

§ 17373. Convention on Supplementary Compensation for Nuclear Damage contingent cost allocation

(a) Findings and purpose

(1) Findings

Congress finds that—

(A) section 2210 of this title (commonly known as the “Price-Anderson Act”)—

(i) provides a predictable legal framework necessary for nuclear projects; and

(ii) ensures prompt and equitable compensation in the event of a nuclear incident in the United States;

(B) the Price-Anderson Act, in effect, provides operators of nuclear powerplants with insurance for damage arising out of a nuclear incident and funds the insurance primarily through the assessment of a retrospective premium from each operator after the occurrence of a nuclear incident;

(C) the Convention on Supplementary Compensation for Nuclear Damage, done at Vienna on September 12, 1997, will establish a global system—

(i) to provide a predictable legal framework necessary for nuclear energy projects; and

(ii) to ensure prompt and equitable compensation in the event of a nuclear incident;

(D) the Convention benefits United States nuclear suppliers that face potentially unlimited liability for nuclear incidents that are not covered by the Price-Anderson Act by replacing a potentially open-ended liability with a predictable liability regime that, in effect, provides nuclear suppliers with insurance for damage arising out of such an incident;

(E) the Convention also benefits United States nuclear facility operators that may be publicly liable for a Price-Anderson incident by providing an additional early source of funds to compensate damage arising out of the Price-Anderson incident;

(F) the combined operation of the Convention, the Price-Anderson Act, and this section will augment the quantity of assured funds available for victims in a wider variety of nuclear incidents while reducing the potential liability of United States suppliers without increasing potential costs to United States operators;

(G) the cost of those benefits is the obligation of the United States to contribute to the supplementary compensation fund established by the Convention;

(H) any such contribution should be funded in a manner that does not—

(i) upset settled expectations based on the liability regime established under the Price-Anderson Act; or

(ii) shift to Federal taxpayers liability risks for nuclear incidents at foreign installations;

(I) with respect to a Price-Anderson incident, funds already available under the Price-Anderson Act should be used; and

(J) with respect to a nuclear incident outside the United States not covered by the Price-Anderson Act, a retrospective premium should be prorated among nuclear suppliers relieved from potential liability for which insurance is not available.

(2) Purpose

The purpose of this section is to allocate the contingent costs associated with participation by the United States in the international nuclear liability compensation system established by the Convention on Supplementary Compensation for Nuclear Damage, done at Vienna on September 12, 1997—

(A) with respect to a Price-Anderson incident, by using funds made available under section 2210 of this title to cover the contingent costs in a manner that neither increases the burdens nor decreases the benefits under section 2210 of this title; and

(B) with respect to a covered incident outside the United States that is not a Price-Anderson incident, by allocating the contingent costs equitably, on the basis of risk, among the class of nuclear suppliers relieved by the Convention from the risk of potential liability resulting from any covered incident outside the United States.

(b) Definitions

In this section:

(1) Commission

The term “Commission” means the Nuclear Regulatory Commission.

(2) Contingent cost

The term “contingent cost” means the cost to the United States in the event of a covered incident the amount of which is equal to the amount of funds the United States is obligated to make available under paragraph 1(b) of Article III of the Convention.

(3) Convention

The term “Convention” means the Convention on Supplementary Compensation for Nuclear Damage, done at Vienna on September 12, 1997.

(4) Covered incident

The term “covered incident” means a nuclear incident the occurrence of which results in a request for funds pursuant to Article VII of the Convention.

(5) Covered installation

The term “covered installation” means a nuclear installation at which the occurrence of a nuclear incident could result in a request for funds under Article VII of the Convention.

(6) Covered person

(A) In general

The term “covered person” means—

(i) a United States person; and

(ii) an individual or entity (including an agency or instrumentality of a foreign country) that—

(I) is located in the United States; or

(II) carries out an activity in the United States.

(B) Exclusions

The term “covered person” does not include—

- (i) the United States; or
- (ii) any agency or instrumentality of the United States.

(7) Nuclear supplier

The term “nuclear supplier” means a covered person (or a successor in interest of a covered person) that—

- (A) supplies facilities, equipment, fuel, services, or technology pertaining to the design, construction, operation, or decommissioning of a covered installation; or
- (B) transports nuclear materials that could result in a covered incident.

(8) Price-Anderson incident

The term “Price-Anderson incident” means a covered incident for which section 2210 of this title would make funds available to compensate for public liability (as defined in section 2014 of this title).

(9) Secretary

The term “Secretary” means the Secretary of Energy.

(10) United States**(A) In general**

The term “United States” has the meaning given the term in section 2014 of this title.

(B) Inclusions

- The term “United States” includes—
- (i) the Commonwealth of Puerto Rico;
 - (ii) any other territory or possession of the United States;
 - (iii) the Canal Zone; and
 - (iv) the waters of the United States territorial sea under Presidential Proclamation Number 5928, dated December 27, 1988 (43 U.S.C. 1331 note).

(11) United States person

The term “United States person” means—

- (A) any individual who is a resident, national, or citizen of the United States (other than an individual residing outside of the United States and employed by a person who is not a United States person); and
- (B) any corporation, partnership, association, joint stock company, business trust, unincorporated organization, or sole proprietorship that is organized under the laws of the United States.

(c) Use of Price-Anderson funds**(1) In general**

Funds made available under section 2210 of this title shall be used to cover the contingent cost resulting from any Price-Anderson incident.

(2) Effect

The use of funds pursuant to paragraph (1) shall not reduce the limitation on public liability established under section 2210(e) of this title.

(d) Effect on amount of public liability**(1) In general**

Funds made available to the United States under Article VII of the Convention with re-

spect to a Price-Anderson incident shall be used to satisfy public liability resulting from the Price-Anderson incident.

(2) Amount

The amount of public liability allowable under section 2210 of this title relating to a Price-Anderson incident under paragraph (1) shall be increased by an amount equal to the difference between—

- (A) the amount of funds made available for the Price-Anderson incident under Article VII of the Convention; and
- (B) the amount of funds used under subsection (c) to cover the contingent cost resulting from the Price-Anderson incident.

(e) Retrospective risk pooling program**(1) In general**

Except as provided under paragraph (2), each nuclear supplier shall participate in a retrospective risk pooling program in accordance with this section to cover the contingent cost resulting from a covered incident outside the United States that is not a Price-Anderson incident.

(2) Deferred payment**(A) In general**

The obligation of a nuclear supplier to participate in the retrospective risk pooling program shall be deferred until the United States is called on to provide funds pursuant to Article VII of the Convention with respect to a covered incident that is not a Price-Anderson incident.

(B) Amount of deferred payment

The amount of a deferred payment of a nuclear supplier under subparagraph (A) shall be based on the risk-informed assessment formula determined under subparagraph (C).

(C) Risk-informed assessment formula**(i) In general**

Not later than 3 years after December 19, 2007, and every 5 years thereafter, the Secretary shall, by regulation, determine the risk-informed assessment formula for the allocation among nuclear suppliers of the contingent cost resulting from a covered incident that is not a Price-Anderson incident, taking into account risk factors such as—

- (I) the nature and intended purpose of the goods and services supplied by each nuclear supplier to each covered installation outside the United States;
- (II) the quantity of the goods and services supplied by each nuclear supplier to each covered installation outside the United States;
- (III) the hazards associated with the supplied goods and services if the goods and services fail to achieve the intended purposes;
- (IV) the hazards associated with the covered installation outside the United States to which the goods and services are supplied;
- (V) the legal, regulatory, and financial infrastructure associated with the cov-

ered installation outside the United States to which the goods and services are supplied; and

(VI) the hazards associated with particular forms of transportation.

(ii) Factors for consideration

In determining the formula, the Secretary may—

(I) exclude—

(aa) goods and services with negligible risk;

(bb) classes of goods and services not intended specifically for use in a nuclear installation;

(cc) a nuclear supplier with a de minimis share of the contingent cost; and

(dd) a nuclear supplier no longer in existence for which there is no identifiable successor; and

(II) establish the period on which the risk assessment is based.

(iii) Application

In applying the formula, the Secretary shall not consider any covered installation or transportation for which funds would be available under section 2210 of this title.

(iv) Report

Not later than 5 years after December 19, 2007, and every 5 years thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report on whether there is a need for continuation or amendment of this section, taking into account the effects of the implementation of the Convention on the United States nuclear industry and suppliers.

(f) Reporting

(1) Collection of information

(A) In general

The Secretary may collect information necessary for developing and implementing the formula for calculating the deferred payment of a nuclear supplier under subsection (e)(2).

(B) Provision of information

Each nuclear supplier and other appropriate persons shall make available to the Secretary such information, reports, records, documents, and other data as the Secretary determines, by regulation, to be necessary or appropriate to develop and implement the formula under subsection (e)(2)(C).

(2) Private insurance

The Secretary shall make available to nuclear suppliers, and insurers of nuclear suppliers, information to support the voluntary establishment and maintenance of private insurance against any risk for which nuclear suppliers may be required to pay deferred payments under this section.

(g) Effect on liability

Nothing in any other law (including regulations) limits liability for a covered incident to

an amount equal to less than the amount prescribed in paragraph 1(a) of Article IV of the Convention, unless the law—

(1) specifically refers to this section; and

(2) explicitly repeals, alters, amends, modifies, impairs, displaces, or supersedes the effect of this subsection.

(h) Payments to and by the United States

(1) Action by nuclear suppliers

(A) Notification

In the case of a request for funds under Article VII of the Convention resulting from a covered incident that is not a Price-Anderson incident, the Secretary shall notify each nuclear supplier of the amount of the deferred payment required to be made by the nuclear supplier.

(B) Payments

(i) In general

Except as provided under clause (ii), not later than 60 days after receipt of a notification under subparagraph (A), a nuclear supplier shall pay to the general fund of the Treasury the deferred payment of the nuclear supplier required under subparagraph (A).

(ii) Annual payments

A nuclear supplier may elect to prorate payment of the deferred payment required under subparagraph (A) in 5 equal annual payments (including interest on the unpaid balance at the prime rate prevailing at the time the first payment is due).

(C) Vouchers

A nuclear supplier shall submit payment certification vouchers to the Secretary of the Treasury in accordance with section 3325 of title 31.

(2) Use of funds

(A) In general

Amounts paid into the Treasury under paragraph (1) shall be available to the Secretary of the Treasury, without further appropriation and without fiscal year limitation, for the purpose of making the contributions of public funds required to be made by the United States under the Convention.

(B) Action by Secretary of Treasury

The Secretary of the Treasury shall pay the contribution required under the Convention to the court of competent jurisdiction under Article XIII of the Convention with respect to the applicable covered incident.

(3) Failure to pay

If a nuclear supplier fails to make a payment required under this subsection, the Secretary may take appropriate action to recover from the nuclear supplier—

(A) the amount of the payment due from the nuclear supplier;

(B) any applicable interest on the payment; and

(C) a penalty of not more than twice the amount of the deferred payment due from the nuclear supplier.

(i) Limitation on judicial review; cause of action**(1) Limitation on judicial review****(A) In general**

In any civil action arising under the Convention over which Article XIII of the Convention grants jurisdiction to the courts of the United States, any appeal or review by writ of mandamus or otherwise with respect to a nuclear incident that is not a Price-Anderson incident shall be in accordance with chapter 83 of title 28, except that the appeal or review shall occur in the United States Court of Appeals for the District of Columbia Circuit.

(B) Supreme Court jurisdiction

Nothing in this paragraph affects the jurisdiction of the Supreme Court of the United States under chapter 81 of title 28.

(2) Cause of action**(A) In general**

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

(B) Requirement

Subparagraph (A) shall apply only if the individual or entity seeks a remedy for nuclear damage (as defined in Article I of the Convention) that was caused by a nuclear incident (as defined in Article I of the Convention) that is not a Price-Anderson incident.

(C) Savings provision

Nothing in this paragraph may be construed to limit, modify, extinguish, or otherwise affect any cause of action that would have existed in the absence of enactment of this paragraph.

(j) Right of recourse

This section does not provide to an operator of a covered installation any right of recourse under the Convention.

(k) Protection of sensitive United States information

Nothing in the Convention or this section requires the disclosure of—

- (1) any data that, at any time, was Restricted Data (as defined in section 2014 of this title);
- (2) information relating to intelligence sources or methods protected by section 3024(i) of title 50; or
- (3) national security information classified under Executive Order 12958 ([former] 50 U.S.C. 435 note; relating to classified national security information) (or a successor Executive Order or regulation).

(l) Regulations**(1) In general**

The Secretary or the Commission, as appropriate, may prescribe regulations to carry out section 2210 of this title and this section.

(2) Requirement

Rules prescribed under this subsection shall ensure, to the maximum extent practicable, that—

- (A) the implementation of section 2210 of this title and this section is consistent and equitable; and
- (B) the financial and operational burden on a Commission licensee in complying with section 2210 of this title is not greater as a result of the enactment of this section.

(3) Applicability of provision

Section 553 of title 5 shall apply with respect to the promulgation of regulations under this subsection.

(4) Effect of subsection

The authority provided under this subsection is in addition to, and does not impair or otherwise affect, any other authority of the Secretary or the Commission to prescribe regulations.

(m) Effective date

This section shall take effect on December 19, 2007.

(Pub. L. 110-140, title IX, §934, Dec. 19, 2007, 121 Stat. 1741.)

REFERENCES IN TEXT

Presidential Proclamation Number 5928, referred to in subsec. (b)(10)(B)(iv), is set out as a note under section 1331 of Title 43, Public Lands.

Executive Order 12958, referred to in subsec. (k)(3), which was formerly set out as a note under section 435 (now section 3161) of Title 50, War and National Defense, was revoked by Ex. Ord. No. 13526, §6.2(g), Dec. 29, 2009, 75 F.R. 731.

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as a note under section 1824 of Title 2, The Congress.

§ 17374. Transparency in extractive industries resource payments**(a) Purpose**

The purpose of this section is to—

- (1) ensure greater United States energy security by combating corruption in the governments of foreign countries that receive revenues from the sale of their natural resources; and
- (2) enhance the development of democracy and increase political and economic stability in such resource rich foreign countries.

(b) Statement of policy

It is the policy of the United States—

- (1) to increase energy security by promoting anti-corruption initiatives in oil and natural gas rich countries; and
- (2) to promote global energy security through promotion of programs such as the Extractive Industries Transparency Initiative (EITI) that seek to instill transparency and accountability into extractive industries resource payments.

(c) Sense of Congress

It is the sense of Congress that the United States should further global energy security and