



DRAFT REGULATORY GUIDE

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(Proposed New Regulatory Guide)

APPLYING FOR ENHANCED-WEAPONS AUTHORITY, APPLYING FOR PREEMPTION AUTHORITY, AND PERFORMING FIREARMS BACKGROUND CHECKS UNDER 10 CFR PART 73

A. INTRODUCTION

This guide describes methods that the staff of the U.S. Nuclear Regulatory Commission (NRC) considers acceptable for licensees and certificate holders to comply with the Commission's regulations implementing the provisions of Section 161A, "Use of Firearms by Security Personnel," of the Atomic Energy Act of 1954, as amended (AEA) (42 U.S.C. § 2201a) (Ref. 1), as implemented by Title 10 of the *Code of Federal Regulations* (10 CFR) 73.18, "Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws," and 73.19, "Firearms Background Checks for Armed Security Personnel" (Ref. 2).

This draft guide is based upon the NRC's proposed rulemaking on "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications," (Ref. 17). As such, any changes in the final rule to 10 CFR 73.18 and 73.19 will be reflected into the final guide.

Section 161A provides authority for the Commission to designate classes of facilities, radioactive material, and other property, as appropriate, for licensees and certificate holders to (1) transfer, receive, possess, transport, import, and use enhanced weapons and (2) preempt State, local, and certain Federal firearms laws (including regulations). In addition, Section 161A mandates that each security officer complete a satisfactory fingerprint-based firearms background check by the U.S. Attorney General for designated classes of facilities, radioactive material, and other property, where the affected licensee's or certificate holder's protective strategy employs firearms and the officer's official duties require access to any covered weapon.

Title 10 of the *Code of Federal Regulations* (10 CFR) 73.2, "Definitions" (Ref. 2), defines the terms "covered weapon," "enhanced weapons," and "standard weapon." Enhanced weapons include machine guns, short-barreled rifles, and short-barreled shotguns, as specified in the National Firearms Act

This regulatory guide is being issued in draft form to involve the public in the early stages of the development of a regulatory position in this area. It has not received final staff review or approval and does not represent an official NRC final staff position. Public comments are being solicited on this draft guide (including any implementation schedule) and its associated regulatory analysis or value/impact statement. Comments should be accompanied by appropriate supporting data. Written comments may be submitted to the Rules, Announcements, and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; submitted through the NRC's interactive rulemaking Web page at <http://www.nrc.gov>; or faxed to (301) 492-3446. Copies of comments received may be examined at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by May 4, 2011.

Electronic copies of this draft regulatory guide are available through the NRC's interactive rulemaking Web page (see above); the NRC's public Web site under Draft Regulatory Guides in the Regulatory Guides document collection of the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/doc-collections/>; and the NRC's Agencywide Documents Access and Management System (ADAMS) at <http://www.nrc.gov/reading-rm/adams.html>, under Accession No. ML100321956. The regulatory analysis may be found in ADAMS under Accession No. ML110100869.

(26 U.S.C. Chapter 53) (Ref. 3) and the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regulations in 27 CFR Part 479, “Machine Guns, Destructive Devices, and Certain Other Firearms (Ref. 4).” In addition to information on complying with the requirements in 10 CFR 73.18 and 10 CFR 73.19, this guide also contains information on applicable definitions in 10 CFR 73.2.

Licenses and certificate holders who wish to apply to the NRC to obtain the authority provided by Section 161A of the AEA are subject to the requirements in 10 CFR 73.18, “Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws” (Ref. 2), while 10 CFR 73.19, “Firearms Background Check for Armed Security Personnel” (Ref. 2), contains requirements for licensees, certificate holders, and their security personnel to submit fingerprints and complete a satisfactory firearms background check.

An application by a licensee or certificate holder for Section 161A authority is voluntary (either for “combined enhanced-weapons authority and preemption authority” or for “stand-alone preemption authority”). In contrast to the voluntary nature of enhanced-weapons authority or preemption authority, the submission of fingerprints and a firearms background check are mandatory for security personnel of all licensees and certificate holders who meet all of the following three conditions: (1) the licensee or certificate holder must fall within the classes of facilities, radioactive material, or other property designated by the Commission under 10 CFR 73.19(c), (2) such licensees or certificate holders must employ covered weapons as part of their protective strategy, and (3) the security personnel’s access to, or possession of, covered weapons for such licensees and certificate holders must be necessary to the discharge of the security officer’s official duties. Covered weapons include both standard weapons (e.g., handguns, rifles, and shotguns) and enhanced weapons (e.g., short-barreled rifles, short-barreled shotguns, and machine guns).

Under Section 161A, only licensees and certificate holders may apply for authorization to use enhanced weapons and preempt firearms laws. However, Section 161A does not apply to applicants for a license or for a Certificate of Compliance (CoC); therefore, such applicants are not subject to the requirements of 10 CFR 73.18 and 10 CFR 73.19.

The NRC issues regulatory guides to describe to the public methods that the staff considers acceptable for use in implementing specific parts of the agency’s regulations; to explain techniques that the staff uses in evaluating specific problems or postulated accidents; and to provide guidance to licensees, certificate holders, and applicants. Regulatory guides are not substitutes for regulations and compliance with them is not required.

This regulatory guide contains information collections that are covered by 10 CFR Part 73 and NRC Form 754 (Ref.11) under Office of Management and Budget (OMB) control numbers 3150-0002 and 3150-0204, respectively. However, the OMB has not yet approved these revised or new information collections. They will be approved by OMB before the NRC issues the final guide. The NRC may neither conduct nor sponsor, and a person is not required to respond to, an information collection request or requirement unless the requesting document displays a currently valid OMB control number. The NRC has determined that this Regulatory Guide is not a major rule as designated by the Congressional Review Act and has verified this determination with the OMB.

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B. DISCUSSION

Background

On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (EPAcT 2005) (Ref. 5). Section 653 of the EPAcT 2005 amended the AEA by adding new Section 161A (42 U.S.C. § 2201a). Section 161A provides new authority to the NRC to enhance security for certain NRC-regulated facilities and activities by allowing certain licensees and certificate holders to obtain and use enhanced weapons (i.e., machine guns, short-barreled shotguns, and short-barreled rifles) to defend their facility, radioactive material, or other property. The terrorist attacks of September 11, 2001, demonstrated the determination and capabilities of adversaries to accomplish operations against targets within the United States. Section 161A provides the NRC with new authority to permit licensees' and certificate holders' to obtain new capabilities to respond to individuals with malevolent intent.

The NRC staff worked closely with staff from the U.S. Department of Justice, including the Federal Bureau of Investigation (FBI) and ATF to develop the firearms guidelines required by Section 161A. The Commission issued firearms guidelines with the approval of the U.S. Attorney General, as required by Section 161A.d, and published them in the *Federal Register* on September 11, 2009 [Ref. 6]. The firearms guidelines provide direction to the NRC, FBI, and ATF for implementing the new authority in Section 161A. The NRC's regulations in 10 CFR 73.2, 10 CFR 73.18, and 10 CFR 73.19 are consistent with the issued firearms guidelines.

Eligible licensees and certificate holders must decide whether to apply to the NRC to obtain the authority to possess and use enhanced weapons or to obtain the authority to preempt State, local, and certain Federal firearms laws, including regulations (hereinafter referred to as preemption authority). Application for either authority is voluntary and the decision to apply for this authority rests solely with the licensee or certificate holder. Licensees or certificate holders would use enhanced weapons to increase their defensive capability to protect their facility from violent attacks. Licensees and certificate holders considering applying for enhanced weapons should evaluate, for their specific site, the costs and benefits of using enhanced weapons; and if a licensee or certificate holder would like to use enhanced weapons, to evaluate which specific types of weapons are appropriate for their particular site and their protective strategy.

The NRC has split this new authority into two components to align with the structure of the firearms guidelines, as well as to improve regulatory clarity. The first component is called "combined enhanced-weapons authority and preemption authority," and the second is called "stand-alone preemption authority." In 10 CFR 73.18(c), the NRC designated the specific classes of facilities, radioactive material, and other property that are appropriate for either component of Section 161A authority. Licensees and certificate holders that fall within the designated classes of facilities, radioactive material, and other property specified in 10 CFR 73.18(c) may apply to the NRC for either authority. Application for either authority is voluntary under Section 161A. Licensees and certificate holders with NRC approval to obtain enhanced weapons are also required to comply with the National Firearms Act and ATF's implementing regulations in 27 CFR Part 479 to receive these enhanced weapons.

The language in 42 U.S.C. § 2201a and the relevant portions of 18 U.S.C. Chapter 44 and 26 U.S.C. Chapter 53, requires licensees and certificate holders applying for enhanced-weapons authority to apply for preemption authority, as well (i.e., "combined enhanced-weapons authority and preemption authority"). However, licensees and certificate holders may choose to only apply for preemption authority to obviate the need to comply with State, local, or certain Federal firearms restrictions or prohibitions (i.e., "stand-alone preemption authority"). Licensees and certificate holders could use "stand-alone

preemption authority” to increase operational flexibility or decrease costs in implementing their NRC-required protective strategy. Examples might include preempting State restrictions on the possession of large capacity ammunition magazines, preempting State restrictions that limit the quantity of handguns an individual or company can purchase to per month, or preempting State restrictions that can limit a private guard force to handguns and shotguns only.

In 10 CFR 73.19(c), the NRC designated the specific classes of facilities, radioactive material, and other property that are appropriate for firearms background checks. Section 161A requires the completion of a satisfactory firearms background check for all security personnel whose official duties require access to covered weapons for licensees and certificate holders who fall within the Commission-designated classes of facilities, radioactive material, and other property and who employ covered weapons as part of their protective strategy. Firearms background checks are mandatory for licensees and certificate holders specified in 10 CFR 73.19(c). Furthermore, firearms background checks are mandatory for designated licensees and certificate holders, even if they are not applying for enhanced-weapons authority or preemption authority.

A firearms background check consists of a fingerprint-based background check by the U.S. Attorney General and a check against the FBI’s National Instant Criminal Background Check System (NICS). These firearms background checks do not replace any other required background checks or criminal history checks required for access to a facility, to special nuclear material or radioactive material, to Safeguards Information, or to classified information (either national security information or restricted data).

This is the first NRC-published regulatory guidance on these topics. The activities, considerations, and guidance included in the regulatory positions listed below are intended to assist licensees and certificate holders in understanding the process for applying to the NRC to obtain either of these two authorities, in understanding their responsibilities regarding any enhanced weapons they subsequently obtain and use, and in understanding the requirements of the firearms background checks.

C. REGULATORY POSITION

1. Applicability

The provisions of 10 CFR 73.18(c) and 10 CFR 73.19(c) describe the classes of facilities, radioactive material, and other property to which the enhanced-weapons authority, preemption authority, and requirements for firearms background checks apply. Under the firearms guidelines (see Ref. 6), the authority of Section 161A is split into two categories: “stand-alone preemption authority” and “combined enhanced-weapons authority and preemption authority.” As these terms indicate, preemption authority may be obtained by itself. However, because of the structure of Section 161A, enhanced-weapons authority must be obtained in conjunction with preemption authority.

For those licensees and certificate holders who fall within the Commission-designated classes of facilities, radioactive material, and other property, application for enhanced-weapons authority and preemption authority under Section 161A is voluntary, while the firearms background checks are mandatory.

1.1 Facilities—Stand-alone Preemption Authority

Under 10 CFR 73.18(c), the Commission has designated the following classes of facilities as appropriate for stand-alone preemption authority. Licensees and certificate holders who own or operate one of the following classes of facilities may apply to the NRC for this authority:

- 1.1.1 power reactor facilities, including both facilities that are operating and that have permanently shut down
- 1.1.2 facilities authorized to possess or use a formula quantity or greater of Category I strategic special nuclear material (SSNM), where the material has a radiation level of less than or equal to 1 Gray (Gy) (100 rad) per hour at a distance of 1 meter (m) (3.28 feet [ft]), without regard to any intervening shielding
- 1.1.3 reserved for the Commission to designate additional applicable classes of facilities by rulemaking or orders, which would be added to future revisions of this regulatory guide

1.2 Radioactive Material—Stand-alone Preemption Authority

Under 10 CFR 73.18(c), the Commission has designated the following classes of radioactive material being transported to or from a facility owned or operated by a licensee or certificate holder as appropriate for stand-alone preemption authority. Licensees and certificate holders who transport one of the following classes of radioactive material to or from such a facility may apply to the NRC for this authority:

- 1.2.1 reserved for the Commission to designate additional applicable classes of facilities by rulemaking or orders, which would be added to future revisions of this regulatory guide

1.3 Other Property—Stand-alone Preemption Authority

Under 10 CFR 73.18(c) the Commission has designated the following classes of other property being transported to or from a facility owned or operated by a license or certificate holder as appropriate for stand-alone preemption authority. Licensees and certificate holders who transport one of the following classes of other property to or from such a facility may apply for this authority:

- 1.3.1 reserved for the Commission to designate additional applicable classes of facilities by rulemaking or orders, which would be added to future revisions of this regulatory guide

1.4 Facilities—Combined Enhanced-Weapons Authority and Preemption Authority

Under 10 CFR 73.18(c), the Commission has designated the following classes of facilities as appropriate for combined enhanced-weapons authority and preemption authority. Licensees and certificate holders who own or operate one of the following classes of facilities may apply to the NRC for this authority:

- 1.4.1 power reactor facilities, including those that are operating and those that have permanently shut down
- 1.4.2 facilities authorized to possess or use a formula quantity or greater of Category I SSNM, where the material has a radiation level of less than or equal to 1 Gy (100 rad) per hour at a distance of 1 m (3.28 ft), without regard to any intervening shielding

- 1.4.3 reserved for the Commission to designate additional applicable classes of facilities by rulemaking or orders, which would be added to future revisions of this regulatory guide

1.5 Radioactive Material—Combined Enhanced-Weapons Authority and Preemption Authority

Under 10 CFR 73.18(c), the Commission has designated the following classes of radioactive material being transported to or from a facility owned or operated by a license or certificate holder as appropriate for combined enhanced-weapons authority and preemption authority. Licensees and certificate holders who transport one of the following classes of radioactive material to or from such a facility may apply to the NRC for this authority:

- 1.5.1 reserved for the Commission to designate additional applicable classes of facilities by rulemaking or orders, which would be added to future revisions of this regulatory guide

1.6 Other Property—Combined Enhanced-Weapons Authority and Preemption Authority

Under 10 CFR 73.18(c), the Commission has designated the following classes of other property being transported to or from a facility owned or operated by a license or certificate holder as appropriate for combined enhanced-weapons authority and preemption authority. Licensees and certificate holders who transport one of the following classes of other property to or from such a facility may apply for this authority:

- 1.6.1 reserved for the Commission to designate additional applicable classes of facilities by rulemaking or orders, which would be added to future revisions of this regulatory guide

1.7 Firearms Background Checks for Armed Security Personnel

Under 10 CFR 73.19(c), the Commission has designated the following classes of (1) facilities, (2) radioactive material being transported to or from a facility owned or operated by a license or certificate holder, and (3) other property being transported to or from a facility owned or operated by a license or certificate holder, as appropriate, for firearms background checks. Firearms background checks are mandatory for all security personnel of licensees and certificate holders who fall within these designated classes if (1) the licensee or certificate holder employs covered weapons as part of its protective strategy and (2) the security personnel's official duties require them to receive, possess, transport, import, and use any one or more covered weapons, ammunition, or devices.

Licensees and certificate holders who own or operate one of the following classes of facilities or who transport one of the following classes of radioactive material or other property are subject to this requirement:

- 1.7.1 power reactor facilities, including those that are operating and those that have permanently shut down
- 1.7.2 facilities authorized to possess or use a formula quantity or greater of Category I SSNM, where the material has a radiation level of less than or equal to 1 Gy (100 rad) per hour at a distance of 1 m (3.28 ft), without regard to any intervening shielding.
- 1.7.3 reserved for the Commission to designate additional applicable classes of facilities by rulemaking or orders, which would be added to future revisions of this regulatory guide

Firearms background checks apply to security personnel who handle, use, and repair covered weapons and to any security personnel who inventory enhanced weapons. Specifically, this should include the following:

- 1.7.4 individuals who carry covered weapons (armed security officers, armed responders, tactical response personnel, and armed supervisors); firearms instructors; and armorers who repair, maintain, or modify covered weapons; as well as individuals who check out and check-in covered weapons from a licensee's or certificate holder's weapons storage facilities (e.g., an armory)
- 1.7.5 individuals who perform periodic inventories of enhanced weapons
- 1.7.6 individuals who are authorized access to in-plant "ready-service" storage containers (i.e., weapons storage containers that are located away from a facility's armories, that are locked and sealed with a tamper-indicating device (TID), and that contain contingency weapons and ammunition)

Firearms background checks apply to all security personnel, whether these security personnel are employed (directly) by the licensee or certificate holder or are employed by a security contractor who provides security services to the licensee or certificate holder.

Firearms background checks should not apply to personnel at a licensee's or certificate holder's warehouse or supply organization who may receive or dispatch shipments of covered weapons at the facility, provided that, when such personnel receive any incoming weapons shipments, the weapons remain sealed in their shipping containers, are promptly turned over to appropriate security personnel, and are promptly moved to an approved security storage area (e.g., an armory), and provided that, when such personnel handle outgoing weapons shipments, any enhanced weapons are secured and sealed in a shipping container (see Section V.E of the proposed rule, "Section-by-Section Analysis" for § 73.19 (Ref. 17)).

1.8 Authorized Weapons, Ammunition, and Devices

- 1.8.1 The following types of weapons, ammunition, and devices are covered under Section 161A authority and are referred to as "covered weapons": handguns, rifles and shotguns, short-barreled shotguns and short-barreled rifles, semi-automatic assault weapons, machine guns, ammunition for the forgoing, and large-capacity ammunition-feeding devices.
- 1.8.2 The definition of "enhanced weapons" is consistent with that in the NRC's firearms guidelines (Ref. 6). As a point of reference, enhanced weapons are required to be registered and transferred, as provided under the National Firearms Act (Ref. 3) and applicable ATF regulations (Ref. 4).
- 1.8.3 Remotely operated weapon systems (ROWS) may use standard weapons or enhanced weapons.

1.9 Remotely Operated Weapons Systems

Licenses and certificate holders who apply for stand-alone preemption authority and obtain approval from the NRC would be able to possess ROWS, notwithstanding any applicable State or local

restrictions on such systems. Licensees and certificate holders who use a ROWS that employs standard weapons are not subject to the enhanced-weapon application process in 10 CFR 73.18.

Combining a ROWS capability with enhanced weapons requires the licensee or certificate holder to fall within the designated classes specified in Regulatory Position 1.1 through 1.3 above, to apply to the NRC for combined enhanced-weapons authority and preemption authority under 10 CFR 73.18, and to receive approval from the NRC.

1.10 Unauthorized Weapons, Ammunition, and Devices

The following types of weapons, ammunition, and devices are not authorized under Section 161A of the AEA:

- 1.10.1 rifled weapons with a bore diameter greater than 12.7-millimeter (mm) (0.5-inches (in.) or .50-caliber)
- 1.10.2 armor-piercing ammunition restricted under 18 U.S.C. 922
- 1.10.3 destructive devices (e.g., hand grenades, explosives, missiles, and mortars)
- 1.10.4 flash-bang grenades that are considered destructive devices under Section 5845 of the National Firearms Act (26 U.S.C. 5845)

Note: Licensees and certificate holders who have applied to the NRC and obtained combined or stand-alone preemption authority may possess flash-bang grenades that are not considered destructive devices but are restricted under State or local law. Licensees and certificate holders should obtain information on whether a particular flash-bang grenade is or is not considered a destructive device from their ATF-licensed manufacturer or importer.

2. Other Applicable Federal Firearms Laws, Regulations, and Licensing Requirements

2.1 National Firearms Act Requirements

In addition to complying with Commission regulations in 10 CFR 73.18 and 10 CFR 73.19, licensees and certificate holders who obtain enhanced weapons must also comply with applicable provisions of certain other Federal firearms laws and regulations, including the transfer, registration, notification, and inspector-access requirements of the National Firearms Act and ATF's implementing regulations in 27 CFR Part 479.

2.2 Gun Control Act Requirements

Licensees and certificate holders who obtain enhanced weapons are not required, under Section 161A of the AEA, to obtain a Federal Firearms License (FFL) under the Gun Control Act (18 U.S.C. Chapter 44) (Ref. 7) or comply with ATF's FFL regulations under 27 CFR Part 478, "Commerce in Firearms and Ammunition" (Ref. 8). However, licensees and certificate holders may voluntarily obtain an FFL at their own discretion (e.g., to take advantage of ATF's special occupational tax provisions regarding the transfer of weapons that are required to be registered under the National Firearms Act). Consequently, if an NRC licensee or certificate holder obtains an FFL, they would also be required to comply with all applicable ATF regulations for a firearms dealer.

2.3 Licensee and Certificate Holder Restrictions on Issuing Covered Weapons

Licensees and certificate holders are required to comply with the provisions of 18 U.S.C. 922(d) (Ref. 7), which prohibit the licensee or certificate holder from issuing a firearm to a security officer “knowing or having reasonable cause to believe” the officer is prohibited from possessing or receiving any firearms or ammunition under Federal or State law. This requirement applies whether or not a licensee or certificate holder requests Section 161A authority.

2.4 Security Officer Restrictions on Possessing Covered Weapons

Licensees and certificate holders may not issue covered weapons to any security personnel whose official duties require access to covered weapons if those personnel are prohibited from possessing or receiving firearms or ammunition under 18 U.S.C. 922(g) and (n).

2.5 Specific State Restrictions on Possessing Covered Weapons

Licensee and certificate security personnel may be disqualified from possessing or receiving any firearms or ammunition in a specific State or States. However, this restriction may not exist in other States. This is because many States have enacted unique restrictions regarding access to firearms above and beyond the Federal disqualification criteria specified in 18 U.S.C. 922(g) and (n). Consequently, for the FBI to correctly conduct a firearms background check under 42 U.S.C. 2201a, security personnel are required to identify on the submitted NRC Form 754 the specific States that are or would be their official duty location(s) (Ref. 11). Security personnel may enter multiple States on their NRC Form 754 to address frequent reassignments. For example, reassignment for outage support purposes to facilities located in different States, but owned by the same utility, or security personnel who are employed by a security contractor operating at multiple sites. Additionally, security personnel may enter multiple States or “CONUS” (i.e., all 48 contiguous states) on the Form 754 for security personnel escorting interstate shipments of designated radioactive material or other property.

As an example, consider three hypothetical states. State A prohibits an individual with any misdemeanor drug convictions from possessing any firearms. State B prohibits an individual with any misdemeanor drug conviction from possessing handguns, but permits long weapons. State C has no firearms restrictions triggered by a misdemeanor drug conviction. Consequently, a hypothetical 45-year old security officer with a 25-year old misdemeanor drug conviction (i.e., that was not punishable by more than two years incarceration), who has no other adverse issues, who has been adjudicated by the licensee as acceptable for access to a facility under 10 CFR 73.57, and whose official duties would require access to covered weapons (handguns and rifles), would be denied access to these weapons at an NRC-regulated nuclear facility located in States A and B but would be permitted access to these weapons for official duty purposes at an NRC-regulated nuclear facility located in State C.

Similarly, this same security officer, whose official duties would require access to covered weapons, would not be able to perform armed escort duties for designated shipments of radioactive material and other property in States A and B, but would be able to perform armed escort duties in State C. Consequently, licensees and certificate holders should consider these implications when submitting armed security personnel for firearms background checks.

3. General Requirements for Enhanced-Weapons and Preemption Authority

The NRC regulations in 10 CFR 73.18(b) set forth the general requirements for licensees and certificate holders to apply to the NRC to obtain either stand-alone preemption authority or combined enhanced-weapons authority and preemption authority. Only licensees and certificate holders that fall

within the Commission-designated classes of facilities, radioactive material, or other property specified in 10 CFR 73.18(c) (see Regulatory Positions 1.1 through 1.6 above) may apply to the NRC for this authority.

A licensee or certificate holder application to the NRC for either authority is voluntary. Based on the submitted application, the NRC will determine whether the proposed use of this authority is appropriate in the discharge of official duties by security personnel engaged in protecting a particular facility, radioactive material, or other property.

Section 161A requires a licensee or certificate holder obtaining enhanced-weapons authority to also obtain preemption authority. This can be done in an application for combined enhanced-weapons authority and preemption authority. However, if a licensee or certificate holder has previously applied for stand-alone preemption authority and received approval from the NRC, the licensee or certificate holder does not need to reapply for preemption authority as part of his or her application to obtain enhanced weapons.

For all NRC licensees and certificate holders who have not applied for either authority, their current security requirements would remain in effect after **[insert effective date of the final rule]**, unless those requirements were modified by a separate order or other NRC regulations. Therefore, licensees and certificate holders who did not choose to voluntarily obtain either new authority must continue to comply with their current security requirements. However, in contrast, the requirements for firearms background checks under the regulations in 10 CFR 73.19 are mandatory for all licensees that fall within the classes of licensed facilities listed under Regulatory Position 1.7 above. Details on the requirements for firearms background checks are found in Regulatory Position 15 below.

4. Authorization for the Preemption of Firearms Laws

The NRC regulations in 10 CFR 73.18(d) set forth the requirements for licensees and certificate holders to apply to the NRC to obtain stand-alone preemption authority. Only licensees and certificate holders who fall within the Commission-designated classes of facilities, radioactive material, or other property specified in 10 CFR 73.18(c)(1) may apply to the NRC for this authority (see Regulatory Positions 1.1 through 1.3 above). Application for this authority is voluntary.

A licensee or certificate holder who has applied for stand-alone preemption authority and obtained NRC approval would be permitted to use, possess, or obtain weapons that may be prohibited by State or local laws and by certain Federal laws (and any implementing regulations). This authority does not include obtaining enhanced weapons. Examples of preempted firearms laws and regulations could include restrictions on possession of semi-automatic assault weapons, large-capacity ammunition magazines, or ROWS. Notwithstanding such State, local, and certain Federal firearms laws and regulations, licensees and certificate holders who apply and receive stand-alone preemption authority would be able to obtain and use such devices or weapons. Some State or local regulations may also involve additional requirements, rather than prohibitions (e.g., registration of armed private security guards, insurance coverage for armed private security guards, or limits on quantities of weapons that can be purchased in a single month). If the NRC grants stand-alone preemption authority, these requirements are also preempted.

4.1 Applying for Stand-alone Preemption Authority

Licensees and certificate holders who wish to apply for stand-alone preemption authority should submit an application in writing to the NRC in accordance with 10 CFR 73.4, "Communications." This application may be mailed, hand delivered, or, when practicable, electronically submitted.

The application should be in the form of a letter and follow the guidance below:

- a. Include the name of the licensee or certificate holder.
- b. Include the docket number and the license or CoC number.
- c. Indicate that the licensee or certificate holder is applying for “stand-alone preemption authority” under 42 U.S.C. 2201a.
- d. Describe the type of facility or activity the licensee or certificate holder is conducting within the designated classes of facilities, radioactive material, or other property specified in 10 CFR 73.18(c)(1) (e.g., power reactor or possession of Category I SSNM).
- e. Briefly describe the reason for requesting this authority. Examples include, but are not limited to, increasing the flexibility of security operations or response activities; enhancing security capabilities through use of restricted weapons or devices, or obtaining relief from State and local registration or licensing requirements).
- f. Indicate that the licensee or certificate holder has completed satisfactory firearms background checks, as required by 10 CFR 73.19, for security personnel whose official duties require access to covered weapons. Alternatively, indicate that the licensee or certificate holder has initiated firearms background checks, as required by 10 CFR 73.19, for their security personnel whose official duties require access to covered weapons. Licensees and certificate holders should supplement their application to indicate that a sufficient number of security personnel have completed satisfactory firearms background checks to meet the licensee’s or certificate holder’s minimum staffing and fatigue requirements for security personnel.
- g. Submit the application under oath or affirmation.

Eligible licensees and certificate holders may apply for stand-alone preemption authority and subsequently apply for combined enhanced-weapons authority and preemption authority.

4.2 NRC Approval of Stand-alone Preemption Authority

The NRC will document in writing to the applying licensee or certificate holder that the agency has approved or disapproved the licensee’s or certificate holder’s application.

If preemption authority is granted, the licensee or certificate holder may wish to provide a copy of the NRC’s approval letter to any Government entity whose regulations this Section 161A authority preempts to assist such entities in their inspection and enforcement activities.

5. Authorization for Enhanced Weapons

The NRC regulations in 10 CFR 73.18(e) and (f) set forth the requirements for licensees and certificate holders to apply to the NRC to obtain combined enhanced-weapons authority and preemption authority. Only licensees and certificate holders that fall within the Commission-designated classes of facilities, radioactive material, or other property specified in 10 CFR 73.18(c)(2) may apply to the NRC for this authority (see Regulatory Positions 1.4 through 1.6 above). Application for this authority is voluntary.

A licensee or certificate holder who has applied to the NRC for combined enhanced-weapons authority and preemption authority and obtained NRC approval would be permitted to obtain, possess, and use enhanced weapons that are otherwise prohibited by State, local and Federal laws (i.e., machine guns, short-barreled shotguns, and short-barreled rifles). Possession of such weapons (e.g., machine guns) would permit licensees or certificate holders to increase their ability to defend a facility, a shipment of radioactive material, or other property.

Section 161A requires licensees and certificate holders who apply for enhanced-weapons authority under 10 CFR 73.18(e) to also apply for and receive NRC approval of preemption authority as a prerequisite. Such application may have been previously made to the NRC (i.e., an application for stand-alone preemption authority) or contained in the application for combined enhanced-weapons authority and preemption authority. A grant of combined enhanced-weapons authority and preemption authority also includes preemption of other requirements beyond proscription of covered weapons, as described in Regulatory Position 4 above.

If granted NRC approval for combined enhanced-weapons authority and preemption authority, the licensee or certificate holder is required to comply with the conditions of approval set forth in 10 CFR 73.18(g) (see Regulatory Position 7 below).

5.1 Applying for Combined Enhanced-Weapons Authority and Preemption Authority

Licensees and certificate holders who wish to apply for the combined enhanced-weapons authority and preemption authority should submit an application in writing to the NRC, in accordance with 10 CFR 73.4 and the license and certificate amendment requirements of 10 CFR 50.90, “Application for Amendment of License, Construction Permit, or Early Site Permit”; 10 CFR 70.34, “Amendment of Licenses”; or 10 CFR 76.45, “Application for Amendment of Certificate.” This application may be mailed, hand delivered or, when practicable, electronically submitted. Because an application would contain Safeguards Information or classified information (i.e., the application includes updated physical security and contingency response plans), licensees and certificate holders should transmit such applications to the NRC in accordance with the information security requirements for transmission of Safeguards Information or classified information (e.g., 10 CFR 73.21, “Protection of Safeguards Information: Performance Requirements,” and 10 CFR 73.22, “Protection of Safeguards Information: Specific Requirements,” or 10 CFR Part 95, “Facility Security Clearance and Safeguarding of National Security Information and Restricted Data,” as appropriate).

The application should be in the form of a letter and should:

- a. Include the name of the licensee or certificate holder.
- b. Include the docket number and the license or CoC number.
- c. Indicate that the licensee or certificate holder is applying for “combined enhanced-weapons authority and preemption authority” under 42 U.S.C. 2201a.
- d. Describe the licensee’s or certificate holder’s type of facility or activity within the designated classes of facilities, radioactive material, or other property specified in 10 CFR 73.18(c)(2) (e.g., a power reactor or Category I SSNM facility).
- e. If applicable, include the date the licensee or certificate holder applied to the NRC for stand-alone preemption authority, whether the NRC approved their application, and if so, the date of approval.

- f. Indicate whether the licensee or certificate holder has completed satisfactory firearms background checks, as required by 10 CFR 73.19, for security personnel whose official duties require access to covered weapons. Alternatively, indicate whether the licensee or certificate holder has initiated firearms background checks, as required by 10 CFR 73.19, for security personnel whose official duties require access to covered weapons. Licensees and certificate holders should supplement their application to indicate that a sufficient number of security personnel have completed satisfactory firearms background checks to meet the licensee's or certificate holder's minimum staffing and fatigue requirements for security personnel.
- g. Include the specific number of enhanced weapons the licensee or certificate holder desires to obtain, along with information on the weapon's manufacturer, model number or type, and caliber.
- h. Include the specific additional information required by 10 CFR 73.18(f) (i.e., physical security plan, training and qualification plan, safeguards contingency plan, and weapons safety assessment). Regulatory Position 6 of this guide contains additional information on the requirements.
- i. Submitted the application under oath or affirmation.

5.2 NRC Approval of Combined Enhanced-Weapons Authority and Preemption Authority

After the NRC makes a final determination on the license or certificate amendment application, pursuant to 10 CFR 50.90, 10 CFR 70.34, or 10 CFR 76.45, the NRC will document in writing to the applying licensee or certificate holder that the agency has approved or disapproved the application.

Regarding the NRC's approval of combined enhanced-weapons authority and preemption authority, the licensee or certificate holder should provide a copy of the NRC's approval letter to the ATF license holder (e.g., dealer, manufacturer, or importer) that will provide the enhanced weapons to the NRC licensee or certificate holder. The ATF license holder will include the NRC's approval in the application to ATF to transfer the enhanced weapons to the NRC licensee or certificate holder. ATF's regulations require prior approval by ATF of requests to transfer weapons registered under the National Firearms Act (Ref.3) (i.e., enhanced weapons). The NRC's approval contains information on the specific types and quantities of enhanced weapons the NRC has concluded are necessary under the licensee's or certificate holder's application and will be relied upon by ATF in reviewing and approving the transfer request.

5.3 Applying for Different Enhanced Weapons

The information on the specific numbers, models or types, and calibers of weapons (contained in the application) is important, as these are the only weapons that ATF will authorize to be transferred to the licensee or certificate holder. Applying respective responsibilities, the NRC will perform a technical assessment of the licensee's or certificate holder's application to determine whether the specific weapons requested are appropriate to the specific facility or activity, and ATF will perform the licensing functions to transfer the authorized weapons to the licensee or certificate holder, if the NRC approves the application to obtain enhanced weapons.

A licensee or certificate holder who has previously received approval from the NRC to obtain enhanced weapons and now wants to obtain different numbers or types of enhanced weapons must submit a new application to the NRC under 10 CFR 73.18(e) and (f) to obtain enhanced weapons different from those previously approved by the NRC.

Licensees and certificate holders seeking to obtain replacement enhanced weapons that are identical to weapons for which they have already received approval from the NRC are not required to reapply to the NRC under 10 CFR 73.18(e) and (f). Licensees and certificate holders seeking to obtain additional enhanced weapons, that have already been authorized by the NRC, are not required to reapply to the NRC under 10 CFR 73.18(e) and (f). The licensee's or certificate holder's additional enhanced weapons may not be greater than their NRC authorized maximum enhanced-weapons possession limits.

5.4 Federal Firearms License Issues

Licensees and certificate holders obtaining enhanced weapons are not required to obtain an FFL from ATF. Licensees and certificate holders may choose to obtain an FFL at their own discretion. NRC licensees and certificate holders who obtain an ATF FFL are required to comply with applicable ATF regulations, including those providing for ATF access to facilities and records.

Licensees and certificate holders are required to pay a transfer tax for each transfer of an enhanced weapon (i.e., a weapon registered with ATF under the National Firearms Act). As an alternative to paying an individual tax on each weapon's transfer, NRC licensees and certificate holders may wish to obtain an ATF FFL and pay a "Special Occupational Tax." This tax is paid once a year and permits an unlimited number of transfers of a registered weapon without payment of an individual transfer tax. While obtaining an FFL and a Special Occupational Tax stamp would provide NRC licensees and certificate holders with greater flexibility in transferring and receiving enhanced weapons, it would also subject such licensees or certificate holders to ATF regulation, inspection, and oversight.

6. Additional Technical Information to Obtain Enhanced Weapons

The NRC regulations in 10 CFR 73.18(f) set forth additional requirements for licensees and certificate holders to incorporate the use of the specific enhanced weapons it intends to employ into a new or revised physical security plan, a security personnel training and qualification plan, a safeguards contingency plan, and a weapons safety assessment. The plans and assessment must be specific to the facilities, radioactive material, or other property being protected. They may be standalone plans or a single integrated plan. Licensees and certificate holders permitted to apply for enhanced weapons were previously subject to various regulations in 10 CFR Part 73 (Ref.2) regarding the development of their physical security plan, security personnel training and qualification plan, and safeguards contingency plan. The use of the specific enhanced weapons should be integrated into these plans. The NRC's requirement for a weapons safety assessment applies only to the enhanced weapons (i.e., the weapons safety assessment does not need to include standard weapons employed by the licensee or certificate holder).

6.1 Physical Security Plans

Licensees or certificate holders must submit proposed modifications to their security plans to the NRC for review and approval prior to implementation. This is because the NRC is evaluating the technical acceptability of the proposed use of enhanced weapons at a specific facility or for a specific activity, while ATF is reviewing licensing functions to transfer the enhanced weapons that do not include the technical appropriateness of specific weapons at specific facilities. While the provisions of 10 CFR 50.54(p), 10 CFR 70.32(e), and 10 CFR 76.60, "Regulatory Requirements which Apply," would otherwise permit licensees or certificate holders to make certain changes to their security plans without prior NRC review and approval, if these changes "would not decrease the plan's effectiveness," the NRC has required prior review and approval to satisfy ATF requirements.

Additionally, the NRC recognizes that the increased defensive firepower from enhanced weapons may permit a licensee or certificate holder to adjust its protective strategy and change the size of its protective force. Consequently, through the submission of these plans, the NRC will have the opportunity to evaluate whether any proposed security plan changes are appropriate for a specific site.

6.2 Training and Qualification Plans

For the training and qualification plan, the licensees or certificate holders should address the additional training and qualification requirements to use these specific enhanced weapons. This information should be integrated into the revised training and qualification plan in the same format and structure as the existing training and qualification plan. The licensee's or certificate holder's training and qualification plan for enhanced weapons must include information from applicable firearms standards developed by nationally recognized firearms organizations or standard-setting bodies or from standards developed by Federal agencies, such as the U.S. Department of Homeland Security's Federal Law Enforcement Training Center, the U.S. Department of Energy's National Training Center, or the U.S. Department of Defense.

6.3 Safeguards Contingency Plans

For the safeguards contingency plan, licensees or certificate holders should address how their security personnel will employ these enhanced weapons and any standard weapons, including tactical approaches and maneuvers, to satisfy the NRC protective strategy requirements.

6.4 Weapons Safety Assessment

For the weapons safety assessment, the licensees or certificate holders should assess, from a number of perspectives, the potential safety impact from the accidental or deliberate use of the proposed enhanced weapons. The weapons safety assessment was developed by the NRC under a contract with the U.S. Army Corps of Engineers, Protective Design Center (USACE, PDC) and is based upon a model employed by the Strategic Petroleum Reserve, U.S. Department of Energy. The weapons safety assessment consists of five volumes and is identified by its task number, USACE PDC NRC TR 06-10.1 to 10.5 (Vol. 1 to 5). Volumes 1 through 3 are publicly available. However, Volumes 4 and 5 contain sensitive security information and are not publicly available.

The NRC staff would not require licensees and certificate holders completing a weapons safety assessment to evaluate the discharge of enhanced weapons with malevolent intent against plant personnel or equipment by an active-violent insider, provided the hypothetical individual has been trained and qualified for security duties and has been screened and evaluated by the licensee's or certificate holder's insider mitigation or personnel reliability programs. The NRC staff has reached this conclusion because a security officer's "inside knowledge" would likely allow them to circumvent these mitigative or preventive measures (established in response to the assessment) or that installation of uncircumventable measures would likely impose unacceptable operations, maintenance, radiation protection, or design impacts on the structures, systems, and components (SSCs) being protected. Rather, the NRC would rely upon other personnel- and behavioral-monitoring programs (e.g., a fitness for duty program or insider-mitigation program) required by NRC regulations to significantly reduce the likelihood of security personnel malevolently using their weapons against such SSCs or against licensee or certificate holder personnel performing critical functions.

Licensees and certificate holders should follow the below guidance in developing their weapons safety assessment:

- a. Assess any potential safety impact on the facility, radioactive material, or other property from the use of these enhanced weapons.
- b. Assess any potential safety impact on public or private facilities, on public or private property, or on members of the public in areas outside the site boundary, from the use of these enhanced weapons.
- c. Assess any potential safety impact on public or private facilities, on public or private property, or on members of the public from the use of these enhanced weapons at training facilities intended for proficiency demonstration and qualification purposes.

Based on the weapons safety assessment, the licensee or certificate holder may choose to implement restrictions on the use of enhanced weapons (e.g., use of traverse and elevation limits on machine guns to control risk) or mitigation measures (e.g., the use of engineered security features to prevent bullet penetration or damage to sensitive structures). The results of this assessment are influenced by the caliber and type of ammunition. Consequently, licensees or certificate holders should repeat this assessment they make changes to the enhanced weapons or ammunition they propose to use.

Finally, the licensee's or certificate holder's use of larger caliber enhanced weapons may create risk at sufficient height to involve the Federal Aviation Administration to determine whether the potential deployment of these weapons could require aircraft safety restrictions around the facility or training ranges.

7. Conditions of Approval to Possess Enhanced Weapons

The NRC regulations in 10 CFR 73.18(g) set forth the conditions of approval for licensees and certificate holders who have applied to the NRC for, and received, combined enhanced-weapons authority and preemption authority. Those licensees and certificate holders should provide a copy of the NRC's authorization to the FFL holder (e.g., the manufacturer, importer, or dealer possessing the enhanced weapons) that will provide the enhanced weapons to the licensee or certificate holder. The NRC's authorization letter would identify the specific types, calibers, and numbers of enhanced weapons the licensee or certificate holder is authorized to possess. The FFL holder will submit an application to ATF to transfer the enhanced weapons to the NRC licensee or certificate holder. The FFL holder should include a copy of the NRC's authorization with the FFL's application to ATF to transfer the enhanced weapons to the NRC licensee or certificate holder.

ATF's regulations require its prior approval to transfer weapons registered under the National Firearms Act. ATF will only approve the transfer of weapons that are listed on the NRC's authorization letter to the licensee or certificate holder.

7.1 Registration of Enhanced Weapons

Licensees and certificate holders should register with ATF (i.e., under the licensee's or certificate holder's name) all the enhanced weapons they possess pursuant to the ATF regulations under 27 CFR Part 479 (see Ref. 4). Enhanced weapons possessed by an NRC licensee or certificate holder may not be registered with ATF under the name of a licensee's or certificate holder's security contractor.

7.2 ATF Tax Stamps

Licensees and certificate holders receiving enhanced weapons should also obtain any required ATF tax stamps for weapons registered under the National Firearms Act, as required by ATF's regulations in 27 CFR Part 479.

8. Completion of Training and Qualification before Use of Enhanced Weapons

The NRC regulations in 10 CFR 73.18(h) and (j) set forth requirements for licensees and certificate holders who have applied for and received combined enhanced-weapons authority and preemption authority to ensure that their security personnel complete the required firearms training and qualification in accordance with the licensee's or certificate holder's NRC-approved training and qualification plan.

8.1 Initial Training and Qualification

Security personnel who will use enhanced weapons to implement the licensee's or certificate holder's protective strategy should complete their initial training and qualification on these enhanced weapons before using such weapons.

Licensees and certificate holders should document the completion of security personnel's training and qualification on the specific enhanced weapons in accordance with the requirements of the licensee's or certificate holder's approved training and qualification plan.

8.2 Recurring Training and Qualification

Security personnel who will use enhanced weapons to implement the licensee's or certificate holder's protective strategy should complete their recurring training and qualification in accordance with the requirements of the licensee's or certificate holder's training and qualification plan.

Licensees and certificate holders should document the completion of security personnel's recurring training and qualification on the specific enhanced weapons in accordance with the requirements of the licensee's or certificate holder's approved training and qualification plan.

8.3 Use of Enhanced-Weapons (Deadly Force) Training

The licensee's or certificate holder's training plans should include direction on the use of force, up to and including deadly force. This training should include information on the applicable State restrictions on the use of force for the location of the facility or activity. The licensee's and certificate holder's plans should address the use of enhanced weapons as they do existing standard weapons. Licensees and certificate holders do not need to repeat use-of-force training in the employment of enhanced weapons for security personnel who are currently qualified to use weapons in accordance with the requirements of the licensee's or certificate holder's approved training and qualification plan.

9. Notification of Adverse ATF Findings

The NRC regulations in 10 CFR 73.18(k) set forth requirements for licensees and certificate holders to notify the NRC of adverse inspection and enforcement findings from ATF that are related to the licensee's or certificate holder's receipt, possession, or transfer of enhanced weapons. Licensees and certificate holders making such notifications to the NRC should do so in accordance with 10 CFR 73.71, "Reporting and Recording of Safeguards Events" (Ref. 2). NRC licensees and certificate holders who

also possess an ATF FFL should also notify the NRC, in accordance with 10 CFR 73.71, of the receipt of adverse ATF inspection or enforcement findings related to their FFL.

Regulatory Guide 5.62, "Reporting and Recording of Safeguards Events," (Ref. 9) contains NRC guidance on such notifications.

10. Transfer of Enhanced Weapons

The NRC regulations in 10 CFR 73.18(m) set forth requirements for licensees and certificate holders regarding the transfer of enhanced weapons. Separately, NRC licensees and certificate holders transferring enhanced weapons must also comply with applicable ATF regulations in 27 CFR Part 479. Enhanced weapons may only be transferred to (i.e., received by) an authorized NRC licensee or certificate holder, not to a security contractor providing security services to the licensee or certificate holder. Licensees and certificate holders purchasing enhanced weapons should assist the Federal Firearms License (FFL) holder (e.g., a dealer, manufacturer, or importer providing the enhanced weapons) in completing the necessary paperwork to obtain ATF's approval to transfer the enhanced weapons from the FFL to the licensee or certificate holder (e.g., by providing a copy of the NRC's letter approving the licensee's or certificate holder's authority to possess enhanced weapons).

The control of enhanced weapons while not located in a licensee's or certificate holder's facility is critical to ensuring that they are only used by authorized personnel for authorized reasons. Consequently, licensees and certificate holders should very closely control the transfer and transport of enhanced weapons.

Licensees and certificate holders should maintain records documenting the removal and return of all enhanced weapons in accordance with the records requirements of 10 CFR 73.18(p). Licensees and certificate holders should verify that the weapons removed from their facility have been returned to their facility following their authorized use. Enhanced weapons that are not returned to the licensee's or certificate holder's authorized facility should be treated as a transfer of the enhanced weapon or reported to the NRC and ATF as a lost or stolen enhanced weapon. Movement of an enhanced weapon from one authorized facility in a licensee's or certificate holder's fleet to another authorized facility within their fleet is considered a transfer requiring prior ATF approval. NRC prior approval is not required in this last instance, provided the receiving licensee or certificate holder remains within its NRC approved maximum enhanced-weapon possession limits

Licensees and certificate holders may only transfer enhanced weapons to authorized entities with the prior approval of ATF. Examples of authorized entities include other NRC licensees and certificate holders authorized to possess these weapons, a Federal firearms licensee authorized to possess weapons registered under the National Firearms Act, a Government agency, or an official police organization. Abandonment of the enhanced weapons to ATF for destruction is also an option.

Removal of enhanced weapons from a licensee's or certificate holder's facility to a gunsmith or manufacturer for the purposes of repair or maintenance and the subsequent return of the enhanced weapon to the licensee or certificate holder should each be considered a transfer under the National Firearms Act and ATF's regulations in 27 CFR Part 479.

10.1 Issuance versus Transfer

A licensee's or certificate holder's issuance of enhanced weapons to a security officer (e.g., at the beginning of a duty shift) and the security officer's return of the enhanced weapon to the licensee or certificate holder, or to another security officer (e.g., fixed weapons in towers or ROWS), are not considered a transfer of the enhanced weapon under the National Firearms Act, provided the enhanced weapons remain within the "site of the facility." Remaining within the "site of a facility" means within the site boundary or owner-controlled-area, as defined by the safety analysis report the licensee or certificate holder submitted to the NRC. Therefore, the possession of an enhanced weapon by a security officer who remains within the site boundary or owner-controlled area of an authorized licensee's or certificate holder's facility would not be considered a transfer of the enhanced weapon.

For activities occurring outside an authorized licensee's or certificate holder's facility's site boundary (e.g., use of the weapons at a firing range or training facility, or in escorting shipments of radioactive material), the issuance of enhanced weapons is not considered a transfer of the weapon, if the weapon is being removed for permissible reasons and the security personnel possessing the enhanced weapons are either of the following:

- (1) an employee of the licensee or certificate holder; or
- (2) a contract security employee possessing enhanced weapons under the direction of, and accompanied by, an employee of an authorized licensee or certificate holder.

Authorized licensee or certificate holder employees accompanying security personnel possessing enhanced weapons are not required to be trained and qualified to use the weapons. However, they should be trained on the requirements for control of enhanced weapons and on notifications for lost or stolen enhanced weapons.

10.2 Permissible Reasons for Removing Enhanced Weapons from an Authorized Facility

Acceptable reasons for removing enhanced weapons from the licensee's or certificate holder's facility (which would not be considered a transfer pursuant to ATF regulations) include the following:

- (1) removal of enhanced weapons for use at a firing range or training facility specified by the licensees or certificate holders in their training and qualification plans; or
- (2) removal of enhanced weapons for use in escorting shipments of radioactive material or other property designated under 10 CFR 73.18(c) being transported to or from the licensee's or certificate holder's facility

A provision in Section 6 of the firearms guidelines allows the Commission to specify additional permissible reasons to remove enhanced weapons from a facility authorized to possess them (i.e., for reasons other than for training on these weapons or to use the weapons in escorting shipments of radioactive material or other property). At this time, the NRC is not proposing any additional reasons for removing enhanced weapons from an authorized facility. However, this flexibility is available, should the Commission need it in the future.

11. Transportation of Covered Weapons

The NRC regulations in 10 CFR 73.18(n) set forth requirements for licensees and certificate holders regarding the transportation of enhanced weapons and standard weapons. These provisions apply to the transportation of enhanced weapons outside the site of the licensee's or certificate holder's facility. These provisions also apply to the transportation of standard weapons in support of designated shipments of radioactive material and other property. This includes both the carrying of weapons to escort the shipment and the repositioning of armed personnel to accompany a shipment or the return of armed personnel following a shipment.

Transporting weapons frequently results in an inherent vulnerability in protection and accountability. While not in the hands of the user or stored within a secure facility, enhanced weapons and standard weapons could be more susceptible to loss or theft, particularly when in transit from one location or person to another. This regulatory position describes guidance relating to the transportation of enhanced weapons for activities that are not considered a transfer. Licensees and certificate holders transporting (i.e., shipping) enhanced weapons via common carriers should also comply with applicable U.S. Department of Transportation regulations.

Security personnel transporting enhanced weapons to or from a firing range or training facility used by the licensee or certificate holder should ensure that such weapons are unloaded and locked in a secure container during such transport. Unloaded weapons and ammunition may be transported in the same locked secure container. Security personnel transporting such weapons are subject to the requirements for firearms background checks in 10 CFR 73.19.

Security personnel transporting covered weapons to or from a licensee's or certificate holder's facility following the completion of, or in preparation for, escorting shipments of radioactive material or other property should ensure that such weapons are unloaded and locked in a secure container during transport. Unloaded weapons and ammunition may be transported in the same locked secure container. Security personnel transporting such weapons should be subject to the requirements of 10 CFR 73.19.

Security personnel using covered weapons to protect shipments of radioactive material or other property being transported to or from the licensee's or certificate holder's facility (whether intrastate or interstate) should ensure that such weapons are maintained in a state of loaded readiness and available for immediate use by personnel accompanying the radioactive material or other property. Security personnel protecting such shipments should also be aware of the restrictions of 18 U.S.C. 922(q)(2) and (q)(3). These statutes impose restrictions on the possession and use of a firearm while in a school zone (i.e., within 304.8 m (1000 ft) of a school – see definitions in 18 U.S.C. 921(a)(25) and (a)(26)). In general, these provisions require firearms in a school zone to be unloaded and secured in a locked container or weapons rack.

12. Periodic Inventories of Enhanced Weapons

The NRC regulations in 10 CFR 73.18(o) set forth requirements for licensees and certificate holders regarding periodic inventories of enhanced weapons. Licensees and certificate holders possessing enhanced weapons should perform periodic accountability inventories of the enhanced weapons in their possession to verify the continued presence of each enhanced weapon that the licensee or certificate holder is authorized to possess. The licensee or certificate holder should periodically perform an accurate and timely inventory of all of enhanced weapons it possesses, document the results, and retain these results in accordance with the records requirements of 10 CFR 73.18(q).

The NRC regulations in 10 CFR 73.18(p) set forth requirements for licensees and certificate holders regarding the discovery that any enhanced weapons they are authorized to possess have been stolen or lost (e.g., following a periodic inventory). Upon such discovery, licensees and certificate holders should notify the NRC and local law enforcement officials in accordance with 10 CFR 73.71. Licensees and certificate holders should also notify ATF of any stolen or lost enhanced weapons, as required by 27 CFR Part 479. Regulatory Guide 5.62 also contains guidance to licensees and certificate holders on making reports to the NRC for stolen or lost enhanced weapons.

The NRC has proposed two types of periodic inventories for enhanced weapons possessed by the licensee or certificate holder to verify that these weapons are not lost, stolen, or uncontrolled, thereby posing a risk to the facility. One inventory would be conducted monthly and the other would be conducted semiannually. Licensees and certificate holders may affix bar-code information to enhanced weapons to facilitate the use of electronic scanning devices and techniques in conducting monthly inventories.

Personnel conducting inventories of enhanced weapons are subject to the fingerprinting and firearms background checks of 10 CFR 73.19. However, these individuals are not required to be trained and qualified to use enhanced weapons. A team of two qualified persons should conduct each inventory.

When a locked secure weapons container located within a protected area, vital area, or material access area (e.g., a ready-service arms locker) has been opened, licensees and certificate holders should inventory and reseal it with a new high-integrity tamper indicating device (TID). A two-person team should also conduct this inventory and resealing. Licensees and certificate holders should store unused TIDs in a manner similar to other security access control devices (e.g., keys, locks, cores) and should maintain a log of serial numbers for issued TIDs.

Licensees and certificate holders should retain any records of inventories of enhanced weapons, as required by 10 CFR 73.18(q).

12.1 Monthly Inventories of Enhanced Weapons

Licensees and certificate holders should conduct a monthly inventory (i.e., a “piece-count” inventory) to verify that the authorized number of enhanced weapons are present at the licensee’s or certificate holder’s facility and that these enhanced weapons are stored in appropriately secured locations. Licensees and certificate holders should verify the presence of each individual enhanced weapon. This inventory should ensure that the internal movement of enhanced weapons does not adversely affect their accountability and control.

The time interval between monthly inventories should be approximately 30 days. Licensees and certificate holders should verify the presence of each enhanced weapon during each monthly inventory. However, for enhanced weapons that are stored in a locked, secure weapons container, located within a protected area, vital area, or material access area, the licensee or certificate holder may instead verify the presence of an intact TID on the weapons container. Licensees and certificate holders shall record the serial number of the intact TID in the monthly inventory records, if that technique was used in lieu of verifying each individual weapon. Enhanced weapons that are located in permanent positions (e.g., a tower or ROWS) should be verified individually rather than through the use of an intact TID.

Licensees and certificate holders are not required to perform a monthly inventory during the month the semiannual inventory is conducted. Thus, over a 12-month period, the licensee and certificate holder should conduct 10 monthly inventories and 2 semiannual inventories of any enhanced weapons it possesses.

12.2 Semiannual Inventories of Enhanced Weapons

Licensees and certificate holders should conduct a semiannual inventory to verify that each authorized enhanced weapon is present at the licensee's or certificate holder's facility and that these weapons are stored in appropriately secured locations. Licensees and certificate holders should verify the presence of each individual enhanced weapon through the verification of each enhanced weapon's serial number.

The time interval between semiannual inventories should be approximately 180 days. Licensees and certificate holders should verify the presence of each enhanced weapon during each semiannual inventory. This inventory includes enhanced weapons that are stored in a locked, secure weapons container, located within a protected area, vital area, or material access area (e.g., a ready-service arms locker), or that is sealed with a TID. For such weapons, the TID should be removed and the serial numbers of the individual weapons verified during the semiannual inventories.

12.3 Discrepancies

Licensees and certificate holders should resolve any inventory discrepancies within 24 hours of discovering the discrepancy. Otherwise, the event should be treated as a lost or stolen enhanced weapon and appropriate notifications made in accordance with 10 CFR 73.18(p) and 10 CFR 73.71.

13. Recordkeeping for Enhanced Weapons

The NRC regulations in 10 CFR 73.18(q) set forth requirements for licensees and certificate holders regarding recordkeeping for the receipt, transfer, and transportation of enhanced weapons. Licensees and certificate holders may integrate any records required under paragraph (q) with records required by ATF relating to the possession of enhanced weapons, and should make these records available to NRC inspectors and ATF inspectors upon request.

Licensees and certificate holders who discover that an enhanced weapon they are authorized to possess is lost or stolen should document this fact in these records. Licensees and certificate holders should also record the completion of periodic inventories, and any discrepancies, in these records.

13.1 Receipt of an Enhanced Weapon

Licensees and certificate holders should maintain a record of each enhanced weapon received. The record of each receipt transaction should contain, at a minimum, the following information:

- (1) date of receipt of the weapon;
- (2) name and address of the transferor (i.e., the person, company, or corporation) who transferred the weapon to the licensee or certificate holder;
- (3) name of the manufacturer of the weapon or the name of the importer (for weapons manufactured outside the United States);
- (4) the model or type, serial number, and caliber or gauge of the weapon; and
- (5) any internal control number (e.g., barcode) assigned to the weapon.

13.2 Transfer of an Enhanced Weapon

Licensees and certificate holders should maintain a record of each enhanced weapon they transfer. The record of each transfer transaction should contain, at a minimum, the following information:

- (1) date of departure of the weapon;
- (2) name and address of the transferee (i.e., person, company, or corporation) who received the weapon; and
- (3) the model or type, serial number, and caliber or gauge of the weapon.

13.3 Transportation of an Enhanced Weapon

Licensees and certificate holders should maintain a record of each enhanced weapon they transport. The record of each transportation transaction should contain, at a minimum, the following information:

- (1) date of departure of the weapon;
- (2) date of return of the weapon;
- (3) purpose of removal of the weapon from the facility;
- (4) name of the person or persons transporting the weapon;
- (5) name of the licensee employee accompanying the transportation, if the person transporting the weapon is a security contract employee;
- (6) name of the person or facility to whom the weapon is being transported; and
- (7) the model or type, serial number, and caliber or gauge of the weapon.

13.4 Record Retention

Licensees and certificate holders possessing enhanced weapons should maintain records required under 10 CFR 73.18(q) for a minimum period of at least 1 year after the licensee's or certificate holder's authority to possess enhanced weapons is terminated, suspended, or revoked. Licensees and certificate holders should also maintain records on all enhanced weapons that have been transferred from the licensee's or certificate holder's facility for a minimum period of 3 years following the transfer or the termination of the facility's license or certificate of compliance, whichever is shorter.

14. Termination, Modification, Suspension, and Revocation of Section 161A Authority

14.1 Termination and Modification

Licensees and certificate holders who desire to modify their combined enhanced-weapons authority and preemption authority (e.g., to obtain different enhanced weapons) should apply to the NRC, in accordance with 10 CFR 73.4, to modify their authority. The licensee's or certificate holder's application to modify their enhanced-weapons authority should provide the same information as is required in an initial application under 10 CFR 73.18(e) and (f).

Licenses and certificate holders who desire to terminate their stand-alone preemption authority, or their combined enhanced-weapons authority and preemption authority should apply to the NRC, in accordance with 10 CFR 73.4, to terminate their authority. Licenses and certificate holders who desire to terminate their combined enhanced-weapons authority and preemption authority should also develop a plan to transfer or dispose of any enhanced weapons they possess. Licenses and certificate holders should include this disposal plan with their application to terminate this authority.

Licenses and certificate holders replacing their enhanced weapons with different types or models of enhanced weapons should also include a plan to transfer or dispose of their existing enhanced weapons, once the required training on the new weapons has been completed and the new weapons are deployed. This transition plan will allow the licensee or certificate holder to maintain their defensive capabilities during the transition from the old to the new weapons. Licenses and certificate holders who are only adding to their enhanced-weapons inventory do not require a transfer or disposal plan.

Licenses and certificate holders who wish to dispose of enhanced weapons, or transfer enhanced weapons that they are no longer authorized to possess, will find guidance in Regulatory Position 10 regarding the transfer or disposal of enhanced weapons.

14.2 Suspension and Revocation

The NRC's criteria for suspending or revoking a licensee's or certificate holder's Section 161A authority are based upon significant events by the licensee or certificate holder that could include deliberate misconduct involving enhanced weapons; material false statements in applying for enhanced weapons; and criminal convictions regarding the receipt, possession, transfer, and inventory of enhanced weapons. Because removal of enhanced weapons could significantly decrease a licensee's or certificate holder's defensive capability, the NRC would apply this standard to actions by the licensee or certificate holder, not to actions by individual security officers. For example, suspension or revocation of Section 161A authority would not normally be appropriate in situations where an individual officer steals or attempts to steal an enhanced weapon, provided the licensee's or certificate holder's records and inventory control programs detect the theft.

Upon a determination that 161A authority should be revoked, the NRC will send the licensee or certificate holder a written notice of the agency's intent to revoke the licensee's or certificate holder's stand-alone preemption authority or combined enhanced-weapons authority and preemption authority. Such revocation may be in whole or in part. The notice would set forth the particular facts that serve as the basis for the agency's proposed action. The affected licensee or certificate holder would have the opportunity to provide a timely response or rebuttal to the NRC regarding the agency's proposed action. After consideration of any response or rebuttal information from the licensee or certificate holder, the NRC will issue a final decision. The provisions of Subpart B, "Procedure for Imposing Requirements by Order, or for Modification, Suspension, or Revocation of a License, or for Imposing Civil Penalties," of 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders" (Ref. 10), regarding the opportunity to request a hearing, are applicable to this type of agency action.

14.3 Reapplication for Section 161A Authority

Licenses and certificate holders who have had their stand-alone preemption authority or their combined enhanced-weapons authority and preemption authority terminated, suspended, or revoked, may reapply to the NRC for such authority by filing a new application under the provisions of 10 CFR 73.18.

14.4 NRC Communications to ATF

Within 3 business days of issuing a decision to terminate, modify, suspend, or revoke a licensee's or certificate holder's combined enhanced-weapons authority and preemption authority, the NRC will notify ATF of that decision. The NRC should make such notification to the position or point of contact designated by ATF in the memorandum of understanding between the NRC and ATF.

15. Firearms Background Check for Armed Security Personnel

The NRC regulations in 10 CFR 73.19 set forth the requirements for licensees and certificate holders to submit fingerprints and personal information to the NRC for all security personnel whose official duties require access to covered weapons. Only licensees and certificate holders that fall within the Commission-designated classes of facilities, radioactive material, or other property specified in 10 CFR 73.19(c) (Regulatory Position 1.7 above) and who use covered weapons as part of their protective strategy, are subject to the requirements for fingerprinting and firearms background checks.

15.1 General Requirements for Fingerprints and Firearms Background Checks

The NRC regulations in 10 CFR 73.19(b) set forth the general requirements for licensees and certificate holders to submit fingerprints and personal information to the NRC for all security personnel whose official duties require access to covered weapons. Only licensees and certificate holders that fall within the Commission-designated classes of facilities, radioactive material, or other property specified in 10 CFR 73.19(c) (Regulatory Position 1.7 above) and who use covered weapons as part of their protective strategy are subject to this requirement for fingerprinting and firearms background checks. Completion of firearms background checks for such licensees and certificate holders is mandatory, regardless of whether the licensee or certificate holder applies to the NRC to obtain stand-alone preemption authority or combined enhanced-weapons authority and preemption authority.

The requirements for fingerprinting and firearms background checks apply to all security personnel of affected licensees or certificate holders, when the security personnel's official duties require access to covered weapons. This regulation applies whether these security personnel are directly employed by the licensee or certificate holder, or they are employed by a security contractor who provides security services to the licensee or certificate holder. However, because of the structure of Section 161A of the AEA, this regulation does not apply to applicants for a license or a CoC until the NRC issues the license or the CoC. Consequently, applicants for a license or a CoC cannot initiate any firearms background checks on their security personnel until after the NRC issues their license or CoC.

This regulation would apply to individuals in the licensee's or certificate holder's security organization who handle, use, maintain, and repair covered weapons and who inventory enhanced weapons. Specifically, individuals performing official duties involving access to covered weapons, including those carrying weapons (security officers, supervisors, and response personnel); firearms instructors; and armorers (those who repair and maintain weapons); those who issue and receive weapons; and those who inventory enhanced weapons. The regulation does not apply to warehouse or supply personnel who receive shipments of covered weapons, provided the weapons remain secured in their shipping containers, are promptly turned over to security personnel, and are promptly placed in secure weapons storage areas (e.g., armories).

Licensees and certificate holders may have already submitted the fingerprints of their security personnel as part of an access authorization or personal security clearance programs. However, these regulations require licensees and certificate holders to submit a new set of fingerprints and the personal information required by new NRC Form 754 (Ref. 11) to the NRC to accomplish the firearms background

check required by Section 161A of the AEA. The FBI has informed the NRC that it requires a new set of fingerprint images, along with the information on the NRC Form 754, to perform the firearms background check.

After completing the firearms background check, the FBI will return to the NRC one of three possible responses: “proceed,” “delayed,” or “denied”:

- a. “Proceed” means the individual has satisfactorily completed the check.
- b. “Delayed” means the FBI needs additional information to complete the check.
- c. “Denied” means the FBI has concluded the individual is prohibited from possessing firearms under 18 U.S.C. 922.

The NRC will forward the response to the submitting licensee or certificate holder, who will provide it to the individual security officer.

Current security officers or applicants for a security officer position who receive a “delayed” response from the FBI will be able to provide the additional information that the FBI it requires to complete the background check. Current security officers or applicants for a security officer position who receive a “denied” response from the FBI will be able to appeal the “denied” decision to the FBI. If, upon appeal, the FBI reverses its decision, it will issue a “proceed” response to the NRC for forwarding to the licensee or certificate holder. Individuals should submit appeals to the FBI using the FBI’s **“Firearms Background Check Appeal brochure”** (Ref.12).

Since the firearms background check regulations are mandatory, the NRC has established various transition times for current licensees and certificate holders to comply with the requirements for completion fingerprinting and firearms background checks. These compliance dates are tied to the effective date of a final rule and include the following provisions:

- a. Licensees and certificate holders must begin submission of fingerprints and NRC Form 754 within 30 days after the effective date of the final rule.
- b. Licensees and certificate holders must complete a satisfactory firearms background check within 180 days after the effective date of the final rule. Completed satisfactorily means the individual has received a “proceed” response from the FBI.
- c. After these 180 days, licensees and certificate holders must remove from any duties that require access to covered weapons any individuals whose current duties require access to covered weapons and who have not completed a satisfactory firearms background check.
- d. After these 180 days, licensees and certificate holders must not assign duties that require access to covered weapons to individuals who have not completed a satisfactory firearms background check.
- e. After these 30 days, licensees and certificate holders must remove from any duties that require access to covered weapons any individual whose current duties require access to covered weapons and who has received a “denied” response from the FBI. However, individuals may be assigned to duties that require access to covered weapons, if the individual appeals the decision to the FBI and the FBI reverses its original decision and issues a “proceed” response.

- f. Within this 180-day period, licensees and certificate holders who currently possess enhanced weapons under an authority other than Section 161A of the AEA must remove any individual from duties that require access to enhanced weapons, if the individual has received a “delayed” response from the FBI. During this 180-day period, such individuals may be assigned duties that require access to standard weapons. After the 180-day period, these licensees and certificate holders must not assign duties that require access to covered weapons to individuals who have not completed a satisfactory firearms background check.

Applicants for a license or a CoC who fall within the Commission-designated classes of facilities, radioactive material, or other property specified in 10 CFR 73.19(c) and who plan to use covered weapons as part of their protective strategy, are not subject to these requirements and may not commence firearms background checks until after the NRC has issued their license or CoC. These new licensees and certificate holders must complete firearms background checks as follows:

- a. New licensees and certificate holders must complete satisfactory firearms background checks for all security personnel whose duties require access to covered weapons before those personnel are permitted access to any covered weapons.
- b. New licensees and certificate holders must complete satisfactory firearms background checks for all security personnel whose duties require access to covered weapons before the licensee’s or certificate holder’s initial receipt of any source material, special nuclear material, or radioactive material specified under the license or CoC.

Licensees and certificate holders may, at their discretion, return security personnel who receive adverse firearms background checks to duties requiring access to covered weapons if they receive a “proceed” response from the FBI in a subsequent firearms background check.

Security personnel who have completed a satisfactory firearms background check, but who have had a break in service with the licensee, certificate holder, or their security contractor of greater than 1 week, or who have transferred from a different licensee or certificate holder, are required to complete a new satisfactory firearms background check. The licensee and certificate holder is required to complete a new firearms background check for such individuals, even though their most recent firearms background check was completed satisfactorily within the last 3 years.

A change in the licensee, certificate holder, or ownership of a facility, radioactive material, or other property, or a change in the security contractor that provides security services for protecting such facilities, radioactive material, or other property, does not require a new firearms background check for security personnel whose official duties require access to covered weapons.

Firearms background checks are not a substitute for any other background checks or investigations required for the licensee’s or certificate holder’s security personnel under any other NRC regulations (Ref. 13) (e.g., “R” and “U” material access authorizations, “Q” and “L” personal security clearances, or criminal history and background checks for access to nuclear power reactors or Safeguards Information).

Security personnel who have completed a satisfactory firearms background check under Commission orders issued before the **insert effective date of the final rule** final rule designating classes of facilities, radioactive material, or other property are not subject to a new initial firearms background check under 10 CFR 73.19(e). However, security personnel are subject to the requirements for periodic firearms background checks in 10 CFR 73.19(f).

To facilitate licensee and certificate holder preparation for these firearms background checks, on May 13, 2008, the NRC issued Regulatory Issue Summary (RIS)-2008-10, "Notice Regarding Forthcoming Federal Firearms Background Checks" (Ref. 14), to all licensees and certificate holders that might be subject to these requirements for firearms background checks. Subsequently, on December 22, 2008, the NRC issued Supplement 1 to RIS-2008-10 to provide further information (Ref. 15). One of the issues discussed in RIS-2008-10 is the FBI's Voluntary Appeal File (VAF) program (Ref. 16), wherein individuals can apply to the FBI to check their status in the NICS databases. This would permit security officers to resolve any adverse records (that might, for example, result in a "delayed" NICS response), before the firearms background checks required by this regulation are formally initiated. The FBI issues a unique personal identification number to individuals who complete the VAF program and receive a "proceed" NICS response. Security personnel can include their VAF number on the NRC Form 754 they submit for a firearms background check. Inclusion of a VAF number will greatly reduce the likelihood that the FBI's NICS databases would generate an incorrect "delayed" or "denied" response.

15.2 Firearms Background Check Submittals

The NRC regulations in 10 CFR 73.19(d) and (e) set forth the requirements for licensees and certificate holders to submit fingerprints and personal information to the NRC for all security personnel whose official duties require access to covered weapons. A firearms background check would consist of two parts: a check of an individual's fingerprints in the FBI's fingerprint system and a check of the individual's identity in the FBI's NICS.

Licensees and certificate holders should submit the following to the NRC, in accordance with 10 CFR 73.4, for all security personnel requiring a firearms background check:

- (1) a set of fingerprint impressions, in accordance with 10 CFR 73.19(k); and
- (2) a completed NRC Form 754, "Armed Security Personnel Firearms Background Check" (Ref. 11).

The NRC developed NRC Form 754 for licensee or certificate holder security personnel to submit the necessary information that the NRC forwards to the FBI to perform the NICS portion of the firearms background check. Security officers can view or print the blank form electronically, or they can complete the form online and then print it. However, they will not be able to save a completed form electronically due to security concerns regarding the protection of personal identity information contained in a completed form.

[Note: The final version of NRC Form 754 has not yet been approved by OMB under the provisions of the Paperwork Reduction Act. Therefore, NRC Form 754 has not yet been placed on the NRC's Electronic Reading Room Web site for forms. A copy of the proposed NRC Form 754 (in "fillable" Portable Document Format) may be found at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>, under ADAMS Accession No. ML092650459.

In lieu of submitting a copy of each individual completed NRC Form 754 to the NRC, licensees and certificate holders may submit a single document to the NRC containing a consolidated set of data from the NRC Forms 754 completed by multiple security officers. Licensees and certificate holders submitting to the NRC either an individual NRC Form 754 or consolidated data from multiple forms electronically should ensure that any Personally Identifiable Information (PII) contained within these documents is protected, in accordance with 10 CFR 73.4.

Licenses and certificate holders should retain a copy of each NRC Form 754 submitted to the NRC for a period of 1 year following the termination of an individual's access to covered weapons or the denial of an individual's access to covered weapons.

The NRC will return the results of the firearms background check to the submitting licensee or certificate holder. Under 10 CFR 73.19(n), the licensee or certificate holder should provide the results to the individual security officer who completed the NRC Form 754. This will allow the individual to understand his or her status pertaining to the possession and use of covered weapons at NRC-licensed facilities and would also serve as the starting point for any appeals by the officer.

15.3 Periodic Firearms Background Check Submittals

The NRC regulations in 10 CFR 73.19(f) set forth the requirements for licenses and certificate holders to periodically submit fingerprints and personal information to the NRC for all security personnel whose official duties require access to covered weapons. Licenses and certificate holders should complete a satisfactory firearms background check by submitting the information required by 10 CFR 73.19(e) at least once every 3 years for all security personnel whose official duties require access to covered weapons. Licenses and certificate holders, at their discretion, may perform periodic (i.e., recurring) firearms background checks more frequently than once every 3 years (e.g., to enable the licensee or certificate holder to synchronize the submission of fingerprints for access authorization checks [for security personnel] with fingerprints submitted for firearms background checks).

Licenses and certificate holders should submit the new fingerprint images and a new NRC Form 754 within 3 years of the last completed satisfactory firearms background check. Licenses and certificate holders may continue a security officer's access to covered weapons pending the completion of these recurring firearms background checks.

Licenses and certificate holders should remove from duties requiring access to covered weapons any individual who receives an adverse ("delayed" or "denied") firearms background check. Licenses and certificate holders may return individuals who have received an adverse firearms background check to duties requiring access to covered weapons if they subsequently complete a satisfactory firearms background check.

15.4 Notification of the Removal of a Security Officer

The NRC regulations in 10 CFR 73.19(g) set forth the requirements to notify the NRC of actions taken by a licensee or certificate holder to remove an individual from access to covered weapons because of the discovery or occurrence of any disqualifying events listed under 18 U.S.C. 922(g) or (n), and the ATF's implementing regulations in 27 CFR Part 478 (Ref. 8) that would prohibit them from possessing or receiving firearms or ammunition. Within 72 hours after taking action to remove security personnel from duties requiring access to covered weapons, licenses and certificate holders should notify the NRC Headquarters Operations Center of such occurrences by telephone at the number specified in Table 1 of Appendix A, "U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses," to 10 CFR Part 73.

Licenses and certificate holders are not required to notify the NRC if the affected security officer voluntarily notifies the licensee's or certificate holder's security management within 3 working days of the occurrence of the disqualification. The NRC has created this provision to encourage the security officers to self-identify by promptly providing such information to the licensee or certificate holder.

Under 10 CFR 73.18(o), the NRC will provide information received from notifications made under 10 CFR 73.19(g) to the appropriate Federal or State agency as a suspected violation of Federal or State law.

15.5 Security Officer Responsibilities

The NRC regulations in 10 CFR 73.19(h) set forth the requirements for security officers whose official duties require access to covered weapons to notify the licensee's and certificate holder's security management within 3 working days of the existence of any disqualifying status or upon the occurrence of any disqualifying events listed under 18 U.S.C. 922(g) or (n), and the ATF's implementing regulations in 27 CFR Part 478 (Ref. 8) that would prohibit them from possessing or receiving firearms or ammunition. Such notifications should be made to the licensee's or certificate holder's security management, regardless of whether the security officer is employed by the licensee or certificate holder or by a security contractor providing security services to the licensee or certificate holder.

15.6 Training Security Personnel on Disqualifying Events

The NRC regulations in 10 CFR 73.19(j) set forth the requirements for licensees and certificate holders to include, within their NRC-approved training and qualification plans, information on disqualifying events listed under 18 U.S.C. 922(g) or (n) and the ATF's implementing regulations in 27 CFR Part 478, that would prohibit personnel from possessing or receiving firearms or ammunition. This requirement is intended to assist security officers in understanding their obligation to report disqualifying events, and thus to encourage self-identification. The obligation to report disqualifying events remains as long as the security officer's official duties require access to covered weapons.

15.7 Submission of Fingerprint Cards

The NRC regulations in 10 CFR 73.19(k) set forth the requirements for licensees and certificate holders to submit fingerprint cards to the NRC in support of firearms background checks. The NRC's process for submitting fingerprint checks is similar to the existing regulations in 10 CFR 73.57(d) (Ref. 2). Licensees and certificate holders, using an appropriate method listed in 10 CFR 73.4, should submit one completed, legible standard fingerprint card (FBI Form FD-258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records, for each individual requiring a firearms background check, to the NRC's Director, Division of Facilities and Security, Mail Stop T6-E46, ATTN: Criminal History Check. Copies of this form may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling (301) 415-6157, or by e-mail to Forms.Resource@nrc.gov. Other guidance in 10 CFR 73.4 includes alternative formats, including electronic submissions, which may be practicable.

Licensees and certificate holders should add the following information to the FBI Form FD-258 fingerprint card or electronic fingerprint records submitted to the NRC:

- a. For fingerprints submitted to the NRC for the completion of a firearms background check only, the licensee or certificate holder should enter the terms "MDNRCNICZ" in the "ORI" field and "Firearms" in the "Reasons Fingerprinted" field of FBI Form FD-258.
- b. For fingerprints submitted to the NRC for the completion of both an access authorization check or personnel security clearance check and a firearms background check, the licensee or certificate holder should enter the terms "MDNRC000Z" in the "ORI" field and "Employment and Firearms" in the "Reasons Fingerprinted" field of FBI Form FD-258.

Licenses and certificate holders should establish procedures to ensure that the quality of the fingerprints minimizes the rejection rate of fingerprint cards or records caused by illegible or incomplete information. The NRC will review fingerprints for firearms background checks for completeness and will return any Form FD-258 or other fingerprint record containing omissions or evident errors to the licensee or certificate holder for corrections.

Licenses and certificate holders are charged a fee for processing fingerprint checks. This fee includes one free resubmission if the initial submission is returned by the FBI, because the fingerprint impressions cannot be classified. The one free resubmission should contain the FBI transaction control number. If additional submissions are necessary the FBI will treat them as an initial submittal, which would require a second payment of the processing fee. The payment of a new processing fee entitles the submitter to an additional free resubmittal, if necessary. Previously rejected submissions may not be included with subsequent submissions, because the submittal will be rejected automatically.

The Commission will forward to the submitting licensee or certificate holder all data received from the FBI as a result of the licensee's or certificate holder's application(s) for fingerprint background checks, including the FBI's fingerprint record. For a firearms background check by itself, the FBI will only provide the "proceed," "delayed," or "denied" responses to the NRC, and will not provide the FBI's fingerprint record.

15.8 Fees for Firearms Background Checks and Fingerprinting

The NRC regulations in 10 CFR 73.19(m) set forth the requirements for licenses and certificate holders to submit fees to the NRC in support of firearms background checks. The NRC intends to charge the same fee for fingerprints submitted for a firearms background check as the fee currently imposed for fingerprints submitted for other NRC-required criminal history checks, including fingerprints (i.e., an NRC administrative fee plus the FBI's processing fee). In addition, the NRC may charge an administrative fee for processing the NICS check information. But no FBI fee will be charged for the NICS check. The NRC's approach would be similar to the regulations in 10 CFR 73.57(d).

Licenses and certificate holders should submit payment with the fingerprint application, and payment must be made by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC."¹ Combined payment for multiple applications is acceptable. The Commission publishes the amount of the application fee for the firearms background check on the NRC's public Web site.² The NRC will directly notify licenses and certificate holders who are subject to 10 CFR 73.19 of any fee changes.

15.9 NRC Processing of the NICS Portion of the Firearms Background Check

The NRC regulations in 10 CFR 73.19(n) set forth the requirements for the NRC to process firearms background checks. Once the NRC has received the information from the submitting licensee or certificate holder, it will forward the information contained in the NRC Form 754 to the FBI for evaluation against the FBI's NICS databases. Upon completion of the NICS portion of the firearms background check, the FBI will inform the NRC of the results, whether "proceed," "delayed," or "denied," and the associated NICS transaction number. The NRC will forward these results and the

¹ For guidance on making electronic payments, contact the NRC's Security Branch, Division of Facilities and Security, Office of Administration at (301) 415-7404.

² Information on the current fee amount for Firearms Background Checks is found on the NRC's Electronic Submittals web page at <http://www.nrc.gov/site-help/e-submittals.html>, in the "Electronic Submittal System Notices" box.

associated NICS transaction number to the submitting licensee or certificate holder. The licensee or certificate holder should provide this information to the security officer.

15.10 Appeals and Resolution of Erroneous System Information

The NRC regulations in 10 CFR 73.19(p) set forth the requirements for security officers to appeal adverse firearms background checks (i.e., a “denied” or “delayed” NICS response). Individuals who have received an adverse firearms background check may obtain further information from the FBI on the reason for the adverse response and either provide additional information to resolve a “delayed” response, or appeal a “denied” response. Security officers or applicants for a security officer position would be required to apply directly to the FBI for these actions (i.e., the licensee or certificate holder may not appeal to the FBI on behalf of the security officer or applicant).

Individuals whose official duties require access to covered weapons and who receive a “denied” or “delayed” NICS response should not be assigned duties requiring access to covered weapons while the appeal is pending, or during the process of providing and evaluating any necessary additional information to the FBI to resolve a “delayed” response.

Licensees and certificate holders should provide information on the FBI’s procedures for appealing a “denied” response to the denied individual, or on providing additional information to the FBI to resolve a “delayed” response. FBI appeals brochure “appeals brochure title” (Ref. 12) contains further information on appealing a “denied” NICS response or providing additional information to the FBI regarding a “delayed” response. [Note: the FBI brochure is under development and information on it will be included in a final regulatory guide.]

An individual who receives a "denied" or "delayed" NICS response to a firearms background check may request the reason for the NICS response from the FBI. The licensee or certificate holder should provide to the individual who has received the “denied” or “delayed” response the unique NICS transaction number associated with his or her specific firearms background check. The process for requesting from the FBI the reason for a “denied” or “delayed” NICS response includes the following:

- a. The individual should make the request for the reason for a “denied” or “delayed” NICS response to a firearms background check in writing to the FBI and must include the NICS transaction number.
- b. The individual should send the request to the Federal Bureau of Investigation; NICS Section; Appeals Service Team, Module A-1; P.O. Box 4278; Clarksburg, WV 26302-9922.

The FBI will provide the individual with the reasons for the “denied” or “delayed” response. The FBI will also indicate whether it requires additional information or documents to support an appeal or resolution: for example, where there is a claim that the adverse record in question does not pertain to the individual who received the “denied” response. If the individual wishes to challenge the accuracy of the record upon which the “denied” or “delayed” response is based, or if the individual wishes to assert that his or her rights to possess or receive a firearm have been restored and that the “delayed” or “denied” response was in error, he or she should make application first to the FBI, using the following process:

- a. The individual should file any appeal of a “denied” response or file a request to resolve a “delayed” response within 45 calendar days of the date the NRC forwards the results of the firearms background check to the licensee or certificate holder.

- b. Individuals appealing a “denied” response or resolving a “delayed” response are responsible for providing the FBI with any additional information required to resolve the adverse response. Such persons should supply this information to the FBI within 45 calendar days after the FBI’s response is issued.
- c. Individuals may request extensions of the deadline for supplying the additional information requested by the FBI in support of a timely appeal or resolution request. Individuals should make such extension requests directly to the FBI. The FBI may grant such an extension request for good cause, as determined by the FBI.
- d. The appeal or request should include appropriate documentation or record(s) establishing the legal or factual basis for the challenge. Any record or document of a court or other Government entity or official furnished in support of an appeal must be certified as a true copy by the court or other Government entity or official.
- e. The individual may supplement his or her initial appeal or request—subsequent to the 45-day filing deadline—with additional information as it becomes available; for example, where obtaining a true copy of a court transcript may take longer than 45 days. The individual should note in his or her appeal or request any information or records that have been requested but are not yet available.

If the individual is notified that the FBI is unable to resolve the appeal, he or she may then apply for correction of the record directly to the agency from which the information forming the basis of the denial originated. If the individual is notified by the originating agency that it requires additional information or documents, the individual may provide them to the originating agency. If the record is corrected as a result of the appeal to the originating agency, the individual should notify the FBI and submit written proof of the correction.

An individual who has satisfactorily appealed a “denied” response or resolved a “delayed” response may provide written consent to the FBI to maintain information about himself or herself in a Voluntary Appeal File (VAF) to be established by the FBI and checked by the NICS for the purpose of preventing the erroneous denial or extended delay by the NICS of any future or periodic firearms background checks. Individuals should apply for the VAF under the FBI Brochure “NICS Voluntary Appeal File Brochure” (Ref. 16). The brochure is available in both English and Spanish and can be found on the FBI’s web page <http://www.fbi.gov/about-us/cjis/nics/nics>. The FBI’s Web site at <http://foia.fbi.gov/vaf.htm> contains the FBI’s Privacy Impact Assessment of the VAF program.

15.11 Untimely Appeals

The NRC regulations in 10 CFR 73.19(p)(7) set forth the consequences of an untimely submission to the FBI by an individual of his or her rebuttal information to appeal an adverse firearms background check. The failure of an individual to initiate a timely appeal or resolution request or provide additional information requested by the FBI will result in the barring or abandonment of the individual’s appeal or resolution request. Appeals or resolution requests that are barred or abandoned because of the failure of the individual to comply with these submission deadlines may only be pursued after the submission of a new firearms background check request. The submission of a new firearms background check is at the sole discretion of the licensee or certificate holder.

15.12 Protection of Information in Firearms Background Checks

The NRC regulations in 10 CFR 73.19(q) set forth the requirements for licensees and certificate holders to protect personally identifiable information of security personnel that has been obtained in support of the firearms background check requirements.

The licensee or certificate holder should not disclose the firearms background check record or personally identifiable information to persons other than the subject individual, his or her representative, or those who need to know the information to perform assigned duties in the process of granting access to covered weapons. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need to know it.

The personal information obtained for an individual from a firearms background check may be transferred to another licensee or certificate holder under the following circumstances:

- (1) upon the individual's written request to the licensee or certificate holder holding the data to disseminate the information contained in his or her file; and
- (2) the licensee or certificate holder verifies such information as name, date of birth, social security number, sex, and other applicable physical characteristics for identification.

Licensees and certificate holders should also make firearms background check records and NRC Forms 754 obtained under this regulatory position available for examination by an authorized representative of the NRC to determine compliance with applicable regulations and laws.

D. IMPLEMENTATION

The purpose of this regulatory position is to provide information to applicants and licensees regarding the NRC's plans for using this draft regulatory guide. The NRC does not intend or approve any imposition or backfit in connection with its issuance. The firearms background checks are a statutory mandate and, therefore, fall under the adequate protection exception contained within the backfit regulations. However, obtaining combined enhanced-weapons authority and preemption authority or stand-alone preemption authority is a voluntary action by licensees and certificate holders and thus is not considered a backfit.

To the extent that some of the specific implementing details of the firearms background checks described in this proposed rule associated with this draft guide are not specifically mandated by statute, or the Firearms Guidelines issued by the Commission with the approval of the U.S. Attorney General, the Commission believes that such measures are essential for the effective implementation of the rule's requirements, and thus necessary for the adequate protection to the health and safety of the public and are in accord with the common defense and security.

The NRC has issued this draft guide to encourage public participation in its development. This is a new area of the NRC's regulations and therefore, applicants, licensees, and certificate holders have not previously established an acceptable alternative method for complying with specified portions of the NRC's regulations. Accordingly, the methods to be described in the active guide will reflect public comments and will be used in evaluating submittals in connection with applications for combined enhanced-weapons authority and preemption authority and applications for stand-alone preemption authority.

GLOSSARY

The following terms are used in this regulatory guide and are consistent with the definitions of these terms contained in Title 10 of the *Code of Federal Regulations* (10 CFR) 73.2, “Definitions.”

Adverse firearms background check—a firearms background check that has resulted in a “denied” or “delayed” response from the National Instant Criminal Background Check System (NICS).

Combined enhanced-weapons authority and preemption authority—the authority of the Commission, pursuant to 42 U.S.C. § 2201a, to authorize licensees or certificate holders, or the designated security personnel of the licensee or certificate holder, to transfer, receive, possess, transport, import, and use one or more categories of enhanced weapons, notwithstanding any local, State, or certain Federal firearms laws (including regulations). Licensees and certificate holders may apply for this combined authority in a single application.

Licensees and certificate holders desiring to obtain enhanced-weapon authority must also obtain preemption authority due to the structure of the statute (42 U.S.C. § 2201a) created by Congress (i.e., due to interactions between 42 U.S.C. § 2201a and existing firearms prohibitions in 18 U.S.C. § 922 and 26 U.S.C. Chapter 53). The terms “combined enhanced-weapons authority and preemption authority” and “stand-alone preemption authority” were created by the NRC in 10 CFR 73.18 (see Ref. 17) to clarify the differences and interrelationship between these two authorities.

Covered weapon—any handgun, rifle, shotgun, short-barreled shotgun, short-barreled rifle, semi-automatic assault weapon, machine gun, ammunition for any of these weapons, or large-capacity ammunition-feeding device, as specified under 42 U.S.C. 2201a. The term “covered weapons” includes both enhanced weapons and standard weapons. The terms “handgun,” “rifle,” “shotgun,” “short-barreled shotgun,” “short-barreled rifle,” “semi-automatic assault weapon,” “machine gun,” “ammunition,” and “large-capacity ammunition-feeding device” specified in 10 CFR 73.18 and 10 CFR 73.19 have the same meaning as these terms in the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regulations at 27 CFR 478.11, “Meaning of Terms,” (Ref. 8).

Enhanced weapon—any short-barreled shotgun, short-barreled rifle, or machine gun. Enhanced weapons do not include destructive devices as defined in 18 U.S.C. 921(a)(4). Explosives or weapons with a bore diameter greater than 12.7 millimeters (0.5-inches or .50-caliber) are considered destructive devices. Enhanced weapons do not include standard weapons.

Federal firearms license (FFL)—a license issued by ATF under 27 CFR Part 478 to possess and transfer firearms and/or ammunition.

Firearms background check—a background check by the U.S. Attorney General, pursuant to 42 U.S.C. 2201a, that includes a check against the Federal Bureau of Investigation’s (FBI’s) fingerprint system and the NICS.

Firearms guidelines—a document approved by the Commission and the U.S. Attorney General in accordance with 42 U.S.C. § 2201a(d) that provides guidance and direction to the three Federal agencies implementing the provisions of 42 U.S.C. § 2201a. The Firearms Guidelines were published in the *Federal Register* on September 11, 2009 (see Ref. 6).

NICS—the National Instant Criminal Background Check System established by Section 103(b) of the Brady Handgun Violence Prevention Act, Public Law 103–159 (107 Statute 1536) and operated by the FBI.

NICS response—a response provided by the FBI as the result of a firearms background check against the NICS. A response from NICS to a firearms background check may be “proceed,” “delayed,” or “denied.” The terms “proceed,” “delayed,” and “denied” have the same meaning as these terms in the FBI’s regulations in 28 CFR 25.2, “Definitions.”

Satisfactory firearms background check—a firearms background check that has resulted in a “proceed” NICS response.

Stand-alone preemption authority—the authority of the Commission, pursuant to 42 U.S.C. 2201a, to authorize licensees or certificate holders, or the designated security personnel of a licensee or certificate holder, to transfer, receive, possess, transport, import, or use one or more categories of standard weapons or enhanced weapons, notwithstanding any local, State, or certain Federal firearms laws (including regulations).

Licensees and certificate holders desiring to obtain enhanced-weapon authority must also obtain preemption authority due to the structure of the statutory language in 42 U.S.C. 2201a (i.e., due to interactions between 42 U.S.C. 2201a and existing firearms prohibitions found in 18 U.S.C. 922). However, licensees and certificate holders not seeking to obtain enhanced weapons may obtain preemption authority by itself. The terms “combined enhanced-weapons authority and preemption authority” and “stand-alone preemption authority” were created by the NRC in 10 CFR 73.18 (see ref. 17) to clarify the differences and interrelationship between these two authorities.

Standard weapon—any handgun, rifle, shotgun, semi-automatic assault weapon, or large-capacity ammunition-feeding device. Standard weapons do not include enhanced weapons. Standard weapons are considered “covered weapons.”

REFERENCES³

1. Atomic Energy Act of 1954, as amended (42 U.S.C. § 2201a), U.S. Government Printing Office, Washington, DC.⁴
2. 10 CFR Part 73, “Physical Protection of Plants and Materials,” U.S. Nuclear Regulatory Commission, Washington, DC.
3. National Firearms Act, (26 U.S.C. Chapter 53), U.S. Government Printing Office, Washington, DC.
4. 27 CFR Part 479, “Machine Guns, Destructive Devices, and Certain Other Firearms,” U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives, Washington, DC.
5. Energy Policy Act of 2005 (42 U.S.C. § 15801), U.S. Government Printing Office, Washington, DC.
6. 74 FR 46800, “Notice of Issuance of Guidelines on Use of Firearms by Security Personnel; Notice of Effective Date of Statute,” *Federal Register*, Volume 74, Number 175, pages 46800–46806, September 11, 2009, Washington, DC.
7. Gun Control Act (18 U.S.C. Chapter 44), U.S. Government Printing Office, Washington, DC.
8. 27 CFR Part 478, “Commerce in Firearms and Ammunition,” U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives, Washington, DC.
9. Regulatory Guide 5.62, U.S. Nuclear Regulatory Commission, Washington, DC.
10. 10 CFR Part 2, “Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,” U.S. Nuclear Regulatory Commission, Washington, DC.
11. NRC Form 754. “Armed Security Personnel Firearms Background Check,” (ADAMS Accession No. ML092650459), U.S. Nuclear Regulatory Commission, Washington, DC.
12. “Firearms Background Check Appeals Brochure,” Federal Bureau of Investigation, Washington, DC.⁵
13. 10 CFR Chapter 1, “U.S. Nuclear Regulatory Commission,” Washington, DC.

³ Publicly available NRC published documents are available electronically through the Electronic Reading Room on the NRC’s public Web site at: <http://www.nrc.gov/reading-rm/doc-collections/>. The documents can also be viewed on-line or printed for a fee in the NRC’s Public Document Room (PDR) at 11555 Rockville Pike, Rockville, MD; the mailing address is USNRC PDR, Washington, DC 20555; telephone 301-415-4737 or (800) 397-4209; fax (301) 415-3548; and e-mail pdr.resource@nrc.gov.

⁴ Copies of the non-NRC documents included in these references may be obtained directly from the publishing organization.

⁵ Copies of the FBI’s firearms background check appeals brochure can be found at the FBI web page <http://www.fbi.gov/hq/cjisdnics.htm>

14. RIS-2008-10, “Notice Regarding Forthcoming Federal Firearms Background Checks,” May 13, 2008 (ADAMS Accession No. ML073480158), U.S. Nuclear Regulatory Commission, Washington, DC.
15. RIS-2008-10, Supplement 1, “Notice Regarding Forthcoming Federal Firearms Background Checks,” December 22, 2008 (ADAMS Accession No. ML082340897), U.S. Nuclear Regulatory Commission, Washington, DC.
16. “NICS Voluntary Appeal File (VAF) Brochure,” Federal Bureau of Investigation, Washington, DC.⁶
17. 76 FR xxxx, 10 CFR Part 73, “Proposed Rule—Enhanced Weapons, Firearms Background Checks, and Security Event Notifications,” *Federal Register*, Volume 76, Number xxx, pages xxxxx–xxxxx, Date, 2011, Washington, DC.

⁶ Copies of the FBI’s VAF application brochure can be found at the FBI web page <http://www.fbi.gov/hq/cjisd/nics.htm>.