

Standby Support Final Rule Fact Sheet

- The purpose of section 638 of the Energy Policy Act of 2005 is to facilitate the construction and full power operation of new advanced nuclear facilities by providing insurance for the risk of certain regulatory and litigation-related delays of such projects.
- The final rule establishes part 950 in Title 10 of the Code of Federal Regulations that sets forth the procedures, requirements, and limitations for award and administration of Standby Support Contracts indemnifying up to six reactors for delays related to the Nuclear Regulatory Commission's (referred to as the Commission) failure to complete certain reviews on schedule, the holding of preoperational hearings, and certain litigation that causes delays in full power operation.
- The final rule is divided into two sections: preamble and regulatory text. The regulatory text is divided into five subparts: subpart A, General Provisions; subpart B, Standby Support Contract Process; subpart C, Claims Administration Process; subpart D, Dispute Resolution Process; and subpart E, Audit Investigations and Other Provisions.
- The Secretary is authorized by Congress to enter into six contracts to cover costs up to \$500 million for each of the initial two reactors and 50 percent of covered costs up to \$250 million for each of the subsequent four reactors after an initial 180-day delay.
- The final rule provides four hypothetical examples that demonstrate the general methodology to determine an estimate of the subsidy cost (or premium) associated with obtaining coverage under the standby support program. For each project, the Department will use the project-specific information such as timing and amount of the sponsor's debt-service to develop an initial estimate at the time of the conditional agreement. Prior to entering into a standby support contract, this estimate will be reevaluated to determine the cost needed to execute the contract.
- **Subpart A states** the purpose of the final rule, its scope and applicability, and provides definitions used in the final rule.
- **Subpart B provides** the two-step process and requirements to obtain a standby support contract.
 - Prior to entering into a standby support contract, a sponsor must first enter into a "Conditional Agreement" with the Department.
 - To be eligible for a conditional agreement, the project sponsor must have a docketed combined license (COL) application with the Commission.

- The statute creates two types of funding accounts. The Program Account is designed to cover principal or interest on project-related debt, whereas the Grant Account is designed to pay the difference between the contractual price of replacement power and the fair market price.
- In addition to having a docketed COL application, the sponsor must also submit the following information to the Department: summary of project schedule, plan of intended financing for the project including the credit structure, estimated timing of the standby support payments for debt service, and estimated percentage of the amount the sponsor will allocate to the Program and Grant Accounts.
- The first two facilities to meet all 9 conditions precedent to a standby support contract may obtain the initial two reactor slots.
- The nine conditions required before a standby support contract can be obtained: (1) a conditional agreement, (2) issuance of a COL by the Commission, (3) documentation of the commencement of construction (pouring of safety-related concrete of the reactor building), (4) documentation of all applicable Federal, State, or local permits, (5) documentation of required insurance, (6) payment of required fees into the program and grant accounts, (7) proposed schedule for completing the inspections, testing, analyses, and acceptance criteria (ITAAC), (8) a detailed systems-level construction schedule, and (9) a detailed plan of financing for the project.
- A covered event includes the Commission's failure to review the sponsor's ITAAC on the schedule set by the Commission, or if no schedule is set by the Commission, then the schedule agreed to by the sponsor and the Department.
- A covered event also includes the holding of pre-operational hearings and litigation in State, Federal, local, or tribal courts including appeals of Commission decisions related to the COL process.
- Contract coverage will exclude a sponsor's failure to take action required by law or regulation, events within control of the sponsor, and normal business risks such as strikes and weather delays.
- **Subpart C provides** the two-step process for making a claim under the contract.
 - Sponsors must first notify the Department's Claims Administrator of any covered event no later than 30 days of the end of such event and provide a description and explanation of the covered event.
 - Sponsors must include in the notification the projected duration of the event, and any revisions to the schedule for construction and full power operation, and the ITAAC schedule.

- Covered Event determination will be made by the Claims Administrator.
- The second step of the claims process is for the sponsor to submit a “Certification of Covered Costs” with supporting documentation that establishes the financial basis for the claim.
- **Subpart D provides** the dispute resolution process.
 - The dispute resolution process addresses the two primary types of disputes under the standby support program: covered events and covered costs.
 - A sponsor must first file a written rebuttal for disagreements with the Claims Administrator’s determination regarding a covered event or covered cost; and, if unresolved, the parties will go through mediation.
 - The final course of action is a Summary Binding Decision procedure before the Civilian Board of Contract Appeals (Board). The Board’s decision cannot be appealed.
- **Subpart E provides** for audits and investigations and other provisions.
 - The Secretary shall have the right to audit any and all costs associated with the standby support contracts.
 - The Secretary or his designee shall have access to and the right to examine pertinent records and documents of the sponsor.