University of California Response to DOE Questions
Regarding **Price-Anderson Renewal**

Q 1. Should the DOE Price-Anderson indemnification be continued without modification?

Answer: Price-Anderson indemnification should definitely be continued. Shifting responsibility for payment of claims from the United States to contractors would undermine the certainty of compensation and would therefore be inappropriate. Recent experience with large class claims, an example being claims arising from faulty breast implants, shows that the availability of bankruptcy protection can defeat the payment of adequate compensation to all harmed citizens. The United States government must remain the insurer for its people so long as nuclear materials are used in research, medicine, power production, and weapons, and so long as resulting waste materials must be transported and stored. However, certain modifications may be appropriate to update the Act, as discussed in responses to the questions below.

Q 2. Should the DOE Price-Anderson indemnification be eliminated or made discretionary with respect to all or specific DOE activities? If discretionary, what procedures and criteria should be used to determine which activities or categories of activities should receive indemnification?

Answer: We believe the indemnification should not be discretionary. The requirement for Price-Anderson is to assure compensation to injured citizens and that assurance should not be eroded. Making indemnification discretionary would result in the requirement of case-by-case determinations of whether to grant the indemnification in individual contract awards, which would prove unnecessarily difficult and time consuming. Those contracts without such risk would never need to call on that indemnification and there is nothing to be gained by denying indemnification. We suspect this is why Congress made the coverage automatic in 1988.

Q 3. Should there be different treatment for “privatized arrangements” (that is, contractual arrangements that are closer to contracts in the private sector than the traditional “management and operating” contract utilized by DOE and its predecessors since the Manhattan Project in the 1940's)? Privatized arrangements can include but are not limited to fixed-priced contracts, contracts where activity is conducted at the contractor's facility located off a DOE site, contracts where activity is conducted at the contractor's facility located on a DOE site, or contracts where a contractor performs the same activity for DOE as it does for commercial entities and on the same terms.

Answer: All Government-funded activities involving nuclear risks should continue to be covered. The public should have an adequate remedy regardless of the form of contract selected by the Government.

Despite their characterization as "privatized arrangements," the arrangements described above are all still Government contracts, and in fact are fairly conventional Government contracts at that. The Act has never before distinguished between different kinds of Government contracts, and there is no reason to create such a distinction now. So long as a corporation or other non-federal entity is paid by the Government to perform work under a Government contract of any kind, and so long as the basic premises of the Act are accepted, the Act should apply to all Government contracts regardless of the form of contract.

Also see the answer to question 16, below.

Q 4. Should there be any change in the current system under which DOE activities conducted pursuant to an NRC license are covered by the DOE Price-Anderson indemnification, except in situations where the NRC extends Price-Anderson coverage under the NRC system? For example, (1) should the DOE Price-Anderson indemnification always apply to DOE activities conducted pursuant to an NRC license or (2) should the DOE Price-Anderson indemnification never apply to such activities, even if NRC decides not to extend Price-Anderson coverage under the NRC system?

Answer: We see no reason to change the present system at this time. Price Anderson Act indemnification should be provided regardless of whether NRC or DOE regulates the DOE contract activity. The risks to the public do not change, and potential contractor exposure to liability should not change, regardless of the regulating entity.

Q 5. (a) Should the DOE Price-Anderson indemnification continue to provide omnibus coverage, or should it be restricted to DOE contractors or to DOE contractors, subcontractors, and suppliers? (b) Should there be a distinction in coverage based on whether an entity is for-profit or not-for-profit?

Answer: (a) The public should be provided a remedy for all nuclear incidents arising from DOE nuclear activities, regardless of who causes such incidents. Limiting the coverage to DOE contractors would only result in those DOE contractors having to enter into numerous subcontract negotiations and having to seek numerous DOE approvals to cover

their subcontractors. Far better is the present arrangement, whereby DOE contractors can simply assure their subcontractors that they are covered under the Act.

Further, limiting the coverage to DOE prime contractors and their subcontractors would eliminate the coverage of, for example, individuals employed by contractors and subcontractors. This would only have the result of dividing the interests of the contractors/subcontractors and their employees, resulting in more complex and expensive litigation defense costs, yet without eliminating the well-established liability of contractors/subcontractors for the errors and omissions of their employees under the state law doctrines of *respondeat superior*.

It is not worth the trouble to distinguish between types of contract, or tier of contract, or identity of a contractor. The better public policy would be to cover all subcontractors and suppliers, in the interest of efficiency and simplicity.

Finally, eliminating the coverage for other individuals or entities not having a contractual arrangement with DOE would only serve to eliminate a remedy to members of the public

(b) For all the reasons stated above, the indemnification should be provided to all contractors without regard to whether they are non-profit or for-profit.

Q 6. If the DOE indemnification were not available for all or specified DOE activities, are there acceptable alternatives? Possible alternatives might include Pub. L. No. 85-804, section 162 of the AEA, general contract indemnity, no indemnity, or private insurance. To the extent possible in discussing alternatives, compare each alternative to the DOE Price-Anderson indemnification, including operation, cost, coverage, risk, and protection of potential claimants.

Answer: We believe Price-Anderson coverage continues to offer the only effective alternative. Other potential remedies would be more expensive, less predictable, less timely, as was recognized in Senate Report 100-70, dated June 12, 1987 Ð

> The amount of private insurance then available was considered insufficient ($60 million in 1957) to cover potential damages from a catastrophic accident. Federal indemnity was therefore considered appropriate to supplement that insurance to ensure adequate compensation to the public in the event of a major nuclear accident. The need for extending the Price-Anderson Act today is essentially the

> same as in 1957. As in 1957, the amount of private insurance available is insufficient to cover the potential damage and personal injury claims resulting from a catastrophic nuclear accident. Compensation to victims of a nuclear accident in the absence of the Price-Anderson Act therefore would likely be seriously limited. [p.14]

The problem with coverage under Public Law 85-804 is that it requires case-by-case DOE approval, and further requires that the activity be essential to the national security, which certainly cannot be demonstrated in all cases. Also, it is contingent on continuation of the "state of emergency" that has existed since sometime in the early 1950's.

The problem with coverage under Section 162 of the Atomic Energy Act is that it requires case-by-case Presidential approval, an impractical solution given the thousands of potential contractors, subcontractors, and other covered entities.

General contract indemnity is subject to the availability of appropriated funds and would require additional Congressional action to provide the same level of assurance of compensation for victims as is currently provided by the Price-Anderson Act. Given the likelihood that such action would be taken, there appears little advantage to the government to have such a requirement at the expense of the publicÕs peace of mind.

Private insurance for nuclear risks is no more available today than it was in the 1950's, and quite possibly is even less available than it was then. We suggest DOE seek a study of the potential monetary liability arising from nuclear incidents and the availability of private insurance. Perhaps this could be accomplished by GAO as an update of their June, 1987 report No. RCED-87-124.

For these reasons, we believe Price-Anderson coverage continues to be appropriate to cover nuclear risks arising as a result of DOE activities.

Q 7. To what extent, if any, would the elimination of the DOE Price-Anderson indemnification affect the ability of DOE to perform its various missions? Explain your reasons for believing that performance of all or specific activities would or would not be affected?

Answer: Without P-A indemnification, and as suggested in the Senate Report referenced aboveÐ

> There is a possibility that some DOE contractors would discontinue work in DOEÕs nuclear activities altogether if the Price-Anderson system is not extended. In that event federal nuclear activities would continue but they would likely be carried out by federal employees or by possibly less responsible, less competent contractors. [p.17]

Q 8. To what extent, if any, would the elimination of the DOE Price-Anderson indemnification affect the willingness of existing or potential contractors to perform activities for DOE? Explain your reasons for believing that willingness to undertake all or specific activities would or would not be affected?

Answer: If Price-Anderson indemnification is discontinued, there is a strong possibility that UC and other contractors would no longer be willing to undertake DOE nuclear activities. Once again, the purpose of the Price-Anderson is to provide compensation to the public, as well as protection to DOE contractors against the potential liabilities associated with their work for the Government.

Elimination of the DOE Price-Anderson indemnification would clearly signal a fundamental shift in U.S. Government policy, away from providing financial protection to the public, as well as away from providing limited liability to DOE contractors. All entities contemplating working for DOE would have to take this shift in policy into account in deciding whether to accept DOE contract work. Obviously, the increased risk that would necessarily be borne by contractors would translate into higher costs to DOE, whether such risk would be covered by insurance or by self-insured arrangements. To the extent contractors may be compelled to seek insurance to cover nuclear risks, the entire insurance industry would have to reassess the coverage of nuclear risks and determine whether to offer protection for such risks, and at what cost. This is something that has not had to be done for over 40 years.

Q 9. To what extent, if any, would the elimination of the DOE Price-Anderson indemnification affect the ability of DOE contractors to obtain goods and services from subcontractors and suppliers? Explain your reasons for believing that the availability of goods and services for all or specific DOE activities would or would not be affected?

Answer: The ability to obtains goods and services in support of nuclear activities would be affected by the same considerations discussed in the response to question 8, above.

There could be some shrinkage in the pool of suppliers, but most certainly there would be an added cost to goods and services for private insurance coverage, if available.

Q 10. To what extent, if any, would the elimination of the DOE Price-Anderson indemnification affect the ability of claimants to receive compensation for nuclear damage resulting from a DOE activity? Explain your reasons for believing the ability of claimants to be compensated for nuclear damage resulting from all or specific DOE activities would or would not be affected?

Answer: Claimants would face major procedural obstacles in bringing claims, and even if successful, would have no assurance that funds would be available to pay a judgment or award. The elimination of Price-Anderson indemnification would result in public claimants having to resort to protracted litigation to seek redress in the event of a nuclear incident. Traditional tort litigation over a nuclear incident would be incredibly time-consuming, expensive, and unpredictable. In the event of a catastrophic incident, the prospect of many thousands of claimants, together with multiple defendants and potentially huge damages, would tax the very ability of the U.S. justice system to provide an adequate remedy.

11. (a) What is the existing and the potential availability of private insurance to cover liability for nuclear damage resulting from DOE activities? (b) What would be the cost and the coverage of such insurance? (c) To what extent, if any, would the availability, cost and coverage be dependent on the type of activity involved? (d) To what extent, if any, would the availability, cost and coverage be dependent on whether the activity was a new activity or an existing activity? (e) If DOE Price-Anderson indemnification were not available, should DOE require contractors to obtain private insurance?

Answer: (a) While private insurance is available to cover portions of nuclear power industry risks, private insurance is not available to cover all the risks presently covered by Price-Anderson indemnification. To our knowledge, the insurance industry has permanently built, into virtually all insurance policies, exclusions for many of the nuclear risks arising from DOE operations. Further study would be required to specifically define coverage for risks associated with all DOE nuclear operations. No such assessment has been conducted since the Price-Anderson Act was enacted 40 years ago. The results would be unpredictable.

(b) We cannot speculate on the cost without more data.

(c) There are substantial differences between the nuclear power industry and DOE nuclear operations and, therefore, it is anticipated that there would be significant variations in availability, cost and coverage dependent on the type of activity involved. However, as mentioned in paragraph (a), above, there is a need to study this in more detail.

(d) It can be anticipated that availability of coverage for new activities would be less than that for existing activities, until private insurers become confident that the risks are well-understood. Accordingly, any cost of coverage would be anticipated to be higher, if any coverage could be obtained.

(e) DOE could require its contractors to obtain private insurance, but DOE would ultimately bear the cost of such insurance. This is the reason why DOE has not required such insurance to date.

Q 12. Should the amount of the DOE Price-Anderson indemnification for all or specified DOE activities inside the United States (currently approximately $8.96 billion) remain the same or be increased or decreased?

Answer: As was done in 1987, DOE and Congress should seek a review and update of the adequacy of the compensation limits of the Price-Anderson Act. There is ample reason to speculate that $9 billion may not be sufficient, given recent claims for injuries based on other toxic materials and the fact that property losses may occur in addition to personal injuries.

Q 13. Should the amount of the DOE Price-Anderson indemnification for nuclear incidents outside the United States (currently $100 million) remain the same or be increased or decreased?

Answer: Unlike the limit for U.S. incidents, the $100 million limit has not been adjusted since l987. Both inflation and changes in international circumstances suggest a reevaluation is necessary. For example, U.S. foreign policy initiatives include obtaining Russian warhead grade uranium for conversion to commercial reactor fuel grade material. The material is then transported by commercial ships that often make several foreign port calls before heading to U.S. delivery ports. While the material is in certified international shipping containers, the potential exists for intentional attacks or shipping mishaps near foreign coastlines or in large foreign ports. Congress could not have had such DOE

nonproliferation missions (and associated DOE contractor tasks) in mind when the $100 million limit was set.

Also, Congress should consider expanding the Act to cover foreign incidents that do not involve U.S.-owned nuclear materials. The advent of the new nonproliferation initiatives in recent years, especially in the states of the former Soviet Union, has opened up the possibility of U.S. Government contractors participating in the dismantling of foreign-owned nuclear weapons, as well as the storage, transportation, and safeguarding of foreign owned Special Nuclear Materials (SNM). These are activities of the highest national security importance, and every possible protection should be provided to encourage Government contractors to accept such work. In considering such an expansion, Congress will have to take into account the potential amounts for foreign claims and the inability to limit damages for foreign citizens as compared with its own citizens. DOE should consult with the Department of State and Department of Defense to determine the potential for obtaining limitations on foreign claims through treaties.

Q 14. (a) Should the limit on aggregate public liability be eliminated? (b) If so, how should the resulting unlimited liability be funded? (c) Does the rationale for the limit on aggregate public liability differ depending on whether the nuclear incident results from a DOE activity or from an activity of a NRC licensee?

Answer:

(a) We understand the question to assume that the government will fully indemnify the DOE contractor and that the question is whether aggregate compensation for injured persons should be limited. That is a fiscal policy question upon which only the Congress can make an appropriate judgment. An update of the study mentioned in response to question 6, above, would be helpful in assessing the financial consequences of no limitation, or in setting a current limit.

(b) That is a fiscal policy question upon which only the Congress can make an appropriate judgment.

(c) To the extent an activity is sponsored by DOE, the policy on aggregate compensation for injured persons should be the same regardless of whether the activity is regulated by DOE or NRC.

Q 15. (a) Should the DOE Price-Anderson indemnification continue to cover DOE contractors and other persons when a nuclear incident results from their gross negligence or willful misconduct? (b) If not, what would be the effects, if any, on: (1) The operation of the Price-Anderson system with respect to the nuclear incident, (2) other persons indemnified, (3) potential claimants, and (4) the cost of the nuclear incident to DOE? (c) To what extent is it possible to minimize any detrimental effects on persons other than the person whose gross negligence or willful misconduct resulted in a nuclear incident? (d) For example, what would be the effect if the United States government were given the right to seek reimbursement for the amount of the indemnification paid from a DOE contractor or other person whose gross negligence or willful misconduct causes a nuclear incident?

Answer: (a) As the Department has noted in footnote 34, Congress has repeatedly and specifically rejected the suggestion that coverage for willful misconduct be excluded. The reasoning of Congress has been that the purpose of the Act is to provide a financial remedy to the public in the event of damage arising from a nuclear incident, and this purpose would be frustrated if the public could be denied compensation because the damage was willfully caused. We believe this reasoning continues to be sound, and for this reason recommend against any narrowing of the scope of coverage. Further, willful misconduct would be a basis for the criminal penalties discussed in our general comments and in question 34, below.

(b) With respect to potential claimants, there would be a reduction in the guarantee of compensation.

(c) This would represent a difficult problem for the government and DOE contractors. In the absence of any overriding federal legislation, the laws of the fifty states would determine the extent to which unfunded liabilities arising from gross negligence or willful misconduct could be imposed on other parties, for example under theories of *respondeat superior* or joint and several liability. To avoid resulting in detrimental impacts on such parties who were not similarly at fault, the Act may have to supersede state law and impose a clear scheme of allocation of liability for nuclear incidents.

(d) The proposal cited in the example would be, at best, be tolerable to a contractor only if the United States were precluded from obtaining reimbursement from the contractor for the gross negligence or willful misconduct of employees who are not senior contractor officials.

Q 16. Should the DOE Price-Anderson indemnification be extended to activities undertaken pursuant to a cooperative agreement or grant?

Answer: It appears that the Act already authorizes the extension of such coverage. 42 USC 2210(d)(6) provides that "The provisions of this subsection [relating to indemnification of DOE contractors] may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Secretary." (emphasis added) If this language does not authorize DOE to extend coverage to grants and cooperative agreements, the Act should be clarified to provide such authorization. Anytime DOE funds are being expended in the support of activities that involve a significant risk of a nuclear incident, the basic spirit of the Act supports such an extension.

Q 17. (a) Should the DOE Price-Anderson indemnification continue to cover transportation activities under a DOE contract? (b) Should coverage vary depending on factors such as the type of nuclear material being transported, method of transportation, and jurisdictions through which the material is being transported?

Answer: (a)Yes, the DOE Price-Anderson indemnification should continue to cover transportation activities under DOE contracts. Transportation activities involving nuclear materials have historically proven to be among those most likely to generate public concern, and in the event of an accident would be very likely to generate substantial public liability.

(b) The coverage should be the same; compensation for injuries should be tied to the injuries suffered not the type of material causing it, the method of transportation, or the jurisdiction in which the incident occurred.

Q 18. (a) To what extent, if any, should the DOE Price-Anderson indemnification apply to DOE clean-up sites? (b) Should coverage be affected by the applicability of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or other environmental statutes to a DOE clean-up site?

Answer: (a) To the extent there may be public liability, as defined in the Price-Anderson Act, associated with clean-up of DOE sites or other sites, the Price-Anderson should be applicable.

(b) To the extent there may be public liability, as defined in the Price-Anderson Act, the Price-Anderson Act should be applicable regardless of whether or not CERCLA is also applicable.

Q 19. To what extent, if any, should the DOE Price-Anderson indemnification be available for liability resulting from mixed waste at a DOE clean-up site?

Answer: To the extent there is indeed public liability, as defined in the Price-Anderson Act, arising from a nuclear incident, whether realized in the form of damage caused by mixed waste or otherwise, the Price-Anderson Act indemnification should continue to be available.

Q 20. Should the definition of nuclear incident be expanded to include occurrences that result from DOE activity outside the United States where such activity does not involve nuclear material owned by, and used by or under contract with, the United States? For example, should the DOE Price-Anderson indemnification be available for activities of DOE contractors that are undertaken outside the United States for purposes such as non-proliferation, nuclear risk reduction or improvement of nuclear safety? If so, should the DOE Price-Anderson indemnification for these additional activities be mandatory or discretionary?

Answer: DOE contractors have engaged in, and may be increasingly expected to engage in, nuclear nonproliferation activities in foreign countries, particularly the states of the former Soviet Union. These activities may extend to the safe, secure dismantlement, transport and storage of nuclear weapons, and the storage, processing, isotopic dilution and transportation of special nuclear materials. These activities are now of the highest national security importance to the United States, yet they were not even contemplated during past renewals of the Price-Anderson Act. As suggested in our response to question 13, above, we believe Congress and DOE should explore the indemnification of contractors performing DOE contract work in foreign countries.

In this regard, Congress and DOE will have to face the question of to what extent, if any, Congress wishes to offer a financial remedy to citizens of foreign countries who may suffer damages as a result of a nuclear incident arising from DOE contract work. There would also be an issue of whether this should be a strict liability remedy. This will be a delicate political issue to undertake, requiring the balancing of national security interests with the

need to maintain fiscal responsibility in overseas operations. It will be all the more complicated by the fact that the United States obviously cannot, in the absence of some sort of international agreement, impose statutory limitations on aggregate public liability for nuclear incidents occurring in foreign countries. We believe that on this issue the DOE may need to work with the State Department as well as the Department of Defense.

Q 21. (a) Is there a need to clarify what tort law applies with respect to a nuclear incident in the United States territorial sea? (b) Should the applicable tort law be based on state tort law?

Answer: (a) No. Courts have dealt with shipping mishaps in U.S. territorial waters for several hundred years. In recent decades, some of those cases have involved massive, wide spread contamination damage. Mass tort litigation is not unusual in the latter half of this century. It seems unlikely that a Price-Anderson incident in U.S. territorial waters would seriously challenge several hundred years of judicial experience with applying the appropriate law.

(b) Yes. There appears to be no rationale to use state law for terrestrial accidents but not for those occurring in adjacent seas.

Q 22. Should the definition of nuclear incident be modified to include all occurrences in the United States exclusive economic zone? What would be the effects, if any, on the shipment of nuclear material in the United States exclusive economic zone if such a modification were or were not made? What would be the effects, if any, on the response to an incident involving nuclear material in the United States exclusive economic zone if such a modification were or were not made?

Answer: No comment at this time.

Q 23. Should the reliance of the Act on state tort law continue in its current form? Should uniform rules already established by the Act be modified, or should there be additional uniform rules on specific topics such as causation and damage? Describe any modification or additional uniform rule that would be desirable and explain the rationale.

Answer: In view of the fact that the Price-Anderson Act already includes a fairly comprehensive federal scheme covering jurisdiction, limitation of liability, and

compensation, it may be reasonable for Congress to consider adopting a complete set of uniform rules for adjudicating nuclear incidents. Should this be done, our comment in question 21, above, would be revised to support such a uniform rule.

Q 24. Should the Act be modified to be consistent with the legal approach in many other countries under which all legal liability for nuclear damage from a nuclear incident is channeled exclusively to the operator of a facility on the basis of strict liability? If so, what would be the effect, if any, on the system of financial protection, indemnification and compensation established by the Act?

Answer: No, such an approach would undermine the basic Price-Anderson purposes to protect the public and to encourage contractors to do DOEÕs nuclear work. These purposes remain valid. See also the responses above regarding the impact of eliminating Price-Anderson Act indemnification and/or compensation.

Q 25. Should the procedures in the Act for administrative and judicial proceedings be modified? If so, describe the modification and explain the rationale?

Answer: Insofar as we know, the existing procedures are adequate with regard to claims of public liability.

Q 26. Should there be any modification in the types of claims covered by the Price-Anderson system?

Answer: No comment at this time.

Q 27. What modifications in the Act or its implementation, if any, could facilitate the prompt payment and settlement of claims?

Answer: No comment at this time.

Q 28. Should DOE continue to be authorized to issue civil penalties pursuant to section 234A of the AEA? Should section 234A be modified to make this authority available with

respect to DOE activities that are not covered by the DOE Price-Anderson indemnification? Should DOE continue to have authority to issue civil penalties if the Act is modified to eliminate the DOE Price-Anderson indemnification with respect to nuclear incidents that results from the gross negligence or willful misconduct of a DOE contractor?

Answer: No comment at this time.

Q 29. (a)To what extent does the authority to issue civil penalties affect the ability of DOE to attain safe and efficient management of DOE activities? (b) To what extent does this authority affect the ability of DOE and its contractors to cooperate in managing the environment, health, and safety of DOE activities through mechanisms such as integrated safety management? (c) To what extent does this authority help contain operating costs including the costs of private insurance if it were to be required?

Answer: (a) We believe the emphasis on nuclear safety has had a positive effect. The actual effectiveness of civil penalties could be evaluated in out years, particularly to compare the relative performance of non-profits and for-profits.

(b) We do not have enough experience to objectively answer this question.

(c) In our opinion this authority has not contained operating costs. We have no information as to whether private insurance costs would have been reduced.

Q 30. (a) Should there continue to be a mandatory exemption from civil penalties for certain nonprofit contractors? (b) Should the exemption apply to for-profit subcontractors and suppliers of a nonprofit contractor? (c) Should the exemption apply to a for-profit partner of a nonprofit contractor?

Answer: (a) Congress and DOE could elect to continue to exempt non-profits from civil fines and penalties, relying solely on administrative controls, or establish a graded scale of smaller civil penalties tailored to non-profits. For reasons discussed below, this would be a more cost effective approach to accountability for non-profit contractors.

At the time of the 1988 amendments it was a general cost principle that civil fines and penalties were allowable costs in DOE contracts with non-profits and educational institutions. Since that time, revisions to federal statutes have both limited the

reimbursability of civil fines and penalties and imposed additional liabilities upon non-profits that did not exist at the time Congress was debating the Price-Anderson Act extension. Unfortunately, non-profit contractors have limited or no ability to apply non-contract revenues to satisfy contract-related costs, whether they be civil fines and penalties or other unreimbursable costs.

In recognition of this DOE has revised its practices since 1988 to make its non-profit contractors eligible for compensation beyond that solely required to meet their general and administrative expenses of performing a contract. However, this cost comes at the expense of funds that would otherwise be applied to carry out the programmatic mission of the contractor. Therefore, there needs to be a balance struck between the use of civil fines and penalties as opposed to administrative sanctions to achieve accountability of contractors for nuclear safety.

There are a variety of administrative sanctions that can be imposed in circumstances where there is a failure to comply with nuclear safety requirements: work stoppage, work reduction, reduced tasking (funding) for the contractor, increased inspections, increased reporting requirements, poor performance ratings, partial contract termination and reassignment of contract work, full contract termination. For non-profits, civil fines and penalties should be reserved for situations where graduated administrative sanctions have not worked and yet there continues to be a desire on the part of DOE for the contractor to continue to perform the work. Failing that, DOE will be faced with reduced funding actually applied to programmatic work and/or a shrinkage in the number of non-profit contractors who will be able to engage in nuclear activities on behalf of DOE.

In any event, the Price-Anderson Act provisions on criminal and civil penalties should be modified to provide that civil and/or administrative sanctions will be used in those instances where no harm was actually done, but where the failure of a DOE contractor to comply with nuclear safety regulations, if undetected, would have resulted in a nuclear incident. Currently this criteria is a basis for a criminal sanction but it is inappropriate for that purpose. ÒAccountabilityÓ measures such as this are more appropriately civil and administrative, rather than criminal.

(b) We see no benefit to changing the existing exemption.

(c) We have no experience with such a relationship.

Q 31. Should DOE continue to have discretionary authority to provide educational nonprofit institutions with an automatic remission of civil penalties? If so, should the remission be available where the nonprofit entity has a for-profit partner, subcontractor, or supplier?

Answer: (a) We believe DOEÕs existing policy is appropriate.
(b) No comment. We have no experience with a for-profit partner.

Q 32. Should the maximum amount of civil penalties be modified? If so, how?

Answer: No comment.

Q 33. Should the provisions in section 234A.c. concerning administrative and judicial proceedings relating to civil penalties be modified? If so, how?

Answer: For contractors who are exempt from the civil penalties, we believe there should be a streamlined procedure for seeking administrative review of a Notice of Violation issued by DOE.

Q 34. Should there be any modification in the authority in section 223.c. to impose criminal penalties for knowing and willful violations of nuclear safety requirements by individual officers and employees of contractors, subcontractors and suppliers covered by the DOE Price-Anderson indemnification? Should this authority be extended to cover violations by persons not indemnified?

Answer: The criminal provisions should be moved to Title 18 of the United States Code, and should be modified so as to apply to anyone who intentionally harms another through the exposure to nuclear materials, regardless of whether they are a government contractor employee or not.