

March 15, 2019

MEMORANDUM TO: Peter J. Habighorst, Branch Chief  
Export Controls and Nonproliferation Branch  
Office of International Programs

FROM: Andrea R. Jones, Senior Licensing Officer **/RA/**  
Export Controls and Nonproliferation Branch  
Office of International Programs

SUBJECT: RESPONSE TO PUBLIC COMMENTS ON DRAFT REGULATORY  
ISSUE SUMMARY 2019-01, "CLARIFICATION OF EXPORT  
REPORTING REQUIREMENTS FOR NUCLEAR FACILITIES,  
EQUIPMENT, AND NON-NUCLEAR MATERIAL"

The U.S. Nuclear Regulatory Commission (NRC) published a notice of opportunity for public comment on the subject regulatory issue summary in Volume 83 of the *Federal Register*, page 26611 (83 FR 26611), on June 8, 2018. The NRC received comments from the Nuclear Energy Institute (Agencywide Documents Access and Management System Accession No. ML18220A875). Enclosed are the NRC responses to all public comments.

Enclosure:  
NRC Responses to Public Comment

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**RESPONSE TO PUBLIC COMMENTS ON DRAFT REGULATORY ISSUE SUMMARY  
2019-01, "CLARIFICATION OF EXPORT REPORTING REQUIREMENTS FOR NUCLEAR  
FACILITIES, EQUIPMENT, AND NON-NUCLEAR MATERIALS," DATE: March 15, 2019**

**ADAMS Accession No.: ML18269A255**

<b>OFFICE</b>	QTE	OIP/ECNB*	OIP/ECNB/BC*	OIP/D*
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<b>DATE</b>	10/15/2018	10/11/2018	10/12/2018	11/13/18
<b>OFFICE</b>	NMSS/FCSE/D	OE/EB*	NRR/MPS/RISB*	OCIO*
<b>NAME</b>	BSmith	JPeralta	LHill	DCullison
<b>DATE</b>	10/29/2018	11/1/18	10/10/2018	11/5/18
<b>OFFICE</b>	OGC (NLO)*	NRR/DIRS/IRGB/LA	NRR/DIRS/IRGB/PM	NRR/DIRS/IRGB/BC
<b>NAME</b>	EMichel	ELee (w/comment)	BBenney	TInverso
<b>DATE</b>	1/25/19	10/02/2018	2/6/19	2/6/19
<b>OFFICE</b>	NMSS/MSST/D			
<b>NAME</b>	AKock			
<b>DATE</b>	03/15/2019			

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**Analysis of Public Comments on  
DRAFT NRC REGULATORY ISSUE SUMMARY 2019-XX, CLARIFICATION OF  
EXPORT REPORTING REQUIREMENTS FOR NUCLEAR FACILITIES, EQUIPMENT,  
AND NON-NUCLEAR MATERIALS” (ADAMS Accession No. ML17338A944)**

Comments on the subject draft regulatory issue summary (RIS) are available electronically at the U.S. Nuclear Regulatory Commission’s (NRC’s) electronic reading room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC’s public documents. The NRC received comments from the following individuals or groups:

<b>Letter No.</b>	<b>ADAMS Accession No.</b>	<b>Commenter Affiliation</b>	<b>Commenter Name</b>
1	ML18220A875	Nuclear Energy Institute (NEI)	Hilary Lane

This document lists each public comment by letter number. For each comment, the NRC has repeated the comment as written by the commenter, followed by the NRC’s response. In some instances, the staff has broken the comment down into segments for clarity. Each comment is referred to by the letter number listed above and the number of each individual comment from the corresponding letter.

Please note that RISs are used to (1) communicate and clarify NRC technical or policy positions on regulatory matters that have not been communicated to or are not broadly understood by the nuclear industry, (2) inform the nuclear industry of opportunities for regulatory relief, (3) communicate previous NRC endorsement of industry guidance on technical or regulatory matters, (4) provide guidance to applicants and licensees on the scope and detail of information that should be provided in licensing applications to facilitate NRC review, and (5) request the voluntary participation of the nuclear industry in NRC-sponsored pilot programs or the voluntary submittal of information that will assist the NRC in the performance of its functions. The purpose of this RIS is to clarify the regulatory reporting requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) 110.54, “Reporting Requirements.”

**Clarification of Technical Positions (Annex II)**

Comment No. 1-1

NRC should provide clarity on Section “1.6 Zirconium Tubes,” given the increased scrutiny industry has experienced in reporting on these components. In general, more technical specifications for reporting under Section 1.6 is requested, such as minimum reportable tube length. The section also includes language that refers to use “in a reactor.” NRC should clarify how items should be reported (or not reported) that are either used out of a reactor / not useable in a reactor.

NRC Response

This comment is beyond the scope of the RIS, which is intended to clarify the applicability of the quarterly reporting requirements in 10 CFR 110.54(a)(1) in

conjunction with the distinct annual reporting requirements in 10 CFR 110.54(c). The intent of this RIS is not to provide technical or substantive guidance on whether specific types of components are reportable under Annex II of the Additional Protocol. The NRC staff notes that Section 1.6 of Annex II refers to zirconium tubes that are “especially designed or prepared for use in a reactor,” with no mention of tube dimensions or other aspects. Persons who have questions whether a particular export falls within the plain language of the Additional Protocol should consult the NRC staff for guidance or a case-by-case determination.

The NRC made no change to the RIS in response to the comment.

Comment No. 1-2

Furthermore, the NRC should state how Section 1.6 (and other applicable sections) will apply to newly designed components for advanced reactor concepts, particularly given the foreseeable export of these designs to foreign customers, and potential applicability to 10 CFR Section 110.54(a)(1). As technologies inevitably advance and mature, industry will look to the NRC for the appropriate clarifications on reporting applicability.

NRC Response

The NRC disagrees with the comment. The NRC is not able to state at this time how the specific sections of Annex II of the Additional Protocol will apply to newly designed components for advanced reactor concepts that have not yet been commercially developed. However, newly designed components or equipment that have nuclear end use (i.e., especially designed or prepared for use in a reactor or other nuclear installation described in Annex II) will be reportable under the Additional Protocol, as long as they fall under the descriptions of Annex II, excluding those that would result in access by the IAEA to activities with direct national security significance to the United States or to locations or information associated with such activities. If and when the IAEA chooses to include new components for advanced reactor concepts in its reporting guidance, the NRC will consider how it might address such changes in regulation or guidance.

The NRC made no change to the RIS in response to the comment.

Comment No. 1-3

“1.6 Zirconium Tubes” states that “zirconium metal and alloys in the form of tubes or assemblies of tubes, and in quantities exceeding 500 kg in any period of 12 months...” must be reported. This language does not make clear whether NRC considers the 500 kg quantity to be a national reporting threshold. Notably, NRC has instructed certain licensees to report regardless of quantity. NRC should clarify this point in the RIS. Without such guidance, NRC licensees may easily misinterpret this provision and not report zirconium tube exports, subjecting the licensee to a possible violation.

### NRC Response

The NRC agrees with the comment. The NRC understands that some specific references to the Additional Protocol in its regulations may confuse licensees with regard to the quantities of material/components exported. The quantities specified in Annex II of the Additional Protocol are level 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). The U.S. Government reports all U.S. exports to the IAEA in accordance with the Additional Protocol. The NRC requires the reporting under 10 CFR 110.54(a)(1) in order for the United States to fulfill its obligations to the IAEA.

The NRC revised the RIS in response to this comment. The staff added a paragraph to the Summary of Issue section to clarify the national reporting threshold.

### Comment No. 1-4

NRC has instructed that certain individual components are not AP [Additional Protocol] reportable, and hence are excluded under Annex II. Such items include: SNM [special nuclear material] powder additives, hardware components such as end caps, springs, cages/skeletons, spacers/grids, tie plates/nozzles, and inner water canisters, to name a few. Without a listing of excluded components, we think it likely that licensees are expending significant time and effort each quarter to report on components that are not necessarily required to be reported from a nonproliferation standpoint. To address this situation, NRC should provide a list of excluded components in the RIS.

### NRC Response

This comment is beyond the scope of the RIS, which is not intended to convey NRC staff technical positions on individual components. As referenced in 10 CFR 110.54(a)(1), Annex II of the Additional Protocol lists those exported items that are reportable to the NRCs. The NRC does not maintain a list of non-reportable components or items. Persons who have questions whether a particular export falls within the plain language of the Additional Protocol should consult the NRC staff for guidance or a case-by-case determination.

The NRC made no change to the RIS in response to the comment.

### Comment No. 1-5

With regard to Section "1.7 Primary Coolant Pumps," the NRC should clarify whether this section includes pumps exported without a motor.

### NRC Response

This comment is beyond the scope of the RIS, which is not intended to convey NRC staff technical positions on individual components. The NRC staff notes that section 1.7 of the Additional Protocol describes primary coolant pumps as "pumps especially designed or prepared for circulating primary coolant for nuclear reactors as defined in paragraph 1.1." Paragraph 1.1 of Annex II of the Additional Protocol states that a nuclear reactor "basically includes the items within or attached directly to the reactor vessel, the

equipment which controls the level of power in the core, and the components which normally come in or come in direct contact with or control the primary coolant of the reactor core.”

A primary coolant pump (with or without a motor) is an item directly attached to the reactor vessel that controls the primary coolant. As such, and as defined in paragraph 1.7 of Annex II of the Additional Protocol, the export of a primary coolant pump (with or without a motor) is required to be reported. However, as stated in the response to Comment 1-4, the purpose of the RIS is to clarify the regulatory reporting requirements under 10 CFR 110.54(a)(1), not to provide more detail on the description of components in the Additional Protocol, Annex II.

For this reason, the NRC made no change to the RIS in response to the comment.

### **Clarification of Policy Positions (Additional Protocol Handbooks)**

#### Comment No. 1-6

The draft RIS makes reference to two handbooks: “Report Handbook for Locations,” and “Report Handbook for Sites.” As noted in NEI’s August 2017 letter, both handbooks have a provision which allows for amended reports to be submitted under three conditions:

- 1) 30 calendar days after identification of a correction to information regarding a reportable activity
- 2) 30 calendar days after change in company information
- 3) 30 calendar days after receipt of a post-complementary access letter from Bureau of Industry and Security (BIS) or NRC

In the absence of any formal interpretation from the NRC, industry has historically utilized condition #1 to submit amended AP reports to the NRC and BIS. To provide greater clarity, NEI requests that the NRC provide its interpretation of condition #1, and outline the appropriate circumstances for submitting an amended report. This issue was raised in NEI’s 2017 letter but was not addressed in the draft RIS.

#### NRC Response

The NRC disagrees with the comment. The guidance, as prescribed in both the handbooks for locations and sites, states the following:

Changes to previously submitted information must be submitted on an Amended Report. Corrections to information regarding a reportable activity and corrections or changes to company information (e.g., corrections to address, changes in contact information, etc.) must be submitted using the same AP [Additional Protocol] Forms used previously and the corrections must be submitted within 30 calendar days after the information has changed or the error identified.

The handbooks clearly state that an amended report provides changes to previously submitted information. The NRC encourages the submittal of any corrections to previously submitted information as soon as practicable after the identification of the errors or changes, but no later than 30 calendar days following identification.

The purpose of this RIS is to clarify the regulatory reporting requirements in 10 CFR 110.54, not to provide further interpretation of guidance jointly issued by the NRC and the U.S. Department of Commerce (DOC).

The NRC made no change to the RIS in response to the comment.

Comment No. 1-7

In order to use the handbooks appropriately, a licensee must first understand whether it qualifies as a “site” or “location.” Industry appreciates that this distinction was included in the draft RIS. However, additional detail is needed to define the term “nuclear facility,” which is used frequently throughout the regulations, and explain how this term differs from a “site” or “location.” On this point, the NRC should be mindful that international safeguards terminology does not typically align with domestic industry terminology, and different international agreements refer to distinct terminology. As these nuances can be challenging, any opportunity for clarification and reinforcement of IAEA terms would be most beneficial to industry and help ensure compliance.

NRC Response

The NRC agrees with the comment. The Additional Protocol defines “facility” as 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 1 effective kilogram is customarily used. This definition is consistent with the NRC regulations in 10 CFR Part 75, “Safeguards on Nuclear Material—Implementation of Safeguards Agreements between the United States and the International Atomic Energy Agency,” which defines a “facility” as follows:

- (1) A production facility or utilization facility as defined in [10 CFR § 50.2];
- (2) A plant that converts nuclear material from one chemical form to another (e.g., Uranium hexafluoride plant);
- (3) A fuel fabrication plant;
- (4) An enrichment plant or isotope separation plant for the separation of isotopes of uranium or to increase the abundance of <sup>235</sup>U;
- (5) An installation designed to store nuclear material, such as an independent spent fuel storage installation or a monitored retrievable storage installation as defined in [10 CFR § 72.3]; or

- (6) Any plant or location where the possession of more than 1 effective kilogram of nuclear material is licensed pursuant to [10 CFR Parts 40, 50, 60, 61, 63, 70, 72, 76, or 150] or an Agreement State license.

The "Report Handbook for Sites of IAEA-Selected Facilities" states that sites of IAEA-selected facilities are required to complete DOC/NRC Forms AP-A through AP-Q. IAEA-selected facilities are nuclear facilities that the IAEA has selected from the U.S. Eligible Facilities List and for which the U.S. Government has submitted a design information questionnaire to the IAEA under the U.S.-IAEA Safeguards Agreement.

The terms "site" and "location" are used to differentiate between facilities that have been selected by the IAEA for the implementation of safeguards and those that have not. "Site" is a facility that is or has been under IAEA safeguards, and "location" is any facility that has never been under IAEA safeguards.

The NRC revised the RIS in response to this comment. The staff added clarifying language to the Summary of Issue section, including a sentence defining the term "facility" as given in the Additional Protocol.

#### Comment No. 1-8

The Handbooks contain several forms for reporting under the U.S. AP, for matters reported either quarterly or annually. Additional clarification is requested on Form AP-C, "Building Information," which applies to "sites," as defined. In a scenario where there have been no building changes (no new buildings, no building removals, etc.), it is unclear to industry whether Form AP-C (one for each building) needs to be re-submitted annually. NRC staff has stated that Forms AP-C need only be submitted when there are changes to the most recently submitted "site map." This is another example of a regulatory position which is not necessarily intuitive based on a plain reading interpretation of the handbooks, respective flow charts, or regulations. We therefore request that the NRC clarify the position in the RIS. Similar to example #4 above [Comment 1-4], it is possible that licensees are unnecessarily submitting several AP-C forms every year when there have been no building changes. Again, this is introducing undue burden due to a lack of clarity on reporting requirements.

#### NRC Response

This comment is outside the scope of the RIS. Form AP-C, "Building Information," is not a form that is required to be submitted on a quarterly basis by 10 C.F.R. § 110.54.

The NRC staff notes that the Report Handbook for Sites states that if there are no changes to any previously reported activities or information, including contact and other administrative information, Form AP-Q, "No Changes Report," may be submitted in lieu of an annual update report. If there are any changes to previously reported activities or information, the Report Handbook for Sites is clear that an annual update report, including forms AP-A, AP-B, AP-C for each building and any required activity forms, must be submitted by the following January 31. If no building information has changed

but an annual update report is required for another reason, the site would simply need to include again its previously submitted Forms AP-C as part of a complete annual update report. Figure 1 of the site handbook provides a flow diagram describing these requirements.

The purpose of this RIS is to clarify the regulatory requirements for the quarterly reporting of the export of components under 10 CFR 110.54, not to clarify the requirements of the AP annual report. For this reason, the NRC made no change to the RIS in response to the comment.

Comment No. 1-9

Information such as the DOC mailing address and email address, as provided in Title 10 of the Code of Federal Regulations (CFR), is outdated. Licensees are instead referred to the [www.ap.gov](http://www.ap.gov) website for the most updated information, including mailing address which is listed at the bottom of the webpage. As 10 CFR has not been corrected, the valid mailing, email, and fax numbers should be stated in the final RIS and confirmed for accuracy directly with the DOC/BIS. This will benefit the NRC as well as licensees, as it will limit the need for administrative questions to NRC staff. Furthermore, staff should update this contact information during the next routine miscellaneous corrections rule.

NRC Response:

The NRC agrees that there exists a slight discrepancy between the contact information provided in 10 CFR 110.54(a)(2) and what is provided at [www.ap.gov](http://www.ap.gov). The NRC has confirmed that completed reports can be sent to the mailing address, facsimile number, or email address listed in 10 CFR 110.54(a)(2):

Treaty Compliance Division  
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  
Fax: (202) 482-1731  
Email: [aprp@bis.doc.gov](mailto:aprp@bis.doc.gov)

The NRC has confirmed with BIS that persons making exports can utilize the email address and send the completed forms to [aprp@bis.doc.gov](mailto:aprp@bis.doc.gov). This email address is operational. The NRC has revised the RIS to clarify that the contact information listed in 10 CFR 110.54(a)(2) is valid.

Comment No. 1-10

Many NRC licensees utilize vendors or sub-contractors who perform work on behalf of the licensee that is subject to AP export reporting. It remains unclear whether the licensee or sub-contractor is responsible for this reporting, in the case that the sub-contractor is the physical exporter. We request that the NRC clarify the agency's position on this matter in the RIS.

NRC Response:

The NRC agrees with the comment that many NRC licensees utilize vendors or sub-contractors who perform work on behalf of the licensee. 10 CFR 110.54(a)(1) states that reports must be submitted "by licensees," which is defined in 10 CFR 110.2 as "the person who authorized by a specific or general license to export the equipment or material pursuant to [10 CFR Part 110]." "Person" is further defined in 10 CFR 110.2 to include not only any "individual, corporation, partnership, firm, association..." but also any legal successor, representative, or agent, or agency of the foregoing. The ultimate obligation to ensure the report is timely filed falls primarily on the actual licensee (either general or specific) who actually enters into the arrangement to physically transfer the nuclear equipment to a person in a foreign country. Part 110 does not preclude licensees from entering into an arrangement via contract with a vendor or subcontractor to submit reports on behalf of the licensee as the licensee's agent. Additional clarification on this topic is available electronically at OIP's public website under Frequently Asked Questions (FAQ) About Export-Import Licensing at <https://www.nrc.gov/about-nrc/ip/faq.html#26>.

No change was made to the RIS in response to the comment.