



The Secretary of Energy

Washington, DC 20585

June 16, 2004

The Honorable Richard B. Cheney
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

The purpose of this letter is to submit to Congress legislation to implement the Convention on Supplementary Compensation for Nuclear Damage adopted in Vienna on September 12, 1997, by a diplomatic conference convened by the International Atomic Energy Agency.

The Convention strengthens the international legal regime governing the liability of an operator, builder, or supplier of a nuclear installation to persons damaged by a nuclear accident. It does so by creating a mechanism for compensating victims of nuclear damage caused within the territory of parties to the Convention, and in certain cases outside their territory.

The first tier of compensation is provided by funds made available under the laws of the state within whose territory the installation involved in the accident is located, or in certain circumstances, the state under whose authority the installation is operated. For accidents in the United States, what this means is that the first tier of compensation would be provided for all likely scenarios by funds that nuclear utilities already are obligated to provide under the Price-Anderson Act. For accidents in another country, the responsible operator in that country would provide the first tier compensation.

The second tier of compensation is provided by an international supplementary compensation fund contributed to by states that are parties to the Convention. An obligation to contribute to the fund for this tier would be triggered if the state responsible for providing the first tier notifies the parties that the amount of all eligible claims may exceed the minimum first tier amount. The amount contributed by a state party to the Convention would depend on the state's nuclear generating capacity and its United Nations assessment.

This legislation would implement the Convention in the United States. It would do so in a manner that would not impose a cost on U.S. taxpayers. It provides that if an accident covered by the Convention is also covered by the Price-Anderson Act, funds drawn from contributions made under that Act by U.S. nuclear utilities would cover the U.S. contribution to the international supplementary fund. The implementing legislation would utilize the existing Price-Anderson Act mechanism so that no nuclear utility would pay more than it

is currently obligated to pay under the Price-Anderson Act and, in some cases, utilities would pay slightly less than their current obligations. If an accident covered by the Convention is not covered by the Price-Anderson system, the legislation provides that the U.S. firms that supply nuclear equipment and technology contribute to a pool of money used to reimburse the U.S. for its contribution to the international supplementary fund. The obligation of suppliers to pay into the pool will be deferred until the U.S. is called upon to contribute to the international supplementary fund with respect to an actual nuclear incident that has occurred. The Convention permits each state to establish a third tier of compensation in order to make available an amount of compensation under domestic law that exceeds the sum of the first and second tiers of compensation under the Convention. Establishment of this third tier, as well as its amount and form, is left to the discretion of each state. In the United States, the normal operation of Price-Anderson system would provide this third tier.

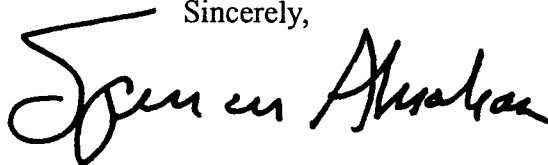
Ratifying the Convention and enacting this legislation will increase potential compensation for victims of a nuclear accident. It also will increase the safety of nuclear installations by lessening the liability concerns of U.S. suppliers of nuclear safety materials and services and make them more willing to provide safety assistance. In addition, the Convention and legislation will encourage U.S. exporters of nuclear technology and equipment to compete more effectively in foreign markets by lessening their liability concerns.

I urge your careful consideration of this legislation and its prompt passage.

The Office of Management and Budget advises that enactment of this proposal is in accord with the President's program.

If you or your staff have any questions regarding the proposal, please call Mr. Rick A. Dearborn, Assistant Secretary for Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,

A handwritten signature in black ink that reads "Spencer Abraham". The signature is written in a cursive, flowing style.

Spencer Abraham

Enclosure



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Washington, DC 20585

June 16, 2004

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

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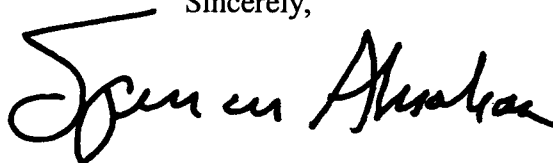
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Spencer Abraham

Enclosure

Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation Act

Section-by-Section Analysis

Section 1. Short Title

This section identifies the short title of the Act as “The Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation Act”.

Section 2. Effective Dates

This section provides that the Act becomes effective on the date on which the Convention on Supplementary Compensation for Nuclear Damage enters into force for the United States.

Section 3. Definitions

This section defines terms used in the Act.

“Commission” refers to the Nuclear Regulatory Commission.

“Contingent costs” refers to the amount that the United States could contribute to the international fund established by the Convention. These costs are contingent on the occurrence of a nuclear incident that triggers the obligation to contribute. The amount is dependent on the amount of nuclear damage resulting from the nuclear incident and the identities of the other countries that belong to the Convention. Assuming wide-spread adherence and nuclear damage in excess of \$1 billion, contingent costs would be approximately \$125 million.

“Convention” refers to the Convention on Supplementary Compensation for Nuclear Damage.

“Covered incident” refers to a nuclear incident that comes within the scope of the Convention. In general, a covered incident is a nuclear incident in a country that belongs to the Convention or during transportation to or from such a country.

“Covered installation” refers to a nuclear installation that comes within the scope of the Convention and at which the occurrence of a nuclear incident could trigger the obligation to contribute to the international fund.

“Covered person” refers to a person that may be a nuclear supplier for purposes of this Act. A covered person may be either (1) a United States Person, or (2) any other person to the extent such other person conducts activities in the United States. A covered person may not be the United States or any agency or instrumentality of the United States.

“Nuclear supplier” refers to a covered person or successor that either (1) provides goods or services to a covered installation, or (2) engages in a shipment of nuclear materials that could result in a covered incident.

"Price-Anderson Act" refers to section 170 of the Atomic Energy Act of 1954 and associated definitions in section 11 of that Act.

"Price-Anderson Incident" means a covered incident that comes within the scope of the Price-Anderson Act.

"Secretary" refers to the Secretary of Energy.

"United States" refers to the same geographic area as the definition of "United States" in the Atomic Energy Act, which includes the fifty States, the District of Columbia, Puerto Rico, the Canal Zone, the Territorial Sea as defined in Presidential Proclamation 5928 (December 27, 1988), and the territories and possessions of the United States.

"United States Person" refers to (1) any individual who is a United States resident, national or citizen, or (2) any entity that is organized under the laws of the United States or any State, territory, possession, or commonwealth of the United States, or any political subdivision thereof.

Section 4. Purpose

This section sets out the purpose of the Act, which is to provide funding for the contingent costs associated with participation by the United States in the international nuclear liability compensation system established by the Convention.

With respect to incidents covered by the Price-Anderson Act, the Act would cover the contingent costs by using the existing funding mechanism established by the Price-Anderson Act in a manner that would neither increase the amount that a nuclear power plant operator would otherwise contribute nor decrease the amount otherwise available to compensate victims. In fact, as discussed in connection with sections 6 and 7, the burden on operators would decrease with respect to nuclear incidents with aggregate damage claims between approximately \$420 million and the limit on public liability, while aggregate compensation available (that is, the limit on public liability) would increase by the amount of funds received from the international fund established by the Convention, to the extent such funds come from contributions to the international fund by countries other than the United States.

With respect to incidents not covered by the Price-Anderson Act, the Act would cover the contingent cost by allocating the contingent costs among nuclear suppliers that the Convention relieves from the risk of potential liability resulting from incidents that are not covered by the Price-Anderson Act. These suppliers are a primary beneficiary of the Convention since the Convention, in effect, provides them with insurance for their potential liability.

Section 5. Findings

This section sets out certain findings that support the adoption of the mechanisms in the Act to fund contributions by the United States to the international compensation fund established by the

Convention. The Price-Anderson Act establishes a comprehensive liability system for a nuclear incident involving a commercial powerplant or a DOE contractor, which provides a streamlined process for recovering compensation for damage caused by the nuclear incident, provides an assured source of funds for the payment of this compensation, and channels liability for covered claims to this assured source of funds. Nuclear suppliers and plant operators have relied upon the Price-Anderson Act in reaching decisions concerning the construction and operation of nuclear facilities. The Convention establishes an international system comparable to and compatible with the Price-Anderson system. The Convention benefits potential victims by assuring that substantial funds will be available to compensate damage caused by nuclear incidents by establishing minimum requirements for the amount of compensation available under the national laws of member countries and by providing for an internationally financed compensation fund to supplement the amounts available under national law. The Convention benefits United States nuclear suppliers who face potentially unlimited liability for nuclear incidents outside the coverage of the Price-Anderson Act by replacing potentially open-ended liability with a predictable regime that, like the Price-Anderson Act, channels liability to operators of nuclear facilities. The Convention also benefits United States nuclear facility operators that may be liable for public liability under the Price-Anderson Act by providing an additional source of compensation for nuclear incidents covered by the Price-Anderson Act. The United States should fund any contributions that it may be required to make to the Convention's supplementary compensation fund in a manner that neither upsets settled expectations based on the liability regime established in the Price-Anderson Act nor shifts to Federal taxpayers liability risks for nuclear incidents at foreign installations. The mechanisms in the Act achieve these objectives by utilizing funds already available under the Price-Anderson Act to cover the contribution by the United States for a nuclear incident covered by the Price-Anderson Act and by prorating the amount of the contribution by the United States for a nuclear incident not covered by the Price-Anderson Act among nuclear suppliers relieved from potential liability for which insurance is not currently available.

Section 6. Use of Price-Anderson Funds

This section provides that if a nuclear incident is covered by the Price-Anderson Act, then a portion of the funds made available for public liability under the Price-Anderson Act will be used to cover the contribution by the United States to the international fund established by the Convention. The use of Price-Anderson funds to cover the contribution by the United States to the international fund will not decrease the funds available to compensate nuclear damage since the United States will receive a corresponding amount as part of the funds distributed from the international fund. The contribution by the United States to the international fund and the distribution from the international fund of a corresponding amount will offset each other and result in a wash for accounting purposes. In addition, the remaining portion of the distribution from the international fund, which comes from contributions by countries other than the United States, will result in a net increase in the amount of compensation available. Section 7 takes this net increase into account by increasing the limit on public liability by the amount received from the international fund which comes from countries other than the United States.

Section 7. Effect on Amount of Public Liability

This section provides that, with respect to an incident covered by the Price-Anderson Act, funds made available to the United States from the international fund established by the Convention will be used to pay persons indemnified under the Price-Anderson Act. In addition, this section provides that the limitation on the amount of public liability under the Price-Anderson Act will be increased by the net amount of funds that the United States receives from the international fund (that is, the actual amount of funds received less the amount of the contribution by the United States to the international fund).

The following example illustrates how sections 6 and 7 will operate. For this example, assume: (1) the limitation on public liability established pursuant the Price-Anderson Act is \$10 billion; (2) there are 100 powerplants covered by the Price-Anderson system; (3) the operator of each powerplant must contribute \$100 million to the Price-Anderson system if legal liability reaches \$10 billion; (4) 1 SDR (special drawing right) equals \$1.40; (5) the contribution by the United States to the international fund is \$100 million; (6) the payment to the United States from the international fund is \$300 million; and (7) there is a nuclear incident at a domestic nuclear power plant resulting in damage that exceeds \$10 billion. Under these assumptions, the Price-Anderson Act would use funds from operators to indemnify legal liability resulting from the nuclear incident until legal liability reached \$420 million (300 million special drawing rights \times \$1.40). At this point, the United States would use the next \$100 million of funds from operators to cover the United States contribution to the international fund. At the same time, the United States would receive a payment of \$300 million from the international fund. This payment from the international fund would be used to indemnify legal liability between \$420 million and \$720 million. In addition, the limitation on public liability would be increased by \$200 million (that is, by the portion of the payment that comes from contributions from countries other than the United States). When legal liability reached \$720 million, operators would resume making funds available through the Price-Anderson system to cover legal liability and would continue to do so until legal liability reached the limit \$10.2 billion. Under this example, an additional \$200 million would be available to indemnify legal liability resulting from a nuclear incident covered by the Price-Anderson Act, at no additional costs to power plant operators. In fact, the retrospective premium imposed on an operator under the Price-Anderson Act would be slightly lower with respect to nuclear incidents with aggregate damage between approximately \$420 million and the increased limit on public liability.

Section 8. Retrospective Risk Pooling Program

This section requires a nuclear supplier to participate in the retrospective payment program established by this Act to cover the costs resulting from an incident covered by the Convention but not covered by the Price-Anderson Act. This retrospective risk pooling program provides nuclear suppliers with insurance for their potential liability in the event of a nuclear incident not covered by the Price-Anderson Act. This program is based on the retrospective pooling arrangement established by the Price-Anderson Act which provides a nuclear power plant operator with insurance for potential liability resulting from a nuclear incident at its power plant

and which determines the premium for this insurance retrospectively after a nuclear incident occurs by allocating the amount of the aggregate legal liability actually resulting from the nuclear incident among all nuclear power plant operators without regard to whether an operator has any liability for the nuclear incident. The retrospective risk pooling program established by section 9, in effect, provides for the collection of a premium from a nuclear supplier for the insurance against potential liability resulting from a nuclear incident not covered by the Price-Anderson Act that participation by the United States in the international nuclear liability compensation system established by the Convention provides the nuclear supplier. The amount of the premium collected from a nuclear supplier will be determined retrospectively after a nuclear incident occurs by allocating the amount of the contribution by the United States to the international fund among nuclear suppliers without regard to whether the nuclear supplier has any liability for the nuclear incident. As discussed in connection with section 11, the portion of the premium allocated to a nuclear supplier will reflect the risk from which the nuclear supplier is relieved relative to other nuclear suppliers by participation by the United States in the international nuclear liability compensation system established by the Convention.

Section 9. Deferred Payment

This section provides that a nuclear supplier is not required to pay its portion of the premium established by the retrospective risk pooling program unless and until the United States must make a contribution to the international fund established by the Convention.

Section 10. Amount of Deferred Payment

This section provides that the amount of a nuclear supplier's deferred payment be based on the risk-informed assessment formula the Secretary of Energy determines, by rule, under section 12.

Section 11. Risk-Informed Assessment Formula

This section requires the Secretary of Energy to determine by rulemaking the formula for allocation of a nuclear supplier's portion of the contingent costs that result when the United States must make a contribution to the international fund with respect to a nuclear incident not covered by the Price-Anderson Act. The section specifies certain risk factors the Secretary must take into account in determining the formula. These risk factors focus on the extent of the potential liability of a nuclear supplier that could result from its activities relative to other nuclear suppliers. These factors are comparable to factors currently used by private insurers to allocate risk among nuclear suppliers and the Secretary may take advantage of the expertise of such insurers in developing the formula. The section also lists certain factors that can provide a basis to exclude certain nuclear suppliers. The formula is expected to exclude nuclear suppliers that do not provide goods or services specifically for nuclear facilities or that do not engage in activities likely to result in significant potential liability or that engage in such activities to only a minor extent.

Section 12. Reporting Requirement

This section authorizes the Secretary of Energy to collect information needed to develop and implement the assessment formula. The section also requires the Secretary to make information available to nuclear suppliers and insurers to facilitate the creation of a voluntary private insurance system to cover potential payments by nuclear suppliers under the retrospective risk pooling program established by the Act. The section also requires entities to make information available to the Secretary to help develop and implement the assessment formula.

Section 13. Limitation of Liability

This section provides that liability for a covered incident may not be limited to less than 300 million Special Drawing Rights (the amount prescribed in Article IV 1.a. of the Convention). 300 million Special Drawing Rights currently equal approximately \$420 million.

Section 14. Payment to the United States

This section sets forth the procedure for the Secretary of Energy and nuclear suppliers to follow in the event of a call for funds under the Convention so that the deferred payments are made to the Treasury of the United States and conveyed from the Treasury to the appropriate entity in fulfillment of the obligation of the United States to contribute to the international fund established by the Convention. In the event a nuclear supplier defaults on its obligation to make a deferred payment, this section authorizes the Secretary of Energy to seek recovery from the supplier of the payment, appropriate interest and civil penalties up to twice the amount of the payment.

Section 15. Cause of Action

This section provides a right to sue the person legally responsible for a nuclear incident under the Convention to recover damage resulting from a nuclear incident for which a court of the United States has jurisdiction under the Convention, but to which the Price-Anderson Act does not apply. This section ensures a cause of action will be available in all situations where United States courts have jurisdiction over a nuclear incident, including a nuclear incident during transportation, for which Federal or state law may not currently provide a cause of action against the person responsible for the nuclear incident under the Convention. State tort law applies to incidents that occur within state boundaries, which generally only extend three miles offshore. This section provides for a federal cause of action beyond state boundaries in the territorial sea, the exclusive economic zone and the high seas. Establishment of this cause of action does not affect any preexisting cause of action on which a person could sue.

This section also assigns jurisdiction to the United States Court of Appeals for the District of Columbia Circuit for appeals and reviews of claims resulting from a nuclear incident for which a court of the United States has jurisdiction under the Convention, but to which the Price-Anderson Act does not apply. This assignment does not affect the jurisdiction of the Supreme

Court under chapter 81 of title 28 of the United States Code.

Section 16. Right of Recourse

This section clarifies that this Act does not provide the operator of a covered installation a right of recourse against a nuclear supplier or any other person.

Section 17. Protection of Sensitive United States Information

This sections provides that neither this Act nor the Convention should be construed to require the disclosure of Restricted Data, Formerly Restricted Date, information relating to intelligence sources or methods, or national security information. This section serves to clarify that no provision in this Act or the Convention is intended or has the effect of requiring the disclosure of such information

Section 18. Implementing Rules

This section authorizes the Secretary of Energy and the Nuclear Regulatory Commission to issue rules to implement this Act, including rules on how the Price-Anderson Act and this Act interact. The Secretary and the Commission will exercise this authority over areas for which they are responsible. For example, if necessary, the Commission would exercise this authority to issue rules describing the effect of sections 6 and 7 on Commission licensees, while the Secretary would issue rules with respect to activities undertaken by DOE contractors. The Secretary and the Commission are expected to consult to ensure proper coordination. The section provides that any implementing rules must be consistent and equitable and ensure that the financial and operational burden on a Commission licensee not increase as a result of the enactment of this Act. This section should not be construed to eliminate, limit or otherwise affect any other regulatory authority that the Secretary or the Commission already possesses.

Section 19. Separability of Provisions

This section provides that if a provision of this Act or the application of a provision of this Act to a person or circumstance is held invalid, the remainder of this Act and the application of the provision to persons and circumstances other than those as to which it is held invalid are not affected.

A BILL

To implement the Convention on Supplementary Compensation for Nuclear Damage, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as “The Convention on Supplementary Compensation for Nuclear
5 Damage Contingent Cost Allocation Act”.

6 **SEC. 2. EFFECTIVE DATES.**

7 This Act takes effect on the date on which the Convention enters into force for the United
8 States under Article XX of the Convention.

9 **SEC. 3. DEFINITIONS.**

10 For purposes of this Act:

11 (1) “Commission” means the Nuclear Regulatory Commission;

12 (2) “contingent cost” means the cost to the United States in the event of a covered
13 incident as measured by the amount of funds the United States is obligated to make
14 available under Article III (1)(b) of the Convention in consequence of a covered incident;

15 (3) “Convention” means the Convention on Supplementary Compensation for
16 Nuclear Damage done at Vienna on the twelfth day of September, one thousand nine

1 hundred ninety-seven, together with such amendments thereto as may hereafter enter into
2 force for the United States in accordance with United States constitutional processes;

3 (4) "covered incident" means a nuclear incident the occurrence of which results in
4 a call for funds pursuant to Article VII of the Convention;

5 (5) "covered installation" means a nuclear installation at which the occurrence of a
6 nuclear incident could result in a call for funds under Article VII of the Convention;

7 (6) "covered person"

8 (A) means -

9 (i) a United States Person, and

10 (ii) any other person, but only with respect to activities conducted

11 by such a person in the United States; and

12 (B) for purposes of this definition, "person" means any individual or
13 entity, including any agency or instrumentality of a foreign state, but not
14 including the United States or any agency or instrumentality of the United States;

15 (7) "nuclear supplier" means a covered person or successor -

16 (A) who supplies facilities, equipment, fuel, services, or technology
17 pertaining to the design, construction, operation, or decommissioning of a
18 covered installation; or,

19 (B) who transports nuclear materials that could result in a covered
20 incident;

1 (8) "Price-Anderson Act" means section 170 of the Atomic Energy Act of 1954,
2 as amended (42 U.S.C. 2210), and the provisions of section 11 of that Act, as amended
3 (42 U.S.C. 2014) that define terms used in section 170;

4 (9) "Price-Anderson Incident" means a covered incident for which the Price-
5 Anderson Act would make funds available to compensate for public liability as defined in
6 section 11 of the Atomic Energy Act of 1954, as amended;

7 (10) "Secretary" means the Secretary of Energy;

8 (11) "United States" means, when used in a geographic sense, the same area as is
9 encompassed by the definition of United States in section 11 of the Atomic Energy Act of
10 1954, as amended, including all Territories and possessions of the United States, the
11 Canal Zone, Puerto Rico and the Territorial Sea as defined in Presidential Proclamation
12 5928, issued December 27, 1988; and

13 (12) "United States Person" means -

14 (A) any individual who is a United States resident, national or citizen
15 (other than an individual resident outside the United States and employed by other
16 than a United States Person), and

17 (B) any corporation, partnership, association, joint-stock company,
18 business trust, unincorporated organization, or sole-proprietorship that is
19 organized under the laws of the United States or any State, territory, possession,
20 or commonwealth of the United States, or any political subdivision thereof.
21

1 **SEC. 4. PURPOSE.**

2 The purpose of this Act is to allocate the contingent costs associated with participation by
3 the United States in the international nuclear liability compensation system established by the
4 Convention by:

5 (1) with respect to a covered incident that is a Price-Anderson Incident, utilizing
6 funds available under the Price-Anderson Act to cover the contingent costs in a manner
7 that neither increases the burdens nor decreases the benefits under the Price-Anderson
8 Act; and

9 (2) with respect to a covered incident that is not a Price-Anderson Incident,
10 allocating the contingent costs equitably, on the basis of risk, among the class of nuclear
11 suppliers relieved by the Convention from the risk of potential liability resulting from
12 any covered incident.

13 **SEC. 5. FINDINGS.**

14 (a) The Price-Anderson Act provides a predictable legal framework necessary for nuclear
15 projects and ensures prompt and equitable compensation in the event of a nuclear incident in the
16 United States.

17 (b) The Price-Anderson Act, in effect, provides operators of nuclear powerplants with
18 insurance for damage arising out of a nuclear incident and funds this insurance primarily through
19 the assessment of a retrospective premium from each operator after the occurrence of a nuclear
20 incident.

1 (c) The Convention will establish a global system to provide a predictable legal
2 framework necessary for nuclear energy projects and to ensure prompt and equitable
3 compensation in the event of a nuclear incident.

4 (d) The Convention benefits United States nuclear suppliers who face potentially
5 unlimited liability for a nuclear incidents outside the coverage of the Price-Anderson Act by
6 replacing a potentially open-ended liability with a predictable regime that, in effect, provides
7 nuclear suppliers with insurance for damage arising out of such an incident. The Convention also
8 benefits United States nuclear facility operators that may be liable for public liability for a Price-
9 Anderson Incident by providing an additional early source of funds to compensate damage
10 arising out of such an incident. The combined operation of the Convention, the Price-Anderson
11 Act, and this Act augments the amount of assured funds available for victims in a wider variety
12 of nuclear incidents while reducing the potential liability of United States suppliers without
13 increasing potential costs to United States operators.

14 (e) The cost of these benefits is the obligation of the United States to contribute to the
15 Convention's supplementary compensation fund. Any such contribution should be funded in a
16 manner that neither upsets settled expectations based on the liability regime established in the
17 Price-Anderson Act nor shifts to Federal taxpayers liability risks for nuclear incidents at foreign
18 installations. With respect to a Price-Anderson Incident, funds already available under the Price-
19 Anderson Act should be used. With respect to a nuclear incident not covered by the Price-
20 Anderson Act, a retrospective premium should be prorated among nuclear suppliers relieved
21 from potential liability for which insurance is not currently available.

1 **SEC. 6. USE OF PRICE-ANDERSON FUNDS.**

2 Funds available under the Price-Anderson Act shall be used to cover the contingent cost
3 resulting from a Price-Anderson Incident, and the use of the funds shall not have the effect of
4 lowering the limitation on public liability otherwise established in section 170e. of the Atomic
5 Energy Act of 1954, as amended (42 U.S.C. 2210(e)).

6 **SEC. 7. EFFECT ON AMOUNT OF PUBLIC LIABILITY.**

7 Funds made available to the United States under Article VII of the Convention with
8 respect to a Price-Anderson Incident shall be used to satisfy public liability resulting from a
9 Price-Anderson Incident, and the amount of public liability allowable under the Price-Anderson
10 Act shall be increased by the amount of funds made available pursuant to Article VII of the
11 Convention less the amount of funds used under section 6 of this Act to cover the contingent cost
12 resulting from the incident.

13 **SEC. 8. RETROSPECTIVE RISK POOLING PROGRAM.**

14 Each nuclear supplier shall participate in a retrospective risk pooling program as
15 specified by this Act to cover the contingent cost resulting from a covered incident that is not a
16 Price-Anderson Incident.

17 **SEC. 9. DEFERRED PAYMENT.**

18 The obligation of a nuclear supplier to pay into the retrospective risk pooling program is
19 deferred until the United States is called upon to provide funds pursuant to Article VII of the
20 Convention with respect to a covered incident that is not a Price-Anderson Incident.

21

1 **SEC. 10. AMOUNT OF DEFERRED PAYMENT.**

2 The amount of a nuclear supplier's deferred payment shall be based on a risk-informed
3 assessment formula determined pursuant to section 11.

4 **SEC. 11. RISK-INFORMED ASSESSMENT FORMULA.**

5 (a) The Secretary shall determine, by notice and comment rulemaking, the risk-informed
6 assessment formula for the allocation among nuclear suppliers of the contingent cost resulting
7 from a covered incident that is not a Price-Anderson Incident, taking into account risk factors
8 such as -

9 (1) the nature and intended purpose of the goods and services supplied by each
10 nuclear supplier to each covered installation;

11 (2) the amount of the goods and services supplied by each nuclear supplier to
12 each covered installation;

13 (3) the hazards associated with the supplied goods and services should they fail to
14 achieve their intended purposes;

15 (4) the hazards associated with the covered installation to which the goods and
16 services are supplied;

17 (5) the legal, regulatory, and financial infrastructure associated with the covered
18 installation to which the goods and services are supplied; and

19 (6) the hazards associated with particular forms of transportation.

20 (b) In determining the formula, the Secretary may:

21 (1) exclude goods and services with negligible risk,

1 (2) exclude classes of goods and services not intended specifically for use in a
2 nuclear installation,

3 (3) establish the period on which the risk assessment is based,

4 (4) exclude a nuclear supplier with a *de minimis* share of the contingent cost, and

5 (5) exclude a nuclear supplier no longer in existence for which there is no
6 identifiable successor.

7 (c) In applying the formula, the Secretary shall not consider any covered installation or
8 transportation for which funds would be available under the Price-Anderson Act.

9 **SEC. 12. REPORTING REQUIREMENT.**

10 (a) The Secretary may collect the information needed for developing and implementing
11 the formula for calculating the deferred payment of a nuclear supplier and shall make available
12 to nuclear suppliers and their insurers information to support the voluntary establishment and
13 maintenance of private insurance against the risk that nuclear suppliers may be required to pay
14 deferred payments pursuant to this Act.

15 (b) Nuclear suppliers and other individuals and entities shall make available to the
16 Secretary the information, reports, records, documents, and other data as the Secretary describes
17 by regulation or order as necessary or appropriate to help develop and implement the formula
18 referred to in subsection (a).

19 **SEC. 13. LIMITATION OF LIABILITY.**

20 No provision of law, whenever enacted, shall be construed to limit liability for a covered
21 incident to less than the amount prescribed in Article IV 1.a. of the Convention, unless such

1 provision specifically refers to this Act and explicitly repeals, alters, amends, modifies, impairs,
2 displaces, or supersedes the effect of this section of this Act.

3 **SEC. 14. PAYMENTS TO AND BY THE UNITED STATES.**

4 (a) In the event of a call for funds under Article VII of the Convention resulting from a
5 covered incident that is not a Price-Anderson Incident, the Secretary shall notify each nuclear
6 supplier of the amount of its deferred payment. Each nuclear supplier shall pay to the Treasury
7 of the United States the deferred payments due under this Act no later than sixty days following
8 the notification, except that a nuclear supplier may elect to prorate payment of its deferred
9 payment in five equal annual payments, plus interest on the unpaid balance at the prime rate
10 prevailing at the time the first payment is due. Each nuclear supplier shall submit payment
11 certification vouchers to Treasury consistent with section 3325 of title 31, United States Code.

12 (b) Amounts paid into the Treasury under subsection (a) shall be available to the
13 Secretary of the Treasury, without further appropriation and without fiscal year limitation, for
14 the purpose of making the United States contributions of public funds required under the
15 Convention. The Secretary of the Treasury shall pay the contribution required under the
16 Convention to the court with jurisdiction under Article XIII of the Convention over actions
17 concerning the covered incident.

18 (c) In the event a nuclear supplier fails to make a payment required under this section, the
19 Secretary may take appropriate action to recover the amount of the payment due from the
20 supplier, any applicable interest on the payment, and a penalty up to twice the amount of the
21 deferred payment due from the supplier.

1 **SEC. 15. LIMITATION ON JUDICIAL REVIEW; CERTAIN CAUSE OF ACTION.**

2 (a)(1) In any civil action arising under the Convention over which Article XIII of the
3 Convention grants jurisdiction to the courts of the United States, any appeal or review by writ of
4 mandamus or otherwise with respect to a nuclear incident that is not a Price-Anderson Incident
5 may be had in accordance with chapter 83 of title 28, United States Code, except that such
6 appeal or review shall occur in the United States Court of Appeals for the District of Columbia
7 Circuit.

8 (2) Nothing in this subsection shall be construed to affect the jurisdiction of the Supreme
9 Court of the United States under chapter 81 of title 28, United States Code.

10 (b)(1) Subject to paragraph (2), in any civil action arising under the Convention over
11 which Article XIII of the Convention grants jurisdiction to the courts of the United States, in
12 addition to any other cause of action that may exist, an individual or entity shall have a cause of
13 action against the operator to recover for nuclear damage suffered by the individual or entity.

14 (2) Paragraph (1) applies only if the individual or entity seeks a remedy for nuclear
15 damage (as defined in Article I f. of the Convention) that was caused by a nuclear incident (as
16 defined in Article I i. of the Convention) that is not a Price-Anderson Incident.

17 (3) Nothing in this subsection shall be construed to limit, modify, extinguish or otherwise
18 affect any cause of action that would have existed in the absence of enactment of this subsection.

19 **SEC. 16. RIGHT OF RECOURSE.**

20 This Act does not provide an operator of a covered installation a right of recourse under
21 the Convention.

1 **SEC. 17 PROTECTION OF SENSITIVE UNITED STATES INFORMATION.**

2 Nothing in the Convention or this Act shall be construed to require the disclosure of
3 Restricted Data (as defined in section 11y. of the Atomic Energy Act of 1954, as amended, (42
4 U.S.C. 2014(y)) or Formerly Restricted Data protected by law, information relating to
5 intelligence sources or methods protected by section 103(c)(7) of the National Security Act of
6 1947, or national security information classified under Executive Order 12958, as amended, or
7 successor order.

8 **SEC. 18 IMPLEMENTING RULES.**

9 (a) The Secretary or the Commission, as appropriate, may prescribe rules to carry out the
10 Price-Anderson Act and this Act.

11 (b) Rules prescribed under this section shall ensure, to the maximum extent practicable,
12 that:

13 (1) implementation of the Price-Anderson Act and this Act is consistent and
14 equitable; and

15 (2) the financial and operational burden upon a Commission licensee in
16 complying with the Price-Anderson Act is no greater as a result of enactment of this Act
17 than it would have been in the absence of enactment of this Act.

18 (c) Section 553 of title 5, United States Code applies to the prescription of rules under
19 this section.

20 (d) Authority granted by this section is in addition to, and does not impair or otherwise
21 affect, any other grant of authority to the Secretary or the Commission to prescribe rules.

1 **SEC. 19 SEPARABILITY OF PROVISIONS.**

2 If a provision of this Act or the application of a provision of this Act to a person or
3 circumstance is held invalid, the remainder of this Act and the application of the provision to
4 persons and circumstances other than those as to which it is held invalid shall not be affected
5 thereby.