

DRAFT SUPPORTING STATEMENT
FOR 10 CFR PART 73
PROPOSED NRC Form 754

Description of the Information Collection

The U.S. Nuclear Regulatory Commission (NRC) regulations in 10 CFR 73.55, § 73.56, § 73.71, 10 CFR Part 73 appendix B, 10 CFR Part 73 appendix C, and 10 CFR Part 73 appendix G prescribe requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage. The regulations are issued pursuant to the Atomic Energy Act of 1954, as amended, and Title II of the Energy Reorganization Act of 1974, as amended. Part 73 contains reporting and recordkeeping requirements which are necessary to help ensure that an adequate level of protection is provided for nuclear power reactor licensees.

This clearance contains the information collections contained in proposed NRC Form 754 "Armed Personnel Background Check." This proposed form is part of a larger proposed rule, 10 CFR Part 73, "Power Reactor Security Requirements," which results in changes to numerous requirements in §§ 73.55, 73.56, 73.71, 10 CFR Part 73 appendix B, 10 CFR Part 73 appendix C, and 10 CFR Part 73 appendix G, and adds three new sections to Part 73, specifically §§ 73.18, 73.19, and 73.58. Proposed NRC Form 754 supports proposed § 73.18.

The need for proposed NRC Form 754 and the proposed section which it supports (i.e., proposed § 73.18) arises from the Energy Policy Act of 2005 (EPAAct 2005) which was signed into law on August 8, 2005. EPAAct 2005 contains several provisions that impact nuclear power plant security. Specifically, Section 652 of the act expands the scope of personnel and licensee types subject to fingerprinting and criminal history background checks, and Section 653 enables the NRC to authorize (not require) the use of automatic weapons, corresponding ammunition, and large capacity ammunition feeding devices. Proposed NRC Form 754 supports implementation of background checks for security personnel possessing enhanced weapons.

EPAAct 2005 resulted in a new § 161A.b of the Atomic Energy Act of 1954. Section 161A requires that security personnel receiving, possessing, transporting, importing, or using an enhanced weapon shall be subject to a background check by the Attorney General, based on fingerprints and including a background check under section 103(b) of the Brady Handgun Violence Prevention Act (Brady Act), Public Law 103-159, 18 U.S.C. § 922(t), to determine whether the person is prohibited from possessing or receiving firearms under Federal or State law. The Brady Act provides for the submission of information to the Federal Bureau of Information's National Instant Criminal Background Check Systems (NICS) to determine if an individual is prohibited under Federal or State law from possessing or receiving firearms. Security personnel at operating nuclear power reactors would complete the background material required by NRC Form 754, and the licensee would submit the completed forms to NRC to submit to the FBI. The burden for the individual to complete the form is covered in the supporting statement prepared for the subject proposed rule.

The proposed form affects 104 operating nuclear power reactors located at 65 sites, with each facility consisting of one or more reactor units. In general, security is addressed in a site-specific manner because it is dependent on the physical layout of the entire site. Additionally,

the proposed form affects two current fuel cycle facilities authorized to possess Category I strategic special nuclear material (SSNM) at two sites. As a result, this supporting statement estimates the burden associated with reporting and recordkeeping based on 67 sites.

A. JUSTIFICATION

1. Need for and Practical Utility of the Information

The reports and records must be provided to the NRC (through the use of NRC Form 754) on the identity of security personnel assigned armed duties to determine that these individuals are not prohibited from receiving, possessing, transporting, importing, or using enhanced weapons (e.g., machine guns). This information is needed to enable the NRC to implement the mandate of § 161A. of the Atomic Energy Act (AEA) to verify that security personnel who will have access to enhanced weapons have been subject to a background check by the Attorney General, based on fingerprints and including a background check under § 103(b) of the Brady Handgun Violence Prevention Act, Pub. L. 103-159.

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Specifically, proposed § 73.18(e)(1) requires licensees and certificate holders who have applied for or received NRC approval of their application for § 73.19 authority or were issued Commission orders requiring firearms background checks to complete firearms background checks using NRC Form 754, for all security personnel employed by the licensee, certificate holder, or contractor and who are assigned duties requiring access to covered weapons.

Proposed § 73.18(e)(2) requires licensees and certificate holders to retain a copy of all NRC Forms 754 submitted to the NRC for one year subsequent to the termination of an individual's access to covered weapons or to the denial of an individual's access to covered weapons.

Proposed § 73.18(f) requires licensees and certificate holders to forward the results of the NICS check, when it is received from NRC, to the individuals who completed the NRC Forms 754.

2. Agency Use of the Information

The information included in proposed NRC Form 754 is forwarded to the FBI to determine if an individual is prohibited under Federal or State law from possessing or receiving firearms.

3. Reduction of Burden Through Information Technology

There are no legal obstacles to reducing the burden associated with this information collection. The NRC encourages respondents to use information technology when it would be beneficial to them. NRC issued a regulation on October 10, 2003 (68 FR 58791), consistent with the Government Paperwork Elimination Act, which allows its licensees, vendors, applicants, and members of the public the option to make submissions electronically via CD-ROM, e-mail, special Web-based interface, or other means. It is estimated that 2 percent of the potential responses are filed electronically.

4. Effort to Identify Duplication and Use Similar Information

NRC Form 754 records maintained by licensees would not be duplicated by other Federal information collection requirements and would not be available from any other source. NRC has in place an on-going program to examine all information collections with the goal of eliminating all duplication and/or unnecessary information collections.

5. Effort to Reduce Small Business Burden

Since the consequences to the common defense and security are the same for large and small entities, it is not possible to reduce the burden on small businesses by less frequent or less complete reports, records, plans, and procedures. However, no small entities are expected to be impacted by the proposed rule.

6. Consequences to Federal Program or Policy Activities if the Collection is Not Conducted or is Conducted Less Frequently

Without this information collection, background checks of armed security personnel could not be conducted as required by § 161A. of the AEA, 42 U.S.C. 2201a.

7. Circumstances Which Justify Variation from OMB Guidelines

None.

8. Consultations Outside the NRC

During the development of NRC Form 754, as well as the development of the associated requirements in proposed § 73.18, the NRC staff engaged with representatives from the U.S. Department of Justice, the Federal Bureau of Investigation, and the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives.

The NRC will publish this information collection requirement in the *Federal Register* to provide the public with the opportunity to comment. The NRC will respond to the public comments received.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality of Information

Certain information designated as Safeguards Information is prohibited from public disclosure in accordance with the provisions of the Atomic Energy Act of 1954, as amended, Chapter 12, Section 147, or designated as classified National Security Information, in accordance with Executive Order 12958.

Confidential and proprietary information is protected in accordance with NRC regulations at 10 CFR 9.17(a) and 10 CFR 2.390(b). The NRC otherwise provides no other pledge of confidentiality for this collection.

11. Justification for Sensitive Questions

Proposed NRC Form 754 collects information that is used to verify that the individual is not prohibited under Federal or State law from receiving, possessing, transporting, importing, or using any firearms pursuant to § 161A. of the Atomic Energy Act of 1954 as amended. The information collected on the proposed form is required in order to properly determine the individual's identity.

12. Estimated Burden and Burden Hour Cost

There is a one-time annualized burden of 1,250 hours (or an average of 18.7 hours per site) for 67 sites to submit NRC Forms 754 to the NRC for security staff. Of this, an estimated 417 hours are for maintaining the records.

The overall estimated annual burden for submission of NRC Form 754 for new personnel is 261 hours (or an average of 3.9 hours per site). Of this, approximately 87 hours are for maintaining the records.

The estimated one-time burden hour cost for all affected licensees and certificate holders is \$271,250 (1,250 hours x \$217/hr), while the estimated annual burden hour cost for all affected licensees and certificate holders is approximately \$56,600 (261 hours x \$217/hr). Therefore, the total estimated burden hour cost is \$327,850.

13. Estimate of Other Additional Costs

The NRC has determined that the records storage cost is roughly proportional to the recordkeeping burden cost. Based on a typical clearance, the records storage cost has been determined to be equal to .0004 percent of the recordkeeping burden cost. Therefore, the records storage cost for this clearance is estimated to be \$44 (504 recordkeeping hours x \$217 per hour x .0004) and is therefore insignificant.

14. Estimated Annualized Cost to Federal Government

This section calculates the estimated annualized cost to the government over the three-year period covered by the analysis, including both one-time costs and annual costs. The estimated one-time cost to the government for the handling NRC Forms 754 (both to provide to the FBI and to provide the results back to licensees and certificate holders) is approximately \$434,000 (or 1 full-time equivalent for one year at \$217/hr). Averaging this over the three-year period covered by the analysis, this burden amounts to \$145,000 (approximately 0.3 FTE per year at \$217/hr). The estimated annual cost to the government is approximately \$43,400 (200 hours at \$217/hr). Combining the one-time cost with the annual cost results in a total annualized cost of approximately \$188,400.

15. Reason for Change in Burden or Cost

The proposed rule would require that new NRC Form 754 be completed for background checks. Initially, this will result in a burden of 1,511 hours because of the requirement that licensees submit the information for current security staff. Thereafter, the burden

is estimated to only require 261 hours annually for submission of the form to NRC for new employees. Therefore, the proposed burden increase will be reduced by approximately 83 percent once the one-time requirements have been completed.

16. Publication for Statistical Use

None.

17. Reasons for Not Displaying the Expiration Date

The requirements are contained in a regulation. Amending the Code of Federal Regulations to display information that, in an annual publication, could become obsolete would be unduly burdensome and too difficult to keep current.

18. Exceptions to the Certification Statement

None.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.