electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: July 22, 2010.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title of Collection: Protection and Advocacy for Assistive Technology (PAAT) Program Assurances.

OMB #: 1820–0658.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Estimated Number of Annual Responses: 57.

Estimated Annual Burden Hours: 9.

Abstract: This information collection instrument will be used by grantees to request funds to carry out the PAAT program. PAAT is mandated by the Assistive Technology Act of 1998, as amended in 2004 (AT Act), to provide protection and advocacy services to individuals with disabilities for the purposes of assisting in the acquisition, utilization, or maintenance of assistive technology or assistive technology services.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4306. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, D.C. 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title and OMB Control Number of the information collection when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–18374 Filed 7–26–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation

AGENCY: Department of Energy.

ACTION: Notice of inquiry and request for comment.

SUMMARY: The Department of Energy ("Department" or "DOE") is seeking comment and information from the public to assist in its development of regulations pertaining to section 934 of the Energy Independence and Security Act of 2007 ("Act"). Section 934 addresses how the United States will meet its obligations under the Convention on Supplementary Compensation for Nuclear Damage ("Convention" or "CSC") and, in particular, its obligation to contribute to an international supplementary fund in the event of certain nuclear incidents. Section 934 authorizes the Secretary of Energy ("Secretary") to issue regulations establishing a retrospective risk pooling program by which nuclear suppliers will reimburse the United States government for its contribution to the international supplementary fund. The Department's regulations to implement the retrospective risk pooling program are the subject of this notice.

DATES: Interested persons must submit written comments by September 27, 2010.

ADDRESSES: Comments may be submitted electronically by e-mailing them to: *Section934Rulemaking@Hq.Doe.Gov.* We note that e-mail submissions will avoid delay associated with security screening of U.S. Postal Service mail.

Also, written comments should be addressed to Sophia Angelini, Attorney-Advisor, Office of the General Counsel for Civilian Nuclear Programs, GC–52, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. The Department requires, in hard copy, a signed original and three copies of all comments. Copies of the written comments received and any other docket material may be reviewed on the Web site specifically established for this proceeding. The Internet Web site is: *http://gc.doe.gov/civilian_nuclear_programs.htm.*

FOR FURTHER INFORMATION CONTACT: Sophia Angelini, Attorney-Advisor, Office of the General Counsel for Civilian Nuclear Programs, GC–52, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone (202) 586–0319.

SUPPLEMENTARY INFORMATION:

I. Background

On September 12, 1997, the Convention on Supplementary Compensation for Nuclear Damage was adopted by a diplomatic conference convened by the International Atomic Energy Agency ("IAEA").[1] The CSC provides the basis for a global nuclear liability regime. Such a regime is an essential element of the infrastructure necessary to support the expanded use of nuclear power around the world to meet the challenges of climate change, energy security, and economic growth. The CSC provides consistent rules for dealing with legal liability resulting from a nuclear incident and ensures prompt availability of meaningful compensation for the nuclear damage resulting from any such incident. A major feature of the CSC is the creation of an "international supplementary fund," which provides an additional tier of compensation not otherwise available under a State's national law and to which each Party to the Convention ("Contracting Party") contributes in the event of certain nuclear incidents.

In the event of a nuclear incident, the CSC provides a two-tiered compensation system based on: (1) A Contracting Party's national law; and (2) the international supplementary fund. The first tier is provided by funds available under the laws of the State where the nuclear installation involved is located, or under whose authority the installation is operated ("Installation State"). The first tier amount is set at a minimum of 300 million Special Drawing Rights ("SDRs").[2] In the event that the first tier is inadequate to compensate all nuclear damage, a second tier would be provided via the international supplementary fund to which all Contracting Parties would contribute, including the Installation

[1] The full text of the Convention on Supplementary Compensation for Nuclear Damage is available at *http://www.iaea.org/Publication/Documents/Infircs/1998/infcirc567.shtml.* A detailed interpretation of the CSC and its provisions is contained in "The 1997 Vienna Convention on Civil Liability for Nuclear Damage and the 1997 Convention on Supplementary Compensation for Nuclear Damage—Explanatory Texts," International Atomic Energy Agency (IAEA) ("Explanatory Texts"). International Law Series No. 3 (2007). The Explanatory Texts is available at *http://www-pub.iaea.org/MTCD/publications/PDF/Pub1279_web.pdf* .

[2] SDR is the unit of account defined by the International Monetary Fund ("IMF") and used by the IMF for its own operations and transactions. As of May 2010, 1 SDR equaled about $1.50 dollars; therefore, 300 million SDRs would equal roughly $450 million dollars.

State that provided the first tier. This obligation arises when, and to the extent that, second tier funds are actually required, with no obligation to contribute if claims can be satisfied from the first tier. The second tier amount is not preset, but instead is calculated based on a formula that takes into account the installed capacity of all Contracting Parties and their United Nations ("UN") rate of assessment at the time of the incident. If countries with most of the current installed capacity join the Convention, the second tier will amount to approximately 300 million SDRs, which, in conjunction with the first tier, would guarantee a total of approximately 600 million SDRs for compensation.

In 2007, Congress passed the Energy Independence and Security Act of 2007 (Pub. L. 110–140), which includes section 934 ("Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation") (42 U.S.C. 17373). Section 934 implements the Convention in the United States. Congress found that the Convention benefits United States nuclear suppliers by replacing their potentially open-ended liability with a predictable liability regime, and, in effect, insurance for nuclear damage arising from incidents not covered by the Price-Anderson Act ("PAA").[3] The Department and the Nuclear Regulatory Commission ("NRC") are authorized to issue implementing regulations, as necessary and appropriate. 934(l). The combined operation of the CSC, PAA, and section 934 assures funding for victims in a wider variety of nuclear incidents, while reducing potential liability of United States nuclear suppliers and without increasing potential costs to United States nuclear reactor operators. 934(a)(1).

Section 934 sets forth the means by which the United States will contribute to the second tier of compensation required under the Convention, that is, the international supplementary fund. (The first tier of compensation would be funded pursuant to the governing United States law for nuclear incidents, the PAA.) Funds available under the PAA would be used to pay the United States contribution to the international supplementary fund for nuclear incidents that are covered by the PAA. 934(c) and (d). For nuclear incidents that are not covered by the PAA, section 934 establishes a new risk pooling program for nuclear suppliers to pay the United States contribution to the international supplementary fund. The risk pooling program involves a premium to be assessed retrospectively (*i.e.,* a deferred payment) based on a risk-informed formula taking into account specified risk factors in conjunction with exclusionary criteria. 934(e). This notice of inquiry ("NOI") is focused only on regulations to be promulgated by the Department to implement the new retrospective risk pooling program for nuclear suppliers. A section by section explanation of section 934 is provided in the Appendix to this notice.

II. Discussion of Section 934 and Request for Public Comment

A. Overview

The Department is issuing this NOI to provide an opportunity for public input as the Department develops a rule to implement a retrospective risk pooling program for nuclear suppliers to fund the United States contribution to the international supplementary fund required by the Convention.

This NOI discusses the major topics related to the implementation of section 934 by the Department, including: (1) Operation of the PAA system; (2) pertinent definitions in section 934(b); (3) the retrospective risk pooling program and deferred payment in subsection 934(e)(2); (4) the risk-informed assessment formula in subsection 934(e)(2)(C)(i) and factors for consideration in subsection 934(e)(2)(C)(ii); (5) reporting requirements in subsection 934(f); and (6) payments to and by the United States in subsection 934(h).

B. Operation of the Price-Anderson System

Section 934 is clear in its findings and purpose that the existing legal and operational framework of the PAA is not affected by the compensation system established by the Convention. Subsection 934(a) specifies that contributions under the Convention cannot "(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." 934(a)(1)(H)(i) and (ii). With respect to a nuclear incident covered by the PAA ("Price-Anderson incident"), "funds already available under the [PAA] should be used" for contributions due under the Convention. 934(a)(1)(I). With respect to a nuclear incident outside the United States not covered by the PAA, "a retrospective premium should be prorated among nuclear suppliers" with contingent costs allocated equitably, on the basis of risk. 934(a)(1)(J) and 934(a)(2)(B). In sum, the United States contribution under the Convention will be funded either from existing PAA funds or the new retrospective risk pooling program for nuclear suppliers. In no case would a nuclear reactor operator that contributes to the PAA pooling program be required also to contribute to the new retrospective pooling program. Because section 934 is clear on this point, and imposes no requirements on nuclear reactor operators covered by the PAA, the statute preserves the existing compensation system under the PAA. Accordingly, it is not necessary for either the Department or the NRC to issue implementing regulations to effectuate how and when PAA funds will be used to cover a contribution under the Convention.

The Department believes that, on this point, the operation of the PAA under the Convention is clear and self-executing; however, the Department invites comments if there is any question in this regard.

C. Definitions

Subsection 934(b) provides definitions for certain terms used in the Act. In its regulation, the Department intends to include the terms defined in the statute, as well as other key terms necessary to implement the statute. The Department views some of the terms defined in subsection 934(b) as being clear and to not require additional clarification. Those terms include: "Commission" at subsection 934(b)(1); "Convention" at subsection 934(b)(3); and "Secretary" at subsection 934(b)(9). Other terms in section 934, although defined, are less clear in their application or interpretation such that clarification may be necessary. For example, while the term "nuclear supplier" is defined at subsection 934(b)(7),[4] that term is potentially very

[3] The Price-Anderson Act ("Price-Anderson" or "PAA"), section 170 of the Atomic Energy Act of 1954, as amended ("AEA"), 42 U.S.C. 2210, is the national law governing compensation for victims of nuclear incidents occurring within the United States. The PAA provides that owners of commercial reactors must assume all liability for nuclear damages awarded to the public; each licensed reactor must carry primary financial protection in the amount of the maximum liability insurance available, currently $375 million U.S. dollars, and damages exceeding that amount would be assessed equally against all commercial reactors (currently 104 reactors) covered by the PAA under a retrospective premium requirement pooling program. The PAA also provides indemnification for public liability in the event of a nuclear incident resulting from activities conducted for or on behalf of DOE, including a nuclear incident outside the United States involving U.S.-owned nuclear material.

[4] The term "nuclear supplier" means a covered person (or a successor in interest of a covered person) that—

broad in scope, complex, and subject to interpretation. As to this definition and others below, the Department requests comments on how implementation of section 934 would be facilitated by further clarification and consideration in the regulation. If a commenter believes that clarifications should be provided in the Secretary's regulation as to the terms below, or any other terms, the commenter is requested to explain why and, if possible, provide suggested language.

The term "contingent cost," defined at subsection 934(b)(2),[5] means the cost to the United States in the event of a covered incident, which is equal to the amount the United States is obligated to make available under paragraph 1(b) of Article III of the Convention (*i.e.,* the international supplementary fund) pursuant to Article VII. As the definition implies, the cost to the United States in the event of a covered incident (a nuclear incident within the scope of the Convention) is contingent, and thus only paid under specified circumstances. Those circumstances and the amount of the payment are governed by the Convention, primarily Articles IV, VI and VII.

The formula for calculating the amount of the international supplementary fund is contained in Article IV, and is based upon:
(1) Nuclear generating capacity (thermal power shown at the date of the nuclear incident in a list of nuclear installations established under Article VIII); and
(2) UN assessment rate. Article IV.1(c) establishes a cap on contributions by any Contracting Party, other than the Installation State, per nuclear incident equal to the Contracting Party's UN rate of assessment plus 8 percentage points of the fund as a whole. For the United States, the contribution is capped initially at 28% (UN rate of assessment of 20%, plus 8%) or less than one-third of the international supplementary fund. As more generating States become Contracting Parties, the cap will increase, while the United States contribution percentage will decrease.

The Department believes that the definition of "contingent cost" is exact both as to when the cost is triggered and as to the required methodology for calculation of such costs. Therefore, the current approach is to define this term consistent with the Act and the Convention. Nonetheless, the Department invites comments as to related clarifications that should be incorporated in its regulation.

The term "covered incident," defined at subsection 934(b)(4), means a nuclear incident "the occurrence of which results in a request for funds pursuant to Article VII." Funds may be requested under Article VII when a nuclear incident results in nuclear damage that exceeds the first-tier contribution amount. Generally, a covered incident is a nuclear incident occurring in the territory of a Contracting Party or during transportation to or from a Contracting Party.

Because section 934 defines neither "nuclear incident" nor "nuclear damage," terms which are essential to an understanding of what constitutes a covered incident, DOE believes that it is necessary to look to the Convention and existing law to determine the proper interpretation and meaning of a covered incident under the Act. The Convention defines both nuclear incident and nuclear damage; the AEA defines nuclear incident.

The Convention, Article I.(i), defines "nuclear incident" as "any occurrence or series of occurrences having the same origin which causes nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage." This definition of nuclear incident includes incidents of actual nuclear damage, and, in the absence of an actual release of radiation, damages incident to preventive measures taken only in response to a grave and imminent threat of a release of radiation that could cause other types of nuclear damage. Under the AEA, subsection 11q. (42 U.S.C. 2014q.), a "nuclear incident" is defined as, in pertinent part, "any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material." Like the Convention, the PAA definition of nuclear incident centers on the occurrence of injury or damage to persons or property directly caused by the incident. Unlike the Convention, the definition of nuclear incident in the PAA does not expressly include damage incident to preventive measures. However, the PAA provides for indemnification in the case of "public liability," where public liability is defined as, in pertinent part, "any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation * * *" (AEA subsection 11w. (42 U.S.C. 2014w.)), and "precautionary evacuation" is defined as, in pertinent part, a government ordered "evacuation of the public within a specific area near a nuclear facility, or the transportation route in the case of an accident involving transportation of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste * * * if the evacuation is—(1) the result of any event that is not classified as a nuclear incident but poses imminent danger of bodily injury or property damage * * *." AEA subsection 11gg. (42 U.S.C. 2014gg.). The definitions of "preventive measures" under the Convention and "precautionary evacuation" under the PAA are similar in scope and effect. Thus, when the AEA definitions of nuclear incident, public liability, and precautionary evacuation are read together the net effect is that a nuclear incident under the Convention is comparable to a nuclear incident under the PAA. Notwithstanding this comparability, in accordance with Article 2.2 of the Annex to the Convention ("Annex"), which permits the United States to use its existing domestic framework for dealing with liability for nuclear damage, the United States expects to use the PAA definition of a nuclear incident in connection with Price-Anderson incidents and the CSC definition of nuclear incident in connection with incidents that are not Price-Anderson incidents when implementing the Act.

The Department requests comments on whether and how it may need to further clarify those terms in its regulation.

In a similar vein, although the term "nuclear damage" is defined in the Convention, the Annex provides a mechanism for the United States to apply a definition of nuclear damage consistent with both the Convention and the PAA. For incidents outside the United States not covered by the PAA, the United States expects to apply the definition of nuclear damage under the Convention, Article I.(f). For incidents inside the United States covered by the PAA, the United States expects to apply the definition of nuclear damage in Annex Article 2.2(a).

The Department requests comments on whether or how it may need to further clarify those terms in its regulation.

(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.

[5] 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.

Nuclear damage is defined in the Convention, Article I.(f), as loss of life or personal injury, loss of or damage to property and, to the extent determined by the law of a competent court, five categories of damages relating to impairment of the environment such as costs of measures of reinstatement, loss of income, costs of preventive measures, and other economic loss that must be treated as nuclear damage. The types of nuclear damage covered by the Convention are thus divided into two categories: Those which must be compensated (loss of life, personal injury, and property loss or damage) and those that are to be compensated "to the extent determined by the law of the competent court." Article I.(f)(ii). This provides the competent court flexibility in determining under national law how to compensate economic loss that does not fall into the category of "loss or damage to property."

Under Annex Article 2.2, the United States (the only country able to meet the conditions of Annex Article 2.2) may define nuclear damage as set forth in Article I.(f) of the Convention, or as set forth in Annex Article 2.2(a). Annex Article 2.2(a) defines nuclear damage as including, in addition to that identified in Article I.(f) of the Convention, "any other loss or damage to the extent that the loss or damage arises out of or results from the radioactive properties, or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation; or other ionizing radiation emitted by any source of radiation inside a nuclear installation, provided that such application does not affect the undertaking by that Contracting Party pursuant to Article III of this Convention." The latter definition of nuclear damage (*i.e.,* at Annex Article 2.2(a)) is consistent with the PAA approach of compensating victims for "bodily injury, sickness, disease or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material." AEA subsection 11q. (42 U.S.C. 2014q.). Accordingly, the United States would use this broader definition for Price-Anderson incidents within the United States when implementing the Act.

The Department requests comments on whether or how it may need to further clarify those terms in its regulation.

The term "covered installation," defined at subsection 934(b)(5), 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 and thus trigger the obligation to contribute to the international supplementary fund. The Department views this definition as clear, except that it is dependent upon an understanding of the term "nuclear installation." The term "nuclear installation" is not defined in section 934 or the AEA. The CSC generally uses the definition set forth in the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 ("Paris Convention"), the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 ("Vienna Convention") or Article 1(b) of the Annex, depending on which instrument is applicable to a particular nuclear incident. Article 2.2(b) of the Annex, however, permits the United States to apply the definition of "nuclear installation" set forth at Article 2.3 of the Annex to the exclusion of the definition at Article 1.1(b) of the Annex. Thus, for covered incidents within the United States, "nuclear installation" is defined at Annex Article 2.3 to mean: a) Any civil nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or any other purpose; and b) any civil facility for processing, reprocessing or storing: (i) Irradiated nuclear fuel; or (ii) radioactive products or waste that: (1) Result from the reprocessing of irradiated nuclear fuel and contain significant amounts of fission products; or (2) contain elements that have an atomic number greater than 92 in concentrations greater than 10 nano-curies per gram; or (c) any other civil facility for processing, reprocessing, or storing nuclear material unless the Contracting Party determines the small extent of the risks involved with such an installation warrants the exclusion of such facility from the definition. In the context of the CSC, the United States interprets this definition of "nuclear installation" to cover reactors and facilities for which the primary purpose is processing, reprocessing, or storing spent fuel, high-level radioactive waste, or highly radioactive TRU waste. The United States further interprets this definition of "nuclear installation" as excluding all non-DOE nuclear facilities to which the NRC has decided not to extend Price-Anderson indemnification. For covered incidents within the United States, the Department's current approach would be to define the term "covered installation" consistent with the PAA and the definition of nuclear installation found in the Annex Article 2. For covered incidents outside the United States not covered by the PAA, the Department's current approach would be to use the definition of nuclear installation applicable under the CSC to determine a covered installation. The Department requests comments on whether or how it may need to further clarify those terms in its regulation.

The term "covered person," is defined at subsection 934(b)(6) as: (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. The term does not include—(i) the United States; or (ii) any agency or instrumentality of the United States. The definition of "covered person" incorporates another defined term, "United States person," which is defined at subsection 934(b)(11) as: (1) Any individual who is a United States resident, national or citizen (other than an individual residing outside the United States and not employed by a United States person); and (2) any entity that is organized under the laws of the United States.

Read together, these definitions provide a frame of reference for the type of individual or entity that would constitute a "covered person" under the Act and the DOE's regulation. The Department's current approach would be to interpret "covered person," to be either: (1) Any individual who is a United States resident, national, or citizen (other than the non-resident who is not employed by a United States person); or (2) any entity organized under the laws of the United States; or (3) any individual or entity—including an agency or instrumentality of a foreign country—to the extent that it is either located in or carries out an activity in the United States. The Department currently expects to define a covered person in the broadest manner as including, for example, any individual or entity, whether of foreign origin or domestic, that carries out any activity in the United States that is determined to provide an appropriate basis for allocating the contingent costs. However, a covered person would not be the United States itself or any agency or instrumentality of the United States. The Department believes these definitions, although broad in scope, are clear and that there is a common understanding of how they are to be interpreted and applied. Nevertheless,

the Department requests public comment on whether additional clarification may be necessary in its regulation.

The term "nuclear supplier," defined at subsection 934(b)(7), means a covered person (or its successor in interest) 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. The definition of "nuclear supplier" refers to a covered person or its successor that either: (1) Provides goods or services to a covered installation (where a nuclear incident could trigger an Article VII request for funds); or (2) engages in a shipment of nuclear materials that could result in a covered incident (which could trigger an Article VII request for funds). Under the Act, a nuclear supplier is the individual or entity responsible for a pro-rata share based on the risk-informed assessment formula at subsection 934(e)(2)(C) of any contingent costs the United States may bear in the event of a covered incident outside the United States that is not covered by the PAA. While the statutory definition of "nuclear supplier" is broad in scope and may require further clarification in the regulation, the criteria related to the risk-informed assessment formula at subsection 934(e)(2)(C)(i) and factors for consideration in determining the formula at subsection 934(e)(2)(C)(ii) (whereby certain nuclear suppliers could be excluded) are directly relevant to determining which nuclear suppliers are contemplated within the Act. In this regard, the Department is considering whether it may be appropriate to include in its regulation additional criteria and requirements which, if met, would exclude certain nuclear suppliers from participation in the retrospective risk pooling program. The Department requests comment on whether the definition of "nuclear supplier" requires further clarification, or whether clarification can be appropriately addressed in regulations pertaining to the retrospective risk pooling program and formula at subsection 934(e).

The term "Price-Anderson incident," defined at subsection 934(b)(8), means a covered incident for which section 170 of the AEA makes funds available to compensate for public liability, as defined in section 11w. of the AEA (42 U.S.C. 2014w.). This definition reflects the distinction between covered incidents *within* the scope of the PAA (where contingent costs would be covered by the PAA) and covered incidents *outside* the scope of the PAA (where contingent costs would be covered by United States nuclear suppliers). For covered incidents that are also PAA incidents (*e.g.,* either a nuclear incident in the United States, or a nuclear incident outside the United States involving a DOE contractor and U.S.-owned nuclear material), the PAA would be used to fund the United States contribution to the international supplementary fund. For a covered incident that does not constitute a PAA incident, such as a nuclear incident occurring in the territory of a Contracting Party that does not involve U.S.-owned nuclear material, the United States contribution would be provided by the United States nuclear suppliers that must participate in the retrospective risk pooling program described at subsection 934(e).

The Department requests comments on whether or how it may need to further clarify those terms in its regulation.

The term "United States," defined at subsection 934(b)(10), means the same geographic area as the definition of "United States" in section 11bb. of the AEA (42 U.S.C. 2014bb.). The AEA definition of United States provides that, when used in a geographical sense, the United States "includes all territories and possessions of the United States, the Canal Zone and Puerto Rico." (Although the AEA definition includes "the Canal Zone," DOE notes that, pursuant to the Panama Canal Treaty, the "Canal Zone" is no longer so included.) For purposes of the AEA definition and section 934, the geographic scope of the United States includes its territorial sea, but not its exclusive economic zone ("EEZ"),[6] even though the CSC grants a member country jurisdiction over nuclear incidents in or above the EEZ of a Contracting Party under specified circumstances, as well as in or above other maritime areas beyond the territorial sea and EEZ of a Contracting Party under specified circumstances. The broader geographic scope of the Convention from that of the AEA (and thus PAA) recognizes the right of a Contracting Party, including the United States, to exercise its jurisdiction in the case of a covered incident that occurs during transport of nuclear material within its EEZ or in maritime areas beyond the territorial seas under the conditions specified in Article V of the Convention. The Department believes this definition is clear; however, the Department requests public comment on whether additional clarification may be necessary.

In sum, the Department requests comment as to whether implementation of section 934 would be facilitated by the Department further clarifying any of the foregoing terms or any other terms in its regulations.

D. Retrospective Risk Pooling Program

Subsection 934(e) sets forth the requirements and risk-informed assessment formula to be used in establishing the retrospective risk pooling program that is central to United States participation in the Convention and supports its goal of ensuring prompt and equitable compensation in the event of a nuclear incident. PAA funding cannot be used for the United States contribution to the international supplementary fund in the event of a covered incident outside the United States that is not a Price-Anderson incident. 934(a)(1)(H)(i). Likewise, Federal taxpayers cannot be burdened with the liability risks associated with nuclear incidents at foreign installations. 934(a)(1)(H)(ii). Accordingly, subsection 934(e) provides for a retrospective risk pooling program, with participation by nuclear suppliers, as the funding mechanism to cover contingent costs resulting from a covered incident outside the United States that is not a Price-Anderson incident. This retrospective risk pooling program for nuclear suppliers (which provides nuclear suppliers with insurance for their potentially unlimited liability in the event of a nuclear incident) is similar in certain respects to the PAA retrospective pooling arrangement (which provides United States nuclear reactor operators with insurance for their potential liability in the event of a nuclear incident) wherein the premium is assessed retrospectively, *i.e., after* a nuclear incident, by allocating the aggregate legal liability (in excess of the required liability insurance constituting primary financial responsibility) that actually resulted from such incident among all operators without regard to fault or liability.

Subsection 934(e)(2) provides the basic structure of the retrospective risk pooling program and criteria for determining the prorated deferred payment. The program is "retrospective"

[6] The EEZ of the United States is "a zone contiguous to the territorial sea, including zones contiguous to the territorial sea of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands (to the extent consistent with the Covenant and the United Nations Trusteeship Agreement), and United States overseas territories and possessions. The EEZ extends to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured." Presidential Proclamation 5030, March 10, 1983, 3 CFR 1983 Comp., p. 22.

in the sense that a nuclear supplier's obligation to pay does not arise (*i.e.,* it is deferred) unless and until a covered incident that is not a Price-Anderson incident occurs and the United States is called on to provide its contribution to the international supplementary fund (*i.e.,* resulting in contingent costs). 934(e)(2)(A). This deferred payment will be allocated among the "pool" of nuclear suppliers on the basis of a risk-informed assessment formula. 943(e)(2)(B). The formula cannot be applied by the Secretary to any covered installation or transportation for which funds are available under the PAA. 943(e)(2)(iii). The amounts of the deferred payments will basically reflect the risk from which each nuclear supplier is relieved, relative to other nuclear suppliers, by reason of the United States participation in the international nuclear liability compensation system.

Subsection 934(e)(2)(C) requires that the Secretary determine by rulemaking the risk-informed assessment formula and specifies certain risk factors that the Secretary must take into account. These risk factors focus on the extent of the potential liability of each nuclear supplier resulting from its activities relative to other nuclear suppliers and are comparable to factors currently used by private insurers to allocate risk. While subsection 934(e)(2)(C) contains specific risk factors to be accounted for in arriving at the risk-informed assessment formula, the Secretary has broad discretion to interpret and implement this provision. The Department believes that the public, and in particular the nuclear insurance industry, can provide valuable information to DOE regarding how each of the following six (6) risk factors enumerated in subsection 934(e)(2)(C)(i) should be taken into account (particularly in light of other factors, such as the exclusionary criteria in subsection 934(e)(2)(C)(ii) and the period on which risk is assessed in subsection 934(e)(2)(C)(ii)(II)):

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

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

Without the six risk factors at subsection 934(e)(2)(C)(i) above, the retrospective risk pooling program could conceivably require the participation of any nuclear supplier involved in activities such as supplying facilities, equipment, fuel, services, technology, or transport of nuclear materials related to any step within the nuclear fuel cycle—from activities such as mining, milling, enrichment, and fabrication through reprocessing—no matter its size or contribution relative to the nuclear installation. However, application of the risk formula provides a basis for the Department to assess a deferred premium according to the relative risk a nuclear supplier's goods or services contribute to a nuclear incident.

Further, subsection 934(e)(2)(C)(ii) lists factors for consideration whereby the Secretary may *exclude* certain nuclear suppliers. The Department believes that its interpretation of the risk factors enumerated above will be influenced significantly by the following factors in subsection 934(e)(C)(ii) that the Secretary may consider:

(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.

The Department believes the intent of this provision is to exclude from participation in the risk pooling program those nuclear suppliers that provide goods or services that are the least likely to result in a nuclear incident for which requests under the Convention for contributions to the international supplementary fund would be invoked. Stated otherwise, the contingent costs should be allocated among those suppliers that provide goods or services most likely to result in significant potential liability in the event of a covered incident. Accordingly, only nuclear suppliers of goods and services that are likely to cause a covered incident with significant damage should be contributors to the risk pooling program. The exclusionary considerations are indicative of the type of nuclear supplier unlikely to contribute to the risk of such an incident, that is, a nuclear supplier that does not provide goods or services specifically for nuclear facilities; that does not engage in activities likely to result in significant potential nuclear liability, or that engages in such activities to a minor extent; or is no longer in existence and therefore cannot be expected to contribute to the pooling program.

If the United States is called upon to contribute to the international supplementary fund, the risk-informed formula would be applied to calculate the amount that each "nuclear supplier" within the definition of the Act would be obligated to pay. The Department believes that, reading both subsections 934(e)(2)(C)(i) and (ii) together, the formula is expected to *include* nuclear suppliers based on the relative risk of their goods or services causing a covered incident resulting in a request for contributions under the international supplementary fund, and to *exclude* nuclear suppliers with little or no risk of being determined legally liable for a covered incident resulting in nuclear damage in excess of 300 million SDRs.

Because of the importance of each risk factor and the exclusionary considerations in establishing the formula, the Department seeks public comment on all of these criteria and how they should be interpreted and applied. Each risk factor, and the corresponding exclusionary considerations, will be discussed below.

1. The first risk factor to be used as a basis for the formula is the *nature and intended purpose* of the goods and services supplied by each nuclear supplier to each covered installation outside the United States. 934(e)(2)(C)(i)(I). The Department's current approach would be to interpret this risk factor, in light of the presence of other statutory criteria that could exclude nuclear suppliers providing goods and services with negligible risk and in classes not intended specifically for use in a nuclear installation (subsections 934(e)(2)(C)(ii)(I)(aa) and (bb)), to mean that, as a general matter, only nuclear suppliers that provide goods or services specifically intended for use in structures, systems, and components ("SSCs") that are important to safety at a nuclear installation should be included. This concept of SSCs important to safety is utilized in NRC

licensing of nuclear installations (*e.g.,* nuclear reactors, fuel storage facilities) as a means to evaluate items based on their relative risk and importance to the safe operation of the nuclear installation. As such, this concept can provide a useful tool to identify those goods and services that have a greater potential for causing a nuclear incident that might result in significant nuclear damage. Focusing on SSCs important to safety would eliminate many nuclear suppliers of goods or services that do not contribute significantly to the risk of a nuclear incident, as well as suppliers of goods or services not intended specifically for use in a nuclear installation. For example, the Department believes that, under this interpretation, suppliers of such items as laboratory equipment, cleaning services, routine operational and technical reporting services, and computers not intended for control of the installation would be excluded from the formula. In contrast, the Department believes that suppliers such as designers and builders of nuclear islands (involving nuclear steam supply systems, reactors, *etc.*), and designers, manufacturers, and sellers of nuclear fuel assemblies or on-line nuclear measurement devices would be included in the formula. The Department seeks public comment on this interpretation, and in particular as to whether it has too narrowly or broadly interpreted this risk factor.

2. The second risk factor to be used as a basis for the formula is the quantity of the goods and services supplied by each nuclear supplier to each covered installation outside the United States. 934(e)(2)(C)(i)(II). The Department's current approach would be to interpret this risk factor to mean that the formula should take into account the amount of goods and services provided by a nuclear supplier as an indicator of the extent to which a nuclear supplier contributes to overall risk. The Department seeks public comment on whether this factor should be assessed on the basis of the value of the goods or services supplied, the volume of the goods or services supplied, or some other criteria.

3. The third risk factor to be used as a basis for the formula is the hazards associated with the supplied goods and services if they fail to achieve the intended purposes. 934(e)(2)(C)(i)(III). The Department's current approach would be to interpret this risk factor, in light of the presence of other statutory criteria that could exclude nuclear suppliers providing goods and services with negligible risk or in classes not intended specifically for use in a nuclear installation (subsections 934(e)(2)(C)(ii)(aa) and (bb)), in a manner analogous to the first risk factor. That is, only nuclear suppliers of safety-related goods or services would be included in the formula. Among those goods and services, risk would then be determined based on the relative radiological hazard or harm that may be caused if a particular good or service failed to achieve its intended function. For example, the supplier of a reactor vessel would be weighted with greater risk than the supplier of the safety-related concrete forming the foundation of the reactor building. Both goods are safety-related, but the malfunction of the former presents a greater risk of radiological hazard than the latter. Further, the Department expects that the relative hazard of a good or service may be evaluated in terms of whether it is a likely contributor to a covered incident resulting in a request for contributions under the international supplementary fund (*i.e.,* is it so hazardous as to likely cause a covered incident of a magnitude that first-tier compensation is inadequate). The Department seeks public comment on these issues and as to how it should further define the term "hazard" in light of various factors, such as whether hazard should be differentiated on the basis of harm to persons or property, or on the basis of its hazard standing alone or as part of a redundant system of protection.

4. The fourth risk factor to be used as a basis for the formula is the *hazards associated with the covered installation* outside the United States to which the goods and services are supplied. 934(e)(2)(C)(i)(IV). The Department's current approach would be to interpret this risk factor to mean that risk should be determined based on the hazard associated with the nuclear installation itself, because some nuclear installations bear more risk or hazard of a nuclear incident than others. These differences in risk stem from a variety of factors. For example, the risk of a nuclear incident causing significant nuclear damage may be greater at a nuclear reactor facility than at a spent fuel storage facility, or it may be greater for a facility located in a densely populated area as opposed to a facility in a remote area. Further, there may be distinctions within a class of nuclear installations that would make the risk posed by some classes more or less than others. For example, among nuclear reactors, research reactors having a thermal power rating of 20 Megawatts or less may have less hazard associated with them than power reactors having a thermal power rating of over 300 Megawatts. Also, nuclear facilities other than reactors may be distinguished based on common nuclear industry standards for hazard categorization and accident analysis techniques. Category 1 facilities pose the most hazardous risk as they have postulated accidents that could result in significant offsite consequences. Category 2 facilities have postulated accidents that could result in significant on-site consequences. Category 3 facilities have postulated accidents that could result in only localized consequences. Accordingly, the risk formula would include consideration of not only the type of good or service provided by the nuclear supplier, but also the type of nuclear installation that will utilize such good or service. DOE seeks public comment on this approach.

5. The fifth risk factor to be used as a basis for the formula is *the legal, regulatory, and financial infrastructure* associated with the covered installation outside the United States to which the goods and services are supplied. 934(e)(2)(C)(i)(V). The Department's current approach would be to interpret this risk factor to refer to the relative risk of a nuclear incident arising from a nuclear installation based upon the legal, regulatory, or financial environment in which the installation operates. For example, a nuclear installation situated in a country with little regulatory oversight of public health and safety, or inadequate financial requirements for the nuclear operator, or without the availability of judicial recourse, may lead to a relative risk factor greater than the supply of goods or services to a nuclear installation in a country with rigorous regulatory oversight, robust financial requirements, and an efficient judicial system. Thus, for example, the presence of independent regulatory inspectors onsite at a nuclear installation of a more hazardous classification (such as a Category 1 facility) could constitute a favorable risk factor. The Department recognizes that this type of risk factor may be difficult to assess in a quantitative fashion, nevertheless, the statutory language must be given a good-faith reading, and the Department seeks public comment on how to interpret and implement this factor in its risk-based formula.

6. The sixth risk factor to be used as a basis for the formula concerns the hazards associated with particular forms of *transportation.* 934(e)(2)(C)(i)(VI). The Department's current approach would be to interpret this risk factor to require consideration of how contingent costs should be allocated between suppliers of goods and services to

nuclear installations and suppliers of transportation services, as well as an assessment of the various forms of transportation and the relative risks of that transportation. The Department seeks public comment on the extent, if any, to which the assessment of transportation services should be different than the assessment of other goods and services, especially with respect to the application of the first risk factor on nature and intended purpose. The Department also seeks public comment on the means to differentiate the hazards between particular forms of transportation, and the nuclear suppliers involved in such transportation. For example, how should the Department assess the relative risks among the various forms of radiological transportation such as truck, ship or rail and the contribution of a nuclear supplier to that risk? Should the hazard be assessed solely on the safety record within each type of transportation, or other factors such as the risks associated with the transportation routes used for a particular form of transportation? For example, transportation by truck may entail greater potential exposure to population centers than transportation by ship.

Further, should certain nuclear suppliers be excluded regardless of the form of transportation in which the good or services is utilized? For example, suppliers that provide navigational systems might be excluded from the formula, as the purpose of the navigational system is not specific to nuclear transport or any one form of transport, and would constitute a negligible risk for causing a nuclear incident. On the other hand, suppliers of transportation casks designed for nuclear material would be included and risk assessed based on the relative contribution of the cask to a nuclear incident while in transport. The Department seeks public comment on these questions or other means to differentiate the hazards associated with particular forms of transportation as well as identifying mitigating factors to appropriately rank risk in its formula.

Subsection 934(e)(2)(ii)(I)(cc) states that the Secretary may exclude "a nuclear supplier with a de minimis share of the contingent cost." As commonly used, the term "de minimis" means lacking significance or importance, or so minor in importance as to be disregarded.[7] The Department's current approach would be to interpret this "de minimis" criteria to mean that nuclear suppliers likely to contribute only a small percentage of the overall contingent costs should be excluded from the formula because they (1) Do not contribute in any meaningful manner to the risks intended to be covered by the Convention, (2) are unlikely to be sued in the event of a nuclear incident, and (3) are even more unlikely to be determined legally liable for significant amounts of nuclear damages. The Department believes this provision is intended to keep the risk pooling program from becoming unmanageable because of the number of potential contributors and to focus operation of the program on the major beneficiaries of the Convention. The Department could incorporate these criteria into its regulations by excluding those suppliers that would contribute less than a specified percentage (*e.g.,* .5%) of the contingent costs.

This approach, however, would result in uncertainty as to which suppliers would be included in the program prior to the actual implementation of the formula. Accordingly, the Department is considering alternative approaches that would implement the "de minimis" criteria in a manner that provides upfront certainty as to which suppliers would be included in the program. For example, the Department might exclude suppliers on the basis of the dollar value of the goods or services (*e.g.,* nuclear suppliers that provide less than $50,000 per year in goods or services may be excluded from the formula), the volume of goods or services (*e.g.,* nuclear suppliers of less than 10 cooling pumps), or the percentage of annual business attributable to nuclear goods or services (*e.g.,* nuclear suppliers for which the nuclear equipment or services provided per year are less than 10% of such entities' overall annual sales). The Department seeks comments on these alternatives, as well as other fair and equitable approaches for excluding "de minimis" suppliers.

Finally, subsection 934(e)(2)(C)(ii)(II) permits the Secretary to "establish the period on which the risk assessment is based." By so doing, the Department could exclude certain nuclear suppliers by virtue of the time period established. The Department interprets this provision to give the Department discretion to determine the time period to use in the risk-informed formula. That time period may be set based on several relevant factors, including when the majority of domestic nuclear suppliers provided supplies in the global market and how many of those suppliers continue in existence today, or based on what suppliers are currently in existence for which the goods or services they supplied are likely to contribute to a future nuclear incident. The Department invites comments on how and what an appropriate and equitable time period should be used in order to determine the risk-informed formula.

E. Reporting

In addition to the information obtained through this NOI and the subsequent rulemaking process, subsection 934(f)(1) expressly authorizes the Secretary to collect information and data from nuclear suppliers "necessary for developing and implementing the formula for calculating the deferred payment of a nuclear supplier under subsection (e)(2)." The Department requests comment on whether it should include in its regulations provision for collection of such information and, if so, what form of information collection requirements should be imposed. For example, what type of information and data should be collected, at what level of specificity, and how often (*e.g.,* one-time or periodic updates)?

While the Department may require that certain information be provided by nuclear suppliers and other appropriate persons (including insurers) as necessary or appropriate to assist in formulating and implementing the risk formula, the Department is required to provide certain information to nuclear suppliers and insurers of nuclear suppliers. Thus, subsection 934(f)(2) directs that the Secretary 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." Such information would facilitate the creation of a voluntary private insurance system to cover potential payments by nuclear suppliers under the retrospective risk pooling program. The Department anticipates its regulations will include a provision to address this requirement; however, the Department requests comment on what type of information would be necessary to assist the nuclear suppliers and insurers of nuclear suppliers in the establishment of private insurance for the deferred payment. The Department is especially interested in obtaining specific and detailed comments on the type of information necessary to develop and implement such a private insurance system from nuclear suppliers and insurers of nuclear suppliers as such commentary would be most relevant to an appropriate formulation and implementation of this requirement. In

[7] Webster's Third New Dictionary (2002)

this regard, the Department is especially interested in descriptions of prior and existing insurance systems that allocate risks among nuclear suppliers, as well as systems that allocate risks among participants in comparable situations.

F. Payments to and by the United States

Subsection 934(h) sets forth the procedure for the Secretary 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 supplementary fund. Subsection 934(h)(1) prescribes the method by which the Secretary will collect the deferred payment from nuclear suppliers in the event the United States is called upon under Article VII to contribute to the international supplementary fund for a covered incident that is not a Price-Anderson incident. The nuclear suppliers are only required to make a deferred payment when and if the United States is required to make a payment under the Convention upon the occurrence of a covered incident. When notified by the Secretary of the amount of the deferred payment that is due, each nuclear supplier must either deposit the required payment into the general fund of the Treasury within 60 days after receipt of notification (subsection 934(h)(1)(B)(i)), or elect to prorate payment in that amount in 5 equal annual payments (including interest on the unpaid balance at the prime rate prevailing at the time the first payment is due) (subsection 934(h)(1)(B)(ii)). In making the payment, each nuclear supplier must submit a payment certification voucher to the Secretary of the Treasury in accordance with 31 U.S.C. 3325. 934(h)(1)(C).

The Department believes the statutory scheme for making the deferred payment is clear and in effect self-executing. Therefore, it does not anticipate significant commentary on the meaning or interpretation of this statutory provision. The Department's implementing regulations will specify when and how a nuclear supplier will make the lump-sum deferred payment, as well as the method of calculating and depositing the prorated annual payments with interest. The Department requests comments on how its regulations may provide clear direction to nuclear suppliers on how, when, and where to make the required deferred payments.

Subsection 934(h)(3) addresses the consequences of a nuclear supplier's failure to pay the deferred payment. In the event a nuclear supplier defaults on its obligation to make the required deferred payment, subsection 934(h)(3) authorizes the Secretary to 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." The Department is authorized to take appropriate action to ensure each nuclear supplier makes the deferred payment and to impose a penalty for noncompliance; however, the means by which the Department exercises this authority is not prescribed in the Act. The Department's implementing regulations will clarify what actions it deems appropriate to take to ensure the payment is made, how it will calculate the interest due on the payment, and the method and criteria for determining the penalty amount. The Department solicits comment from the public on how this statutory provision should be implemented and, in particular, what criteria may be appropriate for calculating the penalty amount.

G. General Questions

In addition to comment on the particular matters discussed in the preceding paragraphs, DOE solicits general comments on how best to implement section 934, including comments that are based on existing systems or prior experience in regard to insurance programs, regulatory controls, reporting requirements, or other mechanisms pertaining to the supply of goods and services for nuclear projects. For example, DOE would be interested in whether there are any existing systems that control or collect information on the export of goods and services for nuclear projects that could be useful in implementing section 934. Likewise, DOE would be interested in prior experience with how risk is allocated when there are multiple participants in a nuclear project.

III. Public Participation

A. Submission of Comments

The Department requests written comments from interested persons on all aspects of implementing the Convention on Supplementary Compensation for Nuclear Damage. All information provided by commenters will be available for public inspection at the Department of Energy, Freedom of Information Reading Room, Room 1G–033, 1000 Independence Avenue, SW., Washington, DC 20585 between the hours of 9 a.m. and 4 p.m. Monday through Friday, except for Federal holidays.

The Department also intends to enter all written comments on a Web site specifically established for this proceeding. The Internet Web site is: *http://gc.doe.gov/.* To assist the Department in making public comments available on a Web site, interested persons are encouraged to submit an electronic version of their written comments in accordance with the instructions in the **ADDRESSES** section of this notice.

Issued in Washington, DC, on July 21, 2010.

Scott Blake Harris,

General Counsel.

Appendix—Overview of Section 934

The Energy Independence and Security Act of 2007, Section 934

The Energy Independence and Security Act of 2007 (Pub. L. 110–140) was enacted in 2007. Section 934 of the Act ("Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation") (42 U.S.C. 17373) implements the Convention in the United States. Congress found that the Convention establishes a global system to: provide a predictable legal framework necessary for nuclear energy projects; ensure prompt and equitable compensation in the event of a nuclear incident; provide benefits to United States nuclear suppliers from a predictable liability regime and, in effect, insurance for nuclear damage arising from incidents not covered by the Price-Anderson Act (PAA); and assure funding is available for victims of a wider variety of nuclear incidents, without increasing potential liability of United States nuclear suppliers or costs to United States nuclear operators or Federal taxpayers. 934(a)(1).

Section 934 implements the Convention by enacting into law provisions that enable the United States to carry out its obligations as a Contracting Party. Specifically, section 934 provides for the allocation of costs associated with the United States' participation in the Convention's compensation system and affirms the right to seek relief in United States courts for covered nuclear incidents. The purpose of section 934 is to ensure that the allocation of costs is fair and equitable and does not burden Federal taxpayers with liability risks for nuclear incidents at foreign installations or adversely impact obligations under the existing system of indemnification under the PAA for nuclear incidents in the United States.

The Secretary and the Nuclear Regulatory Commission are both authorized to issue rules to implement section 934, as appropriate. 934(l). The Department's implementing regulations will be focused on allocating contingent costs equitably, on the basis of risk, among nuclear suppliers for a covered incident outside the United States that is not a Price-Anderson incident. This

cost allocation system will be structured consistent with provisions of the Act that mandate the use of existing PAA funding for a Price-Anderson incident.

For an incident covered by the Convention ("covered incident") that is also covered by the PAA ("Price-Anderson incident"), the Act would use existing PAA funding mechanisms to cover the United States contribution to the international supplementary fund. 934(b) and (c). For a covered incident outside the United States that is not a Price-Anderson incident, the Act would allocate contingent costs owed by the United States among United States nuclear suppliers on the basis of risk. 934(a)(2). In this regard, the Act establishes a retrospective risk pooling program involving a premium assessed retrospectively (*i.e.,* a deferred payment) on nuclear suppliers based on a risk-informed formula taking into account specified risk factors in conjunction with exclusionary criteria. 934(e).

In developing the formula, the Secretary is authorized to collect information necessary for calculating the deferred payment. Each nuclear supplier and other-appropriate persons are required to make available information, reports, records, documents, and other data that the Secretary determines, by regulation, to be necessary or appropriate. 934(f)(1). In turn, the Secretary must make available to nuclear suppliers and their insurers information to support the voluntary establishment and maintenance of private insurance to cover any deferred payments nuclear suppliers may be subject to pay under the retrospective risk pooling program. 934(f)(2).

When the United States is called upon to contribute, the Secretary must notify the nuclear suppliers of the amount of their deferred payment. The nuclear suppliers may either: (1) Pay within 60 days of notification to the general fund of the Treasury; or (2) elect to prorate payment in five equal annual payments (including interest). 934(h)(1). Amounts paid must be available, without further appropriation or fiscal year limitation, for contribution by the Secretary of the Treasury to the international supplementary fund. 934(h)(2)(A). Such contribution will be to the court of competent jurisdiction under Article XIII of the Convention. 934(h)(2)(B). If a nuclear supplier fails to pay, the Secretary of Energy may take appropriate action to recover the amount due with any applicable interest and penalty. 934(h)(3).

Section 934(i) addresses where and what type of actions may be brought in United States courts arising from participation in the Convention. All causes of action arising from a nuclear incident that is not a Price-Anderson incident and for which the United States has been granted jurisdiction under the Convention will be adjudicated on appeal or review in the United States Court of Appeals for the District of Columbia Circuit. 934(i)(1)(A). In addition to any existing cause of action, section 934(i)(2)(A) creates a Federal cause of action for an individual or entity against an operator to recover for nuclear damage suffered in connection with a nuclear incident covered by the Convention. This provision ensures that a cause of action will be available in all situations where United States courts have jurisdiction over a nuclear incident covered by the Convention, such as a nuclear incident during transportation beyond State boundaries in the territorial sea, or the exclusive economic zone (EEZ), or the high seas, for which Federal or State law may not currently provide a cause of action. This provision does not apply to causes of action arising from a nuclear incident covered by the Convention that is a Price-Anderson incident, as the PAA already provides for a cause of action and assignment of jurisdiction in such cases. While subsection 934(i) creates a cause of action for individuals or entities suffering nuclear damage against an operator of a covered installation under certain circumstances, subsection 934(j) makes clear that the Act does not provide to the operator of a covered installation a right of recourse against a nuclear supplier or any other person for any liability it may incur as a result of the nuclear incident. Also, participation in the Convention does not require disclosure of sensitive United States information. 934(k).

The following provides additional information regarding the allocation of contingent costs under section 934 between the PAA and nuclear suppliers.

Costs Allocated to PAA. One of the purposes of the statute, to ensure that contingent costs associated with a Price-Anderson incident are paid with PAA funds, is met primarily through the requirements of subsections 934(c) ("Use of Price-Anderson Funds") and (d) ("Effect on Amount of Public Liability"). These provisions are self-implementing and establish how funding under the PAA is to be used to cover contingent costs resulting from a Price-Anderson incident. As defined in subsection 934(b)(8), a Price-Anderson incident is a covered incident within the scope of the PAA for which PAA funding would be available to compensate for "public liability" defined in section 11w. of the AEA (42 U.S.C. 2014w.). Under subsection 934(b)(2), contingent costs represent the funds that the United States is obligated to make available to the international supplementary fund.

Subsection 934(c)(1) states the requirement that PAA funds be used to cover contingent costs resulting from any Price-Anderson incident. Subsection 934(c)(2) directs that any PAA funds used to pay contingent costs shall not reduce the public liability limitation set by the PAA. These funding requirements serve to maintain the status quo of the PAA liability regime such that payment of contingent costs neither increases the burden on reactor operators nor decreases the benefits of the PAA since any contingent costs resulting from the United States contribution would come from funding otherwise required under the PAA. Using PAA funds to pay the contingent costs will not decrease funds available under the PAA because the contribution by the United States to the international supplementary fund and the distribution from the international supplementary fund of a corresponding amount will offset each other and result in a wash for accounting purposes. As described in the following paragraph, the remaining distribution amount will be used to compensate damage in lieu of using PAA funds. Thus, the benefits of the PAA indemnification system will be increased slightly with no additional burden imposed on reactor operators.

Subsection 934(d) addresses the situation involving a Price-Anderson incident, where funds are made available to the United States under Article VII of the Convention and sets out the effect thereof on the amount of public liability allowable under the PAA. Subsection 934(d)(1) provides that, for an incident covered by the PAA, funds made available to the United States from the international supplementary fund will be used to pay persons indemnified under the PAA. In addition, subsection 934(d)(2) provides that the PAA limitation on public liability will be increased by the net amount of funds that the United States receives from the international supplementary fund (*i.e.,* the increase is equal to the difference between the amount the United States receives from the international supplementary fund and the amount which it contributed to the international supplementary fund). Thus, the United States must use any funds made available to it under the Convention to satisfy any public liability resulting from a Price-Anderson incident and will increase the amount payable under the PAA based upon the net increased amount of funding available pursuant to the Convention.[8]

[8] The following illustrates the combined operation of the Convention, the PAA, and section 934 in the case of a Price-Anderson incident. For this example, assume: (1) The limitation on public liability under the PAA is $10 billion[8]; (2) there are 100 reactors covered by the PAA system; (3) the operator of each reactor must contribute a maximum of $100 million to the PAA system if legal liability reaches $10 billion dollars; (4) 1 SDR equals $1.50 dollars; (5) the United States contribution to the international supplementary fund is $100 million dollars; (6) the payment to the United States from the international supplementary fund is $300 million; and (7) there is an a nuclear incident at a domestic reactor resulting in damage that exceeds $10 billion dollars. Within these parameters, the PAA would use funds from operators to indemnify legal liability resulting from the nuclear incident until legal liability reached $450 million dollars (Article III. 1(a)(i) first tier compensation minimum of 300 million SDRs multiplied by $1.50 dollars). At this point, the United States would use the next $100 million dollars from operators under the PAA to cover the United States contribution to the international supplementary fund. At the same time the United States would receive a payment of $300 million dollars from the international supplementary fund. This payment from the international supplementary fund would be used to indemnify legal liability between $450 million dollars and $750 million dollars. In addition, the limitations on the PAA public liability would be increased by the net $200 million dollars from Contracting Parties other than the United States ($300 million from the international supplementary fund minus the $100 million dollars provided by the United States to that fund). When legal liability reached $750 million dollars, operators would resume making funds available through the PAA system to cover legal liability and continue to do so until such liability reached the $10.2 billion dollar limit. In this scenario, the additional $200 million dollars from the international supplementary fund is available to indemnify legal liability resulting from

Costs Allocated to Nuclear Suppliers. Another purpose of the statute, to ensure that nuclear suppliers pay the contingent costs for a covered incident outside the United States that is not a Price-Anderson incident, is met primarily by subsections 934(e) ("Retrospective Risk Pooling Program") and (f) ("Reporting"). These provisions: (1) Require participation in a retrospective risk pooling program to cover contingent costs for which nuclear suppliers would be responsible; and (2) authorize the Secretary to collect information necessary for developing and implementing the formula to calculate the deferred payments. For such an incident outside the United States, subsection 934(e) requires that nuclear suppliers that supply certain nuclear equipment and technology and transport of nuclear materials contribute to a pool of money used to reimburse the United States for its contribution to the international supplementary fund. In an arrangement known as retrospective pooling, the obligation to pay into the pool will be deferred until the United States' is called upon to contribute with respect to an actual nuclear incident that has occurred. Article VII.1; 934(e)(1).

The following illustrates the combined operation of the Convention and section 934 in the case of a covered incident that is not a Price-Anderson incident. For a covered incident that takes place in the territory of another Contracting Party, the responsible operator (alone or in combination with available public funds) would provide the first tier of compensation pursuant to the national law of the Installation State. If nuclear damage exceeds the first tier, all Contracting Parties, including the Installation State, would contribute to the international supplementary fund according to the Article IV formula.

As a Contracting Party, the United States would contribute an amount determined by application of the formula in Article IV. Under section 934, the amount of the contribution required of the United States would be funded through payments of United States nuclear suppliers under the retrospective risk pooling program. As previously noted, the formula depends upon the installed capacity of the Contracting Parties at the time of the incident and the UN assessment rate assigned to each State. The exact amount owed by the United States would depend upon the number and generating capacity of the States that participate in the Convention at the time of a nuclear incident. For additional information, the IAEA Web site for the Office of Legal Affairs contains a calculator that can be used to run scenarios and estimate the contribution amount from various States. (*http://ola.iaea.org/CSCND/calculate.asp*).

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a nuclear incident covered by the PAA, at no additional cost to reactor operators. (The numbers used in this example were selected to facilitate understanding of how the mechanism operates, and do not reflect the actual numbers that would result from application of the PAA.)

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission For OMB Review; Comment Request.

SUMMARY: The EIA has submitted the "Voluntary Reporting of Greenhouse Gases," form EIA–1605 to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13)(44 U.S.C. 3501 *et seq.*).

DATES: Comments must be filed by August 26, 2010. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail to *Christine_J._Kymn@omb.eop.gov.* is recommended. The mailing address is 725 17th St., NW., Washington, DC, 20503. The OMB Desk Officer may be telephoned at (202) 395–4638. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Alethea Jennings. To ensure receipt of the comments by the due date, submission by FAX (202–586–5271) or e-mail (*alethea.jennings@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC, 20585–0670. Ms. Jennings may be contacted by telephone at (202) 586–5879.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.,* the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e., new, revision, extension or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; (8) estimate number of respondents and (9) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–1605, "Voluntary Reporting of Greenhouse Gases".

2. Energy Information Administration.

3. OMB Number 1905–0194.

4. Three-year extension to an existing approved request.

5. Voluntary.

6. EIA–1605 form is designed to collect voluntarily reported data on greenhouse gas emissions, achieved reductions of these emissions, and carbon fixation. Data are used to establish a publicly available database. Respondents are participants in a domestic or foreign activity that either reduces greenhouse gas emissions or increases sequestration.

7. Individuals or households; business or other for-profit institutions; farms; Federal government; State, local or tribal government.

8. Estimate number of respondents.

9. 6000 hours.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, *see* the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Public Law 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, D.C., July 20, 2010.

Stephanie Brown,

Director, Statistics and Methods Group, Energy Information Administration.

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