

**U.S. Department of Energy  
Rulemaking on  
Convention on Supplementary Compensation for Nuclear Damage  
Contingent Cost Allocation,  
79 Fed.Reg. 75076 (December 17, 2014),  
80 Fed.Reg. 4227 (January 27, 2015),  
80 Fed.Reg. 12352 (March 9, 2015),  
and  
81 Fed.Reg. 51140 and 51193 (August 3, 2016)**

**Docket Number DOE-HQ-2014-0021  
and  
Regulatory Information Number (RIN) 1990-AA39**

**Questions and Topic Suggestions  
of  
Contractors International Group on Nuclear Liability  
for  
September 16, 2016 Public Workshop**

**September 2016**

The Contractors International Group on Nuclear Liability (CIGNL) hereby submits questions and topic suggestions for the September 16, 2016 public workshop in connection with the U.S. Department of Energy (DOE) Rulemaking on the Convention on Supplementary Compensation for Nuclear Damage (CSC) Contingent Cost Allocation. 79 Fed.Reg. 75076 (Dec. 17, 2014); 80 Fed.Reg. 4227 (Jan. 27, 2015); 80 Fed.Reg. 12352 (Mar. 9, 2015); and, 81 Fed.Reg. 51140 and 51193 (Aug. 3, 2016).

### **CIGNL's Interest**

CIGNL is an *ad hoc* nongovernmental group of major U.S. nuclear suppliers formed in 1993 to promote more widespread adherence to the international nuclear liability conventions and adoption of consistent domestic nuclear liability laws. In particular, CIGNL actively promoted ratification of the CSC by the United States after it was signed in 1997, because CIGNL believed the CSC would help open international nuclear export markets to the United States. CIGNL worked closely with the Administration and Congress in securing the ratification of the CSC in 2006 and enactment of implementing legislation in 2007. CIGNL also has been working closely with the U.S. Government, the International Atomic Energy Agency and others to encourage more States to join this important Convention, noting it entered into force on April 15, 2015 following Japan's acceptance.

CIGNL's current members are as follows: AECOM; Bechtel Power Corporation; BWX Technologies, Inc.; Centrus Energy Corp.; Fluor Corporation; GE Hitachi Nuclear Energy LLC; and, Westinghouse Electric Company LLC.

In November 2010, CIGNL submitted comments intended to provide preliminary observations on the Department's earlier Notice of Inquiry (NOI) in this rulemaking. 75 Fed. Reg. 43945 (Jul. 27, 2010); 75 Fed. Reg. 51986 (Aug. 24, 2010); and, 75 Fed. Reg. 64717 (Oct. 20, 2010). On March 2, 2011, representatives of CIGNL met at the Forrestal Building with DOE officials at their invitation to discuss CIGNL's November 2010 written comments. On February 10, 2015, CIGNL submitted questions and topic suggestions for and participated in DOE's public workshop on February 20, 2015, and submitted detailed written comments to DOE in April 2015 on the Department's Notice of Proposed Rulemaking (NOPR).

Recognizing the difficult task that DOE faces and the considerable uncertainty about how to implement the 2007 legislation, CIGNL and each of its members respectfully reserve our rights to provide additional comments, collectively or individually, as this rulemaking proceeds.

### **Questions and Suggested Topics - CSC Data and Information Collection Form**

The August 3, 2016 Federal Register notices seek comment on the draft CSC Data and Information Collection Form posted on the Department's website at <http://www.energy.gov/gc/convention-supplementary-compensation-rulemaking>. This request presents the following questions and topics for consideration:

1. As previously indicated in way of example only in CIGNL's April 2015 Comments, the Nuclear Regulatory Commission (NRC) includes about 600 companies as part of its Vendor Inspection Program. Further, CIGNL's November 2010 comments on the NOI specifically noted that as many as 1,800 different types of goods and services go into engineering, designing, constructing, fueling, operating and maintaining a nuclear power plant. What is the basis for DOE's estimate in the August 3, 2016 Federal Register, 81 Fed.Reg. 51193, that there will be only 150 Respondents to the Collection Form? Did DOE take NRC's list and/or the numerous different types of goods and services into consideration in making its estimate?
2. What is the basis for DOE's estimate in the August 3, 2016 Federal Register, 81 Fed.Reg. 51193, that there will be only 5 burden hours for each Respondent to the Collection Form?
3. What is the basis for DOE's estimate in the August 3, 2016 Federal Register, 81 Fed.Reg. 51193, that the annual reporting cost for each Collection Form Respondent will be only \$1,500?
4. How will DOE ensure that every U.S. supplier subject to the final DOE CSC contingent cost allocation rule will be informed of the need to respond to the Collection Form; and, how will DOE monitor compliance?
5. Recognizing that some data submitted by individual U.S. suppliers may be confidential or proprietary and exempt for public disclosure, will DOE nevertheless publish a list of U.S. nuclear suppliers that have submitted Collection Forms to ensure transparency in the identity of U.S. nuclear suppliers allocated the CSC's contingent costs?
6. How will DOE ensure all suppliers are interpreting or applying the rule in a consistent manner, *i.e.* what mechanism will DOE have in place to assess, audit or otherwise check the completeness and accuracy of such information?
7. CIGNL's April 2015 Comments said the formula should seek to group exporting suppliers into categories of goods and services based on the types of installations that use these goods and services, rather than the types of goods and services themselves as proposed in the NOPR's Alternative 2. The draft Collection Form asks for export values "expressed in U.S. dollars" only by types of installations without regard to the types of goods and services supplied to each. Since none of the six example risk factors in the 2007 CSC Contingent Cost Allocation Act, 42 U.S.C. §17373(e)(2)(C)(i), refer to the revenue, profit or other commercial benefit earned by suppliers from nuclear trade, how will DOE use the financial and other data collected to develop the required *risk-informed* formula, taking into account both the types of installations and the nature of goods and services supplied?
8. The draft Collection Form does not appear to distinguish between nuclear installations under construction, in operation or in the process of being decommissioned. How will DOE take the different risks associated with these stages into account? Should the DOE Collection Form not break these out into separate categories?

9. The Instructions for Completing the Collection Form state that “[v]alue should be expressed in adjusted U.S. dollars....” Will DOE specify a particular adjustment index that includes energy prices?

10. One of DOE’s August 3, 2016 Federal Register Notices says, “The proposed information collection is a one-time effort to facilitate development of the regulation; it is separate from and not intended to be the same as the information that would be collected in connection with any reporting requirements that would take effect after promulgation of a final regulation.” 81 Fed.Reg. at 51141. Does this mean suppliers will be asked to complete the Collection Form prior to promulgation of a final regulation? If so, what would the purpose of asking suppliers to provide that information? If information is collected, will DOE share a summary of the results of that information and indicate what conclusions it has drawn from the information collected? Will the information collected or DOE's conclusions influence the finalization of the Rule; and, if so, can DOE indicate (perhaps by example) what influence such information could have? Will DOE’s final Rule include a Collection Form? What different information might DOE want to collect in a post-incident information collection? Will any new Collection Form be published for public comments before submission to the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 and before DOE promulgates its final CSC Contingent Cost Allocation Rule? If any revised Collection Form requires submission of less data than DOE’s collection of information required by the final regulation, will DOE make it clear that Respondents will not be assuming any liability based on cursory data submitted in response to the initial Collection Form?

11. CIGNL’s April 2015 Comments said DOE should require reporting of covered transactions only in those countries that are CSC Member States on the date the Rule becomes effective and during subsequent annual reporting periods. The draft Collection Form appears to require submission of export data without regard to whether the recipient country is a CSC Member or a likely CSC Member. Why did the Department choose not to follow the legislative history of the 2007 CSC Contingent Cost Allocation Act, which says that, in developing the cost allocation formula, DOE need not limit the examination to “covered installations” in countries that have ratified the Convention, but should consider covered installations in countries that have signed the CSC and in other countries that DOE concludes are likely to join the CSC within a reasonable period of time, given that such countries are the potential sources of liability for U.S. suppliers?

12. CIGNL’s April 2015 Comments also said DOE should ensure that the International Atomic Energy Agency list of covered installations and any updates thereto are made available to U.S. suppliers. Will DOE make that list available before responses to the Collection Form are due?

13. CIGNL’s April 2015 Comments said the Small Business Administration (SBA) size standards may not be the best measure, as they are based on *average annual* sales receipts or *average current* number of employees. Use of SBA standards would not capture U.S. suppliers that cumulatively might have exported goods and/or services during the applicable reporting period. Why is the draft Collection Form asking whether the Nuclear Supplier is considered a “small business” under Small Business Administration size standards at 13 CFR part 121? How

will DOE ensure that “small businesses” that cumulatively exported goods and/or services during the applicable reporting period are subject to CSC cost allocation?

14. The Instructions for Completing the Collection Form refer to a “Nuclear Supplier” as “the principal party in interest in the supply of the nuclear goods or services or nuclear material transport.” Does this mean that DOE is abandoning the terms “final nuclear supplier” and/or “lead nuclear supplier” in the NOPR’s Alternatives 1 and 2?

15. CIGNL’s April 2015 Comments said tying the CSC assessments to suppliers with export licenses or authorizations is fraught with problems, and is not likely to reflect accurately the large number of U.S. suppliers that export goods or services to foreign nuclear installations. What is the basis for the draft Collection Form requesting data about export licenses or authorizations, if “the principal party in interest” is required to report (as indicated in the Instructions for Completing the Collection Form) “whether you, your authorized agent, a carrier, or another Nuclear Supplier obtained the applicable U.S. government license or authorization for export of your nuclear goods or services”? Does DOE intend to apply the final Rule only to U.S. suppliers whose goods and/or services are subject to export licenses or authorizations?

16. Will a transaction have to be reported if goods or services exported from the United States were not used at a foreign nuclear installation?

17. Will a transaction have to be reported if the goods or services exported from the United States have been replaced at the foreign nuclear installation?

18. The December 17, 2014 NOPR (79 Fed.Reg. at 75082) said DOE agreed that suppliers of natural or depleted uranium or uranium conversion services are not suppliers of fuel and thus not nuclear suppliers that would be subject to the requirements of the proposed rule. The definition of “nuclear material” in the Instructions for Completing the Collection Form also does not include such materials. Why is depleted and natural uranium supplied to a nuclear installation not considered to be “nuclear material”, since release of this material at an installation, such as an enrichment or fabrication plant, could cause a nuclear incident given the toxic properties of this material? Since they supply enrichment facilities with converted uranium hexafluoride, should not suppliers of converted uranium, transporters of converted uranium and suppliers of the equipment used to transport such uranium be nuclear suppliers under the proposed rule? Rather than exclude natural and depleted uranium from the definition of “nuclear material”, would a better approach be to exclude mines and conversion facilities from the definition of “nuclear installation,” but include natural and depleted uranium in the definition of “nuclear material”?

19. What is the Department’s schedule for completing this Rulemaking, and will there be further opportunities for comments from the public before promulgation of the final CSC Contingent Cost Allocation Rule?

## **Conclusions**

CIGNL looks forward to participating in the Department's September 16, 2016 public workshop, and urges DOE to fully consider the above questions and topics on the CSC Contingent Cost Allocation. Given the complexity of the issues presented by the rulemaking and the fact that the DOE workshop is scheduled for only three hours, it would be advisable for DOE to address as many of the above questions as possible at the public workshop and then to publish further information in the Federal Register addressing each of them well before written comments from the public are due on the draft Collection Form on October 3, 2016.