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Clarification of Export Reporting Requirements for Nuclear Facilities, Equipment, and Non-Nuclear Materials

**Comment On:** NRC-2018-0113-0001

Clarification of Export Reporting Requirements for Nuclear Facilities, Equipment, and Non-Nuclear Materials

**Document:** NRC-2018-0113-DRAFT-0001

Comment on FR Doc # 2018-12351

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## Submitter Information

**Name:** Hilary Lane

**Organization:** Nuclear Energy Institute

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## General Comment

See attached file.

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## Attachments

08-07-18\_NRC\_NEI Comments on the Draft Regulatory Issue Summary, Docket ID NRC-2018-0113

SUNSI Review Complete

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ADD= Tanya Mensah, Erika Lee and Andrea Jones

COMMENT (1)

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NUCLEAR ENERGY INSTITUTE

August 7, 2018

Ms. May Ma

Office of Administration

Mail Stop: TWFN-7-A60M

U.S. Nuclear Regulatory Commission

Washington, DC 20555-0001

**Subject: NEI Comments on the Draft Regulatory Issue Summary, "Clarification of Export Reporting Requirements for Nuclear Facilities, Equipment, and Non-Nuclear Materials,"  
Docket ID NRC-2018-0113**

**Project Number: 689**

Dear Ms. Ma:

On behalf of the Nuclear Energy Institute's (NEI)<sup>1</sup> members, we appreciate the opportunity to comment on the subject draft Regulatory Issue Summary (RIS), and continued dialogue on this important international safeguards matter. A RIS, as defined by the NRC, is used in part to 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; and to inform the nuclear industry of opportunities for regulatory relief. In addition to the comments laid out below, we would like to reference NEI's letter sent on August 23, 2017<sup>2</sup> which outlines industry's initiating comments on 10 CFR 110.54(a)(1) reporting requirements, and has direct applicability to the subject draft RIS.

The draft RIS makes a clear distinction between the two separate reporting requirements in 10 CFR 110.54: section 110.54(a)(1) and section 110.54(c). This distinction is both important and helpful, as many licensees are required to report exports under both sections – which has not always been realized, and the draft RIS details when each section would apply. NEI also commends the NRC for

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<sup>1</sup> The Nuclear Energy Institute (NEI) is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations and entities involved in the nuclear energy industry.

<sup>2</sup> ML17241A084

exercising enforcement discretion for licensees, as industry has taken full strides to comply with these requirements.

The below topics have proven to be a cause of confusion for our members over several years. These topics are pertinent to Additional Protocol (AP) reporting, and would be an appropriate and timely inclusion in the final RIS, as the NRC takes justified measures to clarify international safeguards reporting requirements. While the NRC has provided some clarification on these topics to a handful of licensees on an informal, case by case basis, these technical and policy interpretations have not been documented such that they are available to the entire Additional Protocol reporting community. This community is widespread, spans the entire fuel cycle, and continues to grow and evolve year-to-year. Capturing these interpretations in the final RIS, such as the examples below, would be the most appropriate vehicle to communicate and clarify requirements to this diverse set of licensees.

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

Because Annex II is produced and written by the International Atomic Energy Agency (IAEA) and utilized by the global nuclear industry, its provisions, and hence interpretations of Annex II, are not necessarily intuitive to domestic licensees. Below are several examples ripe for additional explanation in the final RIS. This list is not all inclusive. Therefore, we encourage the NRC to be as comprehensive as possible when discussing and clarifying Annex II positions.

**Example 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.

**Example 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.

**Example 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.

**Example 4:** NRC has instructed that certain individual components are not AP reportable, and hence are excluded under Annex II. Such items include: SNM 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.

**Example 5:** With regard to Section "1.7 Primary Coolant Pumps," the NRC should clarify whether this section includes pumps exported without a motor.

#### **Clarification of Policy Positions (AP Handbooks)**

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<sup>3</sup> 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.

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.

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<sup>3</sup> Note, the language varies slightly between the two Handbooks.

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, 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.

Information such as the Department of Commerce (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.

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.

In closing, industry continues to report pursuant to the AP given the available NRC resources. Addressing the aforementioned topics in the final RIS will not only provide increased clarity of reporting requirements, but also offer an opportunity for efficiency. The need for this additional information is underscored by the fact that NRC staff and industry interact frequently on these topics, yet the same questions and answers remain undocumented. This is particularly important and timely as the NRC and industry alike pursue transformative change with fewer resources. Our hope is that the final RIS can be utilized as a valuable reference tool for the AP reporting community moving forward.

We appreciate the NRC's willingness to address these issues. As we approach 10 years of AP implementation, we feel the timing is appropriate to issue a RIS that is both responsive to the concerns of the AP community, and reflects in a cohesive fashion what has been learned over the past decade.

Ms. May Ma  
August 7, 2018  
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Please contact me at [hml@nei.org](mailto:hml@nei.org) or (202)-739-8148 for any additional questions or concerns. We are pleased to support a public meeting on these matters if warranted.

Sincerely,

*Hilary M. Lane*

Hilary Lane

c: Mr. Nader Mamish, OIP, NRC  
Mr. Peter Habighorst, OIP, NRC  
Mr. Craig Erlanger, NMSS, NRC  
Mr. James Rubenstone, NMSS, NRC  
Ms. Grace Kim, OGC, NRC