

Supporting Statement
“Convention on Supplementary Compensation for
Nuclear Damage Contingent Cost Allocation”
OMB Control Number 1910-New

This supporting statement provides additional information regarding the Department of Energy (DOE) request for processing of the proposed information collection in connection with implementation of section 934 of the Energy Independence and Security Act of 2007, the Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation. The numbered questions correspond to the order shown on the Office of Management and Budget (OMB) Form 83-I, “Instructions for Completing OMB Form 83-I.”

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the information collection.

The Energy Independence and Security Act of 2007 (Act) enacted on December 19, 2007, Pub. L. 110-140, includes section 934, “Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation” (42 USC 17373), which addresses how the United States Government (USG) will meet its obligations under the Convention on Supplementary Compensation for Nuclear Damage (CSC). The CSC provides the basis for a global nuclear liability regime where victims of nuclear incidents are provided prompt and meaningful compensation and suppliers of nuclear energy are provided consistent rules for dealing with legal liability. A major feature of the CSC is its creation of an international supplementary fund that provides an additional tier of compensation not otherwise available under a State’s national law and to which each party to the CSC contributes in the event of certain nuclear incidents.

Section 934 provides the mechanism whereby United States nuclear suppliers would reimburse the USG for any contribution (termed “contingent costs”) it would have to make to such fund. In this regard, section 934(e) establishes a retrospective risk pooling program in which United States nuclear suppliers must participate and provides that the Secretary of Energy (“Secretary”) must determine, by regulation, the risk-informed assessment formula for allocation among nuclear suppliers of the contingent cost resulting from a nuclear incident covered by the CSC. Section 934(f)(1) authorizes the Secretary to collect information necessary for developing and implementing the formula and requires that each nuclear supplier make available such information, reports, records, documents and other data as the Secretary determines, by regulation, to be necessary and appropriate to implement the formula. A copy of the section 934 (Attachment 1), and a draft of DOE’s proposed implementing regulation (Attachment 2) is attached.

The information in total required for development of the risk-informed formula is not currently available. Under DOE’s proposed rule, certain U.S. nuclear suppliers would be required to report

to DOE, on a one-time basis at first and annually thereafter, their “reportable transactions” involving exports of nuclear goods or services. A reportable transaction is defined in the proposed rule, and the information requested in regard to each reportable transaction would be the inputs to the risk-informed assessment formula used to calculate the risk premium payment owed by a nuclear supplier. The requested information on reportable transactions includes: description of the transaction; date of the transaction; location of the nuclear installation involved in the transaction; and identification of the volume or quantity, and the value in dollars, of each item involved in each transaction.

This collection of information is necessary for DOE to identify the nuclear suppliers responsible for any contingent costs under section 934 and apply the formula under which such nuclear suppliers would make payments in the event of a request for funds under the CSC. The type of information DOE requires on reportable transactions, although available in part under some existing but disparate information collection systems, is largely not collected at all and is not available from any single Federal agency. The lack of comprehensive information collected by the Federal government regarding nuclear exports was affirmed in a recent GAO report, *Nuclear Commerce – Governmentwide Strategy Could Help Increase Commercial Benefits from U.S. Nuclear Cooperation Agreements with Other Countries*, GAO-11-36 (Nov. 2010) and confirmed by DOE in discussions with other federal agencies while developing the proposed rule.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection

This is a new collection of information under section 934(f), which authorizes the Secretary to collect information necessary for developing and implementing the formula for calculating the deferred premium payment of a nuclear supplier and requires each nuclear supplier to make available such information, reports, documents, and other data as the Secretary determines, by rule, to be necessary to develop and implement the formula. The collection will have practical utility as it is an essential means for DOE to develop the necessary risk-informed formula in this unique retrospective risk pooling program.

The premium payment owed by a nuclear supplier is a function of the value and/or quantity of nuclear goods or services a nuclear supplier supplies to certain nuclear installations abroad. As noted above, this information is not collected and available elsewhere. Accordingly, it is essential for DOE to obtain this information from U.S. nuclear suppliers in order to calculate the prorated share each nuclear supplier would owe to the USG in the event of a nuclear incident covered by the CSC.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The proposed rule requires reporting of information to DOE on an electronic basis. DOE requires the information be provided to DOE by electronic means, and anticipates it may establish a website for nuclear suppliers to report their transactions to DOE.

4. Describe efforts to identify duplication.

The information to be collected under section 934(f) does not duplicate existing systems. DOE's collection of information would include information on exports of nuclear goods or services, in some cases dating back to 1960, or at least from 2007 onward, with specific information describing the type of good or service exported, the date of the export, the location of the nuclear installation to which the export was delivered, and of quantity the nuclear good or service exported, and the value of each item exported.

DOE has consulted with other federal agencies, in particular the Department of Commerce, and confirmed that the information to be collected, although available in part under some existing but disparate information collection systems, is largely not collected at all and is not duplicated in other systems. In addition, the GAO report, *Nuclear Commerce-Governmentwide Strategy Could Help Increase Commercial Benefits from U.S. Nuclear Cooperation Agreements with Other Countries*, GAO- 11-36 (Nov 2010), also finds that some of the information required for DOE's proposed rule is not systematically collected or tracked by a single Federal agency. Finally, in the Notice of Inquiry published by DOE to solicit public comments in advance of the proposed rule (75 FR 43945), commenters also noted that the necessary information for the risk-assessment formula may not be collected or consolidated in one place within the federal government.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The proposed collection of information is not expected to affect small businesses or other small entities. Nonetheless, to minimize the burden on any small businesses that may be impacted the proposed rule contains an exclusion for small nuclear suppliers, the final definition of which is subject to review and comment as part of the rulemaking. In addition, the proposed rule would operate such that DOE does not anticipate any small businesses, even if they do not meet the requirements of a small nuclear supplier under the exclusion, or small entities of a governmental or non-commercial nature would qualify as a U.S. nuclear supplier subject to the requirements of the regulation, and thereby be affected by the information collection requirements.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Without the one-time and annual reporting requirements set out in the proposed rule, DOE would not be able to maintain and compile reportable transactions that can be readily accessed in the event of a nuclear incident resulting in a request for funds under the CSC. Without the collection of this information, DOE would be unable to implement the risk-informed assessment formula to determine a nuclear supplier's premium payment to the USG and, consequently, the USG would not be reimbursed for its contribution to the CSC international supplementary fund, which is required for the USG to fulfill its treaty obligations.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. (a) requiring respondents to report information to the agency more often than quarterly; (b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; (c) requiring respondents to submit more than an original and two copies of any document; (d) requiring respondents to retain records, other than health, medical government contract, grant-in-aid, or tax records, for more than three years; (e) in connection with a statistical survey, that is not designed to product valid and reliable results that can be generalized to the universe of study; (f) requiring the use of statistical data classification that has not been reviewed and approved by OMB; (g) that includes a pledge of confidentiality that is not supported by authority established in stature of regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; (h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

This package is consistent with OMB guidelines; however, reportable transactions could date back as far as 1960, or as early as 2007 and thereafter.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken in response to the comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside DOE to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or report.

Comment on the proposed new information collection is being solicited in the Notice of Proposed Rulemaking.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payment or gift is being proposed under this information collection.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The information to be collected should not require disclosure of any confidential or proprietary information. Nevertheless, the proposed rule will provide that if a nuclear supplier provides information that the supplier believes to be exempt by law from public disclosure, they should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information regulations at 10 CFR 1004.11.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why DOE considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

No questions of a personally sensitive nature, such as sexual behavior and attitudes or religious beliefs are contained in the proposed information collection. The information to be collected is of a business and financial nature, neither confidential nor proprietary, and relating only to commercial reportable transactions.

12. Provide estimates of the hour burden of the collection of information. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, DOE should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample fewer than 10 potential respondents is desirable.

The U. S. nuclear suppliers that would be subject to the information collection requirements of the proposed rule are most likely large-scale commercial entities that engage in transactions involving exports of nuclear-related goods and services subject to existing federal regulations. Accordingly, such entities may be deemed to have sophisticated and comprehensive electronic data systems that already track or readily could be adapted to track the type of information that DOE would require. Consequently, the estimate of hour burden of the information collection is as follows:

Total number of unduplicated respondents: 25

Reports filed per person: 1 initial report on prior year reportable transactions; annual reports thereafter.

Total annual responses: 25

Total annual burden hours: 100 burden hours for initial report on prior year transactions and thereafter 25 burden hours for annual information collection requirements.

Average Burden Per Collection: 50
 Per Applicants: 50

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

The collection would involve primarily regular business reports and records. Thus, DOE does not believe that cost estimates should vary widely. DOE believes that, as a result of the information collection, respondents will incur an annual estimated reporting and recordkeeping cost burden of \$8,000 and a one-time reporting requirement cost of \$32,000. The total for a three year period would be \$48,000.

14. Provide estimates of annualized cost to the Federal government.

The annual cost to the Federal government associated with this collection is estimated at \$4,000 annually, with a one-time cost estimated at \$16,000. The total for a three year period would be \$24,000.

15. Explain the reasons for any program changes or adjustments reported in Items 13 (or 14) of OMB Form 83-I.

The proposed information collection is a new collection which involves no program changes or adjustments.

16. For collections whose results will be published, outline the plans for tabulation and publication.

The information collected as to reportable transactions is not intended for publication. No complex analytical techniques will be employed. The collection of information will be on an annual basis after the initial one-time report on prior reportable transactions.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

DOE does not seek approval to not display the expiration date for OMB approval of this information collection.

18. Explain each exception to the certification statement identified in Item 19 of OMB Form 83-I.

There are no exceptions to the certification statement.