

UNITED STATES NUCLEAR  
INFRASTRUCTURE COUNCIL

1317 F Street NW Suite 350 Washington, DC 20004  
[www.usnic.org](http://www.usnic.org)

April 17, 2015

By Email: Section 934Rulemaking@hq.doe.gov

Mr. Samuel T. Walsh  
Deputy General Counsel  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington DC 20085

Re: 10CFR Part 951 (Docket Number OE-HQ-2014-0021 – RIN 1990-AA39 -- DOE NOPR on the Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation

Dear Mr. Walsh:

The United States Nuclear Infrastructure Council (USNIC) welcomes the opportunity to provide comments to the Department subject to its Federal Register notice of March 9, 2015 providing extension of the public comment period with respect to the notice of proposed rulemaking (NOPR), which proposes regulation under the Energy Independence and Security Act of 2007 (EISA) to establish a retrospective risk pool program whereby nuclear suppliers would pay for any contributions made by the United States government to an international supplementary fund created under the Convention for Supplementary Compensation for Nuclear Damage (CSC) in the event of certain nuclear incidents not covered by the Price-Anderson Act.

The Council is the leading global nuclear energy business consortium advocate for new nuclear and the engagement of the American supply chain globally with more than 60 members of the “Who’s Who” of the nuclear supply chain community including key mover utilities, technology providers, engineering and construction companies as well as manufacturers and component suppliers. To this end, the Council’s comments represent a consensus of input receive from its members; however, they do not necessarily reflect the specific view of individual members of the Council.

The Council supports the Convention, which entered into force on April 15, and its objective of establishing a global nuclear liability and compensation regime in the unlikely event of a nuclear energy incident. Although the initial benefits for U.S. suppliers competing in the global marketplace will be limited given the small pool of ratifying countries to date, we believe that -- over the longer term as additional countries ratify and join the CSC instrument -- the benefits of channeling liabilities and providing measurable economic risk will foster an enhanced climate for participation by American suppliers in the global nuclear energy market. Presently, this cost is estimated at \$67 million with an approximate doubling of this cost with a fivefold increase in participation from the current six nation participants.

A key underpinning of the CSC is a U.S. risk pooling mechanism that is straightforward, transparent, and predictable and executable with minimal impact on commerce and companies engaged in international markets.

While we appreciate the DOE Office of General Counsel's outreach efforts in the two public stakeholder meetings to date, it is abundantly clear from the aggregate consensus comments reflected in the public forums that the proposed NOPR falls well short of the mark and is not workable.

Among other things, the NOPR:

- Lacks sufficient economic data and analysis to draw any firm conclusion on potential company costs and or risk in the event of an incident;
- Does not provide a clear basis for the risk allocation formula;
- Embraces a potential bookkeeping forensics odyssey given its proposed reliance on records dating back to 1960 as well as burdensome annual reporting requirements;
- Proposes a risk-pooling paradigm that would hamstring current market players and prove to be a disincentive with respect to new U.S. entrants in the global market.
- Fails to answer basic questions such as how many companies would be impacted and if indeed Fukushima would register as one incident or four.

In our view, proceeding with the current NOPR would be a rush to judgement that is not warranted given the fundamental flaws in the current approach and lack of sufficient economic data to calculate impact, costs and risk. We urge you to strongly consider suspension of the current NOPR to allow additional stakeholder input and accumulation of necessary economic and cost data and analysis with subsequent publication of a supplemental notice of proposed rulemaking.

To this end, we applaud DOE's special interest in potential modifications to the proposals set forth in the NOPR in light of issues elevated at the public meetings.

With respect to the issues illuminated by the DOE:

1. The extent, if any, to which transactions prior to the effective date of the rule should be considered in the allocation formula;

Comment: While reserving judgement on the extent, if any, transactions prior to the effective date of the rule should be considered, it is clear that the current proposal capturing transaction back to 1960 is unworkable and burdensome. Additional market data is needed before fully digesting the fairness and equity of consideration of transactions prior to the effective date.

2. The justification for capping the allocation assigned to a single entity;

Comment: Although there is certainly some sentiment and merit for capping the allocation assigned to a single entity, again the lack of economic data and analysis provided by the DOE precludes any final conclusion at this time.

3. The possibility of different caps for different types of suppliers;

Comment: Similarly, we are not able to judge the possibility of different caps for different types of suppliers given the insufficiency of the economic data and analysis provided by the DOE.

4. The criteria for classifying a supplier as a small entity exempt from the allocation formula;

Comment: Classifying a supplier as a small entity exempt from the allocation formula is prudent and ideally should be based on established U.S. government criteria.

5. Goods and services that pose no or de Minimis risk of triggering the international supplementary fund;

No comment

6. Alternative methodologies for evaluating risk, including examples of existing risk allocation mechanism in the nuclear industry; and

Comment: It is recommended that a stakeholder meeting be constituted with a singular focus on this issue relevant to the EISA statute.

7. Potential modification to simplify, minimize and/or clarify the burden on industry.

Comment: We believe an annual reporting requirement is unnecessary. Relaxation of the present term of five-year for payment in the event of an incident with interest is warranted.

We are pleased that DOE intends to conduct additional data and information gathering in response to and in consideration of statements in the written comments and at the public workshops and that DOE intends to make additional data and information it obtains available for public review and comment.

We look forward to working with you further to this end.

Sincerely

U.S. NUCLEAR INFRASTRUCTURE COUNCIL