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Lockheed Martin Corporation Comments on Department of Energy Notice of Inquiry Concerning Preparation of Report to Congress on the Price-Anderson Act, 62 Fed. Reg. 68272 (December 31, 1997)

Enclosed please find the comments of Lockheed Martin Corporation to the Department of Energy's Notice of Inquiry. Please call me if you have any questions.

Sincerely,

C. Douglas Goins, Jr.
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Environment, Safety and Health
Energy and Environment Sector

Enclosure

CDG:REB:cnc

Lockheed Martin Corporation Comments on Department of Energy
Notice of Inquiry Concerning Preparation of Report to Congress on
the Price-Anderson Act, 62 Fed. Reg. 68272 (December 31, 1997)

Lockheed Martin Corporation (LMC) appreciates this opportunity to provide comments on the Price-Anderson Act (the "Act") to DOE. LMC manages the following national laboratories, defense program facilities, and environmental management facilities for the Department of Energy (DOE): Idaho National Engineering and Environment Laboratory, Sandia National Laboratory, Oak Ridge National Laboratory, the Oak Ridge Y-12 Plant, and the Oak Ridge East Tennessee Technology Park. We are also partners on the Bechtel Nevada team at the Nevada test site and a major subcontractor to the management and integration contractor at Hanford.

General Comments

(1)Lockheed Martin Corporation believes it is appropriate that omnibus coverage be continued because it affords the public the greatest amount of protection in the event of a nuclear incident. Congress originally passed the omnibus provision to encourage growth and development of the nuclear industry by the private sector and to protect the public by ensuring funds were available to compensate the public for damages incurred in the event of a nuclear incident. Congress intentionally enacted language that is broad and which extends to any person who may incur liability.

(2)Lockheed Martin Corporation agrees with statements made by the Senate in 1988 that "the protection afforded the public by the Price-Anderson Act is important enough to justify removing the Secretary's discretion and, instead, to require that DOE contractors be indemnified under the Price-Anderson Act for all Nuclear activities. This will guarantee to the public that the Price-Anderson system will be available to provide compensation in the event of a nuclear incident." Senate Report No. 100-70. LMC believes the same reasons that compelled Congress to amend the indemnity provisions of the Act in 1988 remain today. Further, codifying the Act's indemnification requirement has strengthened the Act by removing discretionary and potentially arbitrary decision making and by providing protection to the public in the event of a nuclear incident.

In 1988, Congress also cited the impact a discretionary Price-Anderson indemnification option would have on the DOE contractor community. Senate Report No. 100-70 states that "there is a possibility that some DOE contractors would discontinue work in DOE's nuclear activities altogether if the Price-Anderson system is not extended. In that event, Federal nuclear activities would continue, but they would likely be carried out by Federal employees or by possibly less responsible, less competent contractors." In addition, in Congressional debates over making the Price-Anderson indemnification mandatory, the point was made that "responsible contractors have made it clear that without Price-Anderson indemnification for all work performed on DOE nuclear contracts, they will leave the business. That is not a threat. That is simply a fact. And why should they stay in the business? Why should a responsible company put all of its corporate assets at risk for a contract that represents a relatively small part of its overall business. The answer is that it shouldn't and it won't." 134 Cong. Rec. S2301-03 (March 16, 1988).

(3)DOE relies on a contractor community skilled in managing and operating DOE radiological and nuclear facilities to achieve its missions. Many of the activities performed at DOE facilities are unique and are not activities that are cost-effective for the private sector. If DOE did not take on these activities, vital national research, environmental remediation, and nuclear waste management missions would not be performed. In order for such work to continue without interruption in such an environment it is essential that DOE indemnify contractors in order to secure their participation in such programs. Going back to a discretionary indemnification provision for DOE contractors would have a significant chilling effect on the contractor community.

(4)Lockheed Martin Corporation is concerned about the possible transfer of regulatory enforcement and licensing of DOE facilities to the Nuclear Regulatory Commission (NRC). While rigorous regulation of the nuclear utilities by the NRC appears to have satisfied the opponents of nuclear power and a concerned public. For a number of reasons, the high cost of NRC regulations being one, the nuclear power industry may well be a dying energy source at a time when the nation is genuinely concerned about its excessive reliance of fossil fuels. There have been no new license applications for new power reactor construction for a number of years in spite of the fact that the majority of permits for existing reactors will expire in the next 20 years. The ordeal endured to obtain a license for a newly constructed facility suggests that the NRC licensing of existing DOE facilities would be costly at best and virtually impossible for the older facilities in the DOE inventory.

(5)In order to understand the regulatory scheme, it is necessary to refer to three different Acts: the Atomic Energy Act of 1954, the Price-Anderson Act, and the Price-Anderson Act of 1988. Two of these Acts, the Atomic Energy Act and the Price-Anderson Act are complex, ambiguous, and contain outdated references, e.g., to the Atomic Energy Commission. The legislation should be simplified and clarified.

DOE's implementation of Price-Anderson rulemaking is patterned after NRC regulation of the commercial nuclear industry. However, unlike the commercial industry where nuclear facilities were designed, constructed, and operated in lock step with nuclear safety requirements such as 10 CFR 50, appendix B (Quality Assurance), the DOE complex is primarily comprised of exiting facilities, many 40 to 50 years old, that were designed, built, and operated for a relatively long period of time without such requirements. It is extremely difficult, if not impossible, to introduce a broad-based rule such as 10 CFR 830.120 (the Quality Assurance rule, or "QA") in an enforceable manner into the operations of such facilities. While it is recognized that DOE QA requirements have been in existence for quite some time, in actuality, programs such as the QA program were seldom implemented by DOE and its former contractors with the degree of rigor expected in a regulatory environment. With the present constraints on budgets and other resources, the bounds of applicability need clear definition. A quality Safety Analysis Report (SAR) which defines the bounds of the nuclear facility and identifies the safety structures, systems, and components required for safety is essential for focusing the program in an efficient manner. Consequently, implementation of the SAR rule prior to enforcement of the QA rule

would reduce the subjectivity and subsequent frustration associated with the current DOE order of rulemaking.

The Nuclear Safety Rules (10 CFR 830) apply to activities affecting the safety of nuclear facilities. The threshold for nuclear facility designation is DOE-STD-1027-92, Nuclear Hazard Category 3 and above. The inclusion of Category 3 facilities is inconsistent with the Act because these facilities do not present a significant risk of a substantial nuclear incident. Regarding Nuclear Hazard Category 3, the standard states: "This category of facilities and hazards by definition cannot release the quantities of materials which could threaten workers at adjacent facilities, the public or the environment." Implementation of 10 CFR Part 830 for hazard category 3 facilities adds significant administrative burden and contractor liability without a commensurate benefit to safety.

(1)Should the DOE Price-Anderson indemnification be continued without modification?

Yes. The Price-Anderson indemnification should be continued with minor housekeeping modifications to update the terms of the Act, but without substantive changes. For 40 years, the Act has worked well for the Government, the public, and the contractors who have operated DOE facilities. It assures the public that there will be a readily available source of funding to pay for "public liability" resulting from nuclear incidents; it assures the Government that the public will be protected, while the Government's risk is actually statutorily limited, and the Department will be able to obtain the services of private contractors and subcontractors to perform essential nuclear related activities; and it provides contractors with protection from risks which are too huge to bear or insure against. Without this protection, the potential for unlimited, astronomical liability would completely deter private business (contractors and subcontractors) from the construction or operation of DOE nuclear facilities. The Act's indemnification assures that the public will be fully compensated while statutorily limiting the DOE's risk. This type of "insurance" would not otherwise be available, and if it was, the cost would be too costly to maintain.

(2)Should the DOE Price-Anderson indemnification be eliminated or made discretionary with respect to all or specific DOE activities? If discretionary, what procedures and criteria should be used to determine which activities or categories of activities should receive indemnification?

It should be mandatory for all activities undertaken pursuant to a contract with the DOE involving hazardous radioactive materials. Although the Act's protection was only mandatory via the Price-Anderson Act Amendments (PAAA), it was included in virtually all contracts prior to the 1988 amendments anyway. All parties benefit from the mandatory aspect of protection because the public is assured that its damages will be compensated, the government has its liability capped, and the contractors receive indemnification protection for a type of risk that they could not otherwise be protected against.

(3)Should there be different treatment for "privatized arrangements" (that is, contractual arrangements that are closer to contracts in the private sector than the traditional "management and operating" contract utilized by DOE and its predecessors since the Manhattan Project in the 1940's)? Privatized arrangements can include but are not limited to fixed-priced contracts, contracts where activity is conducted at the contractor's facility located off a DOE site, contracts where activity is conducted at the contractor's facility located on a DOE site, or contracts where a contractor performs the same activity for DOE as it does for commercial entities and on the same terms.

No. The public policy reasons behind the Act remain unchanged even when DOE facilities are privatized. "Privatized arrangements" should not receive different treatment for purposes of receiving indemnification protection under the Act. Remember, this is high risk work being done by private contractors to solve a set of significant problems for the benefit of the government. The nature and risk of the activities and the need to ensure protection of public health and welfare are the same regardless of the type of contractual arrangement or whether the contract is located on or off of the DOE site. If the contractor is engaging in nuclear related activities, as covered in the Act, the indemnification protection should be provided. The public needs to know that it will be made whole no matter what happens in unforeseen nuclear incidents. The government needs to have both willing public support for its nuclear defense and civilian programs and responsible contractors who are willing and able to undertake hazardous work (such as designing, maintaining, or operating reactors, and designing, maintaining, or building/dismantling nuclear weapons), in carrying out those programs. The Government also benefits from the unique limitation of liability provisions of the Act, without which it could be exposed to far greater indemnification demands from its contractors.

(4)Should there be any change in the current system under which DOE activities conducted pursuant to an NRC license are covered by the DOE Price-Anderson indemnification, except in situations where the NRC extends Price-Anderson coverage under the NRC system? For example, (1) should the DOE Price-Anderson indemnification always apply to DOE activities conducted pursuant to an NRC license or (2) should the DOE Price-Anderson indemnification never apply to such activities, even if NRC decides not to extend Price-Anderson coverage under the NRC system?

For purposes of consistency, DOE should always have the ability to indemnify its contractors, even when the activities are conducted pursuant to an NRC license.

(5)Should the DOE Price-Anderson indemnification continue to provide omnibus coverage, or should it be restricted to DOE contractors or to DOE contractors, subcontractors, and suppliers? Should there be a distinction in coverage based on whether an entity is for-profit or not-for-profit?

The best way to ensure the continued protection of the public in being able to be assured of the availability of funding to compensate for nuclear related damages is to continue the omnibus type of coverage and not limit it to specific groups or make a distinction based on profit or nonprofit status. Excluding noncontracting parties from coverage would force those with whom DOE contractors collaborate in noncontractual ways to formalize their arrangements with a contract so that they too get the benefits of the Act′s coverage. The type of contract has no bearing on the public′s continued need for protection.

(6)If the DOE indemnification were not available for all or specified DOE activities, are there acceptable alternatives? Possible alternatives might include Pub. L. No. 85-804, section 162 of the AEA, general contract indemnity, no indemnity, or private insurance. To the extent possible in discussing alternatives, compare each alternative to the DOE Price-Anderson indemnification, including operation, cost, coverage, risk, and protection of potential claimants.

Sandia Corporation (an LMC subsidiary) is probably the only AEC/ERDA/DOE contractor which has, or has had, all of the three statutory forms of indemnification (Price-Anderson, Public Law 85-804, and Section 162) in its contract at one time or another. Experience has shown that of the three forms, Price-Anderson works best for nuclear risks from the public, government, and contractor perspective. Public Law 85-804 indemnification requires contract-specific action by the Secretary, and Section 162 requires presidential action. Both of these latter processes are protracted and laborious, and neither creates a "fund" to protect the public, or limits the liability of the government. If DOE Price-Anderson indemnification is no longer available, it is unlikely that insurance underwriters would be willing to accept the potential risk associated with a nuclear incident. This is a risk that is unique to these specialized governmental activities and should not be shifted to the private sector. However, DOE should be more flexible in permitting contractors to purchase insurance and should consider contractor proposals tailored to specific activities performed under their contracts which might lend themselves to a combination of Price-Anderson indemnification, Public Law 85-804, and insurance coverage. For example, enhanced coverage may be required for foreign nuclear facility activities.

(7)To what extent, if any, would the elimination of the DOE Price-Anderson indemnification affect the ability of DOE to perform its various missions? Explain your reasons for believing that performance of all or specific activities would or would not be affected?

The elimination of the DOE Price-Anderson indemnification would erode public support for DOE programs because it would take away the protection the Act provides to the public. The public would

no longer be assured of the availability of financial remedies in the event of a nuclear incident. The role of the public has become increasingly recognized in the decisions that DOE makes. It has been an uphill battle to convince the public of the safety of nuclear activities. If the public were made aware of the elimination of indemnification protection for their benefit in the event of a nuclear incident, it would literally "pull the rug out from under" DOE's ability to continue any nuclear related missions. The elimination of DOE Price-Anderson indemnification would also seriously limit DOE's ability to attract quality suppliers and subcontractors to help perform its missions. The most serious impact would likely be on the growing number of small businesses, who individually or through team/joint efforts, are competing for DOE work.

(8)To what extent, if any, would the elimination of the DOE Price-Anderson indemnification affect the willingness of existing or potential contractors to perform activities for DOE? Explain your reasons for believing that willingness to undertake all or specific activities would or would not be affected?

The elimination of the Price-Anderson indemnification would greatly decrease the willingness of contractors to perform activities for DOE. The nuclear activities which are the focus of the DOE Price-Anderson indemnification are unusually hazardous and dangerous. They involve huge and unforeseeable risks which could bankrupt a company. A number of companies that have historically done work for DOE have already stopped doing the work because of DOE's efforts to shift liability for the work to the contractors. Undeniably, there are already corporations with the expertise to do the work that are unwilling to expose corporate assets to such potentially enormous risks.

(9)To what extent, if any, would the elimination of the DOE Price-Anderson indemnification affect the ability of DOE contractors to obtain goods and services from subcontractors and suppliers? Explain your reasons for believing that the availability of goods and services for all or specific DOE activities would or would not be affected?

The elimination of the DOE Price-Anderson indemnification would also have a negative affect on the ability of DOE contractors to obtain goods and services from subcontractors and suppliers. The nuclear activities which are the focus of the DOE Price-Anderson indemnification are extremely hazardous and dangerous. They involve huge and unforeseeable risks which could bankrupt any company if it were held liable for the consequences of a nuclear incident and not indemnified. No responsible contractor could knowingly expose itself or its stockholders to risks of that magnitude.

(10)To what extent, if any, would the elimination of the DOE Price-Anderson indemnification affect the ability of claimants to receive compensation for nuclear damage resulting from a DOE activity? Explain your reasons for believing the ability of claimants to be compensated for nuclear damage resulting from all or specific DOE activities would or would not be affected?

It is likely that elimination of the DOE Price-Anderson indemnification would not substantially change the legal issues involved in determining the entitlement of claimants to compensation. Activities covered by the indemnification would, for the most part, be considered ultra-hazardous and therefore, subject to strict liability. However, elimination of a damage pool of funds would be likely to significantly impact the ability of the public to receive compensation since compensation would be subject to the availability of appropriated funds and/or corporate assets. Contractors might be forced to file bankruptcy to limit or avoid contribution to the damage pool. The real "losers" if indemnification is eliminated would be the members of the public that are damaged or injured by a nuclear incident, and who would no longer have an assured source of adequate coverage.

(11)What is the existing and the potential availability of private insurance to cover liability for nuclear damage resulting from DOE activities? What would be the cost and the coverage of such insurance? To what extent, if any, would the availability, cost and coverage be dependent on the type of activity involved? To what extent, if any, would the availability, cost and coverage be dependent on whether the activity was a new activity or an existing activity? If DOE Price-Anderson indemnification were not available, should DOE require contractors to obtain private insurance?

Lockheed Martin Corporation and its DOE subsidiaries have looked into the availability of private insurance to cover the kinds of risks covered by Price-Anderson indemnification, and to our knowledge, such insurance has never been available. Such insurance is unlikely to become available in the foreseeable future, and even if it were, it is likely the cost of the insurance would not justify its purchase for the limited coverage it would likely provide. Further, such insurance may not reliably protect the public.

(12)Should the amount of the DOE Price-Anderson indemnification for all or specified DOE activities inside the United States (currently approximately $8.96 billion) remain the same or be increased or decreased?

The amount of Price-Anderson indemnification should be sufficient to provide for the damages that can be anticipated from a significant nuclear incident, and be in line with government's ability to secure funds to cover such an incident.

(13)Should the amount of the DOE Price-Anderson indemnification for nuclear incidents outside the United States (currently $100 million) remain the same or be increased or decreased?

The amount should definitely be increased to the same or higher levels as that of guidelines set forth under the various international conventions for addressing civil liability for nuclear damage. The $100 million amount has remained unchanged since 1962. It is unrealistic so long as the DOE's programs involve nuclear risks outside the United States. Following a nuclear incident outside the United States (or even inside the United States which causes consequences outside the United States) involving Government-owned or Government-used nuclear materials, DOE contractors involved in that incident could be sued in foreign courts for compensation. Just the costs of defending against that litigation could exceed $100 million, and no foreign court would likely honor any U.S.-imposed limitation of liability so far as the citizens of that country are involved. (The U.S. Government itself could not be sued in most foreign courts, but many of DOE's contractors, which have international activities, could be sued in many foreign countries.) At a minimum, DOE should have the flexibility to adjust the level of protection for contractors doing work in foreign countries. It is difficult to agree to do contract work in foreign countries without such indemnification because even if indemnification is sought and obtained from the foreign government, many governments who require the services of DOE contractors are not stable enough, or do not have sufficient resources to indemnify to the level required for the type of work for which protection is needed. As a result, many contractors are currently avoiding work in countries where their expertise would be very beneficial.

(14)Should the limit on aggregate public liability be eliminated? If so, how should the resulting unlimited liability be funded? Does the rationale for the limit on aggregate public liability differ depending on whether the nuclear incident results from a DOE activity or from an activity of a NRC licensee?

No. The limit on aggregate public liability should not be eliminated at this time. The Congressional purpose behind imposing a limitation of liability as part of the Act is to assure that there will be a fund, and a source of funding, to pay the compensation costs incurred following a nuclear incident. However, other federal indemnification statutes (such as Public Law 85-804 and section 162) contain no such limitation of liability feature and work well in appropriate cases.

(15)Should the DOE Price-Anderson indemnification continue to cover DOE contractors and other persons when a nuclear incident results from their gross negligence or willful misconduct? If not, what would be the effects, if any, on: (1) The operation of the Price-Anderson system with respect to the nuclear incident, (2) other persons indemnified, (3) potential claimants, and (4) the cost of the nuclear incident to DOE? To what extent is it possible to minimize any detrimental effects on persons other than the person whose gross negligence or willful misconduct resulted in a nuclear incident? For example, what would be the effect if the United States government were given the right to seek reimbursement for the amount of the indemnification paid from a DOE contractor or other person whose gross negligence or willful misconduct causes a nuclear incident?

Price-Anderson indemnification should continue to cover DOE contractors and other persons when a nuclear incident results from their gross negligence or willful misconduct because ensuring adequate liability protection for members of the public should not be contingent upon the good faith of those involved in causing the nuclear incident. However, just as the majority of DOE contracts already have prime contract language that makes contractors responsible for fines incurred because of the gross negligence of their officers, there can also be an adequate contractual remedy to punish contractors for willful or grossly negligent behavior. Prime contracts often contain award fee language whereby contractors' nuclear safety performance is measured. In egregious situations, such as willful or gross negligence, additional measures like stipulated penalties or specified award fee reductions could be used to make contractors "feel the sting" from their grossly negligent behavior or willful misconduct.

(16)Should the DOE Price-Anderson indemnification be extended to activities undertaken pursuant to a cooperative agreement or grant?

Yes. The DOE Price-Anderson indemnification should be extended to activities undertaken pursuant to a cooperative agreement or grant as appropriate for the type of facility.

(17)Should the DOE Price-Anderson indemnification continue to cover transportation activities under a DOE contract? Should coverage vary depending on factors such as the type of nuclear material being transported, method of transportation, and jurisdictions through which the material is being transported?

DOE Price-Anderson indemnification should continue to cover transportation activities regardless of the type of nuclear material being transported, the method of transportation, and the jurisdictions through which the material is being transported. To the extent that hazardous nuclear materials are involved, there is no reason to distinguish transportation activities (or any other activity) from production, storage, maintenance, dismantlement, etc.

(18)To what extent, if any, should the DOE Price-Anderson indemnification apply to DOE

clean-up sites? Should coverage be affected by the applicability of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or other environmental statutes to a DOE clean-up site?

To the extent that activities at DOE clean-up sites involve the "risk of public liability" arising from a nuclear incident, there is no reason to distinguish these activities from any other activities covered by the DOE Price-Anderson indemnification. The application of the indemnification to nuclear activities should be continued irrespective of the clean-up activities because the need for indemnification continues to exist with the continuation of nuclear activities and the ongoing presence of nuclear materials. The risk to the public does not change just because the activities occur at a CERCLA site.

(19)To what extent, if any, should the DOE Price-Anderson indemnification be available for liability resulting from mixed waste at a DOE clean-up site?

The DOE Price-Anderson indemnification should apply to the same extent for liability resulting from mixed waste at a DOE cleanup site. There is no reason to exclude from coverage indemnification for any injury or damage to the public that may result from hazardous waste of this nature.

(20)Should the definition of nuclear incident be expanded to include occurrences that result from DOE activity outside the United States where such activity does not involve nuclear material owned by, and used by or under contract with, the United States? For example, should the DOE Price-Anderson indemnification be available for activities of DOE contractors that are undertaken outside the United States for purposes such as non-proliferation, nuclear risk reduction or improvement of nuclear safety? If so, should the DOE Price-Anderson indemnification for these additional activities be mandatory or discretionary?

Yes. The Act's definition should be expanded to cover nuclear incidents that result from activity outside the United States are covered if the work is being performed under a DOE contract or otherwise on behalf of the DOE. When contractors perform DOE work outside of the United States involving nuclear materials, or when their work inside the United States (such as nuclear weapons or reactor research and development, or production) can have consequences outside the United States, the DOE Price-Anderson indemnification is needed. The indemnification should be mandatory and protect to the same extent as if the nuclear material were owned by the United States.

(21)Is there a need to clarify what tort law applies with respect to a nuclear incident in the United States territorial sea? Should the applicable tort law be based on state tort law?

Yes. The Act should clarify that with respect to a nuclear incident at sea, the already existing body of law of the sea should apply.

(22)Should the definition of nuclear incident be modified to include all occurrences in the United States exclusive economic zone? What would be the effects, if any, on the shipment of nuclear material in the United States exclusive economic zone if such a modification were or were not made? What would be the effects, if any, on the response to an incident involving nuclear material in the United States exclusive economic zone if such a modification were or were not made?

Lockheed Martin Corporation has no comment on this question.

(23)Should the reliance of the Act on state tort law continue in its current form? Should uniform rules already established by the Act be modified, or should there be additional uniform rules on specific topics such as causation and damage? Describe any modification or additional uniform rule that would be desirable and explain the rationale.

Yes. The reliance of the Act on state tort law should continue in its current form. We do not know of any reasons why the uniform rules already established should be modified or augmented.

(24)Should the Act be modified to be consistent with the legal approach in many other countries under which all legal liability for nuclear damage from a nuclear incident is channeled exclusively to the operator of a facility on the basis of strict liability? If so, what would be the effect, if any, on the system of financial protection, indemnification and compensation established by the Act?

No. There is no reason to modify the Act to be consistent with the legal approach taken by other countries, which may have legal systems far different from ours. Assuming such channeling legislation would provide that litigation arising from nuclear incidents as a result of activities at DOE facilities (laboratories, production plants, clean-up sites, etc.) should be brought against the Government as the facility owner instead of any of the contractors or other third persons who might otherwise be sued, such a change would in effect make the Federal Tort Claims Act apply to Price-Anderson claims litigation, and thus relieve such contractors or third parties of any financial risks. Although the approach would be very different from the current Price-Anderson regime, the effect on the public and the contractors would be largely the same. If instead, such channeling legislation would provide that the litigation can only be brought against the DOE contractor, then the contractor and the public would continue to require the same type and amount of financial protection now provided by the Act. The only source for that financial protection is the Government, because private insurance is otherwise unavailable.

(25)Should the procedures in the Act for administrative and judicial proceedings be modified? If so, describe the modification and explain the rationale?

Yes. If the work is being performed under DOE contract, the Act's indemnification should be expanded to cover nuclear incidents that result from activity outside the United States where such activity does not involve nuclear material owned by, and used by or under contract with the United States. Indemnification and protection of the public should not be dependent on who owns the nuclear material. Rather, it should depend on whether the work is being performed under a DOE contract. If so, the Act's indemnification should be mandatory and protect to the same extent as if the nuclear material is owned by the United States.

(26)Should there be any modification in the types of claims covered by the Price-Anderson system?

The Act currently covers claims arising from nuclear incidents inside the United States resulting from the activities of DOE nuclear contractors because Congress wanted to protect the public from nuclear risks and assure adequate compensation funds. For nuclear incidents occurring outside the United States, such indemnity applies only if the nuclear material is "owned by, and used by or under contract with, the United States." This limitation makes no sense and should be eliminated so there is full coverage when work is being performed on behalf of DOE pursuant to a DOE contract, regardless of who owns the material. In addition, the amount of indemnification for extra-national nuclear incidents, $100 million, was established thirty-five years ago, and is woefully inadequate today. It should be increased so that it is equivalent to the amount of indemnity provided for nuclear incidents occurring within the United States.

(27)What modifications in the Act or its implementation, if any, could facilitate the prompt payment and settlement of claims?

Lockheed Martin Corporation has no comment on this question.

(28)Should DOE continue to be authorized to issue civil penalties pursuant to section 234A of the AEA? Should section 234A be modified to make this authority available with respect to DOE activities that are not covered by the DOE Price-Anderson indemnification? Should DOE continue to have authority to issue civil penalties if the Act is modified to eliminate the DOE Price-Anderson indemnification with respect to nuclear incidents that results from the gross negligence or willful misconduct of a DOE contractor?

Section 234A civil penalties are intended to improve accountability for nuclear safety because DOE is providing the contractors with protection in the form of Price-Anderson. In other words, the civil penalties and accompanying Nuclear Safety Requirements were established as a trade-off; the contractor receives Price-Anderson indemnity while being held to DOE mandated performance standards. As long as Price-Anderson is available to contractors, the civil penalty system is appropriate. However, should Price-Anderson be reduced or eliminated in any way, the reason for the Section 234A civil penalties, and the Nuclear Safety Requirements, is equally reduced or eliminated. If

DOE does not extend the special nuclear incident indemnification protection to its contractors, then nuclear operations become simply one more activity undertaken pursuant to a contract between the DOE and its contractor. As such, nuclear operations should then be subject to the standard DOE contract conditions, such as DOE directives, and applicable laws. Without Price-Anderson, there would be no justification for DOE to impose additional standards of care upon contractors operating nuclear activities. Eliminating Price-Anderson protection without some replacement to protect contractors and the public is unacceptable.

There is a second concern which is associated with the way DOE is conducting Price-Anderson enforcement. At present, contractors are being subjected to "double jeopardy" by paying fines levied by DOE enforcement (EH-10) and simultaneously having the same actions result in negative impact on their Award Fee evaluation for the same occurrences. This situation is happening in an environment of ever diminishing budgets, with compliance expectations remaining the same or increasing. In addition to the contractors having to worry about paying Price-Anderson fines and reduced award fee, there is the specter of unlimited and potentially substantial "proceeding" costs under the Major Fraud Act for every Price-Anderson "visit" or investigation that occurs. There is no ceiling or limitation on the Major Fraud Act proceeding costs, and "costs" are defined very broadly to capture all types of costs related to a contractor's efforts in responding to a "proceeding" (which is also defined broadly to include an "investigation" by any authority from the local to the federal level). At best, these "proceeding" costs are normally only 80% recoverable when no fine is levied, and completely unallowable when any fine results. The unlimited nature of the potential MFA proceeding cost liability, combined with DOE's overreaching approach to Price-Anderson enforcement and fines, are causing corporate entities to seriously question the viability of continuing to bid for DOE management and operating contracts.

In addition, DOE seems to be enforcing far beyond what was originally intended by the Act and finding violations for many administrative types of issues that are not genuinely related to nuclear safety. For example, fines have been issued for minor radiological exposures well below federal regulatory limits based on speculation that a limit could have been exceeded. If contractors are not operating nuclear facilities in a safe manner, there is no reason why this cannot be adequately addressed via their DOE contract in the same manner as all other performance issues.

(29)To what extent does the authority to issue civil penalties affect the ability of DOE to attain safe and efficient management of DOE activities? To what extent does this authority affect the ability of DOE and its contractors to cooperate in managing the environment, health, and safety of DOE activities through mechanisms such as integrated safety management? To what extent does this authority help contain operating costs including the costs of private insurance if it were to be required?

There has been no observable enhancement of DOE′s ability to attain safe and efficient management of DOE activities as a result of its enforcement authority for fines and penalties. The civil penalties and enforcement procedure create an adversarial environment between DOE and its contractors. In other

areas, DOE and its contractors work together to achieve a common purpose, whereas the penalties and enforcement activities often place the two at opposite sides when interpreting or implementing the nuclear safety requirements.

(30)Should there continue to be a mandatory exemption from civil penalties for certain nonprofit contractors? Should the exemption apply to for-profit subcontractors and suppliers of a nonprofit contractor? Should the exemption apply to a for-profit partner of a nonprofit contractor?

Lockheed Martin Corporation does not have an opinion on the exemption for certain non-profit contractors. With respect to for-profit subcontractors, supplies, and partners, LMC believes that treating these entities differently from the non-profit contractors would create disincentives for doing business with these contractors.

(31)Should DOE continue to have discretionary authority to provide educational nonprofit institutions with an automatic remission of civil penalties? If so, should the remission be available where the nonprofit entity has a for-profit partner, subcontractor, or supplier?

Yes. If DOE retains its enforcement authority, use of such authority should include the availability of a remission of civil penalties for both profit and non-profit entities.

(32)Should the maximum amount of civil penalties be modified? If so, how?

Yes. If DOE retains its enforcement authority, the maximum amount of penalties should be substantially reduced. Fines of up to $110,000 are extremely high unless the public has been put at substantial risk. These facilities are managed by a stable contractor base with an interest in establishing long term relationships with DOE. By terms of their contract these contractors are highly motivated to meet DOE nuclear safety requirements.

(33)Should the provisions in section 234A.c. concerning administrative and judicial proceedings relating to civil penalties be modified? If so, how?

The proceedings should be modified so that after DOE issues a notice of a proposed penalty, the parties can have an opportunity to solve the issue informally without a penalty being assessed. Under section 234A.c., after the DOE issues an initial notice of a proposed penalty, the recipient has only two options: it can (1) elect to have a determination of violation by an administrative law judge or (2) have the DOE immediately assess the penalty by final order. There is no statutory, or regulatory, provision for remedying the alleged violation between issuance of the notice and final assessment of the penalty. In the interest of creating a cooperative environment between DOE and its contractors, providing a

window of opportunity within which to address alleged violations without imposition of a penalty would be beneficial. Such an opportunity reduces the time spent on defending or justifying an action and instead allows the contractor to focus on improving safety at its site.

(34)Should there be any modification in the authority in section 223.c. to impose criminal penalties for knowing and willful violations of nuclear safety requirements by individual officers and employees of contractors, subcontractors and suppliers covered by the DOE Price-Anderson indemnification? Should this authority be extended to cover violations by persons not indemnified?

Given the broadness of the Act's indemnification, it is difficult to imagine a scenario where someone not covered by the indemnification could commit a knowing and willful violation of a nuclear safety requirement. LMC sees no reason to broaden the scope of the criminal penalty provisions.