

They were really a joy to watch, and I congratulate them on their tremendous achievement.

Mr. SIMMONS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SIMMONS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H. Res. 187.

The SPEAKER pro tempore (Mr. BURGESS). Is there objection to the request of the gentleman from Connecticut?

There was no objection.

SMALLPOX EMERGENCY PERSONNEL PROTECTION ACT OF 2003

Mr. BURR. Mr. Speaker, I ask unanimous consent that the Committee on Energy and Commerce, the Committee on Education and the Workforce, and the Committee on the Judiciary be discharged from further consideration of the bill (H.R. 1770) to provide benefits and other compensation for certain individuals with injuries resulting from administration of smallpox countermeasures, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

Mrs. CAPPs. Mr. Speaker, reserving the right to object, the emergency supplemental appropriations bill which the Congress should pass shortly was going to include a smallpox vaccination compensation program. Now it is being presented for unanimous consent.

For many months I have worked closely with the community of first responders. Many of them are nurses. I commend the leadership of the gentleman from Michigan (Mr. DINGELL) and the gentleman from California (Mr. WAXMAN), who have worked with many other Members of this body to make this program, this compensation program as good as possible. And when we beat a bad bill, which was on the suspension calendar a few days ago as we did, then it gives us an opportunity to improve the program as it was presented. That is what has been attempted to do. Great efforts have been expended and have resulted in marked improvements on the woefully inadequate proposal that the administration initially put forward.

I salute again my colleagues who have worked hard from within this body to represent the needs of our first responders as they anticipate and step

forward to become a part of the shield against bioterrorist attack.

The administration, however, was difficult in this area. I am not convinced that this end product which is before us today really will inspire enough confidence in nurses to make the vaccine program work. However, again, I reiterate that there are improvements in the initial bill that were put forward.

But the process back and forth from the White House to the House of Representatives was very much in the arena of parsimonious, as the progress that was made came in bits and pieces. It felt to the community of first responders as if they were being nicked and dined. And now, with the product that we have, the nursing community, many of the people who will be the first responders, many of them tell me that the safety net provided in the bill before us today still has large holes in it. And it is told to us that the administration has refused to go any further than what is in this bill.

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Now, time will tell us if this proposal succeeds, and the proof is actually not right here in this body but out in the community, in our homeland security efforts, in our communities where firefighters, police officers, EMTs, nurses will be asked to roll up their sleeves to become heroes on behalf of us all.

If they feel confidence that the government will stand behind them with a good compensation package, they will be more inspired to do this. I wish I could be more confident. However, again I remark that there has been progress made.

For example, I myself was recently asked by the Capitol physician to be a first responder here in the Congress. For that reason, I have been asked to get a smallpox vaccination myself; and I am presently consulting with my doctor, as I should do, and with other medical experts about the advisability of this.

But if I do take this vaccine and something goes wrong, I know that my family and my dependents will be taken care of because I am covered by the Federal Employees Compensation Act.

Under the bill that we will pass today under unanimous consent, a nurse in Santa Barbara, a firefighter in any community across this country who takes a vaccine to serve his or her country, may not have that same confidence. So this goes beyond the consideration of a particular vaccine; it really gets down to how we value our first responders and what we are asking them to do on behalf of their country.

Many have said that on 9/11 we crossed through a threshold in this country, and life has been different ever since. We now face the prospect lurking every single day, the possibility of a terrorist attack.

One of the real threats that we face as a nation to which we desire to pro-

tect ourselves is the threat of a bioterrorist attack. We saw that as the anthrax situation came upon us.

Who are the first responders who are called upon to answer the call in the event of such an attack? These are those who work and live among us, ordinary citizens asked now by their government, by their President, to take on extraordinary responsibility.

For many, life goes on as normal. They take the vaccine and nothing will happen. But for a few, and a very few, a drastic reaction could happen. There is a risk to this act of patriotism that we are asking our fellow citizens to take on.

I want us to be, with every measure within us, standing behind them; so that for that handful of people who have life permanently altered for themselves and are never able to be the breadwinner for their family, as they have been in the past, because they stepped forward on behalf of their country, I want them to have the full measure of protection such as I have as a Federal employee.

Reluctantly, I look at the package before us: parsimonious, in my regard. I will withdraw my reservation, but I will do so reluctantly, because I want this process to be better.

Mr. Speaker, I will withdraw my reservation of objection with the hope that our administration, our leaders, will continue to work to give the assurance that screening, that education be available for every first responder to avoid the risks, as many of them as we can.

We can work to make this package even better.

Mr. BURR. Mr. Speaker, will the gentlewoman yield?

Mrs. CAPPs. I yield to the gentleman from North Carolina.

Mr. BURR. Mr. Speaker, I thank the gentlewoman for yielding to me.

This process has been enhanced by the gentlewoman from California (Mrs. CAPPs) and her expertise and her passion on this particular issue.

There is no doubt that this initiative is one that is needed for first responders, regardless of the community that they come from, because without identifying specifically where the threat may be, we have to make sure that we prepare 100 percent of our first responders and health care workers.

Mr. Speaker, the unanimous consent request before us today for the Smallpox Emergency Personnel Protection Act of 2003, a bill critical to our public health security and to our national security against the potential devastating threat of a terrorist release of the deadly smallpox virus, this bill is based on H.R. 1463, which I introduced in the Committee on Energy and Commerce, but it contains refinements, refinements that have been agreed to on a bipartisan basis with the ranking member, the gentleman from Michigan (Mr. DINGELL), the gentlewoman from California (Mrs. CAPPs), the gentleman from California (Mr. WAXMAN), and the

gentleman from Louisiana (Chairman TAUZIN).

It has also been the subject of bipartisan negotiations with Senator GREGG, Senator KENNEDY; and yes, the administration. I applaud the leadership of all parties in this matter. I have stated before, we need to get this done as soon as possible to improve homeland security, to make sure that we are covered in case something happens.

In January of this year, HHS Secretary Tommy Thompson called on health professionals and emergency responders across the Nation to volunteer to receive the smallpox vaccination in order to join the smallpox emergency response team. The goal is to ensure that our country is better prepared to deal with any outbreak of this deadly disease caused by terrorists or rogue regimes, such as Iraq, by having in place thousands and potentially millions of first responders who could help treat others with smallpox or vaccinate the public without the fear of infection.

This legislation, which has been requested by the administration, as the gentlewoman pointed out, is a top personal priority of the President and does a number of important things. Let me point those out, if I may.

First, it provides coverage for reasonable and necessary medical expenses incurred by individuals who are vaccinated and suffer adverse effects, to the extent that such expenses are not picked up by the individual's primary health insurer.

Second, the bill provides a lost-employment-income benefit if an individual misses more than 5 days of work due to an adverse effect from the vaccine. Under this benefit, an individual can receive up to 75 percent of his monthly salary and up to \$50,000 a year in supplemental wages.

For partial disabilities, the amount of Federal benefits would be capped at the maximum amount of the death benefit amount payable under the Public Safety Officers Benefits Program, or PSOB, an existing Federal program that currently provides \$262,000 in a lump sum to public safety officers who are killed or totally disabled in the line of work.

Third, the act provides a PSOB-equivalent death benefit for health care workers and first responders in the unlikely and regrettable cases where there may be a fatal adverse reaction to the smallpox inoculation.

Because of the rare, but potentially severe, adverse side effects uniquely associated with this particular vaccine, a compensation program such as this one is essential if we are to properly incentivize these volunteers, these public safety heroes, to roll up their sleeves and to take the shot at potential risk to themselves and to their spouses and dependents whom their death or injury could leave behind.

While some might say our compensation program is too generous and others might say that it is not enough in

some cases, I think we have struck a good balance, given the uniqueness and the urgency of the national security situation we face today with respect to the potential threat of smallpox.

Finally, this legislation provides sensible, noncontroversial technical amendments to last year's homeland security bill to better provide liability protection to hospitals, doctors, nurses, and public health officials at the State and local levels whom we are asking to participate in this important national initiative.

Again, without this protection, the program is unlikely to be successful. That hurts all of us. This bill has been intensely negotiated, and it is a bipartisan consensus product that is needed for our national security now.

Mr. Speaker, let me say, seldom do we produce a perfect product, but we try our best. Because I believe we have tried our best in this case, I would urge unanimous consent for passage of this measure to be accepted.

Mrs. CAPP. Continuing to reserve my right to object, Mr. Speaker, I agree with the gentleman from North Carolina that progress has been made since the original presentation that the administration put forth before the House of Representatives.

I would stand before the Members as a Member of Congress, but also as a first responder covered with the full protection of the Federal Government; and look forward to an opportunity, now it will be in the future, perhaps, when I can go among other first responders in our Nation with the full assurance that their protection and their compensation is as great as my own.

This compensation package is only as good as the confidence that it inspires within our first responder community, these folks we ask to be heroes. So I make the request to my colleague, the gentleman from North Carolina (Mr. BURR), and to my colleagues in Congress that we must monitor this program as this piece of legislation is unanimously passed here in this body.

We should keep track of it. If it does not work in its present form, we should make the commitment that we will revisit this.

Again, this is a program that is only as good as it will be resulting in the goals that the administration has set before the Nation in terms of its bioterrorist protection.

Mr. DINGELL. Mr. Speaker, I support this smallpox vaccine compensation program. The nurses and first responders recognize that this framework is, unfortunately, the best we can get from this Administration. And even though this compensation program may not be sufficient to build the necessary confidence in those we are asking to receive this risky vaccine, it is better than nothing. We need to begin protecting those we are asking to protect us.

Of course, it remains in the Administration's hands to determine whether this program will ultimately work. Will the Administration devote the necessary resources to do a proper job of education and screening? Will the Administra-

tion work with those directly affected as it implements the program? Will the Administration take necessary steps to assure any injured party that the money to protect their families will be there?

Given that Democrats have been seeking a viable and effective screening and compensation program for months, and given that any concessions from the Administration have been grudging at best, I am not optimistic. But because of the importance of the program, I will continue to fight on behalf of the nurses and other first responders to see that the Administration does not let it fail.

Mrs. CAPP. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The Clerk read the bill, as follows:

H.R. 1770

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Smallpox Emergency Personnel Protection Act of 2003".

SEC. 2. SMALLPOX EMERGENCY PERSONNEL PROTECTION.

Title II of the Public Health Service Act (42 U.S.C. 202 et seq.) is amended by adding at the end the following part:

"PART C—SMALLPOX EMERGENCY PERSONNEL PROTECTION

"SEC. 261. GENERAL PROVISIONS.

"(a) DEFINITIONS.—For purposes of this part:

"(1) COVERED COUNTERMEASURE.—The term 'covered countermeasure' means a covered countermeasure as specified in a Declaration made pursuant to section 224(p).

"(2) COVERED INDIVIDUAL.—The term 'covered individual' means an individual—

"(A) who is a health care worker, law enforcement officer, firefighter, security personnel, emergency medical personnel, other public safety personnel, or support personnel for such occupational specialities;

"(B) who is or will be functioning in a role identified in a State, local, or Department of Health and Human Services smallpox emergency response plan (as defined in paragraph (7)) approved by the Secretary;

"(C) who has volunteered and been selected to be a member of a smallpox emergency response plan described in subparagraph (B) prior to the time at which the Secretary publicly announces that an active case of smallpox has been identified either within or outside of the United States; and

"(D) to whom a smallpox vaccine is administered pursuant to such approved plan during the effective period of the Declaration (including the portion of such period before the enactment of this part).

"(3) COVERED INJURY.—The term 'covered injury' means an injury, disability, illness, condition, or death (other than a minor injury such as minor scarring or minor local reaction) determined, pursuant to the procedures established under section 262, to have been sustained by an individual as the direct result of—

"(A) administration to the individual of a covered countermeasure during the effective period of the Declaration; or

"(B) accidental vaccinia inoculation of the individual in circumstances in which—

"(i) the vaccinia is contracted during the effective period of the Declaration or within 30 days after the end of such period;

"(ii) smallpox vaccine has not been administered to the individual; and

“(iii) the individual has been in contact with an individual who is (or who was accidentally inoculated by) a covered individual.

“(4) **DECLARATION.**—The term ‘Declaration’ means the Declaration Regarding Administration of Smallpox Countermeasures issued by the Secretary on January 24, 2003, and published in the Federal Register on January 28, 2003.

“(5) **EFFECTIVE PERIOD OF THE DECLARATION.**—The term ‘effective period of the Declaration’ means the effective period specified in the Declaration, unless extended by the Secretary.

“(6) **ELIGIBLE INDIVIDUAL.**—The term ‘eligible individual’ means an individual who is (as determined in accordance with section 262)—

“(A) a covered individual who sustains a covered injury in the manner described in paragraph (3)(A); or

“(B) an individual who sustains a covered injury in the manner described in paragraph (3)(B).

“(7) **SMALLPOX EMERGENCY RESPONSE PLAN.**—The term ‘smallpox emergency response plan’ or ‘plan’ means a response plan detailing actions to be taken in preparation for a possible smallpox-related emergency during the period prior to the identification of an active case of smallpox either within or outside the United States.

“(b) **VOLUNTARY PROGRAM.**—The Secretary shall ensure that a State, local, or Department of Health and Human Services plan to vaccinate individuals that is approved by the Secretary establishes procedures to ensure, consistent with the Declaration and any applicable guidelines of the Centers for Disease Control and Prevention, that—

“(1) potential participants are educated with respect to contraindications, the voluntary nature of the program, and the availability of potential benefits and compensation under this part;

“(2) there is voluntary screening provided to potential participants that can identify health conditions relevant to contraindications; and

“(3) there is appropriate post-inoculation medical surveillance that includes an evaluation of adverse health effects that may reasonably appear to be due to such vaccine and prompt referral of, or the provision of appropriate information to, any individual requiring health care as a result of such adverse health event.

“SEC. 262. DETERMINATION OF ELIGIBILITY AND BENEFITS.

“(a) **IN GENERAL.**—The Secretary shall establish procedures for determining, as applicable with respect to an individual—

“(1) whether the individual is an eligible individual;

“(2) whether an eligible individual has sustained a covered injury or injuries for which medical benefits or compensation may be available under sections 264 and 265, and the amount of such benefits or compensation; and

“(3) whether the covered injury or injuries of an eligible individual caused the individual’s death for purposes of benefits under section 266.

“(b) **COVERED INDIVIDUALS.**—The Secretary may accept a certification, by a Federal, State, or local government entity or private health care entity participating in the administration of covered countermeasures under the Declaration, that an individual is a covered individual.

“(c) **CRITERIA FOR REIMBURSEMENT.**—

“(1) **INJURIES SPECIFIED IN INJURY TABLE.**—In any case where an injury or other adverse effect specified in the injury table established under section 263 as a known effect of a vaccine manifests in an individual within the time period specified in such table, such

injury or other effect shall be presumed to have resulted from administration of such vaccine.

“(2) **OTHER DETERMINATIONS.**—In making determinations other than those described in paragraph (1) as to the causation or severity of an injury, the Secretary shall employ a preponderance of the evidence standard and take into consideration all relevant medical and scientific evidence presented for consideration, and may obtain and consider the views of qualified medical experts.

“(d) **DEADLINE FOR FILING REQUEST.**—The Secretary shall not consider any request for a benefit under this part with respect to an individual, unless—

“(1) in the case of a request based on the administration of the vaccine to the individual, the individual files with the Secretary an initial request for benefits or compensation under this part not later than one year after the date of administration of the vaccine; or

“(2) in the case of a request based on accidental vaccinia inoculation, the individual files with the Secretary an initial request for benefits or compensation under this part not later than two years after the date of the first symptom or manifestation of onset of the adverse effect.

“(e) **STRUCTURED SETTLEMENTS AT SECRETARY’S OPTION.**—In any case in which there is a reasonable likelihood that compensation or payment under section 264, 265, or 266(b) will be required for a period in excess of one year from the date an individual is determined eligible for such compensation or payment, the Secretary shall have the discretion to make a lump-sum payment, purchase an annuity or medical insurance policy, or execute an appropriate structured settlement agreement, provided that such payment, annuity, policy, or agreement is actuarially determined to have a value equal to the present value of the projected total amount of benefits or compensation that the individual is eligible to receive under such section or sections.

“(f) **REVIEW OF DETERMINATION.**—

“(1) **SECRETARY’S REVIEW AUTHORITY.**—The Secretary may review a determination under this section at any time on the Secretary’s own motion or on application, and may affirm, vacate, or modify such determination in any manner the Secretary deems appropriate. The Secretary shall develop a process by which an individual may file a request for reconsideration of any determination made by the Secretary under this section.

“(2) **JUDICIAL AND ADMINISTRATIVE REVIEW.**—No court of the United States, or of any State, District, territory or possession thereof, shall have subject matter jurisdiction to review, whether by mandamus or otherwise, any action by the Secretary under this section. No officer or employee of the United States shall review any action by the Secretary under this section (unless the President specifically directs otherwise).

“SEC. 263. SMALLPOX VACCINE INJURY TABLE.

“(a) **SMALLPOX VACCINE INJURY TABLE.**—

“(1) **ESTABLISHMENT REQUIRED.**—The Secretary shall establish by interim final regulation a table identifying adverse effects (including injuries, disabilities, illnesses, conditions, and deaths) that shall be presumed to result from the administration of (or exposure to) a smallpox vaccine, and the time period in which the first symptom or manifestation of onset of each such adverse effect must manifest in order for such presumption to apply.

“(2) **AMENDMENTS.**—The Secretary may by regulation amend the table established under paragraph (1). An amendment to the table takes effect on the date of the promulgation of the final rule that makes the amendment,

and applies to all requests for benefits or compensation under this part that are filed on or after such date or are pending as of such date. In addition, the amendment applies retroactively to an individual who was not with respect to the injury involved an eligible individual under the table as in effect before the amendment but who with respect to such injury is an eligible individual under the table as amended. With respect to a request for benefits or compensation under this part by an individual who becomes an eligible individual as described in the preceding sentence, the Secretary may not provide such benefits or compensation unless the request (or amendment to a request, as applicable) is filed before the expiration of one year after the effective date of the amendment to the table in the case of an individual to whom the vaccine was administered and before the expiration of two years after such effective date in the case of a request based on accidental vaccinia inoculation.

“SEC. 264. MEDICAL BENEFITS.

“(a) **IN GENERAL.**—Subject to the succeeding provisions of this section, the Secretary shall make payment or reimbursement for medical items and services as reasonable and necessary to treat a covered injury of an eligible individual, including the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.

“(b) **BENEFITS SECONDARY TO OTHER COVERAGE.**—Payment or reimbursement for services or benefits under subsection (a) shall be secondary to any obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer) under any other provision of law or contractual agreement, to pay for or provide such services or benefits.

“SEC. 265. COMPENSATION FOR LOST EMPLOYMENT INCOME.

“(a) **IN GENERAL.**—Subject to the succeeding provisions of this section, the Secretary shall provide compensation to an eligible individual for loss of employment income (based on such income at the time of injury) incurred as a result of a covered injury, at the rate specified in subsection (b).

“(b) **AMOUNT OF COMPENSATION.**—

“(1) **IN GENERAL.**—Compensation under subsection (a) shall be at the rate of 66 2/3 percent of the relevant pay period (weekly, monthly, or otherwise), except as provided in paragraph (2).

“(2) **AUGMENTED COMPENSATION FOR DEPENDENTS.**—If an eligible individual has one or more dependents, the basic compensation for loss of employment income as described in paragraph (1) shall be augmented at the rate of 8 1/3 percent.

“(3) **CONSIDERATION OF OTHER PROGRAMS.**—

“(A) **IN GENERAL.**—The Secretary may consider the provisions of sections 8114, 8115, and 8146a of title 5, United States Code, and any implementing regulations, in determining the amount of payment under subsection (a) and the circumstances under which such payments are reasonable and necessary.

“(B) **MINORS.**—With respect to an eligible individual who is a minor, the Secretary may consider the provisions of section 8113 of title 5, United States Code, and any implementing regulations, in determining the amount of payment under subsection (a) and the circumstances under which such payments are reasonable and necessary.

“(4) **TREATMENT OF SELF-EMPLOYMENT INCOME.**—For purposes of this section, the term ‘employment income’ includes income from self-employment.

“(c) LIMITATIONS.—

“(1) BENEFITS SECONDARY TO OTHER COVERAGE.—

“(A) IN GENERAL.—Any compensation under subsection (a) shall be secondary to the obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer), under any other law or contractual agreement, to pay compensation for loss of employment income or to provide disability or retirement benefits.

“(B) RELATION TO OTHER OBLIGATIONS.—Compensation under subsection (a) shall not be made to an eligible individual to the extent that the total of amounts paid to the individual under such subsection and under the other obligations referred to in subparagraph (A) is an amount that exceeds the rate specified in subsection (b)(1). If under any such other obligation a lump-sum payment is made, such payment shall, for purposes of this paragraph, be deemed to be received over multiple years rather than received in a single year. The Secretary may, in the discretion of the Secretary, determine how to apportion such payment over multiple years.

“(2) NO BENEFITS IN CASE OF DEATH.—No payment shall be made under subsection (a) in compensation for loss of employment income subsequent to the receipt, by the survivor or survivors of an eligible individual, of benefits under section 266 for death.

“(3) LIMIT ON TOTAL BENEFITS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B)—

“(i) total compensation paid to an individual under subsection (a) shall not exceed \$50,000 for any year; and

“(ii) the lifetime total of such compensation for the individual may not exceed an amount equal to the amount authorized to be paid under section 266.

“(B) PERMANENT AND TOTAL DISABILITY.—The limitation under subparagraph (A)(ii) does not apply in the case of an eligible individual who is determined to have a covered injury or injuries meeting the definition of disability in section 216(i) of the Social Security Act (42 U.S.C. 416(i)).

“(4) WAITING PERIOD.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), an eligible individual shall not be provided compensation under this section for the first 5 work days of loss of employment income.

“(B) EXCEPTION.—Subparagraph (A) does not apply if the period of loss of employment income of an eligible individual is 10 or more work days.

“(5) TERMINATION OF BENEFITS.—No payment shall be made under subsection (a) in compensation for loss of employment income once the eligible individual involved reaches the age of 65.

“(d) BENEFIT IN ADDITION TO MEDICAL BENEFITS.—A benefit under subsection (a) shall be in addition to any amounts received by an eligible individual under section 264.

“SEC. 266. PAYMENT FOR DEATH.

“(a) DEATH BENEFIT.—

“(1) IN GENERAL.—The Secretary shall pay, in the case of an eligible individual whose death is determined to have resulted from a covered injury or injuries, a death benefit in the amount determined under paragraph (2) to the survivor or survivors in the same manner as death benefits are paid pursuant to the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) with respect to an eligible deceased (except that in the case of an eligible individual who is a minor with no living parent, the legal guardian shall be considered the survivor in the place of the parent).

“(2) BENEFIT AMOUNT.—

“(A) IN GENERAL.—The amount of the death benefit under paragraph (1) in a fiscal year shall equal the amount of the comparable benefit calculated under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) in such fiscal year, without regard to any reduction attributable to a limitation on appropriations, but subject to subparagraph (B).

“(B) REDUCTION FOR PAYMENTS FOR LOST EMPLOYMENT INCOME.—The amount of the benefit as determined under subparagraph (A) shall be reduced by the total amount of any benefits paid under section 265 with respect to lost employment income.

“(3) LIMITATIONS.—

“(A) IN GENERAL.—No benefit is payable under paragraph (1) with respect to the death of an eligible individual if—

“(i) a disability benefit is paid with respect to such individual under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.); or

“(ii) a death benefit is paid or payable with respect to such individual under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.).

“(B) EXCEPTION IN THE CASE OF A LIMITATION ON APPROPRIATIONS FOR DISABILITY BENEFITS UNDER PSOB.—In the event that disability benefits available to an eligible individual under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) are reduced because of a limitation on appropriations, and such reduction would affect the amount that would be payable under subparagraph (A) without regard to this subparagraph, benefits shall be available under paragraph (1) to the extent necessary to ensure that the survivor or survivors of such individual receives a total amount equal to the amount described in paragraph (2).

“(b) ELECTION IN CASE OF DEPENDENTS.—

“(1) IN GENERAL.—In the case of an eligible individual whose death is determined to have resulted from a covered injury or injuries, if the individual had one or more dependents under the age of 18, the legal guardian of the dependents may, in lieu of the death benefit under subsection (a), elect to receive on behalf of the aggregate of such dependents payments in accordance with this subsection. An election under the preceding sentence is effective in lieu of a request under subsection (a) by an individual who is not the legal guardian of such dependents.

“(2) AMOUNT OF PAYMENTS.—Payments under paragraph (1) with respect to an eligible individual described in such paragraph shall be made as if such individual were an eligible individual to whom compensation would be paid under subsection (a) of section 265, with the rate augmented in accordance with subsection (b)(2) of such section and with such individual considered to be an eligible individual described in subsection (c)(3)(B) of such section.

“(3) LIMITATIONS.—

“(A) AGE OF DEPENDENTS.—No payments may be made under paragraph (1) once the youngest of the dependents involved reaches the age of 18.

“(B) BENEFITS SECONDARY TO OTHER COVERAGE.—

“(i) IN GENERAL.—Any payment under paragraph (1) shall be secondary to the obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or

employer), under any other law or contractual agreement, to pay compensation for loss of employment income or to provide disability benefits, retirement benefits, life insurance benefits on behalf of dependents under the age of 18, or death benefits.

“(ii) RELATION TO OTHER OBLIGATIONS.—Payments under paragraph (1) shall not be made to with respect to an eligible individual to the extent that the total of amounts paid with respect to the individual under such paragraph and under the other obligations referred to in clause (i) is an amount that exceeds the rate of payment that applies under paragraph (2). If under any such other obligation a lump-sum payment is made, such payment shall, for purposes of this subparagraph, be deemed to be received over multiple years rather than received in a single year. The Secretary may, in the discretion of the Secretary, determine how to apportion such payment over multiple years.

“(c) BENEFIT IN ADDITION TO MEDICAL BENEFITS.—A benefit under subsection (a) or (b) shall be in addition to any amounts received by an eligible individual under section 264.

“SEC. 267. ADMINISTRATION.

“(a) ADMINISTRATION BY AGREEMENT WITH OTHER AGENCY OR AGENCIES.—The Secretary may administer any or all of the provisions of this part through Memorandum of Agreement with the head of any appropriate Federal agency.

“(b) REGULATIONS.—The head of the agency administering this part or provisions thereof (including any agency head administering such Act or provisions through a Memorandum of Agreement under subsection (a)) may promulgate such implementing regulations as may be found necessary and appropriate. Initial implementing regulations may be interim final regulations.

“SEC. 268. AUTHORIZATION OF APPROPRIATIONS.

“For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2007, to remain available until expended, including administrative costs and costs of provision and payment of benefits. The Secretary's payment of any benefit under section 264, 265, or 266 shall be subject to the availability of appropriations under this section.

“SEC. 269. RELATIONSHIP TO OTHER LAWS.

“Except as explicitly provided herein, nothing in this part shall be construed to override or limit any rights an individual may have to seek compensation, benefits, or redress under any other provision of Federal or State law.”

SEC. 3. AMENDMENTS TO PROVISION REGARDING TORT LIABILITY FOR ADMINISTRATION OF SMALLPOX COUNTERMEASURES.

(a) AMENDMENT TO ACCIDENTAL VACCINIA INOCULATION PROVISION.—Section 224(p)(2)(C)(ii)(II) of such Act (42 U.S.C. 233(p)(2)(C)(ii)(II)) is amended by striking “resides or has resided with” and inserting “has resided with, or has had contact with.”

(b) DEEMING ACTS AND OMISSIONS TO BE WITHIN SCOPE OF EMPLOYMENT.—Section 224(p)(2) of such Act (42 U.S.C. 233(p)(2)) is amended by adding at the end the following new subparagraph:

“(D) ACTS AND OMISSIONS DEEMED TO BE WITHIN SCOPE OF EMPLOYMENT.—

“(i) IN GENERAL.—In the case of a claim arising out of alleged transmission of vaccinia from an individual described in clause (ii), acts or omissions by such individual shall be deemed to have been taken within the scope of such individual's office or employment for purposes of—

“(I) subsection (a); and

“(II) section 1346(b) and chapter 171 of title 28, United States Code.

“(i) INDIVIDUALS TO WHOM DEEMING APPLIES.—An individual is described by this clause if—

“(I) vaccinia vaccine was administered to such individual as provided by subparagraph (B); and

“(II) such individual was within a category of individuals covered by a declaration under subparagraph (A)(i).”

(C) EXHAUSTION; EXCLUSIVITY; OFFSET.—Section 224(p)(3) of such Act (42 U.S.C. 233(p)(3)) is amended to read as follows:

“(3) EXHAUSTION; EXCLUSIVITY; OFFSET.—

“(A) EXHAUSTION.—

“(i) IN GENERAL.—A person may not bring a claim under this subsection unless such person has exhausted such remedies as are available under part C of this title, except that if the Secretary fails to make a final determination on a request for benefits or compensation filed in accordance with the requirements of such part within 240 days after such request was filed, the individual may seek any remedy that may be available under this section.

“(ii) TOLLING OF STATUTE OF LIMITATIONS.—The time limit for filing a claim under this subsection, or for filing an action based on such claim, shall be tolled during the pendency of a request for benefits or compensation under part C of this title.

“(iii) CONSTRUCTION.—This subsection shall not be construed as superseding or otherwise affecting the application of a requirement, under chapter 171 of title 28, United States Code, to exhaust administrative remedies.

“(B) EXCLUSIVITY.—The remedy provided by subsection (a) shall be exclusive of any other civil action or proceeding for any claim or suit this subsection encompasses, except for a proceeding under part C of this title.

“(C) OFFSET.—The value of all compensation and benefits provided under part C of this title for an incident or series of incidents shall be offset against the amount of an award, compromise, or settlement of money damages in a claim or suit under this subsection based on the same incident or series of incidents.”

(d) REQUIREMENT TO COOPERATE WITH UNITED STATES.—Section 224(p)(5) of such Act (42 U.S.C. 233(p)(5)) is amended in the caption by striking “DEFENDANT” and inserting “COVERED PERSON”.

(e) AMENDMENT TO DEFINITION OF COVERED COUNTERMEASURE.—Section 224(p)(7)(A)(i)(II) of such Act (42 U.S.C. 233(p)(7)(A)(i)(II)) is amended to read as follows:

“(II) used to control or treat the adverse effects of vaccinia inoculation or of administration of another covered countermeasure; and”

(f) AMENDMENT TO DEFINITION OF COVERED PERSON.—Section 224(p)(7)(B) of such Act (42 U.S.C. 233(p)(7)(B)) is amended—

(1) by striking “includes any person” and inserting “means a person”;

(2) in clause (ii)—

(A) by striking “auspices” and inserting “auspices—”;

(B) by redesignating “such countermeasure” and all that follows as clause (I) and indenting accordingly; and

(C) by adding at the end the following:

“(II) a determination was made as to whether, or under what circumstances, an individual should receive a covered countermeasure;

“(III) the immediate site of administration on the body of a covered countermeasure was monitored, managed, or cared for; or

“(IV) an evaluation was made of whether the administration of a countermeasure was effective;”

(3) in clause (iii) by striking “or”;

(4) by striking clause (iv) and inserting the following:

“(iv) a State, a political subdivision of a State, or an agency or official of a State or of such a political subdivision, if such State, subdivision, agency, or official has established requirements, provided policy guidance, supplied technical or scientific advice or assistance, or otherwise supervised or administered a program with respect to administration of such countermeasures;

“(v) in the case of a claim arising out of alleged transmission of vaccinia from an individual—

“(I) the individual who allegedly transmitted the vaccinia, if vaccinia vaccine was administered to such individual as provided by paragraph (2)(B) and such individual was within a category of individuals covered by a declaration under paragraph (2)(A)(i); or

“(II) an entity that employs an individual described by clause (I) or where such individual has privileges or is otherwise authorized to provide health care;

“(vi) an official, agent, or employee of a person described in clause (i), (ii), (iii), or (iv);

“(vii) a contractor of, or a volunteer working for, a person described in clause (i), (ii), or (iv), if the contractor or volunteer performs a function for which a person described in clause (i), (ii), or (iv) is a covered person; or

“(viii) an individual who has privileges or is otherwise authorized to provide health care under the auspices of an entity described in clause (ii) or (v)(II).”

(g) AMENDMENT TO DEFINITION OF QUALIFIED PERSON.—Section 224(p)(7)(C) of such Act (42 U.S.C. 233(p)(7)(C)) is amended—

(1) by designating “is authorized to” and all that follows as clause (i) and indenting accordingly;

(2) by striking “individual who” and inserting “individual who—”; and

(3) by striking the period and inserting “; or

“(ii) is otherwise authorized by the Secretary to administer such countermeasure.”

(h) DEFINITION OF “ARISING OUT OF ADMINISTRATION OF A COVERED COUNTERMEASURE”.—Section 224(p)(7) of such Act (42 U.S.C. 233(p)(7)) is amended by adding at the end the following new subparagraph:

“(D) ARISING OUT OF ADMINISTRATION OF A COVERED COUNTERMEASURE.—The term ‘arising out of administration of a covered countermeasure’, when used with respect to a claim or liability, includes a claim or liability arising out of—

“(i) determining whether, or under what conditions, an individual should receive a covered countermeasure;

“(ii) obtaining informed consent of an individual to the administration of a covered countermeasure;

“(iii) monitoring, management, or care of an immediate site of administration on the body of a covered countermeasure, or evaluation of whether the administration of the countermeasure has been effective; or

“(iv) transmission of vaccinia virus by an individual to whom vaccinia vaccine was administered as provided by paragraph (2)(B).”

(i) TECHNICAL CORRECTION.—Section 224(p)(2)(A)(ii) of such Act (42 U.S.C. 233(p)(2)(A)(ii)) is amended by striking “paragraph (8)(A)” and inserting “paragraph (7)(A)”.

(j) EFFECTIVE DATE.—This section shall take effect as of November 25, 2002.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

AUTHORIZING CLERK TO MAKE TECHNICAL AND CONFORMING CHANGES IN ENGROSSMENT OF H.R. 1770, SMALLPOX EMERGENCY PERSONNEL PROTECTION ACT OF 2003

Mr. BARR. Mr. Speaker, I ask unanimous consent that the Clerk be authorized to make technical and conforming changes in the engrossment of H.R. 1770, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

GENERAL LEAVE

Mr. BARR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 1770, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. BURGESS). Under the Speaker’s announced policy of January 7, the Chair will recognize Members for special order speeches without prejudice to the resumption of legislative business.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker’s announced policy of January 7, 2003, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

HONORING AND COMMENDING HARDIN-SIMMONS UNIVERSITY’S 2003 WOMEN’S BASKETBALL TEAM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. STENHOLM) is recognized for 5 minutes.

Mr. STENHOLM. Mr. Speaker, I rise today to honor and commend the Hardin-Simmons University 2003 women’s basketball team from Abilene, Texas, who have achieved an incredible record, including their first undefeated regular season in school history, a fifth straight American Southwest Conference Tournament title, and a fifth consecutive “Sweet 16” appearance in the NCAA Division 3 Tournament.

Our Cowgirls exhibited incredible determination and drive as they worked to set a new benchmark for their university. Their school, community, and district stand behind them and join in celebrating their accomplishments.

□ 1415

When the basketball games first began the season, the university and the surrounding community knew this