

BEFORE THE
UNITED STATES DEPARTMENT OF ENERGY
PUBLIC WORKSHOP
CONVENTION ON SUPPLEMENTARY COMPENSATION FOR
NUCLEAR DAMAGE PROPOSED INFORMATION COLLECTION
TRANSCRIPT OF PROCEEDINGS

16 September 2016
Washington, D.C. USA

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30 DOUGLAS BROOKMAN
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33 Moderator

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1 BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

2 PUBLIC WORKSHOP

3 CONVENTION ON SUPPLEMENTARY COMPENSATION FOR

4 NUCLEAR DAMAGE PROPOSED INFORMATION COLLECTION

5 Public Workshop was held pursuant to
6 Notice and Invitation at the U.S. Department of
7 Energy, 1000 Independence Avenue, SW, Room 1E-245,
8 Washington, D.C., USA, commencing on the 16th day
9 of September, 2016, at 9:14 a.m. ET.

10 Present: Ben McRae, Esquire; Anita
11 Capoferri, Attorney; Sophia Angelini, Attorney;
12 Omer F. Brown II, Esquire; Dwight Cates; Anne W.
13 Cottingham, Attorney; Tim Farward; Kelly Friend,
14 Attorney; Ellen C. Ginsberg, Attorney; Ted Joy; Ray
15 P. Kuyler, Esquire; Joshua Madrigal; Melissa Mann;
16 Daniel S. McGarvey; April Lea Pope, Attorney; James
17 A. Schoettler, Jr., Esquire; and Thomas Wood. Also
18 present: Douglas Brookman, Moderator.

19 TRANSCRIPT OF PROCEEDINGS

20 MR. McRAE: Okay. I think we can begin.

21 Is -- There may be one or two more
22 people coming, but I'll give some welcoming
23 remarks.

1 MR. BROOKMAN: But, not yet.

2 MR. McRAE: But, not yet.

3 MR. BROOKMAN: Let me kick it off.

4 MR. McRAE: Right. Okay. Yes.

5 MR. BROOKMAN: Good morning, everyone.

6 Welcome.

7 So good to see you. This is the United
8 States Department of Energy's Public Workshop
9 Convention on Supplementary Compensation for
10 Nuclear Damage, a proposed information collection
11 meeting -- Today is September sixteenth, 2016. --
12 here at the Department of Energy, the Forrestal
13 Building, Washington, D.C.

14 Thanks to all of you for being here this
15 morning. I'm so happy to see you.

16 Looking forward to the discussion today.
17 I think we will have the opportunity to make a big
18 difference with the progress of this information
19 collection activity.

20 Now, Ben, welcoming remarks.

21 MR. McRAE: Okay. Well, it, it's good
22 to see all of you.

23 I'm not going to have any formal

1 remarks. It's, I think, hopefully today would be
2 relatively informal.

3 I think the last meeting we had,
4 workshop, went really well, and it was fairly
5 informal with give and take. So, what we're trying
6 to do here, as Anita will explain in more detail,
7 is we're trying to be responsive to what we've
8 heard.

9 And, one of the things that we've heard
10 in this process so far is that the industry needs
11 more information in order to comment effectively on
12 the various options. And, we need more information
13 to fashion those options.

14 So, what we're trying to do with this
15 data collection is to get that information,
16 information that will allow you to comment more
17 effectively and that allow us to analyze the
18 options more effectively so we can come up with
19 something that, hopefully, will be something that
20 everyone can live with.

21 I, I know most of you would rather not
22 contribute to the fund. But, given the law, we
23 need to come up with a formula.

1 So, I have -- Our hope is to come up
2 with something that everyone finds to be fair and
3 hopefully workable. So, with that, I will turn it
4 over.

5 One last thing. I might suggest for
6 Omer and the others to move down this way, to, and
7 for you all to come just so we're closer together,
8 because we don't have mics.

9 So, I will, for the benefit of people
10 like me who are going deaf, and the Court Reporter,
11 ask that everyone speak up, and I would suspect
12 give your names when --

13 MR. BROOKMAN: I'll take care of that.

14 MR. McRAE: Okay.

15 MR. BROOKMAN: Yes. So, it's, it's very
16 typical for us to start with introductions around
17 the room. Maybe I can start from my immediate
18 left, and each individual can say his or her name
19 and organizational affiliation.

20 MR. BROWN: I'm Omer Brown. I'm legal
21 counsel for the Contractors' International Group on
22 Nuclear Liability.

23 MR. SCHOETTLER: I'm Jim Schoettler.

1 I'm Deputy General Counsel for Centrus.

2 MS. GINSBERG: I'm Ellen Ginsberg, with
3 NEI.

4 MS. COTTINGHAM: Anne Cottingham, NEI
5 Legal Division.

6 MR. MCGARVEY: I'm Dan McGarvey,
7 Chairman of U.S. Power and Utility.

8 MR. MADRIGAL: Jushua Madrigal,
9 Government Affairs, AREVA.

10 MR. KUYLER: Ray Kuyler, Westinghouse
11 Legal.

12 MR. WOOD: I'm Tom Woods, fuel cycle
13 economies with MELE Associates, who's advising the
14 General Counsel.

15 MS. POPE: April Lea Pope, Idaho
16 National Lab.

17 MR. FARWARD: Tim Farward, U.S. Nuclear
18 Energy Practice for Marsh.

19 MS. MANN: Melissa Mann, Urenco.

20 MR. CATES: Dwight Cates, with Fluor.

21 MR. JOY: Ted Joy with AIG.

22 MS. THACKER: Heather Thacker, DOE
23 Office of the General Counsel.

1 MR. BROOKMAN: Thank you. My name's
2 Doug Brookman, Public Solutions, Baltimore.

3 Nice to see you again.

4 MR. McRAE: Ben McRae, Assistant General
5 Counsel at DOE.

6 MS. CAPOFERRI: Anita Capoferri, DOE
7 Office of General Counsel.

8 MS. ANGELINI: Sophia Angelini, OGC
9 also.

10 MR. BROOKMAN: And you'll please
11 introduce yourself.

12 (Whereupon, the Conference Reporter
13 introduced herself, after which the following
14 occurred:)

15 MR. BROOKMAN: Thank you.

16 I hope -- I think that all of you
17 received a packet of information as you sat down.
18 I'm going to do a very brief agenda review.

19 As you can see, following this agenda
20 review there's a brief presentation, overview of
21 information collection of the form, the content by
22 DOE. Following that there is an opportunity for
23 anybody that wishes to make brief opening remarks,

1 kind of summary comments here at the outset about
2 any particular issues you wish to bring to the
3 fore.

4 Following that we're going to do a more
5 detailed review with an emphasis on discussion:
6 Who's required to file the form, definition of
7 "nuclear supplier," definition of "nuclear
8 installation," definition of "nuclear goods and
9 services."

10 We'll take a break mid-morning around
11 about 10:30 or so, and then moving on from that
12 when we've returned, what information needs to
13 remember reported, nuclear suppliers who and how to
14 reach, nuclear installations, scope, nuclear goods
15 and services, what is covered.

16 Well, actually, I, I'm looking at the
17 old version of the Agenda. I apologize.

18 I hope all of you were tracking. We
19 will do that segment first before the break, and
20 then returning from the break, when information
21 should be reported, the nuclear supplier background
22 information, foreign installation supply, value of
23 nuclear goods and services supplied.

1 And, then, at the end of the day,
2 closing comments and additional remarks. Another
3 opportunity to make sure we get everything covered
4 that you came here to discuss.

5 My personal goal, my personal objective
6 for this meeting is that we observe the scope as
7 listed in the purpose of this meeting, proposed
8 collection and information to assist DOE in further
9 development of proposed rulemaking, the form,
10 itself, and, also, that we, as a group, find a way
11 to make the content that's proposed more workable
12 to advance those concepts, and so that each of you
13 at the end of this meeting can feel as though there
14 were strides made toward something that might do
15 the job, something perhaps for which there might be
16 additional comment, but we make progress in this
17 meeting.

18 That's my goal. And, ask for your
19 consideration during the conduct of the meeting
20 itself, if you'd each please speak one at a time.

21 We don't have microphones here present,
22 but I've worked with this young lady previously.
23 She's very good.

1 She's got good ears. If you'd please
2 say your name each time you speak.

3 I'll be cuing you as best I, I can to
4 speak. Lot to be said in a short amount of time,
5 so please share a the air time.

6 If you haven't turned your cell phones
7 on "Silent" mode, please do so. And, I appreciate
8 the opportunity to work with you here today.

9 Questions or comments before we get
10 started?

11 (Whereupon, no response was had.)

12 MR. BROOKMAN: Okay, let's get started.

13 MS. CAPOFERRI: All right. I will try
14 and make up some time, and do this quickly, because
15 we, we will certainly have the opportunity to go
16 into greater depth than the question form.

17 So, this is just by way of simple
18 background and predicate to the discussions we're
19 having. So, are we on slide show?

20 As most of you may know, background on
21 the rulemaking, Section 934 of the Energy
22 Independence and Security Act implements the
23 international Supplementary Compensation for

1 Nuclear Damage, which provides the basis for global
2 nuclear liability regime.

3 Section 934 of the law also establishes
4 the retrospective risk pooling program which is to
5 allocate the costs of any U.S. contribution under
6 the Convention to U.S. nuclear suppliers, and, of
7 course, charges the Department of Energy with
8 promulgating a Regulation to establish that program
9 and to set up the formula for allocating those
10 costs.

11 Department issued in the end of 2014,
12 the Notice of a Proposed Rulemaking. There were --
13 There was a Notice of Intent prior to that, and
14 some other public comments, but for present
15 purposes, starting from the Notice that was issued
16 in 2014, that Notice proposed, with respect to this
17 assessment formula, two different alternative
18 approaches to establishing a formula.

19 One was based on the nuclear goods or
20 services that were being exported for or supplied
21 by a supplier. Or, Alternative 2 was based on the
22 nuclear sector supply, and, the emphasis on the
23 goods or services supplied by each of those

1 sectors.

2 We held a public meeting and a public
3 workshop in 2015. Got many comments, many good
4 comments, and constructive comments on that.

5 And, again, taking in those comments,
6 and doing some other legwork in the meantime, since
7 the NOPR was issued, to go in and, and do, among
8 other things, go to the other federal agencies, the
9 NRC and the other departments, the NNSA and
10 Department of Commerce, and try and elicit some
11 more information and data from those agencies
12 regarding nuclear exports.

13 So, that's, that's some of what we've
14 been doing since the NOPR, the end of the comment
15 period on June thirteenth. And, one of the things
16 that we determined, of course, was the need and
17 desire, and, based on public comments we got to the
18 NOPR, was to go out and solicit more information
19 directly from nuclear suppliers.

20 And, the way we are best able to do that
21 in the Department is to issue a Form. So, I think
22 that was one of the comments we got on the, on the
23 NOPR, as well, was to collect more information.

1 So, we have been developing the proposed
2 Information Collection Form, which was the subject
3 of this workshop. And, the purpose of it, as we
4 said, is to collect some more specific information
5 from nuclear suppliers that can then assist us in
6 further developing the rulemaking and the
7 allocations made.

8 And, the form would apply to any person
9 that qualifies as a nuclear supplier. And, there
10 are some instructions which go with the form that
11 help to define what that nuclear supplier is or may
12 be.

13 And, the reporting time period, the
14 information that we're requesting dates from
15 January first, 2008, through December thirty-first,
16 2015. That time period was selected, again, based
17 on comments we received on the NOPR, many good
18 comments about the, the length of that reporting
19 period, and the reporting period predating January
20 first, 2008, would be burdensome and not helpful to
21 the Department.

22 So, we started from January first, 2008,
23 basically just after the enactment of Section 934,

1 and chose December thirty-first, 2015, as a good
2 cutoff date as the end of a full calendar year in
3 terms of understanding exports.

4 And, also like to emphasize that this is
5 a one-time collection. This is a collection we
6 would engage in in order to get additional
7 information to further develop the Rule, what may
8 be in the Rule, itself, in terms of putting
9 information in force.

10 And, we have comments, or, other
11 comments that we can, or input on this process
12 we'll feed into that. But, at the moment, we're
13 focused on obtaining this particular information at
14 this time.

15 I'm sorry if I'm not keeping up with
16 you, or not feeding you the contents of the
17 collection form. I think we made copies of them,
18 if you don't already have them.

19 And, so, I'll speak, but you've got the
20 form in hand and you can certainly reference that
21 as I'm speaking.

22 Questions 1, 2, and 3 is just simple
23 identifying the nuclear supplier, the usual kind of

1 name, address, point of contact, the, -- Also asks
2 the question about whether the nuclear supplier's a
3 successor in interest. And, that will apply to
4 companies that are successor in interest of other
5 nuclear supplier companies.

6 So, it's just a way of eliciting that
7 information.

8 Next slide.

9 Questions 4, 5, and 6, again, is just
10 some additional background on the nuclear supplier.
11 Probably one of the important questions is just a
12 brief description of a nuclear supplier.

13 What -- Generally, what categories and
14 good or services do you provide? In other words,
15 what's your business line?

16 What do you, what do you support? What
17 types of services are you in the business of
18 providing, so we can get a basic sense of what you,
19 what you supply as a business line.

20 Just a simple question about whether
21 you're a public or private entity, and some
22 background information of the company, and whether
23 the nuclear supplier is considered a small business

1 under SBA Standards. Again, some basic information
2 about nuclear suppliers, whether we believe a lot
3 of suppliers qualify as small businesses or not,
4 and to kind of guage where that's at in the nuclear
5 industry.

6 That may inform us on things like a
7 small-nuclear-supplier exclusion, which we had in
8 the NOPR, and which would follow in the Statute, we
9 believe, to exclude certain suppliers if they
10 qualify as de minimus or small suppliers. So, that
11 type of information would just be basic and helpful
12 information to help to understand how to further
13 develop the Rule.

14 And, next, Section 7 and 8, tables
15 around reportable information. That was an attempt
16 to have folks fill out, in what we thought was a
17 relatively brief but informative manner, what
18 nuclear installations, foreign nuclear
19 installations they've supplied their goods or
20 services to, the general time period, the year in
21 which they provided it, and the value of those
22 goods and services.

23 And, it would, hopefully, to simplify

1 matters, just set up different tables so that you
2 could, a supplier would fill out the particular
3 table that applied to them, and base the, the
4 nuclear installations, just group them roughly in
5 terms of the nuclear sectors.

6 We've got five tables: Power and
7 research reactors, enrichment and fuel fabrication
8 facilities, reprocessing facilities, nuclear
9 material storage facilities, and new material
10 transportation. And, like the, the form, again,
11 bas-, asks for basic information that would then
12 enable to Department, in aggregate form, to see
13 where and what type of nuclear installations are
14 being supplied by U.S. nuclear suppliers, the
15 general value of those supplies, of those exports.

16 And, then we can use that in aggregate,
17 that information, to help develop the cost
18 allocation.

19 Next slide.

20 Instructions for completing the form.

21 As with Regulations, in the Preamble to
22 Regulations, sometimes the Instructions are a key
23 to understanding how to fill out the form. And,

1 we've tried to answer some questions about how the
2 form will be filled out.

3 And, of course, we're certainly here and
4 want to hear from you about whether those
5 instructions, where they were deficient, should be
6 revised, et cetera, so people, in fact, do
7 understand how to fill out the form.

8 But, in general, we've tried to answer
9 all the questions: Who's required to file the
10 form; who's not required to file the form; that
11 probably being the first and principal question
12 anybody might ask.

13 And, in the Instructions, we try to go
14 into a little bit more detail about the nuclear
15 suppliers that would be required to fill out the
16 form. And, in summary, between various definitions
17 of a "person" and "nuclear supplier," et cetera, in
18 the form, in the Instructions.

19 It boils down to: You're a nuclear
20 supplier if you directly supply nuclear goods and
21 services, or transport nuclear material to any
22 installation outside the U.S., or you have
23 reasonable knowledge that your goods and services,

1 without substantial transformation, were supplied
2 to a foreign nuclear installation during a certain
3 time period, or, in essence, you're the principal
4 party in interest in the supply, whether somebody
5 else may have actually gotten the applicable
6 License or authorization to transport.

7 So, hopefully, that, that, those
8 categories are pulled in part from the comments we
9 got on the NOPR, and the desire to try and, and
10 define who, better, who a nuclear supplier is. We,
11 of course, are here to hear from all of you about
12 whether that is good, bad, or otherwise.

13 Continuing on, the Instructions also
14 provide definitions of "nuclear installations,"
15 "nuclear material." I think they're pretty
16 relatively consistent; maybe not verbatim, but from
17 what we have proposed in the NOPR with respect to
18 those items and those definitions.

19 The Instructions also explain that we've
20 asked for information about what regulatory regime
21 the nuclear goods or services may have been
22 exported under, to the extent that's applicable, or
23 to the extent the supplier knows.

1 Again, that would be just helpful
2 information for us to know the kinds of
3 authorizations there was (sic) in terms of an
4 issue, and, and how those are being tracked, if
5 that information is, indeed, available to the
6 supplier, with the example being, perhaps, a
7 subsupplier who may know that their export, that
8 their nuclear goods or services has been exported
9 or incorporated into a product that has been
10 exported, but was not, themselves, the exporter,
11 would be the applicant for the License to export.

12 And, we also just provided some, some
13 examples of the entries in the tables to,
14 hopefully, explain what, what the tables would look
15 like when they are filled in.

16 And, that, that's kind of the overview
17 of the form, and the background to it. As I'm sure
18 you're all interested in: Where are we going from
19 here?

20 As the slide says, we -- This has become
21 -- A public comment period on this proposed form
22 will end on October third, in a couple weeks. And,
23 then, we'll take in the comments and what we've

1 gotten in this workshop, of course, and we'll get,
2 we get, hopefully, we get in the way of written
3 comments from anybody else.

4 And, then, the next step's going to the
5 RA process, is to finalize the form and submit it
6 to OMB for approval. When that happens, there is
7 another public comment period.

8 So, simultaneous with the form being
9 submitted to OMB for approval, it also goes back
10 out for another 30-day comment period. And, in
11 that, at that juncture, as well, we would, we would
12 summarize and, and respond as best as we can to the
13 comments we got on the proposed Information
14 Collection Form, and explain how we got from the
15 proposed to what we submit to OMB as, as the form
16 for approval.

17 So, that's, hopefully, the timeline, or
18 the, the process for the form. As I said, this is,
19 at this juncture, that's what we are focused on,
20 developing the form and getting the form out, and
21 then getting good information back on the form that
22 then helps us to further develop the Rule.

23 So, whether or not we're going to go out

1 with any supplemental, or any, anything else, is,
2 is a little premature at the moment. So, we would
3 expect some additional public comment.

4 And, that's all I have.

5 MR. BROOKMAN: Okay, great. Thank you.
6 Appreciate the overview.

7 Echoing Ben's earlier comment, my hope
8 is that we can have this be a very informal
9 meeting, very informal; a lot of back-and-forth, a
10 lot of exchange that will advance the workability
11 of the form as we move on through the morning.

12 Now, in the Agenda we are scheduled for
13 any of you that wish to, to make opening remarks:
14 Significant areas of concern; things you liked; any
15 comments here at the outset that you think will
16 help us toward further advancing the workability of
17 the form.

18 Omer.

19 MR. BROWN: Yes. Omer Brown for the --

20 MR. BROOKMAN: Thank you for saying your
21 name.

22 MR. BROWN: -- Contractor's
23 International Group on Nuclear Liability; IGNL, for

1 short.

2 Last week we submitted both a general
3 statement, and questions and suggested topics, and
4 I would ask that those be a part of the, the Record
5 of, of this workshop, --

6 MR. BROOKMAN: Okay.

7 MR. BROWN: -- and just make a few
8 initial comments, and, then, as you suggested, we
9 can, can have a further discussion.

10 One of our concerns is that it's a short
11 period of time for the next set of comments on
12 October the third. So, we would hope that as many
13 of our the questions that we posed could be
14 addressed today so that we can make informed
15 comments on, on October the third.

16 If we, if we are not going to get
17 answers to most or all of the questions, it's going
18 to be very difficult to comment, which might lead
19 us to, to request an extension of time to do that.
20 A, a primary concern about the form is that by only
21 asking for dollar amounts of exports, we don't
22 understand how this can lead to a, a risk-informed
23 formula for, for assessing suppliers.

1 That's one, one key point. Another
2 point is that we're still concerned about the
3 number of suppliers that this would be applicable
4 to.

5 The latest Federal Register Notices say
6 that only about 150 companies would be required.
7 In our earlier submissions, we said that there are,
8 are hundreds of, more, companies that would, that
9 would be involved.

10 So, we hope that we can get some idea
11 how the Department came up with the, the 150
12 number. We're also concerned about the, the burden
13 hours that would be applied to responding to the
14 form.

15 The latest Notice says only about five.
16 Given the detail requested, we don't see how that
17 can be accomplished by companies in only five
18 hours.

19 (Whereupon, at 9:40 a.m. ET, Ms.
20 Ginsberg and Ms. Cottingham conferred, out of the
21 hearing of others and off the Record, during which
22 the following occurred:)

23 MR. BROWN: And, then, the question is

1 what, also, an issue about what countries we would
2 have to report about; whether it would just can
3 current CSC member States, potential CSC member
4 States, and whether it would include States that
5 may not have consistent domestic legislation under
6 the CSC.

7 Those are quick overview. There's more
8 details in our, in our questions, but those are,
9 are, are our major concerns at this point.

10 MR. BROOKMAN: Okay. Thank you, Omer.
11 Appreciate that.

12 Other comments here at the outset? Yes.
13 Please. Anne.

14 MS. COTTINGHAM: Good morning. I'm Anne
15 Cottingham, from NEI.

16 We are pleased to be here. We
17 appreciate you-all holding this workshop.

18 We don't have a formal Opening Statement
19 other than to say that we did file some questions.
20 We hope that as many questions as possible can be
21 addressed here because, like Omer, we think that
22 will better inform the comments that we're going to
23 be writing.

1 In particular, I want to just say NEI
2 appreciates the idea that DOE is considering using
3 the data collection to obtain the information that
4 could support a Regulation that would be based, at
5 least in part, on the model for retrospective risk
6 pooling that NEI submitted in its 2015 comments on
7 the proposed Rule.

8 We think that the information that we
9 might glean from you today will make many things
10 clearer. I would echo Omer's concerns that we
11 don't have a lot of time to put together meaningful
12 comments after today, but we'll, we will endeavor
13 to do our best.

14 And, I would also refer you to our
15 questions for our main categories of concerns which
16 include the burdens because of that collection.
17 The seeming inconsistency between the definitions
18 of key terms in the proposed Rule, as opposed to
19 data collection, and the scope of export
20 destinations that, to our reading, appears to be
21 inconsistent with the Rule.

22 MR. BROOKMAN: Um-hum. Okay.

23 MS. GINSBERG: No. I would just also

1 encourage you --

2 MR. BROOKMAN: This is Ellen speaking.

3 MS. GINSBERG: Ellen Ginsberg.

4 MR. BROOKMAN: Thank you.

5 MS. GINSBERG: I would just encourage --

6 Let me start by thanking you for holding this
7 workshop. It's extremely helpful to have this sort
8 of engagement.

9 I think DOE has demonstrated that it's
10 interested in hearing from the stakeholders here,
11 and we really appreciate that, because I think the
12 product ultimately will be better. But, I would
13 encourage you to think about whether October third
14 really is a reasonable date.

15 It seems to be that two weeks or three
16 weeks beyond October third isn't going to make any
17 difference with respect to the pace at which this
18 Rule is implemented, or a supplementary Rule is
19 proposed. And, so, I would encourage you to think
20 about the quality of what you're going to get if
21 you give a little bit more time.

22 So, that's one of my entreaties. The
23 other entreaty is to look hard at the cost and

1 time, the burden that is identified. It's unclear
2 to us how that calculation was made, and so I hope
3 you'll give us a little, you'll illuminate that
4 particular issue so that we can better understand
5 how you came to that conclusion.

6 Then, the rest of what's been said,
7 that's why I'm not going to repeat. Thank you for
8 the opportunity to make a statement.

9 MR. BROOKMAN: Thank you. Thank you
10 very much.

11 Do we have any additional comments here
12 at the outset? Issues that individuals in the room
13 wish to raise?

14 Nothing additional?

15 MR. SCHOETTLER: Let me make just one
16 more comment.

17 MR. BROOKMAN: Yes, please.

18 MR. SCHOETTLER: This is James
19 Schoettler in Centrus. One concern that we have is
20 to ensure that this is only a (sic) intermediate
21 step to the proposed Rule, not to the final Rule.

22 I realize they -- I mean, they're all
23 steps to the final Rule, but at the end of the day

1 we don't know where, how to interpret this
2 particular collection exercise at this point.

3 Is it going to lead to a final Rule
4 based on this? Or, is there yet another iteration
5 so we understand what you're doing?

6 So, the information is used in the Rule.
7 That's what our concern would be to ensure that
8 that, this is, this is just really a tool for
9 development of a, yet another proposed Rule.

10 MR. BROOKMAN: Yeah. Okay.

11 Okay. The agenda was constructed by DOE
12 staff in an attempt to try to begin to address some
13 of these questions, maybe not all of these
14 questions; certainly, all the questions that they
15 consider in scope for the data collection activity.

16 Of course, any attempt at information
17 collection is a balancing act, a very difficult
18 balancing act I think, and so I'm hoping that as we
19 proceed with the content listed here, that you can
20 describe as best you can whether that content is
21 sufficient, whether it needs to be expanded,
22 whether it's contracted, whether it's modified,
23 whether there's a better way to do it.

1 And, having consulted with DOE, I think
2 they're going to try and answer as many questions
3 as possible. And, then -- And, then, we'll leave
4 it to you and to them to see whether an extension
5 beyond October third is, is necessary or useful.

6 So, yes, Ben.

7 MR. McRAE: In that spirit, and just
8 looking at the Agenda, can I try to answer one
9 question?

10 MR. BROOKMAN: You -- I, I think any
11 time this panel wants on answer questions, we ought
12 to defer.

13 MR. McRAE: Just going back to what Jim
14 said about, and what Anita alluded to in her
15 remarks about where we're going, I don't think we
16 can be definitive at this point. I can tell you
17 that we certainly are going to do this rulemaking
18 so that it's done in accordance with the APA.

19 We're certainly not going to adopt any
20 final Rule that's not a logical outgrowth of a
21 proposal we've made. Could we go to a Final Rule?

22 If we adopted a Final Rule that was very
23 close to what we proposed, it's possible. We've

1 heard a lot of comments.

2 We're taking them into account. I think
3 from the Notice it appears that we are certainly
4 thinking about at least some suggested
5 modifications.

6 You know, we'll have to decide whether
7 or not that needs another, another Proposed Rule,
8 or whether we just need additional comments. But,
9 again, I think we are mindful that this is an issue
10 that people have strong views on, and that even if
11 we think there are minor changes, it's probably
12 good to hear what people think.

13 Having said that, we obviously, until we
14 get the information, until we think about it, until
15 we actually decide the form that we want to go
16 forward with, we can't tell you for sure that what
17 the next event is in the proceeding.

18 I, I, I would be the most shocked person
19 in this room if the next action was a Final Rule.
20 But, I can't tell you.

21 You know, theoretically, if we could,
22 you know, I don't, you know, and the people who
23 deal with rulemaking, they would tell me I should

1 not rule out that we could go to a Final Rule
2 because, as I said, if it was a logical outgrowth
3 of the initial proposal, we probably could.

4 But, quite honestly, our goal in this
5 whole rulemaking is to get buy-in. We're not
6 trying to make people feel as if we're forcing
7 something on them.

8 We really want something that everyone
9 at least feels, feels as if they were heard. You
10 know, I can't guarantee everyone's going to be
11 happy with the outcome, but we do want people to
12 think that they've been heard and listened to.

13 MR. SCHOETTLER: Can I just respond?

14 MR. BROOKMAN: Please do.

15 MR. SCHOETTLER: Jim Schoettler.

16 MR. BROOKMAN: Please do.

17 MR. SCHOETTLER: Yeah. First let me
18 say, Ben, thank you, because I think that's a great
19 statement.

20 You guys have been very good about
21 involving us in this process, and making it a very
22 open, you know, transparent process. And, we
23 appreciate it a great deal.

1 The only reason I ask that it goes to
2 stakes. What's the stakes involved in this step of
3 the process?

4 Is it -- If it's, if it's going to go to
5 Final Rule, the stakes are much higher than if
6 they're not. So, it depends what you're after.

7 So, we'll get a sense -- You're -- I, I
8 gather what you're saying, you can't be definitive.
9 If I were in your shoes, I wouldn't either.

10 But, on the other hand, you, you need to
11 understand from our perspective, -- I think you do.
12 -- we need to understand the import of this.

13 So, thank you very much for that
14 statement. I appreciate that a great deal.

15 MR. McRAE: And, one more thing.

16 MR. BROOKMAN: Ben.

17 MR. McRAE: As far as -- Well, and,
18 again, I think we said this, but maybe to make it
19 clear, this form is not the form that we would use
20 once we adopt a Rule. If we decide that we need to
21 gather information on some periodic basis in order
22 to implement the Rule, there will be another form
23 for that purpose.

1 This form is really to help us, and to
2 help you help us develop the Rule, help you comment
3 on whatever proposals we put out there. So, to
4 some extent the -- And, we'll talk about it in some
5 -- The reasons we may be collecting more
6 information than you might think would be needed
7 under a Rule is we haven't got to the Rule yet.

8 So, we have a -- But we can talk to that
9 when we get to the individual items.

10 MR. BROOKMAN: I envisioned this
11 information gathering thing as a one-time activity.

12 MR. McRAE: I hope it's one time.

13 MR. BROOKMAN: And, so, my
14 interpretation is, as an outsider, and being new
15 to, to this, is you would hope to establish sort of
16 a baseline of relevant information that you can
17 then use.

18 MR. McRAE: (Nodded yes.)

19 MR. BROOKMAN: Yes. Ellen.

20 MS. GINSBERG: Ellen Ginsberg. I just
21 would encourage you, the next time around, really
22 looking past what today's conversation addresses.

23 But, I would encourage you, when you go,

1 if you're going to issue another proposed Rule,
2 that you issue the form with it so that we can
3 evaluate the Rule in concert with the form, and
4 give you more informed comments. I think it's
5 extremely important to have that, both of those
6 documents issued at the same time.

7 MR. BROOKMAN: Okay, that's helpful.

8 Thank you.

9 The first item on the Agenda, it says,
10 "Nuclear Suppliers - Who and How to Reach." I have
11 kind of a broad question, and I know, having read
12 the comments from both CIGNL and the comments from
13 NEI, that you have some questions about
14 definitions.

15 Maybe we can go to that in a bit, but I
16 have a more basic question. If DOE, once they
17 issue a Rule, decides to activate the form, and
18 tries to distribute it adequately, broadly, are
19 they on their own in doing that?

20 Can they count on support from the
21 various entities in the room? How can DOE be
22 assured that the suppliers that they hoped to
23 reach, the defined parties, entities that they hope

1 to reach, that that information's going to get to
2 them?

3 Are they on their own with that, or is,
4 can they expect some support?

5 MS. GINSBERG: This is Ellen --

6 MR. BROOKMAN: Ellen.

7 MS. GINSBERG: -- Ginsberg. I'm not
8 sure exactly what you're asking.

9 Are you asking would we, for example,
10 NEI, disseminate information?

11 MR. BROOKMAN: That, that would be one
12 possible interpretation.

13 MS. GINSBERG: Well, that's sort of the
14 role of the Federal Register, I would assume.

15 MR. BROOKMAN: Okay.

16 MS. GINSBERG: So, I think we need to
17 park that question, because I don't know that
18 there's a really good answer to it at the outset.

19 MR. BROOKMAN: Certainly the Federal
20 Register would be used, utilized, -- Right? -- in
21 any kind of a formal federal function.

22 But, I'm just thinking that there are
23 enough potential players here, and enough time,

1 duration, configuration and reconfiguration of
2 these corporate entities.

3 MS. CAPOFERRI: Let me interject
4 something.

5 MR. BROOKMAN: Anita.

6 MS. CAPOFERRI: Certainly the Federal
7 Register would be the legal notice of the form.
8 And, and, we, we can rest on that legal notice.

9 But, we certainly recognize it may be
10 more effective if we could go out, and, in addition
11 to the Federal Register, provide the information
12 and form, et cetera, to, to folks we think may be,
13 may have to fill it out. This is going to be, in
14 part, an answer to your questions about: How did
15 we come up with the number of suppliers?

16 And, tell you how we did it. And, this
17 is why we're, we're having this workshop.

18 And, you can certainly tell us how we've
19 gone wrong. But, that number was derived from
20 having now looked at NRC data on export licenses,
21 and NNSA data to 810 Authorizations, and a bit of
22 data from the Commerce Department and their export
23 Licenses under comments for nuclear, and doing

1 these kinds of things.

2 So, taking all that data, which even
3 preceded 2008, but concentrating on 2008 through
4 the 2015, we've looked at that data, and basically
5 came up with a (sic) internal list of what it
6 looked to be the companies that were exporting; the
7 vendor list.

8 And, Omer made a comment about the
9 Vendor Inspection List, which is certainly larger
10 than 150; no question. But, for our purposes, we
11 don't know whether or not any or all or some of
12 those particular vendors, in fact, were supplying
13 to foreign installations.

14 You -- That's not information that we
15 could glean from public records, that particular
16 form. It could have been completely domestic
17 suppliers, and wouldn't be subjected to this form
18 at all.

19 So, we derived that number from what we
20 could see objectively. Now, if that's too small,
21 -- And, we recognize the definition of the
22 "supplier" in the form is arguably broader than
23 just the entities that are obtaining those Licenses

1 or Authorizations.

2 But, for purposes of this proposed form,
3 that's what we went with there. And, even that,
4 those, having identified those particular names and
5 companies, we had considered things like:

6 Should we send out a mass e-mail to them
7 and say, "Hey, we've got this form in the Federal
8 Register out here. We think it may apply to you."

9 And, that was a little bit difficult,
10 too, because even with that kind of information, we
11 don't necessarily have a proper name of a person at
12 a company. And, not trying to invade any
13 particular company's privacy, or other kinds of
14 considerations, we didn't want to just mass mail
15 to, you know, a customer service in-box, which, you
16 know, may or may not be ever read or get to anybody
17 who knows anything about it.

18 So, so, those were some of the practical
19 considerations. But, one of the reasons we put it
20 in the Federal Register was if you all have better
21 ideas, and you're open to your information and
22 suggestions on who else might be out there, and how
23 to effectively reach them.

1 So, that's, -- But, that's how we came
2 up with it. I'll address the other, the other
3 question on hours and burden time.

4 And, I'm sure you all will correct us,
5 as well, on this. The proxy there for those was
6 the NRC Form for License Applications and some NNSA
7 information on their, what they say it takes
8 entities to do their authorizations, and the hours,
9 and the hourly rate for that.

10 We've adjusted it a little bit for the
11 Form, but that's basically where we got the time
12 and the hourly rate, which basically would be about
13 \$300 an hour at five hours, based on the
14 information that NRC and NNSA have put forth for
15 their applicants, and to fill out Export Licenses
16 for Authorizations.

17 If that, again, is -- And, I understand,
18 understand there's a wide variety of suppliers. I
19 -- It may be more appropriate for smaller suppliers
20 who don't have as many exports. Understandably, a
21 larger company, a Westinghouse or GE, that might be
22 more difficult.

23 But, that's kind of information if you,

1 as, as industry reps, can tell us that's just
2 completely off, then what would be a better
3 estimate of those hours, then? We're here to
4 listen to that.

5 But, so, that's the basis for those.

6 MR. BROOKMAN: So, that's helpful.

7 Good, helpful explanation.

8 Comments here on both the number of
9 entities listed and comments on the burden
10 associated with -- Joshua.

11 MR. MADRIGAL: Joshua Madrigal.

12 MR. BROOKMAN: Loudly, please.

13 MR. MADRIGAL: Thanks, Anita. I thank
14 you for clarifying that because the 150 number, I
15 was curious if that was derived from the definition
16 of "nuclear supplier" that was in the Proposed
17 Rule, or if that was what was contemplated in the
18 Form, definition that was in the Form that was
19 disseminated and is the purpose of, of, of this,
20 this meeting.

21 So, it's good that, getting specific, I
22 think, to get a clarification of that, because it
23 does seem that the definition, and we're going to

1 get into this, the definition is broader in the, in
2 the collection form, leading to the confusion.

3 MR. BROOKMAN: I didn't hear that.

4 Proceeder in which?

5 MR. MADRIGAL: In the collection Form.

6 MR. BROOKMAN: In the collection Form.

7 MR. MADRIGAL: And, the confusion that
8 arises from that definition. So, I'm glad that you
9 recognize that there is potentially more than 150,
10 depending on which definition is used.

11 And, so, I thank you for that
12 clarification. And, I would, I would ask if, in,
13 in, in that sense, if the 150 number now is no
14 longer applicable, because there is an error
15 conflict.

16 If you see an error conflict between the
17 definition that is in the collection Form versus
18 what is in the Proposed Rule, and if that is now
19 in, the definition that is in the collection Form
20 is now the basis for your understanding, or if the
21 definition that is the Proposed Rule is.

22 MR. BROOKMAN: Which do you think makes
23 the most sense? Which definition?

1 MR. MADRIGAL: I won't, I won't
2 necessarily comment on that. I think that's kind
3 of the purpose of this meeting is to figure out a
4 definition which makes sense.

5 Ultimately, for our purposes, I think we
6 have to look at, we have to look at what the scope
7 of the final goal is. And, that will inform what
8 is a nuclear supplier, consistent with Statute,
9 consistent with the Agreement provision, consistent
10 with the Defense.

11 That convention that will inform an
12 appropriate definition of what a supplier is. I
13 hope we can iron that out.

14 But, just to get my specific point on
15 the number of suppliers that DOE contemplates has
16 been covered under the Proposed Rule versus the
17 Collection Form

18 MR. BROOKMAN: Okay. I think either
19 Omer or Jim.

20 Yes, Omer.

21 MR. BROWN: Omer Brown. What -- We've
22 always been concerned about the number of suppliers
23 that, that any Final Rule would apply to. And,

1 we're happy to see that, that the numbers that
2 DOE's come up with has gone from 25 to 150, but we
3 still he think that that's, that's short of the
4 mark.

5 And, just using Export Authorizations or
6 Licenses doesn't capture the whole universe,
7 because there are general Licenses that are
8 applicable to, to some exports.

9 MR. BROOKMAN: Um-hum.

10 MR. BROWN: So, those entities wouldn't,
11 wouldn't be covered. We were hoping that, that the
12 Department would make more use of the, of the NRC's
13 list of about 600 companies that are in its, its
14 Vendor Inspection Program.

15 That would be a more, a more reasonable
16 number. The number that we had put in our, our
17 initial submission was about 100 different types of
18 goods and services that go into engineering,
19 designing, constructing, and, and building a, a
20 nuclear power plant.

21 So, we think that the number should be,
22 should be much higher than 150. How you capture
23 that, that group is a difficult question.

1 Federal Register may be the only viable
2 means of, of notifying the public.

3 MR. BROOKMAN: If they notify those 600
4 different entities, would that be a pretty good
5 coverage of the universe?

6 MR. BROWN: It would be better. And,
7 and, we would, we would also hope that, at some
8 point, that the Department would disclose the list
9 so that we could, we could know whether, whether
10 various companies are being included that, that we
11 might otherwise identify.

12 And, one of the, one of the problems
13 here is: How do you ensure that, that everyone's
14 really responding?

15 MR. BROOKMAN: Or, even identified.

16 MR. BROWN: Or, even identified. But,
17 then, even more important, are actually responding,
18 and, and realize that they're subject to the Rule,
19 and would, would be subject to an assessment --

20 MR. BROOKMAN: Right. Great.

21 MR. BROWN: -- in the event of an
22 accident.

23 MR. BROOKMAN: Jim.

1 MR. SCHOETTLER: Jim Schoettler. Let me
2 suggest this a practice convention about
3 dissemination of information.

4 One way to do it might be the NRC has,
5 of course, their annual conference, the RIC
6 Conference. You could probably make people aware
7 there.

8 A lot of folks here are going to be
9 there, anyway. So, it might be that you could talk
10 to the same folks as you're talking here.

11 Department of Commerce is, of course,
12 their outreach both on export control and general
13 export. So, the point would be that you would just
14 make it more broadly aware.

15 I mean, certainly the folks in this room
16 will make it available to the members who are
17 coming to the RIC about it, but, there are other
18 ways to reach out, I think, to a broader group to
19 understand that there is this Rule and this
20 requirement out there, and they would then be able
21 to respond to you.

22 So, it seems to me there are
23 government-funded mechanisms that you could

1 include. You know, I know that Part 810, we've
2 seen, you know, the NNSA guys go out and do their
3 outreach.

4 I know Commerce, BIS does the same thing
5 on commerce controls. That would be the thought.

6 And, it might not be -- It might be just
7 a one-time effort. Once it's more broadly known,
8 that people understand that if you're supplying a
9 nuclear reactor, you've got to think about this.

10 So, you know. So, that would be the,
11 that would be the potential idea to broaden the
12 scope of awareness in the Nation that this
13 requirement exists.

14 MR. BROOKMAN: Right.

15 MR. SCHOETTLER: Right?

16 MR. BROOKMAN: Okay.

17 MR. SCHOETTLER: So, might be a thought.

18 MR. BROOKMAN: Thanks, Jim.

19 Additional comments here? So, that was
20 a useful exchange.

21 Ben.

22 MR. McRAE: Just to encourage the
23 discussion and to ask, the reason -- And, I, I

1 think, as some of you have said, there's a
2 difference in the definition on the Form, and the
3 definition in the Proposal. -- is that we thought
4 we had heard from some of you that the Proposal
5 focused on the end of the chain.

6 It focused on the supplier who sent the
7 good or service out of the United States to another
8 country. So, we didn't try to pick up the whole
9 supply chain in the original Proposal.

10 I personally still think that's a good
11 idea, but --

12 MR. BROOKMAN: Let's ask them.

13 MR. McRAE: Well, that's what I'm
14 getting.

15 Because, a number of you said, or at
16 least some of you suggested that we should try to
17 bring in all the suppliers all through the supply
18 chain. It -- And, I agree.

19 I would like to hear: Do people think
20 we need to do that? Or, should we just focus --
21 Because, that affects the number significantly.

22 MR. BROOKMAN: Yeah. And, how would
23 that be?

1 If some big company, Westinghouse or
2 somebody, had a bunch of subsuppliers,
3 subcontractors, whatever, and they were trying to
4 fill out this form, how might they do it? Is it
5 possible?

6 How would, how would that be managed, if
7 at all?

8 Yes, Jim.

9 MR. SCHOETTLER: I do -- Jim Schoettler.
10 I've do think it's a good idea to be dealing with
11 the direct supply.

12 I agree with that.

13 MR. BROOKMAN: The end.

14 MR. SCHOETTLER: To the, to the entity,
15 to the different organizations. I'm saying, you
16 had asked the question: How would you make it more
17 broadly available to the general public that may be
18 dealing, or general businesses that were dealing
19 with it.

20 MR. McRAE: The question is: Should we
21 be focusing on the last person in the chain, what I
22 would call the "exporter," or should we, quote,
23 include not only that supplier, but all the

1 MS. CAPOFERRI: Yeah.

2 MR. BROOKMAN: -- for that.

3 MR. SCHOETTLER: Yeah. So, that's,
4 that's, that's, that's sort of this thing I've said
5 early on.

6 I'm saying that's a good idea.

7 MS. CAPOFERRI: And, that explains why
8 there's a bit of a difference between the NOPR --

9 MR. SCHOETTLER: Yeah.

10 MS. CAPOFERRI: -- and the Form.

11 MR. BROOKMAN: So, does that mean you're
12 more comfortable dealing with fewer, fewer entities
13 that are the, maybe they're the, the licensed
14 exporter? And, and, noting that some of them are
15 going to have subsuppliers, is, is that a good way
16 to go?

17 Or, is -- No. Omer, please.

18 MR. BROWN: Omer Brown. And, no.

19 We, we would prefer that as many of the
20 suppliers be included as possible. There's nothing
21 in the Rule that says this only applies to the
22 ultimate exporter, or the person that has a, a, an
23 A-10 Authorization.

1 MR. BROOKMAN: Give us our logic, Omer.
2 Why do you wish to have that?

3 MR. BROWN: So that the, the burden is
4 distributed among all the companies that profit
5 from the export.

6 MS. GINSBERG: So, you want to be
7 dealing with --

8 MR. BROOKMAN: Ellen, please, and then
9 I'll come back. So, Ted.

10 MR. JOY: Ted Joy, with AIG. I'll have
11 to look at this, and I know the contingent
12 liability we're discussing does not contemplate
13 causality, but I would have to look back at
14 causality of an incident as, as to who may be
15 liable for that incident, and who to include in
16 this, in this process.

17 And, you know, it could be a tiny valve
18 that somebody has included in their supply that,
19 that causes the problem that, that ultimately leads
20 back to liability. It could be -- In today's world
21 it could be software.

22 You know, it could be a very broad
23 and -- And, unfortunately, I think your definition

1 in the data-gathering Form opens you up to a very
2 broad definition of who's a supplier, primarily
3 because the, the definitions of "nuclear supplier"
4 and "nuclear good or service" are basically
5 duplicate each other.

6 It's the same wording within each one.
7 One, one's modifying the other one.

8 And, you really haven't gotten to the
9 point of defining "nuclear," you know, in that
10 sentence. You've, you've, you've really pointed
11 back to "good or service."

12 I would say that, you know, within that,
13 the word "equipment;" the word "technology." You
14 know, "equipment" can be uniforms.

15 "Technology" can be operating systems.
16 It can be open-sourced software.

17 It can be a variety of things that we
18 all know in today's world could be the cause of, of
19 an incident that would trigger, you know, this,
20 this international liability scheme. And, so, you
21 know, I guess my comment is both on the, the
22 broadness of, of "supplier," but also potential
23 problems within the definitions.

1 MR. BROOKMAN: Can you, in your mind's
2 eye, can you think you could sharpen up those
3 definitions and submit them to DOE?

4 (Whereupon, at 10:11 a.m. ET, Mr. Brown
5 and Mr Schoettler conferred, out of the hearing of
6 others and off the Record, during which the
7 following occurred:)

8 MR. JOY: Possibly somebody in my
9 organization could.

10 MR. BROOKMAN: I mean, I think that
11 that's the kind of input that would be useful.

12 MR. JOY: Well, but, it, it really goes
13 back to -- Before you sharpen the definitions, it
14 really goes back to: What are we trying to
15 accomplish?

16 Are we, are we going to be asking the
17 largest software manufacturers and, and the largest
18 open-source operating systems, and, and the, the
19 uniform people? I mean, are, are, are they going
20 to be a part of this?

21 Because, it could be argued that some of
22 these companies that, that supply what would be
23 considered ancillary equipment, although software,

1 I would argue, is not ancillary, that the dollar
2 value of their potential contracts is far superior
3 to the dollar value of some of these de minimus
4 exporters.

5 MR. BROOKMAN: Ellen, please.

6 MS. GINSBERG: Yeah. I think we've got
7 a lot of issues on the table that are somewhat
8 entangled one with the other.

9 I want to start with the prop-, the
10 overall comment that if this Rule is so complicated
11 that neither people understand it, nor it's, nor
12 it's possible to administer, we haven't advantaged
13 anyone. So, I think we have to keep the Rule both
14 understandable and reasonably simple to administer.

15 And, I think sometimes when we drive to,
16 sort of that very, very, very, very, very, very
17 minor details of sub-suppliers and then suppliers to
18 the sub-suppliers or sub-suppliers and who makes the
19 screws that the sub-suppliers use when they supply
20 to the larger suppliers, you, you end up creating a
21 conundrum.

22 So, I want to keep that before us.

23 MR. BROOKMAN: So, do you like the

1 direction that Omer was going?

2 MS. GINSBERG: Well, I'm not there yet.

3 MR. BROOKMAN: Okay.

4 MS. GINSBERG: What I wanted to say is I
5 think we need to keep "simple" and
6 "administratively reasonable" in front of us.

7 I think the second question that I have
8 is: It's unclear to me whether, when you're
9 talking about reporting to a nuclear installation,
10 is the nuclear installation in a CSC country or
11 not?

12 And, I think the Industry feels pretty
13 strongly that it must be in a CSC country because,
14 if not, then you're casting, in our view, too broad
15 a net. So, just --

16 MR. BROOKMAN: But, Ben, --

17 MS. GINSBERG: -- before we get on.

18 MR. BROOKMAN: But, Ben, maybe, Ben,
19 please. Maybe you're in a position to respond to
20 that.

21 MR. McRAE: Yeah. I, I've got two
22 responses.

23 MS. GINSBERG: Um-hum. I'm listening.

1 MR. McRAE: But, on -- I'll deal with
2 the CSC country issue, Ellen. And, depending on
3 the format of the Rule, it may or may not be
4 appropriate for the ultimate Form to be linked to
5 CSC countries.

6 MS. GINSBERG: Can you explain why?

7 MR. McRAE: I could foresee a Rule that
8 would say that we are going to base -- And, again,
9 I'm not saying we'll do this, --

10 MS. GINSBERG: Right.

11 MR. McRAE: -- but, I can see a Rule
12 like what we proposed that would take into account
13 sales or ex-, providing goods and services before
14 the country became a CSC country, and that once you
15 wouldn't be subject to those, taking those into
16 account unless that country became a CSC country,
17 but if it became a CSC country, you would be
18 subject, your allocation would be based on your
19 aggregate sales or your aggregate revenue from
20 providing goods and services to that country from
21 1960, 2008, 2015.

22 There are any number of dates other than
23 the date that that country became a member of the

1 CSC. I, I, I can also city a Rule that would say
2 we only begin counting goods and services that you
3 provide after the country becomes a member of the
4 CSC.

5 It's -- If -- That to me is not dictated
6 by the Statute.

7 MR. BROOKMAN: You can't answer it yet.

8 MR. McRAE: So, on that -- But, that's
9 the -- On this Form there is a, we are operating
10 and trying to get information that would help us
11 make decisions. So, in that case, as a very
12 practical matter, if we limit it to the nine
13 countries that are currently members of the CSC, or
14 even throwing in Canada, which will probably become
15 a member early next year, we're not going to have a
16 lot of information from you all if we start from
17 2008.

18 The truth is, there hasn't been a lot of
19 exports. I mean, that -- So, -- to those
20 countries. I mean, there hasn't been a lot.

21 We have hopes for India, but there
22 hasn't been a lot sent to India. Montenegro,
23 Argentina, you know.

1 And it's just not going -- Even if we
2 include all the countries, we're probably not going
3 to get that much information to work with. So, as
4 a practical matter, we think it will be more
5 useful, both to us and to you, and seeing how the
6 Rule might operate, if we have information, at
7 least in this initial Form, from all the countries
8 that you might make exports to, because the goal of
9 the U.S. Government to it get all of those
10 countries in the CSC.

11 But, again, what makes sense for this
12 Form may not make sense for the next Form. That
13 would depend on the actual form of the Rule.

14 And, I, I think I know where most of the
15 comments have gone on the Rule. And, if, again, as
16 I said, --

17 MS. CAPOFERRI: I would just add to
18 that, and then we'll certainly take on --

19 MR. BROOKMAN: Anita.

20 MS. CAPOFERRI: Sorry. That is
21 certainly something we did learn.

22 If you look at if NRC export data and
23 the NNSA organizational data, and that which is

1 available through those entities, and, you know,
2 setting aside whether there are subsuppliers to
3 those entities, if we limited this data collection
4 to only current CSC-member countries, it will be,
5 it will result in certainly fewer nuclear suppliers
6 being, filling out the Form, and I would think
7 would skew some of the results about who is, who is
8 supplying what countries.

9 It's, it's a much smaller sunset. And,
10 I can say that with more confidence now, having
11 looked at the data.

12 So, just to put that out there, it's,
13 it, it would be less burdensome for folks to fill
14 out the form. I won't dispute that, because it's
15 much less -- Not only is it lesser number of
16 countries, but based on export data that we, at
17 least, have obtained, it's, the number of exports
18 to those countries are significantly less than the
19 number of exports to other countries who are not
20 members of CSC.

21 MR. BROOKMAN: So, I thought this level
22 of disclosure was very helpful. Ellen was
23 beginning to detangle multiple issues, but we now

1 have additional comments or questions.

2 I'll go to Dwight first, and then I'm
3 coming back to Anne. If we can keep these brief,
4 Dwight.

5 MR. CATES: Sure. Dwight Case.

6 I just want to -- You're asking, on this
7 form, for my company to report on exports that
8 would not have been required to be reported on,
9 based on definitions of the Rule. So, I'm, I'm
10 reporting on exports to non-CS-, -CSC countries and
11 non-CSC facilities.

12 Now, if I have substantial exports to
13 those non-CSC countries with non-CSC installations,
14 I'm giving you information, revenue data that I'm
15 concerned now that you're going to use in a (sic)
16 allocation model that will significantly increase,
17 potentially, my contribution. Is that your intent?

18 That you would have a model that would
19 include revenue to non-CSC States and non-CSC
20 installations for purposes of the model

21 MR. BROOKMAN: Ben, please.

22 MR. McRAE: I think, as I said, what
23 we're collecting now has nothing to do with the

1 final Rule. It, it is only to be used in making
2 decisions on how to develop that Rule.

3 And, for -- And, for what we heard from
4 many of you is that you need information to judge
5 how the Rule might affect you. So, we can collect
6 information on eight countries that basically will
7 tell you nothing.

8 And, that's fine with me if that's what
9 you want. But, if what you're saying is that you
10 want information that would allow your companies to
11 have aggregate information so they can judge the
12 potential effect on them.

13 I would offer that you probably want us
14 to collect information from more countries. But,
15 getting back to Dwight's --

16 MR. CATES: Direct question.

17 MR. McRAE: -- direct question, if we're
18 talking about the Proposal on the table, that
19 Proposal went back to 1960s, and covered
20 potentially every country that might join the CSC.

21 So, the Proposal on the table, the
22 original one actually would not only have dictated
23 a form that got information from all countries,

1 whether or not they were currently a member of the
2 CSC. It would have gone back to 1960.

3 What we heard was, quite honestly, not
4 that providing -- And, again, I think it would be
5 useful to hear whether providing information on all
6 countries is going to be a much greater burden than
7 providing information for the current members of
8 the CSC, or what we thought was actually the real
9 burden for people was to go back to 1960; that that
10 was what we heard that people were very concerned
11 about; that they would have to go through their
12 records for 60 years or more, and try to come up
13 with information.

14 And, that, at least we sensed, that
15 there was a general feeling that we should pick a
16 date more recent to begin collecting information

17 MR. BROOKMAN: Several people wish to
18 comment, I think.

19 And, Anne, you're in the queue first.

20 MS. COTTINGHAM: I actually think that
21 Ben pretty much answered it.

22 MR. BROOKMAN: Okay. I thought Omer
23 also wanted to respond, but then I noticed that

1 Ted --

2 Please, go ahead.

3 MR. JOY: My apologies, first, for not
4 participating in this sooner than I have. And,
5 and, this may be unpopular, but the, the algorithm
6 of the CSC, itself, in apportioning liability among
7 Nations was based on their domestic capacity, --
8 Correct? -- and their installed nuclear base.

9 And, so, I'm, I'm curious as to why
10 we're trying the pick some esoteric potential
11 export number to start, i.e., changing the
12 denominator of the equation when it comes to
13 apportioning the risk within the United States. If
14 the United States is the largest participant, and
15 it was based on our domestic capacity, choosing
16 only exports seems to be an interesting way to go
17 about apportioning what would be our largest share
18 among Nations to a much smaller community of
19 potential exporters, especially if you're only
20 picking a brief timeline; you're only picking
21 States, you know, that we currently export to that
22 are part of the CSC.

23 You know, I'm backing way up here, but

1 it just seems to go against the spirit of the CSC
2 and the way the other Nations have approached it,
3 where they look at their domestic base as, as, you
4 know, what their liability would be.

5 MR. McRAE: I, I can understand those --

6 MR. BROOKMAN: It's Ben speaking.

7 MR. McRAE: I can only say that we start
8 from what Congress gave us. And, the law that
9 Congress passed was bifurcated with respect to an
10 accident within the United States.

11 It does follow the approach that you
12 basically, I think, were suggesting, which is: We
13 look at our domestic capacity, --

14 (Whereupon, at 10:24 a.m. ET, Mr.
15 Schoettler and Ms. Ginsberg conferred, out of the
16 hearing of others and off the Record, during which
17 the following occurred:)

18 MR. McRAE: -- and, basically, for that
19 it makes use of the existing Price-Anderson system,
20 and, basically, through accounting mechanisms,
21 basically uses the money it would get from
22 Price-Anderson to meet our obligation.

23 And, then we get that money back when we

1 get money from the international system. But, with
2 respect to accidents outside the U.S., it told us
3 to allocate it among exporters, and that's why
4 we're here.

5 MR. BROOKMAN: Anne was in the process
6 of detangling, but let's let Omer follow on.
7 Pardon me, not Anne.

8 Ellen was in the process of detangling,
9 but, Omer, you're first, and then I'm coming back
10 again.

11 MR. BROWN: Okay. Omer Brown, again.

12 Ben mentioned the Statute, and I wanted
13 to point out that there's nothing in the Statute
14 that talks about the dollar value of exports. The,
15 the formula is supposed to be risk-based, and there
16 are significant elements that are listed in the
17 Statute to determine what is risk-based, and, and,
18 and then several that may be excluded.

19 And, none of that, none of those refer
20 to, to dollars. They refer to the nature and
21 intended purpose of the goods, the quantity of the
22 goods, the hazards associated with the goods, the
23 legal and financial infrastructure associated with

1 the covered installation outside the United States.

2 And, then, the exclusions include such
3 things as goods and services with negligible risk,
4 not specifically intended for a nuclear
5 installation, de minimus share of the contingent
6 cost. None of that is addressed in this, in this
7 questionnaire, and that leads us to, to think that,
8 you know, whatever information you get is really
9 not going to enable you to come up with a
10 risk-informed formula.

11 MR. BROOKMAN: Um-hum.

12 Ellen. I'm coming back to Ted.

13 MS. GINSBERG: I think we've, my
14 comments have been overtaken by other comments, so
15 I'll hold for the moment.

16 MR. BROOKMAN: Okay. So, Ted, please.

17 MR. JOY: Yeah. And, speaking as a, a
18 risk analyst, you know, if we could come to that
19 conclusion, or, or if we could use those
20 assumptions and come to a risk-based allocation, we
21 would no longer need the Price-Anderson Act,
22 because private companies, private insurance
23 companies would have stepped in and, and done that.

1 That's -- You know, that's one of the
2 problems inherent in this liability, is nobody has
3 come to an exercise of assessing risk liability in
4 that fashion. Otherwise there would be a market
5 for it, a broader market for it.

6 And, so, you know, my -- Yeah. We can,
7 we can take a crack at that.

8 It's much larger than the CSC, you know,
9 issue.

10 MR. BROOKMAN: Yeah. I think we would
11 all acknowledge at the outset, this is complicated.
12 If you can imagine DOE searching for a logic and a
13 proxy, something -- Right? -- some, some basis to
14 execute their responsibility here.

15 So, I'm wondering what, what members at
16 the table would suggest that would be different.

17 Dan.

18 MR. MCGARVEY: Yeah, Daniel McGarvey. I
19 think we've taken a step forward in that you've
20 broken down types of facilities as a proxy for
21 who's exposed here, one proxy.

22 I'd say the dollars make a pretty good
23 proxy, as well. That's what insurers do to write

1 general liability.

2 They say, "What's your sales?" So,
3 there's an option.

4 There's an opportunity there. On one
5 other point, I know if there's no intent to
6 potentially use overall international sales, you
7 know, as, as a, as a determinate of risk allocation
8 here, then collecting all that data's not a very
9 good use of time.

10 Having said that, I think I heard Anita
11 say fairly loud and clear that if we limit it to
12 the CSC countries, there may not be enough. Some
13 of those countries that signed aren't even nuclear
14 countries.

15 So, we have a real conundrum, and
16 probably ought to address fairly fervently here
17 what's the real purpose of collecting data, and
18 would it be used, as Dwight said, would it be used
19 for --

20 MR. BROOKMAN: Dwight, follow on.

21 MR. CATES: I think, I think the more
22 direct question -- Pardon me. Were you excluding
23 the period before 2008, and entirely from an

1 allocation model?

2 MR. McRAE: Are you --

3 MR. BROOKMAN: Ben speaking.

4 MR. McRAE: That would depend on the
5 comments that we get.

6 MR. BROOKMAN: Okay.

7 MR. McRAE: What we are doing in this
8 Form is collecting the information which, again, I
9 will repeat, and if I am wrong on this, I would be
10 very happy to be corrected. What I thought I, we
11 heard, two things, I think, in prior comments and
12 public meetings was that -- And, they both went to
13 information.

14 One was that we needed, --

15 (Whereupon, at 10:30 a.m. ET, Ms. Pope
16 left the room, after which the following occurred:)

17 MR. McRAE: -- that we needed more
18 information in, to inform us about making our
19 decisions about how to come up with the formula.

20 MR. BROOKMAN: The allocation scheme.

21 MR. McRAE: The allocation scheme. The
22 other was that the individual companies, in making
23 their comments, felt that they needed to be able to

1 at least estimate how the, a particular, a
2 particular proposal would affect them.

3 And, to do that, they know what their
4 revenue is. They know what goods and services they
5 say provide.

6 They know what countries they send
7 things to. What they don't know is: What is the
8 aggregate number?

9 What is the bottom number? So, they can
10 count.

11 MS. GINSBERG: Right.

12 MR. McRAE: What we're trying to do here
13 is to calculate, give you that bottom number so you
14 can use it. The reason we limit it to 2008, is
15 that we heard from a lot of commenters, especially
16 those which had significant sales back in the '60s
17 and '70s and '80s, that they, it would be a very
18 time-consuming exercise for them to reconstruct,
19 with the precision that you might need for
20 allocating money, and that people would want it to
21 be accurate, and not just, "Well, we sold about \$10
22 million in 1962 and about 11- in 1963," and that,
23 you know, if they actually had to go, to go back

1 and go through their records, that would be a very
2 time-consuming exercise, and five hours would not
3 even begin to cover it if --

4 MR. BROOKMAN: Let's let people in a
5 position to respond.

6 Jim.

7 MR. SCHOETTLER: I just -- I, I, I share
8 the concern that you don't use dollars as a
9 surrogate for risk. It would -- That's not the way
10 the law was written.

11 So, that shouldn't be a surrogate for
12 risk. I'm wondering, though, in this exercise, are
13 you trying to find out the, who the exporters are?

14 And, for that, does it have to be
15 collecting dollar amounts? You just ask who the
16 exporters, or, "Do you -- Are you exporting these
17 type of ...?"

18 You know, do you -- On your Standard,
19 the direct export, you know, "Under that Standard,
20 have you been, have you done that since 2008?"
21 And, you know, and, that, is that what you're
22 really looking for?

23 Because, if you -- When you start

1 getting dollars, I mean, that, that's a question.

2 So, you can answer that.

3 I mean, I -- Just let me get the dollars
4 it looks like that's going to be become a part of
5 the risk assessment.

6 MR. McRAE: Can I just ask a question?
7 And, I'm not sure how we can come up with a formula
8 that doesn't take into account revenue.

9 If you're going to tell me that --

10 (Whereupon, at 10:33 a.m. ET, Ms. Pope
11 entered the room, after which the following
12 occurred:)

13 MR. McRAE: -- And, again, I, I guess I
14 could come up with a Form.

15 If you're going to tell me that if you
16 export to a, the reactor sector, that puts you in
17 the high-risk category. So, I have -- Okay, so I'm
18 using that.

19 Now, I've got Omer, who exports a pump
20 to the hi-risk category. I have you, who tran-,
21 exports a whole reactor vessel.

22 I have Ellen, who does the whole plant.
23 Do -- If I don't use revenue as a surrogate, how am

1 I -- Am I going to treat all three of you the same?

2 Because, each of you made an export to
3 the high-risk category. What is going to be the
4 way I distinguish, once I've got the risk, because
5 I've -- How do determine -- At least that's one way
6 of doing it, that the risk is the sector, that I've
7 determined high-risk is reactors, I now need to
8 distinguish between the three of you who have very
9 little involvement, medium, and high involvement.

10 MR. BROOKMAN: Yeah. Your current
11 thinking -- Correct me.

12 Don't let me peg you with this. Your
13 current thinking is you need the capacity at some
14 proxy to do it, to do both the weighting and
15 proportionality.

16 MR. McRAE: Yes.

17 MR. BROOKMAN: Omer.

18 MR. BROWN: Omer Brown, again. I -- it
19 certainly would be much easier to base it on
20 dollars, but that's not what Congress told you to
21 do.

22 What Congress told you to do is come up
23 with a risk-informed formula. And, it's very

1 specific in the, in the elements that are to be
2 included in that.

3 And, nowhere are dollars mentioned.

4 MR. BROOKMAN: Okay. I'm going to go
5 back to Ellen.

6 You've been very patient. Do you wish
7 to --

8 MS. GINSBERG: That's okay.

9 MR. BROOKMAN: -- weigh in here?

10 MS. GINSBERG: Thank you. When we
11 submitted our comments, we tried to balance those
12 two things.

13 And, what we tried to do was assign
14 relative bands, ranges. Are you -- It sounded from
15 the, at least my reading of the Federal Register
16 Notice, that you had some language from the Regs.

17 And that does do a little bit of, or
18 goes to a great deal of effort to do what we're
19 discussing now, which is take into account those
20 who benefit more on a dollar basis, assign risk to
21 it. Where were you on thinking through something
22 that's a little simpler, like this, in terms of, in
23 terms of future development?

1 MR. BROOKMAN: Simpler; then you held up
2 the Form?

3 MS. GINSBERG: No, this is not the Form.
4 These are former comments.

5 MR. BROOKMAN: Thank you.

6 MS. GINSBERG: We provided a --

7 MR. BROOKMAN: So, when you're saying
8 "simpler," what are you referring to?

9 MR. SCHOETTLER: It's a table. It's a
10 table in the --

11 MS. GINSBERG: What I'm saying is, we've
12 already been through this analysis of how do we,
13 how do we do things. I mean, the Industry went to
14 great effort to come up with something that more or
15 less could be the basis for a DOE, for a DOE
16 Proposed Rule.

17 MS. CAPOFERRI: And, this is Anita. I
18 think you may not have done it precisely.

19 And, it's in the NEI's recommendations
20 would suggest, -- But, I think that if you look at
21 the form, at least in part, we are trying to obtain
22 the type of information that would enable us to do,
23 you know, some kind of a cost allocation along

1 those lines.

2 Or, that is certainly a part of what is
3 the basis for what's on the Form. We are certainly
4 cognizant of Omer's comments, and the statutory
5 requirements, as well.

6 We're not putting those aside. We
7 attempted to respond to the many comments we got
8 through the workshop on things like burden and time
9 allowance, and not going back to 1960.

10 There seemed to be an overwhelming
11 commentary that that was burdensome in any number
12 of ways. We got comments about the need to
13 identify the denominator in any kind of risk
14 allocation, which is essentially knowing the number
15 of your total suppliers.

16 And, in order to know that, we did
17 additional data, as the information collection
18 provides. And, some of the -- The NEI recommended
19 models or potential models for cost allocation,
20 where they based on revenue as a proxy, in addition
21 to other risk factors, such as assigning a risk to
22 a particular nuclear section and nuclear
23 installation to which the goods or services are

1 supplied.

2 So, we, we had lots of comments back and
3 forth on the number regarding the difficulty of
4 assigning a risk allocation per good or service,
5 which I think was what drove, -- But, I won't speak
6 for NEI. -- which is, I think, what drove their
7 recommended model, which doesn't focus as much on
8 the good or service, but on the nuclear
9 installation to which it is supplied, as a risk
10 factor.

11 MR. BROOKMAN: I think Dwight is next,
12 followed by Ted.

13 MR. CATES: If I could just direct you
14 to our comments, our corporation's comments on
15 this, you're struggling with this revenue model,
16 and how to get the data. And, we've told you you
17 can't get it prior to 2008, but you can get it
18 after 2008.

19 I don't think you should exclude the
20 period before 2008, because you can't get perfect
21 data. And, that would require you to go beyond a,
22 a purely revenue-based model. And, you've -- We
23 get into that.

1 We get into that in our comments. I
2 think it's not equitable for you to exclude the
3 period before 2008.

4 Let me just give you a simple, quick
5 example. Let's say there were two domestic
6 companies that never had any engagement overseas in
7 America.

8 One company, Company A, built all the
9 reactors, or supplied all those reactors, or
10 engaged all those reactors, and went out of
11 business in 2007. Company B started business in
12 2008, and are now supplying all those reactors.

13 If you just pick the 2008-forward
14 revenue model, Company A is free and clear.
15 They'll pay nothing under a CSI regime.

16 Company B, who had no engagement in the
17 risk associated with building those reactors, is
18 now full-on, hundred-percent responsible for any
19 CSC allocation. That's just very simplistic.

20 Obviously what we're dealing with is
21 graded. We've got many more companies.

22 But, I think it would -- I, I can't
23 believe you would exclude the period, and you're

1 already telling us you're having a hard time
2 finding revenue after 2008, if you're just going to
3 CSU countries, and CSCU installations. You've got
4 to go beyond that.

5 And, our concern is that if you're going
6 to go beyond that by taking all revenue to all
7 countries only after 2008, you're picking up
8 companies that had no participation in that risk,
9 creating that risk prior to 2008.

10 MR. BROOKMAN: Are you endorsing, --
11 (Whereupon, at 10:40 a.m. ET, Mr.
12 Schoettler and Ms. Ginsberg conferred, out of the
13 hearing of others and off the Record, during which
14 the following occurred:)

15 MR. BROOKMAN: -- or, are you endorsing
16 revenue as the proxy? Or, can you imagine some
17 other --

18 MR. CATES: No, no. I'm saying you need
19 to have more than just revenue.

20 I think you have to have revenue as a
21 proxy. After 2008, revenue is a reasonable proxy;
22 absolutely.

23 But, you can't exclude the period before

1 2008. You should not exclude the period before
2 2008.

3 MS. CAPOFERRI: And, and, how would we
4 obtain that prior to 2008? How would you receive
5 that data?

6 MR. CATES: I'm not asking you to obtain
7 a pure revenue, pure revenue basis.

8 MS. CAPOFERRI: No, I mean just the
9 suppliers. If we -- How would we identify the
10 suppliers?

11 If, if there's still a desire, as we
12 heard prior, to be able to estimate the amount any
13 individual supplier would potentially be subject
14 to, --

15 MR. CATES: I think if people --

16 MS. CAPOFERRI: -- I think the issue
17 gets back to how many.

18 What's your pool, --

19 MR. BROOKMAN: That was Anita.

20 MS. CAPOFERRI: -- right?

21 MR. CATES: I think it's going to be a
22 very small number.

23 MR. BROOKMAN: Dwight.

1 MR. CATES: I think it's going to be a
2 very small number of companies. I think it's going
3 to be -- What we say in the comments is it will
4 be --

5 (Whereupon, at 10:41 a.m. ET, Mr.
6 Schoettler and Ms. Ginsberg conferred, out of the
7 hearing of others and off the Record, during which
8 the following occurred:)

9 MR. CATES: -- a very small number of
10 companies that provided an enormous amount of
11 oversees exports. Right?

12 These are technology providers. There's
13 really a very small number that we know provided a
14 significant amount of technologies and overseas --

15 MR. BROOKMAN: I want to remain in this
16 stream, so I'm going to Ellen and then to Omer.

17 Ted, I haven't forgotten you.

18 Ellen.

19 MS. GINSBERG: I just have one comment
20 that Dwight's comments creates the predicate for,
21 and that is that with, going back before 2008, but
22 also the 2008 forward, the question about what
23 you're actually served by is a great concern to us

1 because 18 USC -- Sorry. Yeah, -- 2001, I'm
2 concerned that you certify to the Federal
3 Government something that turns out to be in good
4 faith but incorrect, and that's even more so if you
5 go back before 2008 to the 1960s.

6 So, I'm not sure what the records look
7 like. Some of my members have said they don't even
8 have the records.

9 You're not required, under a record
10 retention policy, to maintain some of those
11 records. So, I think DOE needs to think long and
12 hard about what that submission looks like, and the
13 ramifications from an enforcement perspective look
14 like.

15 I would not want this to be a gotcha.

16 MR. BROOKMAN: So, with your detangling,
17 that was a discreet point.

18 Omer.

19 MR. BROWN: I think Ellen's covered my
20 point.

21 MR. BROOKMAN: Okay, then back to Ted.

22 MR. JOY: Yeah, Ted Joy, AIG. Going
23 back to the insurance analogies, and that's what

1 this is, Congress asked for an insurance policy,
2 whether it's retrospective paid in, or whether we
3 could figure out a way, you know, for a, --

4 (Whereupon, at 10:41 a.m. ET, Ms. Mann
5 left the room, after which the following occurred:)

6 MR. JOY: -- for a prospective insurance
7 policy.

8 As Dan said, all insurance starts with a
9 basis of revenue, but then we start inter-,
10 interjecting subjective analysis for the five or
11 six points that Congress mandated. I spent 17
12 years in environmental insurance, and environmental
13 insurance also started out as a, you know, we
14 apportioned by revenue.

15 We got so subjective as to the subject
16 matter of various risks, that, all of a sudden, all
17 the subject, all the subjectivity washed out the
18 revenue. We had a much larger equation on the
19 subjectivities to the revenue base.

20 (Whereupon, at 10:43 a.m. ET, Ms.
21 Ginsberg and Mr. McGarvey conferred, out of the
22 hearing of others and off the Record, during which
23 the following occurred:)

1 MR. JOY: And, I'll give you an example.
2 You know, looking at chlorinated solvent plume in
3 the groundwater, you know, is that plume at, at
4 Hanford, and it's also comingled with
5 radionuclides, and there's no groundwater
6 underneath?

7 Or, is that plume in Orlando, Florida,
8 from an old dry-cleaner that is adjacent to a
9 daycare center, and the groundwater is used to, to
10 water the lawn? The dry-cleaner revenues are, are
11 minuscule compared to what DOE's spending at
12 Hanford, but the relative risk, you know, and you
13 could argue Hanford's problems, but, relative risk
14 would put a higher price upon that dry-cleaner in
15 Orlando, Florida.

16 MR. BROOKMAN: Okay.

17 MR. JOY: But, -- And, I'm, I'm getting
18 there.

19 (Whereupon, at 10:44 a.m. ET, Ms.
20 Ginsberg and Mr. Schoettler conferred, out of the
21 hearing of others and off the Record, during which
22 the following occurred:)

23 MR. JOY: What we need to do is we need

1 to sit down with those subjectivities, and we need
2 to sit down with our baseline. And, I argue, also,
3 that our baseline is too narrow.

4 If I was to look at writing hurricane
5 insurance in Florida, and I said, "I'm going to
6 look at hurricanes from 2005 to 2015, that hit
7 Florida," we would have a zero, you know, whereas
8 we all know that Florida historically has, has a
9 large number of hurricanes. So, --

10 MR. BROOKMAN: If you --

11 MR. JOY: -- I, I look to the baseline
12 as being what built the capacity that CSC was
13 looking at in the U.S., you know, as my baseline,
14 and, and going as far back as possible.

15 MR. BROOKMAN: Okay.

16 Omer.

17 And, I should note two things. One,
18 before long we should take a short break.

19 And, then, second, --

20 (Whereupon, at 10:45 a.m. ET, Ms. Mann
21 entered the room, after which the following
22 occurred:)

23 MR. BROOKMAN, -- I would also note, I

1 think all this discussion has been very productive.
2 At the same time, we've haven't observed the agenda
3 at all.

4 So, we should, we should try to make
5 sure we get through all this content in a
6 systematic sort of a way.

7 Omer, please.

8 MR. BROWN: Well, I don't want to
9 overgrab. I just -- Omer Brown.

10 I just wanted to follow up on this point
11 about hurricanes. We have better data about
12 hurricanes going back 50 years, than, than the
13 companies have as to what they may have exported in
14 the 1960s.

15 The records just aren't there. So,
16 it's, it's a much different situation.

17 MR. BROOKMAN: Let me try to squeeze one
18 more content point out briefly before we go to
19 break. Several persons present referenced the
20 burden question, and the DOE's estimates of the
21 burden.

22 Anita's comments suggested there could
23 be a, a range there. Is there some way that

1 members present can comment about burden to, that
2 would amplify DOE's thinking on this?

3 Ellen.

4 MS. GINSBERG: So, I don't want to be
5 glib, but I will be. It's an underestimate.

6 MR. BROOKMAN: Yes. And, you know, how
7 does -- Can you all submit comments?

8 Can you provide a range? Can you
9 provide, provide a distribution curve?

10 What -- How could, do you --

11 Dwight.

12 MR. CASE: Dwight Case. Based on my
13 understanding of what my company can provide, and,
14 and, and what I understand, -- I'm not speaking for
15 other companies. -- but, the amount of hours it
16 takes to respond to this Notice should not change
17 the trajectory of what you're asking, your, your
18 process.

19 It is more hours. It's -- The IRS tells
20 me it takes two hours for me to fill out my tax
21 forms.

22 It takes me eight hours. I've still got
23 to fill it out.

1 It can be done. It's not an
2 unreasonable burden.

3 But, the amount much hours should not be
4 a disqualifying factor here, in my opinion.

5 MS. GINSBERG: Yeah. I don't think
6 we're saying it should be a disqualifying factor.

7 I'm just saying, when you analyze the
8 amount of time and the concomitant costs, because
9 staff resources are a cost driver, that it's just
10 not five -- I think you've said five hours.

11 It's not five hours. And, the estimates
12 are just that thus far.

13 We haven't had more detailed data, in
14 part because we're trying to figure out where we
15 land on this form in terms of what it actually
16 looks like.

17 MR. BROOKMAN: Right.

18 Okay, Ted, and then we're going to take
19 a break.

20 MR. JOY: Ted Joy. You know, I think
21 the five hours was based on one person at a de
22 minimus company.

23 I would, I would, I would ask DOE to

1 look back on itself and ask them, if I had a, if I
2 had to find out this information within the
3 Department of Energy, how long would that take me?
4 And, how many people would that take?

5 You know, would it take 100 people four
6 hours each? And, use that as, as the upper bound,
7 and use, use the fire hours as the lower bound.

8 MR. BROOKMAN: Okay.

9 MS. ANGELINI: Yeah, could I ask a quick
10 question? It's Sophia Angelini.

11 My, my question would be: How quickly
12 could you find this information like the
13 information on this form if your shareholders were
14 asking for it?

15 MR. CATES: Not all of us -- Not all of
16 us are public companies. That's not a relevant
17 question.

18 MR. BROOKMAN: I thought, Dan, you were
19 going to say something. Dan.

20 MR. MCGARVEY: Since the glib train has
21 left the station I would just add that, in my view,
22 any sizeable company, it would take five hours just
23 to find the right desk for this to be handled.

1 MR. BROOKMAN: Okay. In your written
2 comments can you reflect on this a little bit?

3 It's, it's a question for those of you
4 that are going to be submitting, that are going to
5 be shouldering this burden. It's also a question
6 for other entities, like OMB, and other
7 governmental entities that DOE will have to
8 proffer.

9 Let's take a break. It's now 10:50.
10 Let's try and resume in ten minutes, okay?

11 (Whereupon, at 10:49 a.m. ET, those
12 present took a brief recess and returned at 11:01
13 a.m. ET, after which the following occurred:)

14 MR. BROOKMAN: Okay? I wanted to
15 float -- Obviously there's a lot to cover here.

16 We're scheduled to adjourn at noon. I'd
17 like your permission to keep us going till 12:15.
18 An additional 15 minutes will help, I think, and
19 then we'll figure out where to go from there.

20 Sure. And, would everybody see if you
21 can pull out a business card and pass it forward so
22 that we, we have a record of the attendees here,
23 please, and your current contact information?

1 Ben requested something to say here at
2 the outset in a, briefly, before we move on.

3 MR. McRAE: And, I, I'm not expecting
4 anyone to give answers right now. But, going back
5 to what Dwight brought up about the pre-2008, I'm
6 not saying that we're going to look at pre-2008,
7 but we've heard that getting revenue information
8 would be very difficult.

9 It would be very helpful if some or all
10 of you, in your comments, could, if there are
11 cert-, if there are things which might be
12 reportable, like, how many reactor vessels you
13 provided before 2008, or if there are things which
14 are, would allow us to identify who made major
15 contribution, made major exports in the pre-2008
16 period, that would be something that would be easy
17 to report that would not require people, if you
18 could identify what those types of items might be
19 to report, if you think -- Well, even if you don't
20 think we need to go back before 2008, it would be
21 useful if people -- We tried to do that in the
22 original Proposal.

23 Obviously, we failed. But, it would be

1 helpful if you could think about that and tell us
2 if there are things that might, if you think that
3 we do need to pick up the major players in the
4 pre-2008.

5 I don't know that we can pick -- I, I
6 truly think it would be very difficult to pick up
7 mom-and-pop enterprises, or even mid-sized
8 enterprises back in the 1960s and '70s and '80s. I
9 think you would, realistically you could only deal
10 with the major players.

11 But, if you have any idea about that, it
12 would be useful to hear them.

13 MR. BROOKMAN: Okay, thank you. During
14 the break I had a conversation with the DOE
15 staffers here and talked about what we should try
16 and accomplish in our final hour.

17 We're going to go to 12:15. Is that
18 okay with everyone?

19 Twelve-fifteen? Okay.

20 And, we came to thinking, since we said
21 this morning we were trying to answer as many
22 questions as possible, that we would literally try
23 and go through many of the questions that were

1 submitted by both NEI and CIGNL. And, I, I'm, I
2 looked first at the CIGNL listing, and we've
3 started to address several of the things there;
4 maybe not quite half of them, not completely.

5 But, so, I was going to go next to the
6 NEI questions, and then double back, okay? So,
7 we're going to put Anita on the spot here.

8 She's going to respond, to the extent
9 possible. Where's her attorney?

10 The first question is the legal basis
11 for the filing obligation. I'm looking at Page --
12 I believe this is Page 5 of the NEI questions.

13 So, what's the legal basis for -- And,
14 this is, this is a brief response to which we hope
15 that comments can be attached.

16 Right, Anita?

17 MS. CAPOFERRI: Right. Right.

18 I'll try and do this fairly quickly.
19 Legal basis, as we put in the Notice, it's Section
20 934(f)(1).

21 Reporting time period, I think we've
22 gone over that as to why we, we selected the time
23 period.

1 MR. BROOKMAN: Do we have additional
2 questions on that point? We could -- Okay. Okay.

3 MS. CAPOFERRI: Scope of the reporting
4 obligations, I think we've discussed that a bit
5 already, as well.

6 MR. BROOKMAN: Do we have additional
7 questions there? I'm going to keep doing this.

8 Ellen, please.

9 MS. GINSBERG: Yes, Ellen. I just want
10 to reserve the right to go through the answers that
11 we got today and provide further comments, because
12 I need, really need to check back with the members
13 to see where we, they are.

14 MR. BROOKMAN: Thank you for saying
15 that. And, I presume everyone in the room is going
16 to have to walk away from here and think about
17 this, and provide additional comments.

18 And, DOE is hoping that you're going to
19 provide a lot of them.

20 Okay, Anita.

21 MS. CAPOFERRI: The comment on the use
22 of a de minimus threshold, I can say we thought
23 about that and ultimately decided not to, in terms

1 of the Form. But, we, just because, again, the,
2 the idea was to gather as much information as we
3 could.

4 Having said that, I certainly understand
5 the logic of having some de minimus amount, even,
6 on the Form. And, so, if, if folks want to give
7 them some more commentary on that, certainly take
8 that one into consideration.

9 MR. BROOKMAN: And, I think Ben did a
10 good job of describing DOE's current thinking, or
11 initial thinking, maybe we would say, that led them
12 to that, to where they are. Okay?

13 MR. McRAE: Yeah. But, I would --
14 Again, on this we wanted to go broad, but if people
15 think that de minimus is less than a million, or
16 less than ten, whatever, you know, it would be,
17 because we don't want --

18 MS. CAPOFERRI: Right.

19 MR. McRAE: -- it --

20 MS. CAPOFERRI: I, I would echo that to
21 the extent that you believe that there should be a
22 de minimus limit on the Form, please identify what
23 that limit is. That would be very helpful.

1 MR. BROOKMAN: Okay.

2 MS. CAPOFERRI: Confidentiality on
3 submittals, and I certainly understand the concern
4 here. We will do everything we can, as we put in
5 the Instructions, and also to keep it confidential,
6 the proprietary information that may be provided
7 under the form.

8 We even started to look into the
9 mechanism within the Department, where and how we
10 would take in that information and maintain it, and
11 so we can ensure that it is done in a confidential
12 manner. We'll do everything we can, given the
13 confines of law and Regs., to do that.

14 And, and, I would also note, of course,
15 that it's not the first or the only time that we
16 have, that Companies have provided us with
17 proprietary information. So, --.

18 MR. BROOKMAN: Um-hum.

19 Yes, Anne.

20 MS. COTTINGHAM: This is Anne
21 Cottingham. To Anita's point, I have been asked by
22 several Companies -- This is related: Will it be
23 obvious to members of the public which Companies

1 have responded to the data Form?

2 MS. CAPOFERRI: This, this kind of gets
3 to your question of: Will we publish a list, or
4 not?

5 MS. COTTINGHAM: Correct. Yes. Yes.

6 MS. CAPOFERRI: Well, I guess that one,
7 we'll also consider that to the extent, you know,
8 we can do that and not, not violate some kind of
9 Are principles of privacy or, or of, or, you know,
10 disclosing any proprietary-type information. And,
11 I think that's another one we'll consider what we
12 can do there.

13 MR. McRAE: Yeah. Can I just add --

14 MR. BROOKMAN: Ben.

15 MR. McRAE: Because, I've heard at least
16 one person to say that they thought it was
17 important to have a list so they could see if all
18 their colleagues reported. If that's a general
19 comment, it would be good to hear it.

20 Or, if people thought, no, we shouldn't
21 have it, it would be good to hear the views of
22 everyone. And, again, I don't know what the Rules
23 are, so, -- But, it would be good to know what

1 you-all thought about it, whether it should be
2 public or not.

3 MR. BROOKMAN: Um-hum. This is a, this
4 is a tangle here, this issue, right?

5 But, at, at, at the same time, DOE's
6 intention would be that the aggregated content
7 would be the sort of thing that --

8 MS. CAPOFERRI: Right.

9 MR. BROOKMAN: -- would be the sort of
10 thing that would typically be released.

11 MS. CAPOFERRI: Yes. Yes.

12 MR. McRAE: It's the, in my mind right
13 now, the aggregate information is the only thing
14 that we would make available in the rulemaking
15 process. We're not going to, at least when we make
16 the information available to you to use in the
17 rulemaking, we're not going to say, "Westinghouse
18 had this, Fluor had this."

19 We're not going -- We're just going to
20 give you aggregate information.

21 MR. BROOKMAN: Yes.

22 Omer, please.

23 MR. BROWN: Yes. Omer Brown.

1 Our Question 5 addressed this issue, and
2 we realized that there could be confidentiality and
3 proprietary constraints in releasing. But, we
4 suggested that the list of the actual companies be
5 disclosed so that there could be transparency in
6 the identity of the, of the suppliers being subject
7 to this.

8 MR. BROOKMAN: And, your members would
9 get behind that?

10 MR. BROWN: That's -- We, we would.

11 MR. BROOKMAN: Yes. I was wondering,
12 does NEI have a posture on that one?

13 MS. GINSBERG: Is the question on the
14 table disclosing that you have submitted
15 information?

16 MR. McRAE: Not the information. Right.

17 MS. GINSBERG: I'd suspect the answer
18 is, "Yes," but I would have to pass that by my, my
19 members.

20 MR. BROOKMAN: Okay.

21 MS. GINSBERG: But, if it's just a list
22 of who's submitted, I'd suggest that it's probably
23 all right.

1 MR. BROOKMAN: Thank you. That's very
2 helpful to both of the organizations.

3 Any other comments that way here in the
4 room?

5 MS. GINSBERG: While we're on the
6 subject, -- This is Ellen. While we're on the
7 subject of lists, did you respond to -- And, this
8 is off.

9 I'm sorry. It's somewhat of a
10 digression.

11 Did you respond to whether or not DOE
12 would be willing to put a, put together a list of
13 covered installations? The Industry is eager to
14 see what you characterize as a covered, "covered
15 installations."

16 MR. McRAE: Would it help -- Would it
17 help to see what we think is a "covered
18 installation" in the United States?

19 MR. BROWN: No.

20 MS. GINSBERG: I think my request is a
21 list.

22 MR. McRAE: I, I, I think while there,
23 again, is kind of a two-part answer. One is I

1 think that certainly might be a good thing on Final
2 Rule and the, with respect to the final Form.

3 Given the fact -- If you're talking
4 about the list of installations that's reported to
5 the IA-, IAEA under the ISC, there's some questions
6 there as to whether or not that can be made
7 publicly available, that we're talking to the
8 Agency about.

9 And, I doubt if that's going to be
10 answered by the time this Form goes out because it
11 probably won't come up till next May. But -- And,
12 again, it, if we're going to more than CSC
13 countries on this form, it wouldn't cover the other
14 countries.

15 But, --

16 MR. BROOKMAN: Omer.

17 MR. BROWN: When, when I -- Omer Brown,
18 again. When I checked with IAEA on this, they said
19 they, that, that they will not disclose the list
20 submitted with ratification, but they provide that
21 to other member States.

22 So, the United States would have the
23 list. And, the question then is whether the United

1 States can tell us.

2 MR. McRAE: There are questions about
3 whether or not it would be proper for us to because
4 there are other lists which are provided to member
5 States which we would not necessarily be happy if
6 another member State of the IAEA made that list
7 available to everyone, even though there's not some
8 formal -- We -- It's an issue that we need to -- I,
9 I'm not ruling it out.

10 It's just that we'll have to talk to
11 State; we'll have to talk to the Mission to find
12 out what's -- Because, it, it, it, it could set a
13 precedent for other lists that we get from the
14 Agency.

15 MS. GINSBERG: So, --

16 MR. BROOKMAN: Ellen.

17 MS. GINSBERG: -- could I just add that
18 this is really sort of a significant issue,
19 because, while I know it's not DOE's intent, it has
20 the effect of being hide-the-penny to some degree.
21 And, that doesn't help us in creating certainty
22 with the Rule.

23 I understand you're in between a rock

1 and a hard spot here.

2 MR. McRAE: I can also tell you that
3 when I checked into this, the list may not be
4 complete that Countries submit, because some
5 Countries are -- I, I can tell you the U.S., our
6 first list we had to take back because some Agency
7 messed up, double-counting certain reactors.

8 So, we had to take it back and re-do it
9 because it wasn't -- I actually know another
10 Country only didn't put on all their research
11 reactors, and they had the Agency -- So, again, I,
12 I -- But, I understand the concern, and we, it's
13 some -- I -- We're not going to try to hide, --

14 MR. BROOKMAN: Yeah.

15 MS. GINSBERG: Yeah.

16 MR. McRAE: -- you know. We'll find
17 some way to get the information to you.

18 MS. GINSBERG: We appreciate that,
19 because without that, --

20 MR. BROOKMAN: Anne.

21 MS. GINSBERG: I don't know how we can
22 do our job in responding.

23 MR. McRAE: But, it may not be for this

1 Form. Just -- I, I'm just --

2 MS. GINSBERG: Okay.

3 MR. BROOKMAN: Anne.

4 MS. COTTINGHAM: Anne. Further to
5 Ellen's guideline again, this, this lack of
6 information, lack of clarity also raises, helps to
7 raise the concerns about the basis, legal basis for
8 the Rule, penalties for noncompliance, what you do
9 if you certify, in good faith, that you don't think
10 there were those services and there were, since we
11 don't really know what companies or installations
12 are included; blah, blah, blah.

13 MR. BROOKMAN: Okay. Got it. And, we
14 heard your concern.

15 Ellen. Yeah, okay.

16 MS. CAPOFERRI: I, I, I'll just leap to
17 that question. Got a little bit out of order on
18 the certification.

19 I, I can tell you the intent there was
20 certainly to relate to anybody filling out the,
21 Form, that they should do that as in as correct and
22 accurate and good-faith of a manner that they can,
23 and that it could certainly serve our interest, it

1 would serve their interest, it would serve
2 everybody's interest who's commenting on this Rule
3 to have accurate information.

4 We will -- I, I understand the points.
5 We will certainly take into consideration whether
6 the word "certify" and the connotations it has in
7 law is the correct term to use in, to express our
8 desire and hope and intent that people, in fact,
9 fill out the Form accurately and correctly.

10 So, that's, that's where we're at on
11 that.

12 MR. BROOKMAN: Okay.

13 MR. McRAE: I possibly shouldn't say
14 this, but I will.

15 MR. BROOKMAN: This is Ben.

16 MR. McRAE: On this Form, -- And, this
17 doesn't go to the next Form, because the next Form
18 is going to be used potentially for transfers of
19 money. So, the information needs to be accurate.

20 MS. GINSBERG: Right. Sure.

21 MR. McRAE: This Form is really to help
22 us, but, actually, it's more to help you. I'm not
23 sure that we would go through all the work it takes

1 to get a Form through OMB just to get the
2 information for ourselves.

3 We could probably make do with what
4 April and other people have found going through all
5 the NRC and DOE and Commerce documents. We've got
6 a -- But, it's not complete, and what we've heard
7 is that the Industry needs information.

8 So, this Form is really to help people
9 comment on the Proposals, and to assess their
10 positions. So, again, our -- I, I don't foresee us
11 going after anyone.

12 I mean, we're -- These are all valid
13 issues you've raised for the next Form about what
14 is going to be the enforcement mechanism. What
15 does it mean, you know, to certify what happens.

16 On this Form, we are truly just trying
17 to get as good information as we can in the
18 aggregate so that people can use that to inform
19 their comments. This is, you know, again, as I
20 said, next time all of these questions are much, we
21 will need to address, and we'll probably address
22 them in the rulemaking, as you said.

23 We'll probably have a Form attached, and

1 we'll get Notice and comments on it, and deal with
2 it in the rulemaking. But, if that helps you as to
3 -- We're not trying to, you know, to get anyone on
4 this Form. It's really to help you.

5 MR. BROOKMAN: And, go back to Anita, --

6 MS. CAPOFERRI: Yep.

7 MR. BROOKMAN: -- and to the list.

8 MS. CAPOFERRI: Yeah. Aggregation of
9 values and uses of increments, we did it that way
10 just, we thought it was a bit easier to just give
11 us a range of the value of the goods and services
12 exported, as opposed to a precise dollar amount,
13 and set up various bands accordingly.

14 If -- There's nothing much more to it
15 than that. If that's -- If those are wrong
16 increments, or you think something else would be
17 better, then, by all means, give us commentary on
18 that.

19 Information, public priority entity --
20 Again, it was just some basic background
21 information about the nuclear suppliers. Nothing
22 terribly insidious about it other than just you
23 know do you know whether you're a public or private

1 corporation.

2 Export Licenses or Authorizations in a
3 similar vein. That was a, an, a request for that
4 information to help us understand how the
5 particular nuclear supplier is, or under what
6 regime they're providing nuclear goods and
7 services.

8 It may be helpful in terms of
9 cross-checking in terms of database with NRC or
10 others. So, it's just a useful tool to understand
11 how and what basis and where else such exports
12 might lie.

13 MR. McRAE: And, part of it was when we
14 went through all of this, we weren't sure if there
15 were gaps, you know. And, we could see what was at
16 NRC, DOE, Commerce, but we didn't know: Are there
17 another 500 entities that we're not picking up by
18 looking at this?

19 We, you know, --

20 MS. CAPOFERRI: And, it would be helpful
21 to know if you were, for example, a subsupplier and
22 that particular box is already checked, then that
23 would give us some indications about the type of,

1 of means by which you export.

2 MR. BROOKMAN: Jim.

3 MR. SCHOETTLER: Jim Schoettler. Yes.

4 In that regard, if we know that the
5 party it's given to gets an Export License, but we
6 don't, could you indicate that so we can say, "To
7 the best of our knowledge, this is obtained by the
8 actual transporter of goods"?

9 MS. CAPOFERRI: Right. Right.

10 MR. SCHOETTLER: Because, you know,
11 typically the transporter of goods will get it, or
12 the customer, but we'll not be asked for it.

13 MR. BROOKMAN: Ellen.

14 MS. GINSBERG: Could I go back? Sorry.

15 One question on the public/private
16 status. It doesn't seem there's a great deal of
17 use for that information.

18 I'm sure it's just to check the box, but
19 I didn't understand. Well, you said that you were
20 just looking to see if you were one or the other.

21 I didn't understand from your answer how
22 you plan to use that information.

23 MS. CAPOFERRI: You know, I'll tell you,

1 I don't, that doesn't have a direct use to the
2 Proposed Rule. It, again, is just background
3 information that might be helpful.

4 But, if, if, you know, folks think
5 that's, you know, nonhelpful and not necessary,
6 we'll certainly take that into consideration.

7 MR. McRAE: Just for way of background,
8 and I may be wrong on this, but I thought it was
9 there as when we were trying to find, without going
10 out through a data collection, just seeing what we
11 could find during the last year about publicly
12 available information.

13 One avenue that we thought about was
14 going out to look at public companies to look at
15 their filings to see what they said there. And, we
16 found that it was far too -- Again, we were just
17 trying -- We tried a number of avenues to collect
18 information over the last year so that we wouldn't
19 have to, so we could provide the necessary
20 information without going out for a data
21 collection.

22 And, that was one of the avenues we
23 explored. I don't know whether we need to keep it

1 or not.

2 MS. GINSBERG: Yeah. I mean, it's a
3 check-the-box, but it doesn't seem to have great
4 value, from what we've just, if what you've just
5 described.

6 MS. CAPOFERRI: Selection -- I think I'm
7 down to selection of industry sectors for reporting
8 purposes. We, we did want to differentiate a
9 little bit more than, for example, the, the
10 groupings that NEI had in its recommendation.

11 We thought it was a little bit more
12 helpful to disaggregate that a little bit more.
13 And, so, using the definitions of "nuclear
14 installation" that we had proposed in our Proposed
15 Rule, we just made up tables that comport with
16 those. So, those are --

17 MR. BROOKMAN: This is kind of --

18 MS. CAPOFERRI: -- disparate entities,
19 or distinct installations.

20 MR. BROOKMAN: This back to that
21 balancing act between specificity and kind of
22 broader categories that want to be sufficient here.
23 But, you know, you can understand what they're

1 trying to do.

2 So, any comments related to how those
3 categories might be changed, how they might be
4 enhanced, how they might have more utility, that
5 would be useful.

6 Yes, Dwight.

7 MR. CASE: Dwight Case. I would just
8 ask that, in terms of allocating risk within a
9 category, I think if, if you're engaged in
10 decommissioning activities on a reactor that's
11 defueled and there's really relatively zero risk of
12 a nuclear risk, if, if those revenues are included
13 in a model, that they be weighted, risk weighted
14 such that a dollar of decommissioning activities
15 doesn't equal a dollar of fuel handling activity in
16 an operating reactor.

17 MS. CAPOFERRI: I think that might
18 relate to one of the CIGNL's questions.

19 MR. McRAE: Yeah. Our question is --

20 MR. CASE: And, we're a member of CIGNL,
21 so -- .

22 MS. CAPOFERRI: And, we could revise the
23 Form to, to ask that question, as well, whether

1 you're supplying to a decommissioned or operating
2 reactor.

3 MR. BROWN: Yeah. Our Question 8 asked
4 whether it wouldn't make sense to ask whether the
5 installation is under construction or operation, or
6 in the process of decommission.

7 MR. BROOKMAN: Right. Right.

8 And, so, the -- So, they've heard you.

9 MS. CAPOFERRI: And, then, the last one
10 on risk allocation, I guess on that one I would say
11 that's not, that is something that we are still
12 looking at. I think this is information that, you
13 know, that kind of risk-weighting is not something
14 we can ask on a data collection Form of individual
15 suppliers.

16 It's, it's not on there for that reason.

17 MR. McRAE: Can I just, on this, because
18 we were going to try to collect information on risk
19 through revenue. And, again, I think this is what
20 the NEI suggestion was trying to get away from, but
21 in my mind, if we were going to do that, we would
22 have to identify various goods and services, and
23 rank them as to risk.

1 And, then we would have to require
2 people to give us information not just on revenue
3 from a certain sector or from a certain facility;
4 that it would be revenue from certain types of
5 goods and services. So, it would, it would be a
6 much more involved reporting requirement.

7 I mean, we would perhaps need you to --
8 how much revenue from reactor vessels; how much
9 revenue from pumps; how much revenue -- You know,
10 go through the whole list of items. That's what we
11 were trying to get away from.

12 That's -- You know. So, that's why we
13 -- The Form to -- We tried to make it simple, you
14 know.

15 But, if we were to go to a more -- If we
16 were going to try to capture risk, I think that's
17 how. But, as Anita said, we are looking at risk,
18 but that's a different exercise, and I'm sure that
19 whatever we decide about that, you will get a
20 chance to comment at some point in time.

21 MR. SCHOETTLER: So, this is Jim. I
22 assume you are going to do it some way if this is,
23 you suggest there will be at least some sort of

1 evaluation of relative risk between the five
2 different buckets.

3 MR. McRAE: We're still working, so I
4 don't want to overcommit.

5 MR. SCHOETTLER: Well, but, again, --

6 MR. McRAE: -- but, --

7 MR. SCHOETTLER: -- but this information
8 is for purposes of that risk analysis, because, you
9 know, the more money goes to one spot, and the
10 other doesn't really tell you anything about where
11 the risk is.

12 MR. McRAE: Well, we have --

13 MR. SCHOETTLER: I mean, --

14 MR. McRAE: That's not what we're trying
15 to get at.

16 MS. CAPOFERRI: That's why the Form
17 doesn't ask that question.

18 MR. McRAE: But, we understand that risk
19 is something that we need to address in the
20 rulemaking. And, it would be premature to talk
21 about exactly how we're going to do it.

22 MR. SCHOETTLER: Right. Great.

23 MR. McRAE: But, we do realize we need

1 to address it.

2 MR. BROOKMAN: I think, if I'm not
3 mistaken, those are all OF the questions that you
4 were on the NEI, the supplemental questions. You
5 had some rather detailed questions on definitions
6 and the like, and it does occur to me that that's
7 maybe a, a more lengthy conversation.

8 But, Anne, see if you --

9 MS. COTTINGHAM: I think maybe not. We
10 went through a lot of the questions about
11 definitions this morning, but the one I wanted to
12 ask you about was the definition of "goods,"
13 "nuclear goods and services."

14 And, in particular, let me just read the
15 question. We point out that the definition of
16 "goods and services" on the Form, it's different
17 than it is in the Rule.

18 And, the question is: Does equipment
19 pertaining to the operation of a plant include
20 nonsafety-related equipment or balance of plant
21 equipment that is not covered by 10 CFR Part 21,
22 and which would not be reactor equipment requiring
23 NRC Export License under 10.

1 MR. MCGARVEY: That's a good question.

2 MR. McRAE: Could I take that question,
3 since I know the least?

4 MR. BROOKMAN: Ben.

5 MR. McRAE: I, I think on that one we're
6 open. Again, I think this goes to us looking at
7 trying to make it simple, and so we took the
8 approach of every, we're not going to
9 differentiate.

10 Whatever revenue you derive from
11 exports, you should report. Now, if people think
12 that it makes more sense to use a more limited
13 universe, like we did in the Proposal, and to limit
14 it to stuff that is subject to Part 21, or if
15 there's some other identifier that would be
16 something that people in the industry would
17 understand, and that make more, makes more sense;
18 that some of the stuff is revenue, but it's revenue
19 from goods and services that you're never going to
20 get sued on for a nuclear accident, then, you know,
21 again, we're just trying to have something that's
22 useful.

23 So, if there's some identifier or some

1 event Industry thinks, "This is the universe. You
2 know, you don't need balance plan, or you don't
3 need....," we just need to hear it.

4 MS. CAPOFERRI: Yeah. Just to second
5 that, --

6

7 MR. BROOKMAN: Anita.

8 MS. CAPOFERRI: I'm sorry. Anita;
9 right.

10 We would like to hear that. There were
11 lots of concepts in the NOPR, and lots of concepts
12 that were talked about on the previous workshop on
13 the NOPR with regard to narrowing down and putting
14 in.

15 And, some comments were for and against
16 that. So, in the particular proposed Form, we
17 didn't quite select a, a way of doing that.

18 So, we are very open, however, to
19 continued comment on that topic, and what you all
20 would think would be useful and helpful. And, I'm
21 I, I, again, -- So, we always want to put that back
22 out because there was a lot of commentary,
23 commentary on the NOPR, and we're not intending to

1 make this overly burdensome for Industry or for us,
2 in that matter.

3 MR. BROOKMAN: Um-hum.

4 Ted.

5 MS. CAPOFERRI: We would like to hear,
6 again, what you think about how to make this
7 useful, and to have the ways, clearer ways to make
8 that so that it's more helpful.

9 MR. BROOKMAN: Let's let Ben follow on.

10 MR. McRAE: Yeah.

11 MR. BROOKMAN: Just a very quick --

12 MR. McRAE: Or, if you think it would be
13 useful to have the aggregate number, and then have
14 a subset of Part 21, or whatever, so you could see
15 what the difference would be. Again, we're doing
16 this so that you have information that would be
17 useful for commenting on the ultimate Proposal.

18 MR. BROOKMAN: Um-hum.

19 Ted.

20 MR. JOY: Ted Joy, AIG. With a -- Yeah.
21 The way, the way it's written now on the Form is,
22 is so broad as to, you know, I would believe it,
23 industry members would, would enjoy this definition

1 because it would pull in a lot of suppliers that
2 would not consider themselves to be suppliers.

3 I mean, from an insurance-company
4 perspective I can make the case that Keurig
5 machines and the water coolers, and, and everything
6 is included as, as a supplier, the way it's
7 written. So, --

8 MR. BROOKMAN: Okay. Can you supply
9 additional information, additional -- Can you put
10 pen to paper there?

11 MR. JOY: Yeah, I can do that.

12 MR. BROOKMAN: Okay. That would be
13 great.

14 MS. GINSBERG: So, can I just respond to
15 that before we get too far into the Industry's
16 perspective?

17 MR. BROOKMAN: Ellen. Ellen.

18 MS. GINSBERG: The fact is, there is,
19 there are two different concerns that have to be
20 balanced here. One is that, as Omer said
21 correctly, the more, more participants, the more
22 broadly you can spread the costs.

23 The other issue is a competitiveness

1 issue. And, for the smaller participants, this
2 becomes a very big deal.

3 So, we, we really do need to balance
4 those two fairly important issues with respect to
5 how broadly we cast this net.

6 MR. BROOKMAN: Ted, go ahead. Follow
7 on.

8 MR. JOY: I'd add, too, you know, we
9 have to remember this isn't a direct-liability
10 scheme. This is a contingent-liability scheme.

11 So, the intent is, is for anybody.
12 Anybody contingent is pulled into this and shares
13 the liability.

14 And, it wouldn't be, you know, as much
15 as only the operating systems, or only, you know,
16 only things like that, you know, similar to an
17 aircraft incident or something. You know, this is
18 purely contingent.

19 It's not a direct liability.

20 MR. BROOKMAN: Thank you.

21 Yeah.

22 MR. SCHOETTLER: Yeah. This is Jim,
23 again.

1 I -- This is a comment we made before,
2 and I do know, but this exclusion for actual and
3 depleted I think is not really -- Again, I just
4 want to state for the Record we don't believe that
5 should be excluded. They -- You, you know,
6 enrichment plants, they're enriching natural, but
7 also fabrication plants use natural.

8 They also -- From time to time you can
9 see depleted there as well. So, I, I don't think
10 you should be excluding these categories of uranium
11 from the -- If they're shipped directly to an
12 enrichment plant, or shipped directly to a
13 fabrication plant, they're, they have the same
14 chemical composition that causes nuclear accidents.

15 But, I do understand in the
16 international Treaties there's an exclusion for
17 them for dealing with natural uranium. But, we're
18 talking here about something different.

19 I think this is the contribution to the
20 facility. So, that's just for, for the Record.

21 MR. BROOKMAN: Thank you. I'm looking,
22 also, as a matter of completeness and fairness, at
23 the CIGNL questions and comments.

1 And, I'm looking at them, and I think
2 we've already addressed several here at the, the
3 top of the page. And then -- And, I think DOE's
4 been really gracious and up-front about trying to
5 address all of these different issues.

6 (Whereupon, at 11:35 a.m. ET, Ms.
7 Ginsberg and Mr. Schoettler conferred, out of the
8 hearing of others and off the Record, during which
9 the following occurred:)

10 MR. BROOKMAN: And, I'm inviting CIGNL,
11 if there are any things additional here that, that
12 you would like to call attention to.

13 MR. CATES: Dwight Cates, Fluor.

14 MR. BROOKMAN: Go ahead.

15 MR. CATES: A few things. I think our
16 first eight questions have been, have been touched
17 on.

18 Question 9 is a technicality as to what
19 adjustment index would be used for expressing the
20 value in adjusted U.S. dollars, and whether that
21 would be an adjustment index that would include
22 energy prices.

23 MR. McRAE: That I think is a (sic)

1 issue that we will deal, possibly have to deal with
2 in the future. I think that's beyond the
3 collecting the information.

4 MR. CASE: Well, but, if we're giving,
5 if we're giving the numbers in dollars, he need to
6 know how to adjust them.

7 MS. CAPOFERRI: Let me try. I'm going
8 to say likely, with CPI.

9 MR. BROWN: Just tell us which one to
10 use, or tell everybody which one to use so there's
11 consistency.

12 MR. SCHOETTLER: So, this as a question
13 it raises in our reporting. Are we supposed to use
14 then dollars or now dollars?

15 What are we supposed to be using in
16 2008?

17 MS. CAPOFERRI: That's the adjusted.

18 MR. SCHOETTLER: I guess I didn't
19 realize we're supposed to adjust them.

20 MS. CAPOFERRI: Um-hum.

21 MR. SCHOETTLER: Then your five-hour
22 thing is really -- On its face that can't work.
23 Right now I've got to get -- As soon as I can get

1 somebody out of my Invoicing Department.

2 But, then we would have to -- We have to
3 ask them.

4 MR. McRAE: Well, can I ask this, then?
5 Because, inflation has been, I think, relatively
6 flat over the last --

7 MR. BROOKMAN: Since 2008.

8 MR. SCHOETTLER: Well, I grant you that
9 Joe.

10 MR. McRAE: No, no, no. Could we --
11 Would it can more sense to ask for unadjusted
12 revenue, if that's going to, if that's going to not
13 make a big difference?

14 Like, we're not going back to 1960.
15 We're only going back to 2008.

16 If unadjusted numbers would be --

17 MR. SCHOETTLER: We'll comment.

18 MR. McRAE: -- easier and save you time?

19 MR. SCHOETTLER: Well, comment on it.

20 That's a good question.

21 We'll comment on it. Thank you.

22 MR. BROOKMAN: Good point. Okay.

23 Wow, we, we really -- My appreciation to

1 DOE for being so disclosing.

2 Question or comments? Yes.

3 You're going to have to speak loudly.

4 Please say your name.

5 MS. BJORGAN (phonetic): I'm Carol
6 Bjorgan, with the Nuclear Energy Institute. Just a
7 clarifying question.

8 In the Federal Register Notice, the
9 fourth area that you requested comments on related
10 to automatic, automated collection technique. I
11 was just curious in terms of preparing any feedback
12 on that what you envisioned there, or if you had
13 specific ideas.

14 It was unclear to us when we, when we
15 looked at the question.

16 MS. CAPOFERRI: I think that's -- If, if
17 you have any comments on that, that is certainly
18 welcome. That's, gets into a little bit of what
19 we're trying to deal with internally in
20 establishing this system whereby nuclear suppliers
21 could submit the Form and we would get it in a
22 (sic) organized system where we can get --

23 MS. BJORGAN: So, you're thinking some

1 sort of a web-based complex tool, or something
2 around that, this thinking around that?

3 MS. CAPOFERRI: Yes.

4 MS. BJORGAN: Thank you.

5 MR. BROOKMAN: Yes, Ben.

6 MR. McRAE: If we could go back to the
7 discussion just before the break, it was unclear to
8 me, and that may just reflect the fact that there
9 are different views, as to what the view was as far
10 as: What is the universe of suppliers that we
11 should be collecting information from; whether it's
12 just the exporter, or is it other entities?

13 And, I think NEI had -- I think they
14 were limiting the suppliers, other than exporters,
15 to those who provided goods and services that were
16 not materially changed, or whatever; that it would
17 be -- And, that they indicated that that was a
18 relatively well-defined universe, and that we
19 wouldn't be picking up everyone who produced
20 something that was incorporated into the good that
21 was exported.

22 Now, that may be clear to everyone but
23 me. But, that sounds to me like a much smaller

1 universe than what I thought -- And, again, I may
2 have misread the CIGNL comment.

3 I thought that you, CIGNL, was casting a
4 broader net that would catch even people who goods
5 were incorporated into. And I -- It would be
6 useful in the comments to hear where people thought
7 we should draw the line

8 MR. BROOKMAN: Omer.

9 MR. BROWN: Well, there is confusion in
10 this area, because, as, as we point out in our
11 Question 14, that the instructions to Form refer to
12 the term "nuclear supplier" as principal party in
13 interest, and the supplier of nuclear goods or
14 services, whereas, in, in the NOPR there were two
15 different terms.

16 It was "final nuclear supplier" and
17 "lead nuclear supplier." So, we now have three
18 definitions of what a nuclear supplier --

19 MR. McRAE: Well, if I can -- And, I
20 know Anita will probably correct me because I
21 always get it wrong. As I remember, "lead nuclear
22 supplier" was, under one of our alternatives, our
23 attempt to deal with the companies that provided

1 material in the '60s and '70s and '80s, so that we
2 were only trying to pick up those entities that did
3 a major amount of work; that we -- And, that was
4 our attempt, I think, at --

5 MS. CAPOFERRI: Um-hum.

6 MR. McRAE: -- trying to deal with that,
7 rather than having people try to report on
8 everything that they did.

9 So, leave -- So, maybe that one you can
10 put aside. The other -- There is the tension
11 between whether or not we just look at the person
12 at the end of the chain, or we try to pick out some
13 of the people who are in the supply chain.

14 And, again, just from my point of view,
15 for efficiency, I would pick, I will go with just
16 the entity at the end of the chain. But, if people
17 think it's more fair, or more equitable to pick up
18 other people in the supply chain, you know, that's
19 what we're trying to find out.

20 You know, we want something that people
21 think is fair.

22 MS. GINSBERG: So, this is Ellen. I
23 think there isn't unanimity of view here.

1 I can tell you, at Page 21 of our
2 comments that we submitted in two, April, 2015, we
3 do set out that there is an opportun-, we believe
4 that the opportunity should be for suppliers who at
5 the time know that their goods or services are
6 going to be exported to a covered installation
7 unless, unless, so that they're identifiable at the
8 time, and unless they're substantially transformed.

9 So, we, we sliced it and diced it so
10 that we thought it came out reasonably fair. But,
11 I can't tell you that there's unanimity of view
12 there.

13 MR. BROOKMAN: You're inclined toward
14 something that would be a broader net.

15 MS. GINSBERG: I'm sticking with the
16 comments we submitted.

17 MR. McRAE: I'll, I'll characterize.
18 That, to me, sounds like a middle ground between
19 what I think perhaps CIGNL said and probably what I
20 would think, if just from efficiency, the most
21 efficient way of doing it.

22 May not be the most equitable way.

23 MR. BROOKMAN: Well, and, I was going to

1 Must have been stretching.

2 Okay. Now, so, those are very helpful.

3 Do you have any additional areas to
4 clarify? Because, you're doing well.

5 And, there was one question that you
6 said that you wanted to return to.

7 MR. McRAE: Oh, no. That -- We did the
8 list of nuclear installations that -- The list of
9 nuclear installations, I think we addressed that as
10 well as we can right now.

11 MR. BROOKMAN: Okay. So, now I'm, I'm
12 looking at the Agenda, and I'm asking my, those
13 here at the front table to be looking at this and
14 other issues.

15 Surprisingly, we've really covered a lot
16 of ground here very, very rapidly.

17 Jim.

18 MR. SCHOETTLER: One, one question --

19 MR. BROOKMAN: I want to take up any
20 additional issues we can take up in the remaining
21 almost a-half an hour.

22 Jim.

23 MR. SCHOETTLER: The timing, you're

1 going to take comments at some point, and you have
2 a date set. Assuming no extension, that's the
3 date.

4 So, then the development of this final
5 version of this one-time questionnaire. What is
6 the timing for that to be issued?

7 Maybe you already said it and I just
8 didn't hear it. But, -- And, then, how long would
9 the Company have to respond to it, do you think?

10 And, I realize this may be changing in
11 terms of the way you're thinking, but just right
12 now.

13 MR. McRAE: We would get comments from
14 you.

15 MR. SCHOETTLER: Yeah.

16 MR. McRAE: At some point we would look
17 at those. We would make whatever modifications to
18 the Form we thought proper.

19 We would send that over to OMB. At that
20 point we would put the, the form that we sent to
21 OMB out for public comment.

22 We would get comments from you again on
23 that Form. I believe we have to summarize those

1 comments for OMB.

2 MR. SCHOETTLER: Umm.

3 MR. McRAE: We have to get it to OMB.

4 MR. CATES: See you next year.

5 MR. SCHOETTLER: This is for the
6 one-time form.

7 MR. McRAE: This is for the one-time
8 form. That's why I said --

9 MS. CAPOFERRI: There's burden all
10 around.

11 MR. SCHOETTLER: You should give an
12 hourly estimate for your --

13 MR. McRAE: No. But, I'm always the
14 optimist.

15 If we could get OMB to clear it in the
16 month, other people throw out --

17 MS. CAPOFERRI: Multiple months.

18 MR. McRAE: -- multiple months, or not
19 -- It's not usually a year, although some Forms --
20 You know, this is a relatively simple, simple form.
21 It should go through, one would hope, relatively
22 quickly.

23 But, it probably will be sometime next

1 year before we get permission to issue the Form.
2 Then we would send it out, get the information, do
3 that, and then we would then decide what to do next
4 in the rulemaking.

5 So, if that --

6 MR. SCHOETTLER: Yep. Thank you.

7 MR. McRAE: But, but, the timing, a lot
8 of it's OMB.

9 MR. BROOKMAN: Ellen.

10 MS. GINSBERG: Yeah, this is Ellen. So,
11 given all of that, then, I would reiterate our
12 request, which was informal initially, but I think
13 the complicated nature of the issues that we've
14 discussed argue in favor of maybe a November third
15 instead an October third date.

16 We need to give you quality comments,
17 and we need to have time to do that where we have
18 to collect information from other Companies that
19 have a whole host of other issues on their plate.
20 So, I'd urge you about formally announcing that,
21 whether it's in another Federal Register Notice, or
22 right here, that you're amenable to a 30-day
23 extension.

1 MR. McRAE: We'll take it under
2 advisement. We need to talk to people and find out
3 what they want.

4 I hope that means, though, that we're
5 going to get really detailed comments that will
6 really, again, as I keep stressing, this is for, to
7 a large extent, to help you. So, really, if -- We
8 really would like to know what information you
9 think would be helpful to, for you to comment on
10 the rulemaking.

11 And, if you think we've gone too simple,
12 because we, that you need more detailed
13 information, we should hear that, too. I mean, we
14 try to, quite honestly, err on the side of
15 simplicity, rather than have information on every
16 good or service or whatever.

17 But, you know, you tell us what you
18 think would be useful.

19 MR. BROOKMAN: Okay. Melissa?

20 MS. MANN: Yeah. I'm Melissa Mann, with
21 Urenco.

22 First of all, Ben and Anita, thank you
23 for all your comments. But, I actually feel more

1 muddled now than when I walked in.

2 So, I'd like to reiterate the comments
3 we've had regarding the extension of the comments
4 period. Otherwise I don't think it would be
5 particularly productive if we have to respond in
6 such a short period of time.

7 MR. BROOKMAN: Okay. Thank you.

8 Yes, Anne.

9 MS. COTTINGHAM: I'm looking, thinking
10 about what we talked this morning. And, at one
11 point we conveyed maybe more or less specifically
12 the Industry concern, or industry, yes, concern
13 that if we were to fill out a data collection form
14 with definitions such as those that are proposed,
15 which are apparently distinctly and deliberately
16 different from the definitions in the proposed
17 Rule, that the submittal by maybe more suppliers of
18 information about exports to additional locations
19 in the world beyond CSC world would not have any
20 effect on the ultimate proposed Rule.

21 I think I'm trying to articulate a
22 concern about kind of a gotcha situation. Well,
23 now you know.

1 MR. McRAE: I know. I know.

2 I, I, I probably was imprecise in my
3 answer. It will impact the final Rule, but I, in
4 the sense that if we have whatever information we
5 have, we're going to use in thinking about what
6 modifications, if any, to make to the proposals
7 that we've already made.

8 (Whereupon, at 11:52 a.m. ET, Ms. Pope
9 left the room, after which the following occurred:)

10 MR. McRAE: We're not going to use it,
11 though, for implementing the Form, although, quite
12 honestly, I think the decision as to whether or not
13 we should take into account what happens, -- And,
14 again, the reason for collecting more than current
15 -- well, quite honestly I think the rationale for
16 the issue -- The issue of whether we limit the
17 collection of data to countries that are currently
18 CSC members, or potentially CSC members, which
19 would be the whole world, really, goes to a
20 decision that we need to make about the rulemaking,
21 which is whether or not we'll use in the formula
22 for allocating risk taking, we will take into
23 account goods and services exported to a country

1 before it became a member of the CSC, whether we
2 take as a cutoff date 2008, when the U.S. joined
3 the CSC, or 2015, when the CSC came into effect, or
4 we have no cutoff date and you go all the way back
5 and try to capture, as best we can, exports
6 beginning in the 1960s.

7 That's, to me, not really that relevant
8 to this Data Collection Form. That's a policy
9 decision that I don't think is dictated by the
10 language in the Statute; that we had some
11 discretion there, and that would be informed by the
12 comments that we get already in the rulemaking and
13 in the future.

14 I, I think -- Again, I've heard two
15 points of view. I've heard some who think that we
16 should just limit it to the period when a country
17 is a member of the CSC.

18 I've heard some others who think that we
19 need to take into account the fact that some
20 count-, some Companies have made fairly significant
21 exports to countries that are now or will be
22 members of the CSC, and will derive benefit going
23 forward if there were to be an accident in that

1 country.

2 And, do you exclude them? That's a
3 policy call.

4 And, quite honestly, I can, you know,
5 see equities on both sides. And, I think we need
6 to have more discussion, and see more comments on
7 in that.

8 And, also, it's to take into account the
9 difficulty of the further back you go, the harder
10 it is to get. Going forward, you can get pretty --
11 If you know what information you need to have,
12 pretty simple to keep it.

13 You know, telling you, "Let's go back to
14 1960," it, you know, I, I understand that it may
15 not be as easy, and, to get precise information.

16 (Whereupon, at 11:55 a.m. ET, Ms. Pope
17 entered the room, after which the following
18 occurred:)

19 MR. McRAE: So, that's -- But, again,
20 that's, that's an issue I think for another day,
21 not for this forum, if that helps you.

22 MS. GINSBERG: Yes. Thank you.

23 MR. BROOKMAN: So, we have time for some

1 more questions, and particularly we're at a spot in
2 the Agenda where we should also queue closing
3 remarks, should there be any at this point. I'm
4 wondering if the DOE panel has any issues they wish
5 to raise, any other outstanding questions or
6 clarifications?

7 (Whereupon, no response was had.)

8 MR. BROOKMAN: I don't see any. Okay.

9 So, then, we have closing remarks, an
10 opportunity to other issues, things we may not have
11 covered sufficiently to date.

12 Omer, it looks like you're ready.

13 MR. BROWN: Okay. Yeah, Omer Brown.

14 First of all, we appreciate the
15 opportunity to meet with you again to discuss this
16 important rulemaking. I think this has been a
17 useful discussion.

18 We're still concerned about whether the
19 Form, by emphasizing dollars, really gets to the
20 risk-informed formula that's needed. It would be
21 useful to have some more time to, to prepare
22 comments.

23 I guess I, I wonder, for example, is the

1 Transcript going to be made available and put on
2 the web site?

3 MS. CAPOFERRI: Yes, it will be as soon
4 as it's available.

5 MR. BROWN: October third is not very
6 far off, so it would be useful for us to know
7 whether we need to scramble with our comments, or
8 whether we would have a little more time. So, we
9 would encourage the Department to make that
10 decision, whenever it is, promptly.

11 And, again, we appreciated this, this
12 opportunity.

13 MR. BROOKMAN: Thank you. Thank you.
14 Additional closing remarks?

15 (Whereupon, no response was had.)

16 MR. BROOKMAN: Okay. So, yes, I see
17 none then from my part as your facilitator.

18 I thank you. We really covered a lot of
19 ground here rather efficiently, I must say.

20 And, I thank all of you for being open
21 and disclosing, and being so helpful. And, then,
22 to Ben.

23 MR. McRAE: Yeah. When -- And, this

1 isn't a closing remark, but this is on what Omer
2 said, and what I've heard this morning.

3 Again, in your comments it might be
4 helpful, and I think this gets to how we report the
5 revenue, as to, you know, how precise we get, and
6 what are the bands. I do think that in considering
7 revenue, there is certainly a risk component as to
8 the higher the revenue, I think there is a, some
9 greater risk that an Institute will get sued.

10 And, again, to the extent that that
11 might be factored into determining the bands as to
12 someone who only contributes, given that in many
13 nuclear accidents you may not know what the cause
14 is. So, how -- It's prob-, in those cases I would
15 think it would be more likely that entities which
16 had a high dollar amount in the project might be
17 more likely to get sued than somebody who only
18 contributed something, a very small part.

19 Maybe I'm completely off base, and
20 everyone will get sued equally. But, it might be
21 if people were thinking in terms of how we
22 determine the bands, is there some element there
23 that relates to risk?

1 And, then the other thing, which I, I
2 think Ellen brought up, is the effect on
3 competition, and the viability of the industry.
4 And, again, we need to be mindful of the fact that,
5 as a practical matter, known entities which are
6 deriving more revenue from exports may be able to
7 bear the burden better than those entities which
8 have very small amounts of exports.

9 And, at that level it might actually
10 become a disincentive for people to export if they
11 were either subject to a very high level, or even
12 any. But, again, I don't know if you can work that
13 into your comments on how we pick either a de
14 minimus amount, or the bands.

15 But, that would be something I would be
16 interested in seeing.

17 MS. GINSBERG: This is Ellen. I
18 appreciate your comments on that last point, and
19 let me just suggest that the heart of the matter
20 resides with Congress here because Congress cited a
21 Statute that's very hard to administer.

22 So, we would welcome DOE's entreaty to
23 Congress to fix the Statute.

1 MR. BROOKMAN: Okay.

2 Yes, Omer.

3 MR. BROWN: Right. And, on this, this
4 Small Business Administration issue, small
5 businesses, I mean, as we pointed out in our
6 questions, the, the, besides standards that the
7 Small Business Administration sets are based on
8 annual sales, and, and, and an annual number of
9 employees.

10 So, you may be a small business
11 annually, but that doesn't mean over a period of
12 time you haven't exported a large amount, more than
13 a company that's not a small business. So, it's
14 not right just to categorize an entity as a small
15 business and exclude them.

16 You need to look at what they've done
17 over more than an annual period of time.

18 MR. BROOKMAN: Okay. So, I want to
19 thank you all again for coming.

20 I want to pressure do we have additional
21 closing remarks from the DOE team?

22 MS. CAPOFERRI: No. We, we welcome the
23 comments.

1 MR. BROOKMAN: Thanks to everyone, and
2 safe travels. And, thanks again for a very
3 constructive workshop. Thank you.

4 (Whereupon, at 12:02 p.m. ET, the above
5 matter was concluded.)

6 I certify the foregoing to be a
7 true transcript from my notes.

8 E-signature: D. I. Bunn

9 CSR CP RPR

10 CERTIFICATION

11 I, D. I. Bunn, a Registered
12 Professional Reporter, Certified Conference
13 Reporter, and Notary Public, do hereby certify that
14 the foregoing testimony was duly taken and reduced
15 to writing before me at the place and time therein
16 mentioned. I further certify that I am neither
17 related to any of the parties by blood or marriage,
18 nor do I have any interest in the outcome of the
19 above matter.

20 In witness whereof, I have hereunto set
21 my hand and affixed my official seal, at Lusk,
22
23 Wyoming, USA, this 19th day of September, 2016.

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E-signature: D. I. Bunn
Notary Public

My Commission expires January 5, 2020.