

BEFORE THE
DEPARTMENT OF ENERGY

FR DOC. 2021-15840

NOTICE OF INQUIRY ON PREPARATION OF REPORT
TO CONGRESS ON THE PRICE-ANDERSON ACT

COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS AND
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD
ASSOCIATION

The Association of American Railroads (“AAR”) and the American Short Line and Regional Railroad Association (“ASLRRA”) (jointly, “the Associations”), respectfully submit the following comments on the Department of Energy’s July 26, 2021, “Notice of Inquiry on Preparation of Report to Congress on the Price-Anderson Act.” 86 Fed. Reg. 40032 (July 26, 2021).

AAR is a non-profit industry association whose membership includes freight railroads that operate 83 percent of the line-haul mileage, employ 95 percent of the workers, and account for 97 percent of the freight revenues of all railroads in the United States. AAR also represents passenger railroads that operate intercity passenger trains and provide commuter rail service. ASLRRA is a non-profit trade association representing the interests of approximately 500 short line and regional railroad members and railroad supply company members in legislative and regulatory matters. Short lines operate 50,000 miles of track in 49 states, or approximately 30% of the national freight network.

The Associations and their members urge the Department to continue the current Price-Anderson indemnification program without modification.

Omnibus Coverage is Necessary to Protect Department Contractors from Liability for a Nuclear or Radiological Incident.

The primary purpose of the Price-Anderson Act, 42 U.S.C. 2011, *et seq.* (“the Act”), was to encourage private industry to develop and support the nuclear industry by reducing the costs of liability associated with a nuclear or radiological incident. The Act provides omnibus coverage—meaning that the same protection available for a covered nuclear licensee or contractor extends through indemnification to any parties who may be legally liable. This indemnification applies to any nuclear incident during transport of nuclear fuel to a reactor site or the transport of radioactive material from reactors.

As common carriers, railroads are required to carry all commodities (even if they are dangerous) if the shipper tenders the commodity in conformance with all applicable governmental and industry requirements.¹ 49 U.S.C. § 11101. Transportation of these and other hazardous materials is in the public interest because rail is the safest mode available to ship those commodities. Today railroads safely transport radioactive materials used for national defense purposes as well as for medical and energy needs.²

¹ *Radioactive Materials, Special Train Service, Nationwide*, 359 ICC 70, 73 (1978) (“As long as an established practice meets the minimum requirements though, a carrier may not refuse to haul a commodity by charging that it is too dangerous to do so. A carrier thus cannot refuse to haul any materials which meet these standards, but it may seek approval of a stricter practice which is shown to be just and reasonable.”); *see also Radioactive Materials, Missouri-Kansas-Texas R. Co.*, 357 ICC 458 (1978).

² Recent applications to the Nuclear Regulatory Commission indicate plans to increase shipments of spent nuclear fuel to consolidated interim storage facilities in Texas. *See Interim Storage Partners, LLC Application for a Consolidated Interim Storage Facility*, April 28, 2016, <https://www.nrc.gov/waste/spent-fuel-storage/cis/waste-control-specialist.html>; *and* Application

By providing omnibus coverage, the Act eliminates the significant risk associated with transporting radioactive materials that would otherwise be imposed on railroads while transporting nuclear materials. The Act accomplishes this while still ensuring coverage to individuals who may be harmed in the unlikely event of a nuclear incident. In this way, the Act is beneficial to both the public and to railroads performing the necessary task of safely transporting radioactive material. Removing or limiting that protection without replacing it with comparable liability coverage is not in the public's interest and would result in the imposition of inestimable risks to railroads while they provide critical (and mandatory) service. The potential liabilities could easily bankrupt a railroad, disrupting the national economy and interstate commerce.

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For the foregoing reasons, the Associations respectfully request the Department of Energy recommend the Price-Anderson Act be continued in its current form.

Respectfully submitted,



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