

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS  
WASHINGTON, DC 20555-0001

March 15, 2019

**NRC REGULATORY ISSUE SUMMARY 2019-01**  
**CLARIFICATION OF EXPORT REPORTING REQUIREMENTS FOR NUCLEAR FACILITIES,  
EQUIPMENT, AND NON-NUCLEAR MATERIALS**

**ADDRESSEES**

All holders of and applicants for a specific export license, or persons who make exports under a general license, established by Title 10 of the *Code of Federal Regulations* (10 CFR) Part 110, "Export and Import of Nuclear Equipment and Material."

**INTENT**

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to clarify the existing quarterly reporting requirements under 10 CFR 110.54(a)(1) for persons who make certain exports under either a general or a specific license. This RIS requires no action or written response on the part of an addressee.

**BACKGROUND INFORMATION**

Section 110.54(a)(1) of 10 CFR states, in part, that licensees exporting nuclear facilities, equipment, and certain non-nuclear materials under a general license or specific license<sup>1</sup> during the previous quarter must submit reports by January 15, April 15, July 15, and October 15 of each year on U.S. Department of Commerce (DOC)/NRC Forms AP-M or AP-13, and associated forms (as described in [www.ap.gov](http://www.ap.gov)). In accordance with 10 CFR 110.54(a)(2), licensees must submit these required reports to the Bureau of Industry and Security (BIS). The reports must contain information on all nuclear facilities, equipment, and non-nuclear materials listed in Annex II, "List of Specified Equipment and Non-Nuclear Material for the Reporting of Exports and Imports According to Article 2.a.(ix)," of the Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency (IAEA) for the Application of Safeguards in the United States of America (INFCIRC/540, hereinafter referred to as the Additional Protocol).

Additionally, section 110.54(c) states that persons making exports under the general license established by section 110.26(a) (certain nuclear reactor components of U.S. origin to approved

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<sup>1</sup> NRC licenses for the export and import of nuclear equipment and material consist of two types, general licenses and specific licenses. The NRC describes the terms and conditions of a general license in 10 CFR 110.20, "General License Information," through 110.27, "General License for Import." Proposed exports or imports that conform to these requirements do not require the filing of an application with the NRC, nor does the NRC issue a license document to that particular entity authorizing the export or import. This includes exports of materials and minor reactor components as prescribed in those sections. If an export is not covered by an NRC general license, an entity must file an application for a specific license, which is a document issued by the NRC on a case-by-case basis to a named entity for the proposed export described in the license application form.

destinations) must submit to the NRC each year, by February 1, a report of all components shipped during the previous calendar year.

In 2016, the Office of International Programs (OIP) and the Office of Nuclear Material Safety and Safeguards performed a comprehensive review of the annual reports on the export of components under a general license submitted under 10 CFR 110.54(c) and the quarterly reports submitted under 10 CFR 110.54(a). The purpose of the review was to determine whether entities making exports under the provision of a general license, as established by 10 CFR 110.26(a), had also been reporting quarterly under 10 CFR 110.54(a)(1) when applicable. The NRC review identified a number of vendors that did not submit the quarterly reports required under 10 CFR 110.54(a) to the NRC and DOC. The NRC staff identified that some entities were not aware of or did not fully understand the requirement to report exports involving certain nuclear equipment and components under 10 CFR 110.54(a)(1). As follow-up, the NRC staff conducted telephone conversations with all of the identified entities to explain the regulatory requirements of 10 CFR 110.54(a) and to answer questions.

### *Origins and Overview of the Additional Protocol*

In the aftermath of the 1991 Persian Gulf War, the IAEA embarked on a broad program to further strengthen safeguards to draw a broader conclusion on the absence of undeclared material and activities. As such, the international community determined that the safeguards system needed to be strengthened and negotiated a Model Additional Protocol to amend existing bilateral safeguards agreements (i.e., the "Model Protocol Additional to the Agreement(s) Between State(s) and the International Atomic Energy Agency for the Application of Safeguards," INFCIRC/540, September 1997 (Corrected October 1998)). The Model Additional Protocol requires enhanced information collection and access to sites and other locations involved in activities related to the nuclear fuel cycle and covers almost all of a state's nuclear fuel cycle, thereby providing IAEA inspectors greater ability to detect clandestine nuclear activities in the sites and locations of non-nuclear-weapon states (NNWS) that are involved in nuclear fuel cycle activities. To encourage adoption of the Model Additional Protocol among NNWS, on June 12, 1998, the United States signed and accepted all of the measures of the Model Additional Protocol, except where their application would result in access by the IAEA to activities of direct national security significance to the United States or to locations or information associated with such activities (hereinafter referred to as the Additional Protocol).

The NRC published its final rule implementing the provisions of the Additional Protocol on December 23, 2008 (Volume 73 of the *Federal Register*, page 78599 (73 FR 78599)). This rule amended 10 CFR Part 110 and made related changes to 10 CFR Parts 30, 40, 50, 60, 61, 63, 70, 72, 75, 76, 95, and 150.

### **SUMMARY OF ISSUE**

The requirement in 10 CFR 110.54(a)(1) states, in part, that licensees exporting under a general license or specific license in 10 CFR Part 110 must report exports of nuclear facilities and equipment, and certain non-nuclear materials, shipped during the previous quarter by January 15, April 15, July 15, and October 15 of each year on DOC/NRC Forms AP-M or AP-13, and associated forms. In accordance with 10 CFR 110.54(a)(2), these required reports must be submitted to BIS. The reports must contain information on all exports of nuclear facilities, equipment, and non-nuclear materials listed in Annex II of the Additional Protocol. Reporting the export of equipment and components listed in Annex II of the Additional Protocol

on a quarterly basis enables the U.S. Government to fulfill its agreement with the IAEA under the Additional Protocol.

The requirement for submitting an annual report to the NRC of all components shipped during the previous calendar year predates the implementation of the Additional Protocol. This requirement was codified and became effective on January 2, 1985, as part of a broader revision of 10 CFR Part 110.<sup>2</sup> In this revision, the NRC amended 10 CFR Part 110 to reduce the number of actions that would require a specific export license application and created a new general license for the export of certain reactor components to specified countries. This rule codified, as part of this new general license, a requirement to submit an annual report of all components shipped under the general license during the previous calendar year.<sup>3</sup> In response to a public comment requesting that the rule require reports for each individual export under the general license, the Commission explained that one annual report was sufficient for the Commission to “review annually the proliferation implications of the components exported under the general license.”<sup>4</sup> In 2010, this reporting requirement was moved from section 110.26 to its present location in 10 CFR 110.54(c) as part of an effort to consolidate all 10 CFR Part 110 reporting requirements into one section.<sup>5</sup> However, the requirement to submit an annual report of all exports made under the general license established by section 110.26 has, since its inception, been a condition of the use of that general license.

As stated in 10 CFR 110.26(a), nuclear reactor components that are of U.S. origin, and described in paragraphs (5) through (11) of Appendix A to 10 CFR Part 110, may be exported under a general license to destinations listed in 10 CFR 110.26(b). Export of the other items listed in 10 CFR Part 110, Appendix A, requires a specific export license.

Based upon discussions with exporters that did not submit quarterly reports as required by 10 CFR 110.54(a), the NRC believes that licensees do not uniformly understand the two different reporting requirements in 10 CFR 110.54. The annual reporting requirement in 10 CFR 110.54(c) applies to exports under a general license in 10 CFR 110.26(a), which includes exports of nuclear reactor equipment listed in Appendix A to 10 CFR Part 110. The quarterly reporting requirement in 10 CFR 110.54(a) includes nuclear reactor equipment listed in Annex II of the Additional Protocol. The two reporting requirements reference two distinct lists of equipment subject to reporting which share some items in common. Thus, the export of some components reported annually in accordance with 10 CFR 110.54(c) may also require reporting quarterly in accordance with 10 CFR 110.54(a). For example, both Appendix A and Annex II include zirconium metal and alloys in the form of tubes or assemblies of tubes especially designed or prepared for use in a reactor. Such items can be exported under a general license in accordance with 10 CFR 110.26(a). As the same item definition appears in both 10 CFR Part 110, Appendix A, and Annex II of the Additional Protocol, exporters of zirconium tubes and assemblies of tubes are required to submit a quarterly report of any exports during the previous quarter, in accordance with 10 CFR 110.54(a), and an annual report of all

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<sup>2</sup> *Export and Import of Nuclear Equipment and Material* (49 FR 47191; December 3, 1984).

<sup>3</sup> *Id.* at 47199 (codifying the annual reporting requirement at 10 CFR 110.26(c)).

<sup>4</sup> *Id.* at 47193.

<sup>5</sup> *Export and Import of Nuclear Equipment and Material; Updates and Clarifications* (75 FR 44072; July 28, 2010). Paragraph (e) of section 110.26 does still inform that all exports authorized under the general license described in that section are subject to the reporting requirements of section 110.54(c).

exports during the previous calendar year, in accordance to 10 CFR 110.54(c).<sup>6</sup> Reporting under one of these requirements does not obviate the need to report under the other if both apply. While some items appear on both lists, the required reports fulfill complementary but distinct needs in promoting nonproliferation and satisfying the U.S. commitments under the Additional Protocol.

There is a slight discrepancy between the contact information provided for BIS in 10 CFR 110.54(a)(2) and the mailing address provided for BIS on [www.ap.gov](http://www.ap.gov). The NRC has confirmed that reports can be sent via facsimile to (202) 482-1731, emailed to [aprp@bis.doc.gov](mailto:aprp@bis.doc.gov), or hand-delivered or submitted by courier, in hard copy, to BIS at the address listed in 10 CFR 110.54(a)(2):

Treaty Compliance Division  
U.S. Bureau of Industry and Security  
U.S. Department of Commerce  
Attn: AP Reports  
14<sup>th</sup> Street and Pennsylvania Avenue, NW  
Room 4515  
Washington, DC 20230

The BIS Web site, [www.ap.gov](http://www.ap.gov), includes background information on the Additional Protocol to the U.S.-IAEA Safeguards Agreement and guidance on how to fill out the forms to report the export of equipment and non-nuclear material in accordance with 10 CFR 110.54(a). The same BIS Web site also provides links to two handbooks, "Report Handbook for Locations," and "Report Handbook for Sites." The applicability of the terms "site" and "location" is given in the handbooks. A "site" is a nuclear facility that the IAEA has selected and is currently under IAEA safeguards or has been under IAEA safeguards in the past; every other nuclear facility is considered a "location." As defined in the Additional Protocol, a "facility" is a reactor, a critical facility, a conversion plant, a fabrication plant, a reprocessing plant, an isotope separation plant, or a separate storage installation, or any location where nuclear material in amounts greater than one effective kilogram is customarily used. Supplement 3 of each of the handbooks contains the list from Annex II of the Additional Protocol of specified equipment and non-nuclear material that shall be reported under 10 CFR 110.54(a) if exported.

## CONCLUSION

The regulations in 10 CFR 110.54(a)(1) require, in part, that licensees exporting equipment or non-nuclear material listed in Annex II of the Additional Protocol under a specific or general license shall provide to DOC quarterly reports of exports shipped during the previous quarter. It is important for vendors and export licensees to submit the reports to ensure that the United States continues to meet its international treaty obligations under the Additional Protocol. The NRC is required to collect information on activities related to the U.S. nuclear fuel cycle. Timely submission of Additional Protocol forms assists the Federal Government in meeting its treaty obligations to the IAEA.

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<sup>6</sup> Note that Annex II of the Additional Protocol requires reporting of quantities exceeding 500 kilograms of zirconium metal and alloys in the form of tubes or assemblies of tubes, in any period of 12 months, as a national reporting threshold. The quantities specified in Annex II are the aggregate national thresholds for reporting by a country to the IAEA. Licensees are required to report individual exports in accordance with 10 CFR 110.54(a)(1).

## **BACKFITTING AND ISSUE FINALITY DISCUSSION**

This RIS discusses reporting requirements under 10 CFR 110.54 to entities and vendors exporting equipment. This RIS does not set forth any new or changed NRC requirement, or new or changed guidance or position on compliance with any existing NRC regulatory requirement. The RIS does not require any additional action by any addressee, that is not already required to be submitted by existing NRC regulations under 10 CFR 110.54(a)(1) or any other NRC regulation. For these reasons, this RIS does not represent backfitting as defined in 10 CFR 50.109(a)(1) and is not otherwise inconsistent with any issue finality provision in 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants." Therefore, the NRC did not prepare a backfit analysis for this RIS or further address the issue finality criteria in 10 CFR Part 52.

## **FEDERAL REGISTER NOTIFICATION**

A notice of opportunity for public comment on this RIS was published in the *Federal Register* (83 FR 26,611) on June 8, 2018. The staff considered all comments that were received. The staff's evaluation of the comments is publicly available through the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML18269A255.

## **CONGRESSIONAL REVIEW ACT**

This RIS is not a rule as defined in the Congressional Review Act (5 U.S.C. §§ 801-808).

## **PAPERWORK REDUCTION ACT STATEMENT**

This RIS provides guidance on mandatory information collections that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The Office of Management and Budget (OMB) approved these information collections under approval numbers 3150-0036 and 0694-0135. Send comments regarding these information collections to the Information Services Branch, Office of the Chief Information Officer, Mail Stop: T-2F43, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by e-mail to [Infocollects.Resource@nrc.gov](mailto:Infocollects.Resource@nrc.gov), and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0036, 0694-0135) Office of Management and Budget, Washington, DC 20503.

## **Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

## CONTACT

Please direct any questions about this matter to the technical contact listed below or the appropriate Lead Project Manager.

Andrea L. Kock, Director **/RA/**  
Division of Materials Safety, Security, State, and  
Tribal Programs  
Office of Nuclear Material Safety and Safeguards

Technical Contact: Andrea Jones, OIP  
404-997-4443  
E-mail: [andrea.jones2@nrc.gov](mailto:andrea.jones2@nrc.gov)

Note: NRC generic communications may be found on the NRC public Web site, <https://www.nrc.gov>, under NRC Library/Document Collections.

**REGULATORY ISSUE SUMMARY 2018-XX, "CLARIFICATION OF EXPORT REPORTING REQUIREMENTS FOR NUCLEAR FACILITIES, EQUIPMENT, AND NON-NUCLEAR MATERIALS," DATE: March 15, 2019**

**ADAMS Accession No: ML18269A254** \*concurrence via E-mail **CAC/EPID No. A11008/L-2017-CRS-0004**

<b>OFFICE</b>	QTE	OIP/ECNB*	OIP/ECNB/BC*	OIP/D*
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<b>DATE</b>	03/15/2019			

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