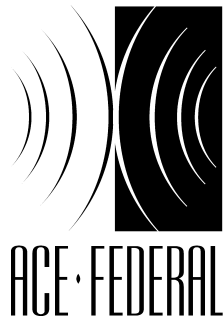


Date: February 20, 2015

Case: Convention On Supplementary Compensation For Nuclear
Damage Proposed Rulemaking



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U.S. DEPARTMENT OF ENERGY PUBLIC MEETING
CONVENTION ON SUPPLEMENTARY COMPENSATION FOR NUCLEAR
DAMAGE PROPOSED RULEMAKING

U.S. Department of Energy
1000 Independence Ave. SW
Washington, DC 20585
Room No. 8E-089

Friday, February 20, 2015

9:00 A.M.

1 Appearances for Department of Energy Meeting

2

3 Ben McRae, DOE

4 Anita Capoferri, DOE

5 Sophia Angelini, DOE

6 Doug Brookman, Public Solutions, -- Moderator

7 Sarah Baldys, MARSH

8 Carol L. Berrigan, Nuclear Energy Institute

9 David Blee, U.S. Nuclear Infrastructure Council

10 Omer F. Brown, II, Counsel to the Contractors

11 International Group on Nuclear Liability.

12 Patricia L. Campbell, GE Hitachi Nuclear Energy

13 Helen G. Cook, Shearman & Sterling, LLP

14 Colleen A. Deegan, Bechtel Corporation

15 William Fork, Pillsbury

16 Ted J. Garrish, Annapolis Energy Consulting

17 Ellen C. Ginsberg, NEI

18 Michael W. Kolodner, MARSH

19 Raphael P. Kuyler, Morgan Lewis

20 Melissa Mann, Urenco USA

21 J. Russell Miller, Bechtel Enterprises Holdings

22 Bill Reitz, Heather Podesta Partners

1 Appearances for Department of Energy Meeting

2

3 James A. Schoettler, Jr., Centrus

4 Daniel F. Stenger, Hogan Lovells

5 Robert Temple, Babcock & Wilcox

6 Mary Alice Hayward, AREVA

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1 P R O C E E D I N G S

2 (9:11 A.M.)

3 MR. BROOKMAN: Good morning everyone.
4 Glad to see you this morning. Glad you made it here.
5 This is the U.S. Department of Energy's Public
6 Meeting Convention Supplementary Compensation for
7 Nuclear Damage, a Proposed Rulemaking.

8 Today is February 20, 2015, here in the
9 Forrestal Building in Washington, D. C. Once again,
10 so happy to see you here this morning.

11 We're going to start this morning with
12 opening remarks, opening comments from Ben.

13 MR. MCRAE: Good morning. I suspect many
14 of you know me. I'm Ben McRae. I'm the Assistant
15 General Counsel for Civilian Nuclear Programs here at
16 DOE.

17 I don't have very long remarks. In fact,
18 basically, that we're very happy that you all are
19 here to talk about this proposed rule. As you know,
20 Congress has tasked us with coming up with a formula
21 to allocate the cost, if there were to be a nuclear
22 accident, that triggers the International Fund under

1 the CSC. And they have given us somewhat clear
2 directions that we need to allocate that among U.S.
3 suppliers that benefit from the CSC.

4 We've put out two alternatives. We think
5 they are good proposals, but we're not wedded to
6 them. What we're trying to do is come up with an
7 approach, given the fact that we've been told that we
8 need to allocate an amount of money that would become
9 due, if the CSC is invoked, that we need to allocate
10 that among U.S. suppliers. We want to come up with
11 an approach that works for you, for the people who
12 are going to be most affected by the rule.

13 So, what we're hoping today is to hear
14 your concerns about the proposals we've put out, what
15 you think are the weaknesses, the strengths. If you
16 have alternatives, we're quite happy to hear those
17 because what we're looking for is something that
18 works efficiently and with the least disruption on
19 the industry.

20 We know that many of you would prefer not
21 to pay this, that you would -- you know, there are a
22 number of concerns; but given the fact that we have

1 been told to come up with a formula we would hope
2 that you can give us suggestions, at least as to what
3 would be the concerns and the issues we need to
4 address in coming up with that formula even if
5 there's not a consensus as to what that formula
6 should be.

7 And with that, I'll just introduce Anita
8 Capoferri and Sophia Angelini, who are in my office,
9 and who actually did most of the work on this rule,
10 and who will probably answer most of the substantive
11 questions. I have to say, as you all know, this is a
12 difficult subject and they did a pretty good job,
13 given what we have to work with.

14 Anyway, with that, we're ready to begin.
15 Thank you.

16 MR. BROOKMAN: I always like to start with
17 introductions around the room. I'll start to my
18 immediate left so you can get used to turning these
19 microphones on and off. Please say your name and
20 organizational affiliation.

21 MR. TEMPLE: Bob Temple with the Babcock &
22 Wilcox Company.

1 MR. BROOKMAN: Thank you.

2 MR. BROWN: I'm Omer Brown, counsel to the
3 Contractors International Group on Nuclear Liability.

4 MS. MANN: Melissa Mann, URENCO, USA.

5 MR. KUYLER: Ray Kuyler, Morgan Lewis.

6 MR. MILLER: Russ Miller, Bechtel Power
7 Corporation.

8 MR. STENGER: Dan Stenger with the Law
9 Firm of Hogan Lovells in Washington, D.C.

10 MR. GARRISH: I'm Ted Garrish, consultant
11 to Ch2MHill.

12 MS. GINSBERG: Ellen Ginsberg, NEI.

13 MR. HAYWARD: Mary Alice Hayward with
14 AREVA.

15 MS. CAMPBELL: Patricia Campbell with GE
16 Hitachi.

17 MR. BLEE: David Blee, U.S. Nuclear
18 Infrastructure Council.

19 MS. ANGELINI: Sophia Angelini,
20 Department of Energy.

21 MS. CAPOFERRI: Anita Capoferri,
22 Department of Energy.

1 MR. BROOKMAN: And would you please stand
2 and just say your name? We'll capture this later.

3 MS. BERRIGAN: Carol Berrigan with the
4 Nuclear Energy Institute.

5 MR. BROOKMAN: Thanks again to all of you
6 for being here. I hope that all of you received a
7 copy of the agenda. I'm going to go through that
8 very briefly. And you can see, immediately following
9 this agenda review there's an opportunity for opening
10 remarks. We hope they'll be fairly brief because, as
11 you can see, the agenda is structured to try to
12 address many, perhaps most or all of the comments
13 that the Department received in advance of this
14 meeting.

15 So, after the opening remarks, we're going
16 to talk about covered nuclear suppliers, and
17 specifically final nuclear suppliers, lead nuclear
18 suppliers, small nuclear supplier exclusion, that
19 content and those definitions. We'll take a
20 mid-morning break around about 11:00 or so.
21 Following that, reporting on information and
22 collection requirements and you see the specific

1 bullets there regarding timeframe of reporting,
2 affected nuclear suppliers, burden hours and costs.

3 We'll break for lunch around about 12:30
4 or 12:45 today. When we return from lunch, talking
5 about the guts of the risk informed formula,
6 Alternative 1 and Alternative 2. I do hope that it's
7 possible to get substantive comment on your
8 preferences surrounding these two alternatives today.
9 That'll help the Department a lot.

10 We'll take a break mid-afternoon around
11 about 3:00 o'clock or so, and then moving on from
12 there to risk premium payment process, cap on premium
13 payment, notice and dispute processes, and penalty.
14 There's an opportunity at the end of the day for
15 additional comments, closing remarks, any additional
16 issues that anybody wishes to raise that haven't been
17 addressed sufficiently.

18 Questions and comments on the agenda, and
19 particularly, is there any content that you wish to
20 cover in this meeting that you don't think is
21 addressed or will not fit in this format? Yes?

22 MR. BLEE: Yes, Mr. Chairman --

1 MR. BROOKMAN: Excuse me. I haven't asked
2 for any ground rules yet. If each time you'd say
3 your name.

4 MR. BLEE: Sure. David Blee, U.S. Nuclear
5 Infrastructure Council.

6 It wasn't clear from the published agenda,
7 so the way you're envisioning this is interactive
8 exchanges as opposed to a lecture.

9 MR. BROOKMAN: Correct. And I will get
10 into that in a moment.

11 MR. BLEE: Okay. Good.

12 MR. BROOKMAN: Yes, I'll talk about how I
13 envision this meeting going, but what I'd like to do
14 now is confirm that the content that you came here to
15 discuss that it's somewhere in this agenda so that
16 we're systematic about approaching it.

17 Omer, you look like you wish to comment.
18 I'm going to cue people to speak as best I can.

19 MR. BROWN: Omer Brown. Unfortunately,
20 we've just gotten the agenda this morning, so we
21 haven't really had a chance to review it, vis-a-vis,
22 the suggested question we put in.

1 At first blush, it looks like most of the
2 key issues are covered, but I reserve on that point.

3 MR. BROOKMAN: Sure. And as we go along
4 during the day, at the breaks, at lunch, if there's
5 other stuff that bubbles forward, then we'll insert
6 it, given the time that we have here today to
7 accomplish this.

8 Yes, please, Patricia?

9 MS. CAMPBELL: Patricia Campbell with GE
10 Hitachi.

11 We supported both CIGNL and on the
12 comments that were sent in and the questions, but
13 isn't there a webinar --

14 MR. BROOKMAN: There is.

15 MS. CAMPBELL: -- introduced and stuff?

16 MR. BROOKMAN: I'm about to address that
17 as well.

18 MS. CAMPBELL: Okay,
19 because I know we have someone on the webinar.

20 MR. BROOKMAN: This is a sharp bunch.
21 You're anticipating a lot of stuff, which will follow
22 on here very, very shortly, so let me get to that.

1 Having done the agenda review, I'd like to
2 ask for your consideration to make this meeting work
3 more successfully. If each one of you would speak
4 one at a time, if you'd say your name for the record
5 each time you speak. There'll be a complete
6 transcript of this meeting made available.

7 I'm going to be cuing individuals by name
8 to speak as best I can. I'm going to be casting my
9 eyes around the room. All you need to do is go like
10 this and I'll acknowledge you. And I also wish to
11 encourage follow up on comments. Sometimes the back
12 and forth between individuals in a room is very, very
13 helpful to the Department, so we wish to encourage
14 that.

15 If you could be concise, share the air
16 time, and if you could turn off your cell phones, put
17 them on silent mode, I'd appreciate that. That would
18 keep the focus here.

19 And webinar participants we welcome you.
20 The Department of Energy is trying hard to make
21 certain these meetings are accessible via the web.
22 If you would turn your telephones on mute, I think

1 you've been instructed to dial in the phone number so
2 you'd have access to this webinar. And if you can
3 raise your hand in the software provided to be
4 recognized to speak and they'll cue me -- the web
5 master over there will cue me and we'll try and
6 insert you in the conversation here in the room.

7 So, that's been working previously. The
8 technology has been working fairly well. So, if you
9 wish to speak, let us know.

10 Also, as a general matter, in all of these
11 regulatory affairs, your comments here are very, very
12 important, very useful, but the Department also
13 wishes you to make detailed, written comments, of
14 course. And that's both for everyone in the room and
15 everyone who's joining us via the webinar. So, the
16 Department expects those comments to be coming in,
17 prior to the submission deadline, which we will
18 describe in a little bit.

19 So, that is most of what I had to cover
20 here at the outset. Do we have additional thoughts
21 or comments before we proceed?

22 Okay, let's proceed. As you can see, the

1 next item on the agenda is opening remarks. Yes?

2 MR. BROWN: I'm Omer Brown here on behalf
3 of the Contractors International Group on
4 International Liability, which is composed of Babcock
5 & Wilcox, Bechtel, CB&I, Centrus Energy, GE Hitachi
6 Nuclear Energy, and Westinghouse.

7 We have submitted for the record a general
8 statement. I won't read that, but I'll summarize a
9 couple of highlights in the statement.

10 We've been working closely with the Energy
11 Department on CSC implementation for years and
12 welcome the opportunity to make comments. We have
13 submitted detailed questions that we think were
14 raised by the Notice of Proposed Rulemaking. Those
15 are also in the record.

16 And there are a couple of points that I'd
17 like to highlight. First of all, we're particularly
18 concerned that the NOPR suggested that the eventual
19 rule would only apply to about 25 U.S. suppliers. We
20 think that number is way too low, and there are
21 hundreds, if not thousands, of suppliers implicated
22 in supplying to nuclear power plants around the

1 world.

2 Our goal is that the rulemaking should
3 facilitate the fulfillment of the CSC's promise,
4 opening up of trade for the United States in foreign
5 markets. We are concerned at this point about the
6 two alternatives. We don't think we have enough
7 information to support either of the alternatives.
8 So, that we come to that discussion this afternoon
9 we're not going to be in a position to say which one
10 is preferable.

11 Again, we appreciate the opportunity, and
12 I hope that our prepared statement will be in the
13 record.

14 MR. BROOKMAN: Okay. Thank you. I'm
15 certain we can insert your prepared statement into
16 the record.

17 Bob, do you wish to go next?

18 MR. TEMPLE: No, I was deferring to both
19 Omer on behalf of CIGNL and Ellen on behalf of
20 Nuclear Energy Institute.

21 MR. BROOKMAN: So, that was just a process
22 comment. So, let's go to Ellen then, please.

1 MS. GINSBERG: Good morning. And thank
2 you for the opportunity to participate in this
3 workshop.

4 I am Ellen Ginsberg, general counsel of
5 Nuclear Energy Institute. And NEI also submitted
6 comments for the record, and we ask that they be
7 entered into the record. We also submitted questions
8 that we hope will help guide this discussion.

9 I think we can start by saying that NEI's
10 membership very much supports the CSC and is
11 appreciative of the government's efforts to bring it
12 into effect, and to encourage other countries to join
13 the CSC.

14 That having been said, we also recognize
15 that Congress has put you in somewhat of a difficult
16 position with EISA because you've been given certain
17 directions that we think makes the job before us a
18 little more difficult.

19 Although that's true, we think certain
20 principles must apply to this rule, and they are
21 principles of simplicity and understanding. Those
22 two go together. It has to be a predictable rule

1 where the entities can understand what their
2 liability is, or will be, sufficiently so that they
3 can manage that risk. And as Omer said, it has to be
4 a rule that doesn't impede the competitiveness of the
5 domestic suppliers.

6 So, with that general structure in mind,
7 or those general principles in mind, we are
8 concerned, specifically, about a few very pointed
9 topics. And those include the information that's
10 been suggested needs to be provided, how it's
11 provided and the scope of it, the quantity of it, and
12 also the cost and burden that's associated with that.

13 In addition, and I think there'll be
14 extensive discussion about this, the allocation
15 method, very important -- the pool, how that pool is
16 determined, what entities scope in, and the size of
17 that pool.

18 And then finally, very important to the
19 industry is a means of making this risk, this
20 liability insurable so that there is a way to manage
21 the risk, and this risk can be mitigated to the
22 greatest extent possible.

1 So, with that, that's sort of the general
2 contour of what we hope to cover today. I would add,
3 however, that if the opportunity arose we hope the
4 Department will support either amendment or
5 potentially repeal of the legislation that guides us
6 today. We think there are opportunities to, if
7 repeal isn't possible, to at least change some of the
8 limitations that exist in the current law that would
9 make this a much less burdensome process.

10 MR. BROOKMAN: Ellen, I don't want to put
11 you on the spot, but I'm going to right now, okay.

12 I don't know you all. I've only worked on
13 the nuclear side of the house here at DOE a few times
14 in my 20 years of working at DOE as a facilitator
15 and mediator, but my tendency and my purpose is to be
16 direct, so I'm going to do that during the course of
17 this meeting.

18 Are you all pursuing legislation to try
19 and amend this statute?

20 MS. GINSBERG: We view that as an option,
21 but we understand that DOE has to address what's in
22 front of it, and we're trying to participate in the

1 DOE rulemaking proceeding while we consider what
2 other options may be available.

3 MR. BROOKMAN: I really appreciate that.
4 And I was thinking, and I had a conversation with
5 Omer and Bob, they got here early this morning before
6 we commenced. I was hoping during the course of this
7 meeting today that however much you can say it in
8 whatever format you can say it that your bias is to
9 try and figure out ways that what is here might turn
10 to be workable because it's clear that DOE has an
11 obligation to proceed with you, but you all have an
12 interest in trying to make something workable,
13 whether you suggest an alternative -- I think this is
14 obvious. I'm fresh to this issue, but as a fresh set
15 of eyes, it seems clear to me -- you wish to comment,
16 Ellen?

17 MS. GINSBERG: No, I just want to make
18 clear that we think that sort of first choice, as it
19 were, changes to the legislative directive would be
20 very helpful here and are necessary, frankly. But
21 since we don't control Congress, and neither does
22 DOE, we understand that we have a job before us and

1 we're trying to work with what we have before us.

2 MR. BROOKMAN: Okay. Thank you.

3 Yes. Additional comments here? We have
4 someone joining us online. Please unmute that
5 gentleman's phone or woman's phone.

6 Please say your name for the record.

7 (Feedback.)

8 MR. BROOKMAN: We're hearing feedback, but
9 no voice.

10 (Pause.)

11 MR. BROOKMAN: We're hearing you in the
12 room, so to speak. Okay, so that didn't work. We'll
13 try that again. Yes, please, it is Mary Alice?

14 MS. HAYWARD: It's Mary Alice Hayward with
15 AREVA. I believe it's my colleague saying that
16 there's audio problems with the webinar and that the
17 participants are not able to actually hear what's
18 being said.

19 MR. BROOKMAN: So, those of you who are
20 joining us via the webinar, please leave your phone
21 muted. Apparently, we have a few individuals that
22 are having audio trouble and we'll try and get that

1 fixed so that everybody can participate. Ben?

2 MR. MCRAE: I think just to pick up on
3 what Doug has said, we do appreciate the questions
4 and comments that we got from CIGNL and NEI. We are
5 not planning to address each and every one of those
6 questions in a systematic way. What we are going to
7 do is, hopefully, during the course of the back and
8 forth we will try to address what we thought were the
9 major concerns expressed, but certainly if Omer or
10 Ellen or anyone else thinks that there are questions
11 that were in those comments that we have not
12 addressed and need to come up feel free to bring that
13 up.

14 Again, we're not here trying to answer
15 those questions. We certainly will as part of the
16 rulemaking. What we really want to hear is
17 articulation of your concerns and exactly what are
18 the elements of those concerns so that we can address
19 those as part of the rulemaking. But certainly, if
20 you think there are things that would help you and we
21 haven't answered, do bring that up during the
22 conversation. Thank you.

1 MR. BROOKMAN: Thank you. Yes, please.

2 MR. STENGER: Dan Stenger with Hogan
3 Lovells.

4 At the risk of saying something positive,
5 I did want to say that we really appreciate DOE
6 making the effort to have this workshop and hear
7 concerns and be willing to answer questions and
8 consider alternatives, so thank you very much for
9 this opportunity.

10 MR. BROOKMAN: Thank you.

11 Okay, anything else here at the outset
12 before we -- and I hope that your colleagues will
13 tell us if their audio problems have been solved.
14 Not yet? Okay. Tell them we're working on it.

15 MS. HAYWOOD: They've said that even on
16 the phone they cannot hear a thing. They only have a
17 picture, but no ability to read lips, so they don't
18 know what's being said and can't follow any
19 instructions that are being communicated.

20 MR. BROOKMAN: So, Patrick is there
21 anything that you can think of to do here?

22 Did they dial in on the dial-in line?

1 They're supposed to dial in on a separate telephone
2 number. Make sure they do that. And then let's
3 proceed with the agenda.

4 As you can see, the first -- yes, please.
5 Mary Alice?

6 MS. CAMPBELL: Patricia Campbell.

7 MR. BROOKMAN: Pardon me. I apologize.

8 MS. CAMPBELL: I do have one comment or
9 question. You said you're not going to address all
10 of the questions that we've had. You mean in the
11 meeting today, but will you address those in the
12 rulemaking phase. I just need clarification.

13 MR. MCRAE: We don't want this to be us
14 talking to you, saying this is why we think this
15 question is this or that. We want it to be more of a
16 give and take where we really hear what it is that
17 motivated the questions and the comments, but no, we
18 certainly intend to during the final rule to address
19 all the major questions and probably all the
20 questions that were brought up. Although, I have to
21 say Omer and Ellen and those of you who helped them,
22 did a very good job of coming up with a lot of

1 questions.

2 MS. CAMPBELL: Okay. Thank you.

3 MR. BROOKMAN: Okay, Bob.

4 MR. TEMPLE: Notwithstanding the desire
5 for the give and take on this, those who contributed
6 to the questions really were hoping to get as many
7 answers to those in the workshop as possible because
8 we really don't understand many elements of the rule.

9 MR. MCRAE: That's why I said bring it up.
10 I mean we don't want to just be answering a list, but
11 if there's something that you need clarification on,
12 we would appreciate more than just telling us why all
13 of -- so we can fully understand it, but we will
14 attempt to do what we can today. And again, to some
15 extent, we are talking about a proposal, so we don't
16 want to lock into this as the only position. So, we
17 can certainly explain the rationale that lead us to
18 making these proposals.

19 MR. BROOKMAN: Additional thoughts here
20 before we proceed?

21 The first item on the agenda is covered
22 nuclear suppliers. And I'm looking at the Federal

1 Register Notice. For those of you who want to refer
2 to what's there, this is page 75080, where that
3 element is listed there.

4 So, comments or questions related to
5 covered nuclear suppliers, and you can see the three
6 sub-bullets there?

7 Omer, maybe you're unclear about how we're
8 to proceed?

9 MR. BROWN: I guess I'll just ask the
10 first question that we submitted in our prepared
11 questions. And that is, what is the basis for DOE's
12 assumption that the rule would apply to only about 25
13 suppliers? That's a key point for us, as we've said
14 in our comments and in our questions. So, if we can
15 get some clarification on that that would be a start.

16 MS. CAPOFERRI: I'll start. And then I
17 would hope that folks will join in, though.

18 I think as we had mentioned before, and I
19 think as we've said in the rule, the way we
20 structured it was trying to take the very broad
21 definition of a covered supplier from the statute, or
22 a nuclear supplier from the statute and then we

1 narrowed that down into what we thought was a
2 reasonable and workable way of identifying those
3 nuclear suppliers who would be providing goods or
4 services abroad that would entail the kind of risks
5 that would lead to a nuclear incident that's covered
6 by the CSC.

7 So, we have a layering of definitions of
8 covered nuclear supplier, a final nuclear supplier,
9 and for an Alternative 2 lead nuclear supplier. And
10 then, of course, we also have an exclusion for small
11 nuclear suppliers.

12 So, based on the way we set up the rule,
13 at least it was our thinking that this narrowed the
14 scope of what could potentially be a very broad field
15 of nuclear suppliers in such a way that it met the
16 purposes of the statute and the criteria of the
17 statute. And then using the knowledge the Department
18 has and the expertise of the nuclear industry
19 provided an estimate of the number of nuclear
20 suppliers we believe in the end would be covered by
21 the rule.

22 Having said that, we also encourage

1 everyone -- and particularly the folks who are
2 sitting around this table to give us additional
3 information, to give us your thoughts and comments on
4 that. In particular, once you had read the rule and
5 see the way in which we were attempting to focus in
6 on those nuclear suppliers of greatest risk and see
7 if that comports with your understanding.

8 We understand your comment. I'm trying to
9 explain the reasoning, the thinking that went into
10 it, but we certainly do want to hear back from the
11 industry whether that's wrong or that's right, and,
12 if it's wrong, in what manner. If there were other
13 thoughts on this and other information and sources of
14 information to be provided, we certainly welcome
15 that.

16 MR. MCRAE: And if I can add one thing to
17 what Anita said. And I have to say it's been several
18 months since we actually did the proposal, but my
19 memory is we also talked to our colleagues here at
20 DOE who do 810s and people at NRC and Commerce. And
21 I had the impression that the number of people who'd
22 actually get those types of authorizations that would

1 make the subject, be a final supplier, at least my
2 memory was it sounded like those numbers were
3 relatively low compared to the initial supplier.

4 So, again, if we have underestimated that,
5 we would like to hear that. But again, we were
6 trying to narrow the number of suppliers who would
7 have to comply with this while still capturing the
8 supply chain. Again, we would like to hear if there
9 are more suppliers who are going to be the final
10 suppliers or whatever.

11 MR. BROWN: Omer Brown again. We don't
12 think you've succeeded because just using Part 810s
13 or 110s doesn't capture everyone.

14 As we point out in one of our questions,
15 the fact of the matter is that some of these licenses
16 may be obtained by freight forwarders who are acting
17 on behalf of other companies. So, I had gone back
18 early on in the process to look at who actually has
19 810s and 110s, and it's a pretty small universe. It
20 doesn't capture the universe of suppliers, so the
21 number 25 grossly underestimates how many companies
22 are actually involved in the supply chain for nuclear

1 exports.

2 MR. BROOKMAN: So, you think the
3 definition should be different because the number
4 flows from the definition, does it not?

5 MR. BROWN: Yes. And it just doesn't work
6 because relying on export licenses or authorizations
7 doesn't capture all true exporters.

8 MR. BROOKMAN: And what would you suggest
9 as an alternative?

10 MR. BROWN: We don't have a great
11 alternative to suggest at this point, but there needs
12 to be a larger universe.

13 MR. BROOKMAN: The Department seems to be
14 relying, where it can, on statute, different regimes
15 that are in place. Is there any other regime which
16 would speak to that broader universe?

17 MR. BROWN: Not that I'm aware of.

18 MR. BROOKMAN: Okay. Yes, please. Stand
19 up there, say your name, and use the microphone.

20 MR. KOLODNER: Mike Kolodner with Marsh.

21 MR. BROOKMAN: Yes.

22 MR. KOLODNER: Two questions. The first

1 is what was the basis for the risk assumption? So,
2 when determining whether a supplier was or was not at
3 risk, as you say, was there an objective methodology
4 that was used, a risk-informed methodology? And if
5 so, can you comment on that?

6 And the second question I have is: what
7 was the basis for seeking to narrow the number of
8 suppliers?

9 MR. MCRAE: Before we do those questions,
10 can we stay with Omer's question? And again, we'll
11 get to those, but I would like to hear a little bit
12 more discussion on the issue of, I'll call it, final
13 supplier.

14 And I guess one is, from what I heard Omer
15 say, there were two questions that came to mind,
16 which I think will be useful for Omer and other
17 people to think about and maybe give us some
18 feedback.

19 One is the issue of should we be focusing
20 on the last person in the supply chain in the U.S.,
21 or should we try to capture everyone at the initial
22 point or some place in between? Our rule is focusing

1 on trying to get the last person in the supply chain
2 in the U.S. That was a choice we made. We thought
3 it was a good choice, but if people think that
4 there's a better approach we would like to hear that.

5 Also, is there some way -- I have to say
6 the issue is a good issue about the freight
7 forwarders-- I'm not sure what the name is.

8 MR. BROWN: Forward.

9 MR. MCRAE: But I assume this is something
10 like FedEx, but they are someone who basically does
11 the -- they're not really suppliers. They're just a
12 service. I guess what I would, if you know, is there
13 a way to get the names or the number of people that
14 they represent. So, that would help us in getting
15 what the actual number is at that final point. So,
16 again, and if you know offhand the range, is that
17 like a hundred suppliers, two hundred, a thousand?
18 That would be helpful, if you know or if you can talk
19 about that in your comments that you make.

20 MR. BROOKMAN: Or comment on that now
21 before we return to those other questions. Omer?

22 MR. BROWN: When this whole process

1 started, I went and looked at who actually has 110s
2 and 810s, and it's a very small number. And there's
3 one particular small company that had a lot of the
4 110s because that company was responsible for
5 handling the export transportation, so they're the
6 ones who got the license. Now, they may even qualify
7 as a small business, so they get excluded on that
8 basis.

9 So, it just doesn't make sense to tie it
10 all to export licenses or authorizations.

11 MR. BROOKMAN: Is that a recent
12 phenomenon? Is that the way it's been since the
13 origins of this industry back in the sixties?

14 MR. BROWN: I believe so, yes.

15 MR. BROOKMAN: Okay. Bob?

16 MR. TEMPLE: When we talked internally
17 about how do you identify folks in the nuclear
18 business broadly, if you have reference to the Rule
19 Part 21 compliance, well, I don't know if there's a
20 comprehensive list of those who have to comply with
21 10 C.F.R. Part 21 because largely you are approving
22 suppliers down the chain.

1 There is probably some list of those who
2 hold N Stamps, as the ASM nuclear stamps and there
3 are various categories of those stamps. But again,
4 are those folks all exporting or are they all on the
5 chain? And then we get to the issue that I'm sure
6 you're going to talk about later, which is who has
7 records dating back any time as to be able to
8 categorize what their long-term exports have been.

9 MR. BROOKMAN: And those individuals are
10 those companies with N Stamps would they be many more
11 than 25?

12 MR. TEMPLE: Yes.

13 MR. BROOKMAN: Can you --

14 MR. TEMPLE: I don't know how many have.
15 I don't have access to the ASM database. I'm sure
16 it's more than 25. Unfortunately, it's a lot fewer.

17 MS. CAPOFERRI: And are they also
18 exporting?

19 MR. BROOKMAN: That was Anita.

20 MS. CAPOFERRI: Sorry.

21 MR. BROOKMAN: Okay.

22 MR. TEMPLE: They may or may not be

1 exporting.

2 MR. BROOKMAN: Describe what the N Stamp
3 authorizes or suggest the role that it implies.

4 MR. TEMPLE: It implies that it is a
5 supplier that's qualified to provide certain
6 components and/or services to the nuclear industry.

7 MR. BROOKMAN: And how do they obtain an N
8 Stamp?

9 MR. TEMPLE: Through the Society of
10 Mechanical Engineers, but there's a whole application
11 process and qualification process associated with
12 that.

13 MR. BROOKMAN: And so, if there are many
14 of them, then it's many more of a whole variety, a
15 whole host of service offerings. It's not just the
16 biggest companies who can offer a full array of --

17 MR. TEMPLE: That's correct.

18 MR. BROOKMAN: Okay. Did you have
19 additional questions here? Ted?

20 MR. GARRISH: When you're talking about
21 810s and 110s, I understand the 110s, and that's a
22 pretty well set number of people. They go through

1 that process. I think the 810s are a little bit
2 trickier. So, the issue that I would really ask is
3 when you start talking about 810s what were you
4 thinking in terms of, for instance, specifically
5 authorized you know who they are, and we have a list
6 of those; and that's a relatively small number of
7 people because of the countries that they're going
8 to.

9 The generally authorized suppliers, which
10 is really the bulk of where the exports are going to
11 be, most of those people, I would say, follow the law
12 and report. I would say a lot of them maybe do not.
13 So, I mean that would be an area that I would be
14 concerned that you're really capturing the whole
15 group of people just by looking at a list, but I
16 would feel that in terms of final exporter or final
17 supplier that that list is still considerably larger
18 than what this has in here.

19 MR. BROOKMAN: So, Ted, can you suggest
20 how the Department might discern from that long list
21 those individuals that they think they want to
22 identify?

1 MR. GARRISH: Well, I think one of the
2 questions that I think you really need to look at,
3 and this is something that troubles our company, and
4 that's the question of enforcement. In other words,
5 the people that, I think, they want; they intend to
6 try to comply with this law and make sure that the
7 materials that they supply you and the information
8 that you get is legitimate.

9 Now, the question is what -- the troubling
10 part of this is everyone is trying to look at their
11 exposure on this and to try to understand how to deal
12 with the exposure and maybe insure it, maybe not, but
13 there's a lot of ways to really understand how to
14 comment. And we're having great difficulty right now
15 in understanding who it applies to and who it doesn't
16 apply to.

17 Give you an example, companies that have
18 gone out of the nuclear business that have supplied
19 in the 1970s to various plants, how is that going to
20 be dealt with? I guess that there are a number of
21 process issues that really make the process extremely
22 difficult to be credible in terms of -- that is

1 verifiable and we feel comfortable that we are not
2 getting taken advantage of because we come forward
3 and say, okay, we have exported so much.

4 And one of the difficulties, I think, that
5 when we look at this is the whole reporting question.
6 Who's going to report, how they going to report, are
7 they going to have the same methods of reporting as
8 everyone else?

9 I mean I'm getting into a lot of issues,
10 but this gets really to who the body is and the group
11 that you're really trying to cover and how you're
12 going to identify them. I don't believe that what
13 you've got here sufficiently identifies or makes me
14 comfortable that we've really captured the bodies
15 that need to be covered. So, I'm not suggesting that
16 I have an idea as to how you would deal with that,
17 but I think as one of the things that you really have
18 to think about as you move forward in this -- let me
19 put it this way. I'm not sure this is soup yet.

20 In other words, I think that there's
21 probably got to be a lot of thinking. And the idea
22 of having this workshop is really useful. And what

1 we are trying to do, I think, and the industry is
2 trying to do is understand what your thinking is in
3 each of these areas so that we can help you identify
4 how to proceed. And I think when we ask these
5 questions about how you would come up with the 25
6 somebody obviously came up with the 25, so it would
7 be really interesting to know what that is. In other
8 words, what that analysis is. And in order to be
9 fair, I think, to everybody that wants to make sure
10 that everybody's included. The way this works best
11 is that you have a big, large pool of everybody that
12 is legitimately should be assessed and then
13 everybody's assessment is reduced.

14 So, the idea is to make sure that you
15 identify those people. And I think what we really
16 need to do is have more interaction back and forth
17 with the Department as to how this process really
18 works. What I worry about, Ben, is when you say and
19 suggest that while we're going to answer all your
20 questions during the finalization of the rule I don't
21 think that this is quite there yet.

22 And I think, generally, the feeling is --

1 and really when I say it's not soup yet, I mean
2 there's a lot of work that's got to be done in
3 analyzing what this market is. So, that's really
4 when I look at who the suppliers are it's really is
5 just kind of an interesting -- it's the tip of the
6 iceberg on the problem and it really starts to be
7 getting into some of the issues.

8 MR. MCRAE: Just one quick response to
9 Ted.

10 MR. BROOKMAN: This is Ben speaking.

11 MR. MCRAE: I'm sorry. Ben McRae.

12 The reason we don't want to get into just
13 answering questions like kind of, okay, here's the
14 answer is the very thing you said. We're not locked
15 in. It's a fluid situation. And what we do want to
16 hear is the back and forth. Before we actually get
17 into this is the rationale, we really want to
18 understand what -- you know, we didn't get all the
19 questions or we made a good faith effort on 25, but
20 we're hearing is that maybe even if we just look at
21 the final supplier there are more of them out there.
22 But certainly, we want to hear what your concerns are

1 and try to come up with a rule that responds to all
2 of that.

3 So, it's not like we've now made a final
4 decision and we're defending it. As I said, we're
5 really happy to try to explain the rationale that we
6 were following coming up with the proposal and answer
7 questions, but we really want to hear what the
8 concerns are so we can come up with something that is
9 responsive.

10 MS. CAPOFERRI: This is Anita.

11 I guess I would add too it's been a while,
12 but we did the NOI back in 2010, and we got a lot of
13 good comments there. And some of what we have in
14 this proposed rule is a product of those earlier
15 discussions. And things like narrowing the scope,
16 trying to hone in on those suppliers who -- and this
17 gets to your question of risk -- of who would be
18 likely to be liable in the case of a nuclear incident
19 abroad.

20 Things like looking at the final supplier
21 or the entity that exports the goods. Those were at
22 least concepts that were discussed and comments were

1 made in the 2010 time period. So, as Ben suggested,
2 if our estimates are not correct or you have
3 additional comments now that's perfectly fine, but if
4 you want to understand what -- we had meetings with
5 many of you, and we read, and we took to heart a lot
6 of the comments we got in the 2010 time period, which
7 is part of how we got to where we are now.

8 Now, if that's not an approach that the
9 industry thinks is the appropriate way to go, we're
10 here collecting additional comments.

11 MR. BROOKMAN: I think several people wish
12 to speak. It's either you or Ellen, among the two of
13 you, and then I'll return to you. Please say your
14 name for the record.

15 MS. BERRIGAN: My name is Carol Berrigan.
16 I'm with the Nuclear Energy Institute.

17 I just have a process issue that I wanted
18 to raise. I'm getting email from a number of our
19 members who are trying to join this on the phone. I
20 know GE and AREVA have staff who are trying to join
21 in on the phone. Westinghouse and Exelon are also
22 trying to join on the phone.

1 I mentioned this briefly to your
2 technician who said they may have a solution to
3 implement at the break. This is a very valuable
4 discussion I think for the companies that are
5 potentially affected by this rule. If there's any
6 way that we could restructure this so we can get the
7 audio working I think it would be very beneficial.

8 MR. BROOKMAN: I really appreciate your
9 comment. I do. I see that we've got two of our tech
10 guys there. How are we doing with this?

11 UNIDENTIFIED MALE SPEAKER: We were
12 waiting for a break.

13 MR. BROOKMAN: Let's take a 10-minute
14 break, shall we, 10-minute break. We'll resume at 10
15 minutes after 10:00. I'm sorry for the difficulty
16 with audio.

17 (Whereupon, a short recess was taken.)

18 MR. BROOKMAN: I'd like to suggest
19 something here at the outset. It seems to me, based
20 on the comments so far today that DOE is going to try
21 to answer questions, to the extent they can, about
22 the way they came up with this NOPR and the details

1 they put in writing in the NOPR.

2 It also seems to me as though it might be
3 possible in more of a workshop format here today for
4 those present to describe some sensible way to
5 address the issues that DOE has tried to address and
6 what the logic would be for doing it that way. In
7 that way, we collectively provide the opportunity for
8 the Department of Energy to move this forward. And
9 so far as I can tell, they are going to move this
10 forward.

11 I think they're compelled to move this
12 forward. So, I'm wondering if there isn't some way
13 that we can shift the tenor of this from just asking
14 them how they came to their rationale, which they're
15 willing to do, but also for those of you -- all of
16 you who have expertise in this field for you to be
17 suggesting ways that the Department can generate a
18 sensible solution here. Ellen, please.

19 MS. GINSBERG: Ellen Ginsberg.

20 We appreciate the conundrum you've just
21 described, which is we have a lot of concerns, but we
22 haven't yet offered a great number of solutions; but

1 I think that stems from, in part, and I'm extremely
2 concerned about the fact that there is a lack of
3 material terms in the proposed rule.

4 And so, without those material terms, and
5 we can get into them in the calculation discussion,
6 it's very hard for us to comment or suggest better
7 approaches because the approaches that are identified
8 may well be acceptable, although I take no position
9 on that yet, if we knew, for example, what the terms
10 were. And each individual entity could calculate
11 what its liability would be under each of the various
12 approaches.

13 So, there is a fundamental problem with
14 the lack of information. And it's a bit of a chicken
15 and egg question because the lack of information also
16 stems from the fact that the Department has asked the
17 industry for certain information and the industry
18 believes that either the information is too
19 burdensome, isn't available, is impossible to come
20 by, and so it is a bit of a problem. But I think
21 it's extremely important to note that they're pretty
22 broad and significant gaps in the current proposal

1 such that it impedes the ability to really comment in
2 any meaningful way.

3 MR. BROOKMAN: Okay. I appreciate that.
4 Ben?

5 MR. MCRAE: Just on Ellen's comment,
6 again, I'm picking up on what you said. It would be
7 very helpful for you when we get to that discussion
8 to be very clear as to what it is you need to know.
9 What is not clear to you, as I have to say I read the
10 rule again last night, and I thought it was actually
11 clear on a number of the terms, at least for
12 rulemakings that had as much clarity.

13 You know there may be issues of
14 application, but I understood what it -- so it would
15 be very helpful to us if you could be detailed in
16 what it is that's not clear, what information is
17 missing, just so we can address that. Because as I
18 said, when I read it, and I've done -- not recently,
19 but in the past I did a lot of rulemaking -- the
20 terms were as defined as many of the terms in the
21 past. So, again, it would be very helpful for us to
22 know what exactly it is that you think needed to be

1 added.

2 MR. BROOKMAN: Please say your name. I
3 would make a request that each time you speak please
4 say your full name so we'll have that in the record,
5 please.

6 MR. KOLODNER: Thank you. This is Michael
7 Kolodner from Marsh. I'm just going to restate the
8 earlier question because I --

9 MR. BROOKMAN: Let's do one at a time.

10 MR. KOLODNER: Yes. Absolutely. And I
11 appreciate the comments as well because I do think it
12 is a bit chicken and egg. And part of the reason I'm
13 asking this question is to really understand how best
14 to comment and provide some suggestions as we go
15 forward.

16 There are risk-informed methodologies that
17 are objective and there are others that are
18 subjective. So, as we seek to define the class,
19 which really is the first step here, defining who is
20 in and who is out, it's important for me to
21 understand, and I'm really looking for any
22 information you can provide as to what was motivating

1 the selection process? Was an objective process used
2 to identify or discriminate with respect to risk, or
3 was it just the best guess that we could come up
4 with?

5 MR. BROOKMAN: Michael, when you read the
6 NOPR, the description in there, you didn't think that
7 was sufficient?

8 MR. KOLODNER: No, it doesn't reference
9 any specific risk allocation methodology. It appears
10 that a great deal of effort went into identifying the
11 pool of potential participants and then whittling it
12 down and making decisions, and all of that is very
13 clear. What I don't really understand, though, is
14 the basis for discriminating who may or may not be
15 exposed to liability to the earlier comment. So,
16 what methodology was used to determine that?

17 MR. BROOKMAN: I thought the logic -- I've
18 read this a half dozen times carefully. I thought
19 the logic was rather clear.

20 MR. KOLODNER: It's clearly not. We
21 represent a very large number of suppliers, about 90
22 percent of the U.S. nuclear industry, and I can tell

1 you that it's not coming across very clear. There is
2 a process and we can follow the process, and I agree
3 that that logic process is clear. What's not clear
4 is where at the root there seems to be an assumption
5 made that one can discriminate with respect to the
6 risk any one party has to liability under the rule.
7 And I don't see anything in the materials that have
8 been provided or anything in the comment period that
9 speaks to what basis you used to discriminate who
10 would or would not be exposed from amongst that
11 class.

12 MR. BROOKMAN: So, it occurs to me, having
13 done a lot of regulatory work here at DOE, that
14 there's always a fair amount of ambiguity at the NOPR
15 stage. That's one thing, right, but I don't know
16 what -- Anita, please.

17 MS. CAPOFERRI: I'll try to answer the
18 question. I think the logic that we used and the
19 bases, for example, the appendices to Alternative 1
20 we described in the rule and we describe the logic
21 for estimating the risk factors and the risk
22 allocations to different nuclear sectors and then the

1 items that we chose under Alternative 1 that would be
2 likely to contribute to possibility of a nuclear
3 incident.

4 I understand what you're saying. I
5 appreciate what you're saying. I would encourage the
6 industry if there is a quantitative or objective risk
7 allocation that you're aware of that we have not
8 cited to, to please provide us that information.

9 MR. KOLODNER: Thank you very much.

10 MR. BROOKMAN: You did say there was an
11 objective way to do this.

12 MR. KOLODNER: I think there are several
13 different objective ways. There are some ways that
14 are being utilized now that are in practice, but I
15 don't know if this is the right time in the agenda to
16 do that. We'll defer that to later.

17 MR. BROOKMAN: Wherever it's right in the
18 agenda to do it let's do it.

19 MR. KOLODNER: We've provided a lot of
20 feedback to NEI.

21 MR. MCRAE: Ben McRae.

22 And just to keep this discussion going,

1 what I don't understand, and I'll say it again. I've
2 heard the same comment several times. We don't know
3 who's covered. We don't know what is your risk base.
4 Again, I read the rule. I mean you may not agree
5 with the methodology, but I thought it was spelled
6 out.

7 And most of this, as Anita said, we met
8 with everyone who commented on the Notice of Inquiry.
9 We got a lot of give and take. It was very helpful.
10 And much of this came from what was said in those
11 meetings where people said you could look at this or
12 that, and we did.

13 I mean, again, if you walk through it we
14 start with Part 21. You may not agree that that's
15 the right starting point, but that's what we started
16 with. We then go up the supply chain and we try to
17 get to the last person. It would seem to me that --
18 again, I'm trying to understand why people say they
19 don't know if they're covered. Is there something
20 that I'm missing as to whether -- that leads you to
21 the conclusion that you don't know if you're a
22 covered supplier?

1 You know on the risk, again, if there are
2 objective criteria for risks and they're out there,
3 we ask that, you know, in all the meetings we had
4 with people from the industry we asked that. How do
5 we define risk? What do you use? So, if there are
6 objective criteria, to the extent you can tell us in
7 this meeting where people can talk about those
8 criteria that would be helpful, to the extent you
9 need to go back and send us comments that's fine.
10 But again, if people can articulate those objective
11 criteria today that would be very useful.

12 MR. BROOKMAN: Ellen?

13 MS. GINSBERG: Yes. Ben, I'd like to just
14 identify as one matter, for example, when you look at
15 the aggregate risk exposure, that's a fundamental
16 term in the calculation that's not supplied. If you
17 have supplied it, let me know, but I too read the
18 rule again last night and could not find anything
19 that indicated what that number is. So, as a matter
20 of just doing the math, the arithmetic, you can't
21 come up with an answer because that's a material term
22 that's not there.

1 Going to the group of suppliers, it's not
2 that I think what you've articulated thus far isn't
3 clear as much as it is I think this group is
4 suggesting that it's not the right set. And so, the
5 question is, what do we use to define that right set?
6 I understand that remains a question, but I think
7 what you're hearing is, thus far, and Ted said it
8 right. Thus far, we don't have a fully baked rule.

9 And on that point, I would say that I
10 think it's extremely important for the Department to
11 consider not going directly to a final rule here
12 because, personally, I don't think it would stand
13 judicial challenge if you have a rule that's
14 fundamentally filled with very large gaps that make
15 it impossible to meaningfully comment and go forward
16 with a final rule.

17 MR. BROOKMAN: So, that was a helpful
18 comment. I appreciate that. So, maybe we can begin
19 to describe what the right set is and what the basis
20 is for the right set.

21 We already started on final nuclear
22 supplier. The Department described their logic. We

1 heard some additional thoughts on that, and the
2 suggestion that maybe the N Stamp was an additional
3 point for consideration.

4 Go ahead, Dan, and then I'm returning to
5 Omer.

6 MR. STENGER: Dan Stenger.

7 On the number of suppliers, the number 25,
8 I'd just ask, you know, under both Part 110 and Part
9 810, there are general export licenses and specific
10 export licenses for the NRC.

11 My guess is you may have just been looking
12 at the specific licenses. So, if you look at the
13 number of reports on generally licensed activities
14 that have to go to the NRC, there's not a specific,
15 separate export license. You'd probably get a much
16 larger number and the same with respect to general
17 authorizations under Part 810. There are reports on
18 generally authorized activities. If you look at
19 those, you will find a much larger set of suppliers.

20 MR. BROOKMAN: Thank you. That's helpful.
21 Generally authorized activities as reported to the
22 NRC.

1 MR. STENGER: Generally licensed
2 activities as reported to the NRC for export
3 licensing of items, of equipment. And with DOE, it's
4 export of technical assistance or technology under
5 Part 810.

6 MR. BROOKMAN: Ed, are you suggesting that
7 might be the basis for the class as described?

8 MR. STENGER: No, I'm just saying if you
9 looked at that universe you'd probably end up with a
10 much higher number than 25.

11 MR. BROOKMAN: Okay.

12 MR. STENGER: I don't know if you have a
13 comment on whether you looked at that or you just
14 focused on specific licenses or not.

15 MR. BROOKMAN: Ben?

16 MR. MCRAE: Certainly, I don't want to
17 squash discussion. I think that we've talked about
18 25. That might may not be the right number, and we
19 will look into that further. The more information
20 you can give us that would be helpful. That, I'm not
21 sure is, to some extent, the most important issue
22 here. I mean we will have to address that in our

1 reporting in developing the reporting system and the
2 amount of burden.

3 But whether it's 25 people or 50, again,
4 we've heard that we may have underestimated, and
5 we're certainly going to look at that. I would say,
6 though, the methodology that to us -- even if the
7 methodology yields a hundred people reporting is it
8 the right methodology or is there another? I mean,
9 would you prefer that we start at the beginning of
10 the supply chain and have people who make this good
11 or service report and contribute, and let them try to
12 determine whether or not their product is eventually
13 exported to a country that belongs to the CSC.

14 I mean there are different ways of doing
15 this. We thought this was the most efficient way of
16 doing it. If you think there's a better way of doing
17 it, we would like to hear that.

18 MR. BROOKMAN: And we'd like to begin
19 hearing it today, but to add on to what Ben already
20 said there's a basis here, correct, that they're
21 suggesting? There's a logic to the number they came
22 up with. And so it would be nice to know in addition

1 to where the records are kept what would be the basis
2 for determining this case. Go ahead, Dan.

3 MR. STENGER: I'm sorry. I don't mean to
4 belabor it, but I think what happened with that
5 number 25 is that that suggested there was something
6 wrong with the methodology. If you count correctly
7 the universe that's out there, and I think would be
8 readily available, it might give us more comfort that
9 the methodology is correct.

10 MR. BROOKMAN: I got you. Now I more
11 fully understand. And Ellen, I understand your
12 comments more fully as well. Omer, I thought you
13 were going to comment?

14 MR. BROWN: Well, I think that the number
15 of suppliers this applies to is the key issue. Once
16 we know how many it applies to, then we can look at
17 the other factors, but we really need to know that as
18 the threshold matter. I want to --

19 MR. BROOKMAN: As a threshold matter --
20 pardon me for interrupting you -- would you suggest
21 what the number should be? Dan, can you do it? Go
22 ahead.

1 MR. STENGER: We said in our 2010 comments
2 that it's anywhere between 300 and a thousand,
3 certainly not 25.

4 I wanted to comment on the timing issue
5 that has come up. We recognize that there is some
6 time pressure to get a rule out. The CSC will enter
7 into force on April 15. But as a practical matter,
8 assessments to member states would be months, if not
9 years, away from entering into force. I mean first
10 you have to have a nuclear incident in a member
11 state. Then you have to have actions brought. Then
12 you have to exceed 300 million special drawing rights
13 in claims, and then there's a call for funds. So,
14 there's no great urgency in getting this done by
15 April 15 or even in this calendar year. So, I think
16 we should take time to do it right and not rush into
17 anything.

18 MR. BROOKMAN: I'm sure the Department
19 appreciates that comment. I wonder if others feel
20 that way since we're on that subject.

21 I wish to obtain comment here for a
22 reason, of course. I'll start with David.

1 MR. BLEE: Sure. David Blee, U.S. Nuclear
2 Infrastructure Council.

3 I agree. I think this is a bit of a rush
4 to judgment, and we'll talk more about that later,
5 but I think, Ben, you said something about, well, you
6 know 25 really is not important. It is important in
7 the sense it really shows the flaws in the whole NOPR
8 because basically what you're saying is we followed
9 this logic trail, which I certainly understand, but
10 it's based on anecdotal information. And what you've
11 seen is that there's holes in the 810s. There's
12 holes in the 110 approach. And you weren't aware
13 really of the N Stamps.

14 And so, since people have been associating
15 themselves with food groups here, chicken and egg,
16 I'll go with that; or the other one was not soup yet.
17 I'm saying this is looking like Swiss cheese.

18 MR. MCRAE: I want to make one thing
19 clear. We were aware of certain facts. As I said,
20 we sat down with everyone who submitted written
21 comments on the Notice of Inquiry.

22 People brought up, and I have to say, as I

1 said, they were very helpful. Some people brought up
2 stuff like N Stamps. They also then brought up what
3 the problems would be of applying that. It's not
4 that we did not think about a number of approaches.
5 We went through everything that NRC, DOE, Commerce
6 had as far as a basis for identifying what would be
7 our initial group and we listened to people in those
8 meetings.

9 The one that seemed to be most appropriate
10 to us, and it wasn't Swiss cheese. It was talking to
11 a number of people who had expertise in this, using
12 what's the initial Part 21 seemed to us to be the
13 most appropriate starting point. Again, as I said,
14 now people are telling us we should -- maybe it's
15 those people who have an N Stamp should be the
16 universe that we start with. But again, we spelled
17 out the methodology.

18 On the 25, again, that number was there.
19 Quite honestly, I think a more relevant question is
20 could Company X know, if they followed the
21 methodology in the proposal would they be a covered
22 supplier? And again, when I read it, I thought that

1 a company could follow that logic and see if it was a
2 covered supplier.

3 If they can't, I think that would be
4 something that -- again, we will take into account,
5 as we develop a final rule, that perhaps N Stamps are
6 better than Part 21. I mean if that's what comes out
7 of these workshops and the comments, you know, we
8 certainly are not locked into something. We want to
9 get the best rule. But again, I just don't want to
10 leave the impression that we just picked this out of
11 the air. We spent a lot of time talking to you and
12 people within the government trying to come up with
13 this basis.

14 But we acknowledge there are probably a
15 dozen ways you could've done this and come up with
16 something. This is the one we thought was most
17 appropriate, but again, we are -- this is good,
18 though. This kind of discussion actually helps so
19 that we can understand more what we should be trying
20 to do.

21 MR. BROOKMAN: That's what we're trying to
22 do. Ted?

1 MR. GARRISH: Ben, I want to reply
2 directly -- this is Ted Garrish.

3 I want to reply directly to your point. I
4 don't think anyone is saying there is any problem
5 with your logic. I mean I think there will be issues
6 around individual terms, but generally speaking, I
7 think everyone can understand if they're a covered
8 supplier. So, you've done that well. I mean it's
9 crystal clear. I mean so I think that's not the
10 issue.

11 The issue really is the aggregate amount.
12 What is making the great unease for everyone is how
13 much they're going to pay, is what the assessments is
14 going to be, and that's going to be based on the
15 information that you all collect and how that
16 calculation is done, what the aggregate amount is and
17 how that calculation is made.

18 Now, all of the questions that you've been
19 asked really deal with the economics and the
20 specifics as to how you determine the aggregate
21 amount and there would be to me the acceptability of
22 the approaches would be eased dramatically if there

1 could be an understanding -- a better understanding
2 as to how many folks are in, how many folks are out,
3 roughly, what my maximum assessment is likely to be.
4 Is it insurable? We go to check with Marsh or
5 others, and we make some determinations.

6 So, what I'm really suggesting to you is
7 you have done a great job in your logic, and I'm not
8 criticizing that. It's what's lacking is how to deal
9 with the aggregate assessment problem to ease the
10 concern of how people are going to deal with their
11 corporate responsibilities. If they have
12 liabilities, they've got to report it to the SEC, and
13 these are things that have to be reported, but how
14 much do they report?

15 Now, obviously, if they don't know they
16 have to report a specific amount, but these are very
17 important questions. And the thing is I think
18 everybody wants to do work overseas, so they want to
19 know, basically, what is it going to cost me to go
20 into a country that has a CSC. It's basically what's
21 my maximum liability and maybe the insurer can help.

22 So, the issue that really you can help us

1 help you by trying to deal with the questions, and
2 it's not the questions about N Stamp or Part 21 or
3 any of those. It's really what's the aggregate
4 situation, economically, amongst all of the people in
5 this room and on the phone.

6 MR. BROOKMAN: And the Department has done
7 their diligence, to date, and put out a NOPR wherein
8 they suggest what they thought was appropriate. So,
9 now it seems it would be nice to hear from you what
10 you think would be appropriate. Go ahead.

11 MR. MCRAE: Just picking up on Ted's
12 question and what would be useful, we've asked this
13 question before, but I think now we have more clarity
14 and we have more -- certainly we have more people in
15 the same room at the same time than we've had before.

16 Again, I think when I read the proposal
17 last night again I thought there was clarity as to
18 what individual covered suppliers had to report.
19 Now, I grant you that right now I don't think there's
20 any system that covers in one place all of that
21 information so you could go and say this is the
22 aggregate number.

1 Are there places in existence now that are
2 publicly available where that information is
3 published? Are there places where we could go and
4 look or is this something that would need to be on a
5 new reporting form? And again, you all may know that
6 better than we do.

7 MR. BROOKMAN: Michael.

8 MR. KOLODNER: Michael Kolodner from Marsh
9 USA.

10 And I'd like to offer just a comment that
11 may be helpful. The clarity around who's in, who's
12 out, ultimately, I agree with the comments. I think
13 it is very clear. You can read through and you can
14 understand that.

15 Over time, as these liabilities build up
16 as you try to figure out who's in year after year,
17 you match that up with financial reporting or just
18 simply trying to understand it, there seems to be
19 some uneasiness around the timing of when you set
20 that aggregate exposure. At the end of the year, is
21 DOE going to issue a notice and say these are the
22 folks that are in, right, because that's very

1 critical to understanding exactly what your
2 percentage exposure is, is knowing who else is in the
3 class.

4 There are examples where this problem
5 exists. And we're talking the problem being this
6 extremely low probability event usually, absent the
7 CSC; we'd be talking about potentially very high
8 severity as well. Thankfully, with the CSC, we're
9 able to take that severity and we're able to put a
10 cap on it. So, we've eliminated the really
11 challenging part. Frankly, in the severity case the
12 biggest problem we have is really identifying the
13 total number.

14 The example I would like to provide, as
15 just one example of how this is done, is on the
16 generation side in the United States, under Price
17 Anderson, there is absolute, crystal clear clarity as
18 to how many individual licensees are exposed at any
19 one time to a secondary financial protection call.
20 And the methodology used by the NRC is proven. It's
21 efficient and it ultimately has helped contribute to
22 an as low as possible total cost of risk to the

1 industry.

2 MR. BROOKMAN: Okay. Well, thanks for
3 being specific. Ellen, did you wish to comment?

4 MS. GINSBERG: Yes. I'm not sure whether
5 I want to take this on or not, but Doug, it really
6 was a comment that you made, which said that there's
7 great expansiveness in the explanation and I don't
8 think we're arguing with that; but I think it's the
9 detailed nature of what we need to calculate. And
10 that's sort of putting a fine point on what was just
11 said. That can't be done.

12 MR. BROOKMAN: On the aggregate amount.
13 You referenced that earlier as well.

14 MS. GINSBERG: Yes, but you need to have
15 both. So, you need to know who's in the class in
16 order to determine that aggregate amount. So, it's a
17 two-pronged issue. And since we haven't really
18 covered the first prong, it's very hard to get to the
19 aggregated amount, but you need both.

20 MR. BROOKMAN: Yes. So, it would be great
21 today if we had additional thoughts on what those
22 numbers, the elements would be and the kind of

1 underlying premise or logic that supports it so that
2 DOE would have that as it considers how to write this
3 regulation.

4 I didn't get your name. Please say it.

5 MR. SCHOETTLER: I'm Jim Schoettler from
6 Centrus Energy.

7 I think there are two questions. One is
8 there's per capita issue, who those individual
9 companies are. And then there's another issue about
10 where you fit as far as the percentage that your
11 company will fall in, what bucket you fall into.
12 There are different percentages because every company
13 has the same risk thing.

14 So, in one sense, the Price Anderson is
15 helpful because it's easy to identify numbers and
16 reactors, but that's sort of looking at reactors all
17 as an equal -- they're an equal class of risk
18 centers, if you will, every reactor so they can all
19 share. This is different in that sense.

20 So, the question of whether or not -- how
21 we identify the number the problem, ultimately, would
22 be the final exporter we all know that if the final

1 exporter ends up being a freight forwarder that
2 wasn't the right party, and we all got that. So, we
3 do need to come down to some way of identifying the
4 numbers.

5 And I just think that we have to be
6 careful about using any system that is not designed
7 for this as a certainty. Export controls is a
8 different class of thing. N Stamp may be a different
9 class. So, that goes to the issue. And I'm not sure
10 we're prepared to give you -- and we'd love to give
11 you, want to give you that way of doing it, but I
12 don't know that we can do that today. But what I
13 think that what we can say is that if there was any
14 reason for us to take a little more time this is
15 certainly one of them to try to give you maybe some
16 comments on how could you do that, kind of figuring
17 out what's the right way. And it may have to be a
18 separate information collection exercise of some
19 type, who are the exporters in this country who
20 export to other countries and figure that out and
21 work that way.

22 But I do agree that, Ben, your rule is

1 very clear about who a final exporter is. That's
2 clear. The question is -- I think somebody else said
3 it -- if it ends up being a freight forwarder, then
4 that's not the right way to do it, I don't think.
5 Respectfully, that's not the right way to do it.

6 But having said that, I do agree, and I
7 agree with Ellen. We've got to do that. But once we
8 get the numbers I do want to make sure that once we
9 get numbers, like a hundred, 200, 300, it doesn't
10 mean we divide the number by 1/300th and that's
11 where everybody's -- I don't think that's quite the
12 way that's going to work.

13 MR. BROOKMAN: Okay. Thank you. That's
14 helpful, and so maybe if that's the sentiment in the
15 room. So, maybe we could briefly describe the process
16 for obtaining that information. Omer?

17 MR. BROWN: Omer Brown again.

18 People are using the term "aggregate
19 number" and I think we know what the aggregate number
20 is. You go on the IAEA website and you could come up
21 with the total. What we need to know is how it's
22 divided up among suppliers. We know what the total

1 is.

2 MR. MCRAE: Let me, so that I understand,
3 because I thought I understood what you were saying.
4 I thought aggregate number was the total amount --
5 and I don't want to use the term, but "revenue" or
6 whatever it is that we're using to be the bottom
7 number. And I guess on that if someone can identify
8 -- and again, this was what I was asking. If someone
9 could identify where we could find a surrogate for
10 that number now in existing information that would be
11 useful, or is it something that would have to --

12 MS. CAPOFERRI: I think they're talking
13 about a different aggregate.

14 MR. MCRAE: Are they talking about a
15 different aggregate.

16 MS. CAPOFERRI: This is Anita.

17 I think Ellen's comment is to the
18 aggregate of the suppliers that would be subject to
19 the premium, which is a different aggregate than what
20 Ben is discussing at the moment.

21 MS. GINSBERG: Yes. This is Ellen
22 Ginsberg.

1 If you look at your presentation, it's on
2 page 11. And I'm sorry that not everyone may have
3 this, but it's the retrospective risk pooling
4 program, Alternative 1, and that's exactly where
5 those numbers, those terms are identified. So, I
6 was focused particularly on risk shares as a function
7 of the nuclear supplier's risk exposure relative to
8 the risk exposure of all nuclear suppliers covered.

9 MR. BROOKMAN: All right, thanks for the
10 clarification. Dan?

11 MR. STENGER: And going to Ben's question
12 about whether there is a collection of data on sort
13 of the aggregate value of nuclear transactions from
14 which you could derive that aggregate risk exposure.
15 We did a top-level review of the literature that's
16 out there, and there really isn't anything we could
17 find that pulls it together. So, I think Jim is
18 probably right. What needs to be done, and we
19 certainly agree, we need to find a surrogate for that
20 number as part of the rule; otherwise, companies
21 cannot do what Ted was talking about; identify what
22 their potential liability is.

1 MR. BROOKMAN: Anita, go ahead.

2 MS. CAPOFERRI: I understand your issue.

3 Let me just make this comment. And then, of course,
4 you can provide additional commentary on that.

5 One of the ways we tried to address that,
6 and I think this was in response to earlier comments
7 we got, which was to propose a cap. The cap was, in
8 part, responsive to the earlier comment that
9 companies needed to know what the aggregate amount or
10 what their risk exposure would be for insurance and
11 other purposes. And that if there was a cap in
12 place, at least one could be assured that your
13 relative share would not exceed a certain amount.

14 So, that was part of the rationale for the
15 cap being proposed in the rule. The other thing we
16 tried to explain in the rule was the way the CSC
17 works and the amount that the U.S. Government would
18 be subject to. And admittedly, it's not a defined
19 amount at the outset right now until and unless a
20 nuclear incident occurs, but we gave the range at
21 which we thought the U.S. Government would have to
22 contribute under the CSC.

1 So, within that range and with a cap on
2 any individual supplier's premium payment was, at
3 least, the proposal for how to provide some level of
4 certainty in the amount of risk that any nuclear
5 supplier would be subject to.

6 MR. BROOKMAN: Please say your name.

7 MS. BERRIGAN: This is Carol Berrigan from
8 NEI.

9 I just wanted to echo a comment that Jim
10 made and that Dan made in terms of the availability
11 of information. And one of the things that I do a
12 fair bit at NEI is researching trade data. As far as
13 I've seen there's not a set of data that's been
14 collected that envelopes the entire spectrum of trade
15 that you're looking to capture in this.

16 You can look at U.S. Commerce trade data.
17 You can look at Department of Commerce trade data.
18 It's got elements of exports, but it's by no means
19 complete. So, I think there really is going to be a
20 challenge in terms of figuring out what that
21 aggregate number is because there isn't, as far as
22 I'm aware, a third-party source that you could point

1 to that would capture the breath of the types of
2 transactions you're looking at.

3 MR. BROOKMAN: So, if someone were to
4 pursue what Jim was suggesting, it would need to be a
5 separate call for data, a sort and sift sort of
6 enterprise. Jim, I thought you were next in the
7 queue.

8 MR. SCHOETTLER: I had a different point,
9 so we can continue.

10 MR. BROOKMAN: Dan?

11 MR. STENGER: Yes, this is Dan Stenger.

12 I know that there needs to be a call for
13 data. I think the first step would be to do -- DOE
14 could try to do the analysis themselves, get together
15 with the NRC on export licensing. You can find what
16 the transactions are. Those exports licenses do
17 provide some information on the value, as Jim said,
18 and those things are for a different purpose, maybe
19 not necessarily this purpose. But I think getting
20 together with the NRC, the Department of Commerce for
21 things that are in their jurisdiction would be a way
22 to start and see what you can come up with.

1 MR. BROOKMAN: Okay. Carol, please.

2 MS. BERRIGAN: I think that's a good
3 suggestion. I think Ben and his team have probably
4 done some of that already, but I think the challenge
5 is there are big holes in the available data. Is
6 something is exported under a general license for
7 export under 110 it may be unclear how much was done.

8 There are potentially services that are
9 provided that are outside of a Part 810 authorization
10 requirement, but still fall within the intent of what
11 DOE's outlined. So, I think you really have a bit of
12 a challenge because there isn't any place that would
13 capture, independently, this information.

14 MR. BROOKMAN: Jim?

15 MR. SCHOETTLER: I want to make sure that
16 we do make it clear. We would not be advocating that
17 you establish liability on the basis of revenue only.
18 It's a risk-based liability scheme, although I did
19 want to say that we look at the rule. I do think you
20 can say what the total exposure is. I mean because
21 you can calculate it based on the number of -- you
22 can calculate it based on the countries involved.

1 And they sort of have a liability, as a maximum. And
2 I think Anita mentioned that. And certainly, we
3 would support the idea of a cap, a cap is good. It's
4 a very good thing. I don't think anybody's going to
5 oppose that.

6 But I do think that you can come up with a
7 total amount and then it's just a question of how
8 many people are in the class, right, so then you come
9 up with -- I think whatever your scheme of collection
10 of information it's going to have to consider not
11 only trade, but then the nature of the contribution
12 to that trade to risk of a nuclear incident.

13 MR. BROOKMAN: And of course, they laid
14 out their two different approaches to that in the
15 NOPR. Can we comment on that today?

16 MR. BLEE: David Blee again.

17 I think there's a numerator and
18 denominator issue. I think at our last meeting in
19 this room the question was asked was Fukushima four
20 incidents or one incident, and they said you couldn't
21 provide any assurance whether it was one or four.
22 So, we're not sure what the total exposure is

1 actually.

2 MR. BROOKMAN: Ben?

3 MR. BLEE: Maybe you have an answer to
4 that.

5 MR. MCRAE: No. Ben McRae.

6 And I think this conversation is useful.
7 Again, just to understand the concern. So, the
8 information -- and I agree, it's the top number and
9 the bottom number. And the top number I would think
10 each company could have a rough estimate of what that
11 number would be for them, but in order to see what
12 that would be when you apply it to the amount of the
13 U.S. contribution to the CSC you would need to know
14 the bottom number.

15 And I think Carol got it right that we did
16 do a lot of research on this trying to see if that
17 number was -- that's why I asked. We were not able
18 to find one place or multiple places where we could
19 find, certainly, the exact information we would need.

20 I think one thing that might be useful are
21 there surrogates out there that you think would be
22 comparable to that number because I don't think we

1 could do the exact calculation based on the currently
2 reported information. It just doesn't match up
3 exactly.

4 MR. BROOKMAN: Michael?

5 MR. KOLODNER: Yes, Michael Kolodner from
6 Marsh.

7 There is a potential surrogate which you
8 could think of, and it may not be appealing to
9 everybody. And I'm not suggesting that this is a
10 methodology that you use, but there's an
11 understanding in the two methodologies that are used
12 that we're going to attempt to discriminate on the
13 basis of risk.

14 One alternative would be to not try to do
15 that because what we're talking about has such a
16 remote probability that there really is no way to
17 actually say who is or who is not going to be more
18 likely to be exposed to that risk. And so, on that
19 basis, the only thing one has to do is define the
20 class, and you don't have to allocate.

21 MR. BROOKMAN: Anita.

22 MS. CAPOFERRI: This is Anita.

1 Again, I understand your comments, but the
2 statute calls for a risk-informed formula. So, we're
3 trying to respond to that statutory --

4
5 MR. SCHOETTLER: And I do understand that.
6 I understand the challenge of that. That is a
7 risk-informed methodology. It's based on an
8 understanding of the ability to quantify and
9 discriminate risks. If you can't, then it's equally
10 acceptable to do that. And in fact, we do have
11 methodologies where that's been acceptable.

12 MR. BROOKMAN: Bob?

13 MR. TEMPLE: Bob Temple from Babcock &
14 Wilcox.

15 An overwhelming theme that you'll probably
16 hear from everyone in the room on the list to go back
17 to Congress for that would be one. The other one
18 would be having a hard cap, an absolute hard cap and
19 getting that in the statute. I think DOE can
20 advocate for that as a necessary element to come to a
21 coherent rule.

22 MR. BROOKMAN: Omer.

1 MR. BROWN: Omer Brown.

2 I was just coming back to Anita's comment
3 about being based on risk, but unfortunately,
4 reporting is based on dollars and the cost of
5 exports. It doesn't take into account the risk.

6 MR. BROOKMAN: But then there's a risk
7 feature, right, that gets applied; isn't there?

8 MS. CAPOFERRI: Yes. This is Anita.

9 The risk part comes in things like the
10 appendices to Alternate 1 that define certain items
11 of export that are subject to the rule and therefore
12 certain items that are not. And the ones that are
13 not on the list are not there because they don't have
14 the risk feature that the ones on the list do.

15 MR. BROOKMAN: Ellen, please.

16 MS. GINSBERG: Sorry. Can I clarify? So,
17 what you're suggesting, and I'm reading from 75080 on
18 the right-hand column. What you're suggesting is
19 that it has to be a reportable transaction to a
20 covered installation and you would be a final
21 supplier if you're covered by 110, 810, or 734; is
22 that roughly the way you're suggesting this works?

1 MS. CAPOFERRI: Correct.

2 MS. GINSBERG: Okay. Thank you.

3 MR. BROOKMAN: Thanks for the specificity.
4 It's helpful. Yes, Ben.

5 MR. MCRAE: This is Ben McRae again.

6 Going back to something Ellen said several
7 minutes ago on what you need to know to comment or to
8 evaluate the proposal, again, there are two aspects
9 to that, and I guess again it would be useful to hear
10 from the room.

11 Certainly, to apply the rule we need the
12 information to come up with the bottom number and the
13 top number, but, quite honestly, that will depend on
14 a number of factors that we don't know now that will
15 only be known in the future, such as how many
16 countries join the CSC, which companies have exports,
17 which companies don't. So, that number is somewhat
18 unknowable right now.

19 What I thought I heard you saying was that
20 you need to maybe not know that number, but you need
21 to know some number now that would allow you to
22 evaluate how much each supplier's exposure would be,

1 assuming that the information that we have now is the
2 information that actually reflects the situation that
3 might happen in 10 or 20 years, if there were to be a
4 nuclear accident then; is that --

5 MS. GINSBERG: Let me try and answer that,
6 although I think there are multiple questions
7 embedded in what you've just said.

8 MR. BROOKMAN: This is Ellen.

9 MS. GINSBERG: This is Ellen.

10 I think the bottom line here is really
11 very straightforward, and I think we're perhaps
12 making this more complicated by going around and
13 around.

14 The bottom line is each and every company;
15 at least the companies of NEI are interested in
16 making sure that they know what their exposure is,
17 more or less. Maybe not to the penny, but sufficient
18 so that they can either insure against it, or decide
19 to self-insure. And also, in terms of contingent
20 liability, know what they might need to report.

21 I think it's important that that range,
22 whatever that range is, be available because

1 otherwise I don't know how you evaluate whether or
2 not this is a reasonable approach or not. I mean you
3 need to have some basic understanding of whether you
4 owe 50 percent of that 67 million, roughly speaking,
5 or you owe 3 percent of that. There's a big delta
6 there. And that, I think, the really bottom line of
7 what the struggle in this room is.

8 And so, the question about certainty goes
9 to being able to figure out what that mathematical
10 calculation will yield for each company when it puts
11 its information into that formula.

12 MR. BROOKMAN: Dan, do you have a comment?

13 MR. STENGER: Yes. I just want to add
14 another very important part of this Notice of
15 Proposed Rulemaking that DOE has offered up two
16 alternatives that are quite distinct.

17 There's literally no way to evaluate the
18 relative merits of those two alternatives without
19 some estimate of that denominator number. If we're
20 missing something, let us know, but to try to do a
21 calculation for one sort of hypothetical company
22 under each alternative and you can kind of sort of

1 get to something with some gross assumptions, but I
2 don't know you meaningfully evaluate the two
3 alternatives.

4 MR. BROOKMAN: Okay. Jim.

5 MR. SCHOETTLER: I am wondering, and I
6 agree with what Dan's saying, although it does let
7 you know that there's a cap, and that certainly helps
8 you understand what your liability could be, but
9 there could be multiple incidents, of course, and
10 that sort of thing.

11 But I noticed you did have Appendix A and
12 B that listed these items. And what effort was made
13 to sort of go out and find out how you could find out
14 who supplies these items? I mean it looks like
15 you're looking at Part 810 and Part 110 as a way to
16 identify new exports in the nuclear field, but who
17 supplies these? I mean is there something -- is it
18 the N Stamp, maybe the N Stamp is the way to do that.
19 I don't know. Is that as a way of looking at who the
20 potential class -- but then you ask whether people
21 actually supply these to foreign customers or
22 not.

1 MR. MCRAE: I'm not going to go into that
2 question right now. The point I wanted to make, and
3 again, in developing this rule we were not concerned
4 as to what the effect would be on any individual
5 company. I mean what we were concerned on would it
6 be fair, would it be a rational system.

7 I can understand why individual companies
8 are concerned as to how it will affect them, but our
9 approach was to try to find an approach that
10 identified risk factors, that identified factors that
11 we could use to try to allocate among a universe of
12 companies which we kind of know who's in the
13 universe. We kind of know what you may have done in
14 the past. But quite honestly, this will be based on
15 -- a large part of this will be based on future
16 actions, both as to the scope of the CSC and what
17 companies do as far as providing goods and services
18 in the future.

19 So again, we're not trying to help or hurt
20 any individual company. So, from our perspective,
21 we're trying to come up with an approach. Again, I
22 understand, and to the extent we can be responsive so

1 individual companies can try to evaluate the affect
2 on them, we will try to do that. And we certainly
3 appreciate any information you can give us to help us
4 do that, but our approach was to try to come up with
5 looking at what we -- and again, on the risk factors,
6 we will certainly take that into account if they're
7 better risk factors. But again, our approach was not
8 designed we want this company or that company to pay
9 this amount.

10 We're neutral. We just want an approach
11 that responds to the legislation and what we hear
12 from you.

13 MR. BROOKMAN: Carol, comment?

14 MS. BERRIGAN: I had a question just to
15 probe a little bit, but it may be more relevant to
16 the next section. And it's really to better
17 understand the rationale for going back to 1960 for
18 reporting transactions. That's the next section, so
19 I'll leave that for the next session.

20 MR. BROOKMAN: Yes, but see if there are
21 comments on this stream of content here. I think
22 we've gained a lot of clarity.

1 Let me make a quick process note. Is
2 everybody okay? We took a break at 10:00 o'clock.
3 Do we need to take a break, or are we going to keep
4 plugging until lunch? Is that okay with everyone?
5 We can keep doing it? We'll keep doing it.

6 Dan, you have a comment here?

7 MR. STENGER: No, I just agree.

8 MR. BROOKMAN: Okay. Any other comments
9 in this last stream? We've identified some
10 individual sources. We've already zeroed in on what
11 the difficulty is the problem from the standpoint of
12 members in the room, individuals in the room,
13 companies in the room. Yes.

14 MS. ANGELINI: There was a discussion with
15 regard to surrogates and the inadequacies of
16 surrogates and I wondered if industry could identify
17 the best existing surrogates, given their inadequacy.
18 Thank you.

19 MR. BROOKMAN: Yes, please. Melissa.

20 MS. MANN: Melissa Mann with URENCO.

21 Sophia, are you asking about the issue of
22 the freight forwarders serving as a surrogate?

1 MS. ANGELINI: I was asking about the
2 existing regulations that we have referred to in an
3 attempt to reach the covered suppliers.

4 MR. BROOKMAN: Dan, it looks like you're
5 ready?

6 MR. STENGER: Dan Stenger.

7 I think the question about the surrogate
8 that Ben raised was the surrogate for coming up with
9 a reasonable estimate of the aggregate value for all
10 suppliers. And as Carol mentioned, there doesn't
11 seem to be existing information that pulls that
12 together. So, it's definitely going to take some
13 type of information gathering and analysis approach
14 to come up with some reasonable estimate that's going
15 to be really no better than a surrogate.

16 MR. BROOKMAN: Jim?

17 MR. SCHOETTLER: I was just going say I
18 think the comment only was that the existing expert
19 control licensing scheme may not get you all the data
20 you want. So, it sounds like you guys did do a fair
21 amount of looking and trying out to figure out what
22 this is. And the only alternate comment I would

1 suggest is it may be necessary, and I would probably
2 be the only one in this room to suggest it, but to
3 suggest that you might have to actually ask
4 separately -- and you have a list -- ask who is there
5 because I don't know that you actually know, based on
6 what you have out there from other government
7 sources, but you might. And they will have to
8 comment on that if we have an idea. And obviously,
9 we're not there yet to make those comments, but the
10 point is that using Part 110 and Part 810 by itself
11 is probably not going to be enough to identify. So,
12 that was the only point, whether that was -- but to
13 your point, Sophia, I don't know that I have one for
14 you off-the-shelf I could offer to you.

15 MR. BROOKMAN: Okay. Do you have any
16 additional questions at this point?

17 Okay, any other comments on this first
18 segment here, on first nuclear supplier, lead nuclear
19 supplier? We haven't talked about small nuclear
20 supplier exclusion, I don't believe. Thoughts,
21 comments -- yes, Omer?

22 MR. BROWN: I think one of the questions

1 we presented suggested that using the Small Business
2 Administration criteria would not be a good idea
3 because those are based on annual sales and current
4 number of employees. So, you could have a small
5 company that otherwise would apply as a small
6 business have done millions of dollars of work over
7 the reporting period, but not in the annual year.
8 So, it doesn't make sense to just use the SBA
9 criteria.

10 MR. BROOKMAN: One commenter suggested an
11 alternative. Did CIGNL suggest an alternative to
12 that?

13 MR. BROWN: We don't have an alternative.

14 MR. BROOKMAN: Other thoughts on the small
15 nuclear supplier exclusion?

16 As I recall, I thought that several of the
17 commenters were generally supportive of the notion,
18 but didn't know how to create a sensible threshold.
19 Yes. It might be useful to get that in the record.

20 MR. MCRAE: May I?

21 MR. BROOKMAN: Please, Ben?

22 MR. MCRAE: This is Ben McCrae again.

1 Just picking on what Omer said, and I
2 realize he said he didn't have an alternative, but
3 what I thought I heard was that rather than do it on
4 a particular year that we should focus on the -- I
5 guess at the time that the fund was triggered that we
6 would have some mechanism that would be looked at,
7 based on how many years the fund had been in effect?

8 Are we looking at some kind of aggregate
9 number? Is that what you're suggesting that would be
10 a better approach than just using something that is
11 based on annual figures? And if so -- but again,
12 both Omer and other people, it would be useful to
13 hear really at least if the small business is not the
14 right approach, at least what are the factors that we
15 should be considering in developing this kind of
16 exclusion?

17 MR. BROOKMAN: Omer, please.

18 MR. BROWN: Just to follow up on that, we
19 did have a question on this and said that an
20 alternative could be to have the average revenue from
21 export over some prescribed period in terms of goods
22 and services, but not just the SBA standards, which

1 are based on one year. I don't know what that period
2 should be, and we're going to talk about reporting
3 periods, which is another whole problem. But just
4 doing it for one year is not a good idea.

5 MR. BROOKMAN: Don't these companies that
6 are involved in the handling, transfer, export of
7 nuclear material don't they report that to someone?
8 Michael?

9 MR. KOLODNER: I can address that, at
10 least in part. I can offer that there are suppliers
11 out there today who do finance the risk they have,
12 independent of the CSC. They absolutely -- and the
13 way that risk is currently priced, a major component
14 for some of them, not all of them, is revenue. And I
15 can tell you that having assisted them for many
16 years, Marsh finds that that process is incredibly
17 challenging, volatile from year to year.

18 And what I can tell you is that I think
19 almost uniformly there is no standard process.
20 There's very little consistency, and it's a very
21 challenging thing to ask, when you say to somebody
22 what is the percentage of your revenue that ties to,

1 broadly speaking, nuclear sales. You can narrow the
2 question down a little bit, but what happens is,
3 ultimately, the contracts are more complicated than
4 that.

5 MR. BROOKMAN: Thank you. Yes, please.
6 Carol.

7 MS. BERRIGAN: Just sharing an
8 observation, which certainly I don't want to present
9 this as a position, but if the Department's goal in
10 having a small business exclusion is to prevent small
11 businesses from going under, not participating in the
12 industry, I think there are a number of things that
13 need to be sorted out in the rule before you can look
14 back at that in terms of how many companies scope and
15 what is the potential cap?

16 Those sorts of things I think need to be
17 answered before you can answer a question on what's
18 the level of a small business that could -- if I'm
19 interpreting your intention correctly of not creating
20 such a disadvantage to a small business that it would
21 leave the industry or go out of business altogether
22 that there are too many other open questions to

1 answer that. I'm not sure what others think, but
2 that's just the sense I get in listening to the
3 discussion.

4 MR. BROOKMAN: Additional thoughts here?
5 Nothing additional? What should we take up next?
6 Should we go to reporting and information collection
7 requirements? Let's do. I'm thinking maybe there's
8 a sequence here that might be sensible, but in the
9 absence of that let's go to reporting and information
10 collection requirements, the first element being
11 timeframe of reporting.

12 Omer, I think that you say you have issues
13 with this?

14 MR. BROWN: Omer Brown again.

15 Part of the rule would require reporting
16 back to 1960, which is just impractical because a lot
17 of companies are not going to have records going back
18 that far. I'm told that particularly revenues, I
19 mean, they may have some information about what was
20 exported, but they haven't maintained the financial
21 information and are not required to do so under IRS
22 regulations.

1 So, that information for a lot of
2 companies is not going to even be available. And
3 then if it's available for some and not available for
4 others, how do you deal with that? How do you treat
5 everybody equally? It's just a period of time that
6 is completely impractical.

7 MR. BROOKMAN: Would you suggest an
8 alternative?

9 MR. BROWN: Something closer to the date
10 the statute was adopted would make more sense.

11 MR. BROOKMAN: I thought in the NOPR the
12 logic was clear that this is when many of the --
13 especially, those individuals who would be lead
14 nuclear suppliers, whatever the term would be, that's
15 when a lot of this activity commenced.

16 MR. BROWN: It may be, but parts may have
17 been replaced over the interim so that the risk
18 would've been reduced because there would be newer
19 parts. I mean I don't think you can just say that
20 during this reporting period things were more risky
21 or less risky or whatever. It's just impractical.
22 And then you get into the issue of how do you deal

1 with mergers, acquisitions, bankruptcies, technology
2 transfers, joint ventures. It gets very complicated
3 when you're going back 50 years.

4 MR. BROOKMAN: Is there another timeframe
5 you'd suggest?

6 MR. BROWN: I'm just throwing out for
7 discussion the idea of when the statute was adopted.

8 MR. BROOKMAN: Other thoughts on
9 timeframe? Bob, please.

10 MR. TEMPLE: Under what standard were you
11 looking to have companies certify that the
12 information that you're getting is complete and
13 accurate, given the difficulty of finding records
14 that date back that far?

15 MR. MCRAE: And again, I think we would
16 need to think more about your question. I assume
17 that when people are given reporting requirements
18 they make a good faith effort to comply with those
19 requirements. But again, I think before we would get
20 into exactly what we might look to I think we would
21 first need to know what it is that we are collecting
22 and have comments from you as to the feasibility.

1 But again, as the proposal indicated, we
2 had thought that part of the risk that is covered
3 comes from existing plants and that it would be, at
4 least there could be an argument that to be equitable
5 we would need to capture those existing plants. I'm
6 not sure that that's required by the statute. I
7 don't know that there's any starting point that is
8 mandated. We could just make -- you know, you could
9 have a continuum from going all the way back to the
10 sixties to having it begin the day the rule becomes
11 effective.

12 Again, I think it would be useful to hear
13 from as many of the entities as possible as to your
14 views on this since, again, it could potentially
15 affect the mix as to which companies might bear more
16 of the burden. Although, if you have caps that may
17 actually eliminate a lot of that issue anyway.
18 Again, if you think that the issues with going back
19 to 1960 or 1980 outweigh any equities that might be
20 addressed by that, you know, that is certainly
21 something we need to hear.

22 So far, I think the comments have

1 indicated, at least most of them, that it may be
2 difficult to go back that far and collect the
3 information. But again, it would be very useful to
4 hear from the entities here on what you thought.
5 Thank you.

6 MR. BROOKMAN: Michael?

7 MR. KOLODNER: This is Michael Kolodner.

8 I'd like to offer one comment, which is
9 the probabilities that we're dealing with here are so
10 remote, right? What you're touching on and I think
11 what you're hearing with the timing question is what
12 is the difference between someone who's 10 times more
13 likely to have an event or be held liable for an
14 event as respect to somebody who's one-tenth of that.

15 When you're talking one over several
16 million being ten times or a hundred times or a
17 thousand times more likely, it's still zero when you
18 compare it, right, so I think that's one of the
19 reasons when I suggested that a risk-informed formula
20 that actually doesn't seek to differentiate to that
21 level of granularity is, in fact, a risk-informed
22 formula.

1 MR. BROOKMAN: Dan?

2 MR. STENGER: I just echo that in terms of
3 a question to throw out there for discussion as to
4 what level of detail do you need information, or is
5 it possible to use ranges or something like that to
6 come up with a more qualitative, yet still
7 risk-informed approach.

8 MR. BROOKMAN: Okay. I see a few heads
9 nodding. Do we have any additional thoughts on this
10 stream? Yes, Mary Alice?

11 MS. HAYWARD: This is Mary Alice Hayward
12 with AREVA.

13 Just echoing a lot of the comments
14 regarding the frequency of the reporting and the
15 burdensomeness of that reporting, I'd like to better
16 understand why there is potentially an annual
17 requirement versus once every five years or at the
18 time of the incident this reporting would become
19 required.

20 As Marsh has indicated, there is a window
21 that from the time of incident to the actual time of
22 potentially tapping to the retrospective risk pool

1 that you could collect that reporting at that time
2 and make that assessment. Now, there may be some
3 flaws in that from a practical matter, but for us an
4 annual 1960s era level type of reporting is
5 essentially incredibly burdensome such that the
6 potential for not being able to comply is very much
7 out there, and that's a big concern for us because we
8 want to comply.

9 MR. BROOKMAN: Thanks.

10 MR. MCRAE: This is Ben McRae.

11 Could we follow up on that because, again,
12 at least when we have been thinking about reporting I
13 guess at least I see a difference between reporting
14 prior events and reporting going forward.

15 I can understand the concerns about going
16 all the way back to 1960. I think it could be done.
17 Again, as I said, we are certainly open to hearing
18 what people say and whether or not it is something
19 that, when we look at it, we need to do.

20 Going forward, I would think, and again,
21 I'm sure were you suggesting a report once a year,
22 once every five years, or not until or if there is a

1 call for funds. Again, and certainly, this would be
2 something I hope that people in the room will give
3 their views on.

4 It would seem that having an annual report
5 going forward would at least not be that burdensome
6 if you knew this is the information you have to
7 report. And it would eliminate the problem that,
8 hopefully, if we don't ever have an accident, but
9 it's 30 years in the future we don't have the problem
10 of people saying how can we go back 30 years.

11 If they had reported ever year, there
12 would be a record that we could -- but again, this is
13 something it would be useful to hear from you all on.

14 MONICA: Ben, this is Monica from
15 Westinghouse. I'm sorry to interrupt. I was trying
16 to raise my hand on the web thing and I'm not sure if
17 it's working.

18 One of the issues with going back to 1960,
19 and this may have been raised in some of the
20 questions that were submitted beforehand. You know
21 there've been a lot of mergers and acquisitions along
22 the way and there've also been transfers. So, I'm a

1 little concerned as to how some of that would work.
2 I think that's another issue that needs to be taken
3 into account.

4 MR. BROOKMAN: Okay. Thank you Monica.
5 Jim?

6 MR. SCHOETTLER: I think my question is I
7 think there's only one -- as I understand it, there's
8 only one big, retrospective look and then everything
9 else is just a year at a time. Okay. Fine. I'm not
10 saying we agree or we disagree. I'm just saying we
11 understand it. Okay, that's fine.

12 Now, the question is it seems to me, as I
13 look at what you're asking for in the report, it's
14 places you've supplied, quantities you've supplied.
15 For some reason you ask for value. I don't
16 understand where you're going to use the value
17 information. It might give us some clarity as to
18 saying, yes, I know I supplied -- you know, I may not
19 know down to the boat level, but I know what I
20 supplied to these reactors or these facilities.

21 What are you going to do with this because
22 this information is interesting? You collect

1 information, but it's only the lead nuclear supplier
2 or the final nuclear supplier, whatever it is, that's
3 actually going to be the one visited with the
4 liabilities. So, my question to you is if you're
5 going to collect this information from everybody what
6 is the use of it from people who aren't in that
7 category of final nuclear supplier? What are you
8 going to do with it?

9 MR. BROOKMAN: Anita, you want to comment
10 on that?

11 MR. SCHOETTLER: Just to be clear, as I
12 read this, the information collection requirement is
13 for covered -- you go to covered nuclear suppliers
14 and you ask them to supply, but the covered --
15 somehow it seems like it's a broader category of
16 people you're going to ask the question that actually
17 end up being in the category of final. Have I got
18 that wrong?

19 MS. CAPOFERRI: You're right. It starts
20 with covered nuclear supplier, and then it has to be
21 the items -- if you're talking about Alternative 1,
22 for example, then it has to be the items that are in

1 one of the appendices that you would report on. So,
2 you'd have to have met the test for basically a final
3 nuclear supplier, which means you exported the items
4 in one of the appendices in the covered nuclear
5 supplier and to the installation. So, it does narrow
6 those who have to report.

7 MR. SCHOETTLER: As I read it, and I may
8 have read it wrong, I thought if you were a covered
9 nuclear supplier, which is not necessarily a final,
10 you had to report, and so you reported. And then
11 from those covered nuclear suppliers then there was
12 going to be identified a subcategory of finals and
13 those are the ones that are going to be actually
14 visited with this, and I may have been wrong. So, I
15 just wanted to clarify that.

16 So, as I read through it, I just wondered
17 it ultimately, you know, why isn't the data you're
18 collecting from the covered nuclear suppliers helping
19 you to identify the final nuclear suppliers. You
20 know the suppliers who end up being in the class?

21 MS. GINSBERG: This is Ellen.

22 I think it would be very helpful, going to

1 Jim's question, to differentiate between how you plan
2 to use the final nuclear supplier and how the lead
3 nuclear supplier fits into your calculation. So, I
4 think that's causing confusion and that would be very
5 helpful if you could explain that.

6 MS. CAPOFERRI: I might have to take that
7 under consideration. Let me think about that a
8 second.

9 MR. BROOKMAN: Ben?

10 MR. MCRAE: Again, just not to leave the
11 subject prematurely, again, does anyone else have any
12 views as to whether or not we need to go back, or
13 prospectively, or how far back we need to go, or any
14 preferences?

15 MR. BROOKMAN: Jim?

16 MR. SCHOETTLER: This is Jim Schoettler.

17 I can say that our preference would be to
18 capture as many other suppliers as you could capture.
19 So, certainly, for us, we're not opposed. I speak
20 only on behalf of my company, but we're not opposed
21 to that. But on the other hand, we're also very
22 mindful. It's a huge, very burdensome, and I really

1 appreciate the comments people are making, and it's
2 burdensome, including for everybody. So, I do think
3 that's a problem with the rule.

4 MR. BROOKMAN: Omer.

5 MR. BROWN: Well, in some cases it's not
6 only burdensome. It's impossible because I'm told by
7 one member of CIGNL that these records just don't
8 exist. They haven't maintained them, so they're not
9 going to be able to report. So, you're going to get
10 some companies that can report and some that can't.
11 And then how do you equitably treat everybody when
12 some people can't report?

13 Another point on reporting, it's not a
14 critical point, but at some point we need to get a
15 list of covered installations because I'm told by
16 IAEA that that information is only given to the
17 member states of the CSC and it is not otherwise
18 publicly available. So, we really would like to see,
19 at some point, a list of the covered installations
20 that's been supplied to the U.S. Government by the
21 IAEA.

22 MR. BROOKMAN: Ben?

1 MR. MCRAE: Just on Omer's question,
2 that's something we would have to look into because
3 as some of you may know, the IAEA is somewhat
4 uncomfortable with the disclosure of information
5 that's reported to them confidentially. So, again,
6 I'm just not sure how far we could go with giving out
7 information that was reported to the IAEA, even if it
8 was given to us because we certainly wouldn't want
9 some of the information that we supply to the IAEA in
10 confidence being revealed by other countries.

11 MR. BROOKMAN: Carol?

12 MS. BERRIGAN: Ben, I'm sorry. I'm
13 confused. I was under the impression -- I'm sorry.
14 This is Carol Berrigan from NEI.

15 I was under the impression at some point
16 the IAEA would post a list of these facilities
17 because part of my read of the rule was that we were
18 to report exports to the covered facilities. So, if
19 we don't have a list of those covered facilities, how
20 can you report?

21 MR. BROOKMAN: Omer, a follow on?

22 MR. BROWN: Omer Brown again.

1 I have checked with IAEA on this, and
2 there's a requirement in the convention that as
3 members join the convention they have to give a list
4 of the covered facilities to the IAEA, and that has
5 to be updated as needed. And that that list is then
6 given to the other member states.

7 And I asked the head of the IAEA legal
8 office whether we could have access to that list, and
9 she told me, no, that this was given to the member
10 states, but that it couldn't be given to anyone else
11 by the IAEA. We didn't get to the issue of whether
12 the United States could disclose them to interested
13 parties.

14 MR. BROOKMAN: Bob?

15 MR. TEMPLE: We had earlier identified
16 challenges with understanding who even needed to
17 report their historic sales. We've now identified a
18 challenge with being able to understand what those
19 sales are, whether or not you've sold to a covered
20 installation. Then there's the issue of how do you
21 challenge back if you get told your number is 25. I
22 don't think my number is 25. I think it's 14. How

1 do I challenge it and what's the dispute resolution
2 that's available to challenge both the allocation of
3 liability and the assessment that's made on that
4 company?

5 MS. CAPOFERRI: This is Anita.

6 If we can just table just for the moment
7 the second part of your question because I think it's
8 on our agenda in a slightly different area, but let
9 me try and go back to the reportable transactions,
10 and I'll try Alternative 1 first. And at the risk of
11 raising the ire I will draw from all of you, I will
12 explain the way it works.

13 The reportable transaction of those who
14 need to report under the reporting requirements of
15 their reportable transactions are not limited to
16 reporting on exports to covered nuclear installations
17 if the requirement is to nuclear installations
18 abroad. And it is for those suppliers that fit the
19 definition of covered nuclear supplier, which means
20 they've otherwise been -- you know their goods would
21 be subject to Part 21. And it's for exports of items
22 that began using the first alternative. It's going

1 to be the entity that got the export license under
2 110 or 810 or the Commerce regs and is exporting
3 those types of goods or services that fall under
4 Appendix A or B.

5 So, that's the reporting requirement and
6 who needs to report, and then that information is
7 then used if or when a nuclear incident occurs at a
8 covered installation to go back and then assess the
9 premium payment per nuclear supplier based on the
10 suppliers to covered installations.

11 So, the premium payment works a little bit
12 differently. So, the reporting requirement is a
13 broader requirement than the risk premium payment
14 formula, if that makes sense. I know you might not
15 like it, but that's the way it works.

16 MS. BERRIGAN: I just want to ask a
17 clarifying question. So, I followed what you said.
18 Let me give you a three-part communication, make sure
19 that I'm repeating back to you to make sure I
20 understand what you said.

21 So, if you exported something that is in
22 those appendices to any other country, you report

1 that to DOE. If there's an event at a covered
2 installation -- and this is where it got muddy -- DOE
3 determines who exported to a covered installation?
4 Is that part of the reporting every nut, bolt, and
5 widget to each installation that it went to?

6 MS. CAPOFERRI: The logic is, if a
7 supplier reported on a nuclear installation to which
8 it exported a good or service DOE would have that
9 information. And then when a nuclear incident arose
10 at a covered installation, then we could go back and
11 look at the records and know which supplier supplied
12 to the country with the covered installation.

13 So, we would have more information on
14 exports to nuclear installations so that when or if
15 that time came then you could see the exports to the
16 covered installation.

17 MS. BERRIGAN: So, from a transparency
18 standpoint, how would an exporter know what their
19 potential liability is at any point in time without
20 having that list and --

21 MR. MCRAE: Can I?

22 MS. CAPOFERRI: Yes.

1 MR. MCRAE: This is Ben McRae.

2 And I think the answer, and it's perhaps
3 not satisfying to everyone in the room, including me,
4 but that since the rule does the allocation at the
5 time that there's a call for funds that would be
6 based on which countries are members of the CSC at
7 that point in the future. And basically, that
8 requires the reporting requirement, assuming that the
9 reporting requirements is not that people keep good
10 records and then they report if there's a call for
11 funds, but that human nature being what it is it's
12 better to have people report when the information is
13 fresh, so we have them report each year.

14 And so the reporting requirement, as Anita
15 said, would be broader than what probably would be
16 the basis for the allocation. To make sure that we
17 had all the information reported, it would cover the
18 type of exports that are covered to all countries and
19 to all facilities that might be a covered facility.

20 Then we got to the call for funds, DOE
21 would have to go back and pull out the information
22 that related to those countries which were members of

1 the CSC at the time of the nuclear accident and which
2 of the facilities that were covered that the exports
3 went to were on the list of covered facilities that
4 we had from the IAEA.

5 So, we would have all the information we
6 needed to do it. I think you can make some rough
7 estimates as to what your exposure would be based on
8 which countries you thought were likely to be members
9 of the CSC in the future. And I think, by and large,
10 the covered facilities are reactors, research
11 reactors. There are not a huge number of other
12 facilities that are covered outside of reactors. But
13 again, there wouldn't be complete certainty, but I
14 think you could make relatively well-informed
15 calculations or estimates.

16 MR. BROOKMAN: Melissa.

17 MS. MANN: Melissa Mann with URENCO.

18 This is fairly fundamental because at no
19 point in my read of this did I think that I would not
20 know what a covered installation is, and so I would
21 encourage, at a minimum, encourage the U.S.
22 Government to seek the permission of the IAEA to

1 release that information because one of my mitigating
2 strategies at a very high level could be that we opt
3 not to export anything to a covered installation.

4 That may not be the best answer, overall,
5 but that is one strategy we might pursue. And then
6 it goes to the question of how we otherwise address
7 our roughly calculated risks. So, I think that's
8 fundamental for this system to work that we know what
9 entity, which facilities overseas is on that list,
10 not my guess of what I think some other country put
11 on the list.

12 MR. BROOKMAN: Thank you Melissa. Jim?

13 MR. SCHOETTLER: Yes, I was going to ask
14 the one thing that -- and I completely endorse what
15 Melissa said. I think that's exactly a good concern.
16 And I think from what Ben was saying -- what you're
17 saying, Ben, is that assume every single reactor in
18 the CSC countries -- maybe you could assume that and
19 maybe there's some way you can provide more clarity
20 is there only in letting us know whether or not it
21 appears, just like in the safeguards area, whether
22 there's some undeclared facilities or something.

1 I don't know that's going to be applicable
2 in this case, but we'd like to know at least more
3 about that, but I do agree. I think that to make
4 this rule work, quite honestly, covered installations
5 has to be defined in some fashion so you can identify
6 it.

7 But that's not my main comment. My main
8 comment was I understood from what Anita was saying
9 is that when you actually do the assessment you're
10 going to look at who the suppliers of that particular
11 facility were, or is it going to be you're in a class
12 of exporters and we're going to differentiate between
13 exports who supply risky facilities versus less risky
14 facilities like you can distinguish reactors versus
15 other kinds of things, or you're going to distinguish
16 between suppliers who supply more risky goods than
17 less risky goods, or is it you're just going to just
18 actually look at who supplied this one because the
19 accidents are likely to happen in places that no
20 American has ever actually supplied, right?

21 Because what if the Russians join or the
22 Chinese -- no, the Chinese is different, but if the

1 Russians joined or some other group that has a design
2 that no American would have actually supplied to we,
3 of course, are going to be called for that and you're
4 going to turn to the industry and expect us to pay
5 for that. So, how are you going to do it in that
6 particular case? And I may have misunderstood what
7 you were saying.

8 MS. CAPOFERRI: And I might not have been
9 clear.

10 MR. BROOKMAN: Anita.

11 MS. CAPOFERRI: Yes, we'll be looking at
12 the exports to the countries that are part of the
13 CSC, which country the incident occurs in amongst
14 those groups would not be the relevant criteria. It
15 would be the countries that's in the CSC collectively
16 and exporters to all of those countries, not just the
17 country that it might occur in.

18 MR. SCHOETTLER: Thank you.

19 MS. GINSBERG: Anita, this is Ellen.

20 So, I don't think that was the way it was
21 understood when you first described it. And I think
22 critically important, what you're really referring to

1 is whether it's \$67 million as sort of the aggregate
2 amount or -- what is it, 158 or so -- and that's the
3 number that would be affected by the number of
4 countries that are participating.

5 MS. CAPOFERRI: Yes.

6 MS. GINSBERG: Okay, that wasn't clear
7 from the initial comments.

8 MS. CAPOFERRI: I apologize.

9 MS. GINSBERG: No problem.

10 MR. BROOKMAN: Mary Alice.

11 MS. HAYWARD: This is Mary Alice.

12 I'm going to be confused. Then the issue
13 of a discussion with the covered facilities and the
14 fact of the IAEA, for understandable reasons, will
15 not make that publicly available, I'm now confused
16 because what I thought I heard, and I think I
17 misunderstood, is that you would collect the whole
18 blanket of information -- not you, DOE. And then
19 when something happens in CSC Country A there's a
20 covered facility "X" that blows up. Only the people
21 who exported to "X" would be assessed. That's not
22 what you said. Okay. Good.

1 Everyone who exported to Country A where
2 covered Facility X would be in or the incident would
3 take place would be assessed. That is my confusion.

4 MR. MCRAE: They would be certainly
5 assessed, but this, I think, if you look back and you
6 actually look at the legislation we view this as an
7 insurance policy. And basically, as an insurance
8 policy people are paying a premium that if something
9 happens to them they're covered, but that premium
10 also covers situations that maybe your neighbor's
11 whose roof gets blown off. Your premium is used,
12 ultimately, to cover all those situations. But
13 again, there are risks factors that may affect what
14 premium you pay.

15 But as far as the coverage, at the time --
16 let's say that in 10 years we have -- today let's say
17 the CSC is in effect now, will be soon, but let's say
18 it's in effect now and the rule is in effect. This
19 year people report information on the countries which
20 are members. Let's assume that Canada and India are
21 a little bit slower in ratifying and they don't
22 ratify until next year. You would have reported on

1 your exports to Japan because they're a member. You
2 would have reported your exports to India and Canada
3 because they say they're going to ratify soon. But
4 you also would be reporting to France, which has said
5 we have no intention of doing it this year or next
6 year or maybe ever, but you will still report on
7 those.

8 There's a nuclear accident in five years
9 and it's in India. We would go back and look at the
10 information that's been reported for five years. We
11 would look at -- now we have seven countries, let's
12 say, so our universe is based on U.S., Argentina,
13 Morocco, Canada, India, Japan, whoever. And we look
14 to see what was reported for those countries and what
15 installations in those countries are on the list, the
16 IAEA list.

17 Every supplier, even if they never
18 reported to any of those countries, even if your
19 export was to France, we would take that -- well, if
20 your only export was to France, then you wouldn't be
21 in. But if you had exports to any of those seven
22 countries, you would be in and it would be based on

1 your exports to those seven countries even though in
2 Year One two of them were not members of the CSC.

3 We would take the information from Year
4 One for India and Canada and use that because at the
5 time -- so we would have all the information we
6 needed, even though in Year One if you were just
7 reporting on CSC countries you would've reported on
8 five. That's why we would need reports for everyone
9 because we don't know who would be members of CSC in
10 the future when the accident would occur. Have I
11 made it more confusing?

12 MR. BROOKMAN: And if I understand this,
13 and Anita, you can clarify this. If you were a
14 supplier and you were exporting and there was an
15 incident in one of those countries for which you
16 supplied, then you would be a part of -- would you
17 call it a risk pool? And you would -- go ahead.

18 MS. CAPOFERRI: I'll try again. And
19 obviously I'm getting the information that this is
20 not clear, so comment.

21 You report on the totality, let's say, of
22 your exports to nuclear installations, which I would

1 say in reply to the comment about what's a covered
2 installation. Although we don't have the precise
3 list, via the IAEA, we have defined what think a
4 nuclear installation is and therefore what would be a
5 covered nuclear installation, and that is in the rule
6 and that's taken from the CSC itself. So, I think
7 there is at least, not by name, a facility, but by
8 type we have identified the nuclear installations.

9 MS. BERRIGAN: Anywhere in the world, not
10 just CSC countries, but anywhere?

11 MS. CAPOFERRI: That's for purposes of the
12 reporting requirement. So, a nuclear supplier
13 supplies to 15 foreign countries. You would report
14 on those 15 transactions that, again, for which you
15 were the final nuclear supplier, for which they were
16 items on Appendix A and B, and you'd report the
17 information of the sales volume or the quantity, the
18 date and the nuclear installation, so you report on
19 all of that.

20 If there's a nuclear incident, and this is
21 five years down the road, and we know which countries
22 are members of the CSC. And if there's a nuclear

1 incident in one of those countries, any one of those
2 countries we would go back to the reporting data and
3 figure out which nuclear suppliers supplied to any of
4 those countries which are CSC members to then be able
5 to apply one of the formulas to say what was the
6 value of the transactions of all the nuclear
7 suppliers to those countries, all of their
8 transactions to apply one of the formulas and figure
9 out individually how much each -- the pro rata share
10 for each nuclear supplier to those installations.

11 MR. BROOKMAN: Both the value and applying
12 the formula's risk calculation.

13 MS. CAPOFERRI: Right.

14 MR. BROOKMAN: Right. Okay.

15 MS. CAPOFERRI: So, we would take a subset
16 of the entirety of those.

17 MR. BROOKMAN: Mary Alice?

18 MS. HAYWARD: Just a quick one, and this
19 may address some of my colleagues. A mitigating
20 strategy would be not to export. Correct? If you
21 did not want to report and not contribute to the pool
22 and not play a mitigating strategy would be don't

1 export.

2 MS. CAPOFERRI: A mitigating strategy for
3 not being subject to this rule.

4 MS. HAYWARD: Correct.

5 MS. CAPOFERRI: Yes.

6 MS. HAYWARD: Okay.

7 MR. BROOKMAN: And Melissa, please, go
8 ahead.

9 MS. MANN: Melissa Man with URENCO.

10 Anita, the articulation you just gave on
11 the reporting side, so let's assume you got that data
12 and then you go to looking at the risk methodology.
13 Is it only at that point that the concept of a
14 covered transaction then gets applied?

15 MS. CAPOFERRI: Correct. Because then you
16 would know what --

17 MS. MANN: That goes into the individual
18 -- so, at that point I do get back to whether my
19 company has exported to that specific installation or
20 not, not just to the country in question.

21 MR. BROOKMAN: Anita.

22 MS. MANN: Well, help me understand the

1 concept of when covered transaction applies.

2 MS. CAPOFERRI: It's going to apply when
3 we get to the point where there's a nuclear incident.

4 MS. MANN: Right.

5 MR. BROOKMAN: Patricia?

6 MS. CAMPBELL: Okay, on that particular
7 point, so you said that you know which country is a
8 member, if an incident occurs in a CSC country, if we
9 supplied anything to that country or if we supplied
10 anything to any CSC country at that point?

11 MS. CAPOFERRI: Any CSC country.

12 MS. CAMPBELL: Any CSC country at the time
13 an incident in any of those countries occurs, so it
14 may not have anything to do with that country even.

15 MS. CAPOFERRI: Correct. In some ways
16 similar to the way the Price Anderson Act works in
17 that an incident at any one nuclear operator you
18 might have the other nuclear operators contribute to
19 the premium payment even though -- I'm just saying by
20 rough analogy it's a similar concept of if you
21 supplied to any one of the CSC member states and
22 there's an incident in any one of these CSC member

1 states at a nuclear installation that is covered by
2 the CSC and by our rule, then all suppliers to all of
3 those states for those transactions to those member
4 countries would then be the aggregate pool of
5 suppliers that would then be the aggregate number in
6 the risk formula. And then, individually, of course
7 you could then figure out the pro rata share.

8 MR. BROOKMAN: Carol, and then to Ellen.

9 MS. BERRIGAN: I'm just going to make an
10 observation based on the discussions. It sounds like
11 you're interested in collecting data on potentially
12 tens of thousands of transactions that you may never
13 have a use for because those countries are not likely
14 to become part of the CSC.

15 And in thinking about some of the concerns
16 that our members have expressed in terms of the
17 burden of collecting this information, have you
18 considered how that will impact the community
19 affected, but also how much of that information you
20 really need to develop an equitable distribution? I
21 don't envy the position you're in. You're in a tough
22 spot on this, but have you considered that? I mean

1 you're sort of talking about France as an example,
2 but there's a lot of U.S. nuclear trade with France
3 or the UK or other countries that may never join the
4 CSC. So, that's a lot of reporting and data
5 collection that may not ever have a use -- just an
6 observation.

7 MR. BROOKMAN: Ellen, you want to comment
8 here?

9 MS. GINSBERG: Yes, I think the discussion
10 is emblematic of the real confusion that the rule's
11 created in not explaining what you've just describe,
12 Anita, as my understanding, frankly.

13 I read the rule multiple times and I never
14 came away with sort of the global and the reduction
15 to or the decrease to just focus on the CSC
16 countries. I think one question you might ask
17 yourself is whether -- and it goes to what Carol was
18 saying -- whether you could reduce the scope of what
19 you collect to just CSC countries. That's one
20 question.

21 The other suggestion is if you're going
22 the route you described this morning it has to be

1 much better explained -- much more expansively
2 explained because I think everybody around here are
3 making the comments their making because no one
4 derived that way of applying the formula as you
5 described it.

6 MR. BROOKMAN: Jim?

7 MR. SCHOETTLER: I agree with that. I
8 think the key here is probably just for some
9 examples, I think, as I understand it -- I think I
10 have understood the covered transaction is determined
11 at the time of an incident so that if those are
12 reportable transactions with the CSC countries at the
13 time of the incident that for which a call for funds
14 is being made, if I understand it correctly.

15 So, it's not transactions with just a
16 country or just the installation where the incident
17 occurs. It's the transactions with all of the CSC
18 countries at that particular moment. And in
19 preparation for that you're collecting information
20 basically to make it available when you need it
21 because you don't know when an incident is going to
22 occur. I think that's right. And I'd ask if that's

1 wrong or right.

2 And the second thing is putting aside this
3 confidentiality issue, one way around it is simply
4 you're asking for data collection on specific
5 installations. Can't you just publish a list of what
6 you want? I mean in your role as a government you
7 can list the transactions. You want to know about
8 transactions with these installations.

9 Whether or not that's based on your
10 interpretation of what the CSC requires, whether it's
11 based on what the IAEA told you, it seems to me at
12 any given moment you're going to have to tell us what
13 installations you're talking about because a reactor
14 is alone -- by just saying "reactors" it may not be
15 exactly 100 percent clear as you go, but that's a
16 mitigation comment, technical detail.

17 I just want to make sure my understanding
18 of what a covered transaction is. It's a class of
19 CSC countries transactions as of the time of an
20 incident, if I'm hearing you right, with the covered
21 installations.

22 MR. BROOKMAN: Michael?

1 MR. KOLODNER: I'd just like to offer a
2 practical comment at this point, just based on the
3 comments that have been received.

4 You know, avoidance is an actual risk
5 management strategy that I think you should be aware
6 of that is absolutely at play here, given the
7 following. If we wait, unlike Price Anderson where
8 every reactor that's in the system knows exactly what
9 their exposure is before the incident happens. And
10 whether you're a 400-megawatt reactor that's not
11 operating in a very remote location or you're a
12 1200-megawatt reactor in a very densely populated
13 location you know exactly what your exposure is well
14 before anything ever happens. That then allows you
15 to finance that particular exposure because you know
16 the amount. You have certainty around it.

17 Lack of certainty means that, from our
18 perspective, as you've described it, we have to
19 assume without the clarity that you'll be subject to
20 the maximum, whether that maximum is the totality of
21 the U.S. contribution or whether it's a cap, if a cap
22 is proposed. That will lead to a higher cost of risk

1 than would be achieved if you had the clarity.

2 MR. BROOKMAN: Okay. Patricia?

3 MS. CAMPBELL: Well, I just wanted to
4 follow up on what Jim said because I think it was
5 something different that I heard and understood a
6 while ago. So, it's not just what we would have
7 supplied to a covered installation. If there's
8 multiple installations in a country some of them may
9 be covered and some may not and we won't know which
10 ones are covered and which are not, so we may have
11 supplied to a country installation that turns out not
12 to be a covered installation, but there's an event at
13 a covered installation so everything that we have
14 supplied to any CSC country, even if it was a nuclear
15 installation that does not become a covered
16 installation, but an event occurred at a covered
17 installation?

18 MR. MCRAE: Can I answer this, and I may
19 sound harsh.

20 MR. BROOKMAN: This is Ben.

21 MR. MCRAE: This is Ben.

22 I think we're making this more difficult

1 than it is. I think -- and again, there are issues
2 as to reporting that we can talk about as to --
3 although, I'm somewhat confused because in our
4 previous session we heard that people were very
5 concerned that they couldn't evaluate their exposure
6 because we didn't have the information that would
7 allow you to do that.

8 What we're trying to do, at least going
9 forward, is to get the information that would allow
10 you to know what your number was and what the bottom
11 number is. And what we hear is that that's not
12 collected any place right now in one place. So, to
13 get the information it sounds like we have to collect
14 it. And again, on the issue of what is a covered
15 installation, I think as a practical matter the CSC
16 identifies what installations are covered.

17 For the most part, they're reactors.
18 There are a few others that are thrown in there, but
19 they're not that many of them. As a practical
20 matter, I think you can assume that if one of those
21 installations is in a country that belongs to the CSC
22 it's covered. And if the country sends a list to the

1 IAEA that doesn't include that, I suspect that if
2 there's a call for funds the CSC provides that the
3 parties get together and discuss.

4 Everyone is going to want to make sure
5 everyone pays their fair share. If they look at the
6 list and they say you didn't include all your
7 installations there will be an update to make sure
8 that all the installations that should have been
9 covered are covered. They have been reported.

10 So, as a practical matter, I think you can
11 assume that all the installations that might be
12 covered installations are going to be covered
13 installations. So, hopefully, that helps. You know,
14 again, if everyone tells that we shouldn't -- you
15 know one approach would be to say each year when
16 people are -- that the premium that people pay for
17 this insurance will change each year and it will be
18 based only in that year on the countries that -- this
19 is going to be prospective. That in 2016 when we
20 look at that year we would only look to countries
21 that are members of the CSC that year in doing the
22 premium.

1 You know, again, that would seem like --
2 again, if India didn't become a member to the CSC
3 until 2017 and someone made a major sale to them in
4 2016, I would think some would think that that should
5 be covered. But again, we would like to hear input
6 as to you what you think is the best way of doing
7 this.

8 MR. BROOKMAN: We have an individual who
9 is joining us via the web who has his or her hand up.
10 Please.

11 MR. CATES: Can you hear me?

12 MR. BROOKMAN: Yes, you sound good.

13 MR. CATES: Just a clarifying question, if
14 my company only exports to France we know I'm not
15 covered. There's not a covered installation. It
16 shouldn't be covered by the rule, but you would
17 require that I report those transactions annually; is
18 that correct? And then, if that is correct, why?

19 MR. BROOKMAN: Anita?

20 MR. MCRAE: Can I answer that?

21 MS. CAPOFERRI: Yes, go ahead.

22 MR. MCRAE: Again, what we're talking

1 about is the proposal that we put out, which was
2 premised on a system that said that we would make the
3 allocation based on the situation at the time for a
4 call for funds.

5 The IAEA has an action plan that the
6 United States and all the other IAEA members
7 supported that calls for a global nuclear liability
8 regime that calls for all countries that might be
9 affected by a nuclear accident to become parties to a
10 global regime that includes all those countries.

11 France and the United States have issued a
12 joint statement that said while France didn't commit
13 to join the CSC, we both have a common commitment to
14 work towards a global regime that we both can belong
15 to. And I can tell you that the United States can
16 only belong to the CSC. So, you can draw your
17 conclusions as to what would be a global regime that
18 the United States and France could both belong to.

19 And that joint statement said that we were
20 going to encourage all countries to join conventions
21 and to have national law, so the global community
22 towards a global regime, and the U.S. position -- and

1 we think it's one that industry supports -- is that
2 that global regime should be based on the CSC. It
3 may not be this decade, but we are hopeful that if
4 enough countries outside of Europe join the CSC, even
5 countries in Europe, even France will see that it's
6 in their self interest to join the CSC. It may not
7 be this decade, but again, I'm hopeful that this
8 scheme never comes into play, or if it does it's
9 many, many years in the future before we have a
10 nuclear accident.

11 MR. BROOKMAN: Certain individuals want to
12 speak, and I saw them in this order. I saw Melissa.
13 I saw Michael and then Ellen and then Omer.

14 MS. MANN: Melissa Mann with URENCO.

15 And I'm sorry, Ben, I need to be your
16 remedial student, but when I'm trying to marry the
17 explanation that we've just heard to what's in the
18 proposed rule I'm having a problem. Because if I
19 look at the proposed rule, Subpart D, Section 951.15
20 -- that's on page 75096 -- it tells me that I'm going
21 to report with respect to reportable transactions.
22 And if I go back earlier in the text to page 75080, a

1 reportable transaction means any transaction by a
2 covered nuclear supplier involving the supply of
3 items, depending on which method, but it refers me
4 back to the covered transaction, which takes me back
5 to covered installations.

6 And so, I don't understand how that
7 reporting requirement links a shipment that I make to
8 a non-covered facility.

9 MR. BROOKMAN: Anita.

10 MS. CAPOFERRI: It gets linked by -- I
11 think perhaps for this exercise it's better to look
12 at the regulatory language itself and the definition
13 of reportable transaction.

14 MS. MANN: Right.

15 MS. CAPOFERRI: For example, I'll just use
16 Alternative 1, which defines the reportable
17 transaction as "Any transaction by a nuclear supplier
18 after 1959 for any of the items under Appendix A or
19 2007 for the items under Appendix B for use in the
20 design, construction, operation, and decommission of
21 any nuclear installation outside the U.S. where the
22 transportation outside the U.S. of nuclear material

1 to or from a nuclear installation."

2 So, that's the universe of the reportable
3 transactions, but where the interrelation comes is
4 when you go to actually assess a premium, which only
5 occurs once a nuclear incident takes place. We would
6 then take the information that has been reported on
7 and then determine the risk share of the nuclear
8 supplier and based on the aggregate risk to all the
9 nuclear suppliers to covered installations.

10 So, that's where you then have to look at
11 the definition of covered installation and understand
12 that that only applies, covered installation, again
13 going back to the definitions, means "A nuclear
14 installation at which the occurrence of a nuclear
15 incident could result in a request for funds under
16 the convention."

17 So, that's where you get the connection
18 between the risk premium calculation, which is a bit
19 different than the reporting -- there's a connection
20 in the reporting information, but all that is
21 reported may not go into the risk premium
22 calculation, which is focused on the exports to

1 covered installations.

2 MS. MANN: So, then let's look more
3 specifically just at what's proposed on the
4 information collection. So, for example, this tells
5 me "By March 15 of each year after the effective date
6 of this subpart, a nuclear supplier," which I
7 recognize is a broad term -- "shall submit
8 electronically a report to the Department signed by
9 an appropriate official that certifies the following
10 information with respect to each reportable
11 transaction."

12 And you're saying that that reportable
13 transaction is not the reportable transaction that we
14 have at the beginning of the --

15 MS. CAPOFERRI: No, it is one in the same.

16 MS. MANN: So, then tell me where is the
17 point at which you collect something that does not
18 fall under the scope of the CSC, like to France, our
19 France example?

20 MS. CAPOFERRI: It would be this because
21 you would be reporting on transactions to any nuclear
22 installation outside of this country. So, if you

1 exported to France to a nuclear installation -- a
2 reactor in France that would be a reportable
3 transaction.

4 What I'm saying is if France is not a
5 member of the CSC when a nuclear incident occurs your
6 transactions with that reactor in France would not be
7 a nuclear incident at a covered installation. It
8 wouldn't be a covered installation.

9 MS. MANN: One thing, at a minimum, what I
10 encourage you to do is rewrite the section on
11 reporting requirements because what that suggests is
12 the only thing that I would be obligated to report is
13 what I think right now is a reportable transaction,
14 not all my nuclear exports.

15 MS. CAPOFERRI: I understand your point.

16 MR. BROOKMAN: Ellen, go ahead.

17 MS. GINSBERG: So, I think the question is
18 so why do you need all of the information that you --
19 I mean we're back to the same question. Carol asked
20 it and I suggest that so what you really need is the
21 information. If you're only going to use the
22 reportable transactions relating to CSC countries,

1 why do you need to collect all of that other
2 information?

3 MS. CAPOFERRI: I'll do the short answer.
4 I guess the short answer was the CSC, hopefully, will
5 have more member countries as time goes on. So,
6 knowing which countries will be members to the CSC at
7 any point in time in the future is not now known.
8 So, we were asking for all of the reportable
9 transactions with nuclear installations which would
10 then at least aid in the process in the future.

11 I hear what you're saying, but I'm just
12 telling you that was the thinking in terms of being
13 broad in reporting requirements.

14 MR. MCRAE: If I can just add, and I think
15 I can be shorter. As Anita said, the U. S. policy is
16 to get as many countries to join the CSC as possible,
17 and we would include France in that. We're not
18 pushing, but we hope that one day they will.

19 I think the question, and again we hear
20 that we have not been as clear as we could be in what
21 needs to be reported. But Anita said our assumption
22 was that we would base the allocation on what was the

1 situation at the time for a call for funds and that
2 means we have to have information available that
3 covers any country that might be a member of the CSC
4 in the future.

5 What would be useful would be if people
6 think that that's the right approach, or do you think
7 we should have an approach that would only require
8 reporting of information each year based on which
9 countries were members of the CSC that year? But
10 that would mean that when we allocate we would
11 allocate on something that was based on that
12 information, so it would be a different allocation
13 formula. Again, we would like your input as to
14 whether or not that's a better approach.

15 MR. BROOKMAN: I have formed a queue. I'd
16 like to observe the queue. Michael is next and then
17 Omer.

18 MR. KOLODNER: Thank you, sir. I promise
19 I will be brief.

20 I will suggest to you that there is a
21 methodology that is vastly simpler. And the premise
22 that you used these revenues and you collect them

1 over time in the event that one day you may need to
2 use them to come up with some kind of formula to
3 allocate presumes that that is the only way to go.
4 The other way to go is the litmus test.

5 That perhaps maybe whether it's the burden
6 of data collection or the difficulty with allocation
7 it really doesn't matter. There's certainly a lot of
8 confusion, but if we can crystallize and define who
9 the class is that, in and of itself, is the most
10 important part of the allocation process. Then you
11 can decide whether or not you find it's worthwhile
12 and to actually allocate amongst that class.

13 But one methodology that's been used, and
14 it's been cited here, you know, is Price Anderson
15 which doesn't seek to do that. And the burden on
16 allocation is essentially passed. You've used the
17 term "insurance" for the CSC, and I agree. It is a
18 global insurance contract, one that the U.S. country
19 participates in.

20 The additional insurance contract, though,
21 if you will, to carry that metaphor past means that
22 those participants who will support it are going to

1 have to finance it again. So, the U.S. has financed
2 the risk. Those who participate are also going to
3 have to finance the risk. If we don't try to
4 allocate, if we simply use a litmus test methodology,
5 you're either in or you're out. If we know how many
6 people are in or out, that's a finite, simple
7 calculation, the industry, on the back end, and then
8 figure out how to allocate amongst themselves.

9 MR. BROOKMAN: Someone needs to mute their
10 phone. We're getting feedback from the web.

11 Omer, you're next.

12 MR. BROWN: Omer Brown, a couple of
13 points.

14 I guess, first of all, all of this
15 illustrates the wisdom of --

16 (Music from webinar)

17 MR. BROOKMAN: Maybe we should take a
18 lunch break. Let me ask you. Several of you had
19 comments. Please make a note to yourselves with
20 respect to what you were going to say. I also noted
21 that Mary Alice and Carol both wanted to speak on
22 this.

1 Let's go for a few minutes, and then we'll
2 break for lunch. Omer, go ahead.

3 MR. BROWN: A couple of points. First,
4 all of this illustrates the wisdom of the Canadians
5 and the Japanese who have decided that the allocation
6 will be to the operators of their facilities and not
7 to the suppliers, but that would take a congressional
8 change.

9 I understand the dilemma of the fact that
10 more countries may join, which, of course, we want to
11 do; but this data collecting is going to be even more
12 cumbersome if we're talking about collecting data for
13 exports to every nuclear installation in the world
14 from the United States, which is what I think I'm
15 hearing. But if you don't do it that way, I
16 understand you'd probably have to go back and collect
17 that data after an accident, so maybe it is more
18 efficient to get it in advance.

19 But that being said, this makes it even
20 less likely that the information will be available
21 and certainly be done within the 100 hours that is
22 proposed in the rule. And then there's also the

1 issue of not having a list of nuclear installations
2 because at least some members of CIGNL have exported
3 to foreign installations that we know are not covered
4 by the CSC because they are involved in defense
5 programs. So, it's going to be important to get some
6 kind of a list to make this at all reasonable.

7 MR. BROOKMAN: Thank you. Mary Alice?

8 MS. HAYWARD: This is Mary Alice Hayward
9 with AREVA.

10 Collecting data for every export that, for
11 example, AREVA, Inc. would make overseas is extremely
12 burdensome. There's a policy point that Ben you've
13 made. And you know that in the past I used to make
14 those similar policy points, so I feel particularly
15 privileged to have to argue against those at the
16 moment.

17 More from actually an industry and
18 pragmatic perspective, it's very intellectually
19 interesting that we have this policy aspiration as a
20 nation, and that we'll follow the lead by example
21 approach, and I understand that from diplomacy
22 perspective, but from an industry perspective it is

1 going to be tremendous for all the suppliers to try
2 and yearly report to every single export they make
3 overseas, which runs counter to the spirit of what I
4 think the CSC was trying to do with our export
5 community here in the United States.

6 I also, and I asked this question before,
7 and Anita will probably smile, having been in the
8 Department in previous lives under several different
9 identities, DOE's capability to handle these reports,
10 safeguard them, protect them, process them, manage
11 them will be very stretched and I question whether or
12 not that can be something that can be done
13 expeditiously in light of when we think this might be
14 asked.

15 So, for us, you wanted some honest
16 feedback, we would prefer not to have to report to
17 every single country that we would want to aspire to
18 export to, regardless of whether or not they were to
19 be potentially in the future to CSC. I understand
20 the universe of the CSC and that I can understand and
21 it is what it is, so we would report on that, but I
22 actually think there's got to be a much simpler way

1 on this reporting side. And again, we really would
2 rather not have to report every single transaction
3 every year forever.

4 MR. BROOKMAN: Carol, do you have a
5 comment here?

6 MS. BERRIGAN: I have a comment that
7 really I think amplifies some of the points Mary
8 Alice raised. And when you start thinking about
9 getting to the transaction reporting basis, some of
10 this is commercially very sensitive information, and
11 so, just to sensitize the Department that when you're
12 getting to this it's a highly competitive industry.
13 It's a small industry. Protecting that kind of
14 information and the benefit you may gain by having
15 that level of detail versus the potential negative
16 impact of that kind of information coming to light,
17 either through a FOIA request or something else that
18 happens there's a real downside to it. So, I would
19 just caution you as you're collecting this
20 information to think that through in terms of the
21 need for that level of detail, all the burden of
22 reporting it, and the potential impact it has on

1 competition.

2 MR. BROOKMAN: Okay. Thank you. Yes,
3 Omer?

4 Let me just confirm, Melissa, are you in
5 this queue, or you're not? Omer?

6 MR. BROWN: I should've mentioned before
7 that there is some language in the legislative
8 history that indicates that DOE doesn't have to take
9 into account every country in the world. I think in
10 the Senate report there was some language to the
11 effect that in developing the formula DOE need not
12 limit examination to covered installations in
13 countries that have ratified, but can also consider
14 installations of countries that have signed the CSC.

15 And more importantly, in other countries
16 that DOE concludes are likely to join within a
17 reasonable period of time.

18 So, I mean there could be some countries
19 excluded like France and Germany that are unlikely to
20 join in our lifetimes.

21 MR. MCRAE: I would ask people over lunch
22 to think about this question because I think -- as I

1 said before, I think I've heard two very interesting
2 conversations this morning. One was that you need
3 information to evaluate what the effect is going to
4 be on you, and again, to do that we have to collect
5 information now.

6 I think many of you have suggested that we
7 need to collect that information before we issue the
8 rulemaking. I'm not sure that we need to do that,
9 but again, from your comments I've heard -- and let's
10 take going back to 1960 let's just put that in the
11 parking lot. We're just talking about prospectively
12 or what is the situation today. What exports do you
13 have this year or in the last 12 months? If we were
14 to collect that information so you would have a
15 benchmark or something because we've been told
16 collect information before you go forward.

17 So, we need to know what information you
18 want us to collect. Is it just from countries that
19 are members of the CSC today? And knowing that the
20 way the rule is written, that if there's an accident
21 in 10 years and despite all predictions France and
22 the EU are members of the CSC because, you know, we

1 actually are very successful in getting most of the
2 rest of the world in and the EU directs them to join
3 the CSC, you know, there would be a much different
4 set of information that you would base the allocation
5 on.

6 Again, it would be very helpful if you
7 could tell us what information you need now. And if
8 you have views on the allocation because the
9 information we have suggested that we need is based
10 on the allocation being based on who's a member of
11 the CSC at some point in the future. If there's
12 another approach that you think is equitable,
13 weighing everything, it would be very useful to hear
14 that because, quite honestly, if we're going with an
15 allocation based on who's a member in the future I
16 think it would be imprudent for us not to either
17 require people to keep that information or to report
18 it on some regular basis.

19 But those are questions that we need --
20 and again, to some extent, we're neutral on this, but
21 we want to hear what you think is the better
22 approach.

1 MR. BROOKMAN: Jim's next and then I'll go
2 to Omer.

3 MR. SCHOETTLER: This is Jim Schoettler
4 from Centrus.

5 It may sound like a gratuitous comment,
6 but I do want to endorse your statement about the
7 importance of CSC as very important, so we absolutely
8 want to see the CSC expanded. My company does want
9 to see more countries belong to it. It's very
10 important. We're just now talking about this rule,
11 and I just don't want to separate the two things
12 because all the work you've done to get the CSC in
13 place is important.

14 I'm wondering on the level of what's
15 reporting -- in some respects reporting will help you
16 identify who the category of individual companies
17 could be potentially touched by this would be. The
18 question is whether or not you need all this
19 information about transactions, values of
20 transactions, or are you a supplier of a nuclear
21 facility in the CSC and there may be proto-CSC
22 countries if you're a supplier. Then you'll know

1 those are the kinds of people, but do you need to
2 have all this information collected now?

3 You might think about is there a two-stage
4 process. Just know who the people are you'd have to
5 go to. Obviously, we'd have to, as an industry,
6 think about how long we want to have to keep
7 information. That's a real burden to do that, but
8 that's another question. I don't have an answer for
9 you there, but I'm just thinking at least on the
10 burdensome -- the requirement of collecting
11 information I don't disagree you have to collect
12 some. Maybe it could be some, and we can comment on
13 that, obviously.

14 MR. BROOKMAN: Omer?

15 MR. BROWN: I guess what I don't
16 understand now is even if you collected all this
17 information; you had all the information from all the
18 exports to all the countries in the world how are
19 individual companies going to know what their shares
20 are? Is that information going to be put out so that
21 there will be an allocation based on -- which each
22 company somehow be informed as to what their share

1 will be so that they can deal with their financial
2 reporting requirements?

3 MR. BROOKMAN: Ben?

4 MR. MCRAE: I think Anita answered this
5 before that to the extent we know what the CSC and
6 the national fund might be and what the U.S. share of
7 that might be and we have a cap that says what the
8 most a supplier would contribute. There could be a
9 bounding number. Now, I don't know. That may help
10 people that do a lot of business or people who don't
11 do as much business that bounding number may be
12 excessively high. But given the fact that the
13 allocation probably, to some extent, has to be made
14 in the future and based on the situation in the
15 future I'm not sure how we can give -- we're open to
16 suggestions.

17 (Interference.)

18 MR. BROOKMAN: We made a good start on the
19 day. We've covered a lot of ground already. And
20 we'll cover more when we return at 1:30.

21 (Whereupon, a lunch recess was taken.)

22

1 A F T E R N O O N S E S S I O N

2 MR. BROOKMAN: Okay, we covered a lot of
3 ground this morning. And the conversation was
4 getting quite productive, I thought, so let's
5 continue on with that.

6 And before we went to lunch, Ben put a
7 question on the table. He was seeking additional
8 thoughts from you all. And I'm going to allow him to
9 rephrase that question briefly.

10 MR. MCRAE: I think the gist of my
11 question was that the information that we indicated
12 that we would like to have reported in the proposal
13 was reflective of the information we would need to do
14 the allocation method that we put in the proposal.

15 There were a number of concerns expressed
16 by the breath of that information. Certainly, I
17 think if we were to reduce that, certainly if we
18 didn't include all countries, which I see to be one
19 theme, we would need to reflect -- again, we're
20 trying to only collect the information we need to do
21 the allocation. So, the question to me it's not what
22 information we collect. It is what is the allocation

1 method and then from that flows what information we
2 need to collect.

3 So, again, to the extent people are
4 telling us we should collect less information that to
5 me says then perhaps they're also saying -- or at
6 least to me that implies that the allocation
7 mechanism should be based on with that less
8 information is. So, I'm just trying to get a feel
9 for -- are people saying they want the allocation
10 scheme made less inclusive?

11 MR. BROOKMAN: It looks like Ellen's
12 ready.

13 MS. GINSBERG: Define "ready."

14 So, let me start with the fundamental
15 point of do we think you could get along with less
16 information. I think the answer to that is yes. And
17 the question -- I don't think we fully resolved
18 exactly when you go back -- you know, how far back
19 you'd go, whether you'd go fully prospectively or
20 not, but there is a way, I think, that you could
21 collect less information and still maintain enough so
22 that you could go forward with an allocation

1 approach.

2 One way to do it is to send out a survey,
3 or depending on what the criteria is, collect
4 information about what entities are supplying and
5 then the criteria for supplying what comes into play,
6 but what entities are supplying to CSC countries.

7 If you wanted to be really expansive, you
8 could say what entities are supplying to CSC
9 countries that have CSC ratified countries as well as
10 countries that either have joined, but not ratified
11 yet, et cetera.

12 So, you keep that universe relatively
13 small and then the question you ask could be
14 relatively straightforward, which is what is it you
15 supply and what is the general range of -- you could
16 do it by revenue, I suppose. What is the general
17 range?

18 And therefore, you wouldn't be focused as
19 much on the granularity of the information. You've
20 have kind of a gross cut, but you'd know and other
21 entities would know how many are in each sector, if
22 you will, if you did it that way.

1 I think you could get along with less
2 information and information of a slightly different
3 type.

4 MR. BROOKMAN: And then if you had an
5 incident, you would know who to go back to.

6 MS. GINSBERG: So, the second step would
7 be -- and then, of course, depending on which
8 allocation method you pick or maybe a third or
9 fourth, whatever everyone comes up with, you would
10 then apply that at that point.

11 MR. BROOKMAN: Go ahead, Ben.

12 MR. MCRAE: Just to be clear, are we
13 talking about -- would this give us enough
14 information to address the concerns we heard this
15 morning about entities not having enough information
16 to evaluate the rule, or do you think that this would
17 be sufficient to allow us to apply the rule in the
18 future because they're two different things, I think?

19 MR. BROOKMAN: Omer, please?

20 MR. BROWN: Well, we'd need both. You'd
21 need the information to apply it in the future, and
22 we'd need it to be able to make financial reports.

1 MR. MCRAE: I'm not sure what Ellen
2 described would be enough for us to apply the rule.

3 MS. GINSBERG: Well, I think it would be.
4 And it would be, in particular, if, and my
5 constituency hasn't agreed to this yet, so there's a
6 very large caveat here. But if, for example, it was,
7 for example, the second approach where you did
8 various sectors, DOE could identify, roughly
9 speaking, how many entities for CSC countries were in
10 each sector. And then if you knew you fell into that
11 sector, you'd at least know if you didn't weight it,
12 assuming you didn't weight it, how you would do the
13 division. It's hard to do -- I mean I'm describing
14 this abstractly.

15 MR. MCRAE: No, I'm looking to Anita
16 because I don't want to misspeak on what you need,
17 but I'm thinking you need more.

18 MS. CAPOFERRI: So, you'd solicit
19 information with respect to each sector within CSC
20 member countries and you would ask for just general
21 revenues per sales or per supplier, or suppliers
22 would report to us what with respect to their

1 transactions with those CSC member state
2 installations.

3 MS. GINSBERG: Really I think some of that
4 still has to be worked out, frankly, with CIGNL and
5 my members; but I think what we're trying to do is
6 simplify this.

7 When we looked at what you're originally
8 asking for, it's a great deal of information, so it's
9 very broad. And I think it was lost on most of us
10 why you needed it so quickly. So, I think your hope
11 that many more countries are going to be
12 participating in CSC is a great one, but it is only a
13 hope at this point, and it's not necessary right now
14 to collect all that information.

15 So, if you can collect a small amount of
16 information, reduce the burden -- yes, there's some
17 incremental burden, I know that, but at least at the
18 first trounce you're not asking folks for information
19 that may never be needed.

20 MR. BROOKMAN: But like the IRS, DOE would
21 expect you to have good records should they come back
22 and seek it.

1 MS. GINSBERG: Prospectively?

2 MR. BROOKMAN: Retrospectively.

3 MS. GINSBERG: So, we've had this
4 discussion. There may be an impossibility here.

5 MR. MCRAE: Let's just take anything
6 before the rule comes into effect off the table for
7 right now, so we're only talking about the universe
8 prospectively. If we didn't change our proposal as
9 to how the allocation would be made, which, again, is
10 based on the situation when there's a call for funds,
11 then you would need to -- when the information that
12 you were reporting now or each year prospectively
13 might not be sufficient. You would have to keep
14 records so that if a country joined the CSC and was a
15 member when there was a call for funds I would think
16 you would need records to report to us what the value
17 was, the volume of equipment, whatever, you would
18 need records, I think, or are you suggesting another
19 system?

20 MS. GINSBERG: No. And I'm going to let
21 others around the table weigh in here, but what I was
22 saying is if you are aware going forward it's much

1 easier to keep records than if you're trying to
2 re-create them since 1960, so I think those are two
3 very different questions; but I welcome other
4 comments on it.

5 MR. BROOKMAN: Omer, do you wish to
6 comment here?

7 MR. BROWN: No.

8 MR. BROOKMAN: Yes, please, David.

9 MR. BLEE: David Blee.

10 Okay, just to clarify, and by your
11 simplifying this here you're looking forward, okay,
12 and what Ellen is saying when she says records are
13 you referring to an annual -- keeping records in case
14 there's an incident, or are you saying there'd be
15 something submitted to the government on an annual --
16 you're saying keeping records until?

17 MS. GINSBERG: I'm saying if you know you
18 have a potential to file information, you, as a
19 corporation, would be wise to maintain those records.

20 MR. BLEE: Exactly. But you wouldn't have
21 to submit -- I'm with you. So, what you're saying is
22 there would be no reporting to the government until

1 such time there was an incident, but at that point
2 you wouldn't go, oh gosh, what'll we do? You'd have
3 clarity with respect to what records you would need
4 to ascertain what your exposure was. Correct?

5 MS. GINSBERG: Roughly speaking, that's
6 right.

7 MR. BROOKMAN: So, the reporting burden at
8 the front end would certainly be reduced and the
9 Department of Energy would be asking that -- that
10 data would be more categorical than specific, but
11 they would know who to approach in the event of an
12 incident. And hopefully, that actor would have good
13 enough records so that company would be able to pull
14 that information up.

15 MS. GINSBERG: If you're looking for
16 affirmation, yes.

17 MR. BROOKMAN: Thank you. Pardon me.
18 Dan?

19 MR. STENGER: Yes, I would just share. I
20 think under the system Ellen was describing you would
21 at least have a range of the revenues or values.

22 MR. BROOKMAN: That's what I meant by

1 categorical.

2 MR. STENGER: So, affected companies could
3 then do a calculation and could use the lowest value,
4 which would give them the highest allocation. And
5 so, they would at least have a better idea of what
6 the potential upward exposure is.

7 MS. GINSBERG: One other comment. The
8 reason for doing this, whether you're self-insure or
9 go to the commercial market, you have enough
10 certainty, at least in the range, to try and insure
11 against this risk so you could manage the risk more
12 easily.

13 MR. MCRAE: I think I'm hearing several
14 things. All of this is very interesting and useful,
15 but just to be clear, I think I heard one proposal,
16 which was -- I thought I heard one which was no
17 reporting until there is a call for funds.

18 MS. GINSBERG: No.

19 MR. MCRAE: No, I think I've heard that.
20 I'm not sure that was yours.

21 MS. GINSBERG: That's not mine, though.

22 MR. MCRAE: But I heard one proposal would

1 be no reporting until there's a call for funds and
2 companies would keep the information. We would give
3 you enough detail as this is the information that we
4 will need if there's a call for funds and you are
5 responsible for keeping it. And if you don't keep
6 it, we're not going to be sympathetic about saying,
7 oh, you don't have to pay. We'll have to come up
8 with something to make sure that everyone pays their
9 share.

10 I thought what I heard Ellen say,
11 originally, was, well, we need an initial call for
12 information, but it doesn't have to be at the same
13 level of detail that we would need for the call for
14 funds. It could be roughly this is what we think
15 we're going to do this year or this is what we think
16 we're going to do over the next 10 years. I don't
17 know, but we would have to give you some time period
18 and the company would give us a range with countries
19 -- and we probably would have to tell you which
20 countries to do it with.

21 We would either say the existing CSC or
22 the existing, plus these countries which we think are

1 likely to join. You would report on that and you
2 would give us like we expect in the next five years
3 to have sales between zero and a million, a million
4 and ten million, ten million and a hundred million, a
5 hundred million and a billion. Something like that.
6 We'd give you some broad ranges and that's what we
7 would get.

8 And I think what I'm hearing, but this is
9 a leap of faith, that that would be sufficient for
10 the concerns we heard this morning about not having
11 sufficient information to either evaluate your
12 potential exposure under the rule or to allow you to
13 report any reporting you might have for security or
14 other things, or to buy insurance. That would give
15 you sufficient information to do that. Is that too
16 big a leap?

17 MS. GINSBERG: Well, yes and yes. So, let
18 me amend your statement, please, so that it's
19 accurate. I'm not sure that you would do the
20 reporting prospectively. You could conceivably do
21 the reporting five years retrospectively, and that's
22 probably an easier way to do it. So, starting in

1 2015, you pick up from 2007 to 2015, then five years
2 from now you retrospectively again, that sort of
3 thing.

4 The other thing I want to be very clear
5 here. My members have not reviewed any of this, so
6 what we were trying to do at lunch was give you a
7 little bit of what you asked for, which is some
8 alternatives to think about and consider as you --
9 because what you heard this morning is it's too
10 complicated. It's got weighting factors. You have a
11 number of issues where people are confused about how
12 the definitions apply, even though I understand it.
13 And we understand you went to great lengths to try
14 and make it understandable, but there are a lot of
15 moving parts here. And the question is: is there a
16 way to create a system that meets the objectives of
17 the legislation, but also allows us to mitigate this
18 risk and manage it in a reasonable and cost-effective
19 way, and so that's what we were trying to do.

20 MR. BROOKMAN: So, Michael goes first.

21 MR. KOLODNER: I'd just like to add since
22 we were talking about it. I second those comments,

1 but I would also suggest to you that there are
2 alternate methodologies. And to the extent you're
3 looking for feedback, as you evaluate the ability to
4 actually put this into practice, you might also
5 consider whether alternate methodologies have been
6 looked at.

7 MR. BROOKMAN: And you'll suggest those in
8 your written comments.

9 MR. KOLODNER: Yes.

10 MR. BROOKMAN: Thank you. David?

11 MR. BLEE: In addition to what Ellen was
12 saying, also to reduce the paperwork burden of cost
13 because I used to be involved in nuclear material
14 oversight of the nuclear materials management system
15 and it was static in the sense of annual -- you know,
16 every six months reporting how materials -- but most
17 of the utilities had to maintain a full-time FTE just
18 to keep up with that.

19 And so I think the simplicity lends itself
20 to also reducing the paperwork burden.

21 MR. BROOKMAN: Okay. Thank you. Yes?

22 MR. MCRAE: Maybe I'm naive about this,

1 but don't most companies keep records as to what they
2 sell and who they sell it to, and the approximate
3 value that they get for that goods and services that
4 they supply? I'm not sure that we're asking for
5 information -- it may not be information that's
6 currently reported to the government, but I would
7 think that going forward prospectively we're not
8 asking, and if we are, it would be useful for someone
9 to tell us what it is we're asking for that you
10 don't, at least for internal purposes, don't already
11 keep records on because I can see going back it's a
12 problem.

13 MR. BROOKMAN: Omer?

14 MR. BROWN: I talked to one of the
15 companies about this, and I can't remember the exact
16 dates, but at some point a lot of this was
17 computerized. Now, it's easier to keep, but 50 years
18 ago it wasn't computerized. It was all on paper, and
19 those papers haven't been maintained in a lot of
20 cases, and particularly, as to sales amounts. Now,
21 there may have been some information about a product
22 being shipped, but that wouldn't necessarily even

1 have the price on it.

2 So, it's not going to be possible to
3 compile all this information back 50 years. Going
4 forward, if you know you have to keep it, that's a
5 lot easier.

6 MR. BROOKMAN: Michael?

7 MR. KOLODNER: Just speaking from
8 experience, asking for this data on an annual basis
9 from many of our clients, the ways in which
10 individual companies track a simple question, which
11 we ask every year how much revenue did you put in
12 each individual country. We don't even get into
13 whether you supplied a given facility or not. We
14 just say outside the U.S., and then by country. That
15 question, the information we get back from these
16 suppliers comes in very different format to varying
17 degrees of sophistication. Certainly, some have
18 phenomenal systems for tracking that. Others have
19 almost none to the point where they struggle months
20 it takes in some cases to actually identify. So, I
21 would just offer that for comment because it is
22 challenging.

1 MR. BROOKMAN: Okay. Thank you. Yes,
2 Ted?

3 MR. GARRISH: I was just going to, in
4 response to your question, is companies and our
5 company keeps invoices by client, so we have that.
6 But the problem that you've got is that those
7 invoices are not necessarily segregated as to the
8 type of information that you're looking for. So, all
9 of a sudden it becomes much more complicated to go
10 back and then divide that what you need.

11 Yes, they have information, but generally
12 speaking, it's for other business purposes and God
13 knows what those would necessarily be in a particular
14 instance.

15 MR. BROOKMAN: Dan?

16 MR. STENGER: And I would just add for
17 some of the suppliers we're talking about here they
18 may supply the same type of equipment in a safety
19 related application for one project, non-safety in
20 another, maybe non-nuclear in another and they may
21 have all those records together, but they would have
22 to go through and sift out which one was, you know,

1 used in an application that would be covered by the
2 proposed rule.

3 In addition, you know, they can have
4 follow-on shipments and that kind of thing that are
5 separately tracked, and you've got to pick up on
6 those as well. So, it's that sort of difficulty and
7 I'm just scratching the surface with that kind of
8 difficulty you run into.

9 MR. BROOKMAN: Sophia's got a question or
10 comment.

11 MS. ANGELINI: Sophia Angelini.

12 Would you just tell us what would be the
13 date when the nuclear industry began to computerize
14 all of its records?

15 MR. TEMPLE: Bob Temple from Babcock &
16 Wilcox.

17 There's no industry answer for you. Each
18 company, you know, turned to computerizing its
19 records at different times. It's up to the company.

20 MR. BROOKMAN: Anita.

21 MS. CAPOFERRI: Anita Capoferri.

22 Just to follow up with Ellen on what you

1 were saying, and if you don't know, that's fine. I'm
2 just trying in the very outline of this new type of
3 reporting system you described it sounds as though
4 there would be a new piece in which the Department
5 would need to put out some information to the
6 industry. If the industry wanted that information to
7 get a rough estimate of what its or a supplier's
8 relative share would be, so there would be an aspect
9 of this which is not in the proposed rule as it
10 stands, which is reporting out from the Department to
11 the industry.

12 MR. BROOKMAN: I believe Ellen
13 characterized this as something of a survey, that
14 sort of thing.

15 MS. GINSBERG: Yes. And I think that
16 there are a number of ways to do that. I think you
17 could send a letter to each individual submitter so
18 that it wasn't broadcast, but each submitter would
19 know you are one of five in this category. Perhaps
20 that would be one way to do it. And then if you knew
21 what the relative exposure in that category was, you
22 could quickly figure out what your 20 percent cost

1 would be or liability -- I'm not suggesting that.

2 I'm just saying there are ways to do it like that.

3 This was done on a napkin over lunch, so
4 it's not a refined proposal, but it is something that
5 is an alternative that has the qualities of getting
6 you the information that I think you minimally or
7 would need at a minimum and giving the industry
8 information that it needs at a minimum.

9 MS. GINSBERG: I appreciate that.

10 MR. BROWN: That would be helpful for the
11 individual company. The problem with that is when we
12 get to the discussion of notice and dispute
13 processes, it doesn't address the dispute process
14 because you won't know what other people are being
15 assessed, so you won't know if your assessment was
16 fair or not. So, I don't know how you address both
17 of those issues, getting the information to the
18 company so it can handle financial reporting, but
19 then also allowing the company to decide whether its
20 share was appropriate.

21 MR. BROOKMAN: Go ahead. Please do.

22 MR. MCRAE: Just to build on this, again,

1 I think and I recognize that this was an effort, and
2 you probably need to talk more, but again, were you
3 considering this to be a one-time survey or would it
4 be a rolling survey that every year -- and you would
5 go back five years, so it would be kind of
6 cumulative. Each year you'd have to update it for
7 that year because, again, if you're using this for
8 insurance or for annual reporting requirements you
9 would, I think, want it to be current. You wouldn't
10 want to do it in 2015 and then be using that same
11 information in 2025.

12 But again, I'm trying to understand
13 because what I'm hearing is you need this information
14 for other things other than calculating what your
15 amount would be under the allocation. There may be
16 annual reports that you have to submit that would
17 need to estimate what your risk is. And I would
18 think -- and again, we'd need to hear from you, but I
19 would think you would need to have that on a current
20 basis.

21 MR. BROOKMAN: Patricia.

22 MS. CAMPBELL: Patricia Campbell from GH.

1 So, if we came up with a scheme and say we
2 did an annual report using some type of form that you
3 might come up with, would you then tell us each year
4 what our share is? Is that something you would
5 contemplate doing under any scheme?

6 MR. MCRAE: Again, just throwing this out
7 for discussion purposes, it would seem to me that if
8 you did that -- if we gave you the aggregate number,
9 you would know what you reported so you could
10 probably figure out your share.

11 Again, to me, once you know the amount for
12 a company and you know the aggregate amount and you
13 have the information -- but again, it also gets into
14 another question that I have as to while this might
15 work for your concerns, again, depending on what the
16 allocation formula were to be and how granular that
17 was, how much down in the details we went where we're
18 using what we hope to be relatively exact numbers as
19 to how many sales you made, what particular country,
20 the value, then I think we would need more
21 information than what we're getting from this survey.

22 If people were to tell us, oh, you could

1 have an allocation formula that some how did it based
2 on how you grouped all the countries that had
3 aggregate sales under a million dollars in one group,
4 all the companies that had aggregate sales between
5 one and ten million, and you can use kind of this
6 based each year on where they fell into these bands
7 and that's close enough, given the probabilities and
8 the risk calculation. If people were to tell us that
9 they thought that was equitable -- but again, I think
10 that as we've heard from some people they're very
11 concerned that they're paying their fair share and
12 they might want to go and have a -- you know
13 challenge whether their share was fair.

14 So, the more we're having a system that is
15 based on very detailed information for particular
16 countries the more the information we collect has to
17 be very detailed and precise. And again, it would be
18 good to get feedback as to what people think the
19 formula needs to be based on.

20 MR. BROOKMAN: This is what I think I've
21 heard. Ellen floats a proposal and it's essentially
22 kind of a two-step proposal that -- or maybe it's a

1 three-step proposal that DOE create some sort of a
2 survey. They send it to some list of companies who
3 have been identified as suppliers and the survey is
4 not too specific. That allows everyone who's
5 surveyed to send back that information to DOE.

6 DOE can aggregate and figure out however
7 you subdivide the content you can provide the
8 aggregates, the totals back to the survey respondents
9 and they would be able to ascertain how their portion
10 compared to the aggregate, the whole. And then if
11 there was some sort of an incident for which there
12 was a call, the DOE would have to probably request
13 additional information, but all the companies would
14 know what kind of information likely would be
15 requested. And hopefully, they'd have good enough
16 records to be able to do that. That's the proposal,
17 as I understand it.

18 Noting, for the record, that you haven't
19 consulted with all your companies this is a back of
20 the envelope sort of a proposal.

21 MS. GINSBERG: I did.

22 MR. BROOKMAN: You're welcome. Mary

1 Alice.

2 MS. HAYWARD: And in the meantime,
3 companies could begin to measure their exposure so
4 they can make a determination of whether they insure
5 and how they insure and whether they do a
6 self-insurance because they have some benchmark.

7 MR. BROOKMAN: Okay.

8 MS. GINSBERG: Can I just make one
9 definitive comment.

10 MR. BROOKMAN: Yes. Ellen?

11 MS. GINSBERG: You mentioned aggregate
12 amount, and I think the second step is important
13 because you floated two formulas, and we seem to be
14 back and forth as to which Formula 1 is a sector-type
15 formula. The other one has all manner of weighting,
16 depending on what the item is that's being --

17 MR. BROOKMAN: Service and goods.

18 MS. GINSBERG: Service and goods that's
19 being exported. So, the transparency, I think, will
20 depend on which of those two calculation methods we
21 use. Just to be clear, I was suggesting, lightly
22 suggesting that it's a sector approach only because

1 it's easier. It's a simpler approach. There's less
2 weighting that goes on. You could wait within the
3 sectors if you so chose, but at least broadly
4 entities know which category or categories that they
5 fall into. So, I just wanted to sort of fine tune
6 what you said.

7 MR. BROOKMAN: That's useful. Thank you.

8 Yes, Dan? Sophia?

9 MS. ANGELINI: Sophia Angelini.

10 In the context of simplification, could
11 you please identify for us all the areas in which we
12 should -- all the information that would be useful
13 for reporting purposes in order to ascertain the fair
14 share that we've been speaking of?

15 MR. BROOKMAN: And this takes us toward
16 dispute resolution mechanisms as well. We'll head in
17 that direction before too long.

18 I didn't get your name when you came in.

19 MR. FORK: Sure. Will Fork from Pillsbury
20 Winthrop.

21 MR. BROOKMAN: Please, you wish to speak
22 now?

1 MR. FORK: Sure. I just wanted to sort of
2 dovetail on this part of the conversation with the
3 sort of associated and additional risks associated
4 with the sensitivity of the information that the
5 companies are providing. So, you know, even today or
6 going back for a number of years, the sensitivity of
7 the data that's being provided -- price data is
8 really sort of the hallmark of a lot of the companies
9 in the nuclear industry.

10 And so that raises the question, at least
11 particularly in the regulations, as to how the
12 Department of Energy is able to balance the need to
13 collect information, protect information, sensitive
14 information, and then the need of the other suppliers
15 in this sort of understanding that they need to
16 understand what the other companies are providing.
17 And there needs to be an audit or a review process,
18 and so that's sort of one comment.

19 The second comment that I had relates to
20 specifically what you had mentioned, Sophia, as to
21 the reports that are provided. So, when I look on
22 the list of information it talks about description of

1 the transaction, the date, location, volume and
2 quantity and value. And we have to remember that in
3 these large international nuclear transactions that
4 the transaction date, the signing of the contract is
5 one part of sometimes a 10- or 15-year process of the
6 transfer of goods.

7 So, you may sign one contract for 15 or 20
8 plus billion dollars, and of course, that lasts over
9 time. And so the time period and the actual period
10 of payment sometimes does not directly relate to the
11 time period of the actual shipment of the goods. And
12 so, these commercial transactions are supported by
13 banks, financing institutions, the risk allocation
14 that the vendor is willing to provide. In any event,
15 it gets complicated. And so trying to figure out all
16 these details -- I don't want to throw kind of a
17 monkey wrench into it, but it is complicated and it's
18 not quite as simple as the regulation might propose.

19 MR. BROOKMAN: Yes, please. Ben.

20 MR. MCRAE: It's not simple, but that
21 doesn't mean that we don't have to do it. It doesn't
22 mean that we're not going to issue final rules, and

1 there are a lot of rules which deal with complex,
2 difficult subjects and they work. So, I do hope that
3 in your comment you identify all these difficulties
4 so that we can address them because, quite honestly,
5 you know, good issue, transition date, transaction
6 date. You know should we do it the date of the
7 contract? Should we spread it out over the years?
8 Quite honestly, it doesn't really matter as long as
9 you have clarity and we do it in a way that is fair
10 to everyone.

11 So, these are the kinds of issues that we
12 need to know that are concerns to you so we can
13 address them. We can give you clarity as to whether
14 you should report in the year that the contract is
15 signed or in the year that the good or service is
16 supplied. I kind of have an initial view on that,
17 but quite honestly, that's not important.

18 Actually, it's more important to hear from
19 you as to what you think will be the most fair and
20 quite honestly, the most efficient way for you to do
21 this, and that would come out with an equitable
22 formula. So, again, I think this is useful to

1 address all these things.

2 MR. BROOKMAN: Ellen?

3 MS. GINSBERG: On that point, it seems to
4 me that today's discussion just emphasizes the need
5 for more time. So, I'm going to make a second plea.
6 I've done it in writing already, but I'm going to
7 make a second plea for the extension, which I believe
8 has not been acted on yet because really to give you
9 the best information is not something that we should
10 rush to do. We really need to give you what you've
11 asked for, which is further thinking following this
12 interchange.

13 MR. MCRAE: And you're right. We haven't
14 actually responded to your request, but regardless of
15 that, I think actually what we've heard today, and I
16 think will hear has been useful. And perhaps it's a
17 burden, but I think it might be a justified burden.
18 Getting comments from you, capturing what has been
19 said today after you think about it, getting some of
20 that.

21 And even if it's not your final comments,
22 I mean, some of these have been very useful topics

1 and your back of the envelope maybe -- again, if it's
2 just a thought, you know, think about this, getting
3 that back in writing sooner than later would actually
4 -- whatever we might decide is the best way to
5 proceed would certainly be helpful so that we would
6 have that. Because, as I said, what I've heard so
7 far, all of this I think has been quite useful and
8 things that should be addressed.

9 MR. BROOKMAN: Yes. Carol?

10 MS. BERRIGAN: I just want to make sort of
11 a follow up comment to Ben's comment. To me this has
12 been a very useful session to answer questions, to
13 crystallize some thinking and better understand where
14 you're coming from. And I understand your need for
15 comment back as people are continuing to think about
16 this. Has the Department considered doing another
17 workshop session as people have a further opportunity
18 to consider the answers they've gotten and ask
19 further clarifying questions because this is really
20 complicated?

21 MR. MCRAE: And I think the answer is,
22 yes, we've thought about it. Have we made a final

1 decision, no. Are we responsive to what people say
2 to us? Yes. So, if people think it's useful,
3 certainly we would consider that.

4 MS. CAPOFERRI: And this is Anita
5 Capoferri.

6 And I think the feedback today is an input
7 into that decision-making process, so this is good to
8 get all this today.

9 MR. BROOKMAN: Omer?

10 MR. BROWN: I would also like to support
11 the idea of an extension. And it just would be
12 useful to know sooner rather than later as to whether
13 there's going to be one because that way we can plan
14 for preparing comments. I mean we could put some
15 comments together in now less than a month, but if we
16 had more time we could probably do a better job.

17 MR. BROOKMAN: Okay. Yes, Ben?

18 MR. MCRAE: Just again, there are no
19 commitments on this because we're not the ones who
20 make these decisions. But assuming people said it
21 would be useful to have a workshop, would people also
22 think it might be useful to submit comments before

1 that workshop, at least to flesh out what we've been
2 talking about so that we can -- again, I think having
3 seen the questions you had this time was useful.
4 Would people be willing to consider that, you know,
5 if we had a workshop?

6 MR. BROOKMAN: David?

7 MR. BLEE: We would also endorse the call
8 for an extension for comments. We would also endorse
9 another workshop, and you could tie it to some sort
10 of interim comments provided before that certainly
11 we'd be open to that.

12 MR. BROOKMAN: Please, Ellen?

13 MS. GINSBERG: Yes, I would just like to
14 be cautious here because comments take an inordinate
15 -- these sorts of comments take an inordinate amount
16 of time, both mine and my members. And getting folks
17 together to really discuss the details, and as you've
18 seen this morning this is really very much the devil
19 is in the detail kind of issue. It is not easy and
20 is time-consuming. So, I'm not sure that I would
21 endorse the idea of having comments submitted before
22 that. I think we could have alternatives,

1 alternative ideas prepared for you and another set of
2 suggestions, perhaps, but I cannot commit to a full
3 set of comments before another workshop, assuming
4 that there's an extension of course.

5 MR. BROOKMAN: So, we've made a lot of
6 progress. And I appreciate you all taking the
7 initiative to work the back of an envelope and noting
8 that it's a preliminary concept, but a different sort
9 of a concept and a beneficial one for this meeting.

10 I'm wondering whether we should proceed to
11 risk and form formula, or whether we should just put
12 that on hold for the moment because your comment
13 earlier, Omer, was that -- I think it consisted with
14 Ellen's proposal that you would need also to know --
15 there would need to be some level of disclosure,
16 dispute resolution appeal sort of a process as well.
17 Maybe you could say a little more about that and then
18 we'll begin that subject.

19 MR. BROWN: I probably said about as much
20 as I can, but let me go back over it. The problem is
21 that once an allocation is made and however we're
22 informed of it, either at the time of an accident or

1 annually or whenever it is, under the current version
2 of the rule we have no way to contest that or to see
3 what other people are being assessed and to know
4 whether it's a fair allocation. Whether some people
5 have said they don't have the record, so they just
6 punted.

7 MR. BROOKMAN: Anita, is that a gap in the
8 rule, or is that something that hasn't been addressed
9 presently?

10 MS. CAPOFERRI: There is nothing presently
11 in the proposed rule that addresses this concept of a
12 dispute resolution, be it with respect to an
13 individual supplier's share or vis- -vis other
14 nuclear suppliers, so that is correct, and so, we're
15 open to comment. It was raised in the information
16 session a month or so ago, and we're certainly
17 willing to consider any kind of comments or concepts
18 or thoughts that folks have.

19 MR. BROOKMAN: Yes, please. Ben?

20 MR. MCRAE: And when you're considering
21 that, I think we heard at least from one person that
22 entities -- I think we actually heard from more than

1 one -- that entities are very cautious about
2 revealing this kind of proprietary information. And
3 again, given the nature of this allocation, if we're
4 going to have some type of -- if we're going to go
5 beyond the mechanisms that are in place that ensure
6 that when the federal government requires people to
7 keep records and to report information that they do
8 it and they don't provide false information or
9 whatever, and those provisions are fairly
10 substantial.

11 But if we're going to have a process where
12 companies are going to come in and litigate whether
13 another company reported the right information,
14 you're going to have to be willing to share that kind
15 of confidential information in the proceeding.

16 And again, it would be useful to get feed-
17 back as to the extent to which companies are doing to
18 do that in a proceeding because I'm not quite sure
19 how -- if it's not going to be enforced by the
20 government saying you have a recordkeeping
21 requirement or a reporting requirement and if you
22 don't do that in a good faith manner you're subject

1 to fairly substantial civil and criminal penalties.

2 You know, if you think you need more than
3 that, you're talking about making confidential
4 information available, and it would be good to have
5 feed back.

6 MR. BROOKMAN: Yes, please. Patricia.

7 MS. CAMPBELL: Patricia Campbell from GH.

8 So, I guess I have a comment on that that
9 goes back to the gentleman from Pillsbury where, you
10 know, this information may be very complex, and yet,
11 it's hard to understand exactly what is going to take
12 place. So, you know, we don't know whether there
13 needs to be DOE audits of the information as he
14 suggested so that at that point you have the
15 information.

16 We wouldn't necessarily have the
17 confidential information. So, I think it would be
18 somewhat part of your role to make sure that it was
19 implemented properly, that the reporting was correct,
20 maybe even have violations or criminal penalties. I
21 don't know. But then, you know, at some point if we
22 believed that it's not being fairly managed I think

1 it really goes back to DOE's management of it if we
2 don't share the information, right?

3 MR. MCRAE: This is Ben McRae again.

4 And again, I think there're two. One is
5 we do have some experience in collecting and managing
6 information. Perhaps EIA does quite a bit of that,
7 and other parts of the government. Commerce collects
8 information like this, so I mean it's not something
9 that this is a first of a kind. I mean certainly we
10 would draw on that experience. And to the extent we
11 could use them, we would probably use people who were
12 in the business of collecting information and who
13 knew more how to do it.

14 But if we're talking about -- and I guess
15 when I heard Omer I was thinking more of someone
16 going to our Office of Hearings and Appeals, or
17 something. Those tend to be adjudicatory
18 proceedings where there's evidence. And if you're
19 talking about that, then that's going to raise these
20 questions about if you're going to have that kind of
21 proceeding and if that's what people are talking
22 about that will raise questions of the only way that

1 can be done, I think, is for that confidential
2 information to come out in that proceeding.

3 Again, if there are ways of doing this, we
4 would be -- we need to know what you're asking for.

5 MR. BROOKMAN: Yes, Bob, please.

6 MR. TEMPLE: Bob Temple from Babcock &
7 Wilcox.

8 I guess it has to start with once you
9 collect information you have to tell the companies
10 what their potential liability is. You have to give
11 them a number, and the company needs to be able to
12 respond to that in some fashion as to the -- and
13 there needs to be a degree of transparency in the
14 formulation with that, notwithstanding you're working
15 with confidential information, so that you can have
16 some confidence in it so you're not dealing with
17 everyone challenging it all the time.

18 And then we all know there are in-camera
19 proceedings that you can have and ways of protecting
20 information even in the confidential settings if you
21 have to get down and wrestle a dispute. So, I don't
22 think that any of that's unmanageable.

1 MS. CAPOFERRI: This is Anita.

2 I take what you said. I guess my one
3 question would be in such a process would you
4 envision this process also dealing with claims about
5 how my share is too much versus somebody else's
6 share? And if so, how would that work if we're in a
7 situation where everybody's information is privileged
8 and confidential and therefore cannot be divulged
9 without some kind of contentious proceedings, an
10 in-camera review, et cetera?

11 MR. TEMPLE: Well, certainly, I'm looking
12 to challenge the fairness of my share, all right?
13 And if the whole process is opaque, how do I do that?

14 MS. CAPOFERRI: I think that's a good
15 question, but it also gets to the question of how we
16 deal with the issue that's -- how we balance that
17 with the other issue that's been raised about the
18 propriety of the information coming from every other
19 company.

20 MR. BROOKMAN: The confidentiality.

21 MS. CAPOFERRI: The confidentiality of it
22 and proprietary nature of it such that we wouldn't be

1 able to share it.

2 MR. TEMPLE: The EIA was the example that
3 was thrown out. They publish aggregate data, right?
4 So, if you are gathering data from us, you can
5 publish an aggregate and then we can look at our own
6 proprietary number and see where that number fits
7 into the aggregate and understand somehow how that,
8 okay, that makes sense to me.

9 MS. CAPOFERRI: That's helpful to get that
10 clarification.

11 MS. GINSBERG: This is Ellen.

12 I think there may be a model, although
13 I'll turn to Omer on this because I haven't given it
14 much thought, but I think you could, like government
15 contracting, there are ways where a bid -- you know a
16 failed bid is appealed or a bid that's been not
17 granted is appealed and that's clearly by comparison
18 to someone else's bid, another entity's bid. So,
19 there is an analogy, perhaps, here. I don't know
20 enough about it, but there may be a model there. And
21 I don't think it has to be as complicated as you were
22 suggesting.

1 I mean I think these sorts of challenges
2 go anywhere from Social Security benefits, which is
3 in front of a reviewer sitting behind a desk to Armed
4 Services Board of Contractors Appeals, which is a
5 very proceduralized kind of approach.

6 MR. MCRAE: This is Ben McRae again.

7 And again, I think it would be useful for
8 people to really put this down in writing because
9 there is a range. And I guess I'm having a hard time
10 conceptualizing it because I don't think it's a
11 problem giving out aggregate data and that's at one
12 end and that seems very doable.

13 And maybe I just misunderstood what was
14 been proposed, but to challenge that in some other
15 than the normal mechanisms that the government uses
16 to make sure that the data it collects is good data
17 and that people are reporting correctly and not
18 falsifying it and all of that. But if we're going to
19 some sort of adjudicatory process or something that
20 sounds to me like we're going to have a proceeding
21 where basically each reporter would have to come in
22 and justify the accuracy of their data or somebody

1 would say I don't think Company X reported -- not
2 knowing the number, but I don't think Company X
3 reported the correct information.

4 Again, I guess I'm just trying to
5 understand what it is that people want to do as far
6 as challenging beyond the fact that this is the
7 aggregate amount. When I apply the data, I come out
8 with my share being "x" and you told me it was twice
9 that amount. I don't understand. That's something
10 we can -- but if it's challenging I don't think that
11 everyone has reported everything, so your aggregate
12 number is too low and so I'm paying too much. I
13 guess we just need more of an example of exactly how
14 that would arise and what you would expect to be able
15 to do so we can better understand what it is that we
16 might need to consider in a rule.

17 MR. TEMPLE: During the rule comment
18 extension period, we will certainly work on that.

19 MR. BROOKMAN: Yes, Dan?

20 MR. STENGER: Yes, I would just add I
21 think most of the disputes, the vast majority would
22 relate to an alleged sort of mistake in the

1 calculation of the supplier's exposure or a question
2 about how did you derive the aggregate data. For
3 which case, the Department might disclose, you know,
4 kind of bottom line category of information to give
5 some assurance about the aggregate data.

6 But even in the worst case where it got
7 beyond that in the government's contracts area there
8 are well known, time-honored protective order
9 mechanisms that generally can get to the point of
10 even just allowing counsel involved to review
11 proprietary data of other bidders, for example, in a
12 bid protest; but the company being represented never
13 sees that data. So, there are mechanisms to even get
14 beyond, but I think the vast majority are going to be
15 kind of calculation questions.

16 MR. BROOKMAN: Okay. Yes, Patricia.

17 MS. CAMPBELL: Patricia Campbell again.

18 I guess I don't feel like my question was
19 quite answered when I asked if you're going to give
20 us our allocation number -- you know, if we do
21 reporting, whether it's every five years or every
22 year or whatever in some simplified fashion,

1 hopefully, but would you then write each entity
2 that's subject to this a letter and say this is your
3 number for the year or for the five-year period or
4 whatever? Is that something you envision? I don't
5 really see that in the rule.

6 MR. BROOKMAN: Anita.

7 MS. CAPOFERRI: Yes, I'll address that.

8 Something of the sort of what you've
9 described is not in the rule as it currently stands.
10 So, if that's something that you think should be in
11 there and you want to flesh out that concept and what
12 you think is appropriate, we'll certainly consider
13 that.

14 MS. CAMPBELL: Okay. Because that kind of
15 goes to the discussion we've just been having. If we
16 don't know that number, and maybe we don't know it
17 before an incident occurs and we find out something
18 at the time of an incident that makes it, you know,
19 even more difficult to maybe understand what goes
20 into that number. Do you agree with that, Bob?

21 MR. TEMPLE: Yes, I was concerned about
22 that. What's my public reporting obligation in terms

1 of risk and the potential liability? Can I get an
2 insurance product that will help me with this
3 challenge if I chose to do something other than
4 self-insure for the risk? If I know a number and my
5 broker knows a number, then I can work with that.

6 MR. MCRAE: Ben McRae again.

7 I think this actually is useful. I think
8 it actually would help to get some written comments
9 because, again, these are all legitimate concerns,
10 but again, getting back to the point I made on the
11 reporting. If this survey-type information is more
12 general than the information that we will actually
13 use in the formula to do the allocation, and it could
14 be, is that sufficient for the purposes that you need
15 it.

16 And again, it may be. I don't know
17 because to the extent we use ranges we're not going
18 to have exact numbers. We could approximate what
19 your amount would --

20 MS. GINSBERG: A range.

21 MR. MCRAE: But then, again, that doesn't
22 match up with what the formula is now. Now, you

1 could do a formula that was based on ranges, but
2 again, that's kind of getting away from precision.
3 But again, we need comments from people as to what
4 they think is an equitable way of doing this because
5 the more you go towards ranges and less precise
6 information, the more squashed the number is going to
7 be, less precise.

8 MR. BROWN: What you might be able to give
9 is a percentage -- each company's percentage of the
10 overall cost because you're not going to be able to
11 know exactly what the cost would be because you don't
12 even know how much the call will be under the
13 international fund unless there's a catastrophic
14 accident. So, it could be that the call would just
15 be up to 350 million or 400 million SDRs above the
16 300 million domestic limit. But if you gave a
17 company a percentage, at least then they could bound
18 it based on the minimum and maximum U.S. share. That
19 might be a way to do it.

20 And if that were allocated by sector or
21 under Alternative 1 under the appendices, then the
22 company might be able to look at the appendix and say

1 we know that three of our competitors also do this
2 kind of business, so why are we getting a hundred
3 percent of this particular item? That may be a way
4 to do it.

5 MR. BROOKMAN: That's a comment that's
6 very helpful, and your written comments as well.

7 MR. BROWN: Yes.

8 MR. BROOKMAN: Sophia. I can't see you
9 over there. Sorry about that.

10 MS. ANGELINI: Sophia Angelini.

11 Could you please specify how the rule can
12 facilitate your obtaining an insurance product? I'm
13 probably just rephrasing what has been said before.

14 MR. BROOKMAN: Omer?

15 MR. BROWN: Well, I can't at the moment
16 because the problem is even if we could bound how
17 much the United States share would be, we don't know
18 how to divide that up among the suppliers. So, until
19 you know how to divide it among the suppliers,
20 nobody's going to buy an insurance policy for the
21 whole U.S. share. They're going to buy a policy for
22 their individual share. So, until we know the

1 percentage of shares, it's even impossible to talk
2 about an insurance policy. And that's something that
3 we've been saying all along.

4 MR. BROOKMAN: If you did know your
5 percentage of some aggregate, then you could make a
6 decision and insurance could be obtainable, perhaps?

7 MR. BROWN: Well, perhaps, yes. I've
8 talked to the insurance pool about this, and they're
9 not sure that they're even going to be willing to
10 offer it because they see this as more of a tax than
11 a contingent-type liability that would normally be an
12 insurable risk. They're not sure it's an insurable
13 risk, so that's the question down the road.

14 The thing we need to know first is what
15 are the shares? How many suppliers are in and what
16 are the shares?

17 MR. BROOKMAN: Okay. Is there anything
18 else in this same segment here? To the extent we're
19 able to do it, I certainly want to talk about
20 Alternative 1 and Alternative 2 today, but in this
21 same segment of risk premium payment process we
22 referenced on premium payment this morning and we

1 didn't cover it in a very detailed way. We haven't
2 talked about the penalty provision yet. Maybe we
3 could talk about those a little bit. Dan?

4 MR. STENGER: If I may, before getting
5 into the penalty.

6 MR. BROOKMAN: Please. I didn't want to
7 foreclose anything here.

8 MR. STENGER: Yes, Alternative 1 and
9 Alternative 2 on the risk allocation, those sorts of
10 things, I guess one thing we didn't really see
11 discussed very much in the NOPR was the technical
12 basis for some of the values chosen.

13 Is there a technical basis or analysis
14 underlying the value of 2 for the multiplier for
15 Appendix A items under Alternative 1? Was there any
16 kind of analysis underlying how you divided up the
17 allocation of risk among the four sectors under
18 Alternative 2? Could you just speak to that?

19 MS. CAPOFERRI: Anita Capoferri.

20 I guess I would say we explained in the
21 preamble in the rule how we came to the sectors that
22 we chose, and the weighing, and the sources that we

1 looked at, for example, for Appendices A and B, under
2 Alternative 1. And then, of course, we used the
3 knowledge and experience we have within the
4 Department and of the industry and in consultation
5 with the other federal agencies that reviewed the
6 rule, so it was all of those things. So, that's kind
7 of how we really came out.

8 MR. BROOKMAN: Dan, would you suggest a
9 different way? Is there another source of data that
10 might guide the Department that they may not have
11 seen yet?

12 MR. STENGER: No. I was more curious as
13 to whether there was some technical basis for it. If
14 you had told me the weighting was, say, 10 rather 2
15 it might've seemed appropriate. I just wondered how
16 you got those values really.

17 MR. MCRAE: I think Anita basically
18 described it, but we talked to people who have
19 expertise in this area here in the Department, NRC,
20 other agencies. I can tell you that people had
21 different views and we went back and forth. And
22 again, this is what we came up with. Again, we are

1 quite interested in, you know, if here people think,
2 no, it should be 10 to 1 rather than 2 to 1 or 5 to
3 1. I mean certainly if there's better -- again, we
4 used our best expertise that was available to us in
5 the Department and other agencies. I don't have any
6 expertise and relied on other people who had
7 expertise in this, but that was what we heard. If
8 there are other factors we ought to take into
9 account, we are happy to hear that and take that into
10 account.

11 MS. CAPOFERRI: This is Anita.

12 I'm sorry. I would just add I think we
13 also certainly looked at the information we got in
14 response to the NOI as well as some of these at least
15 concepts if not particular quantifications of numbers
16 were also floated during that process as well.

17 MR. BROOKMAN: Michael, do you wish to
18 comment here?

19 MR. KOLODNER: Mike Kolodner here.

20 First, I'm not going to comment on the
21 particular adequacy of individual weightings because,
22 to be honest with you, Marsh does not have an opinion

1 on that. We don't insure anything. Marsh just
2 represents those and advises those who finance risk
3 once it's out there.

4 To the prior comments around whether or
5 not this risk that we're talking about collectively
6 is insurable and what is required to be able to
7 insure it, I want to make sure that I'm very clear
8 that it's eminently insurable. The question is at
9 what cost. And the uncertainty in the proposed rules
10 and the two options before us present an enormous
11 additional amount of costs.

12 For example, the numbers are important
13 here. How many participants there are absolutely
14 matters and is a major factor in how that cost gets
15 allocated. The nice thing about the CSC and the
16 reason everybody should be proud that we are actually
17 at this stage where we can talk about implementing it
18 is that the risk itself is now capped. It is
19 quantifiable and that's fantastic.

20 The challenge is just going to be really
21 are we going to make it easy to allocate this amongst
22 ourselves, or do we make it really difficult. And I

1 think, you know, ultimately, I do appreciate that DOE
2 does seem to be very receptive to the comments that
3 are coming in today. I think there will be plenty of
4 additional comments and we're certainly happy to
5 offer them.

6 MR. BROOKMAN: Thank you. Ellen?

7 MS. GINSBERG: Yes, I was just going to
8 comment, piggyback a little bit on what Dan has said.
9 I think the issue is not necessarily the weighting
10 itself, but what's behind it. And I think the
11 industry, maybe because of the nature of the industry
12 didn't find it very satisfying to hear, well, we
13 based it on our expertise. It felt a little like
14 there was a magic wand waved over this and we arrived
15 at 2 and 1. I know that's not what happened, but it
16 isn't transparent from the description, which is why
17 went to other agencies and based it on their and our
18 expertise. So, that just gives you a little more
19 feel for what the concern is.

20 MR. BROOKMAN: Can we say a little bit
21 more about Alternative 1 and Alternative 2? Dan?

22 MR. STENGER: I'll just add, just to

1 repeat what I said earlier today, and others have
2 mentioned. It's virtually impossible to do a
3 comparison of Alternatives 1 and 2 without knowing
4 essentially the denominator in each one. It's really
5 hard to do any kind of apples-to-apples comparison.

6 Even the two examples in the NOPR are very
7 different. You walk through how the calculation would
8 work for Alternative 1 and then when you do
9 Alternative 2 and walk through that calculation it
10 appears to be a reactor suppliers, I gather, which
11 doesn't match Alternative 1. It's sort of apples and
12 oranges. I mean Omer emphasized this up front. You
13 can't tell which one is preferable.

14 MS. CAPOFERRI: This is Anita.

15 I have heard all of that today and
16 appreciate all of that. I guess I would wonder,
17 though, if there are other aspects of the formula
18 that you could comment on, aside from the ultimate
19 number it spits out. Presumably, there are other
20 parts of it that either you like or don't like. I
21 mean the very notion of is it perceived as more
22 appropriate to go to a sector-type designation of

1 nuclear suppliers or is it better to go to the
2 Alternative 1, which is kind of the types of goods
3 and services?

4 So, those kinds of concepts that are
5 embedded in both of those Alternatives if we could
6 get some feedback on them, understanding the ultimate
7 number is still problematic for you all, that would
8 be helpful.

9 MR. BROOKMAN: Let me hear from Ted, and
10 then we're coming back to you Michael. Ted?

11 MR. GARRISH: Just a thought for you, you
12 know, when you look at Alternative 1 and Alternative
13 2 for a company like Ch2MHill Services, between the
14 two it looks better for a services company to go to
15 2. Now, what is that? Well, it has more to do with
16 the specificity of what you're dealing with. In
17 other words, in understanding -- the risk seems to be
18 more defined for a smaller company in a larger pool.

19 So, if we had more information on the
20 aggregate, then we could make that determination
21 better. But without that, then really it looks
22 better for a company like CH2MHill to look at on the

1 basis of services, and that is minimization of the
2 assessment.

3 MR. BROOKMAN: Michael?

4 MR. KOLODNER: Running some initial model,
5 making some gross assumptions just based on our
6 particular area of expertise, what I can tell you is
7 that each of the options looks different, depending
8 on what lens you use. So, I would second those
9 comments. I think depending on what category you
10 find yourself in you're definitely going to be in
11 some cases it's more advantageous to be in one than
12 the other.

13 The only other general comment I'd offer
14 is that the fractional cost that is associated with
15 it, which does not necessarily go toward financing
16 the actual risk itself is particularly high relative
17 to the risk. So, when you look at the efficiency of
18 creating a vehicle that's going to ultimately finance
19 something efficiently over time the expense ratio for
20 both methodologies is very high in comparison
21 relative to the actual risk to be financed.

22 MR. BROOKMAN: Yes, Ben?

1 MR. MCRAE: I've got two points to make.
2 And one is, again, if you were to provide us more
3 comments or information, one thing would be useful
4 because again getting back to -- I keep hearing you
5 need more information. You need to know what the
6 aggregate number is. It would be very useful to know
7 exactly what you need to -- what information you need
8 to have to be able to make this evaluation as to what
9 is the affect on your company.

10 And also, if we did a survey, would the
11 survey that we've talked about give you that
12 information, or does that survey need to ask for
13 other information or more detail in order for you to
14 have sufficient information. Because as I think
15 we've heard we were unable to find a place or source
16 for all this information currently and I think no one
17 here has told us that that source exists. So, this
18 survey may be a way of getting that information. But
19 if we were to do a survey, we would like to get the
20 information that you think you need.

21 Now, as I also said, while we do care
22 about all of the companies here, we're not doing the

1 rulemaking based on how one company or another is
2 affected. That is important to you, but our emphasis
3 on what is the most efficient way of doing this, what
4 is the way that the companies affected feel it has
5 been fair to them, equitable.

6 Given the fact that there are these
7 uncertainties, we would like to know what factors you
8 think make it more efficient or make it burdensome.
9 What we can do to try to make it work well for as
10 many of the companies as we can. So, in making your
11 comments it would be helpful -- and on things like
12 risk it really would help us to know if you thought -
13 - even though we'll go back and look -- if you think
14 2 to 1. You think it should be 5 to 1. If you think
15 that some stuff should be in one category or another,
16 it would be very helpful for us to get your input
17 because you know this better than we do. So, it
18 would be useful.

19 MR. BROOKMAN: Ted?

20 MR. GARRISH: To just follow up on one
21 thing, I think the one thing that you have to take a
22 look at that's important is the differences between

1 services companies and hardware companies. And for
2 instance, I would take the view, and you asked what's
3 fair and equitable, I don't believe the services
4 companies have much to do with nuclear access. So,
5 therefore, the numbers, I think, need to be at a
6 minimum.

7 Now, that is a particular view coming from
8 a perspective. Now, obviously, there are others that
9 will feel that that may not be true, but the point is
10 that -- so, we look at the numbers and we say, okay,
11 if we're going to have to play how do we play at the
12 minimum required and we'll make comments because we
13 don't think that we're responsible in the risk
14 categories to be required to have to pay anything at
15 all. So, that would be the point that we would make
16 on that.

17 MR. BROOKMAN: Okay. Thank you. Dan?

18 MR. STENGER: And again, I would add in
19 connection with that, one thing to look at -- and
20 this goes back to comments NEI provided on the Notice
21 of Inquiry in 2010. There can be certain segments of
22 the industry, such as the back end of fuel cycle,

1 like spent fuel and nuclear material storage or
2 transportation where there is such a low risk that
3 that activity could ever create the risk of a nuclear
4 incident triggering a call for funds under the CSC
5 that those could be moved way down on the list.
6 Those types of things are worth looking at.

7 MR. BROOKMAN: Thank you. Ellen it would
8 be very good to get that in. Ellen?

9 MS. GINSBERG: I actually would like to
10 switch subjects for a moment.

11 So, I'm looking again at your
12 presentation, your January presentation, and I'm a
13 little confused in the Alternative 2.

14 MR. BROOKMAN: Can you find the page?

15 MS. GINSBERG: Sure. It's page 13. But I
16 have a question that's more general, which is in
17 terms of the facility sector the criteria seems to be
18 lead nuclear supplier, which strikes me as
19 interesting because that's different than the final
20 nuclear supplier and it's based strictly on whatever
21 number. You said exceeds 500 million. Could you
22 explain your thinking there? Is that strictly

1 because your thought is that reactors are costly and
2 so it's an easy way to capture reactor vendors? I'm
3 not quite sure I followed the logic there of facility
4 sector lead nuclear suppliers involved in development
5 and deployment.

6 MS. CAPOFERRI: This is Anita.

7 I think we put that into the preamble to
8 the rule, but I'll try and articulate again. The
9 thinking about the lead nuclear supplier -- and it is
10 in the facility sector. And as we put in the rule,
11 the thinking is that if you're going back to 1960 and
12 trying to capture those suppliers who would've been,
13 in essence, the lead or the primary supplier of a
14 nuclear facility abroad, which might be a different
15 business arrangement that currently exist. It
16 would've been more of a consolidated business as
17 opposed today where things are a bit more bifurcated
18 and disaggregated.

19 So, in order to capture that concept and
20 to capture those types of suppliers to those
21 facilities in the past, for the sector approach,
22 which is a little different, we were trying to

1 capture that concept of having the rule apply to that
2 type of nuclear supplier, which seemed to us to be
3 distinct from other suppliers and the other sectors
4 and a distinct concept from Alternative 1, which was
5 based more on the particular goods or services
6 provided.

7 But when we looked at it from the facility
8 point of view, it seemed like it would zero in, for
9 historical purposes, more on certain types of
10 suppliers, which we just deemed or called lead
11 nuclear supplier.

12 MS. GINSBERG: Thank you. I appreciate
13 that. That's helpful.

14 MR. BROOKMAN: Yes, Bob.

15 MR. TEMPLE: Another topic we haven't
16 gotten to today, but it's really what this rule does
17 to potential new entrance into the business, new
18 suppliers. And clearly, as you measure the formula
19 and approach, you have to look at those folks on the
20 margin who will say I will not supply if I'm going to
21 become liable under this regime. And that's going to
22 make unavailable a lot of critical components that

1 are necessary for us to do business.

2 MR. BROOKMAN: So, to detail that in your
3 written comments that would be helpful.

4 MR. TEMPLE: Yes.

5 MR. BROOKMAN: Okay. I think, though,
6 shortly we should take a break. There's a little
7 lull in the room. I have a countervailing strategy,
8 so be brief.

9 MR. MCRAE: Just picking up on this
10 because new entrance and the effect on the
11 competitiveness of the market certainly is important.
12 And I do think if you're going to make those comments
13 it would be useful -- and again, to some extent,
14 industry has gotten the benefit of us joining the CSC
15 because, quite honestly, I'm told that without the
16 CSC that where the CSC doesn't apply it's also a
17 detriment to people entering the market. That they
18 might be exposed unlimited liability and lawsuits in
19 the United States, so again, to the extent.

20 But having said that, it is useful if
21 we're going to try to not discourage new entrants.
22 Again, you need to try to help us understand what

1 would be a fair approach to doing that. Should it be
2 based on how many years they've been supplying?
3 Should it be based on how much they supply? What is
4 it that would help us be able to not have a chilling
5 effect on new entrants?

6 And also, bearing in mind that every time
7 we carve out someone that means the people who remain
8 still have to divide up the total, the amount that is
9 the U.S. contribution. So, again, it cuts both ways,
10 but we certainly don't want to have a chilling effect
11 on new entrants.

12 MR. BROOKMAN: It's now 3:00 o'clock.
13 Let's take a 10-minute break. And let me remind you,
14 please, let's make certain that any issues that we
15 haven't raised so far that you wish to raise when we
16 return from break we start taking those up. Okay.
17 I'm going to be reviewing my list.

18 (Whereupon, a short recess was taken.)

19 MR. BROOKMAN: Okay, let's resume now. I
20 was consulting with Ben and Anita at the break, and
21 two items that we haven't covered very much, or
22 perhaps not at all in one case, are some of the final

1 items listed on your agenda. The cap on premium
2 payments we referenced this morning, but we didn't
3 discuss it in a detailed way, and we haven't talked
4 about penalty yet. And of course, any additional
5 thoughts on notice and dispute resolution process,
6 although I thought that was pretty good for what we
7 needed to cover here today.

8 So, I'd like to just queue those up, and
9 also any additional thoughts on Alternative 1 and
10 Alternative 2, if you think that's appropriate. So,
11 who wants to start? Dan, you look like you're ready.

12 MR. STENGER: I would defer to Ellen, but
13 on the cap we do agree that a cap is really
14 essential. In fact, we think it would be very useful
15 to have both an annual cap and a cap on total
16 liability similar to what's in place for the Price
17 Anderson secondary retrospective premium system where
18 there's a cap on annual as well as total liability.
19 So, something like that I think would be very
20 helpful.

21 MR. BROOKMAN: Okay. Thank you. Yes,
22 Ben?

1 MR. MCRAE: On cap, I think it would be
2 useful -- I mean certainly we've heard what you have
3 said and others. Again, just so that everyone is
4 clear, our understanding of the statute is that we
5 have to collect from suppliers the entire amount.
6 So, to the extent the cap actually operates, you're
7 transferring exposure from the entities that are
8 capped to the other people in the pool.

9 Again, as long as people think that's
10 equitable or at least they think it's something they
11 can accept and they want a cap. And that's what I'm
12 hearing, at least from what I think I've heard today
13 and the comments, but again, people should be clear
14 about that.

15 Then it would also be useful to hear what
16 do you think the cap should be. And it's the same
17 comment as far as the exclusion for small entities,
18 new entrants. Again, we're open to those kinds of
19 things, but bear in mind the more we exclude for the
20 people who remain in the pool they're going to have
21 to bear the cost.

22 MR. STENGER: And that was a good

1 clarification. We understand that the cap would be
2 subject to the possibility that if the total call for
3 funds exceeds -- if it isn't covered that it would
4 have to spread out.

5 With respect to the cap, again, it's kind
6 of difficult to come up with an amount, other than to
7 pull a number out of thin air without knowing the
8 number of suppliers and the percentage one could be
9 subject to, but understood. We want to flesh that
10 out. But one point that's been alluded to today, we
11 just want to make clear in terms of the equity. If
12 there is a single cap at a certain amount that can
13 end up being inequitable for smaller suppliers.
14 Everybody hits that cap. It may be a drop in the
15 bucket for a very large supplier, but it could be
16 bankrupting for one of the small shop, so we have to
17 think about how that operates. Maybe there should be
18 a range of caps or percentage or something like t
19 that.

20 MR. BROOKMAN: Okay. Additional thoughts
21 on caps. It was a subject that was referenced a lot
22 on your written comments previously. I heard, Ben,

1 see if there are any takers on a number. Yes, Omer?

2 MR. BROWN: Well, on our 2010 comments, we
3 put out the number five million, but that was based
4 on the assumption that there were going to be a lot
5 more than 25 companies involved. So, the more
6 companies involved more likely that cap could be
7 sustained.

8 MR. MCRAE: Okay.

9 MR. BROWN: Recognizing that you have to
10 collect the full amount, but if more people are
11 sharing then it's easier to maintain the cap.

12 MR. BROOKMAN: Not having read those
13 comments from 2010, were you suggesting some sort of
14 proportionality based on the size of the firm or the
15 amount of business?

16 MR. BROWN: No. We didn't get into that
17 level of detail.

18 MR. BROOKMAN: I see because I was just
19 thinking about Dan's last comment about small
20 companies versus large companies. Ellen, you're
21 next.

22 MS. GINSBERG: Yes, this goes into the

1 category of legislative fixes. If we were to get
2 some legislative changes, one of the things I think
3 would be useful is a hard cap and that would solve
4 the problem that Ben was suggesting, which would be
5 that you'd have to then go back and collect the rest
6 if you met the cap. So, if our legislative wish list
7 is being kept that would be on the list.

8 MR. BROOKMAN: Okay. I didn't get your
9 name, sir?

10 MR. CATES: Dwight Cates with FLUOR.

11 Can you explain to me why is a cap
12 equitable to those members or participants who are
13 not going to hit the cap? And is there going to be a
14 cap for certain, or is this just an opportunity
15 you're exploring.

16 MR. BROOKMAN: Yes, Anita.

17 MS. CAPOFERRI: Well, we did put in the
18 proposed regulation a cap. What we left open was the
19 amount that that cap would be. And we put it in
20 there, in part, because of previous comments such as
21 we've heard today as well about the cap being a means
22 by which companies could have some certainty about at

1 least the limits of what they would owe for
2 insurability and other purposes.

3 So, I think that was the impetus to
4 propose the cap in the rule, and the amount of which
5 we have sought additional comment on. But if you
6 have a comment that you don't think a cap is
7 appropriate, then we're certainly open to hear that
8 too.

9 MR. CATES: I don't know that I would say
10 that, but it would seem that if one or two
11 participants have a very large allocation, if you
12 just take the total pool of overseas revenues over
13 the period of time and one or two companies have 60
14 or 70 percent of those revenues, to cap them both at
15 10 percent of the total risk exposure of say it's 100
16 million, so say they had 70 percent of the overseas
17 revenue and we're going to cap them at some arbitrary
18 really number of 5 or 10 million that doesn't seem
19 equitable to the other 15, 20, 30 participants who
20 have minimal participation overseas, but who are
21 captured that now have to pay a much larger share.

22 MR. MCRAE: This is Ben McRae again.

1 And I think on this -- this is a difficult
2 issue, and certainly is something that we will think
3 about quite a bit in the process before we get to a
4 final rule. Certainly, I have to say in the written
5 comments we've received on the NOI and this workshop,
6 there seem to be a lot of support for a cap from
7 organizations which had members which would be in the
8 situation that you described, that they would not be
9 capped and that they might have money exposure
10 shifted to them.

11 But again, what we're faced with is
12 Congress told us to do a risk-informed rulemaking.
13 And certainly, we've looked at the value of the goods
14 and services. That's certainly one surrogate for a
15 risk. But I think as we've heard in this industry
16 risk is a very difficult issue and that certainly,
17 given the low probability of anyone ever being -- of
18 a nuclear incident that will trigger a call for
19 funds, the even lower possibility that anyone who's
20 represented in this room would be subject to a
21 lawsuit based on that accident, you know, we're
22 dealing with numbers. Doing a risk analysis is very

1 difficult.

2 And we're also not talking about -- we're
3 talking about the possibility that somebody will be
4 sued, and that truly again may relate to how visible
5 you are, what kind of component you provide, how many
6 projects you're involved in, but it's very hard to
7 take risks down to one factor, whether it's revenue
8 or number of projects or type of goods and services
9 because how people get sued is hard to determine
10 sometimes.

11 So, there are a number of things. And so
12 I think the cap was -- it could be that people think
13 it's equitable, given that the range of possibilities
14 in making this risk conform certainly if you
15 overweight something one way to make sure that you
16 get -- and I think some persons have suggested that
17 while it might not be feasible you could do a risk
18 analysis that would say everyone should pay -- if you
19 have a hundred people each should pay 1 percent.
20 It's so hard and the risk of being -- there are a lot
21 of different theories out there on how you do risk
22 analysis. So, I think that, at least I would think

1 that some of the reasons people have suggested caps
2 is to take that into account, that it could well be
3 that under some theories of risk just allocating it
4 between everyone on the same amount might,
5 theoretically, be the way to do it.

6 Now, having said that, we've got an open
7 mind. If people think that a cap is a good thing,
8 they should tell us why. If they think that it's not
9 a good thing, they should tell us why, but we would
10 like for people to support it. And bear in mind,
11 that risk informed in this industry is a very
12 difficult standard to address all the elements of
13 risks. It's not just a simple matter.

14 MR. BROOKMAN: I'm wondering, Dwight, if
15 you had thoughts on how this might be arranged to --
16 I believe you used the word "equitable" in there.

17 MR. CATES: Just in terms of Alternative
18 1, you've got a framework for allocating risks and
19 that's based on revenue and then based on a
20 multiplication factor.

21 MR. BROOKMAN: A risk multiplier.

22 MR. CATES: So, you've got it equitably

1 distributed based on that framework, but then you're
2 introducing a cap, potentially, that would remove
3 liability for certain participants based on that
4 framework and reallocate it to other participants who
5 don't have that risk exposure based on that
6 framework.

7 And so, it wouldn't seem -- okay, so where
8 my company may be in that smaller end of the range,
9 so we may be paying a higher, you know, cost
10 allocation than we would if it was just spread out
11 without a cap. So, why is it fair to the smaller
12 company or the business that hasn't had a large
13 amount of overseas revenue? Why is it fair to them
14 to make them pay a higher share because we want to
15 cap a larger -- .

16 MR. BROOKMAN: And would you suggest a way
17 that could be addressed?

18 MR. CATES: I don't have that answer.
19 This is more of a threshold question, cap or no cap.
20 I'm not arguing a different cap system. I'm just
21 arguing it seems like you have a very elegant way of
22 allocating risks without a cap. You have a

1 framework, and now you're forcing a cap into it, then
2 the framework no longer becomes about your risk
3 participation.

4 MR. BROOKMAN: Ben?

5 MR. MCRAE: Again, the point I was trying
6 to make is the statute didn't -- well, it would've
7 been actually easier if the statute had told us
8 allocate this on revenue, on the value of goods and
9 services that people supply. They didn't. They said
10 do it on a risk-informed basis. We certainly have
11 used revenue or market share. These are all factors
12 that can be surrogates for risks and we have used
13 those to try to make the formula simpler. It's not
14 simple enough, but we actually have tried to make this
15 something that would work and take into account risk,
16 but as I think we've heard risk-informed here really
17 is not so simple as how much revenue you receive, how
18 much market share you have, what type of goods or
19 services you provide.

20 Those are all elements and I think we can
21 justify bringing them in, but again, I'm not arguing
22 for or against a cap. We'll see what people say, but

1 again, I suspect that the people who argued for a cap
2 are saying that, to the extent the formula may over
3 allocated based on one factor, a cap kind of brings
4 it back into alignment with the fact that -- again, I
5 think I heard arguments being made that there is a
6 good basis for people to assert that if you were
7 doing this on the basis of risk it would almost --
8 that they would suggest, although they I think
9 indicated they didn't think we would adopt it, that
10 it really ought to be based if you have a hundred
11 participants each one would bear 1 percent of the
12 risk.

13 I'm not advocating that either. I'm just
14 saying I heard that. And that way a cap kind of
15 reflects the fact that there is a range of ways to
16 look at risks, but certainly we would like to hear
17 all of this in written comments as to what people
18 think about it.

19 MR. BROOKMAN: Patricia.

20 MS. CAMPBELL: Patricia Campbell from GEH.

21 Just to make sure I understand, when I
22 read the way that the cap proposal is worded, it

1 could be a percentage basis rather than a set dollar
2 amount. And then it does seem to go more toward some
3 type of allocation based on the original levels; is
4 that right? And you wanted feedback on which of
5 those proposals, whether it be the percentage, a
6 dollar amount, or some other dollar amount.

7 MS. CAPOFERRI: That's correct.

8 MS. CAMPBELL: Okay. Thank you.

9 MR. MCRAE: And also like we heard,
10 because I hadn't actually, but looking at tiers based
11 on different -- that companies are in different
12 positions. You know all of those things may be
13 reasonable, but we would like to see it in writing
14 and see what -- you know so we can think about it and
15 analyze it and try to come up with something that
16 works.

17 MR. BROOKMAN: About five minutes ago,
18 Dan, I thought you were going to say something more.

19 MR. STENGER: Yes, I'd just like to go to
20 a slightly new topic, but related in terms of the
21 length of time for the payment. It's either 60 days
22 or prorated over five years, which I understand is in

1 the statute. Have you given thought to the
2 possibility of being more flexible in tying the time
3 for payment to vary according to the amount of the
4 liability and that sort of thing? Do you see any
5 flexibility under the statute?

6 The thinking there is that kind of makes
7 it more of a -- I'd like to defer to our colleagues
8 from Marsh, but more of an insurable type of risk?

9 MR. MCRAE: Are you talking about the five
10 years?

11 MR. STENGER: Yes.

12 MR. BROOKMAN: Ben or Anita. Is it in the
13 statute?

14 MR. MCRAE: Yes.

15 MS. CAPOFERRI: Yes, it's in the statute.
16 So, certainly you can make that comment and make that
17 suggestion, but the statute does specify the one
18 payment or the option for five annual payments.

19 MR. BROOKMAN: With interest and the like.

20 MS. CAPOFERRI: Right.

21 MR. BROOKMAN: Ellen?

22 MS. GINSBERG: Remind me does the statute

1 say five equal annual payments? I mean that's the
2 implication.

3 MS. CAPOFERRI: It does say that.

4 MS. GINSBERG: Okay. Thank you.

5 MR. MCRAE: I think this is one that
6 without legislation -- there are areas that we have
7 flexibility and this is not one of them.

8 MR. BROOKMAN: Additional thoughts on caps
9 before we go to penalty? What about what's in the
10 NOPR. Ben?

11 MR. MCRAE: I think suppliers would be
12 very concerned about the possibility the penalty
13 would be twice the amount of the payment that's owed.
14 So, we would certainly urge a more flexible approach
15 on that to allow some extenuating factors to be
16 presented that might justify an extension of the time
17 for payment.

18 MR. BROOKMAN: I was wondering if there
19 was some other regime or benchmark that would be a
20 model in this case.

21 MR. MCRAE: Under the U.S. tax system.

22 MR. BROOKMAN: That's what I was thinking,

1 yes. The penalty isn't twice, is it, I don't think?

2 MR. MCRAE: It should be meant to be
3 punitive. It's just, as I recall, the amount could
4 be twice the amount of the payment, right? That
5 would be a significant penalty for being one day late
6 on payment or something, or the check bouncing.

7 MS. GINSBERG: It says "Of not more than."
8 So, I think the industry would like to suggest that
9 you didn't need to go the full Monty and take the
10 twice. It says not more than twice the amount.

11 MR. MCRAE: I think on this one because my
12 memory is that there were some folks who thought that
13 they wanted to make sure that people paid. But
14 having said that, I think that if the feeling is that
15 this is too harsh, certainly I don't think it's too
16 harsh were someone intentionally refuses to pay or
17 doesn't report information so that they escape. But
18 if there are situations which somebody honestly
19 didn't realize they were subject to it or whatever,
20 it would be useful to get fairly detailed information
21 about what those circumstances are so we can evaluate
22 whether or not we should have some -- you know

1 whether we should provide some flexibility and if so,
2 should we flesh that out, but I suspect that there
3 are situations where this penalty is the correct
4 amount. Again, there may be situations where
5 flexibility would be appropriate, but we would need
6 to see comments on that.

7 MS. GINSBERG: I think you want to make it
8 the exception, not the rule, and that's consistent
9 with what you're suggesting, if at all.

10 MR. MCRAE: Well, as I said, there may
11 well be situations where we should show flexibility,
12 but I think we would need to have justification in
13 the comments as to why we were doing that and show
14 that it was appropriate.

15 MR. BROOKMAN: Further thoughts on
16 penalty? Looking at what we've listed on the agenda,
17 I think we've at least touched on all of these
18 subjects. I'm not sure we've covered them as much as
19 some of you would like, that's why I'm asking you to
20 take a peek at the agenda now again to see if there
21 are other issues that you wish to cover at this time,
22 and also noting that after we do this review of the

1 content areas that we have an opportunity for closing
2 remarks as well.

3 Anything additional before we move to
4 closing remarks? Okay, I see nothing at this point.
5 So, then any other issues that people wish to raise
6 at this time? Yes, Dwight.

7 MR. CATES: I just have a question. Do
8 you expect you may have a SNO PR?

9 MR. MCRAE: Right now there is no plan for
10 that. As I said, you know, we are not locked in
11 stone in anything. Certainly, we've heard some of
12 the comments today. I suspect that again there would
13 need to be a reason, you know, for a workshop, for an
14 extension of comments, for another proposal; but
15 again, there's a lot been said today that's been
16 useful.

17 If people think it would be useful to have
18 some additional process here, it would certainly be
19 useful if we got that in writing and explain why
20 people thought why that would be useful, but again,
21 that's up to you. But right now we don't have any
22 plans for another workshop or for an additional

1 notice. We have a request for an extension of the
2 comment period and that's under advisement. And
3 while there is no absolute deadline for finishing
4 this rule, we would like to finish this rule in a
5 reasonable amount of time, so we need a reason to
6 keep having -- but if it develops a better rule that
7 is more acceptable to everyone, we certainly will
8 listen to those suggestions.

9 MR. BROOKMAN: Yes, Dan?

10 MR. STENGER: Doug, just a couple of
11 things in closing. One, I think one of the key
12 messages -- and again, thank you very much for being
13 willing to have this workshop. It truly has been a
14 workshop, which has been very useful and a good
15 exchange of ideas. You've been very receptive, so
16 thank you so much for that.

17 I think one of the key messages the
18 Department needs to gather additional information to
19 inform this rule so that the affected suppliers can
20 really look at it and have some reasonable
21 understanding of what their potential exposure is for
22 a lot of reasons. And it doesn't have to be that

1 precise. I'm arguing that we have an imprecise
2 system or anything like that, but the fact is with
3 the historically records, particularly going back to
4 1960, much of that's not going to exist. It's not
5 going to be in great shape. Suppliers have gone out
6 of business, whatever, so there's going to be
7 significant imprecision to begin with anyway, even if
8 you sought all that detailed information.

9 But some collection of data through the
10 survey process that Ellen outlined would be extremely
11 useful, whether it be the be all and end all I'm not
12 sure, but my personal view is if you got that type of
13 information from suppliers it would give most people
14 what they need to see to be able to kind of having a
15 bounding sense of their potential exposure under the
16 rules, so that would be very useful.

17 I think gathering that information is a
18 critical first step in the process. And I think once
19 that's done there would be a good reason to have
20 another workshop to go through that, or a
21 supplemental proposed rule as was suggested.

22 MR. BROOKMAN: Thank you. Yes, Mary

1 Alice?

2 MS. HAYWARD: Well, first, I want to thank
3 you all for being so generous with your time in
4 dedicating a whole day for a workshop. I think it's
5 been very productive and I really appreciate your
6 willing and receptivity to all the commentary that
7 we've given today. We hope it's been useful. I have
8 found it very useful on a personal note to interact
9 with all of you, so I think it was a productive use
10 of my time.

11 I just leave you with a couple of
12 comments. Again, repeating that if we can find a way
13 to lessen the burden on the reporting requirements,
14 simplify the way we drive the actual approach that
15 will go a long way towards helping us feel that we're
16 being considered in your analysis.

17 I'd like to also align myself with the
18 comments that you've just made with respect
19 especially to a possible SNOBR. We would be willing
20 to dedicate the same amount of time and energy again
21 so that we all get a rule that we feel is more or
22 less workable and implementable. And while I don't

1 expect a perfect rule with everyone being 100 percent
2 happy, I expect a rule that we can really live up to
3 and hold up our end of the bargain. So, thank you
4 very much.

5 MR. BROOKMAN: Thank you. Ellen?

6 MS. GINSBERG: I'm not sure if I'm the
7 cleanup hitter or not here, but on NEI's behalf, and
8 actually personally, I also would like to express my
9 sincere appreciation for the time and effort you've
10 put into this rulemaking. We started at the outset
11 saying that EISA had given you fairly difficult
12 charge and you've done, I think, yeoman's work trying
13 to make it something that the industry could live
14 with and would mean that you've met your statutory
15 obligation.

16 That having been said, of course, I would
17 be remiss if I didn't say that I do think that an
18 extension is warranted, given the discussion that we
19 had today. Regardless of the fact that this is a
20 complex rule, it also is a rule that affects the --
21 potentially affects the competitiveness of the
22 domestic suppliers and therefore needs to be very

1 carefully considered and we need time to do that.

2 We also need time to be able to think
3 through some other ideas. You've asked us for
4 comments on a huge number, really a very large number
5 of matters that are embedded in the rule and we want
6 to give you quality information.

7 In addition, I think it's extremely
8 important that the Department think through the need
9 for -- call it a supplement, call it another proposed
10 rule because the current gaps in the rule, the holes
11 in information that we see are going to be subject of
12 our discussion and significant concern. And I think
13 you can alleviate those concerns by allowing another
14 set of comments to be submitted.

15 And finally, at the appropriate time, and
16 I don't pretend to know when exactly that might be,
17 but Dan's suggestion about after you collect some
18 additional information another workshop would be very
19 useful, if not before then. I, too, have found this
20 very enlightening. And so let me finish my cleanup
21 batting by saying thank you again.

22 MR. BROOKMAN: Any additional comments

1 here? Omer?

2 MR. BROWN: Well, everything has been
3 said. Not everyone has said it, so I'll just
4 reiterate some of the points that were made. We, of
5 course, appreciated the opportunity to meet with you
6 today and I think it's been a useful discussion. I
7 think it also points out a lot of the problems with
8 the proposal and the issues that have yet to be
9 resolved. We don't have any great solutions, but we
10 could use some extra time to see if we can come up
11 with something. So, I expect we will be filing a
12 formal extension request as well and hope that the
13 Department will support that. So, thank you for
14 taking the time with us today.

15 MR. BROOKMAN: Yes, David?

16 MR. BLEE: David Blee.

17 I'll associate myself with the comments
18 that have just been made. I think that, obviously,
19 it's an important issue. The stakes are high. I
20 think we would encourage you to move from a "just do
21 it now" to "do it right."

22 I think this discussion today has surfaced

1 a lot of issues. There were some good ideas that
2 came out of it, but clearly I think a first step
3 towards a reset would be an extension of the comment
4 period and then there were some other ideas,
5 additional workshop and SNOPR and the like.

6 So again, I think this session today,
7 thanks to your listening skills and dedication and
8 hard work I think has progressed and surfaced through
9 some of the issues, so thank you for your time today,
10 and we look forward to more dialogue.

11 MR. BROOKMAN: Thank you. Well, if those
12 are the end of the comments, then for my part I'll
13 thank you. We really covered a lot of ground today,
14 and I especially appreciate the tenor and tone of the
15 conversation. There was a lot of cooperation in the
16 room today, and I particularly really appreciate
17 that. We did well, I think, in that respect.

18 So, I'll turn it back to Ben and to Anita
19 and to Sophia for their closing remarks.

20 MR. MCRAE: Again, I just want to thank
21 everyone. It truly has been very useful and the
22 dialogue, I think, has been a very good setting.

1 We've heard what you've said about various
2 process things, but I do think it would be helpful in
3 considering that, and I certainly don't want to
4 increase the burden on anyone or require people to go
5 to great effort, but there's been a lot said today.
6 And to the extent you could reflect on that and
7 provide suggestions. I don't want to call them
8 comments, but just capture some of the thoughts that
9 you brought up today and some of the things that you
10 would like us to think about and especially on like
11 the summary report a little bit.

12 Again, I am not asking for a proposal or a
13 commitment, but some of the suggestions as to why it
14 might be useful, keeping and bearing in mind that
15 we've had people say that they need more information,
16 so we would hope that if we were to go out and ask
17 for people to report we would get the type of
18 information that people say that they need to
19 evaluate the rule and to do the other things they
20 need to do.

21 So, again, to the extent you could tell us
22 this would allow us to do that if we got this kind of

1 information that would be helpful. And again, if we
2 were going to be considering alternatives, it would
3 be helpful to know which of the suggestions and
4 concerns that have been identified today are more
5 important so we have some ranking or some idea of
6 where people think we ought to be thinking about
7 going.

8 I think today has been very helpful to me,
9 at least in understanding and I'll let Anita and
10 Sophia speak.

11 MS. CAPOFERRI: I'll be very brief, given
12 that Doug and Ben have said it all; but I'll just
13 express my thanks as well. It has been very, very
14 useful to hear all of your comments. And we will
15 definitely be looking forward to anything you can
16 provide to us in writing and any other explanations
17 and expounding on all of the concepts and approaches
18 that have been discussed here today. Very useful.
19 Thank you.

20 MS. ANGELINI: This is Sophia. Thank you
21 so much and thank you for any specifics on
22 simplification. Thank you.

1 (Whereupon, the meeting was concluded at

2 3:51 p.m.)

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