

Appendix B

Atomic Energy Act of 1954, as amended 42 United States Code §§ 2210 et seq. (1994)

§ 2014	(AEA § 11)	Definitions
§ 2210	(AEA §170)	Indemnification and Limitation of Liability
§ 2282a	(AEA § 234A)	Civil Monetary Penalties for Violations of Department of Energy Regulations

UNITED STATES CODE

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 23 - DEVELOPMENT AND CONTROL OF ATOMIC ENERGY

SUBCHAPTER I - GENERAL PROVISIONS

Sec. 2014. Definitions

The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this chapter:

(a) The term "agency of the United States" means the executive branch of the United States, or any Government agency, or the legislative branch of the United States, or any agency, committee, commission, office, or other establishment in the legislative branch, or the judicial branch of the United States, or any office, agency, committee, commission, or other establishment in the judicial branch.

(b) The term "agreement for cooperation" means any agreement with another nation or regional defense organization authorized or permitted by sections 2074, 2077, 2094, 2112, 2121(c), 2133, 2134, or 2164 of this title, and made pursuant to section 2153 of this title.

(c) The term "atomic energy" means all forms of energy released in the course of nuclear fission or nuclear transformation.

(d) The term "atomic weapon" means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principal purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device.

(e) The term "byproduct material" means (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

(f) The term "Commission" means the Atomic Energy Commission.

(g) The term "common defense and security" means the common defense and security of the United States.

(h) The term "defense information" means any information in any category determined by any Government agency authorized to classify information, as being information respecting, relating to, or affecting the national defense.

(i) The term "design" means (1) specifications, plans, drawings, blueprints, and other items of like nature; (2) the information contained therein; or (3) the research and development data pertinent to the information contained therein.

(j) The term "extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines to be substantial, and which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines has resulted or will probably result in substantial damages to persons offsite or property offsite. Any determination by the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, that such an event has, or has not, occurred shall be final and conclusive, and no other official or any court shall have power or jurisdiction to review any such determination. The Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, shall establish criteria in writing setting forth the basis upon which such determination shall be made. As used in this subsection, "offsite" means away from "the location" or "the contract location" as defined in the applicable Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, indemnity agreement, entered into pursuant to section 2210 of this title.

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

(l) The term "Government agency" means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

(m) The term "indemnitor" means (1) any insurer with respect to his obligations under a policy of insurance furnished as proof of financial protection; (2) any licensee, contractor or other person who is obligated under any other form of financial protection, with respect to such obligations; and (3) the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, with respect to any obligation undertaken by it in indemnity agreement entered into pursuant to section 2210 of this title.

(n) The term "international arrangement" means any international agreement hereafter approved by the Congress or any treaty during the time such agreement or treaty is in full force and effect, but does not include any agreement for cooperation.

(o) The term "Energy Committees" means the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(p) The term "licensed activity" means an activity licensed pursuant to this chapter and covered by the provisions of section 2210(a) of this title.

(q) The term "nuclear incident" means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however,* That as the term is used in section 2210(l) of this title, it shall include any such occurrence outside the United States: *And provided further,* That as the term is used in section 2210(d) of this title, it shall include any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States: *And provided further,* That as the term is used in section 2210(c) of this title, it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to subchapters V, VI, VII, and IX of this division, which is used in connection with the operation of a licensed stationary production or utilization facility or which moves outside the territorial limits of the United States in transit from one person licensed by the Nuclear Regulatory Commission to another person licensed by the Nuclear Regulatory Commission.

(r) The term "operator" means any individual who manipulates the controls of a utilization or production facility.

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

(t) The term "person indemnified" means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in section 2210(c) of this title, and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Secretary of Energy or any project to which indemnification under the provisions of section 2210(d) of this title has

been extended or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.

(u) The term "produce", when used in relation to special nuclear material, means (1) to manufacture, make, produce, or refine special nuclear material; (2) to separate special nuclear material from other substances in which such material may be contained; or (3) to make or to produce new special nuclear material.

(v) The term "production facility" means (1) any equipment or device determined by rule of the Commission to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission. Except with respect to the export of a uranium enrichment production facility, such term as used in subchapters IX and XV of this division shall not include any equipment or device (or important component part especially designed for such equipment or device) capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

(w) The term "public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or a precautionary evacuation), except: (i) claims under State or Federal workmen's compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (ii) claims arising out of an act of war; and (iii) whenever used in subsections (a), (c), and (k) of section 2210 of this title, claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. "Public liability" also includes damage to property of persons indemnified: Provided, That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

(x) The term "research and development" means (1) theoretical analysis, exploration, or experimentation; or (2) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(y) The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 2162 of this title.

(z) The term "source material" means (1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 2091 of this title to be source

material; or (2) ores containing one or more of the foregoing materials, in such concentration as the Commission may by regulation determine from time to time.

(aa) The term "special nuclear material" means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 2071 of this title, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(bb) The term "United States" when used in a geographical sense includes all territories and possessions of the United States, the Canal Zone and Puerto Rico.

(cc) The term "utilization facility" means (1) any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission.

(dd) The terms "high-level radioactive waste" and "spent nuclear fuel" have the meanings given such terms in section 10101 of this title.

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

(ff) The term "nuclear waste activities", as used in section 2210 of this title, means activities subject to an agreement of indemnification under subsection (d) of such section, that the Secretary of Energy is authorized to undertake, under this chapter or any other law, involving the storage, handling, transportation, treatment, or disposal of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, including (but not limited to) activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164 (93 Stat. 1265).

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

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

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

(hh) The term "public liability action", as used in section 2210 of this title, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 2210 of this title, and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.

(jj)¹ Legal Costs. - As used in section 2210 of this title, the term "legal costs" means the costs incurred by a plaintiff or a defendant in initiating, prosecuting, investigating, settling, or defending claims or suits for damage arising under such section.

(Aug. 1, 1946, ch. 724, title I, § 11, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 922; amended Aug. 6, 1956, ch. 1015, § 1, 70 Stat. 1069; Sept. 2, 1957, Pub. L. 85-256, § 3, 71 Stat. 576; Aug. 8, 1958, Pub. L. 85-602, § 1, 72 Stat. 525; Sept. 6, 1961, Pub. L. 87-206, §§ 2, 3, 75 Stat. 476; Aug. 29, 1962, Pub. L. 87-615, §§ 4, 5, 76 Stat. 410; Oct. 13, 1966, Pub. L. 89-645, § 1(a), 80 Stat. 891; Dec. 31, 1975, Pub. L. 94-197, § 1, 89 Stat. 1111; Nov. 8, 1978, Pub. L. 95-604, title II, § 201, 92 Stat. 3033; Aug. 20, 1988, Pub. L. 100-408, §§ 4(b)-5(b), 11(b), (d)(2), 16(a)(1), (b)(1), (2), (d)(1)-(3), 102 Stat. 1069, 1070, 1076, 1078-1080; Nov. 15, 1990, Pub. L. 101-575, § 5(a), 104 Stat. 2835; renumbered title I and amended Oct. 24, 1992, Pub. L. 102-486, title IX, § 902(a)(8), title XI, § 1102, 106 Stat. 2944, 2955; Nov. 2, 1994, Pub. L. 103-437, § 15(f)(1), 108 Stat. 4592; Apr. 26, 1996, Pub. L. 104-134, title III, § 3116(b)(1), 110 Stat. 1321-349.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (bb), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

Section 213 of Public Law 96-164, referred to in subsec. (ff), is Pub. L. 96-164, title II, § 213, Dec. 29, 1979, 93 Stat. 1265, which is not classified to the Code.

¹So in original. No subsec. (ii) has been enacted.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 18 of act Aug. 1, 1946, ch. 724, 60 Stat. 774, which was classified to section 1818 of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1994 - Subsec. (o). Pub. L. 103-437 substituted " 'Energy Committees' means the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives" for " 'Joint Committee' means the Joint Committee on Atomic Energy".

1992 - Subsec. (v). Pub. L. 102-486 amended last sentence generally. Prior to amendment, last sentence read as follows: "Except with respect to the export of a uranium enrichment production facility, such term as used in subchapters IX and XV of this division shall not include any equipment or device (or important component part especially designed for such equipment or device) capable of separating the isotopes of uranium or enriching uranium in the isotope 235."

1990 - Subsec. (v). Pub. L. 101-575 inserted at end "Except with respect to the export of a uranium enrichment production facility, such term as used in subchapters IX and XV of this chapter shall not include any equipment or device (or important component part especially designed for such equipment or device) capable of separating the isotopes of uranium or enriching uranium in the isotope 235."

1988 - Subsecs. (j), (m). Pub. L. 100-408, § 16(b)(1), substituted "Nuclear Regulatory Commission or the Secretary of Energy, as appropriate," for "Commission" wherever appearing.

Subsec. (q). Pub. L. 100-408, § 16(d)(1), substituted "section" for "subsection" in three places, which for purposes of codification was translated as "section", thus requiring no change in text.

Pub. L. 100-408, § 16(a)(1), substituted "Nuclear Regulatory Commission" for "Commission" wherever appearing.

Subsec. (t). Pub. L. 100-408, § 16(d)(2), substituted "section" for "subsection" in two places, which for purposes of codification was translated as "section", thus requiring no change in text.

Pub. L. 100-408, § 16(b)(2), substituted "Secretary of Energy" for "Commission" in cl. (2).

Subsec. (w). Pub. L. 100-408, § 16(d)(3), substituted "subsections (a), (c), and (k) of section 2210 of this title" for "section 2210(a), (c), and (k) of this title".

Pub. L. 100-408, § 5(a), inserted "or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or a precautionary evacuation)" after first reference to "nuclear incident".

Subsecs. (dd) to (ff). Pub. L. 100-408, § 4(b), added subsecs. (dd) to (ff).

Subsec. (gg). Pub. L. 100-408, § 5(b), added subsec. (gg).

Subsec. (hh). Pub. L. 100-408, § 11(b), added subsec. (hh).

Subsec. (jj). Pub. L. 100-408, § 11(d)(2), added subsec. (jj).

1978 - Subsec. (e). Pub. L. 95-604 designated existing provisions as cl. (1) and added cl. (2).

1975 - Subsec. (q). Pub. L. 94-197 substituted "source, special nuclear, or byproduct material" for "facility or device" and inserted proviso to include within term as used in section 2210(c) of this title any occurrence outside both the United States and any other nation.

Subsec. (t). Pub. L. 94-197 expanded definition to include nuclear incidents occurring outside the United States as the term is used in section 2210(c) of this title and inserted reference to person required to maintain financial protection.

1966 - Subsec. (j). Pub. L. 89-645, § 1(a)(2), added subsec. (j). Former subsec. (j) redesignated (k).

Subsecs. (k), (l). Pub. L. 89-645, § 1(a)(1), redesignated former subsecs. (j) and (k) as (k) and (l), respectively. Former subsec. (l) redesignated (n).

Subsec. (m). Pub. L. 89-645, § 1(a)(3), added subsec. (m). Former subsec. (m) redesignated (o).

Subsecs. (n) to (p). Pub. L. 89-645, § 1(a)(1), redesignated former subsecs. (l) to (n) as (n) to (p), respectively. Former subsecs. (n) to (p) redesignated (p) to (r), respectively.

Subsec. (q). Pub. L. 89-645, § 1(a)(1), (4), redesignated former subsec. (o) as (q) and inserted ", including an extraordinary nuclear occurrence," between "occurrence" and "within", respectively. Former subsec. (q) redesignated (s).

Subsecs. (r) to (cc). Pub. L. 89-645, § 1(a)(1), redesignated former subsecs. (p) to (aa) as (r) to (cc), respectively.

1962 - Subsec. (o). Pub. L. 87-615, § 4, enlarged definition of "nuclear incident" to include any occurrence within the United States causing any of the listed injuries and damages within or outside the United States, provided that as used in section 2210(l) of this title, term shall "include" instead of "mean" any such occurrence outside the United States, and that as used in section 2210(d) of this title, the term shall include any such occurrence outside the United States if such occurrence involves a facility or device owned by, and used by or under contract with, the United States.

Subsec. (r). Pub. L. 87-615, § 5, limited definition of "person indemnified" to nuclear incidents occurring within the United States, or in connection with the nuclear ship Savannah, and inserted provisions with respect to nuclear incidents occurring outside the United States.

1961 - Subsec. (b). Pub. L. 87-206, § 2, included section 2121(c) of this title in enumeration.

Subsec. (u). Pub. L. 87-206, § 3, designated existing provisions as cls. (i) and (ii) and added cl. (iii).

1958 - Subsec. (o). Pub. L. 85-602 inserted proviso defining "nuclear incident" as it is used in section 2210(l) of this title.

1957 - Subsec. (j). Pub. L. 85-256 added subsec. (j). Former subsec. (j) redesignated (k).

Subsecs. (k) to (m). Pub. L. 85-256, redesignated former subsecs. (j) to (l) as (k) to (m), respectively. Former subsec. (m) redesignated (p).

Subsec. (n). Pub. L. 85-256 added subsec. (n). Former subsec. (n) redesignated (q).

Subsec. (o). Pub. L. 85-256 added subsec. (o). Former subsec. (o) redesignated (s).

Subsecs. (p), (q). Pub. L. 85-256 redesignated former subsecs. (m) and (n) as (p) and (q), respectively. Former subsecs. (p) and (q) redesignated (t) and (u), respectively.

Subsec. (r). Pub. L. 85-256 added subsec. (r). Former subsec. (r) redesignated (w).

Subsecs. (s), (t). Pub. L. 85-256 redesignated former subsecs. (o) and (p) as (s) and (t), respectively. Former subsecs. (s) and (t) redesignated (x) and (y), respectively.

Subsec. (u). Pub. L. 85-256 added subsec. (u). Former subsec. (u) redesignated (z).

Subsecs. (v) to (aa). Pub. L. 85-256 redesignated former subsecs. (q) to (v) as (v) to (aa), respectively.

1956 - Subsec. (u). Act Aug. 6, 1956, substituted "the Canal Zone and Puerto Rico" for "and the Canal Zone".

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 20 of Pub. L. 100-408 provided that:

"(a) Except as provided in subsection (b), the amendments made by this Act (enacting section 2282a of this title and amending this section and sections 2210 and 2273 of this title) shall become effective on the date of the enactment of this Act (Aug. 20, 1988) and shall be applicable with respect to nuclear incidents occurring on or after such date.

"(b)(1) The amendments made by section 11 (amending this section and section 2210 of this title) shall apply to nuclear incidents occurring before, on, or after the date of the enactment of this Act.

"(2)(A) Section 234A of the Atomic Energy Act of 1954 (section 2282a of this title) shall not apply to any violation occurring before the date of the enactment of this Act.

"(B) Section 223 c. of the Atomic Energy Act of 1954 (section 2273(c) of this title) shall not apply to any violation occurring before the date of enactment of this Act."

EFFECTIVE DATE OF 1978 AMENDMENT

Section 208 of Pub. L. 95-604 provided that: "Except as otherwise provided in this title (see section 202(b) of Pub. L. 95-604, set out as an Effective Date note under section 2113 of this title) the amendments made by this title (enacting sections 2022 and 2114 of this title, amending this section and sections 2021, 2111, and 2201 of this title, and enacting provisions set out as notes under sections 2021 and 2113 of this title) shall take effect on the date of the enactment of this Act (Nov. 8, 1978)."

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2021, 2021b, 2022, 2077, 2113, 2114, 2139, 2153b, 2201, 2204a, 2273, 2286g, 2291, 2296a-3, 7274j, 7922, 10101 of this title; title 10 section 801; title 18 section 1030; title 22 section 6305.

* * * * *

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 23 - DEVELOPMENT AND CONTROL OF ATOMIC ENERGY

SUBCHAPTER XIII - GENERAL AUTHORITY OF COMMISSION

Sec. 2210. Indemnification and limitation of liability

(a) Requirement of financial protection for licensees

Each license issued under section 2133 or 2134 of this title and each construction permit issued under section 2235 of this title shall, and each license issued under section 2073, 2093, or 2111 of this title may, for the public purposes cited in section 2012(i) of this title, have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Nuclear Regulatory Commission (in this section referred to as the "Commission") in the exercise of its licensing and regulatory authority and responsibility shall require in accordance with subsection (b) of this section to cover public liability claims. Whenever such financial protection is required, it may be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection (c) of this section. The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.

(b) Amount and type of financial protection for licensees

(1) The amount of primary financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (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 (subject to adjustment for inflation under subsection (t) of this section), but not more than \$10,000,000 in any 1 year, for each facility for which such licensee is required to maintain the maximum amount of primary financial protection: *And provided further*, That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs (excluding legal costs subject to subsection (o)(1)(D) of this section, 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 chapter shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission.

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

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

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

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

(3) The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may

provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.

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

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

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

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

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

redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(c) Indemnification of licenses by Nuclear Regulatory Commission

The Commission shall, with respect to licenses issued between August 30, 1954, and August 1, 2002, 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, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 2002.

(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, 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) of this section or agreements of indemnification under subsection (c) or (k) of this section.

(B)(i)(I) Beginning 60 days after August 20, 1988, agreements of indemnification under subparagraph (A) shall be the exclusive means of indemnification for public liability arising from activities described in such subparagraph, including activities conducted under a contract that contains an indemnification clause under Public Law 85-804 (50 U.S.C. 1431 et seq.) entered into between August 1, 1987, and August 20, 1988.

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

(ii) Public liability arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A) that are funded by the Nuclear Waste Fund established in section 10222 of

this title shall be compensated from the Nuclear Waste Fund in an amount not to exceed the maximum amount of financial protection required of licensees under subsection (b) of this section.

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

(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 August 20, 1988, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection on August 20, 1988.

(4) Financial protection under paragraph (2) and indemnification under paragraph (1) shall be the exclusive means of financial protection and indemnification under this section for any Department of Energy demonstration reactor licensed by the Commission under section 5842 of this title.

(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.

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

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

municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.

(e) Limitation on aggregate public liability

(1) The aggregate public liability for a single nuclear incident of persons indemnified, including such legal costs as are authorized to be paid under subsection (o)(1)(D) of this section, shall not exceed -

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

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

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

(i) \$500,000,000, together with the amount of financial protection required of the licensee;
or

(ii) if the amount of financial protection required of the licensee exceeds \$60,000,000, \$560,000,000 or the amount of financial protection required of the licensee, whichever amount is more.

(2) 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 subsection (i) of this section 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.

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

(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) of this section is

applicable, such aggregate public liability shall not exceed the amount of \$100,000,000, together with the amount of financial protection required of the contractor.

(f) Collection of fees by Nuclear Regulatory Commission

The Commission or the Secretary, as appropriate, is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be \$30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 2133 of this title: *Provided*, That the Commission or the Secretary, as appropriate, is authorized to reduce the fee for such facilities in reasonable relation to increases in financial protection required above a level of \$60,000,000. For facilities licensed under section 2134 of this title, and for construction permits under section 2235 of this title, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 2134 of this title, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than \$100 per year.

(g) Use of services of private insurers

In administering the provisions of this section, the Commission or the Secretary, as appropriate, shall use, to the maximum extent practicable, the facilities and services of private insurance organizations, and the Commission or the Secretary, as appropriate, may contract to pay a reasonable compensation for such services. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 5 of title 41 upon a showing by the Commission or the Secretary, as appropriate, that advertising is not reasonably practicable and advance payments may be made.

(h) Conditions of agreements of indemnification

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

(i) Compensation plans

(1) After any nuclear incident involving damages that are likely to exceed the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection (e)(1) of this section, the Secretary or the Commission,² as appropriate, shall -

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

(B) expeditiously submit a report setting forth the results of such survey to the Congress, to the Representatives of the affected districts, to the Senators of the affected States, and (except for information that will cause serious damage to the national defense of the United States) to the public, to the parties involved, and to the courts.

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

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

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

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

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

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

²So in original. Probably should be "Commission,".

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

(4) No such compensation plan may be considered approved for purposes of subsection (e)(2) of this section unless between the date of transmittal and the end of the first period of sixty calendar days of continuous session of Congress after the date on which such action is transmitted to the Senate, the Senate passes a resolution described in paragraph 6³ of this subsection.

(5) For the purpose of paragraph (4) of this subsection -

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

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

(6)(A) This paragraph is enacted -

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

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

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

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

(D)(i) If the committee of the Senate to which a resolution with respect to a compensation plan has been referred has not reported it at the end of twenty calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge

³So in original. Probably should be paragraph "(6)".

the committee from further consideration with respect to such compensation plan which has been referred to the committee.

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

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

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

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

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

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

(j) Contracts in advance of appropriations

In administering the provisions of this section, the Commission or the Secretary, as appropriate, may make contracts in advance of appropriations and incur obligations without regard to sections 1341, 1342, 1349, 1350, and 1351, and subchapter II of chapter 15, of title 31.

(k) Exemption from financial protection requirement for nonprofit educational institutions

With respect to any license issued pursuant to section 2073, 2093, 2111, 2134(a), or 2134(c) of this title, 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) of this section. With respect to licenses issued between August 30, 1954, and August 1, 2002, for which the Commission grants such exemption:

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

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

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

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

(I) Presidential commission on catastrophic nuclear accidents

(1) Not later than 90 days after August 20, 1988, the President shall establish a commission (in this subsection referred to as the "study commission") in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) to study means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under subsection (e)(1) of this section.

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

(i) shall be appointed by the President; and

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

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

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

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

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

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

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

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

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

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

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

(C) The Attorney General, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency shall, to the extent permitted by law and subject to the availability of funds, provide the study commission with such facilities, support, funds and services,

including staff, as may be necessary for the effective performance of the functions of the study commission.

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

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

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

(5) The final report required in paragraph (3) shall be submitted to the Congress not later than the expiration of the 2-year period beginning on August 20, 1988.

(6) The study commission shall terminate upon the expiration of the 2-month period beginning on the date on which the final report required in paragraph (3) is submitted.

(m) Coordinated procedures for prompt settlement of claims and emergency assistance

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

(n) Waiver of defenses and judicial procedures

(1) With respect to any extraordinary nuclear occurrence to which an insurance policy or contract furnished as proof of financial protection or an indemnity agreement applies and which -

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

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

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

(D) arises out of, results from, or occurs in the course of, the construction, possession, or operation of any facility licensed under section 2073, 2093, or 2111 of this title, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection (a) of this section,

(E) arises out of, results from, or occurs in the course of, transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under section 2073, 2093, or 2111 of this title, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection (a) of this section, or

(F) arises out of, results from, or occurs in the course of nuclear waste activities.⁴

the Commission or the Secretary, as appropriate, may incorporate provisions in indemnity agreements with licensees and contractors under this section, and may require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, which waive (i) any issue or defense as to conduct of the claimant or fault of persons indemnified, (ii) any issue or defense as to charitable or governmental immunity, and (iii) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. When so incorporated, such waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified. Such waivers shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages, nor shall such waivers apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant. The waivers authorized in this subsection shall, as to indemnitors, be effective only with respect to those obligations set forth in the insurance policies or the contracts furnished as proof of financial protection and in the indemnity agreements. Such waivers shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the terms of insurance policies or contracts furnished as proof of financial

⁴So in original. Probably should be a comma.

protection, or indemnity agreements, and (ii) the limit of liability provisions of subsection (e) of this section.

(2) With respect to any public liability action arising out of or resulting from a nuclear incident, the United States district court in the district where the nuclear incident takes place, or in the case of a nuclear incident taking place outside the United States, the United States District Court for the District of Columbia, shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant or of the Commission or the Secretary, as appropriate, any such action pending in any State court (including any such action pending on August 20, 1988) or United States district court shall be removed or transferred to the United States district court having venue under this subsection. Process of such district court shall be effective throughout the United States. In any action that is or becomes removable pursuant to this paragraph, a petition for removal shall be filed within the period provided in section 1446 of title 28 or within the 30-day period beginning on August 20, 1988, whichever occurs later.

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

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

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

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

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

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

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

- (ii) to establish priorities for the handling of different classes of cases;
- (iii) to assign cases to a particular judge or special master;
- (iv) to appoint special masters to hear particular types of cases, or particular elements or procedural steps of cases;
- (v) to promulgate special rules of court, not inconsistent with the Federal Rules of Civil Procedure, to expedite cases or allow more equitable consideration of claims;
- (vi) to implement such other measures, consistent with existing law and the Federal Rules of Civil Procedure, as will encourage the equitable, prompt, and efficient resolution of cases arising out of the nuclear incident; and
- (vii) to assemble and submit to the President such data, available to the court, as may be useful in estimating the aggregate damages from the nuclear incident.

(o) Plan for distribution of funds

(1) Whenever the United States district court in the district where a nuclear incident occurs, or the United States District Court for the District of Columbia in case of a nuclear incident occurring outside the United States, determines upon the petition of any indemnitor or other interested person that public liability from a single nuclear incident may exceed the limit of liability under the applicable limit of liability under subparagraph (A), (B), or (C) of subsection (e)(1) of this section:

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

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

(C) The Commission or the Secretary, as appropriate, shall, and any other indemnitor or other interested person may, submit to such district court a plan for the disposition of pending claims and for the distribution of remaining funds available. Such a plan shall include an allocation of appropriate amounts for personal injury claims, property damage claims, and possible latent injury claims which may not be discovered until a later time and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds. Such court shall have all power necessary to

approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission or the Secretary as appropriate, any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States.

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

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

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

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

(B) demonstrated to the court -

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

(ii) that such person has -

(I) litigated in good faith;

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

(III) not made frivolous claims or defenses; and

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

(p) Reports to Congress

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

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

(q) Limitation on awarding of precautionary evacuation costs

No court may award costs of a precautionary evacuation unless such costs constitute a public liability.

(r) Limitation on liability of lessors

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

(s) Limitation on punitive damages

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

(t) Inflation adjustment

(1) The Commission shall adjust the amount of the maximum standard deferred premium under subsection (b)(1) of this section not less than once during each 5-year period following August 20, 1988, in accordance with the aggregate percentage change in the Consumer Price Index since -

(A) August 20, 1988, in the case of the first adjustment under this subsection; or

(B) the previous adjustment under this subsection.

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

(Aug. 1, 1946, ch. 724, title I, § 170, as added Sept. 2, 1957, Pub. L. 85-256, § 4, 71 Stat. 576; amended Aug. 8, 1958, Pub. L. 85-602, §§ 2, 2[3], 72 Stat. 525; Aug. 23, 1958, Pub. L. 85-744, 72 Stat. 837; Sept. 6, 1961, Pub. L. 87-206, § 15, 75 Stat. 479; Aug. 29, 1962, Pub. L. 87-615, §§ 6, 7, 76 Stat. 410; Aug. 1, 1964, Pub. L. 88-394, §§ 2, 3, 78 Stat. 376; Sept. 29, 1965, Pub. L. 89-210, §§ 1-5, 79 Stat. 855-857; Oct. 13, 1966, Pub. L. 89-645, §§ 2, 3, 80 Stat. 891; Dec. 31, 1975, Pub. L. 94-197, §§ 2-14, 89 Stat. 1111-1115; Aug. 20, 1988, Pub. L. 100-408, §§ 2-4(a), 5(c)-11(a), (c), (d)(1), 12-15, 16(a)(2), (b)(3)-(c), (d)(4)-(e), 102 Stat. 1066-1068, 1070-1080; renumbered title I, Oct. 24, 1992, Pub. L. 102-486, title IX, § 902(a)(8), 106 Stat. 2944.)

REFERENCES IN TEXT

Public Law 85-804, referred to in subsec. (d)(1)(B)(i)(I), is Pub. L. 85-804, Aug. 28, 1958, 72 Stat. 972, as amended, which is classified generally to chapter 29 (§ 1431 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

The Federal Advisory Committee Act, referred to in subsec. (l)(1), (4)(A), (E), (F), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Federal Rules of Civil Procedure, referred to in subsec. (n)(3)(C)(v), (vi), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1988 - Subsec. (a). Pub. L. 100-408, § 16(e)(1), inserted "Requirement of financial protection for licensees" as heading.

Pub. L. 100-408, § 16(d)(4), substituted "section 2i." for "subsection 2i. of the Atomic Energy Act of 1954, as amended", "subsection b." for "subsection 170b.", and "subsection c." for "subsection 170c.", which for purposes of codification were translated as "section 2012(i) of this title", "subsection (b) of this section", and "subsection (c) of this section", respectively, thus requiring no change in text.

Pub. L. 100-408, § 16(a)(2), substituted "the Nuclear Regulatory Commission (in this section referred to as the 'Commission') in the exercise" for "the Commission in the exercise".

Subsec. (b). Pub. L. 100-408, § 16(e)(2), inserted "Amount and type of financial protection for licensees" as heading.

Subsec. (b)(1). Pub. L. 100-408, § 2(a)-(c)(3), inserted par. (1) designation, inserted "primary" after "The amount of", "the amount of", "Such", and "of such", redesignated cls. (1) to (3) as (A) to (C), inserted "(excluding the amount of private liability insurance available under the industry retrospective rating plan required in this subsection)", substituted "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," for "In prescribing such terms and conditions for licensees required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources, the Commission shall, by rule initially prescribed not later than twelve months from December 31, 1975, include, in determining such maximum amount", substituted "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 (subject to adjustment for inflation under subsection (t) of this section), but not more than \$10,000,000 in any 1 year, for each facility for which such licensee is required to maintain the maximum amount of primary financial protection" for "That the standard deferred premium which may be charged following any nuclear incident under such a plan shall be not less than \$2,000,000 nor more than \$5,000,000 for each facility required to maintain the maximum amount of financial protection", inserted "(excluding legal costs subject to subsection (o)(1)(D) of this section, payment of which has not been authorized under such subsection)", and struck out "The Commission is authorized to establish a maximum amount which the aggregate deferred premiums charged for each facility within one calendar year may not exceed. The Commission may establish amounts less than the standard premium for individual facilities taking into account such factors as the facility's size, location, and other factors pertaining to the hazard."

Subsec. (b)(2). Pub. L. 100-408, § 2(c)(4), added par. (2).

Subsec. (b)(3). Pub. L. 100-408, § 2(d)(1), inserted par. (3) designation.

Subsec. (b)(4). Pub. L. 100-408, § 2(d)(2), added par. (4).

Subsec. (c). Pub. L. 100-408, § 16(e)(3), inserted "Indemnification of licenses by Nuclear Regulatory Commission" as heading.

Pub. L. 100-408, § 3, substituted "August 1, 2002" for "August 1, 1987" wherever appearing.

Subsec. (d). Pub. L. 100-408, § 4(a), inserted "Indemnification of contractors by Department of Energy" as heading and completely revised and expanded subsec. (d), changing its structure from a single unnumbered subsection to one consisting of seven numbered paragraphs.

Subsec. (e). Pub. L. 100-408, § 6, inserted "Limitation on aggregate public liability" as heading and completely revised and expanded subsec. (e), changing its structure from a single unnumbered subsection to one consisting of four numbered paragraphs.

Subsec. (f). Pub. L. 100-408, § 16(e)(4), inserted "Collection of fees by Nuclear Regulatory Commission" as heading.

Pub. L. 100-408, § 16(b)(3), inserted "or the Secretary, as appropriate," in two places.

Subsec. (g). Pub. L. 100-408, § 16(e)(5), inserted "Use of services of private insurers" as heading.

Pub. L. 100-408, § 16(c)(1), substituted "section 3709 of the Revised Statutes (41 U.S.C. 5)" for "section 3709 of the Revised Statutes", which for purposes of codification was translated as "section 5 of title 41", thus requiring no change in text.

Pub. L. 100-408, § 16(b)(4), inserted "or the Secretary, as appropriate," after "Commission", wherever appearing.

Subsec. (h). Pub. L. 100-408, § 16(e)(6), inserted "Conditions of agreements of indemnification" as heading.

Pub. L. 100-408, § 16(b)(4), inserted "or the Secretary, as appropriate," after "Commission", wherever appearing.

Subsec. (i). Pub. L. 100-408, § 7(a), inserted "Compensation plans" as heading and completely revised and expanded subsec. (i), changing its structure from a single unnumbered Subsection to one consisting of six numbered paragraphs.

Subsec. (j). Pub. L. 100-408, § 16(e)(7), inserted "Contracts in advance of appropriations" as heading.

Pub. L. 100-408, § 16(c)(2), Substituted "sections 1341, 1342, 1349, 1350, and 1351, and subchapter II of chapter 15, of title 31" for "section 3679 of the Revised Statutes, as amended".

Pub. L. 100-408, § 16(b)(4), inserted "or the Secretary, as appropriate,".

Subsec. (k). Pub. L. 100-408, § 16(e)(8), inserted "Exemption from financial protection requirement for nonprofit educational institutions" as heading.

Pub. L. 100-408, § 16(d)(5), in introductory provisions substituted "subsection a" for "subsection 170a", which for purposes of codification was translated as "subsection (a) of this section", thus requiring no change in text.

Pub. L. 100-408, § 8(1), Substituted "August 1, 2002" for "August 1, 1987", wherever appearing in introductory and closing provisions.

Subsec. (k)(1). Pub. L. 100-408, § 8(2), Substituted "including such legal costs of the licensee as are approved by the Commission" for "excluding cost of investigating and settling claims and defending suits for damage".

Subsec. (l). Pub. L. 100-408, § 9, inserted "Presidential commission on catastrophic nuclear accidents" as heading and completely revised and expanded Subsec. (l), changing its structure from a single unnumbered Subsection to one consisting of six numbered paragraphs.

Subsec. (m). Pub. L. 100-408, § 16(e)(9), inserted "Coordinated procedures for prompt settlement of claims and emergency assistance" as heading.

Pub. L. 100-408, § 16(b)(4), inserted "or the Secretary, as appropriate," after "Commission" wherever appearing.

Subsec. (n). Pub. L. 100-408, § 16(e)(10), inserted "Waiver of defenses and judicial procedures" as heading.

Subsec. (n)(1). Pub. L. 100-408, §§ 10, 16(b)(5)(A), (d)(6), redesignated existing subpars. (a), (b), and (c) as (A), (B), and (C), respectively, added subpars. (D), (E), and (F), Substituted "a Department of Energy contractor" for "a Commission contractor" in subpar. (C), and, in closing provisions inserted ", or the Secretary, as appropriate," after "the Commission", struck out ", but in no event more than twenty years after the date of the nuclear incident" after "and the cause thereof", and substituted "subsection e" for "subsection 170e", which for purposes of codification was translated as "Subsection (e) of this section", requiring no change in text.

Subsec. (n)(2). Pub. L. 100-408, § 16(b)(5)(B), inserted "or the Secretary, as appropriate" after "Commission".

Pub. L. 100-408, § 11(a), Substituted "a nuclear incident" for "an extraordinary nuclear occurrence" in two places and "the nuclear incident" for "the extraordinary nuclear occurrence", and inserted "(including any such action pending on August 20, 1988)", and "In any action that is or becomes removable pursuant to this paragraph, a petition for removal shall be filed within the period provided in section 1446 of title 28 or within the 30-day period beginning on August 20, 1988, whichever occurs later."

Subsec. (n)(3). Pub. L. 100-408, § 11(c), added par. (3).

Subsec. (o). Pub. L. 100-408, § 11(d)(1), inserted "Plan for distribution of funds" as heading, designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and added subpars. (D) and (E) and par. (2).

Subsec. (o)(1). Pub. L. 100-408, § 7(b)(1), Substituted "the applicable limit of liability under subparagraph (A), (B), or (C) of subsection (e)(1) of this section" for "subsection (e) of this section" in introductory provisions.

Subsec. (o)(1)(B). Pub. L. 100-408, § 16(d)(7), substituted "subparagraph (C)" for "subparagraph (3) of this subsection (o)".

Subsec. (o)(1)(C). Pub. L. 100-408, § 16(b)(6), inserted "or the Secretary, as appropriate," after first reference to "Commission" and "or the Secretary as appropriate" after second reference to "Commission".

Subsec. (o)(4). Pub. L. 100-408, § 7(b)(2), struck out par. (4) which read as follows: "The Commission shall, within ninety days after a court shall have made such determination, deliver to the Joint Committee a supplement to the report prepared in accordance with subsection (i) of this section setting forth the estimated requirements for full compensation and relief of all claimants, and recommendations as to the relief to be provided."

Subsec. (p). Pub. L. 100-408, § 16(e)(11), inserted "Reports to Congress" as heading.

Subsec. (p)(1). Pub. L. 100-408, § 12, designated existing provisions as par. (1), substituted "and the Secretary shall submit to the Congress by August 1, 1998, detailed reports" for "shall submit to the Congress by August 1, 1983, a detailed report", and added par. (2).

Subsec. (q). Pub. L. 100-408, § 5(c), added subsec. (q).

Subsec. (r). Pub. L. 100-408, § 13, added subsec. (r).

Subsec. (s). Pub. L. 100-408, § 14, added subsec. (s).

Subsec. (t). Pub. L. 100-408, § 15, added subsec. (t).

1975 - Subsec. (a). Pub. L. 94-197, § 2, inserted provision relating to the public purposes cited in section 2012(i) of this title and "in the exercise of its licensing and regulatory authority and responsibility" after "as the Commission", and substituted "required, it may" for "required, it shall".

Subsec. (b). Pub. L. 94-197, § 3, inserted requirement that for facilities having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be at a reasonable cost and on reasonable terms, and requirement that financial protection be Subsec. ject to such terms and conditions as the Commission, by rule, regulation or order prescribes, and established premium and funding standards and procedures for prescribing terms and conditions for licensees required to have and maintain financial protection equal to the maximum amount of liability insurance

available from private sources. Notwithstanding the directory language that amendment be made to section 107 b. of the Atomic Energy Act of 1954, as amended, the amendment was executed to section 170 b. of the Atomic Energy Act of 1954, as amended, (subsec. (b) of this section) as the probable intent of Congress.

Subsec. (c). Pub. L. 94-197, § 4, substituted "and August 1, 1987, for which it requires financial protection of less than \$560,000,000," for "and August 1, 1977, for which it requires financial protection," "excluding" for "including the reasonable", and "August 1, 1987" for "August 1, 1977" in text relating to any production or utilization facility.

Subsec. (d). Pub. L. 94-197, § 5, substituted "until August 1, 1987," for "until August 1, 1977," and "excluding" for "including the reasonable".

Subsec. (e). Pub. L. 94-197, § 6, designated existing provisions as cl. (1), added cl. (2), substituted proviso relating to Congressional review and action for proviso relating to aggregate liability exceeding the sum of \$560,000,000, and substituted "*And provided further*" for "*Provided further*".

Subsec. (f). Pub. L. 94-197, § 7, inserted proviso which authorized Commission to reduce the indemnity fee for persons with whom indemnification agreements have been executed in reasonable relation to increases in financial protection above a level of \$60,000,000.

Subsec. (h). Pub. L. 94-197, § 8, substituted "shall not include" for "may include reasonable".

Subsec. (i). Pub. L. 94-197, § 9, inserted "or which will probably result in public liability claims in excess of \$560,000,000," after "this section", and requirement that Commission report extent of damage caused from a nuclear incident to the Congressmen of the affected districts and the Senators of the affected state and Substituted provision relating to information concerning the national defense, for provisions relating to applicability of prohibition of sections 2161 to 2166 of this title, other laws or Executive order.

Subsec. (k). Pub. L. 94-197, § 10, Substituted "August 1, 1987" for "August 1, 1977" wherever appearing and substituted "excluding" for "including the reasonable" in par. (1).

Subsec. (l). Pub. L. 94-197, § 11, Substituted "excluding" for "including the reasonable".

Subsec. (n)(1)(iii). Pub. L. 94-197, § 12, substituted "twenty years" for "ten years".

Subsec. (o)(3), (4). Pub. L. 94-197, § 13, in par. (3) inserted provisions authorizing the establishment, in any plan for disposition of claims, of priorities between classes of claims and claimants to extent necessary to ensure the most equitable allocation of available funds, and added par. (4).

Subsec. (p). Pub. L. 94-197, § 14, added Subsec. (p). 1966 - Subsec. (e). Pub. L. 89-645, § 2, struck out last sentence which authorized application by the Commission or any indemnified person to district court of the United States having venue in bankruptcy over location of nuclear incident and to United States District Court for the District of Columbia in cases of nuclear incidents occurring outside the United States, and upon a showing that public liability from a single nuclear incident will probably exceed the limit of impossible liability, entitled the applicant to orders for enforcement of this section, including limitation of liability of indemnified persons, staying payment of claims and execution of court judgments, apportioning payments to claimants, permitting partial payments before final determination of total claims, and setting aside part of funds for possible injuries not discovered until later time, now incorporated in subsec. (o) of this section.

Subsecs. (m) to (o). Pub. L. 89-645, § 3, added subsecs. (m) to (o).

1965 - Subsec. (c). Pub. L. 89-210, § 1, Substituted "August 1, 1977" for "August 1, 1967" wherever appearing, and inserted proviso requiring the amount of indemnity to be reduced by the amount that the financial protection required shall exceed \$60,000,000.

Subsec. (d). Pub. L. 89-210, § 2, Substituted "August 1, 1977" for "August 1, 1967," and inserted proviso requiring the amount of indemnity to be reduced by the amount that the financial protection required shall exceed \$60,000,000.

Subsec. (e). Pub. L. 89-210, § 3, inserted proviso prohibiting the aggregate liability to exceed the sum of \$560,000,000.

Subsec. (k). Pub. L. 89-210, § 4, Substituted "August 1, 1977" for "August 1, 1967" wherever appearing.

Subsec. (l). Pub. L. 89-210, § 5, Substituted "August 1, 1977" for "August 1, 1967" and "in the amount of \$500,000,000" for "in the maximum amount provided by subsection (e) of this section", inserted "in the aggregate for all persons indemnified in connection with each nuclear incident", and inserted proviso requiring the amount of indemnity to be reduced by the amount that the financial protection required shall exceed \$60,000,000.

1964 - Subsec. (c). Pub. L. 88-394, § 2, provided that with respect to any facility for which a permit is issued between Aug. 30, 1954, and Aug. 1, 1967, the requirements of the subsection shall apply to any license issued subsequent to Aug. 1, 1967.

Subsec. (k). Pub. L. 88-394, § 3, provided that with respect to any facility for which a permit is issued between Aug. 30, 1954, and Aug. 1, 1967, the requirements of the subsection shall apply to any license issued subsequent to Aug. 1, 1967.

1962 - Subsec. (d). Pub. L. 87-615, § 6, limited the amount of indemnity provided by the Commission for nuclear incidents occurring outside the United States to \$100,000,000.

Subsec. (e). Pub. L. 87-615, § 7, inserted proviso limiting the aggregate liability in cases of nuclear incidents occurring outside the United States to which an indemnification agreement entered into under Subsec. (d) of this section is applicable, to \$100,000,000, and Substituted "occurring outside the United States, the Commission or any person indemnified may apply to the United States District Court for the District of Columbia" for "caused by ships of the United States outside of the United States, the Commission or any person indemnified may apply to the appropriate district court of the United States having venue in bankruptcy matters over the location of the principal place of business of the shipping company owning or operating the ship".

1961 - Subsec. (d). Pub. L. 87-206 inserted provision for liability of contractor to extent of indemnification under this section free of defense of sovereign immunity.

1958 - Subsec. (e). Pub. L. 85-602, § 2[3], gave the district court that has venue in bankruptcy matters over the location of the principal place of business of the shipping company owning or operating the ship, jurisdiction in cases of nuclear incidents caused by ships of the United States outside of the United States.

Subsec. (k). Pub. L. 85-744 added subsec. (k).

Subsec. (l). Pub. L. 85-602, § 2, added Subsec. (l).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-408 effective Aug. 20, 1988, and applicable with respect to nuclear incidents occurring on or after Aug. 20, 1988, except that amendment by section 11 of Pub. L. 100-408 applicable to nuclear incidents occurring before, on, or after Aug. 20, 1988, see section 20 of Pub. L. 100-408, set out as a note under section 2014 of this title.

SHORT TITLE

This section is popularly known as the "Price-Anderson Act" and also as the "Atomic Energy Damages Act".

* * * * *

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 23 - DEVELOPMENT AND CONTROL OF ATOMIC ENERGY

SUBCHAPTER XVII - ENFORCEMENT OF CHAPTER

Sec. 2282a. Civil monetary penalties for violation of Department of Energy regulations

(a) Persons subject to penalty

Any person who has entered into an agreement of indemnification under section 2210(d) of this title (or any subcontractor or supplier thereto) who violates (or whose employee violates) any applicable rule, regulation or order related to nuclear safety prescribed or issued by the Secretary of Energy pursuant to this chapter (or expressly incorporated by reference by the Secretary for purposes of nuclear safety, except any rule, regulation, or order issued by the Secretary of Transportation) shall be subject to a civil penalty of not to exceed \$100,000 for each such violation. If any violation under this subsection is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

(b) Determination of amount

(1) The Secretary shall have the power to compromise, modify or remit, with or without conditions, such civil penalties and to prescribe regulations as he may deem necessary to implement this section.

(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.

(c) Assessment and payment

(1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within thirty days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within thirty calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5 before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the election under paragraph (1).

(B) If the civil penalty has not been paid within sixty calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(d) Excepted institutions

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 and 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.

(Aug. 1, 1946, ch. 724, title I, § 234A, as added Aug. 20, 1988, Pub. L. 100-408, § 17, 102 Stat. 1081; renumbered title I, Oct. 24, 1992, Pub. L. 102-486, title IX, § 902(a)(8), 106 Stat. 2944.)

EFFECTIVE DATE

Section effective Aug. 20, 1988, but inapplicable to any violation occurring before Aug. 20, 1988, see section 20 of Pub. L. 100-408, set out as an Effective Date of 1988 Amendment note under section 2014 of this title.

⁵So in original. No subsec. (ii) has been enacted.