget. If damages resulting from a nuclear accident exceed the liability coverage established by the Price-Anderson Act (roughly $10 billion under H.R. 2983), the Act requires that the Congress determine how remaining damages would be paid. Options could include additional assessments on the nuclear industry or federal appropriations. These Price Anderson Act provisions apply to both NRC licensees and DOE contractors working at nuclear facilities.

	By fiscal year, in million of dollars				
	2002	2003	2004	2005	2006
CHANGES IN SPENDING SUBJECT TO APPROPRIATION[2]					
Gross NRC Spending:					
Estimate Authorization Level	10	0	0	0	0
Estimated Outlays	7	3	0	0	0
NRC Offsetting Collections:					
Estimated Authorization Level	−10	0	0	0	0
Estimated Outlays	−10	0	0	0	0
DOE Spending for Health and Safety:					
Estimated Authorization Level	1	(1)	(1)	(1)	(1)
Estimated Outlays	1	(1)	(1)	(1)	(1)
Net Changes Under H.R. 2983:					
Estimated Authorization Level	1	(1)	(1)	(1)	(1)
Estimated Outlays	−2	3	(1)	(1)	(1)

[1] Spending of less than $500,000.
[2] Enacting H.R. 2983 could also affect revenues, but by less than $550,000 a year.

The bill would change the level of indemnification for DOE contractors to $10 billion from slightly more than $9 billion in current law. Because DOE reimburses its contractors for property damage and third-party liability claims, this increase to DOE contractor indemnification would not be likely to change any obligations of the federal government to pay claims related to accidents at it facilities. Over the past 13 years, DOE has paid $108 million in claims related to nuclear accidents at its facilities. Those claims arose from DOE activities that occurred starting in the 1950s.

Spending subject to appropriation

H.R. 2983 would require the NRC to study and issue rules relating to nuclear security, and require DOE to apply health and safety standards similar to those imposed by OSHA to the nuclear facilities it operates. CBO estimates that such changes would cost $3 million over the 2002–2006 period, assuming appropriation of the necessary amounts. Additional significant costs could result from applying new health and safety standards at DOE facilities, but the cost to implement projects to correct health and safety problems at DOE facilities could also be incurred under current law.

Nuclear security

H.R. 2983 would require the NRC to conduct a study of the vulnerability of its licensed nuclear facilities to certain threats, and re-

port to the Congress. According to the NRC, the study would require testing the reaction of materials used at nuclear facilities to several types of destructive forces. Based on information from the NRC, CBO estimates that such studies would cost $7 million over the 2002–2003 period.

The bill also would require a rulemaking to update the design basis threat (DBT)—the attack scenario that nuclear facilities must be capable of defeating. Based on information from the NRC, CBO estimates that updating the DBT rule to met the new scenarios outlined in the bill would cost $3 million over the 2002–2003 period. The bill also would require an additional rulemaking to enhance the security of nuclear materials being transported, but based on information from the NRC, CBO expects this effort would not have a significant cost.

Because the NRC has the authority to collect annual charges from its licensees to offset 96 percent of its general fund appropriations in 2002, the net cost of these provisions would be less than $500,000.

Health and safety rules at DOE nuclear facilities

H.R. 2983 would require DOE to issue industrial health and safety regulations that are substantially similar to those required by OSHA and apply those standards to DOE nuclear facilities. Enforcement and inspections of these new standards would be conducted by the Office of Enforcement and Investigation within DOE. Based on information from DOE, we estimate that such a change would cost $3 million over the 2002–2006 period, for issuing new rules and hiring new inspectors.

Contractors at DOE facilities are requested to meet DOE's own health and safety standards, many of which are similar to OSHA standards. According to DOE, however, changing standards may require changes in training protocol, a difference in emphasis on types of safety concerns, and physical modifications to facilities. Because DOE contractors would be able to charge DOE for changes in procedures, any additional costs because of the new regulations would be paid by the federal government, subject to the availability of appropriations.

According to DOE, about 30 of its facilities would be affected by a change in standards. Many DOE facilities do not fully comply with the department's current health and safety standards. In most cases corrective actions have not been taken because sufficient funds have not been allocated to these projects. Changing standards is not likely to significantly change the overall need for health and safety upgrades in many DOE facilities.

Revenues

Enacting H.R. 2983 could result in additional civil penalties for nuclear safety violations at certain DOE facilities and for violations of health and safety regulations that would be required under the bill. CBO estimates that additional penalties would be less than $500,000 a year.

Penalties for nuclear safety violations by nonprofit institutions

H.R. 2983 would repeal the exemption from civil penalties for nuclear safety violations that currently applies to nonprofit institutions operating laboratories for DOE. Under the bill, nonprofit institutions that are operating DOE laboratories would be subject to penalties. According to DOE's Office of Enforcement and Investigation, over the last four years, nonprofit contractors have been assessed $1,843,625 in penalties. All of those penalties have been waived, in accordance with current law. Under H.R. 2983, any future penalties would be paid to the Treasury. Based on penalties that have been assessed in the past, CBO expects that any additional revenues that would be collected under the bill would be less than $500,000 a year.

Penalties for health and safety violations under the Price-Anderson Act

H.R. 2983 would impose civil penalties for noncompliance with the new health and safety standards that would be required under the bill. Such penalties would be required to be substantially similar to OSHA penalties. Based on information from DOE, CBO does not expect the agency would impose significant fines on its contractors, so any additional receipts would be negligible.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that enacting H.R. 2983 would result in changes in governmental receipts of less than $500,000 a year.

Intergovernmental and private-sector impact: H.R. 2983 would impose both intergovernmental and private-sector mandates as defined by UMRA. The bill would increase the cost of existing mandates on NRC licensees by increasing the total and annual retrospective premium that can be assessed in the event of a nuclear accident. In addition, the bill would authorize the NRC to issue new security regulations for transporting nuclear materials and for operating nuclear facilities.

CBO estimates that the cost of complying with the intergovernmental mandates in the bill would be unlikely to exceed the threshold as defined in UMRA ($56 million in 2001, adjusted annually for inflation). The bill would impose no other costs on state, local, or tribal governments.

The cost to comply with the private-sector mandates imposed by the bill would depend in large part on future actions of the NRC regarding the operation of nuclear facilities. CBO therefore cannot determine whether the aggregate direct cost to privately owned nuclear facilities of complying with all of the mandates in the bill would exceed the annual threshold specified by UMRA ($113 million in 2001, adjusted annually for inflation).

Increase in retrospective premium

Under current law, NRC licensees are required to obtain the maximum amount of private insurance available to cover losses in the event of a nuclear incident. If losses exceed the amount of private insurance, each licensee is assessed a charge, known as the retrospective premium, up to a maximum of $84 million, to cover

any shortfall in damage coverage. Charges are assessed in annual amounts until the entire premium is collected.

Section 3 of H.R. 2983 would increase the maximum retrospective premium from $84 million to $94 million, as well as increasing the maximum annual premium from $10 million to $15 million. CBO has determined that raising both the maximum total premium and the annual premium would increase the costs of an existing mandate and would thereby impose intergovernmental and private-sector mandates under UMRA.

Currently, two nuclear power facilities are wholly owned and operated by the state of Nebraska, and a few municipalities own a small percentage of other nuclear facilities. Because so few facilities are publicly owned (less than 5 percent) and because the probability of a nuclear accident resulting in losses exceeding the amount of private insurance coverage is so low, CBO estimates that the costs of complying with that mandate would not be significant over the next five years.

Based upon the low probability of a nuclear accident resulting in losses exceeding the amount of private insurance coverage, CBO estimates that the annual cost to the private sector also would not be substantial over the next five years.

Shipment of nuclear materials

Section 11 of the bill would direct the NRC to issue rules aimed at improving the security of nuclear material shipments. The rules would require federal background checks for individuals transporting nuclear materials, impose restrictions on where such shipments could travel, and require the shipper to carry a manifest detailing the contents. According to the NRC, only a small number of nuclear material shipments are made to and from each nuclear facility per year. Thus, CBO estimates that the costs of this mandate would not be significant.

Upgrading security at nuclear facilities

Section 12 would require the NRC to issue new regulations addressing security threats at facilities licensed by the NRC. NRC's rulemaking would be based upon the results of a nine-month study of facility security and consultation with other federal, state, and local agencies. At this time, the agency could not give any indication as to the scope of the new regulations. Consequently, CBO cannot determine the costs of complying with the new regulations.

Estimate prepared by: Federal Costs: Lisa Cash Driskill, Impact on State, Local, and Tribal Governments: Elyse Goldman, and Impact on the Private Sector: Lauren Marks.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides the short title of the legislation, the Price-Anderson Reauthorization Act of 2001.

Section 2. Extension of indemnification authority

Section 2 authorizes a fifteen year extension of Price-Anderson indemnification authority, to August 1, 2017, for Nuclear Regulatory Commission (NRC) licensees, DOE contractors, and DOE nonprofit educational institutions.

Section 3. Maximum assessment

The 1988 Price Anderson Amendments Act established an inflation adjustment for the $63 million standard deferred premium. However, there was no inflation adjustment requirement for the annual maximum premium assessment, which was set at $10 million. Over time, the effect of not adjusting the $10 million maximum premium assessment for inflation results in a substantially longer payout period in the event of a nuclear accident. The last inflation adjustment on the standard deferred premium was in 1998, which adjusted it to $88 million. The standard deferred premium is currently scheduled to be adjusted again next year. This section adjusts for inflation to July 1, 2001, both the standard deferred premium to $94 million, and the maximum premium assessment to $15 million, based on the Consumer Price Index for all urban consumers (CPI–U). Both will be adjusted for inflation from the July 1, 2001 baseline not less than once every five years.

Section 4. Department of Energy liability limit

This section sets the limitation on aggregate public liability for DOE contractors for a single nuclear incident. Under current law, DOE contractor indemnity and liability provisions are linked to the amount of protection required of nuclear power reactor licensees by setting the amount of DOE contractor indemnity to the amount of protection which is available to nuclear power reactor licensees. This section de-links the DOE contractor provisions for liability and

indemnification from the NRC licensee provisions, and establishes the amount of indemnification of DOE contractors at $10 billion, subject to adjustment for inflation, for all persons indemnified in connection with the contract, and for each nuclear incident.

Section 5. Incidents outside the United States

This section increases the amount of indemnification and liability limit for incidents outside of the United States from $100,000,000 to $500,000,000 for DOE contractors.

Section 6. Reports

The section requires the NRC and DOE, by August 1, 2013, to submit detailed reports to Congress concerning the Price-Anderson Act and related matters, such as the availability of private insurance.

Section 7. Inflation adjustment

This section takes the new July 1, 2001 baseline established in section 3 for the $94 million standard deferred premium and the $15 million maximum annual assessment, and requires an inflation adjustment for both not less than every five years following July 1, 2001.

Section 8. Price-Anderson treatment of modular reactors

Section 8 is intended to encourage the development of a new generation of smaller or "modular" reactors. The Committee received testimony from several companies that are developing modular reactors that may be deployed in groups of as many as ten, and operated from one central control room. The size of known modular reactors designs currently under development generally is expected to be less than 300 megawatts. Exelon Corporation, for instance, expects that its pebble bed modular reactor will operate in the range of 100 to 150 megawatts, and General Atomics provided testimony that its gas turbine modular helium reactor will operate in the range of 250 to 300 megawatts.

This section would allow a combination of two or more modular reactors each with a rated capacity between 100 and 300 megawatts, and built at the same site, to be considered one facility for purposes of indemnification under Section 170. Thus, a combination of such reactors would be assessed only one standard deferred premium, with a cap on the combined rated capacity of 1,300 megawatts. For example, a site with ten 110 megawatt modular reactors, having a combined rated capacity of 1,100 megawatts, would be considered one facility under Section 170. A site with five 300 megawatt reactors, with a combined rated capacity of 1,500 megawatts, would be considered two facilities. This new definition of "facility" in this section applies only for purposes of Section 170 financial protection requirements.

Section 9. Applicability

This section ensures that the amendments made by sections 3, 4, and 5 do not apply to a nuclear incident that occurs before the date of enactment of the Act.

Section 10. Prohibition on assumption by United States Government liability for certain foreign accidents

Section 10 prevents any instrumentality of the United States Government from entering into any arrangement that would impose liability on any instrumentality of the United States Government for nuclear accidents that occur in any country identified by the Secretary of State as a sponsor of terrorist activities, including countries known to have repeatedly provided support for acts of international terrorism.

Section 11. Transportation of nuclear materials

This section directs the Commission to establish a system to ensure that: (1) vehicles transporting certain radioactive materials carry a manifest describing the type and amount of materials being transported; (2) individuals driving or traveling with such vehicles are subject to background checks; and, (3) vehicles transporting such materials must travel to a NRC licensed facility, an appropriate Federal facility, or a country with whom the United States has an agreement for cooperation under section 123. The effective date of the system is delayed until the NRC, not later than one year of enactment, issues regulations identifying, consistent with the protection of public health and safety and the common defense and security, radioactive materials that are appropriate exceptions to the system.

The Committee intends that the rulemaking in this section apply only to the potential for a particular material to be used in a terrorist attack or other destructive act. Accordingly, the Commission need not include within the scope of its rulemaking materials with small quantities of radioactivity that would have little or no impact on public health or safety. The NRC should focus particular attention on identifying radiopharmaceuticals and other medical materials for appropriate exemption from the new requirements, to assure the uninterrupted availability of these materials to patients that need them. Of course, the regulations promulgated pursuant to section 11 are not intended to alter any other applicable rules relating to the proper use, handling, or disposal of any nuclear materials.

Section 12. Nuclear facility threats

Section 12 requires the President to conduct a study to identify the types of threats that pose an appreciable risk to the security of the various classes of NRC-licensed facilities. In preparing the study, the President is to consult with the NRC and other governmental and nongovernmental entities. The study must consider: the events of September 11, 2001; physical, cyber, biochemical, and other terrorist threats; the potential for attack on facilities and spent fuel shipments by multiple coordinated teams of a large number of individuals; the potential for assistance in an attack from several employees at the facility; the potential for suicide attacks; the potential for water-based and air-based threats; the potential use of explosive devices of considerable size and other modern weaponry, the potential for attacks by persons with a sophisticated knowledge of facility operations; and, the potential for fires, especially fires of long duration.

After the study is completed and within 180 days after enactment, the President is to submit a report to Congress and the NRC. The Report must summarize the types of threats identified and must classify each type of threat as either involving attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States or otherwise falling under the responsibilities of the Federal Government, or involving the type of risks that the NRC licensees should be responsible for guarding against.

Following submission of the report, the President is required to transmit a report to Congress within 90 days on actions taken, or to be taken, to address the types of threats identified in the President's report as involving attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States or otherwise falling under the responsibilities of the Federal Government.

The NRC is required to promulgate regulations, including changes to the design basis threat, to ensure that licensees address the threats identified in the President's report as involving the type of risks that the NRC licensees should be responsible for guarding against. The NRC must promulgate such regulations not later than 270 days after the President transmits his initial report to the Commission and Congress.

Section 12(e) is intended to provide statutory direction to the Commission in implementing an operational safeguards response evaluation program. In doing so, the Committee is very concerned that the Commission conduct a rigorous program that will ensure accurate measurements of a facility's ability to defeat design basis threats. The Committee is deeply troubled about reports that terrorists may target domestic nuclear facilities, and envisions a fully developed program as being the first line of defense against any such attacks.

To address these concerns, the language of section 12(e) directs the Commission to take a dominant role in the implementation of force-on-force exercises. The Commission controls the three critical aspects for carrying out tests of operational safeguards: it must either design or approve the design for each force-on-force exercise; it must physically observe the exercises; and, it is the final arbiter on the results of the exercises. The Commission should not serve as a rubber stamp at any step of the way. For instance, to the extent a licensee has devised all or any part of an exercise design, the NRC should scrutinize the design rigorously to ensure that it will provide the information necessary to determine whether a licensee can defeat design basis threats. The Committee contemplates, in particular, that any design approval process would be an iterative, collaborative one, reflecting the work of both a licensee and Commission staff in composing a plan appropriate to the facility involved.

Section 13. Industrial safety rules for Department of Energy nuclear facilities

Section 13 requires DOE to develop regulations including civil penalties, that provide a level of protection of worker health and safety that is substantially equivalent to or identical to that provided by the industrial and construction safety regulations of the

Occupational Health and Safety Administration. These regulations would apply only to contractors and subcontractors who are covered under Price Anderson 170 d. or e. indemnity agreements, and would be effective within 240 days after the date of enactment. This section is not intended to require expensive retrofitting of DOE's decommissioned facilities that are closed and/or scheduled to be torn down. For closed facilities that have alternate uses now or in the future, this section would apply consistent with the intended uses of the facility.

Section 14. Unreasonable risk determination

Section 14 requires the NRC to consult with the Assistant to the President for Homeland Security (or any successor official) concerning whether the location and design of a proposed utilization facility provides for adequate protection of public health and safety if subject to a terrorist attack. The consultation is required before NRC enters into an agreement of indemnification with a utilization facility under Section 170.

Section 15. Financial accountability

Section 15 authorizes the Attorney General to bring an action to recover from a DOE contractor, subcontractor, or supplies amounts paid by the Federal government under a Section 170 indemnity agreement for public liability resulting from conduct which constitutes intentional misconduct of any corporate officer, manager, or superintendent of the DOE contractor, subcontractor, or supplier. The Attorney General, however, may not recover an amount exceeding the amount of profit derived by the defendant under the contract. DOE cannot reimburse the contractor of the amount recovered. This provision does not apply to any nonprofit entity conducting activities under the DOE contract. DOE is required to define the terms "profit" and "nonprofit entity" in a rulemaking to be completed within 180 days after enactment.

Section 16. Civil penalties

Section 16 ends the automatic remission of civil penalties for nonprofit institutions listed in Section 234A(d). This section also ends the Secretary's authority to determine whether nonprofit educational institutions should receive automatic remission of any civil penalty issued under section 234A. It is the intent of this Section to make all of DOE's nonprofit contractors, subcontractors, and suppliers subject to civil penalties for nuclear safety violations under 234A. The replacement language for section 234A(d) provides an upper limit on the amount of civil penalties that may be collected from a nonprofit contractor. This limit is the amount of the discretionary fee paid to the contractor under the contract under which the nuclear safety violation occurs. The term 'discretionary fee' refers to that portion of the contract fee which is paid, or not, at the discretion of the DOE contracting officer based on the contractor's performance.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ATOMIC ENERGY ACT OF 1954

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TITLE I—ATOMIC ENERGY

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CHAPTER 14. GENERAL AUTHORITY

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SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.—

a. * * *

* * * * * * *

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: (A) the cost and terms of private insurance, (B) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (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 contractual 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. 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, 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 that may be charged a licensee following any nuclear incident under such a plan shall not be more than [$63,000,000] *$94,000,000* (subject to adjustment for inflation under subsection t.), but not more than [$10,000,000 in any 1 year] *$15,000,000 in any 1 year (subject to adjustment for inflation under subsection t.)*, 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.

* * * * * * *

(5)(A) For purposes of this section only, the Commission shall consider a combination of facilities described in subparagraph (B) to be a single facility having a rated capacity of 100,000 electrical kilowatts or more.

(B) A combination of facilities referred to in subparagraph (A) is 2 or more facilities located at a single site, each of which has a rated capacity of 100,000 electrical kilowatts or more but not more than 300,000 electrical kilowatts, with a combined rated capacity of not more than 1,300,000 electrical kilowatts.

c. INDEMNIFICATION OF [LICENSES] *LICENSEES* BY NUCLEAR REGULATORY COMMISSION.—The Commission shall, with respect to licenses issued between August 30, 1954, and August 1, [2002] *2017*, 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] *2017*, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, [2002] *2017*.

d. INDEMNIFICATION OF CONTRACTORS BY DEPARTMENT OF ENERGY.—(1)(A) In addition to any other authority the Secretary of

Energy (in this section referred to as the "Secretary") may have, the Secretary shall, until August 1, [2002] *2017*, enter into agreements of indemnification under this subsection with any person who may conduct activities under a contract with the Department of Energy that involve the risk of public liability and that are not subject to financial protection requirements under subsection b. or agreements of indemnification under subsection c. or k.

* * * * * * *

[(2) In agreements of indemnification entered into under paragraph (1), the Secretary may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary 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, to the full extent of the aggregate public liability of the persons indemnified for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.

[(3)(A) Notwithstanding paragraph (2), if the maximum amount of 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.]

(2) INDEMNIFICATION AGREEMENTS.—In an agreement of indemnification entered into under paragraph (1), the Secretary—

(A) may require the contractor to provide and maintain the financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity; and

(B) shall indemnify the persons indemnified against such liability above the amount of the financial protection required, in the amount of $10,000,000,000 (subject to adjustment for inflation under subsection t.), in the aggregate, for all persons indemnified in connection with the contract and for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.

(3) CONTRACT AMENDMENTS.—All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person under this section shall be deemed to be amended, on the date of enactment of the Price-Anderson Reauthorization Act of 2001, to reflect the amount of indem-

nity for public liability and any applicable financial protection required of the contractor under this subsection.

* * * * * * *

(5) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary under this subsection shall not exceed **[**$100,000,000**]** *$500,000,000*.

* * * * * * *

(8)(A) It shall be a condition of any agreement of indemnification entered into under this subsection that the indemnified party comply with regulations issued under this paragraph.

(B) Not later than 180 days after the date of the enactment of this paragraph, the Secretary shall issue industrial health and safety regulations that shall apply to all Department of Energy contractors and subcontractors who are covered under agreements entered into under this subsection for operations at Department of Energy nuclear facilities. Such regulations shall provide a level of protection of worker health and safety that is substantially equivalent to or identical to that provided by the industrial and construction safety regulations of the Occupational Safety and Health Administration (29 CFR 1910 and 1926), and shall establish civil penalties for violation thereof that are substantially equivalent to or identical to the civil penalties applicable to violations of the industrial and construction safety regulations of the Occupational Safety and Health Administration. The Secretary shall amend regulations under this subparagraph as necessary.

(C) Not later than 240 days after the date of the enactment of this paragraph, all agreements described in subparagraph (B), and all contracts and subcontracts for the indemnified contractors and subcontractors, shall be modified to incorporate the requirements of the regulations issued under subparagraph (B). Such modifications shall require compliance with the requirements of the regulations not later than 1 year after the issuance of the regulations.

(D) Enforcement of regulations issued under subparagraph (B), and inspections required in the course thereof, shall be conducted by the Office of Enforcement of the Office of Environment, Safety, and Health of the Department of Energy. The Secretary shall transmit to the Congress an annual report on the implementation of this subparagraph.

e. LIMITATION ON AGGREGATE PUBLIC LIABILITY.—(1) The aggregate public liability for a single nuclear incident of persons indemnified, including such legal costs as are authorized to be paid under subsection o. (1)(D), shall not exceed—

(A) * * *

(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**]** *paragraph (2) of subsection d.*; and

* * * * * * *

(4) 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 d. is applicable, such aggregate public liability shall not exceed the amount of [$100,000,000] *$500,000,000*, together with the amount of financial protection required of the contractor.

* * * * * * *

k. EXEMPTION FROM FINANCIAL PROTECTION REQUIREMENT FOR NONPROFIT EDUCATIONAL INSTITUTIONS.—With respect to any license issued pursuant to section 53, 63, 81, 104 a., or 104 c. 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 a. With respect to licenses issued between August 30, 1954, and August 1, [2002] *2017*, for which the Commission grants such exemption:

(1) * * *

* * * * * * *

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] *2017*, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, [2002] *2017*.

* * * * * * *

p. REPORTS TO CONGRESS.—The Commission and the Secretary shall submit to the Congress by August 1, [1998] *2013*, 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.

* * * * * * *

t. INFLATION ADJUSTMENT.—(1) The Commission shall adjust the amount of the maximum *total and annual* 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] *July 1, 2001*, in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) [such date of enactment] *July 1, 2001*, in the case of the first adjustment under this subsection; or

(B) the previous adjustment under this subsection.

(2) ADJUSTMENT.—The Secretary shall adjust the amount of indemnification provided under an agreement of indemnification under subsection d. not less than once during each 5-year period following July 1, 2001, in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) that date, in the case of the first adjustment under this paragraph; or

(B) the previous adjustment under this paragraph.

[(2)] *(3)* 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.

u. PROHIBITION ON ASSUMPTION OF LIABILITY FOR CERTAIN FOREIGN ACCIDENTS.—Notwithstanding this section or any other provision of law, no officer of the United States or of any department, agency, or instrumentality of the United States Government may enter into any contract or other arrangement, or into any amendment or modification of a contract or other arrangement, the purpose or effect of which would be to directly or indirectly impose liability on the United States Government, or any department, agency, or instrumentality of the United States Government, or to otherwise directly or indirectly require an indemnity by the United States Government, for nuclear accidents occurring in any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which, as of September 11, 2001, had been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961, section 6(j)(1) of the Export Administration Act of 1979, or section 40(d) of the Arms Export Control Act to have repeatedly provided support for acts of international terrorism).

v. UNREASONABLE RISK CONSULTATION.—Before entering into an agreement of indemnification under this section with respect to a utilization facility, the Nuclear Regulatory Commission shall consult with the Assistant to the President for Homeland Security (or any successor official) concerning whether the location of the proposed facility and the design of that type of facility ensure that the facility provides for adequate protection of public health and safety if subject to a terrorist attack.

w. FINANCIAL ACCOUNTABILITY.—(1) Notwithstanding subsection d., the Attorney General may bring an action in the appropriate United States district court to recover from a contractor of the Secretary (or subcontractor or supplier of such contractor) amounts paid by the Federal Government under an agreement of indemnification under subsection d. for public liability resulting from conduct which constitutes intentional misconduct of any corporate officer, manager, or superintendent of such contractor (or subcontractor or supplier of such contractor).

(2) The Attorney General may recover under paragraph (1) an amount not to exceed the amount of the profit derived by the defendant from the contract.

(3) No amount recovered from any contractor (or subcontractor or supplier of such contractor) under paragraph (1) may be reimbursed directly or indirectly by the Department of Energy.

(4) Paragraph (1) shall not apply to any nonprofit entity conducting activities under contract for the Secretary.

(5) No waiver of a defense required under this section shall prevent a defendant from asserting such defense in an action brought under this subsection.

(6) The Secretary shall, by rule, define the terms "profit" and "nonprofit entity" for purposes of this subsection. Such rulemaking shall be completed not later than 180 days after the date of the enactment of this subsection.

* * * * * * *

SEC. 170C. TRANSPORTATION OF NUCLEAR MATERIALS.—

a. The Nuclear Regulatory Commission shall establish a system to ensure that—

(1) with respect to activities by any party pursuant to a license issued under this Act, each vehicle transporting materials described in subsection b. in the United States—

(A) from a facility licensed by the Nuclear Regulatory Commission;

(B) from a facility licensed by an agreement State; or

(C) from a country with whom the United States has an agreement for cooperation under section 123,

carries a manifest describing the type and amount of materials being transported;

(2) each individual driving or traveling with such a vehicle has been subject to a security background check by appropriate Federal entities; and

(3) no such vehicle transports such materials to a destination other than a facility licensed by the Nuclear Regulatory Commission or an agreement State under this Act or other appropriate Federal facility, or to a destination outside the United States in a country with whom the United States has an agreement for cooperation under section 123.

b. Except as otherwise provided by the Commission by regulation, the materials referred to in subsection a.(1) are byproduct materials, source materials, special nuclear materials, high-level radioactive waste, spent nuclear fuel, transuranic waste, and low-level radioactive waste (as defined in section 2(16) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(16))).

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CHAPTER 18. ENFORCEMENT

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SEC. 234A. CIVIL MONETARY PENALTIES FOR VIOLATIONS OF DEPARTMENT OF ENERGY SAFETY REGULATIONS.—a. * * *

b. (1) * * *

(2) In determining the amount of any civil penalty under this subsection, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. **[**In implementing this section, the Secretary shall determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty under this section.**]**

* * * * * * *

[d. The provisions of this section shall not apply to:

[(1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;

[(2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;

[(3) American Telephone an Telegraph Company and its subsidiaries (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratories;

[(4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory;

[(5) Princeton University (and any subcontractors or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;

[(6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and

[(7) Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.]

d. Notwithstanding subsection a., a contractor, subcontractor, or supplier described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code shall not be subject to a civil penalty for a violation under subsection a. in excess of the amount of any discretionary fee paid to such contractor, subcontractor, or supplier under the contract under which such violation occurs.

* * * * * * *

MINORITY ADDITIONAL OR DISSENTING VIEWS

ADDITIONAL VIEWS OF MR. MARKEY OF MASSACHUSETTS REGARDING NUCLEAR SECURITY PROVISIONS OF H.R. 2983

During its markup of H.R. 2983, the Committee approved by voice vote an amendment which I, along with Chairman Tauzin and Ranking Member Dingell, offered to improve the security of nuclear power plants against the threat of terrorist attacks. While the Committee Report briefly describes this amendment, I would like to provide some additional background on why it is necessary.

Under the Atomic Energy Act, the Nuclear Regulatory Commission has the obligation to assure that our nation's nuclear power plants are operated in a manner which protects public health, public safety, and the environment. Pursuant to the authorities conferred by the Congress to the Commission under the Act, the NRC has issued regulations requiring licensees to protect its plants against the "design basis threat" (see 10 CFR 73). These rules require licensees to be able to protect nuclear facilities against acts of radiological sabotage or theft of special nuclear material.

For more than 10 years, I have been concerned that the NRC's efforts to prevent and respond to terrorist attacks or major accidents at nuclear reactors have been sorely lacking.

In 1991, in the wake of U.S. bombing of Iraqi nuclear reactors and Saddam Hussein's call for acts of terrorism against the U.S., I wrote two letters to the NRC concerning the threat of truck bombs at nuclear reactors, and called for an upgrade of the plans to defend nuclear reactors against larger and better-armed groups of attackers. The NRC responded that "we have determined that there continues to be no credible threats of terrorist actions against any NRC-licensed facility that warrants implementation of contingency plans against truck bombs at this time." It was not until years later that the NRC finally revised its truck bomb rule. And even then, it remains inadequate—as it assumes that the largest truck bomb threat is a truck bomb in a 4 wheel drive SUV.

Over the years, the NRC has continued to have a checkered record on nuclear security. In 1998, for example, the NRC senior staff tried to eliminate the program that tested the adequacy of the licensees' guard forces through force-on-force exercises, citing budget problems. Funding for this program was only restored after I wrote the NRC to complain and several NRC staffers were forced to take the extraordinary step of filing formal "Differing Professional Opinions" protesting this ill-advised action. This prompted the Commission to reverse the decision made by its senior staff to cancel funding for the OSRE program.

Today, the current NRC "Design Basis Threat"—published in the Federal Register—that is supposed to be used to design safeguards systems, fails to adequately reflect the true nature of the terrorist

threat to our nuclear plants. For example, the NRC says that the plants are supposed to be able to defend against attacks by "several persons". How many is that? Well, the exact number is confidential, but suffice it to say that it is far, far less than the number of people that carried out the September 11th attacks. The Design Basis Threat rules talk about "Inside assistance" which may include "a knowledgeable individual". In other words, one insider. In reality, we need to be concerned about multiple insiders. The rules talk about "Suitable weapons, up to and including hand-held automatic weapons" and "hand-carried equipment" including explosives." In reality, terrorists can probably obtain access to larger, vehicle-mounted weapons. The rules talk about a "four wheel drive land vehicle bomb." What about a large truck or tractor-trailer filled with explosives? What about water-borne threats to reactors located along rivers or the ocean? And what about air-borne threats—like a commercial airliner filled with jet fuel? The Commission's current regulations regarding the design basis threat says nothing about such threats, and in an October 16, 2001 letter responding to concerns I had earlier raised about security in the aftermath of the events of September 11th, Chairman Meserve stated that none of the current commercial reactors are capable of withstanding a hit from a large commercial airliner. In addition, spent fuel pools, dry cask storage, switching yards, and other areas of these plants may be even more vulnerable to destructive acts.

The reality is that the Commission's Design Basis Threat rules simply ignore many of the risks that the NRC decided prior to September 11th were just unthinkable, or which they had arbitrarily assumed had such a remote probability of occurring that they did not have to be addressed. Now we know that threats that had been considered to be unthinkable can happen here. The provision adopted by the Committee will compel the Commission to evaluate these threats and respond to them with new rules and procedures aimed at beefing up security and safeguards at these facilities in the aftermath of the September 11th attacks. It is intended to force a complete, top-to-bottom review of the nature and adequacy of the defenses currently in place to protect nuclear facilities from the terrorist threat.

Under the amendment, the President is required to undertake an immediate study of the terrorist threat to nuclear facilities and materials, focusing on (but not limited to) an examination of 10 specific threats. Based on that examination, the President would determine what types of threats properly are considered attacks by enemies of the United States, such as attacks using surface to air missiles launched by a foreign government, and what types of threats involve the type of risks, such as radiological sabotage or theft of nuclear materials, that NRC licensees should be responsible for guarding against. Following the submission of this report, the NRC will be required to undertake an immediate rulemaking to revise the Design Basis Threat and issue other appropriate rules to upgrade the security around nuclear licensees.

Another problem addressed by the amendment relates to the NRC's force-on-force exercises designed to prevent terrorist attacks at nuclear reactors. Because of the inadequacies in the Design Basis Threat, we know that the mock terrorist forces in these drills

must labor under numerous artificial restrictions and limitations, and far too few exercises are conducted. Currently, we are informed that licensees have been required to undergo an operational safeguards response evaluation (OSRE) test only once every eight years. But even within these limitations, the NRC has reported that about half of the plants tested had inadequacies in their test programs—some of them quite serious in nature. According to press reports, at a test a few years ago a simulated attack by an NRC team would have been able to cause a core melt at one nuclear power plant. And at Vermont Yankee, a few years ago, a team reportedly was able to scale plant fences undetected at several locations and to slip a fake handgun past a plant security check. Numerous other problems have been found at other plants.

What has been the Commission's and the nuclear industry's response to this situation? They decided to try to get rid of the program—first trying to defund it and then trying to replace it with a toothless industry-designed and managed alternative, which would have allowed the nuclear industry to design, implement and assess its own security performance. In the first weeks following September 11, I learned that lobbyists for the nuclear industry were pressuring the Commission to scale back the enhanced security measures that had been taken, despite numerous warnings by Federal officials that additional security threats to the U.S. existed. The nuclear industry has also lobbied Members of Congress in recent weeks, urging them to reject my efforts to improve security at nuclear facilities.

My amendment attempts to assure that the OSRE program is placed on a sound statutory basis. It represents a compromise that has been worked out between myself, the Chairman, and Ranking Member Dingell. It will require the NRC to establish an Operational Safeguards Response Evaluation Program to ensure the physical protection capability and operational safeguards response for sensitive nuclear facilities. This program will test the licensee's security guards through frequent Commission-approved or designed, observed, and evaluated force-on-force exercises to determine whether the ability to defeat the design basis threat is being maintained.

As noted in the Committee report, this amendment directs the Commission to take a dominant role in the implementation of force-on-force exercises. The Commission controls the three critical aspects for carrying out tests of operational safeguards: it must design, or approve the design for each force-on-force exercise; it must physically observe the exercises; and, it is the final arbiter on the results of the exercises. The Commission should not serve as a rubber stamp at any step of the way. For instance, to the extent a licensee has devised all or any part of an exercise design, the NRC should scrutinize the design rigorously to ensure that it will provide the information necessary to determine whether a licensee can defeat design basis threats. The amendment contemplates, in particular, that the design approval process will be an iterative, collaborative one, reflecting the work of both a licensee and Commission staff in composing a plan appropriate to the facility involved.

It is my personal view that if the Commission wants to restore public confidence in the safety of nuclear facilities, it should use

the authorities conferred under this section to immediately cancel the nuclear-industry's so-called Safeguards Performance Assessment (or SPA) program. Under SPA, the nuclear industry would design, conduct and evaluate tests of its own guard forces. Such tests cannot, in my view, replace the role of NRC-designed, supervised and evaluated force-on-force exercises. In the aftermath of the September 11th attack, the public does not have confidence in industry self-regulation when it comes to safety. The public would have even less confidence in this particular industry if it was aware of the extent of the nuclear industry's lobbying of both the Commission and the U.S. Congress to prevent improvements to security at nuclear facilities from being made. It wants the federal government to assume a direct role.

Finally, in light of reports indicating that terrorists may have obtained licenses to transport hazardous waste, including radioactive waste, the amendment directs the NRC to undertake an immediate rulemaking to improve transportation safety.

The purpose of this amendment is to address the risk that terrorists might target shipments of radioactive materials. We know that there are persistent problems with the current system of controls for the transportation and accounting of radioactive and other hazardous wastes. Recently, Northeast Utilities reported that after conducting a $9 million internal investigation, it has been unable to account for two missing spent fuel rods that disappeared some time during the last 20 years. According to the utility, the fuel might still be in spent fuel storage pools, or it might have been transported to other facilities or it may have been stolen. Records do not allow them to account for its whereabouts.

According to NRCs Annual Safeguard Summary Event List for 1999, the threat of theft or diversion of nuclear materials is very real. The NRC report indicates that 3 men in Chechnya were caught stealing radioactive Cobalt-60 from a facility there. It is not known what they planned to do with the materials, but we do know that Osama Bin Laden works with some of the Chechnyan factions. And the Committee is aware of the press reports indicating that suspected terrorists have successfully obtained licenses to drive radioactive and hazardous waste around from an unscrupulous state examiner in Pennsylvania. Some of these reports quoted sources in the trucking industry as saying that anyone with a criminal record could get a license to drive hazardous materials as long as they were over 21 years old. We can only imagine what terrorists might have done with radioactive materials if they got them.

We also know from the Attorney General that we must be on guard for future terrorist attacks against other targets. Under the amendment, the NRC would be required to issue rules to strengthen the safeguards associated with transportation of radioactive materials. First of all, the amendment requires that anyone authorized to drive or accompany these materials must pass a background check to determine whether they pose a security threat. Second, the amendment requires NRC to develop a manifest system that accurately describes the radioactive contents of each shipment so that any recipient would know what they were receiving. Finally, the amendment prohibits any shipments of radioactive material

from being sent to anywhere other than a licensed NRC facility, an agreement state licensed facility, or an appropriate Federal facility, so that we ensure that the materials are only going places where the expertise to handle them exists. The amendment allows the NRC to exempt out from coverage certain materials, such as certain radio-pharmaceuticals used in nuclear medicine, that might not need to be subjected to these requirements. Such exemptions must follow only after a determination that doing so is fully consistent with the protection of public health and safety and the common defense and security has been made. The rulemaking would only be for the purposes of determining whether the transportation of a particular radioactive material would pose a terrorist threat, and should not serve as a precedent for any non-terrorist-related matter.

EDWARD J. MARKEY.

DISSENTING VIEWS OF REPRESENTATIVE EDWARD J. MARKEY (D–MA) ON H.R. 2983, REAUTHORIZATION OF THE PRICE-ANDERSON ACT

Back in the 1950s, when I was a boy, we were told that nuclear power was going to be safe, efficient, and too cheap to meter. In order to promote this new technology, the nuclear utility industry sent us kids nifty little Reddy Kilowatt pins to tout their new technology. And they came with a catchy little jingle, which I'd like to share with you:

"I'm a Busy Little Atom
I split myself in two
And multiply as many times
As I have jobs to do!
I'll work for you for pennies,
I'm fast, efficient, steady,
So any time . . . to ease your work
Just 'plug in,' folks—I'm Reddy.
The Mighty Atom—Reddy Kilowatt."

And so, we learned at a very early age that Reddy Kilowatt was our friend, standing ready to ease the nation's work. Unfortunately, it turned out at the time that our little friend was having some problems getting insurance coverage, because the insurance industry wasn't convinced that he was as "fast, efficient and steady" as the nuclear utilities were claiming. So, the Congress decided to step in and give our little buddy Reddy Kilowatt a boost by capping the nuclear industry's liability in the event that those "busy little atoms" got out of control and began multiplying TOO MUCH—resulting in a catastrophic core meltdown at a civilian nuclear power plant.

Americans were told at the time that this would just be temporary assistance that we were going to be providing for a developing new industry and technology help get on its feet—so the private insurance markets could take over the job of insuring its risks. The Senate Report said that Price-Anderson would only be needed for ten years because, ". . . the problem of reactor safety will be to a great extent solved and the insurance people will have had an experience on which to base a sound program of their own." That

was 44 years ago. But as this program became entrenched, the sun never set on the Price-Anderson subsidy!

Despite the persistence of this and other federal subsidies, the nuclear industry has remained unable to compete economically in the energy marketplace. No new nuclear power plants have been successfully ordered since 1973 because nuclear power is more expensive than natural gas; it costs about $1700 per kilowatt hour of power generated to build a nuclear plant, while a gas plant costs as little as $420 per kilowatt hour. And if capital costs are included, nuclear power costs 6 cents a kilowatt-hour, compared to 4 cents a kilowatt-hour for gas or coal.

There is nothing stopping any utility or power generating company from ordering a nuclear power plant today. They haven't done so. Why? Not because of the opposition of a bunch of granola-chomping, tree-hugging anti-nuclear activists, as the nuclear industry would have us believe. No. No new nuclear power plants have been ordered because Republican Wall Street investment bankers know that the bottom line is that despite all the subsidies, nuclear power is still too expensive when compared to natural gas or coal.

Geoffery Rothwell of the CATO Institute has said that "A more efficient solution would have been to assign full liability to those parties and let the insurance market determine the probability of an accident, its consequences and the proper premiums for coverage. . . . If nuclear power cannot compete, however, it should not be subsidized. Let the best energy win." My view is that it is now time for nuclear power to grow up and compete in the free market without further market distorting government subsidies. This is no longer a fledgling industry, and it needs to be weaned from its reliance on government support and compete freely against other energy generation technologies and against technologies which would reduce the need for new power plants by making us more energy efficient. If nuclear power is so safe, we should not be capping liability and we should not be subsidizing the industry's insurance needs.

During the Committee markup of the legislation, I offered an amendment that would have required the nuclear industry to attempt to obtain private sector insurance prior to obtaining taxpayer-funded coverage through the Price-Anderson Act. All a nuclear reactor owner would have had to do in order to get Price-Anderson coverage is prove that they tried to obtain private sector insurance and that they were rejected.

All of us have to have insurance for our cars into order to be able to get a drivers license. If you are a good driver, and never have any accidents, you end up paying a lower rate. And if you are not such a good driver, and have some accidents, you end up paying higher rates. But, if you've just had your 12th accident in the past 12 months, you will soon receive a notice that your auto insurance company is canceling your policy, and you may be unable to find any private source of insurance, and you will need to get insurance from your state's "insurer of last resort," also known as the assigned-risk pool. Being in the high-risk pool will hurt your wallet, but if you drive safely while you're in it, you can get back on the road to more affordable insurance.

That's the way the insurance markets work. Except, of course, for nuclear power. Nuclear power was placed in the Price-Anderson "assigned risk pool" 44 years ago, and that is apparently where it wants to stay, despite industry's claims of a whole new generation of new reactor designs that are inherently safe. Well—if these designs are safe, why are we going to throw them into the Price-Anderson "assigned risk pool"? If the new advanced reactor designs and the new pebble bed reactors are so safe, why shouldn't the companies that buy these technologies be asked to go into the private insurance markets first, before we automatically throw them into Price-Anderson? Maybe they can get a lower rate from the insurance markets.

All my amendment said is that before we automatically put nuclear power into the Price-Anderson "assigned-risk pool", why not see if it can prove it has improved its safety record and get private insurance coverage first? My amendment was rejected. Before we continue to promise bailouts to an industry that claims to be completely safe for the next 15 years, shouldn't it at least attempt to get insurance from companies who insure other completely safe industries?

Why should we establish a cap on the nuclear industry's liability in the event of a catastrophic nuclear accident and commit the American taxpayers to picking up the tab for any accident which results in more than $9 billion in damage without first establishing that the nuclear industry is unable to obtain full insurance coverage from the private markets? If the industry is correct that no company can get coverage from the private markets, then it should not oppose this amendment, as every new licensee will be able to demonstrate to the NRC that they have tried and failed to get full coverage for their full nuclear liability.

The nuclear industry likes to claim that "there is no taxpayer Money involved" in Price-Anderson. This is just nonsense. While the Act does require reactor operators to get $200 million of insurance per reactor per incident, and it also provides for a retroactive assessment of all reactor operators that goes to just over $9 billion, the very core of the entire Act is a commitment from the Congress to pick up the tab for accidents that cost more than $9.4 billion.

Indeed, Section 170(e)(2) states "In the event of a nuclear incident involving damages in excess of 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 170i. And will in accordance with such procedures, take whatever action is determined to be necessary (including approval of appropriate compensation plans and appropriation of funds) to provide full and prompt compensation to the public for all public liability claims resulting from a disaster of such magnitude." Section 170i, in turn sets up detailed expedited procedures to the submission by the Executive Branch of nuclear accident liability bailout bill. So, very clearly, billions, hundreds of billions, perhaps even trillions of taxpayer dollars are involved.

All my amendment says is let's subject the proposition that none of these reactor operators can get private insurance to a market test. If it is really true that the private insurance market can't provide full coverage for nuclear liabilities, and that this industry

can't judge the likely extent of their liability, then the operators will easily be able to show that they can't get insurance and can join the Price-Anderson system. Now, I'm not so pessimistic about the inherent genius and entrepreneurial abilities of the private sector. The insurance industry is in the business of making sophisticated judgements about complex risks, some of which involve unlikely, but high-cost pay-outs. That's what their entire business is about—making lots of money by collecting more in premiums than they have to pay out in claims. So, if a nuclear accident is as improbable and remote as the nuclear industry claims it is, this should be a very profitable business!

I respectfully dissent.

EDWARD J. MARKEY.

EXCHANGE OF COMMITTEE CORRESPONDENCE

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, November 8, 2001.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, DC.

DEAR CHAIRMAN SENSENBRENNER: Thank you for your letter regarding to H.R. 2983, the Price-Anderson Reauthorization Act of 2001.

I appreciate your willingness not to exercise your right to a referral of H.R. 2983. I agree that your decision to forego action on the bill will not prejudice the Committee on the Judiciary with respect to its jurisdictional prerogatives on this or similar legislation. Further, I recognize your right to request conferees on those provisions within the Committee on the Judiciary's jurisdiction should they be the subject of a House-Senate conference.

I will include your letter dated October 31, 2001 concerning the Cox amendment, your November 7, 2001 letter, and this response in the Committee's report on H.R. 2983, and I look forward to working with you as we bring this legislation to the Floor.

Sincerely,

W.J. "BILLY" TAUZIN, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
November 7, 2001.

Hon. W.J. (BILLY) TAUZIN,
Chairman, Committee on Energy and Commerce, Washington, DC.

DEAR BILLY: I write regarding H.R. 2983, the "Price-Anderson Reauthorization Act of 2001," which was ordered reported by the Committee on Energy and Commerce on October 31, 2001. As you know, the Committee on the Judiciary has subject matter jurisdiction over at least one amendment adopted by your Committee. I have previously written to you about the Cox Amendment (see enclosed). Because I understand the desire to have this legislation considered expeditiously by the House and because the Committee does not have a substantive concern with those provisions that fall within its jurisdiction, I do not intend to hold a hearing or markup on this legislation.

In agreeing to waive consideration by our Committee, the Committee does not waive its jurisdiction over H.R. 2983. The Committee on the Judiciary takes this action with the understanding

that the Committee's jurisdiction is in no way diminished or altered, and that the Committee's right to the appointment of conferees during any conference on the bill is preserved. I would also expect your support for my request to the Speaker for the appointment of conferees from my Committee with respect to matters within the jurisdiction of my Committee should a conference with the Senate be convened on this or similar legislation.

I request that you include our exchange of letters (and my October 31, 2001, letter relating to the Cox Amendment) in your Committee's report to accompany H.R. 2983. Thank you for your cooperation on this important matter.

Sincerely,

F. JAMES SENSENBRENNER, Jr., *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
October 31, 2001.

Hon. W.J. BILLY TAUZIN,
Chairman, Committee on Energy and Commerce, Washington, DC.

DEAR CHAIRMAN TAUZIN: I understand that Rep. Chris Cox intends to offer an amendment that may fall within the jurisdiction of the Committee on the Judiciary during your Committee's mark-up of H.R. 2983, the "Price-Anderson Reauthorization Act of 2001." The Cox Amendment would prohibit assumption by the United States Government of liability for nuclear accidents in certain foreign countries.

I have reviewed this amendment and support it. Furthermore, should the Cox Amendment be adopted during the mark-up of H.R. 2983, the Judiciary Committee will not seek a sequential referral of H.R. 2983 on the basis of the adoption of the Cox Amendment.

If you have further questions about this matter, your staff should contact Mr. William Moschella, Chief Legislative Counsel of the Committee on the Judiciary.

Sincerely,

F. JAMES SENSENBRENNER, Jr., *Chairman*.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC, November 19, 2001.

Hon. BILLY TAUZIN,
Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Washington, DC.

DEAR CHAIRMAN TAUZIN: The Committee on Energy and Commerce, on October 31, 2001, ordered reported H.R. 2983, the Price-Anderson Reauthorization Act of 2001. As introduced, the bill was referred to Committee on Energy and Commerce. During consideration of the bill, it was modified to include an amendment by voice vote. Part of that amendment (what is now Section 11 of the bill) involves matters within the jurisdiction of the Committee on Transportation and Infrastructure under Rule X(q) of the Rules of the House of Representatives, which grants this Committee jurisdiction over "[r]oads and the safety thereof" (Clause 19) and all

"[t]ransportation . . . transportation safety (except automobile safety), [and] transportation infrastructure" (Clause 20).

Our respective committees have addressed the jurisdictional issue of transportation of nuclear material three times in the past three Congresses, (See, Report 104–254, Part 1, Nuclear Waste Policy Act of 1995, Committee on Commerce, 104th Congress, 1st Session, page 40–41; Report 105–290, Part 1, Nuclear Waste Policy Act of 1997, Committee on Commerce, 105th Congress, 1st Session, page 53–54; Report 106–155, Part 1, Nuclear Waste Policy Act of 1999, Committee on Commerce, 106th Congress, 1st Session, page 46–48). I propose a similar accommodation in this instance.

Because you have expressed a desire to expeditiously act on this measure, the Committee on Transportation and Infrastructure will agree to be discharged from consideration of this measure if the bill is modified on the House floor so as not to govern the overall "transportation" of nuclear materials, which would infringe on my Committee's jurisdiction. I believe that our staffs have reached a mutually satisfactory compromise on this issue. In addition, the following proviso must be included to ensure that the bill does not waive or otherwise affect any requirements governing motor carrier and rail safety provisions under Title 49, or the Hazardous Materials Transportation Act:

> (d) Nothing in this Act shall waive, modify, or affect the application of chapter 51 of title 49, United States Code; part A of subtitle V of title 49, United States Code; part B of subtitle VI of title 49, United States Code, and title 23, United States Code.

Sincerely,

DON YOUNG, *Chairman.*

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, November 19, 2001.

Hon. DON YOUNG,
Chairman, Committee on Transportation and Infrastructure, Washington, DC.

DEAR CHAIRMAN YOUNG: Thank you for your letter regarding to H.R. 2983, the Price-Anderson Reauthorization Act of 2001.

I appreciate your willingness not to seek a referral of H.R. 2983 so that we can move this legislation to the House floor expeditiously. Your letter is correct in that we will revise section 11 of the bill (1) so as not to infringe on the jurisdiction of the Transportation and Infrastructure Committee and (2) to include the savings clause you have proposed.

Again, thank you for your consideration. I will include your letter and this response in the Committee's report on H.R. 2983.

Sincerely,

W.J. "BILLY" TAUZIN, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, DC, November 19, 2001.

Chairman W. J. "BILLY" TAUZIN,
Chairman, Committee on Energy and Commerce, Washington, DC.

DEAR MR. CHAIRMAN: On October 31, 2001, the Committee on Energy and Commerce ordered reported H.R. 2983, the Price-Anderson Reauthorization Act of 2001. As ordered reported by the Committee on Energy and Commerce, this legislation contains a number of provisions that fall within the jurisdiction of the Committee on Armed Services and, therefore, would be subject to sequential referral to our committee.

I understand that our staffs have been discussing these items and have reached an understanding that would involve your agreement to modify two provisions before this legislation is brought before the House for floor consideration. Specifically: (1) section 10 relating to the assumption of liability for certain foreign accidents and (2) section 13 relating to industrial safety rules for the Department of Energy. Accordingly, and based on this understanding, I do not intend to request a sequential referral on this bill.

By agreeing not to seek sequential referral, the Committee on Armed Services does not waive its jurisdiction over these provisions or any other provisions of the bill that may fall within its jurisdiction. In addition, the Committee on Armed Services reserves the right to seek conferee status on any provisions within its jurisdiction, which are considered in the House-Senate conference, and asks for your support in being accorded such conferees.

Thank you for your cooperation on this matter and I request that you include this letter as part of the report on H.R. 2983.

Sincerely,

BOB STUMP, *Chairman.*

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, November 19, 2000.

Hon. BOB STUMP,
Chairman, Committee on Armed Services, Washington, DC.

DEAR CHAIRMAN STUMP: Thank you for your letter regarding H.R. 2983, the Price-Anderson Reauthorization Act of 2001.

I appreciate your willingness not to exercise your right to seek a referral of H.R. 2983. I agree that your decision to forego action on the bill will not prejudice the Committee on Armed Services with respect to its jurisdictional perogatives on this or similar legislation. Further, I recognize your right to request conferees on those provisions within the Committee on Armed Services' jurisdiction should they be the subject of a House-Senate conference.

I will include your letter and this response in the Committee's report on H.R. 2983.

Sincerely,

W.J. "BILLY" TAUZIN, *Chairman.*