

Group A

FOIA/PA No: 2014-0478

**RECORDS ALREADY PUBLICLY AVAILABLE AND BEING
RELEASED IN THEIR ENTIRETY**

- 1. ML14069A145 – One Pager on Licensee’s Application Process Issues for Obtaining Authority under Section 161A of the Atomic Energy Act of 1954.**
- 2. ML13121A322 – Staff Requirements memorandum [SRM] – SECY-13-006.**
- 3. ML12339A049 – SECY-13-006.**
- 4. ML12339A051 – In the Matter of Interim Class of NRC-Licensed Facilities, EA-12-244.**
- 5. ML100321956 – Draft Regulatory Guide, DG-5020, Applying for Enhanced-Weapons Authority, Applying for Preemption Authority, and Performing Firearms Background Checks under 10 CFR Part 73.**
- 6. 74 Fed. Reg. 46800 – Notice of Issuance of Guidelines on Use of Firearms by Security Personnel; Notice of Effective Date of Statute (September 11, 2009).**
- 7. 76 Fed. Reg. 26200 – Proposed Rule (February 3, 2011).**
- 8. 76 Fed. Reg. 23515 – Proposed Rule; Extension of comment period (April 27, 2011).**
- 9. 78 Fed. Reg. 2214 – Supplemental Proposed Rule (January 10, 2013).**

March 7, 2014

One Pager on Licensee's Application Process Issues for Obtaining Authority under Section 161A of the Atomic Energy Act of 1954

Following the guidance of Section 161A of the *Atomic Energy Act of 1954*, as amended (AEA), the NRC's, "Firearms Guidelines" require the Commission to designate classes of facilities, radioactive material being transported, or other property as appropriate for either combined enhanced weapons authority and preemption authority (enhanced weapons authority) or for standalone preemption authority (preemption authority). The Commission has published a proposed rule that would designate a limited number of classes of facilities as eligible to apply for Section 161A authority. The final rule for this action is still under development. Until the final rule is published, licensees cannot apply under these new regulations.

In the interim, 10 licensed facilities (located at 8 sites) have requested the ability to apply for standalone preemption authority through confirmatory order. On June 5, 2013, the Commission issued Confirmatory Order EA-13-092 designating these 10 licensees as part of an interim class of facilities eligible to apply for preemption authority. The NRC has not received any similar requests from licensees to be designated as part of an interim class of facilities eligible to apply for enhanced weapons authority.

As part of EA-13-092, the NRC required these licensees to conduct firearms background checks on their security personnel whose official duties include access to firearms. The Federal Bureau of Investigation (FBI) performs these background checks and determines if the individual is prohibited from possessing or using firearms. Secondly, the NRC also required these licensees to formally apply to the NRC for preemption authority. The application included a discussion of the basis for the requested authority and new training required for security officers on the prohibiting factors in the firearms background checks. The NRC staff reviews, and the Commission considers, each application on a case-by-case basis. If the Commission approves the application, the NRC issues a second order approving the licensee's application for preemption authority. A licensee that the NRC has approved for preemption authority may choose to exercise this authority (with respect to State and local laws) at its own discretion. Finally, firearms background checks are repeated at least every 5 years; and they are required for all new armed security personnel.

For enhanced weapons authority, the application consists of additional information, including changes to the licensee's physical security plan, training and qualification plan, and contingency response plan; plus a new weapons safety assessment. The weapons safety assessment evaluates where the enhanced weapons are to be deployed and any potential unevaluated onsite or offsite safety risks posed by these weapons. The application also identifies the quantity, type or model, and caliber of the enhanced weapons. The NRC staff reviews, and the Commission considers, each application on a case-by-case basis. Once a licensee receives approval of its application from the NRC, the federal firearms licensee must submit additional paperwork to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for approval of the transfer of the specific weapons to the NRC licensee.

Until the Commission publishes a final rule designating classes of facilities and radioactive material eligible to apply for enhanced weapons authority, licensees interested in obtaining enhanced weapons authority would follow a similar two-step, two-order process including designation in an interim class and approval of an application. Additionally, a licensee can apply for combined enhanced weapons authority and preemption authority either at the same time or in sequence. However, the Commission must first approve the application for preemption authority before it can approve the application for enhanced weapons authority.

ML14069A145

May 1, 2013

MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS – SECY-13-0006 –
COMMISSION ORDER TO DESIGNATE AN INTERIM
CLASS OF U.S NUCLEAR REGULATORY
COMMISSION-LICENSED FACILITIES THAT ARE
ELIGIBLE TO APPLY TO THE COMMISSION FOR
PREEMPTION AUTHORITY UNDER SECTION 161A OF
THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

The Commission has approved the draft designation order designating a limited class of NRC-licensed facilities eligible to apply for the authority granted to the Commission pursuant to Section 161A of the Atomic Energy Act of 1954, as amended, including attachments, subject to the attached edits. The staff should issue the orders to the licensees listed in Attachment 1 of the order as revised. The staff should provide for Commission review and approval any future draft designation order(s) it may develop for licensees that the staff subsequently determines have a near-term need for interim action prior to the issuance of the final rule implementing the Commission's authority under Section 161A.

The staff should prepare letters informing the governors of all affected states about the Commission's interim actions to execute preemption authority under section 161A via order. Consistent with the September 4, 2009 notification, the letters to the governors should be signed by the Chairman.

Attachment: Changes to the orders and attachments in SECY-13-0006

cc: Chairman Macfarlane
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
CFO
OCA
OPA
Office Directors, Regions, ACRS, ASLBP (via E-Mail)
PDR

Changes to the Orders and Attachments in SECY-13-0006

Changes to the Orders

1. On page 1, in the heading, update the order number, as appropriate, and correct throughout the orders and attachments.
2. On page 1, 1st paragraph, revise lines 3 and 4 to read ' ... facilities ~~and general license at reactor Independent Spent Fuel Storage Installations (ISFSIs)~~ licensed'
3. On page 1, 1st paragraph, revise lines 7 and 8 to read ' ... and an Independent Spent Fuel Storage Installation ~~specific license, co-located~~ (ISFSI) licensed'
4. On page 1, 1st paragraph, last line, delete the last 2 words "These licensees."
5. On page 2, delete the top 2 lines "authorize the ... specified."
6. On page 3, paragraph 3, line 1, delete the commas after "licensees" and "Order."
7. On page 3, last paragraph, revise line 4 to read ' ... import, ~~and~~ or use'
8. On page 3, last paragraph, delete everything after the period in line 5 "An application ... to use"
9. On page 4, revise line 1 at the top to read ' ... ~~Section 161A preemption authority has been submitted to the NRC.~~ The Commission's'
10. On page 4, revise line 3 from the top to read ' ... import, ~~and~~ or use'
11. On page 4, last paragraph, revise line 11 to read ' ... Part 95, ~~and~~'
12. On page 5, paragraph 1., revise line 1 to read ' ... must ~~fall~~ be ~~within~~ in'
13. On page 5, paragraph 1., revise lines 1 and 2 to read ' ... facilities, ~~radioactive material, or other property~~ designated'
14. On page 5, paragraph 1., revise line 2 to read ' ... Attachment 1 as eligible to apply for preemption authority.'
15. On page 5, paragraph 3., revise line 2 to read ' ... facility ~~falling within~~ the class'
16. On page 5, paragraph 3., revise line 3 to read ' ... Attachment 1 as eligible to apply for preemption authority.'
17. On page 5, last paragraph, delete the last sentence 'However, the ... this Order.'
18. On page 6, 1st paragraph, revise line 1 to read 'At a ~~minimum~~, applications must include, at a minimum, all the'
19. On page 6, 2nd paragraph, revise lines 1 through 3 to read 'Licensees of the facilities listed in Attachment 1 are required to conduct firearms background checks of all personnel who require access to any firearm listed in Section 161A.b in the performance

of their official duties, as provided in Attachment 3 to this Order, whether the licensee applies for pre-emption authority or not. ~~Such In accordance with the Firearms Guidelines, all personnel at the designated facilities listed in Attachment 1 who are assigned official duties that require access to any firearm listed in Section 161A.b shall be subject~~

20. On page 6, 2nd paragraph, revise line 10 to read ' ... Section 161A.b. Each licensee must also remit to the NRC a A \$70 administrative processing fee ~~will be charged to the licensee for each~~
21. On page 7, paragraph 2., revise line 1 to read ' ... 30 days of the effective date of this Order, and'
22. On page 7, paragraph 2., revise line 2 to read ' ... of the ~~issuance~~ effective date of this'
23. On page 7, paragraph 3., revise line 2 to read ' ... check ~~to staff~~ such that the licensee's'
24. On page 7, paragraph 3., revise line 3 to read ' ... organization can be staffed as specified'
25. On page 7, paragraph 3., revise lines 3 through 5 to read ' ... and ~~effectively implement~~ the licensee's site protective strategy and procedures can be effectively implemented, while meeting'
26. On page 7, paragraph 4., revise line 2 to read ' ... of Safeguards Events," of'
27. On page 7, paragraph 4, in line 3, delete the extra space after "which."
28. On page 7, paragraph 4., revise line 4 to read ' ... the ~~issuance~~ effective date of this'
29. On page 8, paragraph 5., revise line 1 to read '~~Submit~~ Remit to the'
30. On page 8, 1st full paragraph, delete the last sentence "The Director ... the licensee."
31. On page 8, insert a new paragraph before the last paragraph which reads: "As applicable, the Director, Office of Nuclear Reactor Regulation, the Director, Office of Nuclear Material Safety and Safeguards, or the Director, Office of Federal and State Materials and Environmental Management Programs may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause."

Changes to Attachment 1

32. On page 1, insert the following as the 2nd entry:

Calvert Cliffs Nuclear Power Plant, Units 1 and 2
Docket Nos. 50-317 and 50-318, License Nos. [NRC staff to insert License Nos.]
Calvert Cliffs co-located Independent Spent Fuel Storage Installation
Docket No. 72-8, Specific-License No. [NRC staff to insert License No.]
[NRC staff to insert Address information]

33. On page 1, last licensee, revise line 1 to read ' ... FitzPatrick'

Changes to Attachment 2

34. On page 1, 3rd paragraph, revise line 2 to read ' ... must be ~~fall~~ within the class'
35. On page 1, 3rd paragraph, revise lines 2 and 3 to read ' ... facilities, ~~radioactive material,~~
~~or other property~~ designated'
36. On page 1, 3rd paragraph, revise line 6 to read ' ... FR 46800;: September 11, 2009)
(“Firearms Guidelines”)) as part'
37. On page 1, 3rd bullet, revise line 1 to read ' ... include ~~general license co-located~~
Independent'

Changes to Attachment 3

38. On page 1, paragraph 1., revise line 1 to read ' ... 30 days after the effective date
issuance of'
39. On page 2, last paragraph, revise line 6 to read ' ... at 301-492-3531.) Combined'
40. On page 3, paragraph 4., revise line 1 to read ' ... after the effective date issuance of'
41. On page 3, paragraph 4., revise line 3 to read ' ... after the effective date issuance of'
42. On page 3, paragraph 5., revise line 1 to read ' ... after the effective date issuance of'

POLICY ISSUE NOTATION VOTE

January 10, 2013

SECY-13-0006

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

SUBJECT: COMMISSION ORDER TO DESIGNATE AN INTERIM CLASS OF U.S. NUCLEAR REGULATORY COMMISSION-LICENSED FACILITIES THAT ARE ELIGIBLE TO APPLY TO THE COMMISSION FOR PREEMPTION AUTHORITY UNDER SECTION 161A OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

PURPOSE:

The purpose of this paper is to request Commission approval of a draft designation order (Enclosure) designating a limited class of U.S. Nuclear Regulatory Commission (NRC) licensed facilities eligible to apply for the authority granted to the Commission pursuant to Section 161A of the Atomic Energy Act of 1954 (AEA), as amended. This draft designation order responds to Commission direction in SRM-SECY-12-0125 that the order be limited to those licensees that have a near-term need for interim action prior to completion of the final rule implementing the Commission's authority under Section 161A. This paper does not address any new commitments or resource implications.

BACKGROUND:

In SECY-12-0125, "Interim Actions to Execute Commission Preemption Authority Under Section 161A of the Atomic Energy Act, As Amended" (Agencywide Documents Access and Management System Accession No. ML12164A839), the staff recommended, among other things, that the Commission designate a limited class of facilities (i.e., six nuclear power plants, a Category I special nuclear material facility and a specific-license Independent Spent Fuel Storage Installation (ISFSI) co-located with a nuclear power plant) eligible to apply for the authority granted the Commission pursuant to Section 161A of the AEA.

CONTACT: Dennis Gordon, NSIR/DSP
301- 415-6671

In SRM-SECY-12-0125, the Commission approved all staff recommendations and directed the staff to: (1) provide a draft final order for Commission review and approval, and (2) limit the addressees to those that the NRC has determined have a near-term need for interim action before completion of the final rulemaking implementing the Commission's preemption authority.

DISCUSSION:

The enclosed draft designation order responds to the Commission's direction in SRM-SECY-12-0125. The list of proposed eligible licensees is in Attachment 1 to the draft order. Attachment 2 to the draft order sets forth the process to be used by licensees when submitting applications to the NRC requesting that they be granted preemption authority. Attachment 3 sets forth the process to be used by licensees within the designated class when completing the mandatory firearms background checks required by Section 161A.c of the AEA and the Firearms Guidelines issued by the Commission in the *Federal Register* on September 11, 2009.¹

Accordingly, if approved by the Commission, the draft designation order would designate a limited interim class of NRC-licensed facilities eligible to apply for Section 161A preemption authority. It also would establish the process for submitting applications to the NRC and the process for requesting firearms background checks in accordance with Section 161A.c of the AEA and the Firearms Guidelines. Section 161A.c contains a specific provision for mandatory firearms background checks for security personnel at designated facilities. These background checks would be required at facilities within the designated class upon issuance of the order, if approved.

To date, the NRC has received a request for preemption authority from the licensees of the following four facilities: Babcock & Wilcox Nuclear Operation Group—Lynchburg; Indian Point Nuclear Generating, Units 1, 2, and 3; San Onofre Nuclear Generating Station, Units 2 and 3; and Diablo Canyon Nuclear Power Plant, Units 1 and 2. The Pacific Gas and Electric request also includes the Diablo Canyon specific-license ISFSI.

The Firearms Guidelines require that the Commission designate the class of facilities eligible to apply to the Commission for the authority granted under Section 161A. The Commission may designate classes by rule or order. The Enhanced Weapons rulemaking, which would designate by rule the classes of facilities eligible to apply for preemption authority, has not yet been completed. Therefore, without an order designating a limited interim class of facilities, the staff cannot process the requests currently submitted to the NRC.

¹ The Firearms Guidelines currently require that all licensees within the designated class must complete the mandatory firearms background checks. The Office of the General Counsel is working with the Department of Justice to revise the guidelines so that only those licensees within the designated class that actually apply for preemption authority will have to complete background checks. The Department of Justice has agreed in principle to this approach

Accordingly, the staff has developed a draft designation order that includes the three nuclear power plant facilities identified above, the Category I facility, and the Diablo Canyon ISFSI. In reviewing requests already received from the affected licensees, the staff determined that each facility has a near-term need for preemption authority based upon the types of firearms and devices currently in use at these facilities and the current State firearms laws that could adversely impact the ability of these licensees to maintain the capabilities described in their current NRC-approved security plans. In addition, the staff has also determined that the licensees of three other New York State facilities are in a situation similar to Indian Point Nuclear Generating Units 2 & 3. These facilities include: James A. Fitzpatrick Nuclear Power Plant; Nine Mile Point Nuclear Station, Units 1 and 2; and R. E. Ginna Nuclear Power Plant. The staff determined that inclusion of three additional facilities in the State of New York is necessary based upon the applicability of State firearms laws that are the subject of the Indian Point licensee's request. While these licensees have not yet applied for preemption authority, the staff expects that they will submit applications once the Indian Point application is processed. Therefore, the staff has also included these three licensees in the interim class of licensees encompassed by the draft designation order.

The staff evaluated the requirements of this draft order in accordance with the backfit provisions in Title 10 of the *Code of Federal Regulations* (10 CFR), Parts 50, 70, and 72, specifically, sections 10 CFR 50.109, 70.76 and 72.62. As a result of this evaluation, the staff concluded that the requirements of the draft order do not constitute backfitting because the decision to request preemption authority is voluntary in nature and the order provisions implement statutory requirements contained in Section 161A, particularly the mandatory firearms background checks. Also, the application requirements do not impose modifications or additions to existing systems, structures, components, or designs of a facility or the procedures or organization required to design, construct, or operate a facility and, therefore, are not backfits.

To the extent that some of the implementing details described in the draft order, such as revisions to NRC-approved security plans of licensees, are not specifically mandated by statute, or the Firearms Guidelines issued by the Commission with the approval of the U.S. Attorney General, the staff has determined that such measures are administrative in nature and are essential for the effective implementation of the statute and Firearms Guidelines. Provisions of this draft order that relate to or amend existing information collection and reporting requirements or impose new information collection and reporting requirements are not considered to be backfits, as presented in the charter for the NRC's Committee to Review Generic Requirements. Therefore, for the reasons stated above, a backfit analysis has not been completed for any of the provisions of this draft order.

The Commissioners

-4-

RECOMMENDATIONS:

The staff recommends that the Commission approve the enclosed draft designation order, including attachments, and direct the staff to issue the order to the licensees listed in Attachment 1 of the order.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection.

/RA/

R. W. Borchardt
Executive Director
for Operations

Enclosure:
Draft Designation Order

The Commissioners

-4-

RECOMMENDATIONS:

The staff recommends that the Commission approve the enclosed draft designation order, including attachments, and direct the staff to issue the order to the licensees listed in Attachment 1 of the order.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection.

/RA/

R. W. Borchardt
Executive Director
for Operations

Enclosure:
Draft Designation Order

WITS 201200243/SRM-SECY-12-0125/NSIR-12-0540

ADAMS SUBMISSION NO.: Pkg. ML12339A053 *via email SECY-012

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| OFFICE | NSIR/DSP/RSLB | TechEdit* | NSIR/DSP/RSLB | NSIR/DSP | OE* | FSME* |
| NAME | DGordon | JDougherty/ email | RFelts | CLui | RZimmerman | MSatorius |
| DATE | 12/3/12 | 12/3/12 | 12/ 05/12 | 12/05/12 | 12/ 11/12 | 12/ 11/12 |
| OFFICE | NMSS* | NRR* | ADM* | OGC* | NSIR | EDO |
| NAME | Chaney | ELeeds | CCarpenter | MDoane (MYoung for) | JWiggins (MDapas for) | RWBorchardt |
| DATE | 12/20/12 | 12/10/12 | 12/13/12 | 1/6/13 | 1/7/13 | 1/10/13 |

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

INTERIM ELIGIBLE CLASS OF
NRC-LICENSED FACILITIES

Docket Nos. (as shown in Attachment 1)
License Nos. (as shown in Attachment 1)
EA-12-244

ORDER DESIGNATING AN INTERIM CLASS OF
NRC-LICENSED FACILITIES THAT ARE ELIGIBLE TO
APPLY TO THE COMMISSION FOR AUTHORIZATION TO USE
THE AUTHORITY GRANTED UNDER THE PROVISIONS OF
SECTION 161A OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

I

In accordance with the Atomic Energy Act (AEA) of 1954, as amended, the licensees identified in Attachment 1 to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC) authorizing the operation of nuclear power reactor facilities and general-license at-reactor Independent Spent Fuel Storage Installations (ISFSIs) licensed under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," a Category I special nuclear material (CAT-I SNM) facility licensed under 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material," and a specific-license, co-located ISFSI licensed under 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste," whose physical security program is conducted as a support activity of the co-located power reactor facility respectively. These licenses

Enclosure

authorize the operation of nuclear power reactors and at-reactor ISFSIs, a CAT-I SNM facility, and a specific-license, co-located ISFSI in accordance with the conditions specified.

Specific physical protection program requirements for nuclear power reactors are contained in 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage." Specific physical protection program requirements for CAT-I SNM facilities are contained in 10 CFR 73.45, "Performance Capabilities for Fixed Site Physical Protection Systems," and 10 CFR 73.46, "Fixed Site Physical Protection Systems, Subsystems, Components, and Procedures." Specific physical protection program requirements for ISFSIs are contained in 10 CFR 73.51, "Requirements for the Physical Protection of Stored Spent Nuclear Fuel and High-Level Radioactive Waste," and 10 CFR 73.55.

II

Section 161A, "Use of Firearms by Security Personnel," of the AEA (42 United States Code (U.S.C.) 2201a) confers upon the Commission the authority to permit the security personnel at designated NRC-licensed facilities to possess and use firearms, ammunition, and other devices, such as large-capacity ammunition feeding devices, notwithstanding local, State, and certain Federal firearms laws that may prohibit such possession and use.

The provisions of Section 161A took effect on September 11, 2009, with publication in the *Federal Register* (FR) of the guidelines approved by the NRC and the U.S. Attorney General entitled, "Guidelines on the Use of Firearms by Security Personnel in Protecting U.S. NRC

Regulated Facilities, Radioactive Material, and Other Property” (74 FR 46800; September 11, 2009) (referred to as “Firearms Guidelines”).

The NRC is issuing EA-12-244 to implement the authority granted to the Commission under Section 161A before the completion and issuance of a final rule implementing this authority. The Commission is taking this interim action in response to several requests from NRC licensees for Commission authorization to use Section 161A preemption authority.

Specifically, this Order accomplishes the following:

1. Designates an interim class of NRC-licensed facilities, as listed in Attachment 1, that are eligible to apply to the Commission for authorization to use Section 161A preemption authority;
2. Provides a process for submitting an application to the Commission for authorization to use Section 161A preemption authority, in accordance with Attachment 2; and,
3. Requires that the licensees, listed in Attachment 1 of this Order, subject all personnel who require access to firearms in the performance of their official duties to a firearms background check in accordance with Section 161A.c as described in Attachment 3.

Nothing in this Order relieves a licensee from compliance with applicable U.S. Department of Alcohol, Tobacco, Firearms, and Explosives requirements, or any other Federal, State, and local firearms laws and regulations. This Order does not provide or grant any authority or permission to transfer, receive, possess, transport, import, and use “enhanced weapons” as this term is defined in Section 8 of the Firearms Guidelines. An application for enhanced weapons must be submitted to the NRC together with an application for Commission authorization to use Section 161A preemption authority or separately after an application to use

Section 161A preemption authority has been submitted to the NRC. The Commission's authority under Section 161A does not include any permission to transfer, receive, possess, transport, import, and use destructive devices as defined under 27 U.S.C. Chapter 53, "The National Firearms Act," including explosive devices such as grenades or weapons with a bore diameter greater than 12.7 mm (0.5 inches or 50 caliber).

As authorized under Section 161A, and as described in Section 2 of the Firearms Guidelines, the Commission is issuing this Order to designate the licensees listed in Attachment 1 as an interim class of NRC-licensed facilities that may voluntarily apply to the Commission for authorization to use Section 161A preemption authority in advance of the Commission's issuance of a final rule on this subject.

A licensee's application for permission to use Section 161A preemption authority is voluntary and, therefore, the designated facilities listed in Attachment 1 are not required to submit an application in response to this Order. However, the designated facilities are required to conduct firearms background checks in accordance with Attachment 3 to this Order. If a licensee at a designated facility chooses to take advantage of the provisions of Section 161A, an application must be submitted to the NRC, in accordance with Attachment 2. In addition, applications and other documents produced in response to this Order that contain classified information, as defined in 10 CFR Part 95, "Facility Security Clearance and Safeguarding of National Security Information and Restricted Data," or Safeguards Information as defined by 10 CFR 73.22, "Protection of Safeguards Information: Specific Requirements," shall be properly marked and handled, in accordance with applicable requirements in 10 CFR Part 95 and 10 CFR 73.21, "Protection of Safeguards Information: Performance Requirements," and 10 CFR 73.22.

III

As discussed above, the Commission has designated the facilities listed in Attachment 1 as an interim class of NRC-licensed facilities that are eligible to apply to the NRC for Commission authorization to use Section 161A preemption authority. Licensees choosing to apply to the Commission for Section 161A preemption authority must meet the following conditions:

1. The NRC-licensed facility must fall within the class of facilities, radioactive material, or other property designated by the Commission in Attachment 1.
2. The licensee must employ covered weapons (as defined in the Firearms Guidelines) as part of their protective strategy.
3. Possession, use, or access to covered weapons must be necessary in the discharge of official duties by personnel at a facility falling within the class of facilities designated by the Commission in Attachment 1.

Licensees of the facilities listed in Attachment 1 that choose to apply for permission to use Section 161A preemption authority must use the application process outlined in Attachment 2 and must submit the application in accordance with the provisions of 10 CFR 50.90, "Application for Amendment of License, Construction Permit, or Early Site Permit," or 10 CFR 70.34, "Amendment of Licenses," and 10 CFR 72.56, "Application for Amendment of License," as appropriate. Applications will be subject to a minimum of 60 days for routine processing. Submittal of an application to the NRC is voluntary and, therefore, recipients of this Order are not required to apply. However, the designated facilities are required to conduct firearms background checks in accordance with Attachment 3 to this Order.

At a minimum, applications must include all the information specified in Attachment 2. All applications will be reviewed on a case-by-case basis. If an application is approved by the Commission, authorization to use Section 161A preemption authority will be granted by the Commission through a confirmatory order that will permit the security personnel at the affected facility to possess and use firearms and large-capacity ammunition feeding devices that were not previously permitted to be owned or possessed under Commission authority, notwithstanding local, State, and certain Federal firearms laws (and implementing regulations) that would otherwise prohibit such possession and use.

In accordance with the Firearms Guidelines, all personnel at the designated facilities listed in Attachment 1 who are assigned official duties that require access to any firearm listed in Section 161A.b shall be subject to a firearms background check by the U.S. Attorney General consisting of a fingerprint-based background check against applicable Federal Bureau of Investigation (FBI) databases and a name-based background check against the FBI's National Instant Criminal Background Check System. Accordingly, all licensees at the designated facilities listed in Attachment 1 shall submit a completed hard-copy FBI Form FD-258, "Fingerprint Card," to the NRC as specified in Attachment 3, for all security personnel who will receive, possess, transport, import, or use any firearm, weapon, ammunition, or a device listed in Section 161A.b. A \$70 administrative processing fee will be charged to the licensee for each FBI Form FD-258 submitted to the NRC for the conduct of the required firearms background checks. Payment shall be made to the NRC using the processes described in Attachment 3.

IV

Accordingly, under Sections 53, 103 or 104b (depending on the license), Sections 161b, 161i, 161o, 161A, and 182 of the AEA of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 50, 10 CFR Part 70, and 10 CFR Part 72, IT IS HEREBY ORDERED that all recipients of this Order as listed in Attachment 1 shall:

1. Subject all individuals who are assigned duties that require the possession, use, or access to firearms and devices listed in Section 161A.b to a firearms background check in accordance with Section 161A.c "Background Checks," and the process specified in Attachment 3.
2. Begin submitting requests for firearms background checks within 30 days, and complete all firearms background checks within 180 days of the issuance of this Order.
3. Notify the NRC after a sufficient number of personnel have successfully completed the requisite firearms background check to staff the licensee's security organization as specified in each licensee's NRC-approved security plans, and effectively implement the licensee's site protective strategy and procedures, while meeting applicable fatigue requirements in 10 CFR Part 26, "Fitness for Duty Programs." This notification shall be submitted by the licensee or duly authorized officer thereof in writing and under oath and affirmation.
4. Notify the NRC as soon as practicable and in accordance with the applicable reporting requirements in 10 CFR 73.71, "Reporting of Safeguard Events," of any situation in which the licensee would not be able to sufficiently staff the security organization within 180 days of the issuance of this Order.

5. Submit to the NRC a \$70 administrative processing fee for each firearms background check requested using the processes outlined in Attachment 3.

Notifications shall be submitted to the Director of the NRC licensing office responsible for licensing actions at the affected facility and shall be marked and protected as required for the sensitivity of the information presented. The Director of the responsible NRC licensing office may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the licensee.

This Order is effective 20 days after the date of issuance.

Publicly available documents created or received at the NRC are available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are also accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland this

day of [month, year].

FOR THE NUCLEAR REGULATORY COMMISSION

Cathy Haney, Director
Office of Nuclear Material Safety
and Safeguards

Mark Satorius, Director
Office of Federal and State Materials
and Environmental Management
Programs

Eric Leeds, Director
Office of Nuclear Reactor Regulation

Attachments:

1. List of Affected Licensees
2. Application Process for Requesting
Commission Authorization to Use
Section 161A Preemption Authority
3. Process for Conducting Firearms
Background Checks

LIST OF AFFECTED LICENSEES

Babcock & Wilcox Nuclear Operation Group–Lynchburg
Docket No. 70-027, License No. SNM-42
Mr. Sandy Baker, President
Babcock & Wilcox
Nuclear Operations Group–Lynchburg
2016 Mount Athos Road
Lynchburg, VA 24504

Diablo Canyon Nuclear Power Plant, Units 1 and 2
Docket Nos. 50-275 and 50-323, License Nos. DPR-80 and DPR-82
Diablo Canyon-Independent Spent Fuel Storage Installation
Docket No. 72-26, Specific-License No. SNM-2511
Mr. John T. Conway
Senior Vice President - Energy Supply and Chief Nuclear Officer
Pacific Gas and Electric Company
Diablo Canyon Power Plant
77 Beale Street, Mail Code B32
San Francisco, CA 94105

Indian Point Nuclear Generating, Unit 1
Docket No. 50-003, License No. DPR-5
Indian Point Nuclear Generating, Units 2, and 3
Docket Nos. 50-247, 50-286, and 72-51, License Nos. DPR-26 and DPR-64
Mr. John Ventosa
Vice President, Operations
Entergy Nuclear Operations, Inc.
Indian Point Energy Center
450 Broadway, GSB
P.O. Box 249
Buchanan, NY 10511-0249

James A. Fitzpatrick Nuclear Power Plant
Docket Nos. 50-333 and 72-12, License No. DPR-59
Mr. Mike Colomb
Vice President, Operations
Entergy Nuclear Operations, Inc.
James A. FitzPatrick Nuclear Power Plant
P.O. Box 110
Lycoming, NY 13093

Nine Mile Point Nuclear Station, Units 1 and 2
Docket Nos. 50-220, 50-410, and 72-1036, License Nos. DPR-63 and NPF-69
Mr. Ken Langdon
Vice President Nine Mile Point
Nine Mile Point Nuclear Station, LLC
P. O. Box 63
Lycoming, NY 13093

R.E. Ginna Nuclear Power Plant
Docket Nos. 50-244 and 72-67, License No. DPR-18
Mr. Joseph E. Pacher
Vice President
R.E. Ginna Nuclear Power Plant, LLC
R.E. Ginna Nuclear Power Plant
1503 Lake Road
Ontario, NY 14519

San Onofre Nuclear Generating Station, Units 2 and 3
Docket Nos. 50-361, 50-362, and 72-41, License Nos. NPF-10 and NPF-15
Mr. Peter T. Dietrich
Senior Vice President and Chief Nuclear Officer
Southern California Edison Company
San Onofre Nuclear Generating Station
P. O. Box 128
San Clemente, CA 92674-0128

**Application Process for
Requesting Commission Authorization
to Use Section 161A Preemption Authority**

Recipients of EA-12-244 are within the interim class of facilities designated by the U.S. Nuclear Regulatory Commission (NRC) as eligible to voluntarily apply for Commission authorization to use preemption authority under Section 161A of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201a). Applications must be submitted to the NRC for review and approval under the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.90, "Application for Amendment of License, Construction Permit, or Early Site Permit," or 10 CFR 70.34 "Amendment of Licenses," and 10 CFR 72.56 "Application for Amendment of License" as appropriate, and will be reviewed and approved individually on a case-by-case basis.

If an application is approved by the Commission, permission to use Section 161A preemption authority will be granted under a confirmatory order and will permit the security personnel of the licensee granted such permission to possess and use weapons, devices, ammunition, or other firearms, notwithstanding local, State, and certain Federal firearms laws that may prohibit such possession and use. Licensees must receive permission from the NRC through a confirmatory order before they are authorized to use Section 161A preemption authority.

Licensees that choose to apply for Section 161A preemption authority must meet the following criteria: 1) the licensee must fall within the class of facilities, radioactive material, or other property designated by the Commission in Attachment 1; 2) the licensee must employ covered weapons (as defined in the "Guidelines on the Use of Firearms by Security Personnel in Protecting U.S. NRC-Regulated Facilities, Radioactive Material, and Other Property," (74 FR 46800: September 11, 2009) ("Firearms Guidelines") as part of its protective strategy; and 3) access to, or possession of, covered weapons must be necessary in the discharge of official duties by personnel assigned to the individual facility falling within the class of facilities designated by the Commission.

A single application should be submitted to the NRC in the form of a letter and, at a minimum, must contain the following:

- name of the licensee
- facility name
- docket number and license number (to include general-license co-located Independent Spent Fuel Storage Installation docket number, if applicable)
- a statement that the licensee is applying for "Commission authorization to use Section 161A preemption authority under 42 U.S.C. 2201a"
- a statement that the facility is within the interim class of facilities designated by the Commission as listed in Attachment 1 of this order
- a statement describing the reason for requesting Section 161A preemption authority. This description shall include: 1) the local, State, or Federal law (or implementing

regulation) for which Section 161A preemption authority is being requested, and 2) a description of the types and calibers of weapons and ammunition feeding devices for which Section 161A preemption authority is necessary. This description must be sufficiently detailed for the NRC staff to conclude the following:

1. the licensee employs firearms or devices defined as covered weapons in accordance with the Firearms Guidelines, and are listed in Section 161A.b;
2. the identified covered weapons are used as part of the site protective strategy at a Commission-designated facility listed in Attachment 1;
3. possession, use, or access to the identified covered weapons is necessary in the discharge of official duties by security personnel who are engaged in protecting a Commission-designated facility listed in Attachment 1; and
4. other information provided by the licensee supports the need for Commission authorization consistent with the criteria in the AEA and Firearms Guidelines.

Process for Conducting Firearms Background Checks

As required by Section 161A.c. of the Atomic Energy Act (AEA) of 1954, as amended (42 U.S.C. 2201a), any person who receives, possesses, transports, imports, or uses a weapon, ammunition, or a device under Section 161A.b. shall be subject to a background check by the Attorney General, based on fingerprints and including a background check under Section 103(b) of the Brady Handgun Violence Prevention Act (Public Law 103-159; 18 U.S.C. 922 note) to determine whether the person is prohibited from possessing or receiving a firearm under Federal or State law.

All licensees within the designated class of facilities identified in Attachment 1 shall implement the following requirements and must notify the U.S. Nuclear Regulatory Commission (NRC) in writing upon the satisfactory completion of a sufficient number of firearms background checks to staff the site security organization and continue the effective implementation of its physical protection program, specifically, its NRC-approved security plans, site protective strategy, and implementing procedures while meeting applicable fatigue requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26, "Fitness for Duty Programs."

1. Within 30 days after the issuance of EA-12-244, the licensee of each facility listed in Attachment 1 shall begin submitting for firearms background checks, a hard copy Federal Bureau of Investigation (FBI) Form FD-258, "Fingerprint Card," for each member of the security organization whose official duties require, or will require, the possession, use, or access to any firearm.
2. Procedures for processing Form FD-258 for firearms background checks.
 - a. Affected licensees shall submit one completed, legible, standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) for each member of the security organization who will receive, possess, transport, import, or use any firearm, weapon, ammunition, or a device.
 - b. Affected licensees shall submit each Form FD-258, using an appropriate method listed in 10 CFR 73.4, to the Director of the NRC's Division of Facilities and Security, Mail Stop: TWB-05B32M, marked for the attention of the Division's Criminal History Program. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Attention: Forms Manager, Washington, DC 20555-0001; by calling 630-829-9565; or by e-mail to forms@nrc.gov. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.
 - c. The firearms background check requires both a fingerprint-based check and a name-based check through the FBI National Instant Criminal Background Check System (NICS). Because of the nature of this interim process, a hard copy FD-258 must be completed and submitted to the NRC. A hard-copy FD-258 is necessary because the format of the electronic information exchange system does not support the transfer of all required information for processing through the FBI NICS database.

- d. The following information fields specified on the FBI Form FD-258 shall be completely and accurately filled-in with appropriate identifying information. Specifically, individuals must complete the following fields:
- I. first name
 - II. last name
 - III. place of birth
 - IV. gender
 - V. date of birth
 - VI. height
 - VII. weight
 - VIII. race: (choose one of the following codes)
 - o American Indian or Alaska Native
 - o Asian
 - o Black or African-American
 - o Hispanic or Latino
 - o Native Hawaiian or other Pacific Islander
 - o White
 - IX. residence and employer addresses of person fingerprinted:
Complete mailing addresses of current residence and duty station are required. (NICS check includes query of State records for disqualifying information in both State of residence and State of duty station.)
 - o street number (Post Office box numbers cannot be accepted)
 - o street name
 - o city
 - o State (required)
 - o ZIP Code
 - X. citizenship
 - XI. reason fingerprinted
"Firearms Background Check (42 U.S.C. 2201a)"
 - XII. social security number
 - XIII. ORI Number: MDNRCNICZ
- e. Fees for the processing of firearms background checks are due upon application. Licensees shall submit payment with the Form FD-258 for the processing of firearms background checks through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the Facility and Security Branch, Division of Facilities and Security, at 301-492-3531. Combined payment for multiple applications is acceptable. The application fee is the sum of the user fee charged by the FBI for each firearms background check or other fingerprint record submitted by the NRC on behalf of a licensee, and an administrative processing fee assessed by the NRC. The NRC processing fee covers administrative costs associated with NRC handling of licensee Form FD-258 submissions. The NRC publishes the amount of the firearms background check application fee on the NRC public Web site. (To find the current fee amount, go to the Electronic Submittals page at

<http://www.nrc.gov/site-help/e-submittals.html> and see the link for the Criminal History Program under Electronic Submission Systems.) The NRC will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for firearms background checks, to include the FBI fingerprint record.

- f. *Right to correct and complete information.* Before making any final adverse determination, the licensee shall make available to the individual the contents of records obtained from the FBI for the purpose of assuring correct and complete information. Confirmation of receipt by the individual of this notification must be maintained by the licensee for a period of 5 years from the date of the notification. If after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes changes, corrections, or updating (of the alleged deficiency), or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537-9700 as set forth in 28 CFR 16.30, "Purpose and Scope," through 16.34, "Procedure to Obtain Change, Correction or Updating of Identification Records." In the latter case, the FBI then forwards the challenge to the agency that submitted the data requesting that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. Licensees must provide at least 10 days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record being made available for his/her review. The licensee may make a final adverse determination based upon the criminal history record, if applicable, only upon receipt of the FBI's confirmation or correction of the record.
3. The licensee shall retain a copy of all information submitted and received for firearms background checks for a minimum of 5 years after the information is superseded through periodic reinvestigation or the termination of an individual's access to firearms.
4. By 180 days after the issuance of EA-12-244, the licensee shall remove from any current armed duties, any individual who has not completed a satisfactory firearms background check. Additionally, no later than 180 days after the issuance of EA-12-244, licensees at the designated facilities listed in Attachment 1 shall not assign any individual to any armed duties unless the individual has completed a satisfactory firearms background check. A satisfactory firearms background check means a "proceed" response has been received by the licensee, from the FBI, through the NRC.
5. During the 180-day transition period after the issuance of EA-12-244, individuals who receive a "delayed" response from the FBI to their firearms background check may continue to have access to standard weapons as defined in the "Guidelines on the Use of Firearms by Security Personnel in Protecting U.S. NRC-Regulated Facilities,

Radioactive Material, and Other Property" (74 FR 46800) dated September 11, 2009 ("Firearms Guidelines") as part of their official duties not to exceed midnight of the 180th day.

6. Consistent with the NRC-approved security plans, the licensee shall remove from armed duties, without delay, any individual who has received a "denied" response from the FBI.
7. Licensees may return an individual to armed duties if the individual receives a "proceed" response from the FBI, subsequent to receiving a "delayed" or "denied" response.
8. The licensee shall provide instructions to all personnel subject to a firearms background check for appealing "delayed" or "denied" responses. An individual security officer is responsible for appealing a "denied" response or resolving a "delayed" response directly with the FBI.
9. The licensee shall revise its site training and qualification program, as needed, to provide each individual with instructions on identifying events or status that would disqualify the individual from possession or use of firearms and the continuing responsibility of each individual to promptly notify the licensee of the occurrence of any such event or status.
10. Individuals who require access to firearms shall notify the licensee's security management within 3 working days of the occurrence or existence of any disqualifying event or status. Disqualifying events or status are discussed in 27 CFR 478.32, "Prohibited Shipment, Transportation, Possession, or Receipt of Firearms and Ammunition by Certain Persons," the Gun Control Act of 1968 (18 U.S.C. 922(g) and (n)), and any applicable State laws.
11. The licensee shall remove from armed duties, without delay, any individual for whom disqualifying information has become known or where a satisfactory firearms background check re-investigation has not been completed. When the individual is on duty at the time disqualifying information is received, the term "without delay" means that the licensee shall, beginning at the time of notification, remove the individual from armed duties and reconstitute the minimum staffing level within the timeframe specified for reconstitution of the minimum staffing levels described in the NRC-approved security plans and applicable 10 CFR Part 73, "Physical Protection of Plants and Materials," requirements, or sooner if practicable.
12. The licensee shall subject all individuals who require access to firearms as part of their official duties to a periodic firearms background check re-investigation at least once every 5 years, following the initial or most recent satisfactory firearms background check. Licensees may conduct periodic firearms background checks at a period shorter than 5 years, at their discretion. Re-investigations shall be satisfactorily "completed" within the same calendar month as the initial or most recent firearms background check, with an allowance to midnight of the last day of the month of expiration. The licensee may continue the individual's access to firearms pending completion of the re-investigation, not to exceed midnight of the last day of the month of expiration.

13. The licensee shall complete a "new" firearms background check or reinvestigation for individuals who have:
 - a. Had a break in employment of greater than 7 consecutive calendar days (1 week) with the licensee or the licensee's security contractor. Temporary active duty in the military Reserves or National Guard is not considered to be a break in employment for the purpose of this Order and the required firearms background check.
 - b. Transferred to the employment of the licensee or the licensee's security contractor. A satisfactorily completed firearms background check performed by a previous employer or completed for employment within a State other than the State in which the individual will be performing armed duties, is not transferable.

14. The licensee shall notify the NRC Headquarters Operations Center by telephone within 72 hours after removing an individual from armed duties as a result of the discovery of any disqualifying status or event. Applicable telephone numbers are specified in Appendix A, "U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses," to 10 CFR Part 73. Notification timeliness shall commence from time of discovery by the licensee or the time of reporting by the individual security officer. The licensee is not required to notify the NRC if the individual security officer has disclosed the disqualifying event or status to the licensee as specified in Appendix B.4, "Weapons Qualification and Requalification Program," to 10 CFR Part 73.



DRAFT REGULATORY GUIDE

Contact: P. Brochman
(301) 415-6557

DRAFT REGULATORY GUIDE DG-5020

(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.

Licensees 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 (EPAAct 2005) (Ref. 5). Section 653 of the EPAAct 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 foregoing, 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

Licensees 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 prepositioning 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

Licenses 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. Licenses 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. Licenses 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

Licenses 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 licenses and certificate holders regarding recordkeeping for the receipt, transfer, and transportation of enhanced weapons. Licenses 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.

Licenses 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. Licenses and certificate holders should also record the completion of periodic inventories, and any discrepancies, in these records.

13.1 Receipt of an Enhanced Weapon

Licenses 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 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.

Licensees 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 licensees 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. Licensees 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. Licensees 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).

Licensees 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. Licensees and certificate holders may continue a security officer's access to covered weapons pending the completion of these recurring firearms background checks.

Licensees and certificate holders should remove from duties requiring access to covered weapons any individual who receives an adverse ("delayed" or "denied") firearms background check. Licensees 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, licensees 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.

Licensees 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.

Licensees 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.

Licensees 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 licensees 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).

Licensees 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 licensees 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/cjisid/nics.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>.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection in ADAMS at <http://adamswebsearch.nrc.gov/dologin.htm>. The NRC may revise the determinations in the summary as appropriate. The staff will then prepare and issue for comment the draft supplement to the FES, which will be the subject of separate notices and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses. After receipt and consideration of the comments, the NRC will prepare a final supplement to the FES, which will also be available for public inspection.

The NRC is inviting the following to participate in scoping:

- a. The applicant, Tennessee Valley Authority.
- b. Other Federal agencies that have jurisdiction by law or special expertise with respect to any environmental impact involved, or that are authorized to develop and enforce relevant environmental standards.
- c. Affected State and local agencies, including those authorized to develop and enforce relevant environmental standards.
- d. Affected Native American Tribes.
- e. Persons who requested an opportunity to participate in the scoping process.
- f. Person who petitioned for leave to intervene in the proceeding.

In accordance with 10 CFR 51.26, the scoping process for an EIS, which in this case is equivalent to the FES, may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in the FES. The NRC has decided to hold public meetings for the WBN2 operating license supplement to the FES. The scoping meetings will be held at the Magnuson Hotel at 1421 Murrays Chapel Road in Sweetwater, Tennessee, on Tuesday, October 6, 2009. There will be two sessions to accommodate interested persons. The first session will be at 1:30 p.m. and the second at 6:30 p.m. Both sessions will be transcribed and will include: An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the FES, and the proposed review schedule; and the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the

proposed scope of the supplement to the FES. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No formal comments on the proposed scope of the supplement to the FES will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting the NRC Project Manager, Mr. Joel Wiebe, by telephone at 301-415-6606, or by e-mail to Joel.Wiebe@nrc.gov no later than September 30, 2009. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the FES.

Members of the public may send written comments on the environmental scope of the WBN2 operating license review to: Chief, Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop TWB-05B01, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Electronic comments may be sent by e-mail to the NRC at RidsNrrPM.WattsBar2.Resource@nrc.gov, and should be sent no later than October 30, 2009, to be considered in the scoping process. Comments will be available electronically and accessible through ADAMS at <http://adamswebsearch.nrc.gov/dologin.htm>. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Participation in the scoping process for the supplement to the FES does not entitle participants to become parties to the proceeding to which the supplement

to the FES relates. Notice of opportunity for a hearing regarding the updated license application was the subject of the aforementioned **Federal Register** notice 74 FR 20350. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

Information about the proposed action, the supplement to the FES, and the scoping process may be obtained from Mr. Wiebe at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 4th day of September 2009.

For the Nuclear Regulatory Commission.

L. Raghavan,

Chief, Watts Bar Special Projects Branch, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9-21978 Filed 9-10-09; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2008-0465]

Notice of Issuance of Guidelines on Use of Firearms by Security Personnel; Notice of Effective Date of Statute

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance; Notice of effective date.

SUMMARY: The Nuclear Regulatory Commission (Commission or NRC) is issuing, with the approval of the U.S. Attorney General, guidelines on the use of firearms by security personnel whose official duties include the protection of NRC-regulated facilities, radioactive material, or other property. On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (the Act). Section 653 of the Act amended the Atomic Energy Act of 1954 (AEA) by adding new section 161A., regarding the use of firearms by security personnel. Under the provisions of section 161A.d., section 161A. takes effect on the date that these guidelines are issued by the Commission, with the approval of the Attorney General.

DATES: Section 161A. of the AEA takes effect on September 11, 2009.

FOR FURTHER INFORMATION CONTACT:

Philip Brochman, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6557, e-mail Phil.Brochman@nrc.gov or Susan Fonner, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone

(301) 415-1629, e-mail
Susan.Fonner@nrc.gov.

SUPPLEMENTARY INFORMATION: On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005, Public Law 109-58, 119 Stat. 594 (2005). Section 653 of the Act amended the AEA by adding section 161A., "Use of Firearms by Security Personnel," 42 U.S.C. 2201a. Section 161A. of the AEA provides the Commission with new authority with respect to firearms that will enhance security at designated facilities of NRC licensees and certificate holders and will also enhance security with respect to certain radioactive material or other property owned or possessed by an NRC licensee or certificate holder, or the transportation of such material or other property.

Specifically, section 161A. provides two potential advantages to NRC licensees and certificate holders to enhance security. NRC's current regulations authorize in certain circumstances the possession of standard weapons by the security personnel of licensees and certificate holders. Under section 161A., the Commission is authorized to permit licensees and certificate holders to obtain weapons not previously permitted to be owned or possessed under Commission authority, that is, short-barreled shotguns, short-barreled rifles, and machineguns (*i.e.*, enhanced weapons). In addition, section 161A. authorizes the Commission to permit security personnel of a licensee or certificate holder to transfer, receive, possess, transport, import, and use handguns, rifles, shotguns, short-barreled shotguns, short-barreled rifles, machineguns, semiautomatic assault weapons, ammunition for such weapons, and large capacity ammunition feeding devices, notwithstanding State, local, and certain Federal firearms laws, including regulations, that prohibit such actions.

Prior to the enactment of section 161A., with limited exceptions, only Federal, State or local law enforcement could lawfully possess machineguns. Section 161A. authority, however, allows licensees and certificate holders, who obtain the necessary authorization from the NRC, to lawfully possess machineguns that they previously were not authorized to possess.

As indicated in the attached guidelines, an NRC licensee or certificate holder will be required to apply to the Commission to take advantage of the new authority provided by section 161A. Prior to granting an application to permit security personnel

of an NRC licensee or certificate holder to transfer, receive, possess, transport, import, and use a weapon, ammunition, or device not previously authorized, the Commission must determine that the requested permission is necessary in the discharge of the official duties of the security personnel and that the security personnel are engaged in protecting: (1) A facility owned or operated by an NRC licensee or certificate holder and designated by the Commission, or (2) radioactive material or other property that is owned or possessed by an NRC licensee or certificate holder, or that is being transported to or from a facility owned or operated by such a licensee or certificate holder, and which has been determined by the Commission to be of significance to the common defense and security or public health and safety.

Furthermore, an NRC licensee or certificate holder that applies to the NRC for enhanced weapons authority under section 161A. must also comply with applicable U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) firearms requirements before obtaining such enhanced weapons.

Section 161A. also mandates that all security personnel with duties requiring access to covered weapons who are engaged in the protection of Commission-designated facilities, radioactive material, or other property owned or operated by an NRC licensee or certificate holder shall be subject to a fingerprint-based background check by the Attorney General and a firearms background check against the Federal National Instant Background Check System (NICS). Consequently, these firearms background check requirements are mandatory for all such security personnel who are engaged in protecting licensees and certificate holders that fall within Commission-designated classes of facilities, radioactive material, and other property and who employ covered weapons as part of their protective strategy. These firearms background checks will provide assurance that such security personnel are not barred under Federal and State law from receiving, possessing, transporting, or using any covered weapons.

Under the provisions of section 161A.d., 42 U.S.C. 2201a(d), section 161A. takes effect on the date that these guidelines are issued by the Commission, with the approval of the Attorney General. The Attorney General approved these guidelines by letter July 7, 2009. Accordingly, section 161A. takes effect as specified in the **DATES** section above.

The recordkeeping and reporting requirements described in these

guidelines will take effect upon the Commission's promulgation of regulations or the issuance of orders. Therefore, the NRC will obtain, as part of the promulgation or issuance of such regulations or orders, approval from the Office of Management and Budget of any such information collection burdens, as required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Regulations or orders issued by the Commission concerning section 161A. shall be consistent with the provisions of these guidelines. These guidelines do not supersede or alter existing Commission regulations or orders. The Commission will review and revise existing Commission regulations and orders to be consistent with these guidelines, as appropriate.

Dated at Rockville, Maryland, this 4th day of September 2009.

For the Nuclear Regulatory Commission,
Annette L. Vietti-Cook,
Secretary of the Commission.

Attachment—Guidelines on the Use of Firearms by Security Personnel in Protecting U.S. NRC-Regulated Facilities, Radioactive Material, and Other Property

1. Authority and Scope

On August 8, 2005, the President signed into law the Energy Policy Act of 2005 (the Act), Public Law 109-58, 119 Stat. 594 (2005). Section 653 of the Act amended the Atomic Energy Act of 1954 (AEA) by adding section 161A., "Use of Firearms by Security Personnel," 42 U.S.C. 2201a. Section 161A. of the AEA provides new authority to the U.S. Nuclear Regulatory Commission (Commission or NRC) to enhance security at designated facilities of NRC licensees and certificate holders and to enhance security with respect to certain radioactive material or other property owned or possessed by an NRC licensee or certificate holder, or the transportation of such material or other property.

Specifically, section 161A. provides two potential advantages to NRC licensees and certificate holders to enhance security. NRC's regulations authorize in certain circumstances the possession of standard weapons by the security personnel of licensees and certificate holders. Under section 161A., the Commission is authorized to permit licensees and certificate holders to obtain weapons not previously permitted to be owned or possessed under Commission authority, *i.e.*, enhanced weapons. In addition, section 161A. authorizes the Commission to preempt State, local, and certain Federal

firearms laws, including regulations, that prohibit the transfer, receipt, possession, transport, import, and use of handguns, rifles, shotguns, short-barreled shotguns, short-barreled rifles, machineguns, semiautomatic assault weapons, ammunition for such weapons, and large capacity ammunition feeding devices.

Prior to the enactment of section 161A., with limited exceptions, only Federal, State or local law enforcement could lawfully possess machineguns. Section 161A. authority, however, allows licensees and certificate holders who obtain the necessary authorization from the NRC, to lawfully possess machineguns (enhanced weapons authority) that they previously were not authorized to possess.

An NRC licensee or certificate holder must apply to the Commission to take advantage of the provisions of section 161A. Prior to granting an application to permit security personnel of an NRC licensee or certificate holder to transfer, receive, possess, transport, import, and use a weapon, ammunition, or device not previously authorized, the Commission must determine that the requested authority is necessary in the discharge of the official duties of the security personnel and the security personnel are engaged in protecting: (1) A facility owned or operated by an NRC licensee or certificate holder and designated by the Commission, or (2) radioactive material or other property that has been determined by the Commission to be of significance to public health and safety or the common defense and security, and that is owned or possessed by an NRC licensee or certificate holder, or that is being transported to or from an NRC-regulated facility. The Commission's authorization shall only apply to use by security personnel of a licensee or certificate holder of a weapon, ammunition, or a device listed in section 161A.b. when used by such personnel while in the discharge of their official duties.

Section 161A. also mandates that all security personnel with duties requiring access to covered weapons who are engaged in the protection of Commission-designated facilities, radioactive material, or other property owned or operated by an NRC licensee or certificate holder shall be subject to a fingerprint-based background check by the Attorney General and a firearms background check against the Federal National Instant Background Check System (NICS). These firearms background checks will provide assurance that such security personnel are not barred from possessing,

transporting, or using any covered weapons.

Under the provisions of section 161A.d., 42 U.S.C. 2201a(d), section 161A. takes effect on the date that these guidelines are issued by the Commission after being approved by the U.S. Attorney General.

Regulations or orders issued by the Commission concerning section 161A. shall be consistent with the provisions of these guidelines. Modification of these guidelines by the Commission must be made with the concurrence of the Attorney General.

Definitions of terms that may not have a commonly understood meaning are contained in section 8 of these guidelines.

2. Commission Designations and Determinations

After the issuance of these guidelines, the Commission will promulgate regulations or issue orders that authorize specific classes of licensees and certificate holders to apply to the Commission to use the authority of section 161A. These regulations or orders will designate the specific types of facilities for which licensees and certificate holders are authorized to use the authority of section 161A. In addition, Commission regulations or orders will designate the specific types of radioactive material or other property owned or possessed by NRC licensees and certificate holders, or specific types of radioactive material or other property being transported to or from a facility owned or operated by an NRC licensee or certificate holder, for which an application to the Commission may be made to use the authority of section 161A. The Commission's designation of specific radioactive material or other property will be based upon a finding that the material or property is of significance to the common defense and security or public health and safety. These regulations or orders will require a firearms background check (as described in section 5 of these guidelines) for armed security personnel who have access to covered weapons and who are engaged in the protection of a facility, radioactive material, or other property owned or operated by an NRC licensee or certificate holder that has been designated by the Commission pursuant to section 161A.

The Commission will promulgate regulations or issue orders establishing a process for NRC-regulated entities to apply for and obtain preemption authority under section 161A. The Commission will also promulgate regulations or issue orders establishing a process for NRC-regulated entities to

apply for and obtain both enhanced weapons authority and preemption authority under section 161A. An NRC-regulated entity may obtain preemption authority without applying for enhanced weapons authority. An NRC-regulated entity seeking enhanced weapons authority must obtain both enhanced weapons authority and preemption authority. A licensee's or certificate holder's applications for preemption authority and enhanced weapons authority may be sequential or concurrent, but the NRC must approve the licensees' and certificate holders' applications for preemption authority at the same time as or before approving their application for enhanced weapons authority.

Before granting preemption authority, the Commission will require persons who are licensees and certificate holders on the effective date of these guidelines, and who have applied for preemption authority only or for enhanced weapons authority and preemption authority, to notify the NRC when a sufficient number of security personnel have completed a satisfactory firearms background check to permit the licensee or certificate holder to meet the licensee's or certificate holder's security personnel minimum staffing and fatigue requirements. The NRC will review such readiness notifications on a case-by-case basis prior to approving a licensee's or certificate holder's application for preemption authority.

In addition, Commission regulations or orders will require that before licensees and certificate holders may be granted authority by the NRC to obtain enhanced weapons they must: (1) Apply to the NRC for preemption authority, (2) apply to the NRC for approval to obtain enhanced weapons, and (3) develop new, or revise existing, physical security plans (including plans for the safe storage of covered weapons), security personnel training and qualification plans, safeguards contingency plans, and safety assessments incorporating the use of the enhanced weapons to be employed. These plans and assessments must be specific to the facility, radioactive material, or other property being protected; must identify the specific type(s) of covered weapons that will be used by security personnel; and must address how these covered weapons will be employed in meeting the NRC-required protective strategy. Licensees and certificate holders must submit these new, or revised, plans and assessments to the NRC for review and written approval. The requirements for the contents of the licensee's and certificate holder's physical security

plans, security personnel training and qualification plans, safeguards contingency plans, and safety assessments on the use of enhanced weapons are contained in NRC regulations.

Based upon the NRC's review of an applicant's plans and assessments (as provided in the preceding paragraph) and upon a determination that all of the requirements of section 161A. have been, or will be, met, the NRC will provide a written statement to the licensee or certificate holder stating that the NRC has determined that the licensee's or certificate holder's need for the specific enhanced weapons that the licensee or certificate holder intends to deploy satisfies the requirements of the NRC under section 161A.

Licensees and certificate holders lawfully possessing enhanced weapons under an authority other than section 161A. on or before the effective date of these guidelines are not required to revise their previously approved security plans, unless the licensee or certificate holder applies to the NRC under section 161A. for preemption authority or for enhanced weapons authority and preemption authority.

3. Applicability of Federal Firearms Laws, Regulations and Licensing Requirements

In addition to complying with Commission regulations and orders implementing section 161A.. licensees and certificate holders covered by these guidelines must also comply with applicable provisions of Title 18 U.S.C. Chapter 44 (the Gun Control Act (GCA)) and Title 26 U.S.C. Chapter 53 (National Firearms Act (NFA)) and 27 CFR parts 478 and 479 (the applicable regulations promulgated under those laws by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)), regarding the transfer, receipt, possession, transportation, importation, or use of covered weapons, except to the extent that those regulations are superseded by section 161A. After a licensee's or certificate holder's receipt of the NRC's written approval of their application for enhanced weapons authority, the licensee or certificate holder may in accordance with 26 U.S.C. Chapter 53 have enhanced weapons transferred to them. An application to transfer an enhanced weapon to a licensee or certificate holder must be submitted to ATF by the transferor of the enhanced weapon. The application must include all required information including a copy of the NRC's written approval to possess specific enhanced weapons under section 161A. All enhanced weapons must be registered with ATF

under the name of the licensee or certificate holder.

4. Training and Qualification on Enhanced Weapons

The Commission will promulgate regulations or issue orders requiring NRC licensees or certificate holders who have received written NRC approval of their application for section 161A. enhanced weapons authority to provide specific training to their security personnel on the possession, storage, maintenance, and use of enhanced weapons and on tactical maneuvers employing such weapons in protecting NRC-designated facilities, radioactive material, or other property, whichever is applicable. The regulations or orders will require such licensees and certificate holders to incorporate within their security personnel training and qualification plans specific training and qualification information applicable to the enhanced weapons to be employed, including information regarding tactical maneuvers that security personnel will carry out with those weapons. This training and qualification information must conform with firearms training and qualification standards developed by nationally recognized firearms organizations or standard setting bodies, or with 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, and the U.S. Department of Defense.

5. Firearms Background Checks

The Commission will promulgate regulations or issue orders establishing requirements for firearms background checks for security personnel whose duties require access to covered weapons in connection with the protection of a facility, radioactive material, or other property owned or operated by an NRC licensee or certificate holder that has been designated by the Commission under section 2 of these guidelines.

Licensees and certificate holders may apply to the NRC for preemption authority only or they may apply for both enhanced weapons authority and preemption authority. In either case, to obtain approval of such an application, satisfactory firearms background checks must have been completed for the licensee's or certificate holder's security personnel whose official duties require access to covered weapons. The firearms background check requirement applies to such security personnel whether they 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.

The Commission's regulations or orders will set forth the criteria for satisfactory and adverse firearms background checks, as defined in section 8(a) of these guidelines. The regulations or orders will require that licensees and certificate holders who employ covered weapons as part of their protective strategy for a facility, radioactive material, or other property that is included within the classes of facilities, radioactive material, or other property designated by the Commission shall complete a satisfactory firearms background check of security personnel who have, or are proposed to have, official duties that require access to covered weapons in the protection of such facilities, radioactive material, or other property. The firearms background checks are in addition to any other background checks or criminal history checks required for security personnel under Commission regulations or orders.

Licensees and certificate holders who employ covered weapons as part of their protective strategy for a facility, radioactive material, or other property that is included within the classes of facilities, radioactive material, or other property designated by the Commission shall begin firearms background checks of their security personnel who have, or are proposed to have, official duties that require access to covered weapons in the protection of such facilities, radioactive material, or other property after the NRC issues a rule or order designating the class of facility, radioactive material, or other property into which their facility, radioactive material, or other property falls. Within 180 days of the NRC issuing such a rule or order, affected licensees and certificate holders must remove such personnel from duties requiring access to covered weapons if they have received an adverse firearms background check. During this 180-day period, affected licensees and certificate holders may permit such personnel who receive a "delayed" National Instant Criminal Background Check System (NICS) response to continue duties that require access to standard weapons pending resolution of the "delayed" response; however, they must remove such individuals from duties requiring access to enhanced weapons.

Licensees and certificate holders may not permit security personnel who receive a "denied" NICS response, as defined in sections 8(a) and (c), to perform duties requiring access to

covered weapons, except as provided in the next paragraph.

After the 180-day period, licensees and certificate holders may not permit security personnel who receive an adverse firearms background check to perform duties requiring access to covered weapons, except that security personnel who received a "denied" or "delayed" NICS response and who subsequently receive a response that a satisfactory firearms background check has been completed may be permitted access to covered weapons.

Licensees or certificate holders who employ covered weapons as part of their protective strategy for a facility, radioactive material, or other property that is included within the classes of facilities, radioactive material, or other property designated by the Commission are required to conduct periodic firearms background checks of all security personnel who have, or are proposed to have, official duties that require access to covered weapons in the protection of such a facility, radioactive material, or other property, at a minimum of once every five years after their first background check. However, these checks may be conducted more frequently if required by Commission regulation or order, or if the licensee or certificate holder requires an earlier check. Security personnel who receive an adverse firearms background check response upon a recheck must be removed from duties that require access to covered weapons. Security personnel so removed who subsequently complete a satisfactory firearm background check may be permitted access to covered weapons. In addition, the Commission will require a new firearms background check for security personnel who have had a break of greater than one (1) week in employment by the licensee or certificate holder or in employment by a contractor who provides security services to a licensee or certificate holder.

The Commission will require a new firearms background check for security personnel who have transferred to the employment or the service of the licensee or certificate holder from a different licensee or certificate holder in whose employ they previously completed a satisfactory firearms background check. However, a change in the ownership of the licensee or certificate holder, a change in the ownership of the security contractor providing the security personnel, or a change in the security contractor providing the security personnel will not require, by itself, the performance of a new firearms background check for

personnel who have previously completed a satisfactory firearms background check.

The Commission will require each licensee or certificate holder who employs enhanced weapons as part of their protective strategy for a facility, radioactive material, or other property that is included within the classes of facilities, radioactive material, or other property designated by the Commission to complete a satisfactory firearms background check for security personnel whose official duties require access to enhanced weapons in the protection of such facilities, radioactive material, or other property, before such personnel may be given access to enhanced weapons. The Commission will promulgate regulations or issue orders requiring such licensees or certificate holders to establish procedures for notifying the NRC when a security officer assigned duties requiring access to covered weapons is permanently removed from such duties because of an adverse firearms background check. The NRC will promptly report suspected violations of Federal law to the appropriate Federal agency and suspected violations of State law to the appropriate State agency.

The Commission will promulgate regulations or issue orders providing a process for security personnel who have received an adverse firearms background check to appeal a "denied" NICS response to the FBI, or to provide additional information to the FBI to resolve a "delayed" NICS response. Security personnel must file a request to appeal a "denied" NICS response or a request to resolve a "delayed" NICS response within 45 calendar days after the date the licensee or certificate holder notifies the individual of the adverse response. The request must include appropriate documentation or record(s) establishing the legal or factual basis, or both, for the challenge. It is the responsibility of a person who is appealing or resolving an adverse firearms background check to provide the FBI with any additional information requested by the FBI to resolve an adverse firearms background check. Such persons must supply this information to the FBI within 45 calendar days after the FBI's request. Extensions of the time period to supply additional requested information in support of a timely appeal or resolution request may be granted by the FBI for good cause shown, as determined by the FBI. Failure to timely initiate an appeal or resolution request or timely provide additional information requested by the FBI will result in the barring or abandonment of the appeal or resolution

request. Appeals or resolution requests that are barred or abandoned because of the failure to comply with these deadlines may only be pursued after resubmission of a firearms background check request on the individual. Such resubmission will be by, and at the sole discretion of, a licensee or certificate holder.

6. Enhanced Weapons Accountability, Transfer, Transportation, and Record Keeping

The Commission will promulgate regulations or issue orders requiring licensees and certificate holders to perform periodic accountability inventories of the enhanced weapons in their possession to verify their continued possession of each enhanced weapon. The regulations or orders will require licensees or certificate holders to complete such inventories at specified intervals, and at least one inventory will be conducted each year. These inventories must be based upon the verification of the presence at the licensee's or certificate holder's facility of each enhanced weapon or upon a verification of the presence of an intact tamper indicating device (TID) for enhanced weapons that are stored in locked and sealed storage or ready-service containers at the licensee's or certificate holder's facility. The regulations or orders will require that licensees and certificate holders permitting enhanced weapons to be removed from their facility (*i.e.*, the owner controlled area) by security personnel for permissible reasons verify that such weapons are subsequently returned to the licensee's or certificate holder's facility upon completion of official use of the weapons.

Permissible reasons for removal of enhanced weapons from the licensee's or certificate holder's facility include: (1) Removal for use at a firing range or training facility used by the licensee or certificate holder, and (2) removal for use in escorting shipments of radioactive material or other property designated by the Commission under section 2 of these guidelines, if the material or other property is being transported to or from the licensee's or certificate holder's facility. The Commission may provide other permissible reasons for the removal of enhanced weapons by regulation or order.

Any other removal of enhanced weapons from a licensee's or certificate holder's facility would be a transfer of those weapons. The licensee or certificate holder may only transfer (by sale or otherwise) enhanced weapons

pursuant to an application approved by ATF under 26 U.S.C. Chapter 53.

A licensee or certificate holder receiving enhanced weapons must assist the transferor in completing an application to transfer such weapons in accordance with 26 U.S.C. 5812, and must provide the transferor a copy of the NRC's written approval of their application for enhanced weapons authority. Enhanced weapons may only be transferred to the licensee or certificate holder, not to a contractor of the licensee or certificate holder.

The Commission will promulgate regulations or issue orders requiring a licensee or certificate holder possessing enhanced weapons to notify the NRC and the appropriate local authorities of any stolen or lost enhanced weapons upon the discovery of such theft or loss. Licensees and certificate holders will also have an independent obligation, pursuant to 27 CFR 479.141, to report to ATF stolen or lost enhanced weapons registered in accordance with 26 U.S.C. 5841 immediately upon the discovery of such theft or loss.

Security personnel transporting enhanced weapons to or from a firing range or training facility used by the licensee or certificate holder are responsible for assuring that the weapons are unloaded and locked in a secure container during transport. Except as provided in the next paragraph, 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 designated radioactive material or other property being transported to or from the licensee's or certificate holder's facility are responsible for assuring that the weapons are unloaded and locked in a secure container during transport. In addition to being in a secure container, the contents of the container should only be accessible by authorized personnel. Unloaded covered weapons and ammunition for such weapons may be transported in the same secure container during transport.

Security personnel required to carry covered weapons while escorting designated radioactive material or other property being transported to or from the licensee's or certificate holder's facility (whether intrastate or interstate) are responsible for assuring that such weapons are maintained in a state of loaded readiness and available for immediate use while they are accompanying the transport.

To facilitate compliance with these guidelines, the NRC's regulations or orders will require licensees and certificate holders to keep records

(capable of being inspected or audited by the NRC) relating to the receipt, transfer, and transportation of enhanced weapons. The records will be required to include the following minimum information relating to receipt and transfer of enhanced weapons: the date of receipt of the enhanced weapon; the name and address of the person from whom the enhanced weapon was received; the name of the manufacturer and importer (if any) of the enhanced weapon; the model, serial number, type, and caliber or gauge of the enhanced weapon; and for any transfer of an enhanced weapon (including sending off for repairs) by the licensee or certificate holder to another person, the name and address of the person to whom the enhanced weapon was transferred and the date of the transfer. The records will be required to include the following minimum information relating to transportation of enhanced weapons: the date of departure of the enhanced weapon from, and the date of return of the enhanced weapon to, the licensee's or certificate holder's facility; the purpose of the enhanced weapon's transportation; the name of the person transporting the enhanced weapon and the name of the person/facility to whom the enhanced weapon is being transported; and the model, serial number, type, and caliber or gauge of the enhanced weapon.

7. Termination, Modification, Suspension, and Revocation

The Commission will promulgate regulations or issue orders setting forth standards for the termination, modification, suspension, or revocation of the NRC's approval of a licensee's or certificate holder's preemption authority or enhanced weapons authority and preemption authority. Within three (3) business days of notifying the licensee or certificate holder, the NRC will notify ATF of the termination, modification, suspension, or revocation of a licensee's or certificate holder's preemption authority or enhanced weapons authority and preemption authority. Such a notification will be made to the position or point of contact designated by ATF. The regulations or orders will require licensees and certificate holders to transfer any enhanced weapons that they are no longer authorized to lawfully possess under section 161A., or that they wish to dispose of, to (1) a Federal, State, or local government entity; (2) a Federal firearms licensee authorized to receive the enhanced weapons under applicable law and regulations; and (3) other NRC licensees and certificate holders subject to section 161A. that are authorized to receive and

possess these weapons. Licensees and certificate holders may also abandon such weapons to ATF. Transfers of such enhanced weapons must be made in accordance with section 6 of these guidelines.

The regulations or orders will require licensees and certificate holders to transfer any enhanced weapons (1) prior to NRC approval of the termination or modification of a licensee's or certificate holder's authority to possess the enhanced weapons under section 161A., and (2) as soon as practicable following NRC suspension or revocation of the licensee's or certificate holder's authority to lawfully possess enhanced weapons under section 161A.

Licensees and certificate holders who have had their preemption authority or enhanced weapons and preemption authority suspended or revoked may reapply for such authority by filing a new application for such authority under these guidelines.

Licensees and certificate holders who intend to obtain enhanced weapons different from the weapons previously approved by the NRC must submit to the NRC for prior review and approval revised physical security plans, training and qualification plans, safeguards contingency plans, and safety assessments addressing the use of these different enhanced weapons.

8. Definitions

(a) As used in these guidelines—
Adverse firearms background check means a firearms background check that has resulted in a "denied" or "delayed" NICS response.

Covered weapon means any handgun, rifle, shotgun, short-barreled shotgun, short-barreled rifle, semi-automatic assault weapon, machinegun, ammunition for any such weapon, or large capacity ammunition feeding device as specified under section 161A. Covered weapons include both enhanced weapons and standard weapons.

Enhanced weapon means any short-barreled shotgun, short-barreled rifle, or machinegun. Enhanced weapons do not include destructive devices as defined in 18 U.S.C. 921(a). Enhanced weapons do not include standard weapons.

Firearms background check means a background check by the Attorney General pursuant to section 161A. that includes a check against the Federal Bureau of Investigation's (FBI's) fingerprint system and the NICS.

NICS means the National Instant Criminal Background Check System established by Section 103(b) of the Brady Handgun Violence Prevention Act, Public Law 103-159, 107 Stat.

1536, that is operated by the FBI's Criminal Justice Information Services Division.

NICS response means a response provided by the FBI as the result of a firearms background check against the NICS. Such a response may be "proceed," "delayed," or "denied."

Standard weapon means any handgun, rifle, shotgun, semi-automatic assault weapon, or large capacity ammunition feeding device. Standard weapons do not include enhanced weapons.

Satisfactory firearms background check means a firearms background check that has resulted in a "proceed" NICS response.

(b) The terms "handgun, rifle, shotgun, short-barreled shotgun, short-barreled rifle, semi-automatic assault weapon, machinegun, ammunition, and large capacity ammunition feeding device" have the same meaning provided for these terms in 18 U.S.C. 921(a).

(c) The terms "proceed," "delayed," and "denied," as used in NICS responses, have the same meaning provided for these terms in the FBI's regulations in 28 CFR part 25.

Disclaimer

These guidelines may not be relied upon to create any rights, substantive or procedural, enforceable by law by any party in any manner, civil or criminal, and they do not place any limitations on otherwise lawful activities of the agencies.

[FR Doc. E9-21980 Filed 9-10-09; 8:45 am]
BILLING CODE 7590-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11868 and #11869]

New York Disaster #NY-00079

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA-1857-DR), dated September 1, 2009.

Incident: Severe Storms and Flooding.
Incident Period: August 8, 2009 through August 10, 2009.

Effective Date: September 1, 2009.

Physical Loan Application Deadline

Date: November 2, 2009.

Economic Injury (EIDL) Loan

Application Deadline Date: June 1, 2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business

Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on September 1, 2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Cattaraugus, Chautauqua, Erie.

The Interest Rates are:

| | Percent |
|--|---------|
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere | 4.500. |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000. |

The number assigned to this disaster for physical damage is 11868B and for economic injury is 11869B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9-21846 Filed 9-10-09; 8:45 am]

BILLING CODE 8025-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28896; File No. 812-13631]

Columbia Funds Series Trust, et al.; Notice of Application

September 4, 2009.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from rule 12d1-2(a) under the Act.

SUMMARY: *Summary of Application:* Applicants request an order to permit registered open-end investment companies relying on rule 12d1-2 under the Act to invest in certain financial instruments.

Applicants: Columbia Funds Series Trust and Columbia Funds Series Trust II (together, the "Trusts") and Columbia Management Advisors, LLC (the "Adviser").

DATES: *Filing Dates:* The application was filed on February 6, 2009 and amended on August 25, 2009.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 29, 2009 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants, c/o Peter T. Fariel, Esq., Bank of America, N.A., MA5-515-11-05, One Financial Center, 11th Floor, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Deepak Pai, Senior Counsel, at (202) 551-6876, or Marilyn Mann, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551-8090.

Applicants' Representations

1. The Trusts are organized as Delaware statutory trusts and are registered under the Act as open-end management investment companies. The Adviser, a limited liability company organized under Delaware law and an indirect wholly owned subsidiary of Bank of America Corporation, is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser serves as the investment adviser to each Applicant Fund (as defined below).

2. Applicants request an exemption from rule 12d1-2(a) under the Act to the



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Part II

Nuclear Regulatory Commission

10 CFR Part 73

Enhanced Weapons, Firearms Background Checks, and Security Event
Notifications; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC-2011-0018]

RIN 3150-AI49

Enhanced Weapons, Firearms Background Checks, and Security Event Notifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or the Commission) is proposing regulations that would implement its authority under the new section 161A of the Atomic Energy Act of 1954 (AEA), as amended, and revise existing regulations governing security event notifications. These proposed regulations are consistent with the provisions of the Firearms Guidelines the NRC published under section 161A with the approval of the U.S. Attorney General on September 11, 2009 (74 FR 46800).

The NRC previously proposed new regulations on October 26, 2006 (71 FR 62663), that would have implemented this new authority as part of a larger proposed rule entitled "Power Reactor Security Requirements." However, based upon changes to the final Firearms Guidelines the NRC is now proposing further revisions in these implementing regulations that address the voluntary application for enhanced weapons and the mandatory firearms background checks under section 161A. These implementing regulations would only apply to nuclear power reactor facilities and Category I strategic special nuclear material (SSNM) facilities.

In addition, the NRC is also proposing revisions addressing security event notifications from different classes of facilities and the transportation of radioactive material consistently and would add new event notification requirements on the theft or loss of enhanced weapons.

DATES: Submit comments on this proposed rule by May 4, 2011. Submit comments specific to the information collection burden aspects of this proposed rule by March 7, 2011. Comments received after these dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after these dates.

ADDRESSES: Please include Docket ID NRC-2011-0018 in the subject line of your comments. See Section I of this

document for instructions on how to submit comments.

Federal rulemaking Web site: Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2011-0018. Address questions about NRC dockets to Carol Gallagher 301-492-3668; *e-mail:* Carol.Gallagher@nrc.gov.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, *Attn:* Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays (telephone 301-415-1677).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101. You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

See Section IX of this document, Availability of Documents, for instructions on how to access NRC's Agencywide Documents Access and Management System (ADAMS) and other methods for obtaining publicly availability documents related to this action.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Beall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone 301-415-3874; *e-mail:* Robert.Beall@nrc.gov or Mr. Philip Brochman, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone 301-415-6557; *e-mail:* Phil.Brochman@nrc.gov.

SUPPLEMENTARY INFORMATION:

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I. Submitting Comments

Comments on rulemakings submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site [Regulations.gov](http://www.regulations.gov). Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

II. Background

A. Implementation of Section 161A of the AEA

On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (EPAct), Public Law 109-58, 119 Stat. 594 (2005). Section 653 of the EPAct amended the AEA by adding section 161A, "Use of Firearms by Security Personnel" (42 U.S.C. 2201a). Section 161A of the AEA provides the NRC with new authority that will enhance security at designated facilities of NRC licensees and certificate holders. Section 161A also provides the NRC with new authority that will enhance security with respect to the possession or use of certain radioactive material or other property owned or possessed by an NRC licensee or certificate holder, or the transportation of such material or other property that has been determined by the Commission to be of significance to the common defense and security or public health and safety.

Section 161A also mandates that all security personnel with duties requiring access to covered weapons¹ who are engaged in the protection of Commission-designated facilities, radioactive material, or other property owned or operated by an NRC licensee or certificate holder, be subject to a fingerprint-based background check by the U.S. Attorney General and a firearms background check against the Federal National Instant Background Check

¹ Covered weapons, standard weapons, and enhanced weapons are new terms the NRC is defining in § 73.2 of this proposed rule. Enhanced weapons are weapons registered under the *National Firearms Act* (e.g., machine guns, short-barreled shotguns, and short-barreled rifles). Standard weapons are all other weapons. Covered weapons are enhanced plus standard weapons.

System (NICS). These firearms background checks will provide assurance that these security personnel are not barred under Federal or applicable State law from receiving, possessing, transporting, or using any weapons.

Section 161A also provides two potential advantages to NRC licensees and certificate holders to enhance security. The first advantage is that certain licensees and certificate holders, after approval by the NRC, will be permitted to obtain and employ in their protective strategies weapons that they were not previously permitted to own or possess under Commission authority and applicable U.S. laws. These include short-barreled shotguns, short-barreled rifles, and machine guns (hereinafter referred to as "enhanced weapons authority"). The second advantage is that security personnel of certain licensees or certificate holders will be permitted to transfer, receive, possess, transport, import, and use handguns, rifles, shotguns, short-barreled shotguns, short-barreled rifles, machine guns, semiautomatic assault weapons, ammunition for these weapons, and large capacity ammunition feeding devices, notwithstanding State, local, and certain Federal firearms laws, including regulations, that otherwise prohibited these actions (hereinafter referred to as "preemption authority"). Before the enactment of section 161A, with limited exceptions, only Federal, State, or local law enforcement authorities could lawfully possess machine guns. Exercise of section 161A authority, however, will allow certain licensees and certificate holders, after obtaining the necessary authorization from the NRC, to lawfully possess enhanced weapons that they previously were not authorized to possess. Licensee and certificate holder applications for enhanced weapons authority and preemption authority are both voluntary.

Subsequent to the enactment of the EPAct, NRC staff and U.S. Department of Justice (DOJ) staff, including the Federal Bureau of Investigation (FBI) and the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), began development of the Firearms Guidelines required under section 161Ad of the AEA. As required by section 161Ad, the provisions of section 161A took effect when the Commission, with the approval of the U.S. Attorney General, published the approved Firearms Guidelines in the **Federal Register** on September 11, 2009 (74 FR 46800). The issued Firearms Guidelines may also be found in the Federal e-Rulemaking Web site at

<http://www.regulations.gov> under Docket ID NRC-2011-0018.

*B. October 2006 Proposed Rule—
Implementation of Section 161A of the
AEA*

In parallel with the development of the Firearms Guidelines, the NRC developed proposed implementing regulations. On October 26, 2006 (71 FR 62663), the NRC published proposed regulations to implement the provisions of section 161A as part of a larger proposed amendment to its regulations under Title 10 of the Code of Federal Regulations (CFR) parts 50, 72, and 73, "Power Reactor Security Requirements." These proposed implementing regulations were based upon the draft version of the Firearms Guidelines that existed in September 2006. The NRC had proposed that the provisions of section 161A would apply only to power reactor facilities and Category I Strategic Special Nuclear Material (SSNM) facilities (*i.e.*, facilities possessing or using formula quantities or greater of strategic special nuclear material). This would permit these two highest risk classes of licensed facilities to apply to the NRC for section 161A authority (either combined enhanced weapons authority and preemption authority or stand-alone preemption authority).

The NRC had also indicated that it would consider making section 161A authority available to additional classes of facilities, radioactive material, or other property, but this would be accomplished in a separate future rulemaking.

The NRC had recognized that the language of the issued Firearms Guidelines might differ significantly from the September 2006 version of the draft Firearms Guidelines (which was used to develop the October 2006 proposed rule), and therefore changes to the proposed rule might be required to ensure that the final rule text was consistent with the final version of the Firearms Guidelines. The NRC had noted this possibility in the October 2006 proposed rule (*see* 71 FR 62666) and had indicated that appropriate rulemaking actions might be necessary to reconcile the issued Firearms Guidelines and the proposed rule. Subsequent to the publication of the October 2006 proposed rule, the DOJ required several significant changes to the Firearms Guidelines. Consequently, the NRC is taking appropriate action in this proposed rule by proposing further revisions to the agency's regulations that would implement the Firearms Guidelines.

*C. October 2006 Proposed Rule—
Security Event Notifications*

The NRC had also proposed several changes to the security event notification requirements in part 73 in the October 2006 proposed rule to address imminent attacks or threats against power reactors as well as suspicious events that could be indicative of potential reconnaissance, surveillance, or challenges to security systems. These proposed changes would have made generically applicable provisions similar to those that had been contained in security advisories and other guidance issued by the NRC following the events of September 11, 2001.

For example, these advisories had requested that power reactor licensees voluntarily report suspicious activities that could be indicative of surveillance or reconnaissance efforts. The October 2006 proposed rule changes were principally focused on power reactor facilities. Thus, they did not address identical types of events at Category I SSNM facilities, at other waste and special nuclear material (SNM) facilities, or during the transportation of spent nuclear fuel (SNF), high-level radioactive waste (HLW), or SSNM. Additionally, for licensees who obtained enhanced weapons, a new notification provision was also proposed when the licensee made a separate notification to ATF (*e.g.*, regarding a stolen or lost enhanced weapon). However, as discussed previously, the final Firearms Guidelines contained new provisions regarding notifications to the NRC and local law enforcement officials involving stolen or lost enhanced weapons.

Based upon the changes now reflected in the final Firearms Guidelines, comments received on the October 2006 proposed rule, and a reassessment by NRC staff on security event notification needs for equivalent facilities and activities, the NRC is proposing further revisions to the security event notification requirements in part 73. In several cases, the NRC has retained the proposed new or modified notification requirements from the October 2006 proposed rule, but has expanded their applicability to include additional classes of facilities and activities (*e.g.*, Category I SSNM facilities and the transportation of SNF, HLW, and Category I SSNM). The NRC is proposing to make changes to the security event notification requirements that would affect a number of classes of NRC-regulated facilities and activities. This would include fuel cycle facilities

authorized to possess and use Category I quantities of SSNM, Category II and Category III quantities of SNM, hot cell facilities, independent spent fuel storage installations (ISFSIs), monitored retrievable storage installations (MRSs), geologic repository operations areas (GROAs), power reactor facilities, production reactor facilities, and research and test reactor facilities. This would also include notifications involving the transportation of Category I quantities of SSNM, SNF, HLW, and Category II and Category III quantities of SNM. The NRC is also proposing clarifying and editorial changes to these regulations to improve regulatory clarity and licensee implementation of these requirements. The security event notification requirements have not been updated for several years, and the NRC is taking this opportunity to address additional significant classes of facilities and activities beyond power reactors, as well as incorporating changes required by the final Firearms Guidelines.

III. Discussion

A. Implementation of Section 161A of the AEA

Section 161A allows the NRC to authorize licensees and certificate holders to use, as part of their protective strategies, an expanded arsenal of weapons, including machine guns and semi-automatic, large-capacity, assault weapons. As indicated in the October 2006 proposed rule, an NRC licensee or certificate holder interested in obtaining section 161A authority (either enhanced weapons authority and preemption authority or preemption authority alone) will be required to apply to the NRC to take advantage of this new authority. Application for this authority would remain voluntary. However, the firearms background check requirements of section 161A would become mandatory for certain licensees and certificate holders.

The fingerprint-based background check by the U.S. Attorney General and a firearms background check against the FBI's NICS databases (hereinafter the "firearms background checks") would apply to all licensees and certificate holders that fall within the classes of facilities, radioactive material, or other property designated by the Commission under section 161A. The proposed § 73.18(c) would identify the specific classes of licensee facilities, radioactive material, and other property designated by the Commission under section 161A that would be eligible to apply for stand-alone preemption authority or for combined enhanced weapons authority and preemption authority. The

proposed § 73.19(c) would identify the specific classes of facilities, radioactive material, and other property designated by the Commission under section 161A that would be subject to the firearms background check requirements. In this rulemaking, the NRC would designate two classes of facilities as subject to the requirements of proposed §§ 73.18 and 73.19: power reactor facilities and Category I SSNM facilities. The Commission may consider whether to designate additional classes of facilities, radioactive material, and other property in a separate future rulemaking. Although the October 2006 proposed rule was primarily focused on power reactor security requirements, the NRC expanded the scope of this proposed rule to also include facilities authorized to possess Category I SSNM to efficiently implement the provisions of section 161A for these classes of highest risk facilities. The NRC is continuing to follow this approach in this revised proposed rule to expedite the issuance of these regulations for these highest risk classes of facilities.

Before granting an application to permit security personnel of an NRC licensee or certificate holder to transfer, receive, possess, transport, import, or use a weapon, ammunition, or device not previously authorized, the NRC must determine that the requested action is necessary to enable the security personnel to carry out their official duties associated with protecting: (1) A facility owned or operated by an NRC licensee or certificate holder and designated by the Commission; or (2) radioactive material or other property that has been designated by the Commission to be of significance to the common defense and security or public health and safety and that is owned or possessed by an NRC licensee or certificate holder or that is being transported to or from an NRC-regulated facility. Furthermore, an NRC licensee or certificate holder that applies to the NRC for enhanced weapons authority under section 161A must also comply with applicable ATF firearms requirements before any enhanced weapons are transferred to the licensee or certificate holder.

In the October 2006 proposed rule implementing the Firearms Guidelines, the NRC proposed amendments to part 73 adding new definitions, processes for obtaining enhanced weapons, requirements for firearms background checks, and event notification requirements for stolen or lost enhanced weapons. This proposed rule continues those proposed changes and further impacts part 73 in four areas, as summarized below:

First, the NRC is proposing substantive revisions to the following existing regulations in part 73:

- Section 73.2, Definitions.
- Section 73.8, Information collection requirements: OMB approval.
- Section 73.71, Reporting of safeguards events.
- Appendix A to part 73, U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses.
- Appendix G to part 73, Reportable Safeguards Events.

Second, the NRC is proposing adding the following new regulations to part 73:

- Section 73.18, Authorization for use of enhanced weapons and preemption of firearms laws.
- Section 73.19, Firearms background checks for armed security personnel.

Third, the NRC is proposing conforming changes to the following existing regulations in part 73:

- Section 73.46, Fixed site physical protection systems, subsystems, components, and procedures.
- Section 73.55, Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.
- Appendix B to part 73, General Criteria for Security Personnel.

Fourth, the NRC is proposing new NRC Form 754, "Armed Security Personnel Firearms Background Check" to submit the information for the firearms background checks required under § 73.19.

The NRC did not receive any comments on the technical content of this new form in response to the October 2006 proposed rule. However, the ATF revised the similar ATF Form 4473, "Firearms Transaction Record Part I—Over-the-counter" in August 2008. Accordingly, the NRC staff has reviewed the new proposed NRC Form 754 to ensure that the language and provisions in the NRC form are appropriately consistent with the ATF form. Based upon this review and ongoing discussions with the FBI, the NRC staff has identified that several minor changes to NRC Form 754 that are necessary. Accordingly, the NRC would revise proposed NRC Form 754 as follows:

The NRC did not receive any comments on the technical content of this new form in response to the October 2006 proposed rule. However, the ATF revised the similar ATF Form 4473, "Firearms Transaction Record Part I—Over-the-counter" in August 2008. Accordingly, the NRC staff has reviewed the new proposed NRC Form 754 to ensure that the language and provisions in the NRC form are appropriately consistent with the ATF form. Based upon this review and ongoing discussions with the FBI, the NRC staff has identified that several minor changes to NRC Form 754 that are necessary. Accordingly, the NRC would revise proposed NRC Form 754 as follows:

- Revise Question 4 to only require identification of the State or Territory of the security individual's current duty station, rather than the complete address of the duty station.
- Revise Question 4 to permit the entry of multiple States or Territories by security personnel with multiple duty stations.
- Delete Question 13, since it is now redundant with the revised proposed Question 4.

- Add appropriate clarifying, assisting, and explanatory note text that would be consistent with the current ATF Form 4473.

- Revise paragraph 4 in the Privacy Act Information summary to indicate that the submission of NRC Form 754 would be mandatory for certain security personnel. Finally, this proposed rule is not proposing changes to any of the other provisions of parts 50, 72, or 73 that were contained in the October 2006 proposed rule.

B. Differences Between the Firearms Guidelines and the October 2006 Proposed Rule

The NRC has identified 14 substantive technical differences between the issued Firearms Guidelines and the proposed implementing text in the October 2006 proposed rule. Additionally, the NRC has identified two editorial/administrative issues that will improve the clarity of these implementing regulations. The NRC is not proposing any additional regulations to resolve technical difference number 7 but would reserve these actions for a future rulemaking, as necessary. A summary of these technical differences and the NRC's proposed solution for each issue follows.

1. A new requirement was added to Sections 1, 2, and 5 of the Firearms Guidelines that would require firearms background checks for all security personnel of 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. The October 2006 proposed rule would only have required firearms background checks for the security personnel of licenses or certificate holders who voluntarily applied for enhanced weapons authority or preemption authority.

Solution: The NRC is proposing a requirement in § 73.19 on existing licensees and certificate holders that fall within Commission-designated classes of facilities, radioactive material, and other property, and who employ covered weapons as part of their protective strategy, that imposes firearms background checks for security personnel who have, or are proposed to have, duties that require access to covered weapons. The NRC would designate two classes of facilities in this proposed rule—power reactor facilities and Category I SSNM facilities.

2. In Section 5 of the Firearms Guidelines, new requirements were added to indicate that licensees and certificate holders in such designated

classes who use covered weapons as part of their protective strategy shall begin firearms background checks for their security personnel within 30 days after the NRC issues a final rule designating these classes of facilities, radioactive material, and other property. Additionally, these licensees and certificate holders would be required to remove security personnel who have not received a satisfactory firearms background check from duties requiring access to covered weapons within 180 days of an effective final rule making these designations. These provisions were not addressed in the October 2006 proposed rule.

Solution: The NRC is proposing a requirement in § 73.19 on existing licensees and certificate holders who fall within designated classes of facilities, radioactive material, and other property and employ covered weapons as part of their protective strategy to subject all of their security personnel, whose duties currently require, or will require, access to covered weapons, to a firearms background check. Affected licensees and certificate holders would have to begin these firearms background checks within 30 days after the effective date of a final rule (*i.e.*, within 60 days after publication of a final rule in the **Federal Register**). Affected licensees and certificate holders would have to remove from duties requiring access to covered weapons any security personnel who have not completed a satisfactory firearms background check within 180 days after the effective date of a final rule (*i.e.*, within 210 days after publication of a final rule). The rule would permit individuals who have been removed from duties requiring access to covered weapons and who subsequently receive a satisfactory firearms background check to be returned to duties requiring access to covered weapons.

Additionally, the NRC would require applicants for licenses and certificates of compliance (CoC) who fall within designated classes of facilities, radioactive material, or other property to do the following: (1) Begin firearms background checks for security personnel whose duties will require access to covered weapons after the NRC has issued their respective license or CoC; and (2) complete a satisfactory firearms background check before these individuals have access to covered weapons. Future licensees and certificate holders may only begin firearms background checks after the NRC issues their license or CoC, because section 161A of the AEA does not apply to "applicants" for a license or CoC. The NRC would require completion of

satisfactory firearms background checks before the licensee's or certificate holder's initial receipt of source material, special nuclear material, or radioactive material (*i.e.*, the point of implementation of the licensee's or certificate holder's security program).

3. In Section 5 of the Firearms Guidelines, new requirements were added to indicate that licensees and certificate holders in designated classes who use covered weapons as part of their protective strategy must remove from duties requiring access to covered weapons any security personnel who receive a "denied" NICS check response. During the 180-day implementation period, individuals who receive a "delayed" NICS check response may continue their access to standard weapons. These provisions were not addressed in the October 2006 proposed rule.

Solution: The NRC is proposing a requirement in § 73.19 that would require licensees and certificate holders who fall within designated classes of facilities, radioactive material, and other property, and employ covered weapons as part of their protective strategy to remove from duties requiring access to covered weapons any individuals who receive a "denied" NICS check response. During the 180-day implementation period for existing licensees and certificate holders, individuals who receive a "delayed" NICS check response would be permitted to continue duties requiring access to standard weapons pending resolution of their "delayed" NICS check response. However, during the 180-day implementation period for existing licensees and certificate holders, individuals who receive a "delayed" NICS check response would be required to be removed from duties requiring access to enhanced weapons. Individuals whose "delayed" NICS check response is converted into a "denied" NICS check response (during this 180-day period) would be required to be removed from duties requiring access to covered weapons. Individuals who have been removed from duties requiring access to covered weapons and who subsequently complete a satisfactory firearms background check would be permitted to be returned to duties requiring access to covered weapons. As discussed in Issue 2, the 180-day implementation period would not apply to future licensees or certificate holders; rather, these applicants would be required to complete satisfactory firearms background checks on their security personnel before the initial receipt of

any source material, special nuclear material, or radioactive material.

4. In Section 5 of the Firearms Guidelines, a new requirement was added to indicate that satisfactory completion of a firearms background check must be conducted before security personnel are permitted access to enhanced weapons. Therefore, individuals who received a "delayed" NICS check response during the 180-day transition period would not be permitted to continue their access to enhanced weapons during resolution of the "delayed" NICS response. However, as discussed in Issue 3, these individuals would be permitted continued access to standard weapons during this 180-day period. For licensees and certificate holders who already have deployed enhanced weapons under an authority other than section 161A,² this requirement could impact their current ability to deploy enhanced weapons to defend their facility. The NRC's flexibility in this area is constrained by the following: (1) The language of the statute (which does not provide for a transition period); (2) DOJ's assertion that completion of a satisfactory firearms background check is a necessary prerequisite for both future and current access to enhanced weapons; and (3) the language of the Firearms Guidelines.

Solution: On May 13, 2008, the NRC issued a generic communication, Regulatory Issue Summary RIS-2008-10, "Notice Regarding Forthcoming Federal Firearms Background Checks" (ADAMS Accession No. ML073480158), to all licensees and certificate holders that might be subject to these firearms background check requirements. On December 22, 2008, the NRC issued Supplement 1 to RIS-2008-10 (ADAMS Accession No. ML082340897), to the same groups of licensees and certificate holders. Supplement 1 clarified the new mandatory nature of the forthcoming firearms background checks. In both communications, the NRC discusses the FBI's Voluntary Appeal File (VAF) program wherein individuals can apply to the FBI to check their status under the NICS databases. This program permits security personnel to resolve any "false-positive" adverse records (that can create an incorrect "delayed" or "denied" NICS response), before the firearms background checks required by this proposed regulation are implemented. The FBI issues a unique personal identification number (UPIN)

² A small number of NRC licensees have previously obtained enhanced weapons since they are also Federal agencies or they are under contract to Federal agencies.

to individuals who complete the VAF program and receive a "proceed" NICS response. This UPIN can be included on the NRC Form 754 submitted for subsequent firearms background checks by security personnel and would greatly reduce the likelihood that the FBI's NICS databases would generate an incorrect "delayed" or "denied" NICS response—requiring removal of the individual from access to enhanced weapons.

NRC staff has discussed this issue with licensees and certificate holders who currently possess enhanced weapons (under an authority other than section 161A) so that these licensees and certificate holders can prepare for implementation of this new statutory requirement. Accordingly, the NRC proposes to include a provision in § 73.19 that would require the removal of individuals from access to enhanced weapons (for licensees and certificate holders that currently possess enhanced weapons under an authority other than section 161A) if the individual receives a "delayed" or "denied" NICS response.

5. In Section 5 of the Firearms Guidelines, a new requirement was added for periodic firearms background checks at least once every five years. This requirement is in conflict with the language in § 73.18(b)(2) of the October 2006 proposed rule. The proposed rule had indicated that no further (or recurring) firearms background checks would be required subsequent to the completion of an initial firearms background check. Additionally, no Office of Management and Budget (OMB) information collection burdens were identified for these recurring firearms background checks.

Solution: The NRC is proposing a requirement in § 73.19 for all licensees and certificate holders subject to firearms background checks to periodically complete a satisfactory firearms background check on security personnel whose official duties require access to covered weapons, after completing an initial satisfactory firearms background check. These periodic checks would be completed at least once every three years, following the initial check. Licensees and certificate holders would be able to perform these periodic checks more frequently than every three years, at the licensee's or certificate holder's discretion. The NRC would use a 3-year period for recurring firearms background checks to be consistent with the NRC's access authorization program background check requirements for power reactors under the recently revised § 73.56(i)(1)(v)(B). Under that regulation, security personnel fall

within a group of personnel that are subject to a criminal history records check every three years (rather than once every five years) to maintain their unescorted access to the reactor facility. Synchronizing the firearms background check with criminal history records checks for unescorted access could reduce licensee and certificate holder administrative costs. *See also* the "Specific Questions for the Public and Stakeholder Input" discussion on using a 3-year or 5-year periodicity for these recurring firearms background checks (Section III.I of this document).

6. In Section 5 of the Firearms Guidelines, a new restriction was added on the untimely submission to the FBI by an individual of his (her) rebuttal information to appeal an adverse firearms background check. An untimely submission would lead to the barring of the individual or abandonment of the individual's appeal of an adverse firearms background check. Additionally, the Firearms Guidelines require a licensee or certificate holder to resubmit a new NRC Form 754 for any further consideration following an untimely submission. This provision is in conflict with § 73.18(p) of the October 2006 proposed rule.

Solution: The NRC is proposing requirements that clearly present the consequences of an untimely submission of information concerning an individual's appeal of an adverse firearms background check. The rule also would provide for the ability of a licensee or certificate holder to resubmit an individual for a background check, thereby addressing the unintended, permanent debarment of an individual.

7. In Section 6 of the Firearms Guidelines, a provision was added permitting the Commission to specify additional permissible reasons to remove enhanced weapons from a facility authorized to possess these weapons (*i.e.*, movement of the weapons outside of the site for reasons other than for training on these weapons or to use the weapons in escorting shipments of radioactive material or other property). This provision was not addressed in the October 2006 proposed rule.

Solution: The NRC is not recommending adding any additional authorized purposes for removing enhanced weapons from a facility possessing enhanced weapons at the present time. However, this additional flexibility is available to the Commission if it is necessary in the future.

8. In Section 6 of the Firearms Guidelines, a new requirement was added to conduct periodic

accountability (*i.e.*, inventory) requirements for enhanced weapons possessed by a licensee or certificate holder. These inventories must be completed by the licensee or certificate holder at least annually. These provisions were not addressed in the October 2006 proposed rule.

Solution: The NRC is proposing requirements for licensees and certificate holders to conduct two types of periodic inventories for any enhanced weapons possessed by the licensee or certificate holder. The first type of inventory would be conducted monthly and would verify the number of enhanced weapons present at the licensee's or certificate holder's facilities (*i.e.*, a "piece-count" inventory). The licensee or certificate holder may use electronic technology (*e.g.*, bar codes on weapons) to conduct this inventory. The monthly inventories would not include weapons that are stored in locked containers which are sealed with a high-integrity, tamper-indicating device (TID) (*e.g.*, "ready-service" in-plant storage containers). The second type of inventory would be conducted every six months and would verify the serial number of all enhanced weapons possessed by the licensee or certificate holder. The six-month inventory would include a verification of any weapons that are stored in a locked and TID-sealed storage container. Both types of inventories would be conducted by teams of two individuals who have completed a satisfactory firearms background check to prevent a single individual from manipulating the inventory results and thus obscuring the potential theft or loss of such weapons. The NRC is proposing that these inventories be conducted more frequently than the minimum requirement of the Firearms Guidelines to ensure that stolen or lost weapons do not create an unacceptable security risk for the facility or hazard for local law enforcement in the communities surrounding the licensee's or certificate holder's facility.

9. In Section 6 of the Firearms Guidelines, a new requirement was added to specify that a licensee or certificate holder possessing enhanced weapons must notify the NRC and local law enforcement authorities of the theft or loss of any enhanced weapon (*i.e.*, weapons registered under the National Firearms Act (NFA) (*see* 26 U.S.C. 5841)). This requirement was added due to DOJ's view that NRC licensees and certificate holders possessing enhanced weapons under section 161A are not required to obtain a Federal firearms license (FFL) under ATF's regulations. Federal firearms licensees are required

to notify local law enforcement officials of stolen or lost weapons. Independent of the NRC's proposed requirements, licensees and certificate holders who possess enhanced weapons are required under ATF's regulations in 27 CFR 479.141 to immediately notify ATF of any stolen or lost weapons that are registered under the NFA.

Solution: The NRC is proposing a requirement that licensees and certificate holders must notify local law enforcement authorities within 48 hours of notifying ATF of the theft or loss of an enhanced weapon. The NRC is also proposing that licensees or certificate holders must notify the NRC as follows; (1) Within four hours of notifying ATF, (for an enhanced weapon that is discovered to be stolen or lost outside the licensee's or certificate holder's protected area); and (2) within one hour of discovery (for an enhanced weapon that is discovered to be stolen or lost inside the licensee's or certificate holder's protected area). The shorter notification time to the NRC would be required when a theft or loss of an enhanced weapon occurs inside the facility's protected area, vital area, material access area, or controlled access area, because those weapons could potentially affect the security of the facility. The NRC views enhanced weapons stolen or lost outside of a facility as primarily a law-enforcement issue, rather than a facility security issue.

The NRC proposes to consolidate these new event notification requirements for licensees and certificate holders into § 73.71(g). Additionally, in the October 2006 proposed rule the NRC added a new provision under Appendix G to part 73, paragraph III(a)(3) regarding security notifications to be made to the NRC subsequent to a licensee's or certificate holder's notifications made to other State or Federal agencies for law-enforcement or regulatory purposes. The provision for notification of the NRC following notifications to Federal law enforcement agencies would now be located in part 73, Appendix G, paragraph II(d)(1).

10. In Section 6 of the Firearms Guidelines, a new requirement was added on the transport of enhanced weapons. Specifically, when these weapons are not being used to escort shipments of radioactive material or other property, they must be unloaded and locked in a secure container during their transport. Weapons and ammunition may be transported in the same container. This provision was not addressed in the October 2006 proposed rule.

Solution: The NRC is proposing to add requirements that enhanced weapons being transported to or from the licensee's or certificate holder's facility must be unloaded and locked in a secure container. The rule would permit weapons and their ammunition to be transported in the same secure container. This requirement would not apply to enhanced weapons being used in the course of escorting shipments of radioactive material or other property. Under those circumstances, the enhanced weapons would be required to be maintained in a State of loaded readiness and to be immediately accessible to security personnel (*i.e.*, ready for immediate use in defending the shipment), except when prohibited by 18 U.S.C. 922(q).

11. In Section 6 of the Firearms Guidelines, a new requirement was added requiring licensees and certificate holders possessing enhanced weapons to keep records on the receipt, transfer, and transportation of these enhanced weapons. This provision was not addressed in the October 2006 proposed rule, based on the presumption that licensees and certificate holders would be required to comply with the recordkeeping requirements for the holder of an ATF FFL. However, as discussed in Issue 9 of this section, DOJ does not view an ATF FFL to be required for those possessing weapons under section 161A.

Solution: The NRC is proposing to add requirements that records be kept on the receipt and transfer of enhanced weapons that would include the following information: Date of receipt or date of shipment of the weapon; the name and address of the transferor or the name and address of the transferee; name of the manufacturer or importer; and the model, serial number, type, and caliber or gauge of the weapon. Records requirements also would be added regarding the transportation of enhanced weapons (away from the licensee's or certificate holder's facility), including: Date of departure and date of return; the purpose of the enhanced weapon's transportation; the name of the person transporting the enhanced weapon and the name of the person/facility to whom the enhanced weapon is being transported; and the model, serial number, type, and caliber or gauge of the enhanced weapon.

12. In Section 7 of the Firearms Guidelines, a new requirement was added providing for the termination, modification, suspension, or revocation of a licensee's or certificate holder's authority under section 161A of the AEA. A requirement for the NRC to notify ATF of these types of actions was

also added. Furthermore, a process for re-application for section 161A authority was also added. These provisions were not addressed in the October 2006 proposed rule.

Solution: The NRC is proposing a requirement that the NRC provide timely notification to ATF regarding the termination, modification, suspension, or revocation of a licensee's or certificate holder's section 161A authority. A process would be specified for terminating, modifying, suspending, or revoking a licensee's or certificate holder's section 161A authority as well as their re-application for such authority following a termination, suspension, or revocation.

13. In Section 8 of the Firearms Guidelines, new definitions were added. These definitions are not consistent with the October 2006 proposed rule's new definition in § 73.2 for the term: *Enhanced weapons*. Additionally, new definitions were not included in § 73.2 for the terms: *Firearms background check*, *NICS check*, *NICS response*, and *Satisfactory firearms background check*.

Solution: The NRC is proposing to revise the definitions in § 73.2 to match the definitions contained in the issued Firearms Guidelines.

14. In Section 8 of the Firearms Guidelines, cross references were added to ATF and FBI current regulations for certain weapons terms and NICS terms, rather than replicating these terms directly in the Firearms Guidelines. These provisions were not addressed in the October 2006 proposed rule.

Solution: The NRC is proposing to add cross references in § 73.2 that would point to the relevant definitions under ATF and FBI regulations, rather than fully replicating these ATF and FBI terms in § 73.2.

In addition to these 14 technical issues, the NRC would address 2 administrative issues raised in the October 2006 proposed rule as follows:

15. As originally developed by the NRC staff, the order of presentation of the new regulations implementing the Firearms Guidelines first presented the requirements on firearms background checks and then identified the classes of licensee or certificate holders to whom these provisions and the provisions for obtaining enhanced weapons and preemption authority or preemption authority alone would apply. Based on input from stakeholders and discussions within the NRC staff, the NRC recognizes that this order of presentation is not logical and does not support agency regulatory clarity objectives.

Solution: The NRC is proposing to switch the order of presentation in these

regulations implementing the Firearms Guidelines. Accordingly, the NRC would switch the contents of the two sections implementing this new authority. First, revised § 73.18 would identify the classes of facilities designated by the Commission under section 161A authority that are appropriate for the voluntary stand-alone preemption authority or combined enhanced weapons authority and preemption authority and present the requirements for licensees and certificate holders obtaining enhanced weapons or preemption authority. Second, revised § 73.19 would identify the classes of facilities designated by the Commission under section 161A authority that are appropriate for the mandatory firearms background checks and present the requirements for these firearms background checks.

16. In the information collection requirements of § 73.8 of the October 2006 proposed rule, a place holder was added for the OMB control number (for Paperwork Reduction Act purposes) regarding the FBI's current fingerprint Form (FBI Form FD-258). OMB has subsequently issued a new control number (0110-0046) to the FBI for FBI Form FD-258.

Solution: The NRC is proposing to add the approved OMB control number for FBI Form FD-258 to § 73.8 and to reference § 73.19 as one of the sections in part 73 where this burden is required (see also issue 15 of this section).

The NRC is also proposing to specify the proposed OMB control number (*i.e.*, 3150-0204) for NRC Form 754 in § 73.8.

C. Application of Section 161A Authority to Additional Classes of NRC-Regulated Facilities and Radioactive Material

In the October 2006 proposed rule, the NRC had proposed designating only two classes of NRC-regulated facilities as appropriate for the authority of section 161A of the AEA at that time—power reactor facilities and Category I SSNM facilities. The NRC had taken this approach to focus on the highest risk facilities and had indicated that additional classes of facilities and radioactive material would be considered in future rulemakings. The NRC intends to continue this approach; and therefore the scope implementing section 161A authority in this rulemaking will be limited to these two classes of facilities. However, the NRC may also propose designating additional classes of facilities and radioactive material in a separate future rulemaking.

D. Transfer of Enhanced Weapons

During development of the Firearms Guidelines, NRC, DOJ, and ATF staffs discussed the circumstances under which a licensee's or certificate holder's issuance of an enhanced weapon to a security individual would not be considered a "transfer" of an enhanced weapon under ATF's current regulations (*e.g.*, the issuance of an enhanced weapon to an authorized security individual for their duty shift, for escort of a shipment of radioactive material, or for training purposes). Defining a transaction involving a weapon as a "transfer" under ATF's regulations incurs a number of additional obligations, and the NRC was concerned that an unnecessarily broad classification of "transfers" would result in serious impacts on routine, day-to-day security activities involving enhanced weapons.

For example, by definition, ATF regulations require that any "transfer" of enhanced weapons (*i.e.*, weapons registered with ATF under the NFA (26 U.S.C. chapter 53) (see 26 U.S.C. 5841, "Registration of Firearms")), be reviewed and approved by ATF staff in advance of any such transfers (see 26 U.S.C. 5812). The NRC has been informed that the ATF's typical review process to transfer a weapon registered under the NFA can take a month or more in normal circumstances. If daily issuances of enhanced weapons to security personnel at nuclear power plants were considered "transfers" under ATF's regulations, these activities would then require prior ATF approval. Further, each weapons transfer under the NFA would also trigger tax implications under ATF regulations. This issue was not addressed in the October 2006 proposed rule.

Following discussions between the NRC, DOJ, and ATF staffs regarding NRC's concerns with the transfer issue, the ATF provided a legal opinion to the NRC's Office of the General Counsel on potential circumstances that would or would not constitute the transfer of an enhanced weapon and thus require prior ATF approval (see letter from ATF listed in Section IX, "Availability of Documents," of this document). As described in the opinion, ATF concluded that ATF's transfer requirements under 27 CFR part 479, "Machine Guns, Destructive Devices, and Certain Other Firearms," would not apply in certain circumstances. Based on this guidance from ATF, the NRC is proposing language in § 73.18(m) that would clarify when the issuance of an enhanced weapon to security personnel of licensee's and certificate holder's

authorized to possess such weapons is, or is not, considered a weapons transfer under the NFA.

ATF's letter indicates that the issuance of enhanced weapons by a licensee or certificate holder to security personnel for the performance of their official duties does not constitute a transfer in three instances:

- When the enhanced weapons are issued to security personnel who are employees of the licensee or certificate holder or who are employees of a security contractor providing security services to the licensee or certificate holder and their official duties are "at the site" of an NRC-approved facility;
- When the enhanced weapons are issued to security personnel who are employees of the licensee or certificate holder and their official duties are "beyond the site" of an NRC-approved facility; or
- When the enhanced weapons are issued to security personnel who are employees of a security contractor providing security services to the licensee or certificate holder and their official duties are "beyond the site" of an NRC-approved facility, if authorized licensee employees are present to oversee the activities.

The NRC is proposing that the limit of "at the site" would include all areas of an authorized facility located within the "site boundary," where the "site boundary" is defined in the facility's safety analysis report. Absent the presence of licensee personnel overseeing the contractor security personnel possessing enhanced weapons, when enhanced weapons are taken beyond the site boundary, ATF has indicated that unless licensee personnel are present to maintain "constructive possession" of the enhanced weapons, such actions are considered a transfer of an enhanced weapon. Without prior ATF approval of a transfer, such an action would be a violation of 26 U.S.C. 5812 and 5841. Licensee personnel overseeing the use of enhanced weapons beyond the site boundary would need to have completed a satisfactory firearms background check and would need to be trained on the accountability and notification requirements for enhanced weapons. However, such personnel would not have to be fully trained and qualified to use the enhanced weapons.

As discussed in Technical Difference 7 (Section III, "Discussion," of this document), the licensee's or certificate holder's issuance of an enhanced weapon to security personnel for their official duties beyond the site boundary would only be authorized for: (1) Training at facilities designated in the

licensee's or certificate holder's training and qualification plan; and (2) escorting shipments of Commission-designated radioactive material and other property. ATF's transfer requirements would apply in all other circumstances where enhanced weapons are taken beyond the site boundary by employee or contractor personnel (e.g., the sale or relocation of an enhanced weapon to another NRC licensee or certificate holder, the repair of an enhanced weapon at an offsite armorer or the manufacturer, or the use of an enhanced weapon at a shooting competition that is located away from the licensee's or certificate holder's training facility specified in the NRC-approved training and qualification plan).

E. NRC Form 754

One comment on the information collection burden was received from the October 2006 proposed rule that bears on § 73.19 and the proposed NRC Form 754. The NRC has addressed this issue in comment F.2 (see Section IV, "Resolution of Public Comments on the October 2006 Proposed Rule," of this document). The NRC would make minor changes to the assisting and explanatory notes text of proposed NRC Form 754 to make the NRC's form consistent with similar ATF Form 4473 that was revised in August 2008. Separately, the NRC would revise Question 4 on Form 754 to require only the identification of the State or Territory where the security individual's duty station exists, rather than the complete address of the duty station, as this is unnecessary. Additionally, the NRC would require the security personnel to enter multiple States or Territories for instances where the security personnel routinely serves at multiple duty stations that are located in different States or Territories. The NRC would also delete Question 13 (State of Residence) on proposed NRC Form 754 since this information is redundant to the information provided under the proposed Question 3 (Current Residence Address). Furthermore, the NRC would revise paragraph 4 in the Privacy Act Information summary (page 3 of the form) to indicate that the submission of NRC Form 754 would be mandatory for certain security personnel.

The FBI staff has indicated to the NRC that a firearms background check is only valid for the States or Territories identified on the NRC Form 754. Consequently, the duty station's State or Territory information is necessary for the FBI to conduct the firearms background check against a specific State's or Territory's firearms restrictions. Therefore, if security

personnel are moved to a different duty station in a different State or Territory or if the security individual conducts firearms training at a facility in a different State or Territory, then the individual's firearms background check must be recompleted against all applicable States and Territories to ensure the individual is not disqualified under a particular State's or Territory's laws. This would also permit licensees to move security personnel to a different facility to support an outage (for example, to a reactor that is located in a different State but is part of a larger fleet of reactors within a single utility) or to use a central training facility and firing range that is capable of handling large-caliber automatic weapons.

F. Definitions

The NRC would add several new definitions to § 73.2 as conforming changes to the new enhanced weapons and firearms background check provisions in §§ 73.18 and 73.19 and to the revised event notification provisions in § 73.71 and Appendix G to part 73. As a conforming change to the event notification provisions, the NRC would add new definitions to § 73.2 for SNF and HLW. The current definitions for SNF and HLW that are found in the NRC's regulations in parts 63, 72, and in Section 2 of the Nuclear Waste Policy Act of 1982, as amended (NWSA), have slight differences. Accordingly, the NRC would add definitions for SNF and HLW to § 73.2 to support the proposed changes to the event notification requirements regarding shipments of SNF and HLW. These definitions would also support changes to transportation security and shipment advance notification requirements in a separate future rulemaking.

G. Changes to Safeguards Event Notifications

In the October 2006 proposed rule, the NRC had proposed several changes to the safeguards event notification requirements in part 73. These requirements are located in § 73.71 and in Appendix G to part 73. In this proposed rule, the NRC would retain notification requirements to address imminent attacks or threats against power reactors as well as suspicious events that could be indicative of potential reconnaissance, surveillance, or challenges to security systems. Additionally, based upon further review of the need for these requirements to accomplish the agency's strategic communication missions, the NRC would expand the applicability of these proposed regulations to include Category I SSNM facilities as well as the

transportation of SNF, HLW, and Category I SSNM. The NRC believes these types of facilities and activities pose a potential for a significant level of risk to the public and therefore require an equivalent level of security event notifications. Based upon the nature of the stakeholder comments received on the proposed 15-minute "imminent attack" notification requirement, the NRC recognizes that the basis for this requirement (*i.e.*, the accomplishment of the NRC's strategic communications missions) requires further clarification.

Accordingly, while the NRC agrees it would not respond to a licensee's 15-minute notification with NRC resources to defeat an imminent or actual threat, the NRC has two strategic communications missions to execute in response to reports of imminent or actual hostile acts that are independent of the affected licensee. First, the NRC has a strategic mission to immediately communicate such hostile act information to the Department of Homeland Security (DHS) operations center under the National Response Framework. DHS has responsibility for rapidly communicating (*i.e.*, retransmitting) this information to other parts of the government (*e.g.*, national leaders and key military, homeland security, and critical infrastructure communication centers). Second, the NRC also has a strategic mission to immediately communicate hostile act information to other appropriate NRC licensees and certificate holders so that they can increase their security posture at their facilities or for their shipments of SNF, HLW, or Category I SSNM. This prompt notification could be vital in increasing licensees' ability to defend against a multiple-site attack and to protect the lives of security and plant personnel at a second facility. This rationale extends to other government or critical infrastructure facilities for defense against multiple-sector attacks. During the terrorist attacks of September 11, 2001, the United States saw that its adversaries can simultaneously attack multiple sectors of our critical national infrastructure (*i.e.*, financial, military, and governmental sectors were attacked).

Consequently, prompt notification to the NRC may permit NRC licensees and certificate holders or other government facilities or components of the critical national infrastructure (who receive timely notification of an attack or threat elsewhere) to shift their security defensive posture, thereby increasing the likelihood that the defensive forces would defeat a terrorist attack. Accordingly, the NRC views the licensee's 15-minute "imminent attack"

notifications as providing the NRC the necessary information to permit the NRC to accomplish its strategic communication missions.

The NRC would retain the proposed requirement for a licensee to establish a continuous communications channel with the NRC subsequent the licensee's initial transmission of an abbreviated set of information to the NRC, and thereby reduce the immediate impact on licensee personnel. The NRC proposes that licensees establish a continuous communications channel (if requested by the NRC following the initial 15-minute attack or threat notification) after the licensee has completed any required emergency plan notifications, required notifications or requests for assistance to local law enforcement officials, or 60 minutes have elapsed since event discovery. Licensees are required under the current § 73.71 to establish a continuous communications channel, if requested by the NRC, following both facility and transportation one-hour security event notifications.

For enhanced weapons that are stolen or lost, the NRC would add a notification requirement to § 73.71 to notify the NRC and local law enforcement officials. The NRC is also proposing to add a separate requirement to notify the NRC if a licensee possessing enhanced weapons receives an adverse inspection finding from ATF (regarding the enhanced weapons). The NRC is proposing this second notification requirement to enable the NRC to respond to any press or public inquires following ATF action.

The NRC is proposing to make changes to the security event notification requirements that would affect a number of classes of NRC-regulated facilities and activities. This would include fuel cycle facilities authorized to possess and use Category I quantities of SSNM, Category II and Category III quantities of SNM, hot cell facilities, ISFSIs, MRSs, GROAs, power reactor facilities, production reactor facilities, and research and test reactor facilities. This would also include notifications involving the transportation of Category I quantities of SSNM, SNF, HLW, and Category II and Category III quantities of SNM.

The NRC also is proposing to make several editorial and organizational changes to § 73.71 and Appendix G to part 73 to provide a prioritized, graded, and parallel structure that applies to both licensees and certificate holders. The new structure would accomplish the following: (1) Provide increased regulatory clarity; and (2) avoid confusion regarding the applicability of

individual provisions of § 73.71 and Appendix G to part 73 to certificate holders, given the current language in §§ 76.113, 76.115, and 76.117. The NRC would also group notifications under common time limits, as is currently done in § 50.72. The NRC also would incorporate changes made in response to comments to provide increased differentiation between required event notifications versus the safeguards event log, to facilitate the retraction of non-valid notifications, and to provide additional clarity on tampering events. The NRC would also add clarifying language to § 73.71 and Appendix A to part 73 to address non-reactor facilities that are required to make classified security event notifications.

The NRC views the long-term imposition of "voluntary notifications" for security events as inconsistent with the agency's strategic goals of long-term regulatory stability and fostering transparency and public involvement in developing and imposing regulatory requirements. Accordingly, some event notifications that were originally issued to licensees and certificate holders following the events of September 11, 2001 (via NRC bulletins and advisories) would be incorporated into the regulations in § 73.71 and Appendix G rather than continuing as "voluntary notification." This concept remains unchanged from the NRC's approach taken in the October 2006 proposed rule.

Additionally, the NRC would continue with the proposed removal of the word "credible" from the term "credible threats" reported under proposed Appendix G, Paragraph 1(a). The NRC maintains that only the NRC, the intelligence community, and law enforcement agencies should determine whether a threat is credible. This function should not rest with the licensee or certificate holder. Licensees and certificate holders would not have access to classified threat indicators or intelligence information; therefore, a licensee or certificate holder decision on the credibility of a specific event might be incorrect or incomplete.

Additionally, the NRC is proposing to add security event reporting and recording requirements related to certain cyber security issues at nuclear power reactor facilities. The NRC is proposing the additions because cyber security events reporting and recording requirements were not included in the NRC's recent final rule that added § 73.54 to the NRC's regulations (74 FR 13925; March 27, 2009). Section 73.54 requires power reactor licensees to establish and maintain a cyber security program at their facilities to provide

high assurance that digital computer, communication systems, and networks are adequately protected against cyber attacks, up to and including the design basis threat as described in § 73.1. The proposed additions would be added to the security event notification provisions of § 73.71 and Appendix G to part 73.

H. Conforming Changes to Category I SSNM Facility, Power Reactor Facility, and Training and Qualification Security Requirements

The NRC is proposing to make two conforming changes to the security requirements for Category I SSNM facilities and power reactor facilities to increase regulatory clarity. The NRC would add a new paragraph (b)(13) to § 73.46 and a new paragraph (b)(12) to § 73.55 that would provide a cross reference to the firearms background check requirements of § 73.19. Additionally, the NRC would add clarifying implementation language to these two new paragraphs to address the allowable time for future licensees to satisfactorily complete firearms background check requirements on armed security personnel (*i.e.*, licenses issued by the NRC after the implementation date specified in the proposed § 73.19(b)(4)). The NRC is proposing this implementation language because applicants for a license are not authorized under section 161A of the AEA to submit firearms background checks to the NRC until after the NRC issues a license and thus § 73.19(b)(4) would require immediate compliance upon issuance of a license, (as the implementation date will have already passed). Accordingly, the NRC is proposing a 6-month implementation period for any future licensees to satisfactorily complete these firearms background checks. This implementation period is the same as is proposed for current licensees under § 73.19.

The NRC is also proposing to make a conforming change to the requirements of Appendix B to part 73, Section I.A, "Employment Suitability," to update the suitability language on felony convictions restrictions for unarmed security personnel and the 18 U.S.C. 922 restrictions on armed security personnel. This proposed language is the same as the language used in the final rule issued on March 27, 2009 (74 FR 13925), "Power Reactor Security Requirements," under VI.B.1 to Appendix B to part 73—General Criteria for Security Personnel (*see* 74 FR 13988).

I. Specific Questions for Public and Stakeholder Input

The NRC is seeking specific input from the public and stakeholders on the proposed solution to Issue 5 discussed previously. Issue 5 involves the requirement for designated licensees and certificate holders to complete a periodic firearms background check on security personnel whose official duties require access to covered weapons. The Firearms Guidelines require that a satisfactory firearms background check be completed for security personnel at least once every five years. The NRC is proposing that these checks be conducted at least once every three years and that licensees and certificate holders can conduct these checks more frequently, if they desire. The NRC is proposing this approach to reduce licensee and certificate holder costs by permitting licensees and certificate holders to submit a single set of fingerprints to accomplish the periodic firearms background checks and periodic criminal history records checks that support access authorization and personnel security clearance processes. For example, fingerprints for security personnel at power reactors are currently submitted to the NRC every three years as part of the licensee's access authorization program, as required by § 73.56(i)(1)(v)(B) for power reactors.

An alternative approach would be to require firearm background checks at least once every five years and let licensees and certificate holders choose how they will coordinate and/or control these checks with other required fingerprint checks (*e.g.*, the access authorization program under § 73.56 for power reactors). The Firearms Guidelines allow the NRC some flexibility in developing the requirements for the background checks. Therefore, the NRC is seeking stakeholder comments on the following three questions:

A. Is it appropriate to require a 3-year periodicity for recurring firearms background checks? (*Note:* Consistent with the periodicity of access authorization program recurring fingerprint checks for armed security personnel.)

B. Or, is it appropriate to require a 5-year periodicity for recurring firearms background checks, keeping in mind that the Firearms Guidelines require no less than 5 years?

C. If not 3 years or 5 years, what is an appropriate periodicity for recurring firearms background checks, keeping in mind that the Firearms Guidelines require no less than 5 years?

The NRC is also seeking public and stakeholder input on questions related to the periodic inventory requirements for enhanced weapons that are set forth in the proposed § 73.18(o). Specifically, these proposed regulations would not require monthly accountability inventories of enhanced weapons that the licensee or certificate holder stores in a locked secure weapons container that is: (1) Physically located within the protected area, vital area, or material storage area of a facility; and (2) is sealed with a high-integrity TID.

In such cases, only the verification of the intact TID on the weapon containers would be required during the monthly inventory. However, for the semi-annual accountability inventories, licensees and certificate holders would be required to physically verify the serial number of each enhanced weapon they possess by removing the TID and verifying the weapon(s) serial number.

D. Are semi-annual accountability inventories an appropriate periodicity for inventories that would physically verify the serial number of each enhanced weapon possessed by a licensee or certificate holder? If not, what is an appropriate periodicity for such inventories?

Finally, the NRC is seeking public and stakeholder input on the question of whether the proposed security event notification regulations (currently consisting of § 73.71 and Appendix G to part 73) should be consolidated into a single section or into a series of three adjacent sections (*e.g.*, separate sections on telephonic notifications, written follow-up reports, and safeguards event logs) that would be similar in concept to the structure of §§ 50.72 and 50.73. The NRC is concerned that continuing to locate security event reporting and recording requirements in separate portions of part 73 may reduce the regulatory clarity and ease of use of these regulations. Therefore, the NRC is seeking stakeholder comments on the following two questions and may implement these actions in a final rule, without further opportunity for comment:

E. Should the requirements for reporting and recording security events be consolidated into a single section of part 73?

F. Should the requirements for reporting and recording security events be located in a series of three adjacent sections of part 73 (*e.g.*, telephonic notifications, written follow-up reports, and safeguards event log)?

IV. Resolution of Public Comments on the October 2006 Proposed Rule

On October 26, 2006 (71 FR 62663), the NRC published a proposed rule and requested public comments. Forty-eight comment letters were received on the October 2006 proposed rule, and 16 of these letters included comments on the proposed rule relating to the Firearms Guidelines and event notification provisions. Of these 16 comment letters, one was from a State, three were from the public, and the remaining 12 letters were from NRC licensees and the Nuclear Energy Institute. The comment letters provided various points of view and suggestions for clarifications, additions, and deletions. Copies of these letters are available for public inspection and copying for a fee at the NRC's PDR at 11555 Rockville Pike, Rockville, MD 20852. Copies of these letters may also be viewed and downloaded from the Federal eRulemaking Web site <http://www.regulations.gov>, docket number NRC-2006-0016.

The NRC also requested comments on six specific questions, one of which involved the event notification provisions. No specific questions were asked on the Firearms Guidelines provisions. In the specific question the NRC asked, "For the types of events covered by the proposed four-hour notification requirements in § 73.71 and Appendix G to part 73, should the notification time interval for some or all of these notifications be different (e.g., a 1-hour, 2-hour, 8-hour, 24-hour notification)? If so, which notification time interval is appropriate? "Notification time interval" is meant to be the time from when a licensee recognizes that an event has occurred, or is occurring, to the time that the licensee reports the event to the NRC. No commenters responded to this specific question.

The NRC also requested comments on the information collection burden associated with the October 2006 proposed rule and asked four specific questions. One commenter responded to each of these four questions.

There was a range of stakeholder views concerning the Firearms Guidelines and event notification provisions of the 2006 proposed rulemaking. However, most commenters supported the enhanced weapons and firearms background check provisions and only requested clarifying changes. There were some commenters who requested more rigorous provisions for the use of enhanced weapons, and some who objected strongly to provisions regarding event notification

requirements. Some stakeholders viewed the 2006 proposed rulemaking as an effort to "codify" the "insufficient status quo" while others described the new requirements as going well beyond the post-September 11, 2001 security order requirements previously imposed by the Commission.

The Commission believes that commenters who suggested that the Commission had no basis to go beyond the requirements that were imposed by the security orders misunderstood the relationship of those security orders and the October 2006 proposed rulemaking. The security orders were issued based on the specific knowledge and threat environment information available to the Commission at the time the orders were issued. The Commission advised licensees who received those orders that the requirements were interim and that the Commission would eventually undertake a more comprehensive re-evaluation of current safeguards and security programs. The objectives of the October 2006 proposed rule went beyond simply making generically applicable security requirements similar to those that were imposed by Commission orders. The Commission intended to implement requirements informed by its review of site security plans, its experience with the implementation of the enhanced baseline inspection program, and its evaluation of force-on-force exercises. Accordingly, the Commission will apply insight gained from these actions to any new requirements proposed for event notifications in this proposed rulemaking.

Responses to specific comments are presented as follows.

A. General Issues

Comment A.1: One commenter indicated that concussive type devices (a.k.a., flash bangs) should be covered by this rule as a significant addition to the armed responders' available equipment (i.e., the use of flash bangs would significantly increase security personnel's capabilities).

Response: The NRC disagrees. Section 161A of the AEA does not authorize NRC licensees and certificate holders to possess destructive devices as they are defined under section 5845 of the NFA (26 U.S.C. 5845). It is the NRC's understanding, however, that some flash bang devices are not prohibited because they are not considered destructive devices. Therefore, it is possible that some licensees and certificate holders currently may possess flash bang devices that are not classified as destructive devices under the NFA. However, if a flash bang device is

classified as a destructive device under the NFA, NRC licensees and certificate holders in general would not be authorized to possess them. Information on whether or not a particular flash bang device is considered a destructive device should be obtained from its ATF-licensed manufacturer or importer.

Under the proposed requirement, if a specific type of flash bang device is not classified as a destructive device, but its possession is restricted under applicable State or local law (applicable to the licensee's or certificate holder's locale), then licensees and certificate holders who apply for and are approved for preemption authority would be able to possess these devices notwithstanding any State or local restrictions.

Comment A.2: One commenter asked if stakeholders would have an opportunity to comment on the Firearms Guidelines before they are published in the **Federal Register**.

Response: Section 161A.d of the AEA required the NRC to develop the Firearms Guidelines and obtain the approval of the U.S. Attorney General before issuance. To meet this requirement, the NRC, DOJ, FBI, and ATF staff, worked jointly to develop guidelines that were approved by the U.S. Attorney General and which provide direction to these agencies on implementing section 161A of the AEA. An opportunity for public comment on the Firearms Guidelines was not provided before its publication in the **Federal Register** on September 11, 2009.

Comment A.3: One commenter asked if the enhanced weapons provisions of the proposed rule were mandatory or voluntary.

Response: A licensee and certificate holder application for section 161A authority (either combined enhanced weapons authority and preemption authority or stand-alone preemption authority) is voluntary. However, the firearms background check requirements will be mandatory for affected licensees and certificate holders (those that are within the Commission-designated classes of facilities listed in § 73.19(c)). Licensees and certificate holders who apply for section 161A authority and receive approval from the NRC must comply with the applicable requirements of §§ 73.18, 73.19, and 73.71.

Comment A.4: One commenter asked if the rule would permit licensees to use enhanced weapons as a substitute for uniformed guards or other weapons.

Response: The NRC recognizes that the increased defensive firepower from enhanced weapons may permit a licensee or certificate holder to adjust its protective strategy and thereby reduce

the size of its protective force. However, to obtain enhanced weapons, the licensee or certificate holder must submit updated security plans and contingency response plans to the NRC for review and approval. Consequently, the NRC will have the opportunity to evaluate and approve the level of defensive firepower and personnel appropriate for a specific site.

Comment A5: One commenter asked what, in the NRC's view, would be the incentive for licensees to obtain and use enhanced weapons, given the increased costs to obtain and deploy such weapons?

Response: The decision to employ enhanced weapons is essentially a business decision to be made on a site-specific basis by each licensee or certificate holder subject to this regulation. It is not the place of the NRC to advise such regulated entities on business decisions. However, from a purely tactical security viewpoint, the fundamental incentive for a licensee or certificate holder to obtain enhanced weapons is to increase its defensive capability to provide high assurance that the public health and safety and the common defense and security will be adequately protected from attempted radiological sabotage at reactor facilities or from the attempted theft or diversion of Category I SSNM at Category I SSNM facilities. Many of the weapons that would be accessible to licensees and certificate holders under this rule are considered to be "force multipliers." The increased firepower from these weapons would permit a single security individual to deliver more rounds on target in a shorter period of time, thereby increasing the likelihood that an adversary would be neutralized.

Because obtaining enhanced weapons is voluntary, licensees and certificate holders must evaluate for their specific site whether the costs and benefits of using enhanced weapons are appropriate in general, and if appropriate in general, which specific types of weapons are appropriate for their particular site and protective strategy. Likewise, as applications are submitted to the NRC for its review and approval, the NRC will also evaluate the site-by-site suitability of the use of enhanced weapons in making its own determination that the planned use is consistent with public health and safety and the common defense and security.

B. Definitions (§ 73.2)

Comment B.1: One commenter suggested that the definitions for enhanced weapons should include remotely operated weapon systems (ROWS). The commenter indicated that

there is growing (State or local) pressure to regulate enhanced weapons, and these weapons allow increased defensive capabilities without expanding the number of armed responders.

Response: The NRC disagrees. The definition of "enhanced weapons" under this rule is consistent with that contained in the Firearms Guidelines. The critical distinction for an enhanced weapon (e.g., a machine gun) is whether multiple rounds are fired with a single pull of the weapon's trigger or a single round is fired with a single pull of the trigger. The issue is not whether the trigger is pulled directly by a human finger or pulled remotely by an electro-mechanical device. Generally speaking, a ROWS is not in itself a "weapon" but rather is a mechanical and electro-optical mechanism into which a normal or enhanced weapon could be incorporated and thus permit the weapon to be fired remotely. In the NRC's view, licensees and certificate holders could currently employ a ROWS using the standard weapons to which they currently have access. However, licensees and certificate holders who apply for enhanced weapons and are approved for preemption authority would in theory be able to incorporate these weapons into a ROWS under the language of section 161A, notwithstanding any applicable State or local restrictions. Therefore, no change is needed to the definition. The NRC notes that a ROWS using machine guns would require NRC approval of this enhanced weapon. Although ROWS could also use short-barreled shotguns or short-barreled rifles, the NRC considers that approach unlikely because of the inherent inaccuracy of these weapons (i.e., these are short-range weapons that are typically designed for concealment purposes).

C. Authorization for the Use of Enhanced Weapons and Preemption of Firearms Laws (Formerly Proposed § 73.19, Now Revised Proposed § 73.18)

Comment C.1: Several commenters stated that while the proposed rule allows enhanced weapons to be used for defense and requires the licensee to protect against an insider, it does not require the licensee to protect against an insider using enhanced weapons for the purposes of radiological sabotage.

Response: The NRC agrees that the proposed rule (§§ 73.18 and 73.19) did not include language requiring a "licensee to protect against an insider using enhanced weapons for the purposes of radiological sabotage." However, subsequent to the close of the comment period on the October 2006

proposed rule, the NRC published a separate final rule revising the design basis threat contained in § 73.1 (see 72 FR 12705; dated March 19, 2007), which addresses this issue. Specifically, § 73.1(a) (1) (i) (B) and (C) for radiological sabotage and § 73.1(a) (2) (i) (B) and (C) for theft or diversion of formula quantities of strategic special nuclear material both require licensees to protect against threats that include "knowledgeable inside assistance" that can be active or passive, or both, and also addresses the use of hand-held automatic weapons. Consequently, the NRC concludes that the issue raised by these commenters has been addressed by a separate rulemaking; no further changes are required in this proposed rule.

Comment C.2: Several commenters stated that the weapons safety assessment (required as part of licensee's or certificate holder's application for enhanced weapons under the proposed rule) should be expanded in scope to include the assessment of an insider malevolently using these weapons against the facility.

Response: The weapons safety assessment is a new concept that the NRC created in developing the Firearms Guidelines to aid the staff in evaluating applications to use enhanced weapons. The NRC's intent was to require licensees and certificate holders to examine how they intended to deploy enhanced weapons and to assess if significant onsite or offsite collateral damage might occur from firing such weapons. If these types of concerns were identified, the licensee could take actions to use different caliber weapons (e.g., use a 5.56 x 45 mm round instead of a 7.62 x 51 mm round; the latter has a greater range and penetrating power) or to take preventive or mitigative efforts. Examples of preventive efforts could include limiting a fixed machine gun's field of fire through the use of elevation and traverse limits or not deploying a fixed machine gun along certain azimuths of a facility. Mitigative efforts could include the use of intervening, bullet-resistant protective barriers.

Thus, it is unclear to the NRC how licensees and certificate holders could gain useable mitigative or preventive information from a weapons safety assessment that included an evaluation of security personnel malevolently using their issued enhanced weapons against either safety-related or sensitive structures, systems, and components (SSCs) or critical personnel. The NRC has reached this conclusion given that a security individual'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 SSCs. With respect to non-security personnel obtaining access to enhanced weapons and acting as an active insider, the licensee's and certificate holder's security plans currently require that all weapons be controlled and secured, unless they are in the possession of authorized security personnel.

Consequently, the NRC would rely upon other personnel-monitoring programs required by NRC regulations to significantly reduce the likelihood of security personnel malevolently using their weapons against such SSCs or against critical personnel. These programs would include the fitness-for-duty program, psychological-screening program, behavioral-observation program, and insider-mitigation program. Therefore, the NRC would not expand the scope of the proposed weapons safety assessment as requested by the commenters.

Comment C.3: One commenter stated that the NRC did not explicitly recognize the authority of FFL holders (who are licensed by ATF to manufacture, import, or possess machine guns) to transfer enhanced weapons to an NRC-licensee or certificate holder who has received the NRC's approval under this proposed rule and the October 2006 proposed rule to possess specific enhanced weapons and who has also received the ATF's approval under ATF regulations to receive these weapons. The commenter requested the NRC to explicitly clarify in a final rule that the holder of an FFL who has received approval from ATF to transfer specific types and quantities of enhanced weapons (machine guns) to a specific NRC licensee or certificate holder, is authorized to make this type of transfer.

The commenter indicated that the basis for this comment was that ATF was not intending to revise its regulations to add approved NRC licensees and certificate holders to the list of entities that are authorized to obtain machine guns. Therefore, the commenter was concerned that without explicit clarification, the holder of an ATF FFL would be reluctant to transfer machine guns to approved NRC licensees and certificate holders, notwithstanding the NRC's and the ATF's written authorizations.

Response: The Firearms Guidelines developed by the NRC, DOJ, FBI, and

ATF and approved by the U.S. Attorney General define the overall process for NRC licensees and certificate holders obtaining enhanced weapons. The proposed rule would require the NRC to document in writing its approval of an application for enhanced weapons to the applying licensee or certificate holder. The licensee or certificate holder would then be required to provide a copy of the NRC's approval to the holder of an FFL who will supply the enhanced weapons. The holder of the FFL would include a copy of the NRC's approval with the FFL's application to ATF to transfer the specific weapons to the NRC licensee or certificate holder. Prior ATF approval must be received to transfer the weapons.

ATF staff has indicated that ATF does not intend to revise any of its regulations to implement the provisions of section 161A. Therefore, the issued Firearms Guidelines and the specific NRC approval to obtain enhanced weapons should provide sufficient evidence to the holder of an FFL that they are submitting a lawful request to transfer such weapons. The holder of an FFL can contact ATF in advance regarding proposed transfers to NRC licensees or certificate holders. Finally, before ATF approves the transfer request and any weapons are actually transferred, ATF can consult with the NRC if any questions are identified regarding a specific proposed transfer.

D. Firearms Background Checks for Armed Security Personnel (Formerly Proposed § 73.18, Now Revised Proposed § 73.19)

Comment D.1: One commenter asked if the proposed rule allows licensees to begin firearms background checks as soon as they have applied for preemption authority but before the NRC approves their application. If this is correct, under what authority would the licensee request the background check information? A second commenter requested clarification on whether some, or all, of the licensees' armed security personnel would be subject to a firearms background check if the licensee decides to implement § 73.18. A third commenter requested clarification on whether firearms background checks (NICS checks) are completely separate from any other background check performed on people who do not have access to enhanced weaponry. A fourth commenter requested clarification on whether there is any change to existing background check requirements for security personnel under 10 CFR part 73, if they will not have access to enhanced weapons.

Response: The requirements for firearms background checks have changed substantially from the October 2006 proposed rule due to changes in the Firearms Guidelines. Under the revised proposed regulations, all licensees and certificate holders that fall within the classes of facilities, radioactive material, or other property designated under § 73.19(c) and who employ covered weapons as part of their protective strategy would be required to complete satisfactory firearms background checks for all security personnel whose official duties require, or will require, access to covered weapons. Affected licensees and certificate holders must begin these checks within 30 days of the effective date of a final rule designating such classes of facilities, radioactive material, or other property. Applicants for a new license or CoC may only begin submitting their security personnel for a firearms background check after the NRC has issued their respective license or CoC.

A firearms background check is a separate action from the background investigation required as part of an access authorization program required under 10 CFR part 73 or for a personnel or material security clearance required under 10 CFR chapter 1. The revised proposed firearms background check requirements would not alter these personnel security, material security, or access authorization program requirements.

Comment D.2: A commenter asked if the disqualifying criteria for the NICS background checks were available for licensee review.

Response: The disqualifying criteria are available for public review under ATF's regulations at 27 CFR 478.32. ATF's regulations may be found at the National Archives and Records Administration's Web site for the Code of Federal Regulations: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>. Additionally, the NRC issued a generic communication in 2008 titled: Regulatory Information Summary RIS-2008-10, "Notice Regarding Forthcoming Federal Firearms Background Checks," dated May 13, 2008. Enclosure 1 to this RIS contained the disqualifying criteria and the RIS provided additional information resources to licensees, certificate holders, and their security personnel. RIS-2008-10 can be found in the NRC's Electronic Reading Room under ADAMS Accession No. ML073480158.

The NRC also issued RIS-2008-10, Supplement 1, "Notice Regarding Forthcoming Federal Firearms Background Checks," dated December

22, 2008. Supplement 1 provided further information on the implementation of the firearms background checks. It can be found in the NRC's Electronic Reading Room under ADAMS Accession No. ML082340897.

E. Reporting of Safeguards Events (§ 73.71 and Appendix G to Part 73)

Comment E.1: One commenter stated that the October 2006 proposed rule would require licensees to report particular incidents within a certain time from discovery. The commenter indicated that additional time is often necessary to determine whether an event is reportable or not. The commenter suggested the reportability clock should start when the event is determined to be reportable, not when it is discovered. The commenter believes this position is implied in previous NRC guidance, such as NUREG-1304, "Reporting of Safeguards Events," dated February 1988. The commenter recommends the NRC clarify the rule language (or clarify in guidance documents) that additional time may be required to determine whether a security event is actually reportable or not. This approach would minimize the submission of unnecessary notifications and written reports. A second commenter indicated that no exception language (*i.e.*, back out clause) exists regarding the submission of follow-up written reports for situations in which the original telephonic report is retracted or for situations for which the reported event never advances beyond the threshold specified in the original proposed Appendix G to part 73, paragraph I. A third commenter indicated that the proposed changes to Appendix G to part 73 would result in unnecessary notifications.

Response: While the NRC agrees that the overall goal of reducing unnecessary notifications is worthy, the NRC continues to believe that the time period for making notifications to the NRC should begin at the time of discovery, as opposed to when the licensee concludes a reportable event has occurred. This approach is preferred for two reasons.

First, the NRC needs event notifications in a timely manner to integrate them into its ongoing assessment of the current threat environment. Security events occurring at multiple facilities may indicate a broader trend; a seemingly innocuous event occurring at a single site is quite different from similar events occurring at multiple sites. In a threat assessment, "connecting the dots" between multiple intelligence or threat threads can allow authorities to develop a larger mosaic,

but this integration requires prompt notification from licensees. Second, the use of "time of concluding" when a reportable event occurs could allow a significant amount of time to lapse before a licensee makes the notification. This time lapse could also affect the accuracy of the ongoing assessment of the current threat environment. The current language in § 73.71 refers to "time of discovery," and the commenters have not indicated that licensees are unable to comply with current requirements.

The NRC encourages licensees to report security notifications and then subsequently retract them if appropriate (*e.g.*, as invalid events). This is preferable to allowing licensees to delay or not make a notification that could potentially add a critical piece to the threat puzzle. In comparison, the NRC routinely receives safety-related notifications from power reactor licensees of actuation of an engineered safety feature that are subsequently retracted as an "invalid" actuation. Therefore, the NRC agrees with the commenter that written follow-up reports are not necessary for event notifications that are retracted by the licensee. Accordingly, the NRC would add a new requirement to revised proposed § 73.71(m)(13) to indicate that a written follow-up report is not required for events that are retracted before the 60-day written report due date. However, for events that are retracted after the written follow up report is submitted to the NRC, the licensee would be required to submit a revised written report to the NRC in accordance with revised § 73.71(m). This revised report is necessary to ensure that the official agency record describing the event is correct.

Comment E.2: Several commenters indicated that the wording used to describe the types of events that reactor licensees must report under the 15-minute standard is confusing and is inconsistent with NRC Bulletin 2005-02 (*see* ADAMS Accession No. ML051740058). One commenter recommended deleting the term "safeguards threat" from § 73.71(a). One commenter suggested removing the word "threat" in order to be more consistent with original proposed Appendix G to part 73, paragraph I. One commenter recommended replacing the language in original proposed Appendix G to part 73, paragraph I (a) on "actual or imminent threat against a nuclear power plant" with "an attack by a hostile force against the facility." One commenter indicated that the proposed notification did not address notification to local law enforcement agencies

(LLEA) consistent with NRC Bulletin 2005-02, nor did it provide allowance for delaying the notification to the NRC to complete the LLEA notification.

Response: The NRC agrees that the clarity of the regulation should be improved and made consistent with NRC Bulletin 2005-02. The NRC would replace the term "safeguards threat" with "hostile action" to indicate the urgency of the situation. The NRC would add clarity by simplifying the wording in § 73.71(a) and incorporating the text from original proposed paragraph I(b) of Appendix G to part 73. The NRC would also remove the 15-minute notification from Appendix G to part 73 as it would be duplicative with § 73.71(a).

Additionally, the NRC would apply the 15-minute notification requirement to Category I SSNM facilities, and to significant shipments from these licensees involving SNF, HLW, and Category I SSNM in a new paragraph (b) to Appendix G to part 73.

These changes are necessary to accomplish the agency's strategic communication mission responsibilities (*see* Section III, "Discussion," of this document).

The NRC agrees that notifications to LLEA to request immediate assistance should take precedence over lengthy event notifications to the NRC. However, because of the NRC's strategic communication missions, the NRC would not delay the initial notification to the NRC but would simplify the notification information to allow both notifications and requests for assistance to be made as rapidly as possible. Therefore, the NRC would add a sentence to proposed § 73.71(a) and (b) to indicate that a licensee's or certificate holder's request to LLEA for assistance in this event may take precedence over the notification to the NRC.

Comment E.3: Several commenters disagreed with the requirement to establish an open and continuous communications channel following a 15-minute notification. One commenter indicated that this new requirement for a continuous communication channel was not included in NRC Orders, the "EPAC," or NEI guidance document 03-12. The commenter recommended this provision be eliminated and follow-up notifications made in accordance with § 50.72. Another commenter indicated this provision was more stringent than NRC Bulletin 2005-02. The commenter recommended that the requirement be removed and not apply to 15-minute notifications. Another commenter disagreed with the requirement to establish an open and continuous communications channel following a

one-hour notification for transportation security events. The commenter argued that to mandate in all instances that a licensee establish a continuous communication channel detracts from a full integrated response to the security event. The commenter recommended that the NRC retain the discretion allowed by the current regulation so that priority can be given to maintaining safety.

Response: The NRC disagrees with these recommendations. Under the current regulations in § 73.71(a)(3) and (b)(2), licensees making a one-hour notification (*e.g.*, for an attack against either a facility or against a transport) are currently required to maintain an open and continuous communication channel, upon request from the NRC. Consequently, given this current regulation, the commenters' arguments would only apply to the time from minute 15 (time of the event notification) to minute 60. After 60 minutes, establishing a continuous communications channel upon NRC request is required under existing regulations.

However, the NRC recognized that this time would be extremely busy for licensee personnel. Therefore, the NRC would provide additional flexibility in the proposed rule. After a 15-minute notification, the licensee would only be required to establish the continuous communication channel after the following occurred: (1) The licensee completed other required notifications (*e.g.*, declaration of an emergency or requesting local law enforcement personnel assistance); (2) the licensee completed any immediate actions to place the plant in a safe condition or stabilize the plant; or (3) 60 minutes elapsed from event discovery. The NRC also would provide flexibility and clarity regarding the personnel appropriate to staff such a communication channel. The communication channel could be staffed by personnel from the licensee's security, operations, or emergency response organizations at a location of the licensee's discretion.

Comment E.4: Several commenters disagreed with the requirement to establish an open and continuous communications channel following a four-hour notification by a reactor licensee. One commenter raised the same arguments as with this requirement following 15-minute notifications. The commenter indicated this provision was unnecessary and recommended this provision be eliminated. Another commenter indicated that voluntary reporting had been working very well and there did

not appear to be regulatory justification for the underlying notification requirement or the continuous communication channel requirement.

Response: The NRC did not propose a requirement in the October 2006 proposed rule to establish a continuous communication channel following a four-hour suspicious event notification (*see* proposed § 73.71(e)(5) at 71 FR 62867). The NRC is not changing its original approach in this proposed rule. Accordingly, § 73.71(h)(8) would not require a continuous communications channel for four-hour event notifications. As discussed previously, the NRC has concluded that incorporating suspicious event notifications in § 73.71 is necessary not only to understand patterns that are occurring at multiple sites, but also to achieve regulatory stability through the elimination of "voluntary reporting requirements."

Comment E.5: One commenter indicated that making a one-hour report resulted in very "sketchy" information and suggested that two or four hours were a more appropriate time. The commenter indicated that if additional time were available, the licensee would be able to "discount" many of these notifications before they were made (*i.e.*, conclude that they were unnecessary before the notification is made, rather than retracting a previous notification).

Response: The NRC disagrees and views the proposed one-hour notifications as appropriate. (*See also* response to Comment E.1 in this document on delaying notifications until complete information is available).

Comment E.6: Two commenters disagreed with the removal of the word "credible" from original proposed Appendix G to part 73, paragraph II(a). The commenters indicated that this was inappropriate and that, without the qualifying language, all manner of threats and unnecessary reports would be made. The commenters recommended returning to the current wording of this regulation.

Response: The NRC disagrees. In the October 2006 proposed rule (*see* 71 FR 62840), the NRC had proposed removing the word "credible" before the word "threat." As the October 2006 proposed rule stated, "The Commission's view is that a determination of the 'credibility' of a threat is not a licensee responsibility, but rests with the Commission and the intelligence community." The commenters are correct that removing the qualifying language "credible" may increase the number of notifications made by licensees. However, without the

licensee's consulting with local law enforcement or the NRC staff, the NRC's view is that a licensee could not adequately assess the credibility of all potential events within the time limit of this one hour notification (*i.e.*, one hour from time of discovery). Therefore, the NRC would require licensees to make the required notification for all such events. Consequently, the NRC would continue the original approach of removing the qualifying term "credible" in revised proposed Appendix G to part 73, paragraph I(a). The NRC will continue to monitor trends and patterns for security event notifications. Should the results of this monitoring, following implementation of this proposed approach, indicate that an inappropriate burden has been placed on licensees or NRC Headquarters Operations Center staff, then the NRC will evaluate the need for further changes to this requirement by rulemaking.

Comment E.7: Two commenters disagreed with the approach in the original proposed Appendix G to part 73, paragraph II(b) and indicated that this notification was too broad. One commenter indicated that the proposed language would require a one-hour report for any improper entry or attempted entry into a protected area (PA), a vital area (VA), or the owner controlled area (OCA). The commenter indicated that on a daily basis plant workers may inadvertently attempt to gain access to a VA to which they are not currently authorized access. These events are not security threats and therefore should not be reported as such. The commenters indicated that these events should be qualified by some intent to committing radiological sabotage or "an intentional act by an unauthorized individual."

Response: The NRC agrees. The NRC would revise proposed Appendix G to part 73, paragraph I(b)(1) to require one-hour notifications for actual entry of an unauthorized person into a PA, VA, material access area (MAA), controlled access area (CAA), or transport. This would be accompanied by revised paragraph I(b)(2) where the NRC would require one-hour notifications for the attempted entry of authorized persons with malevolent intent into a PA, VA, MAA, CAA, or transport vehicle or shipment. The NRC notes that the term "controlled access area" is defined in § 73.2 and is not the same as the term "owner controlled area" that is used at power reactor facilities. A CAA can be used to store special nuclear material (SNM) at a range of facilities possessing SNM that are subject to § 73.67. This includes power reactors as well as fuel cycle facilities.

Comment E.8: One commenter indicated that original proposed Appendix G to part 73, paragraphs II(c) and II(d) both needed further clarification. The same commenter urged the NRC to focus event notifications on intentional acts or omissions that would have allowed unauthorized access to any area or transport for which the licensee is required to control access.

Response: The NRC agrees that additional clarification to Appendix G to part 73 is warranted. Accordingly, the NRC would split revised proposed paragraph II(e) into two components for events involving failures, degradation, or the discovered vulnerabilities in safeguards systems, for which compensatory measures have not been employed, that could permit unauthorized or undetected access of explosives or incendiaries beyond a vehicle barrier, or personnel or contraband into a PA, VA, MAA, CAA, or transport. With regard to the commenter's suggestion that the language focus on intentional acts or omissions, the NRC disagrees with this suggestion. The current Appendix G to part 73, paragraph I(c) does not limit these events to intentional acts or omissions. For example, the cause of the notification may arise from barrier degradation or natural events. Focusing or screening criteria on intentional acts or omissions would preclude notifications that the NRC deems necessary.

The NRC would revise proposed Appendix G to part 73, paragraph I(c) to require notifications for actual introduction of contraband into a PA, VA, MAA, CAA, or transport and attempted introduction with malevolent intent of contraband into a PA, VA, MAA, CAA, or transport. Revised proposed Appendix G to part 73, paragraph I(d) would address an actual or attempted introduction of explosives or incendiaries beyond the vehicle barrier. The language in paragraphs I(c) and I(d) differs because some items are considered contraband when they are located at a nuclear facility, but not when they are away from the facility (e.g., a handgun and ammunition). Other items are always considered contraband—irrespective of their location (e.g., explosives and incendiaries).

Comment E.9: One commenter indicated that the four-hour notification provision was unnecessary and recommended that this provision be eliminated. The commenter indicated that voluntary reporting had been working very well and there did not appear to be regulatory justification for

the four-hour notification requirements. Several commenters objected to the original proposed Appendix G to part 73, paragraph III(a)(3) to require four-hour notifications following licensee notification of local, State or national law enforcement officials, or a law enforcement response to the facility not otherwise covered by original proposed paragraphs I or II. One commenter suggested that there was no basis for this requirement and indicated that many of the calls to law enforcement officials currently made by licensees have no nexus to the licensee's security activities. Another commenter indicated that this proposed requirement is problematic because its scope is not clearly defined.

Response: The NRC continues to view the reporting of suspicious activities to the NRC as an important component in evaluating the threat against licensed facilities and radioactive material. Individual reports are integrated into a mosaic of information that is reviewed with law enforcement and homeland security officials, as appropriate. The NRC views the long-term imposition of a "voluntary" notification for suspicious events as inconsistent with regulatory stability and the agency's strategic goals for fostering transparency and public involvement in developing and imposing regulatory requirements.

However, the NRC agrees that requirements must be clearly specified in regulations and have a nexus to NRC's mission. Consequently, the NRC agrees that a notification to local law enforcement that has no nexus to licensee security activities should not require a notification to the NRC. However, the NRC does continue to view notifications to law enforcement that are related to implementation of the physical security program as appropriate for NRC notification so that the NRC can be prepared to respond to public or press inquiries on the security event. This is similar to the current requirement for power reactor event notifications in § 50.72(b)(2)(xi). Therefore, the NRC would narrow the scope of the revised proposed paragraph II(c) to require the existence of one of the following: (1) A nexus to the physical protection program; or (2) a reasonable expectation for public or media inquiries following a law enforcement response to the facility. The NRC also would add language to eliminate duplicate notifications.

Comment E.10: Several commenters indicated that it would be hard for licensees to differentiate between the one-hour and four-hour notifications for tampering and manipulation. A second commenter indicated that the proposed

language would result in unnecessary one-hour notifications and suggested that the phrase "unauthorized use of" is problematic.

Response: The NRC agrees that a clearer distinction between one-hour and four-hour tampering event notifications is appropriate. The NRC also agrees that the phrase "unauthorized use of" is unclear. Therefore, the NRC would propose one-hour tampering notifications in the revised proposed Appendix G to part 73, paragraphs I(a)(3) and I(a)(4). The revised text would require that the potential tampering event leads to the interruption of normal operations of the facility. In revised proposed paragraphs II(b)(1) and II(b)(2), these four-hour notifications would not require the potential tampering event to lead to the interruption of facility operation. The NRC also would add clarity by indicating that the tampering refers to "unauthorized operation, manipulation, or tampering with reactor controls or with safety-related or non safety-related structures, systems, and components (SSCs)." A four-hour notification would be added in revised proposed II(b)(3) to address unauthorized operation, manipulation, or tampering with reactor controls or with security-related SSCs (i.e., the NRC would not expect tampering with security-related SSCs to affect normal reactor or facility operations).

Comment E.11: One commenter indicated that the provision of original proposed Appendix G to part 73, paragraph III(c) on follow-up verbal communications regarding suspicious events that would be reported under original revised paragraph III(a)(1) are unnecessary and should be removed and addressed in internal NRC procedures.

Response: The NRC disagrees. This proposed language ensures that the NRC Headquarters Operations Center is the single point of receipt for security notifications made to the NRC. These notifications would then be forwarded to the appropriate NRC organization.

This information handling protocol is similar to the process for classified notifications to the Headquarters Operations Center described in revised proposed paragraph III of Appendix A to part 73.

Comment E.12: One commenter indicated that licensees should be required to train personnel on indications of tampering. The commenter also suggested that unless licensees are required to formally incorporate tampering assessments into all corrective actions taken for target set equipment malfunction and

mispositioning events, this proposed regulation would not have much meaning.

Response: In § 73.55(i), the NRC has added requirements for power reactor licensees to ensure that their physical protection program includes surveillance, observation, and monitoring provisions to identify indications of tampering. The NRC may consider similar requirements for other classes of licensed facilities in future security rulemakings. The commenter suggests that tampering assessments be incorporated into certain corrective action reports. That suggestion would require changes to quality assurance program regulations which are beyond the scope of this rulemaking.

Comment E.13: One commenter asked if there were restrictions on which licensee personnel can make four-hour event notifications. The commenter also asked if these notifications also would be made through the NRC headquarters operations personnel.

Response: The licensee may use any trained and qualified individual to make a four-hour event notification to the NRC. All notifications required under § 73.71 would be made under revised proposed § 73.71(h) to the telephone numbers for the NRC Headquarters Operations Center, which are specified in revised proposed Table 1 in Appendix A to part 73.

Comment E.14: One commenter noted that the exemption for the use of nonsecure communication systems to make exigent or emergency notifications containing Safeguards Information should be updated from the current § 73.71 to refer to the correct exemption paragraphs in §§ 73.22 and 73.23 under the final Safeguards Information rule the NRC is developing.

Response: The NRC agrees in part and has revised the proposed language in paragraph (h) to refer to the correct paragraph in § 73.22 to reflect the final Safeguards Information rule. The NRC issued the final Safeguards Information rule on October 24, 2008 (73 FR 63545), effective February 23, 2009. The NRC would not include a reference to § 73.23 at this time because this provision does not currently apply to licensees subject to § 73.71.

Comment E.15: One commenter stated that it was not clear what adding the term “current” to “safeguards event log” in § 73.71(f) meant. The commenter asked if the NRC was intending to require a new or additional time restriction requirement for these records. The commenter recommended that the term “current” be removed. One commenter indicated that the proposed change from “that committed” to “that

described” in original proposed Appendix G to part 73, paragraph IV(b) will be problematic and result in unnecessary security log entries. The commenter recommends that the NRC revert to the current “that committed” language.

Response: The NRC agrees. The proposed regulations would specify the timeliness of adding these records and the retention period for these records. Therefore, the modifier “current” does not add value or clarity to the “safeguards event log” regulation and would be deleted. The NRC also would revise proposed paragraph IV(e) in Appendix G to use “that committed” to in a licensee’s or certificate holder’s NRC-approved security plan.

Comment E.16: One commenter indicated that the logable events paragraph in the original proposed Appendix G to part 73, paragraph IV(b) has always been difficult to implement under the current paragraph II(b) in Appendix G to part 73.

The commenter recommends that this provision be removed.

Response: The NRC disagrees. The original revised paragraph has only a minor difference from the current regulation. This paragraph is intended to sweep security-related events not otherwise specifically identified in Appendix G to part 73 into the licensee’s or certificate holder’s security log, where they can be subsequently reviewed by NRC staff. The NRC considers this capability important in the security inspection program, and it should be retained. However, the NRC will evaluate whether regulatory guidance can be improved in this area.

Comment E.17: Several commenters objected to the proposed requirement to submit a written report following a 15-minute notification under the original proposed § 73.71(a). Many used the same objections as to the 15-minute notification itself or duplication with the one-hour notification. One commenter viewed this requirement as redundant and recommended that it be removed. Another commenter recommended that written follow-up reports for 15-minute notifications be added to the exception for written reports in original proposed § 73.71(g)(2). One commenter indicated that the original proposed regulation indicating which telephonic notifications do not require a written follow-up report was unnecessary regulatory language and was not included in NRC Orders, the “EPAC,” or NEI guidance document 03-12.

Response: The NRC agrees in part and disagrees in part. The NRC agrees that one-hour notifications following a 15-

minute notification for the same event are redundant. Therefore, the NRC would add a paragraph to revised proposed § 73.71(c) and (d) (one-hour notifications) to eliminate redundant notifications from events reported under revised proposed § 73.71(a) and (b), respectively. However, the NRC continues to view written follow-up reports as an important component of the event notification process. The NRC also views language excluding follow-up written reports following certain events as providing regulatory clarity and reducing licensee burden. Therefore, the NRC would retain a requirement for written follow-up reports following 15-minute notifications to provide for NRC event analysis and review, as well as for evaluation of any necessary licensee corrective actions. However, the NRC would remove language in Appendix G to part 73 referring to “followed by a written report within 60 days,” as this language is duplicative of the language in § 73.71, which addresses follow-up written reports after security event telephonic notifications.

Comment E.18: One commenter suggested adding a new requirement to original proposed § 73.71(g)(11) that is similar to the proposed language in paragraph (f)(2) to revise the records retention requirements for follow-up written reports to add “or until termination of the license.”

Response: The NRC agrees. The NRC would include “or until termination of the license” in the revised proposed § 73.71(m)(12).

Comment E.19: One commenter stated that updated guidance is needed on implementing this revised regulation for both event notifications and written reports. The commenter recommends that the NRC issue updated guidance before issuing a final rule. A second commenter asked if the final rule or regulatory guidance will give licensees detailed information on what reaches the threshold of tampering.

Response: The NRC published draft regulatory guide DG-5019 on event notifications for public comment on July 6, 2007 (72 FR 37058). The NRC also held a public meeting to discuss the draft regulatory guide on July 27, 2007. Because of the additional changes to the event notification regulations, the NRC intends to reissue DG-5019 for additional public comment.

The NRC will also hold an additional public meeting to discuss the reissued DG-5019. A final regulatory guide will be issued following the publication of a final rule.

F. Information Collection Requirements

Comment F.1: One commenter responded to the NRC's question on whether the proposed information collection requirements are necessary (regarding the proposed 15 minute notification requirement in § 73.71(a) for imminent or actual threats) and stated that this notification has no practical utility. The commenter indicated that the NRC is not a response organization and brings no resources to bear to resist an actual threat. The commenter indicated that the resources and time spent communicating with the NRC would be better spent communicating with local resources that could actually assist in defending the licensee's facility.

Response: The NRC disagrees. These licensee and certificate holder notifications are necessary for the NRC to accomplish its strategic communications missions (see Section III, "Discussion," of this document). Therefore, they would be retained.

Comment F.2: One commenter responded to the NRC's question on the estimate of the burden and indicated that the number of responses per site and the time per response estimated by the NRC for the fingerprinting provisions in proposed § 73.19(e)(1) were too low. The commenter suggested a better estimate of the burdens would be 975 annual responses per site per year and that the time to accomplish each response would be 1 hour.

Response: The NRC has revised the estimated information collection burden for this provision in this proposed rule to reflect the commenter's suggestions.

Comment F.3: One commenter responded to the NRC's question on whether a proposed information collection burden (regarding the proposed 15-minute notification requirement in § 73.71(a) for imminent or actual threats) could be minimized, including the use of automated collection techniques. The commenter suggested that this burden should be completely automated, if not removed. The commenter suggested that an automated feature should be a push button that notifies the NRC that a threat exists. Only after the threat is neutralized should the licensee be required to provide additional details to the NRC.

Response: While the concept of an automated imminent attack or threat notification system may be desirable, the NRC believes there are significant technological and policy challenges to be resolved to implement such a system. These challenges would include resolution of software issues such as:

Message content, licensee identification, authentication, and non-repudiation protocols. Hardware issues could include circuit redundancy, independence, and tamper indication. Policy issues such as the degree of authentication and non-repudiation necessary to support automatic command and control actions, without human verification of the initial information, also would need to be addressed. Therefore, the NRC would not adopt this suggestion. However, the NRC may pursue evaluation of this or a similar communications and command and control capabilities in the future to reduce industry burden.

V. Section-by-Section Analysis

A. Overview

This proposed rulemaking would implement the new voluntary enhanced weapons and preemption authority and the mandatory firearms background check requirements that are authorized under section 161A of the AEA. The Commission is required by this statute to designate by rule or order the classes of facilities, radioactive material, or property appropriate for the application of this authority. The proposed regulations in this rule are consistent with Firearms Guidelines issued by the Commission with the approval of the U.S. Attorney General (see discussion in Section II, "Background," of this document).

This proposed rulemaking to part 73 would revise three existing sections (§§ 73.2, 73.8, and 73.71); add two new sections to (§§ 73.18 and 73.19); revise Appendix A and Appendix G; and make conforming changes to §§ 73.46, 73.55, and Appendix B to part 73.

The NRC is also proposing a new NRC Form 754, "Armed Security Personnel Background Check" to implement the provisions of the firearms background check under proposed § 73.19. The NRC would make minor editorial changes to the instructions and the assisting text. Additionally, the NRC would revise Question 4 to simplify the question and also provide the option for multiple duty station locations.

B. Definitions (§ 73.2)

New definitions for the terms: *Adverse firearms background check, covered weapon, combined enhanced weapons authority and preemption authority, enhanced weapon, firearms background check, NICS, NICS response, satisfactory firearms background check, stand-alone preemption authority, and standard weapon* would be added in alphabetical order to the definitions in § 73.2(a).

These new definitions are consistent with the definitions for the same terms found in the Firearms Guidelines issued by the Commission, with the approval of the U.S. Attorney General. New definitions for the terms: *High-level radioactive waste (HLW)* and *spent nuclear fuel (SNF)* would be added as conforming changes to the changes made to § 73.71 and Appendix G to part 73. The definitions for HLW and SNF are consistent with the definitions for these terms found in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101(12) and (23), respectively).

New paragraphs (b) and (c) would be added to § 73.2 to provide cross references to ATF's regulations and to FBI's regulations for selected terms within these new definitions, rather than explicitly defining these same terms in the NRC's regulations. These cross-referenced terms would include *handgun, rifle, shotgun, short-barreled shotgun, short-barreled rifle, semi-automatic assault weapon, machine gun, ammunition, and large capacity ammunition feeding device* (under ATF's regulations) and the terms *proceed NICS response, delayed NICS response, and denied NICS response* (under FBI's regulations).

C. Information Collection Requirements: OMB Approval (§ 73.8)

Paragraph (b) would be revised to add §§ 73.18 and 73.19 to the list of sections in part 73 that contain information collection requirements and that have been approved by OMB under control number 3150-0002.

Paragraph (c) would be added to specify the OMB control numbers for three forms referenced under specific sections of part 73, because these forms have a separate OMB control number than their initiating or referencing regulation. Two forms currently exist, and their inclusion would be added to this paragraph as a corrective change (NRC Form 366 and FBI Form FD-258) under OMB control numbers 3150-0104 and 1110-0046, respectively. The third form would be added to this paragraph as a new form (NRC Form 754) under OMB control number 3150-0204.

D. Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws (§ 73.18)

New § 73.18 would contain requirements for a licensee or certificate holder to apply for stand-alone preemption authority or to apply for combined enhanced-weapons authority and preemption authority under section 161A of the AEA. Due to the structure of section 161A, licensees and

certificate holders who apply for enhanced-weapons authority, must also apply for and receive NRC approval of preemption authority as a necessary prerequisite to receiving enhanced-weapons authority. Proposed paragraph (a) would describe the purpose of the section and paragraph (b) would contain general requirements applicable to both types of authority.

Paragraph (c) would list the designated classes for either stand-alone preemption authority or combined enhanced weapons authority and preemption authority. Section 161A requires the Commission to designate classes of facilities, radioactive material, and other property for which the use of such authority is appropriate. The NRC would apply these requirements to two classes of facilities: (1) Power reactor facilities; and (2) Category I SSNM facilities authorized to possess or use a formula quantity or greater of SSNM, where the SSNM 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. The NRC intends to specify any additional classes of authorized facilities, radioactive material, and other property in a separate future rulemaking. Similarly, the proposed rule would refer to both licensees and certificate holders to be consistent with the scope of the statute, although the NRC would designate only power reactor facilities and Category I SSNM facilities as appropriate for section 161A authority (*i.e.*, these facilities are owned and operated by licensees).

In paragraph (d), the NRC would require authorized licensees and certificate holders (*i.e.*, those that fall within designated classes of facilities, radioactive material, and other property) who are interested in obtaining this authority to apply for stand-alone preemption authority. The benefits that would accrue to a specific licensee or certificate holder under this authority would likely vary depending on the locale of the affected facility (*i.e.*, State and local firearms restrictions can vary widely). Separately, the benefit that would accrue to licensees and certificate holders transporting designated classes of radioactive material would be a consistent Federal standard, rather than varying State standards, and the ability to maintain weapons in a loaded and ready for use condition when escorting a shipment across State lines (Federal law requires that weapons be transported across State lines in an unloaded condition). Before submitting their application to the NRC, licensees and certificate holders must have

completed satisfactory firearms background checks for their security personnel. Alternatively, licensees and certificate holders can indicate that they have commenced the firearms background checks in their application and then supplement their application with information that they have completed satisfactory firearms background checks. The NRC would document its approval of the application in writing.

In paragraph (e), the NRC would require authorized licensees and certificate holders (*i.e.*, those that fall within designated classes of facilities, radioactive material, and other property) to apply to the NRC for combined enhanced-weapons authority and preemption authority. The benefit that would accrue to a specific licensee or certificate holder under this authority would be obtaining enhanced weapons to defend their facility or shipment of radioactive material or other property. Additionally, due to the structure of section 161A, licensees and certificate holders applying for enhanced weapons authority must also apply for and obtain preemption authority. Therefore, the NRC would use the term "combined enhanced-weapons authority and preemption authority" to refer to this authority. Licensees and certificate holders who previously applied for preemption authority under paragraph (d) would not be required to reapply for that authority, but would indicate the date the NRC had approved their previous application. Before submitting their application to the NRC, licensees and certificate holders must have completed satisfactory firearms background checks for their security personnel.

Alternatively, licensees and certificate holders can indicate that they have commenced the firearms background checks in their application and then supplement their application with information that they have completed satisfactory firearms background checks. The NRC would document its approval of the application in writing.

In paragraph (f), the NRC would specify the technical information that must be included with a licensee's or certificate holder's application to obtain enhanced weapons. The NRC would describe the requirements of the security plans, training and qualifications plans, and contingency response plans supporting the use of enhanced weapons. The NRC would require licensees and certificate holders to develop their training and qualification plans for enhanced weapons based upon standards set by nationally-recognized firearms

organizations or Federal agencies. The NRC intends to include information on firing range construction for enhanced weapons in the regulatory guidance being developed. The NRC would require that applying licensees and certificate holders submit for prior review and approval, a new or revised security plan, training and qualification plan, and safeguards contingency plan to reflect the use of these specific enhanced weapons the licensee or certificate holder intends to employ; and to provide a weapons safety assessment of the onsite and offsite impact of the specific types and caliber of enhanced weapons it intends to employ. The NRC would take this approach because the NRC is responsible for making a determination on the technical adequacy of the specific weapons the licensee or certificate holder proposes to use. Consequently, the NRC would require licensees and certificate holders to submit these plans and analyses to the NRC as a license or certificate amendment, in accordance with the applicable provisions of parts 50, 70, and 76.

Additionally, licensees and certificate holders who have been approved for enhanced weapons and who subsequently desire to obtain different types, calibers, or quantities of enhanced weapons must repeat this process to obtain the weapons.

In paragraph (g), the NRC would require licensees and certificate holders to provide a copy of the NRC's approval letter to the holder of an ATF FFL that will be providing the enhanced weapons to the licensee or certificate holder. The holder of an ATF FFL would include the NRC's approval in the application to ATF to transfer enhanced weapons to the licensee or certificate holder. ATF must approve in advance all transfers of enhanced weapons.

Licensees and certificate holders obtaining enhanced weapons also would be required to comply with applicable ATF regulations, registration, and tax-stamp requirements. Enhanced weapons obtained by the licensee or certificate holder must be registered under the name of the licensee or certificate holder (*i.e.*, they may not be registered under the name of a security contractor to the licensee or certificate holder). Following the NRC's approval of a licensee's or certificate holder's application, if the licensee or certificate holder wants to obtain different or additional enhanced weapons, they would reapply under this section. The NRC also would indicate that licensees and certificate holders obtaining

enhanced weapons may, at their discretion, also apply to ATF to obtain an FFL or a special occupational tax (SOT) stamp (associated with the transfer of a machine gun). Obtaining an FFL and/or an SOT stamp would provide NRC licensees and certificate holders with greater flexibility in transferring and receiving machine guns. However, it also would subject them to greater regulation, inspection, and oversight by ATF.

In paragraph (h), the NRC would require licensees and certificate holders to complete training and qualification of security personnel on any enhanced weapons, before these personnel employ those weapons to protect the facility. Recurring training and requalification on any enhanced weapons also would be required in accordance with the licensee's or certificate holder's approved training and qualification plan. The NRC would reserve paragraph (i) to avoid confusion.

In paragraph (j), the NRC would treat the use of enhanced weapons the same as existing weapons (e.g., standards on deadly force). Accordingly, the NRC would cross-reference to the applicable security regulations for other classes of facilities or radioactive material.

In paragraph (k), the NRC also would require Commission licensees and certificate holders to notify the NRC of any adverse ATF inspection or enforcement findings received by the licensee or certificate holder regarding the receipt, possession, or transfer of enhanced weapons. The NRC would reserve paragraph (l) to avoid confusion.

In paragraph (m), the NRC would define permissible reasons to remove an enhanced weapon from an authorized licensee's or certificate holder's facility that would not constitute the transfer of an enhanced weapon under ATF's regulations (training and escorting shipments of radioactive material that fall within a class designated under paragraph (c)). The NRC would reserve any additional reasons, if necessary, for a future rulemaking. The NRC would require that records be maintained to track not only the removal of enhanced weapons from licensee's or certificate holder's facility but also the return of such weapons to the facility. The NRC would also describe actions that would constitute a transfer of enhanced weapons. Such a transfer would require application to and prior approval from ATF. The NRC would indicate that weapons that are not returned to the facility are to be considered stolen or lost or an approved transfer. Finally, the NRC would indicate that the issuance of an enhanced weapon to a security individual with the subsequent return of

the weapon upon the completion of official duties would not constitute a transfer under ATF's regulations. The NRC would require NRC licensees and certificate holders to assist an ATF FFL in submitting the required paperwork to ATF to transfer the weapons to the licensee or certificate holder.

In paragraph (n), the NRC would describe requirements to transport enhanced weapons for activities that are not considered a transfer of the enhanced weapons. Enhanced weapons being transported would be unloaded and placed in a locked secure container. Ammunition for the weapon may be placed in the same container for transport. The exception to this requirement would be for purposes of escorting shipments of radioactive material or other property designated under paragraph (c). While escorting these shipments, the enhanced weapons would remain loaded and available for immediate use.

In paragraph (o), the NRC would describe requirements for conducting periodic inventories of enhanced weapons to verify that these weapons are not stolen or lost. The NRC would propose two types of inventories. First, a monthly inventory that would require counting the number of enhanced weapons that are present at the licensee's or certificate holder's facility. Licensees and certificate holders would be able to use electronic technology (e.g., bar codes) to conduct this inventory. Second, a semi-annual inventory that would verify the serial number of each weapon that is present at the licensee's or certificate holder's facility. The monthly inventory would not require accounting for weapons that are located in in-plant ready-service containers that are locked and sealed with a TID. Instead, the inventory would verify the presence of the intact TID (indicating the container had not been opened). However, the semi-annual inventory would require a verification of all weapons at the licensee's or certificate holder's facility. The NRC would specify limits on the intervals between inventories. Records would be maintained on inventory results. Inventories would be conducted by two-person teams to prevent manipulation of inventory results. Minimum requirements on TIDs used for securing enhanced weapons would be specified.

Finally, inventory discrepancies would require resolution within 24 hours of identification. Otherwise, the discrepancy would be treated as if an enhanced weapon had been stolen or lost.

In paragraph (p), the NRC would describe requirements for notification of the NRC and local law enforcement officials of this event. Requirements on the timing of these notifications would be located in § 73.71. The NRC also would note that licensees and certificate holders possessing enhanced weapons are subject to a separate ATF requirement to notify ATF of any stolen or lost weapons registered at 49 CFR part 479 (i.e., enhanced weapons).

In paragraph (q), the NRC would describe the records requirements for licensees and certificate holders relating to the receipt, transfer, and transportation of enhanced weapons. Retention requirements for records required under this section would be specified as up to one year after the licensee's or certificate holder's authority is terminated, suspended, or revoked.

Records also would be retained on completed inventories of enhanced weapons and on any stolen or lost enhanced weapons. Licensees and certificate holders would be permitted to integrate any records required under this paragraph with records required by ATF relating to the possession of enhanced weapons. Licensees and certificate holders would be required to make these records available to NRC inspectors and/or ATF inspectors upon request.

In paragraph (r), the NRC would describe requirements regarding the termination, modification, suspension, and revocation of a licensee's or certificate holder's section 161A authority. Licensees and certificate holders seeking termination or modification of their authority to possess enhanced weapons, or different types of enhanced weapons would be required to apply to the NRC in accordance with this section. Licensees and certificate holders would be required to transfer any enhanced weapons they will no longer be authorized to possess to an appropriate party in accordance with ATF's requirements; or the weapons can be surrendered to ATF for destruction. Licensees and certificate holders may reapply for this authority if it has been terminated, suspended, or revoked. The NRC would also establish criteria for revocation of the authority to possess enhanced weapons. Additionally, the NRC would promptly notify ATF of these actions.

E. Firearms Background Checks for Armed Security Personnel (§ 73.19)

New § 73.19 would contain requirements for a licensee or certificate holder to conduct a firearms background

checks mandated under section 161A of the AEA. The firearms background checks required by § 73.19 would be intended to verify that armed security personnel are not prohibited from receiving, possessing, transporting, or using firearms under Federal or State law. Proposed paragraph (a) would describe the purpose of the section.

In paragraph (b), the NRC would describe general requirements regarding firearms background checks. These checks would apply to all licensees and certificate holders that fall within the classes of facilities, radioactive material, and other property designated under paragraph (c), if the licensee or certificate holder uses covered weapons as part of its protective strategy. These checks would apply to all security personnel of such licensees and certificate holders, whose official duties require access to covered (*i.e.*, both standard and enhanced) weapons, irrespective of whether the 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 (*see also* new definitions for *Covered weapons*, *Enhanced weapons*, and *Standard weapons* in § 73.2).

The Firearms Guidelines required by section 161A refer to “security personnel whose official duties require access to covered weapons.” The NRC would apply this criterion to individuals in the licensee’s or certificate holder’s security organization who handle, use, maintain, and repair covered weapons and inventory enhanced weapons. Specifically, individuals performing official duties involving access to covered weapons, including: carrying weapons (security personnel, supervisors, and response personnel); firearms instructors; armorers (repair and maintenance of weapons), weapons’ issuance and receipt; and individuals inventorying enhanced weapons. This would not include 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).

These checks would not apply to applicants for a license or a CoC until after the NRC issues the license or the CoC. These new licensees and certificate holders would not be able to commence firearms background checks until after the NRC issues their license or CoC. Additionally, these new licensees and certificate holders would be required to

complete satisfactory firearms background checks for their affected security personnel before to the initial receipt of source, byproduct, or special nuclear material authorized by the license or CoC.

Within 30 days after the effective date of a final NRC rule designating classes of facilities, radioactive material and other property, affected licensees and certificate holders would be required to commence firearms background checks (*i.e.*, within 60 days after publication of the final rule in the **Federal Register**). Within 180 days after the effective date of a final NRC rule, affected licensees and certificate holders would be required to remove from duties requiring access to covered weapons any individual who has not completed a satisfactory firearms background check (*i.e.*, within 210 days after publication of the final rule in the **Federal Register**). During this 180-day transition period, affected licensees and certificate holders that currently possess enhanced weapons under an authority other than section 161a would be required to remove from any duties requiring access to enhanced weapons any security personnel who receive a “delayed” NICS response to their firearms background check. Subsequent to the 180-day transition period, affected licensees and certificate holders must complete a satisfactory firearms background check for (new) personnel whose duties would require access to covered weapons. During this 180-day period, affected licensees and certificate holders would be required to remove from duties requiring access to covered weapons any individual who receives a “denied” NICS response. However, individuals who receive a “delayed” NICS response would be permitted to continue their access to standard weapons until the 180-day period expires or the “delayed” NICS response is resolved into a “denied” NICS response. Individuals who have been removed from duties requiring access to covered weapons due to a “denied” or “delayed” NICS response would be permitted to return to such duties if they subsequently receive a “proceed” NICS response (*i.e.*, they have completed a satisfactory firearms background check).

Security personnel who have a break in service or who transfer to another licensee or certificate holder would be required to complete a new firearms background check. However, a change in the licensee, certificate holder, security contractor, or ownership of the license or CoC would not trigger a new firearms background check. Firearms background checks would not replace other background checks required for

access authorization, personal security clearances, or SSNM access clearances.

In paragraph (c), the NRC would designate the classes of facilities, radioactive material, and other property that are appropriate for firearms background checks. In general, the NRC intends that this list would be consistent with the list contained in § 73.18(c). However, the Commission would not be constrained to make these lists identical. The NRC would apply these requirements to two classes of facilities in this rulemaking: (1) Power reactor facilities, and (2) Category I SSNM facilities authorized to possess or use a formula quantity or greater of SSNM, where the SSNM 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.

In paragraph (d), the NRC would describe the components of a firearms background check. A firearms background check would consist of two parts: (1) A check of an individual’s fingerprints against the FBI’s fingerprint system; and (2) a check of the individual’s identity against the FBI’s NICS. The NRC would propose a new NRC Form 754 for licensee or certificate holder security personnel to submit the necessary information to the NRC for forwarding to the FBI to perform the NICS portion of the firearms background check.

In paragraph (e), the NRC would describe the information that is to be submitted for each individual to conduct a firearms background check and would specify a retention period for this information.

In paragraph (f), the NRC would describe the requirements for periodic (*i.e.*, recurring) firearms background checks. Periodic firearms background checks would be required every 3 years. The NRC would use this interval to be consistent with the interval for recurring access authorization program criminal history records checks for power reactor security personnel under the recently added § 73.56(i)(1)(v)(B). The 3-year interval would permit licensees and certificate holders to reduce administrative costs. Licensees and certificate holders would also be able to conduct periodic firearms background checks at intervals of less than three years, if they so desire. The NRC would specify a timely submission period of three years and security personnel would be permitted to continue their access to covered weapons pending the licensee’s or certificate holder’s receipt of the NICS response. Similar to the requirements in paragraph (b), individuals who receive an adverse

firearms background check (during this periodic check) also would be removed from duties requiring access to covered weapons. These individuals would be eligible for reinstatement if they subsequently complete a satisfactory firearms background check.

In paragraph (g), the NRC would describe the requirements for affected licensees and certificate holders to notify the NRC that an individual with access to covered weapons has been removed from these duties because of the discovery of a disqualification or the occurrence of a disqualification under applicable Federal or State law. An exception to this requirement would be created to encourage the prompt identification of such information by the security personnel to their licensee or certificate holder (*i.e.*, the NRC would encourage security personnel to timely self disclose the occurrence of a disqualifying event).

In paragraph (h), the NRC would describe the requirements for affected security personnel to make timely disclosure of the occurrence of a disqualifying event at 18 U.S.C. 922 that would prevent them from receiving or possessing firearms.

Timely notification would be within 3 working days of occurrence of the event.

The NRC would reserve paragraph (i) to avoid confusion.

In paragraph (j), the NRC would describe the requirements for training security personnel on the following: (1) Disqualifying events of 18 U.S.C. 922; (2) ATF's implementing regulations; and (3) security personnel's responsibility to notify their licensee or certificate holder under the requirements of paragraph (h).

In paragraph (k), the NRC would describe the requirements for processing fingerprint checks as part of firearms background checks. This would include the submission of fingerprint cards to the NRC or the submission of electronic fingerprint records to the NRC. The proposed language would be similar to the existing regulations in § 73.57(d). Additionally, licensees and certificate holders would be required to include specific codes on the FBI Form FD-258 fingerprint cards or electronic fingerprint records to indicate whether the fingerprint check is solely for the purposes of a firearms background check or whether the firearms background check is being combined with an access authorization criminal history records check or a personnel security clearance records check. The use of these codes is necessary for the FBI to appropriately control dissemination of criminal history information. The NRC would reserve paragraph (l) to avoid confusion.

In paragraph (m), the NRC would describe the requirements for fees associated with processing firearms background checks. The NRC would charge the same fee for fingerprints submitted for a firearms background check that is 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 would charge an administrative fee for processing the NICS check information, however, no FBI fee would be charged for the NICS check. The proposed language would be similar to the existing regulations in § 73.57(d). The cost of the fee will be specified on the NRC's public Web site with the existing fingerprint fee (*see* NRC Web page <http://www.nrc.gov/site-help/e-submittals.html> under the "Electronic Submittals System Notices" box). The NRC is proposing a fee of \$26 to process both the NICS check information and the fingerprint checks per individual. This fingerprint processing fee is separate from the fingerprint processing fee for fingerprints submitted to complete a criminal history records check under the NRC's access authorization programs (*e.g.*, § 73.56 for power reactors). Further information on proposed costs is contained in Section XIV, "Regulatory Analysis," of this document.

In paragraphs (n) and (o), the NRC would describe obligations of the NRC regarding the processing of firearms background checks and reporting potential or suspected violations of law to the appropriate law enforcement agency. Under paragraph (o), the NRC would forward licensee and certificate holder notifications to the applicable Federal or State law enforcement officials.

In paragraph (p), the NRC would describe how individuals who have received an adverse firearms background check (*i.e.*, a "denied" or "delayed" NICS response) may do the following: (1) Obtain further information from the FBI on the reason for the adverse response; (2) appeal a "denied" response; or (3) provide additional information to resolve a "delayed" response. Security personnel 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 personnel). Individuals appealing an adverse firearms background check would not be permitted access to covered weapons during the pendency of the appeal. Security personnel who receive a

"denied" NICS response are presumed by ATF to be prohibited from possessing or receiving a firearm under Federal law (*see* 18 U.S.C. 922) and may not have access to covered weapons unless they have successfully appealed the "denied" NICS response and received a "proceed" NICS response. The exception to this limitation would occur during the 180-day transition period described in paragraph (b) for individuals who receive a "delayed" NICS response. To support effective use of FBI resources, timeliness requirements would be specified for individuals wishing to appeal an adverse firearms background check they believe is incorrect. An individual who fails to initiate a timely appeal or resolution request or provide information in response to an FBI request would result in the barring or abandonment of the appeal or request. Subsequent to a barring or abandonment action, a licensee or certificate holder would be permitted to resubmit the individual for a new firearms background check for any further consideration by the FBI. This resubmission would be at the discretion of the licensee or certificate holder. Finally, individuals who have successfully appealed a "denied" NICS response would be able to request that the FBI retain those records under the FBI's VAF program. Except for VAF records, the FBI purges the results of all NICS checks after 30 days (as required by the statute establishing the NICS program).

In paragraph (q), the NRC would describe how licensees and certificate holders must protect personal identification information associated with firearms background checks and NRC Forms 754, as well as the results of firearms background checks, from unauthorized disclosure. This proposed language is similar to the current regulations in § 73.57(f) regarding the protection of criminal history record check information.

F. Fixed Site Physical Protection Systems, Subsystems, Components, and Procedures (§ 73.46)

In paragraph (b)(13), the NRC would add a conforming change to provide a cross reference to the new firearms background check requirements in § 73.19 for armed security personnel. Additionally, the NRC would provide implementation schedule information for future licensees.

G. Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage (§ 73.55)

In paragraph (b)(12), the NRC would add a conforming change to provide a cross reference to the new firearms background check requirements in § 73.19 for armed security personnel. Additionally, the NRC would provide implementation schedule information for future licensees.

H. Reporting and Recording of Safeguards Events (§ 73.71)

Overall, the NRC would revise § 73.71 to apply imminent or actual hostile action notifications to additional significant facilities (*i.e.*, Category I SSNM facilities), to significant transportation events (*i.e.*, the shipment of SNF, HLW, and Category I SSNM), and to significant cyber attacks on power reactors. Additionally, the NRC would revise § 73.71 to accomplish the following: (1) Add regulatory clarity; (2) improve the structure through increased parallelism between facility and transportation notifications; and (3) add notifications for stolen or lost enhanced weapons and adverse ATF inspection findings.

In paragraph (a), the NRC would require licensees and certificate holders for power reactor facilities and Category I SSNM facilities to notify the NRC within 15-minutes of discovery of an imminent or actual hostile action or the initiation of a security response in accordance with the licensee's or certificate holder's safeguards contingency plan due to an imminent or actual hostile action. The NRC would describe the abbreviated set of information to be initially provided to the NRC. The NRC recognizes that licensees and certificate holders would be very busy in these circumstances and requires a minimal set of information to execute the NRC's strategic communication responsibilities. Additionally, the NRC would recognize that the licensee or certificate holder should make requests for immediate assistance from a local law enforcement agency (LLEA) before notifying the NRC. Finally, the NRC would relocate the language to not require licensee notifications to the NRC regarding an increase in its security posture which was made in response to an NRC communication from original proposed Appendix G to part 73, paragraph I(b) to this revised paragraph. This relocation would reduce duplication of requirements and continue the proposed elimination of unnecessary notifications.

In paragraph (b), the NRC would require similar 15-minute notifications for certain transportation events. This would apply to an imminent or actual hostile action or the initiation of a security response in accordance with the licensee's or certificate holder's safeguards contingency plan, due to an imminent or actual hostile action against shipments of SNF, HLW, and Category I SSNM. A similar abbreviated set of information would be initially provided to the NRC for these transportation events and similar redundancy language would be included. The NRC would recognize that the licensee or certificate holder should request immediate assistance from LLEA before notifying the NRC.

In paragraph (c), the NRC would require one-hour notifications from licensees or certificate holders for facility-based events listed in revised proposed paragraph I to Appendix G to part 73. This would affect licensees and certificate holders of fuel cycle facilities authorized to possess and use Category I quantities of SSNM, Category II and Category III quantities of SNM, hot cell facilities, ISFSIs, MRSs, GROAs, power reactor facilities, production reactor facilities, and research and test reactor facilities. Notifications made under revised proposed paragraph (a) for imminent or actual hostile acts against facilities would not be required to be repeated under this paragraph.

In paragraph (d), the NRC would require one-hour notifications from licensees or certificate holders for transportation-based events listed in revised proposed paragraph I to Appendix G to part 73. This would affect licensees' and certificate holders' activities involving the transportation of Category I quantities of SSNM, SNF, HLW, and Category II and Category III quantities of SNM. Notifications made under proposed paragraph (b) for imminent or actual hostile acts against shipments would not be required to be repeated under this paragraph.

In paragraph (e), the NRC would require four-hour notifications from licensees or certificate holders for facility-based events listed in revised proposed paragraph II to Appendix G to part 73. This would affect licensees and certificate holders of fuel cycle facilities authorized to possess and use Category I quantities of SSNM, Category II and Category III quantities of SNM, hot cell facilities, ISFSIs, MRSs, GROAs, power reactor facilities, production reactor facilities, and research and test reactor facilities.

In paragraph (f), the NRC would require eight-hour notifications from licensees or certificate holders for

facilities-based events listed in revised proposed paragraph III to Appendix G to part 73. This would affect licensees and certificate holders of fuel cycle facilities authorized to possess and use Category I quantities of SSNM, Category II and Category III quantities of SNM, hot cell facilities, ISFSIs, MRSs, GROAs, power reactor facilities, production reactor facilities, and research and test reactor facilities.

In paragraph (g), the NRC would require one-hour or four-hour notifications by licensees or certificate holders (*i.e.*, power reactor licensees and Category I SSNM licensees) who possess enhanced weapons under section 161A of the AEA, and discover that these weapons are stolen or lost. The one-hour notification would result from weapons that are discovered to be stolen or lost from inside of a PA, VA, MAA, or CAA. The four-hour notification would result from weapons that are discovered to be stolen or lost from outside of a PA, VA, MAA, or CAA. The shorter notification is based upon the potential for weapons lost or stolen inside a PA, VA, MAA, or CAA to affect the security of the facility (*i.e.*, an insider threat issue). The timing of a four-hour notification would start from the licensee's notification to ATF. The NRC notes that licensees and certificate holders possessing enhanced weapons have an independent responsibility under ATF's regulations to immediately upon discovery report such stolen or lost enhanced weapons to ATF (*see* 27 CFR 479.141). Additionally, the NRC would require such licensees and certificate holders to notify local law enforcement as soon as possible, but no later than 48 hours after discovery of stolen or lost enhanced weapons. The 48 hour requirement is consistent with current ATF requirements for notifying local law enforcement of stolen or lost weapons.

In paragraph (h), the NRC would require a 24-hour notification from licensees or certificate holders who meet the following criteria: (1) They possess enhanced weapons per section 161A of the AEA; (2) they receive an adverse inspection or enforcement finding from ATF regarding any enhanced weapons possessed, received, stored, or transferred by the licensee or the certificate holder; or (3) they receive an adverse inspection or enforcement finding regarding a Federal firearms license held by the NRC-licensee or certificate holder. Paragraph (i) would be reserved to avoid confusion.

In paragraph (j), the NRC would describe the notification process for telephonic notifications required under paragraphs (a) through (h). The

applicability of the exception for exigent or emergency safeguards communications would be continued using the cross reference to the Protection of Safeguards Information final rule (October 24, 2008; 73 FR 63545). A provision would be added to address classified notifications under this section from licensees or certificate holders with classified security plans. Clarification would be provided as to when licensees or certificate holders need to be able to respond to NRC requests to establish a continuous communication channel following a 15-minute notification that provides for the following: (1) The completion of other critical tasks (e.g., declaration of an emergency or contacting local law enforcement); and (2) communicator staff requirements (i.e., the use of knowledgeable security, operations, or emergency response personnel from a location of the licensee's or certificate holder's discretion).

In paragraph (k), the NRC would require that a safeguards event log be maintained for the events described in paragraph IV of Appendix G to part 73. This would affect licensees and certificate holders of fuel cycle facilities authorized to possess and use Category I quantities of SSNM, Category II and Category III quantities of SNM, hot cell facilities, ISFSIs, MRSs, GROAs, power reactor facilities, production reactor facilities, and research and test reactor facilities. This would affect licensees' and certificate holders' activities involving the transportation of Category I quantities of SSNM, SNF, HLW, and Category II and Category III quantities of SNM. Events recorded in the safeguards log must be entered within 24 hours of discovery and retained until 3 years after the last entry in each log or termination of the license or certificate of compliance.

Paragraph (l) would be reserved to avoid confusion.

In paragraph (m), the NRC would describe the form and content of written follow-up reports following telephonic notifications required by § 73.71(a) through (g). The NRC also would provide new language to obviate the requirement for a written follow-up report if the licensee or certificate holder retracts the initial telephonic notification. However, if a written follow-up report has already been submitted, then licensees and certificate holders would be required to submit a revised written report to ensure that the NRC's official records are correct.

In paragraph (n), the NRC would clarify that notifications made under the declaration of an emergency are covered under other regulations in 10 CFR

chapter 1 applicable to the license or certificate of compliance.

In paragraph (o), the NRC would provide for the elimination of duplicate notifications or records under this section relative to other event notifications required under 10 CFR chapter 1 (i.e., a single report or record may be made that lists all of the applicable reporting or recording requirements)

I. Criminal Penalties (§ 73.81)

The NRC would not make any conforming changes to § 73.81(b), "Criminal Penalties," due to the addition of new §§ 73.18 and 73.19 to part 73. Consequently, willful violations of §§ 73.18 and 73.19 may be subject to criminal penalties. Therefore, proposed §§ 73.18 and 73.19 would not be included in the list of sections from part 73 contained in § 73.81(b). See Section VII, "Criminal Penalties," of this document for further information.

J. U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses (Appendix A to Part 73)

The NRC would make administrative, conforming, and editorial changes to Appendix A to part 73. The NRC is proposing to make administrative changes in Table 1, including: updating the main (nonsecure) e-mail address, adding a secure e-mail address, and removing previously used telephone number for the NRC Headquarters Operations Center. Editorial changes would be made to the titles of Tables 1 and 2 to refer to the table number to improve clarity. Finally, new paragraphs III and IV would be added to Appendix A to part 73 as conforming changes to provide direction to licensees and certificate holders regarding classified telephone calls and sending classified e-mails to the NRC for classified event notifications under § 73.71.

K. General Criteria for Security Personnel (Appendix B to Part 73)

In section I.A, the NRC would make a conforming change to update the employment suitability language to reflect the statutory requirements for possession of firearms under 18 U.S.C. 922. This would be consistent with the recently added language in Section VII.B, "Criminal Penalties," of this document.

L. Reportable and Recordable Safeguard Events (Appendix G to Part 73)

The NRC is proposing additional conforming and corrective changes to Appendix G to part 73, from the language presented in the October 2006

proposed rule. The introductory text and paragraph I would be revised to include Category I SSNM facilities. The requirements for 15-minute notifications (in the October 2006 proposed Appendix G to part 73) in paragraph I would be relocated to § 73.71 and paragraphs II and III would be redesignated as paragraphs I and II, respectively. New paragraph III would be added to address unauthorized operation or tampering events that do not impact the operation of the facility. Paragraph IV would remain to address recordable events. Information on the applicability of the NRC's proposed security event notification (both reporting and recording requirements) specified under in Appendix G to individual classes of NRC-regulated facilities and activities is described in § 73.71. See also Section V.H above.

In paragraph I, the NRC would describe the types of facility-based and transportation-based security events that would require a one-hour notification per § 73.71. These events would include the following: (1) Committed acts and attempted acts; (2) threats to commit certain acts involving theft or diversion of SNM; (3) significant physical damage to a facility or shipment; (4) unauthorized operation, mispositioning, or tampering with controls or SSCs that results in the interruption in the normal operation of a facility; (5) unauthorized entry of personnel into a PA, VA, MAA, or CAA, or transport; (6) malevolent attempted entry of personnel into a PA, VA, MAA, CAA, or transport vehicle or transported material; (7) actual or attempted entry of contraband into a PA, VA, MAA, CAA, or transport vehicle or transported material; (8) actual or attempted introduction of explosives or incendiaries beyond a vehicle barrier system; (9) an uncompensated vulnerability, failure, or degradation of security systems that could allow unauthorized access of personnel or contraband; (10) a lost shipment of Category I SSNM, Category II or III SNM, SNF, or HLW; or (11) the recovery or accounting for a lost shipment. Modifying language referring to "credible" threats would be removed. (The NRC views the determination of whether a threat is credible or not appropriately rests with government officials, such as the NRC, the intelligence community, or an LLEA; rather than with the licensee or certificate holder.) Additionally, the NRC would require one-hour notifications from nuclear power facilities of the determination of an actual cyber attack or if there is reason to believe that a cyber attack has

occurred or has been attempted on systems, networks, or equipment within the scope of § 73.54 or against security measures that protect those networks or equipment.

In paragraph II, the NRC would describe types of facility-based events that would require a four-hour notification per § 73.71. These events would include suspicious activities involving the following: (1) Potential attempted surveillance, reconnaissance, intelligence-gathering acts against the facility; (2) challenges to security control systems and processes; (3) unauthorized operation, mispositioning, or tampering with controls or SSCs that does not result in the interruption of the normal operation of the facility; (4) notification of law enforcement officials in accordance with the licensee's or certificate holder's security program (that does not otherwise require a notification under the other provisions of Appendix G to part 73); or (5) a law enforcement response to the facility which could reasonably be expected to result in public or media inquiries (that does not otherwise require a notification under the other provisions of Appendix G to part 73). However, this would not include commercial or military aircraft activity over or close to the facility that is considered routine or non-threatening by the licensee or certificate holder. Additional information on follow-up communications with the NRC's Information Assessment Team regarding suspicious event notifications also would be provided.

Additionally, the NRC would require four-hour notifications from nuclear power facilities if licensee obtains or gathers information that indicates tampering, unauthorized access, use or modifications, or unauthorized gathering of information or data of systems has occurred or is occurring on networks, or equipment within the scope of § 73.54 or to the security measures that protect these safety, security, or emergency preparedness functions of nuclear power facilities are degraded.

In paragraph III, the NRC would describe types of facility-based events that would require an eight-hour notification per § 73.71. These events would include unauthorized operation, mispositioning, or tampering with controls or SSCs that that could prevent the implementation of the licensee's or certificate holder's protective strategy for protecting any target set. Additionally, the NRC would require eight-hour notifications from nuclear power reactor facilities if a licensee detects an unauthorized operation or manipulation of, or tampering with

networks, or equipment within the scope of § 73.54 or the security measures that protect such networks and equipment, but such actions did not interrupt or degrade the nuclear power reactor facility's safety, security, or emergency preparedness functions.

In paragraph IV, the NRC would describe types of facility-based and transportation-based events that would require an entry in the safeguards event log per § 73.71. These events would include a compensated vulnerability, failure, or degradation of security systems that except for the compensatory actions could have allowed unauthorized access of personnel or contraband beyond a vehicle barrier or into a PA, VA, MAA, CAA, or transport; of a threatened, committed, or attempted act that would degrade the licensee's or certificate holder's committed physical protection program. Additionally, these events include (1) any other threatened, attempted, or committed act not previously defined in Appendix G that has resulted in or has the potential for decreasing the effectiveness of the security program including cyber security program or (2) any failure, degradation, or the discovered vulnerability in a security measure, system, component had compensatory measures not been established or employed, that could degrade the effectiveness of protecting any systems, networks, or equipment described in § 73.54. The NRC also would indicate that events that are reported as telephonic notifications do not require an entry in the safeguards event log.

M. Armed Security Personnel Background Check (NRC Form 754)

The NRC is proposing editorial changes to NRC Form 754 to increase clarity in the assisting notes and explanatory text. These changes would be consistent with the August 2008 version of similar ATF Form 4473. The NRC is also proposing a change to Question 4 to NRC Form 754 to (1) eliminate the address of a security individual's duty station and only specify the applicable State or Territory; and (2) permit the inclusion of multiple States or Territories where the individual routinely conducts official duties requiring access to covered weapons at multiple duty station locations or escorts shipments of radioactive material or other property across multiple States. The NRC is also proposing to delete Question 13 (State of Residence), since this question is now redundant with the information requested in Question 3 (Current Residence Address). Accordingly,

Questions 14 through 18 would be redesignated as Questions 13 through 17, respectively. The NRC is also proposing to revise paragraph 4 of the Privacy Act Information summary (on page 3 of the form) to indicate that the submission of information on NRC Form 754 would be mandatory for certain security personnel at NRC-regulated facilities.

VI. Guidance

The NRC is preparing a new draft regulatory guide (DG-5020) (NRC-2011-0015) that will contain detailed guidance on the implementation of the proposed requirements on applying for enhanced weapons and conducting firearms background checks. The draft regulatory guide will be made available for public comment. The NRC will issue a final regulatory guide subsequent to the publication of a final rule. The NRC also has developed a guidance document to assist licensees and certificate holders in completing the weapons safety assessment required as part of an application for enhanced weapons under § 73.18 (NRC-2011-0017).

The NRC developed a draft regulatory guide (DG-5019) (NRC-2011-0014) on event notifications that contained detailed guidance on the implementation of the changes in the October 2006 proposed rule to § 73.71 and Appendix G to part 73. The NRC published draft regulatory guide DG-5019 for public comment on July 6, 2007 (72 FR 37058). The NRC also held a public meeting to discuss the draft regulatory guide on July 27, 2007. However, the NRC has made substantive changes to DG-5019 to reflect the new notification requirements for stolen or lost enhanced weapons and the further changes to § 73.71 and Appendix G to part 73 discussed in this proposed rule. Because of the scope of these proposed changes to the event notification regulations, the NRC intends to issue a Revision 1 to DG-5019 for further public comment and will hold an additional public meeting to discuss Revision 1 to DG-5019. The NRC will issue a final regulatory guide (Revision 2 to RG 5.62) subsequent to the publication of a final rule.

The NRC has determined that public and stakeholder access to these draft guidance documents is not necessary to provide informed comments on this proposed rule.

VII. Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act of 1954 (AEA), as amended, the Commission is proposing to amend 10 CFR part 73 under Sections

161b, 161i, or 161o of the AEA. Criminal penalties, as they apply to regulations in part 73, are discussed in § 73.81. The new §§ 73.18 and 73.19 are issued under Sections 161b, 161i, or 161o of the AEA. Violations of these new sections are subject to possible criminal penalties; and therefore they are not included in § 73.81(b).

VIII. Compatibility of Agreement State Regulations

Under the “Policy Statement on Adequacy and Compatibility of Agreement States Programs,” approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility Category “NRC”; and new §§ 73.18 and 73.19 are designated as Category “NRC” regulations. Compatibility is not required for Category “NRC” regulations. The NRC program elements in this

category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the 10 CFR, and although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State’s administrative procedure laws, but does not confer regulatory authority on the State.

IX. Availability of Documents

NRC’s Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.
NRC’s Agency Wide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are

available electronically at the NRC’s Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC’s public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC’s PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to pdr.resource@nrc.gov.

Federal rulemaking Web site: Public comments and supporting materials related to this proposed rule can be found at <http://www.regulations.gov> by searching on Docket ID: NRC–2011–0018.

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated

| Document | PDR | Web | ERR (ADAMS) |
|--|-----|-----|-------------|
| Firearms Guidelines | X | X | ML082560848 |
| Environmental Assessment (October 2006 proposed rule) | X | X | ML061920093 |
| Regulatory Analysis | X | X | ML061380803 |
| Regulatory Analysis—appendices (October 2006 proposed rule) | | | ML061380796 |
| | | | ML061440013 |
| Information Collection Analysis | X | X | ML092640277 |
| NRC Form 754 | X | X | ML092650459 |
| Commission: SECY–08–0050 (April 17, 2008) | X | X | ML072920478 |
| Commission: SECY–08–0050A (July 8, 2008) | X | X | ML081910207 |
| Commission: SRM–SECY–08–0050/0050A (August 15, 2008) | X | X | ML082280364 |
| Letter opinion from ATF’s Office of Enforcement on the transfer of enhanced weapons (January 5, 2009) | X | X | ML090080191 |

X. Plain Language

The Presidential memorandum dated June 1, 1998, entitled “Plain Language in Government Writing” directed that the Government’s writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883), in the **Federal Register**. In complying with this directive, the NRC made editorial changes to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC has used the phrase “may not” throughout this proposed rule to indicate that a person or entity is prohibited from taking a specific action. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption.

XI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal

agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC proposes to use standards 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, and the U.S. Department of Defense. The NRC invites comment on the applicability and use of these and other standards.

As discussed in Section VI, “Guidance,” of this document, the NRC also intends to issue for public comment draft Regulatory Guides DG–5019 (NRC–2011–0014) and DG–5020 (NRC–20011–0015) that would provide implementing information to licensees and certificate holders. DG–5020 would include references to U.S. government manuals that have been developed for the

training and deployment of machine guns.

The NRC has determined that public and stakeholder access to these draft guidance documents is not necessary to provide informed comments on this proposed rule.

XII. Finding of No Significant Environmental Impact

In the proposed rule published on October 26, 2006, the Commission determined under the National Environmental Policy Act of 1969, as amended, and the Commission’s regulations in subpart A of 10 CFR part 51, that the proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

The determination of the environmental assessment in this proposed rule is that there will be no significant offsite impact to the public from this action. Availability of the environmental assessment is provided in Section IX, “Availability of Documents,” of this document.

Accordingly, because of the nature of the changes to the firearms background checks and enhanced weapons provisions presented in this proposed rule, the assumptions in the October 2006 proposed rule are not changed so the Commission is not seeking additional comments on the environmental assessment.

The NRC sent a copy of the environmental assessment and the October 26, 2006, proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

XIII. Paperwork Reduction Act Statement

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

1. *Type of submission, new or revision:* Revision and new.

2. *The title of the information collection:* 10 CFR part 73, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications" proposed rule, and NRC Form 754, "Armed Security Personnel Background Check."

3. *The form number, if applicable:* NRC Form 754.

4. *How often the collection is required:* One time for power reactor licensees and Category I SSNM licensees applying for combined enhanced weapons authority. Initial submissions of NRC Form 754 will be required for all of their security personnel whose duties require access to covered weapons; thereafter, recurring firearms background checks and completion of NRC Form 754 will be required once every three years. New records requirements are imposed to document enhanced weapon inventory requirements, monthly and semiannually. As needed, licensees will report removals of security personnel, discovery of a stolen or lost enhanced weapon, and security events. For certain security events, follow-up reports are required within 60 days.

5. *Who will be required or asked to report:* The proposed NRC Form 754 and event notification changes affect operating nuclear power reactors located at 65 sites, 15 decommissioning power reactor sites, and 2 fuel cycle facilities authorized to possess Category I SSNM. Security event notifications under different sections of § 73.71 could also affect 42 research and test reactor

(RTR) sites, 6 Category II and II SNM sites, 60 Independent Spent Fuel Storage Installation (ISFSI) sites, 2 hot cell sites, and 3 other reactor sites. Security personnel must report to their management any event disqualifying them from possessing enhanced weapons.

6. *An estimate of the number of annual responses:* 16,685 responses [10 CFR part 73: 7,966 (7,771 response plus 195 recordkeepers); NRC Form 754: 8,719 (8,637 responses plus 82 recordkeepers)].

7. *The estimated number of annual respondents:* 206 (65 sites power reactor sites, 15 decommissioning power reactor sites, 2 fuel cycle facilities, 42 research and test reactors sites, 6 Category II and II SNM sites, 60 Independent Spent Fuel Storage Installation sites, 2 hot cell sites, 3 other reactor sites, plus 11 third party security personnel respondents).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 161,884 hours [10 CFR part 73: 150,459 (130,113 reporting hours plus 20,299 recordkeeping hours plus 47 third party notifications); NRC Form 754: 11,425 hours (8,637 reporting hours plus 2,788 recordkeeping hours)].

Abstract: The NRC is proposing to amend the current security regulations and add new security requirements pertaining to nuclear power reactors and Category I SSNM facilities for access to enhanced weapons and firearms background checks. The proposed rulemaking would fulfill certain provisions of the Energy Policy Act of 2005 and add several new requirements to event notification requirements that resulted from insights from implementation of the security orders, review of site security plans, and implementation of the enhanced baseline inspection program and force-on-force exercises.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Estimate of burden?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC PDR, One White Flint North, 11555 Rockville Pike, Room O1-F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html> for 30 days after the signature date of this document. These documents are also available at: <http://www.regulations.gov> under Docket ID (NRC-2011-0018). Documents may be viewed and downloaded electronically.

Send comments on any aspect of these proposed regulations related to information collections, including suggestions for reducing the burden and on the above issues, by March 7, 2011 to the Information Services Branch (T-5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to Infocollects.Resource@NRC.GOV and to the Desk Officer, Ms. Christine Kymm, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0002 and 3150-0204), Office of Management and Budget, Washington, DC 20503. Comments on the proposed information collections may also be submitted via <http://www.regulations.gov>. Docket ID NRC-2011-0018. Comments received after this date will be considered if it is practical to do so, but assurance cannot be given to comments received after this date. You may also e-mail comments to Christine.J.Kymm@omb.eop.gov or comment by telephone at 202-395-4638.

Public Protection Notification

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

XIV. Regulatory Analysis

The NRC had prepared a draft regulatory analysis for the original proposed rule published on October 26, 2006 (see Section IX, "Availability of Documents," of this document). The analysis examined the costs and benefits of the Implementation of section 161A of the AEA, proposed by the NRC at that time. Given that the NRC is required to comply with this statute, the regulatory analysis is provided in this case more for informational purposes rather than as a tool for decision-makers, which is its customary role.

The NRC is now taking action to conform implementing regulations to the firearms guidelines issued by the Commission, with the approval of the

U.S. Attorney General. Many of the requirements identified in this revised proposed rule were identified in the original proposed rule. However, for the sake of completeness in this regulatory analysis, the staff is providing cost and benefit estimates for the proposed changes to §§ 73.18, 73.19, and 73.71 and Appendices A and G to part 73. The NRC considers the costs and benefits associated with applying for enhanced weapons to be unchanged from that described in the draft regulatory analysis, as the plans and analysis that are required to accompany an application have not changed. However, additional requirements have been added to the proposed § 73.18 that involve recordkeeping or reporting burdens. These include: Periodic inventories of enhanced weapons under paragraph (n), notifications to the NRC and local law enforcement of stolen or lost enhanced weapons under paragraph (o), and record keepings under paragraph (p). These proposed regulations are required to be consistent with the issued firearms guidelines. Additionally, the proposed regulation would require a licensee or certificate holder to notify the NRC of a licensee's or certificate holder's receipt of adverse ATF findings under paragraph (j). This notification would permit the NRC to effectively respond to any public or press inquires related to the adverse ATF findings at NRC licensees possessing enhanced weapons. Additional recordkeeping and reporting burdens have also been added to § 73.19 that include periodic firearms background checks under paragraph (f). Finally, additional recordkeeping and reporting burdens have been added to the proposed changes to § 73.71 and Appendix G. These include imminent or actual hostile acts under paragraphs (a) and (b), suspicious activities under paragraph II, and cyber events under paragraphs I, II, and III. This regulatory analysis was developed following the guidance contained in NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Revision 4, issued September 2004.

1. Statement of the Problem and Objective

The information generally contained in this portion of the regulatory analysis may be found earlier in this document in Sections II, "Background," and III, "Discussion."

2. Identification and Analysis of Alternative Approaches to the Problem

Because this rulemaking is in response to the statutorily mandated

provisions of the new section 161A of the AEA and the direction provided by the firearms guidelines issued by the Commission, with the approval of the U.S. Attorney General (see 74 FR 46800; September 11, 2009), there are no acceptable alternatives to the proposed rulemaking. Licensee application for enhanced weapons authority and preemption authority under section 161A is voluntary; however, licensee compliance with the firearms background checks under section 161A is mandatory for certain designated classes of licensees. Consequently, the no-action option is used only as a basis against which to measure the costs and benefits of the proposed rule.

3. Estimation and Evaluation of Values and Impacts

In general the parties that would be affected by this proposed rule are the licensees (there is no impact on applicants since they are not subject to the firearms background check requirements), the NRC, the public surrounding the plants, the on-site employees of the licensees, the FBI, and the ATF.

The following attributes are expected to be affected by this rulemaking. Their impacts are quantified where possible. Impacts to accident-related attributes are qualified because estimates of occurrences of possible attacks and their successful repulsions are unknown. Further, even if reliable estimates were available, they would be considered Safeguards Information and not to be released for public dissemination.

- **Safeguards and Security Considerations**—The proposed actions regarding access to enhanced weapons and mandatory firearms background checks will provide high assurance that the common defense and security will be enhanced because of licensees' increased ability to repulse an attack and to comply with statutory requirements.

The proposed actions regarding security event notifications will increase the NRC's ability to respond to security events and to effectively monitor ongoing licensee actions and inform other licensees in a timely manner of security-significant events and thus protect public health and safety and the common defense and security.

- **Industry Implementation**—The proposed rule would require licensees and certificate holders to subject their security personnel to a finger-print based background check and a firearms background check against the NICS. Requirements on security event notifications were also updated. Also, the rule would give licensees in

Commission-designated classes of facilities the option to apply for combined enhanced weapons authority and preemption authority or standalone preemption authority. If a licensee is so inclined, it must submit plans and analysis to the NRC on their proposed deployment of enhanced weapons. The NRC must then act on approving the request or not. Following NRC approval, such a licensee would apply to ATF to transfer the authorized enhanced weapons to its facility. Industry would, of course, need to develop procedures to comply with these requirements.

For purposes of analysis, the NRC staff assumes that all licensees who fall within the proposed designated classes would take advantage of making use of enhanced weapons protection (*i.e.*, 65 operating power reactor sites, 15 decommissioning power reactor sites, and 2 Category I SSNM facilities for a total of 82 facilities). The staff also assumes that it would take an individual site one-half staff year to develop the changes to the security, training and qualification, contingency response plans and security event notification reports and to develop the weapons safety assessment and submit these documents to the NRC for its review and approval. Next, the staff assumes that it would take an individual site one-quarter staff year to complete ATF paperwork, acquire the enhanced weapons, develop new training standards and then train security personnel, and deploy the weapons. The staff further assumes a weapons acquisition cost of \$1000 per weapon for 50 weapons equaling \$50,000 per individual site. The staff uses a value of \$160,000 per staff year. Therefore, the staff estimates that an individual site's implementation cost for the voluntary enhanced weapons regulations would be sum of the values of: the half staff-year, the quarter staff-year, and the cost of the weapons or \$170,000 (\$80,000 + \$40,000 + \$50,000); and a total enhanced-weapons' implementation cost of \$13,940,000 for the industry.³ Note: this cost analysis does not include any transfer tax payments required from a licensee to register an enhanced weapon with ATF under the National Firearms Act (26 U.S.C. chapter 53), since those costs fall under ATF's sole regulatory purview.

NRC staff estimates that the costs to establish the program for accomplishing the mandatory firearms background checks would require two staff months per individual licensed facility. Therefore, the staff estimates that an

³ Please note that throughout this paper sums may not equal shown total values because of rounding.

individual site's costs (excluding fees) for this task would be \$26,700; and a total cost of \$2,190,000 for the industry.

NRC staff estimates that the total fees for the mandatory firearms background checks including the NICS check and the fingerprint check would be \$26. The NRC staff also assumes that the completion of, and recordkeeping for each NRC form 754 for mandatory background checks would be equivalent to one staff-hour. The NRC staff assumes 150 security officers per operating reactor and Category I SSNM facility and 75 officers for each decommissioning reactor and an hourly rate for industry security personnel of \$50.

This results in costs of \$11,400 for each operating reactor and Category I SSNM facility and \$5,700 for a decommissioning reactor site. This sums to total industry costs of \$741,000 for all operating reactors and \$22,800 for the two Category I SSNM facilities, and a decommissioning reactor industry cost of \$85,500. Therefore, the overall total industry cost estimate for performing the first-time background checks is \$849,000.

When summed, the total implementation costs for obtaining enhanced weapons, establishing the program for accomplishing the mandatory firearms background checks, and completing the firearms background checks for an individual site range from \$202,000 for the decommissioning sites to \$208,000 for the operating reactor and Category I SSNM sites. The total industry implementation costs for operating reactors is \$13,526,000; for Category I SSNM sites \$416,000; and for decommissioning sites \$3,036,000. The sum of the total industry implementation cost is \$16,979,000.

• **Industry Operation**—Enhanced weapon inventories' requirements of the proposed rule, both monthly and semi-annually would result in operating expenses for industry. The NRC staff estimates that the automatic weapons inventories would take a total of 1 staff day for the monthly inventories and a total of 2 staff days for the semi-annual inventories, for the two-person inventory team. A licensee does not have to do the monthly inventory (these are inventories not inspections) if they are doing the semi-annual check that month. Assuming an hourly rate for industry security personnel of \$50, the NRC staff estimates that this requirement would result in an annual cost per site of \$5,600 (*i.e.*, $\$50/\text{hr} \times [(8\text{hrs}/\text{monthly-inventory} \times 10 \text{ monthly-inventories}/\text{yr}) + (16\text{hrs}/\text{semi-ann-inventory} \times 2 \text{ semi-ann-inventory}/\text{yr})]$). Assuming all 65 operating power reactor

sites, 15 decommissioning reactor sites, and two Category I SSNM facilities decide to obtain enhanced weapons, this results in an industry annual cost of approximately \$460,000. Based on the extended license expiration dates, the NRC staff assumes the average remaining life of operating reactors is 34 years. We also assume another 20 years in "SAFSTOR" for a total of 54 years additional years. For the 15 decommissioning reactors we assume an additional 20 years of life. Lastly, we assume an additional 50 years of life for the 2 Category I SSNM licensees. By type of licensee, the net present value (presented as individual cost/industry cost) using a 7 percent real discount rate are \$72,000/\$5,100,000 for operating reactors; \$59,000/\$890,000 for decommissioning reactors; and \$77,000/\$154,000 for Category I SSNM facilities. The corresponding values using a 3 percent real discount rate is calculated to be \$149,000 per operating reactor or \$9,674,000 for all 65 reactors; \$83,000 for each decommissioning reactor or \$1,250,000 for all 15 sites; and \$144,100 for each of the two Category I SSNM facilities or \$288,174 for their total. Therefore, the total industry operating costs for the inventory requirements is the sum of the discounted flow of funds costs which is approximately \$6.1 million using a 7 percent rate and \$11.2 million using a 3 percent real rate.

Also, the licensees need to comply with the mandatory recurring background checks. As mentioned in the Industry Implementation section above, the NRC staff estimates a one-time background-check cost of \$11,400 per operating reactor. Recurring firearms background checks every 3 years would approximate an annualized cost of \$3,800. Discounted over the assumed 34 remaining years of life of an operating reactor results in discounted flow values of \$48,800 (7 percent) and \$80,300 (3 percent). The NRC staff then assumed the operating reactors would have 20 years of life remaining as decommissioning reactors. At decommissioning reactors the calculated cost would be \$5,700 per site, or \$1,900 per year. This value discounted over the future years 35 through 54 at a decommissioning site would be \$1,840 (7 percent) and \$9,670 (3 percent). Therefore, the total cost of background checks for a presently operating reactor is \$50,680 (7 percent) and \$90,000 (3 percent). This corresponds to values for all operating reactors of \$3,294,000 (7 percent) and \$5,848,000 (3 percent).

The discounted flow of funds value for background checks (assuming the \$3,800 annualized cost) for the

individual Category I SSNM licensees is \$52,400 using the 7 percent rate and \$97,800 using the 3 percent discount rate. This corresponds to the Category I SSNM industry total of \$104,900 (7 percent) and \$195,500 (3 percent).

Lastly, the discounted cost estimates for background checks for a decommissioning reactor are \$20,100 (7 percent) and \$28,300 (3 percent). Total costs for all present decommissioning reactors are \$301,900 (7 percent) and \$424,000 (3 percent).

The total discounted flow of funds for the industry to have the background checks performed is \$3,401,000 ($\$3,294,000 + \$104,900 + \$424,000$) using a 7 percent real discount rate. Using a 3 percent real discount rate provides a total industry cost of \$6,468,000 ($\$5,848,000 + \$196,000 + \$424,000$).

With respect to the security event notification reporting requirements, this analysis presents combined cost estimates for both physical and cyber events for: Imminent or actual hostile action notifications, cyber and physical intrusions, suspicious activity notifications, unauthorized operation or tampering events (including cyber systems), and security logable events.

The NRC staff estimates that for 65 operating reactor sites, 15 decommissioning sites, and 2 Category I SSNM sites, each facility would make one imminent or actual hostile act notification every 10 years. This equates to a site-risk value of 0.1 per year. Further, the staff estimates that the proposed required initial communication with the NRC would take approximately 6 minutes, or 0.1 hours. The 2 hour open-line continuous communication channel requirement is, of course, assumed to take 2 staff-hours of time. Therefore, the annual cost per site may be expressed as $0.1/\text{yr} \times [0.1\text{hrs} + 2\text{hrs}] = 0.21\text{hrs}/\text{year}$. At the assumed professional level wage rate of \$100/hr, this results in an annual cost of \$21 per site.

For the operating reactors, the annual industry cost is \$1,365, for decommissioning reactors it is \$315, and only \$42 for the Category I SSNM facilities. When the annual costs are discounted over the average remaining lives of the various sites, the totals for operating reactors range from \$19,000 (7 percent real discount rate) to \$36,000 (3 percent). For decommissioning reactors, the values range from \$3,300 (7 percent) to \$4,700 (3 percent). For the two Category I facilities, the discounted flows of funds for the annual operating costs range from \$600 (7 percent) to \$1,000 (3 percent). Therefore, the total operating expenses for the imminent attack notification component of the

rule range from \$22,900 (7 percent) to \$41,700 (3 percent).

For cyber and physical intrusions, the NRC staff assumes the following sites will be affected: (1) 82 operating, decommissioning, and Category I SSNM sites, (2) 42 operating and decommissioning research and test reactor (RTR) sites, (3) 3 other reactor sites, (4) 6 Category II and Category III Special Nuclear Material Sites (SNM), (5) 60 Independent Spent Fuel Storage Installations (ISFSI), and (6) 2 hot cell sites. This results in 195 affected licenses. The intrusions, which require a one hour notification time, are assumed by the NRC staff to occur on average once every 2 years, or at a rate of 0.5 per year. Further, the staff assumes that each event would require one hour of licensee staff time per event. Given the assumed professional level wage rate of \$100/hr, this results in an annual cost of \$50 per site. The discounted cost over the assumed life of an operating reactor and its additional time in SAFESTOR ranges from \$700 (7 percent real discount rate) to \$1300 (3 percent).

The total industry costs are composed of the following. Operating reactors total cost estimates range from \$45,000 (7 percent) to \$86,000 (3 percent). The Decommissioning Reactors range from \$7,900 to \$11,100. Category I's range from approximately \$1,400 to \$2,600. RTRs range from \$28,000 to \$48,000. Other sites estimates are \$2,000 to \$3,500. The Category II and III sites range from \$4,000 to \$6,900. The 2 Hot Cell sites estimated costs are from \$1,300 to \$2,300. The ISFSI's costs are estimated to range from \$43,000 to \$91,000. This results in an estimate for the total industry operating costs of from \$132,000 (7 percent) to \$252,000 (3 percent).

For suspicious activity reports, the NRC staff assumes five reports per year, for each of the 195 licenses, which we assume would result in a 1 hour total response per report. This results in annual costs per site of \$500. For operating reactors (including their time in SAFESTOR), the total costs range from \$452,000 (7 percent) to \$864,000 (3 percent). Decommissioned reactors corresponding estimates run from \$79,400 to \$112,000. The 2 Category I SSNMs cost estimates range from \$13,800 to \$25,700, again showing the 7 percent value first, followed by the 3 percent estimate. The 42 Research and Test Reactors had industry total cost estimates of \$280,000 to \$485,000. The 3 other sites values were \$20,000 to \$34,700. The 6 Category II and III SNMs had approximately double those values at \$40,000 to \$69,300. The 2 hot cell

sites incurred costs of \$13,300 to \$23,100. Lastly, the ISFSI's estimates ran from \$427,000 to \$906,000. The summed estimate for suspicious activity reports runs from \$1,325,000 (7 percent) to \$2,520,000 (3 percent).

With respect to unauthorized operation or tampering events, the NRC staff assumes one event per year, per site, (for both physical and cyber events) and a 1 hour total response per event resulting in annual costs of \$100 per site. Operating Reactors total cost estimates range from \$90,400 (7 percent) to \$173,000 (3 percent). Similar estimates for the decommissioning reactors range from \$15,900 to \$23,300. The Category I SSNMs were \$2,800 to \$5,100. Research and Test Reactors had estimates from \$56,000 to \$97,000. The 3 other sites' values ranged from \$4,000 to \$6,900. Category II and III SNM sites incurred estimates of \$8,000 to \$13,900. The hot cell sites ranged from \$2,700 to \$4,600. ISFSI's ranged from \$85,300 to \$181,200. Therefore the total industry operating expenses for unauthorized operation or tampering ranges from \$265,000 (7 percent) to \$504,000 (3 percent).

For both requirements relating to enhanced weapons being lost or stolen and to adverse ATF findings, the NRC staff assumes an occurrence of once every 2 years or at a rate of 0.5 per year at the 82 sites. While these requirements differ as to time required to submit the report, all are assumed to require an hour of licensee staff time per event. Again, \$100 per staff-hour is assumed as the wage rate that results in an annual cost of \$50 per site. The resulting discounted cost over the assumed life of an operating reactor ranges from \$700 (7 percent real discount rate) to \$1,300 (3 percent). For all 65 reactors that becomes \$45,200 to \$86,400. The corresponding values for the 15 decommissioning reactors range from \$8,000 to \$11,100. Lastly, the 2 Category I sites related values are \$1,400 and \$2,600. Therefore, these sum to ranges of \$54,600 (7 percent) to \$100,000 (3 percent).

Finally, the NRC staff estimates the impact of the events requiring entry in the safeguards event log at 195 sites. The NRC staff assumes 150 events requiring entry in the log per site, per year and that each entry requires 20 minutes of licensee staff time. Therefore, the annual cost per site is \$5,000 and \$975,000 for the industry. Total costs resulting from this requirement are estimated to be from \$13,250,000 (7 percent real discount rate) to \$25,200,000 (3 percent rate). This is based on the sum of the following components. Operating

reactors have estimated costs that range from \$4,520,000 to \$8,640,000. Decommissioning Reactors have estimates going from \$794,000 to \$1,120,000. The 2 Category I sites' costs for this paragraph go from \$138,000 to \$257,000. RTRs have estimates of from \$2,800,000 to \$4,800,000. Other reactor sites run from \$200,000 to \$347,000. The Category II and III sites have estimates of \$400,000 to \$693,000. The Hot Cell Sites account for \$133,000 to \$231,000, while the ISFSI sites have estimates of \$4,270,000 to \$9,060,000.

The NRC notes that Appendix G to part 73 imposes no additional (or separate) requirements on licensees. It only contains a detailed listing of the security event notifications that are required to be reported under § 73.71. As a result, no separate costs would be incurred by licensees because of the requirements of Appendix G (*i.e.*, the costs for event notifications specified under Appendix G are accounted for under the costs associated with § 73.71).

The notification requirements' discounted flow of funds costs for the industry sum to from \$15,056,000 (7 percent) to \$28,613,000 (3 percent).

The total industry operating costs are the sum of the recurring inventory requirements (\$6.1 million given the 7 percent real discount rate and \$11.2 million with the 3 percent rate), the background checks (\$3.7 million at 7 percent and \$6.5 million at 3 percent), and the security event notification reports (\$15.1 million using the 7 percent rate and \$28.6 million with the 3 percent rate). This total is estimated to range from \$24.9 million (7 percent) to \$46.3 million (3 percent rate).

• *NRC Implementation*—NRC implementation costs include the labor cost for the development of the final rule and the regulatory guidance (two regulatory guides). The NRC would also need to develop appropriate inspection procedures to confirm compliance with this rule.

NRC staff estimates that it would take approximately 1 staff year or 1,600 hours to develop the final rule and about a half year (800 staff hours) to develop the final regulatory guidance. Lastly, the development of NRC inspection procedures will take about a quarter staff year (400 staff hours). Using the NRC's partially loaded hourly rate of \$100 results in the NRC implementation cost of \$280,000 (1,600 hrs + 800 hrs + 400 hrs). The NRC estimates that it would take about a quarter staff year to review and comment on each licensee's security plan, training and qualification plan, contingency response plan, and weapons safety assessment, including a round of Requests for Additional

Information. This is estimated to cost the NRC \$40,000 per site or \$3,280,000 for the industry. Adding this amount to the initial part of the NRC implementation cost estimate of \$280,000 results in a total NRC implementation cost of almost \$3.6 million.

- *NRC Operation*—The NRC would need to inspect the licensees' periodic inventories, recordkeeping, and training and qualification of enhanced weapons as a result of this rule. These inspections of the licensee's enhanced weapons would take one staff day per year per individual licensee site, with the exception of the first year, which would take 2 staff days per site. This results in a first-year NRC cost of about \$1,600 for one site and about \$131,200 (82 sites × \$1,600/site) industry-wide for the first year. Subsequent years would result in costs of \$800 per site and \$65,600 (82 sites × \$800/site) for industry-wide impacts on the NRC. This results in a discounted flow of funds equal to total operating costs for the inspection of the periodic weapons inventory ranging from an estimated high of about \$1,665,000 (using a 3 percent real discount rate) to \$934,000 (using a 7 percent rate).

The NRC staff estimates that inspecting the licensee's records program for the mandatory firearms background checks would take one staff day per year per individual licensee site, with the exception of the first year, which would take 2 staff days per site. This results in an NRC cost of about \$1,600 for one site the first year and about \$131,200 (82 sites × \$1,600/site) industry-wide for the first year. Subsequent years would result in NRC costs of \$800 per site and \$65,600 (82 sites × \$800/site) for industry-wide impacts on the NRC. NRC's total operating cost for the records check of the mandatory firearms background checks ranges from an estimated high of \$1,665,000 (using a 3 percent real discount rate) to \$934,000 (using a 7 percent rate). No separate estimate for NRC costs associated with recordkeeping and processing firearms background checks are provided, because these costs are already included in the NRC's fee for processing a firearms background check.

The NRC's total operating costs are the sum of the above values, which range from slightly under \$1.9 million (7 percent rate) to \$3.3 million (3 percent rate).

- *Regulatory Efficiency*—The proposed action would result in enhanced regulatory efficiency through regulatory and compliance improvements based upon statutory

mandates involving the voluntary possession of enhanced weapons and mandatory firearms background checks at power reactor facilities and 2 Category I SSNM facilities. The proposed action would also result in enhanced regulatory efficiency involving the NRC's ability to monitor ongoing security events at a range of licensed facilities, and the ability to rapidly communicate information on security events at such facilities to other NRC-regulated facilities and other government agencies, as necessary.

- *Public Health (Accident)*—The proposed action would reduce the risk that public health will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.

- *Occupational Health (Accident)*—The proposed action would reduce the risk that occupational health will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.

- *Off-Site Property*—The proposed action would reduce the risk that off-site property will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.

- *On-Site Property*—The proposed action would reduce the risk that on-site property will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.

- *Other Government Agencies*—The FBI would be affected by this rule because of its role in processing the mandatory fingerprint checks and firearms background checks the statute requires. The ATF would be affected by this rule because of its involvement with the approval to transfer of enhanced weapons to and from an authorized NRC licensee. Note: The FBI's fees for fingerprinting checks are incorporated within the NRC's fee discussed above. The FBI does not charge a fee for firearms background checks. Also, as previously noted, the ATF taxes to transfer enhanced weapons are not included in this analysis.

Attributes that are *not* expected to be affected under any of the rulemaking options include the following: Occupational health (routine); public health (routine); environmental considerations; general public; improvements in knowledge; and antitrust considerations.

4. Presentation of Results

Section 161A of the AEA requires several modifications to 10 CFR part 73. The pertinent sections and appendices which are being revised are §§ 73.2,

"Definitions," 73.71, "Reporting of safeguards events" 73.18, "Authorization for use of enhanced weapons and preemption of firearms laws," and 73.19, "Firearms background checks for armed security personnel."

The fundamental incentive for a licensee to choose to obtain enhanced weapons is to increase their defensive capabilities to provide high assurance that public health and safety and the common defense and security will be adequately protected from any attempts of radiological sabotage. Since a licensee's obtaining enhanced weapons is voluntary, licensees must evaluate for their specific site whether the costs and benefits of using enhanced weapons are appropriate in general; and if appropriate in general, which specific types of weapons are appropriate for their particular site and protective strategy. Also, the firearms background checks will provide assurance that security personnel possessing enhanced weapons are not barred under Federal and State law from receiving, possessing, transporting, or using any covered weapons and ammunition. The NRC staff notes that while licensees would be required to pay an excise tax when transferring enhanced weapons, the tax is not considered a cost of this proposed rule because it is a result of ATF regulations.

The total industry implementation costs for operating reactors is \$13,526,000; for Category I SSNM sites \$416,000; and for decommissioning sites \$3,036,000. The sum of the total industry implementation cost is \$17.0 million. The industry operating costs when discounted as flows of funds and based on the assumed lengths of lives of the various facilities ranged from \$24.9 million to \$46.3 million given the 7 percent and 3 percent real discount rates respectively.

The total costs to industry, including both implementation and operating expenses are estimated to range from \$41.9 million to \$63.3 million, again given the 7 percent and 3 percent real discount rates respectively.

The NRC implementation costs are almost \$3.6 million. The recurring or annual costs are calculated to have a present value of from \$1.9 million (7 percent rate) to \$3.3 million (3 percent rate). Therefore, the total estimated NRC costs range from about \$5.5 million (7 percent rate) to \$6.9 million (3 percent rate).

The total quantitative costs estimates for this proposed rulemaking are estimated to be from \$47.4 million (7 percent) to \$70.2 million (3 percent).

- *Disaggregation*

In order to comply with the guidance provided in Section 4.3.2 (Criteria for the Treatment of Individual Requirements) of the NRC's Regulatory Analysis Guidelines, the NRC conducted a screening review to ensure that the aggregate analysis does not mask the inclusion of individual rule provisions that are not cost-beneficial when considered individually and not necessary to meet the goals of the rulemaking. Consistent with the Regulatory Analysis Guidelines, the NRC evaluated, on a disaggregated basis, each new regulatory provision expected to result in incremental costs. Given that the NRC is required to comply with section 161A of the AEA, the NRC believes that each of these provisions is necessary and cost-justified based on its resulting qualitative benefits, as discussed above.

5. Decision Rationale

Relative to the "no-action" alternative, the proposed rule would cost industry from around \$42 million to \$63 million over the average lifetime of the plants. The total NRC costs would range from \$5.5 million to slightly under \$7 million. Total costs of the rule are estimated to range from around \$47 million to \$70 million. The large majority of requirements in this rule is the result of the new section 161A of the AEA. However, there are some items which the NRC has required that were not specifically in the statute. The NRC included them because it needs to be able to respond to public and press inquiries on security event issues and the items provided the most opportune method for the NRC to comply with the statute. Furthermore, the NRC concluded that for all of these requirements, and their corresponding costs, the proposed approach is appropriate.

Although the NRC did not quantify the benefits of this rule, the staff did qualitatively examine benefits and concluded that the rule would provide safety and security-related benefits. Offsetting this net cost, the NRC believes that the rule would result in substantial non-quantified benefits related to safety and security, as well as enhanced regulatory efficiency and effectiveness. Therefore, the NRC believes that the rule is cost-justified for several qualitative reasons. First, the proposed rule would provide increased defensive capability of licensees and thus would increase the assurance that a licensee can adequately protect a power reactor facility, decommissioning site, or Category I SSNM facility against an external assault. Second, the proposed rule would provide a

mechanism to accomplish a statutory mandate to verify that security officers protecting such facilities are not disqualified under Federal or State law from possessing or using firearms and ammunition. Lastly, as indicated above, licensee application for enhanced weapons authority and preemption authority under section 161A is voluntary.

The NRC also modified the event notification requirements for the following qualitative reasons. This change would result in increasing the NRC's ability to respond to security-related plant events, evaluate ongoing suspicious activities for threat implications, and accomplish the Agency's strategic communication mission.

Based on the NRC's assessment of the costs and benefits of the propose rule on licensee facilities, the agency has concluded that the proposed rule provisions would be justified.

6. Implementation

The final rule is to take effect 30 days after publication in the **Federal Register**. A compliance date of 180 days after publication of the final rule will also be established for some provisions of this rule. The NRC staff does not expect this rule to have any impact on other requirements.

XV. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. With respect to the enhanced weapons and firearms background check provisions, this proposed rule affects only the licensing and operation of nuclear power reactors and fuel cycle facilities authorized to possess and use Category I quantities of SSNM. With respect to the security event notification provisions (both reports and records), this proposed rule affects fuel cycle facilities authorized to possess and use Category I quantities of SSNM, Category II and Category III quantities of SSNM, hot cell facilities, ISFSIs, MRSs, GROAs, power reactor facilities, production reactor facilities, and research and test reactor facilities. Additionally, this proposed rule also affects licensees and certificate holders engaged in activities involving the transportation of Category I quantities of SSNM, SNF, HLW, and Category II and Category III quantities of SSNM. The companies that own or operate these facilities or conduct these activities do not fall within the scope of the definition of "small entities" presented

in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XVI. Backfit Analysis

The NRC evaluated the aggregated set of requirements in this proposed rule that constitute backfitting in accordance with sections 10 CFR 50.109 and 70.76. The NRC prepared a draft regulatory analysis on the original proposed rule published on October 26, 2006. The backfit analysis is contained within Section 4.2 of that regulatory analysis. Availability information for the draft regulatory (and backfit) analysis is provided in Section IX, "Availability of Documents," of this document. This analysis examined the costs and benefits of the alternatives considered by the NRC.

Many of the provisions of this proposed rule do not constitute backfitting because they are voluntary in nature, and would therefore not impose modifications or additions to existing structures, components, or designs, or existing procedures or organizations. These provisions include those related to application for the use of enhanced weapons and/or preemption authority. Other provisions of the rule implementing section 161A, such as the mandatory firearms background checks, are not backfits because they implement mandatory provisions required by statute.

To the extent that some of the specific implementing details of the firearms background checks described in this proposed rule 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.

Regarding the provisions of the October 2006 proposed rule and this proposed rule that relate to information collection and reporting requirements, revisions that amend existing information collection and reporting requirements or impose new information and collection and reporting requirements are not considered to be backfits, as presented in the charter for the NRC's Committee to Review Generic Requirements (CRGR).

Therefore, for the reasons stated above, a backfit analysis has not been completed for any of the provisions of this proposed rule.

List of Subjects in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the AEA, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594 (2005).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

2. In § 73.2, paragraph (a), definitions for "Adverse firearms background check," "Combined enhanced weapons authority and preemption authority," "Covered weapon," "Enhanced weapon," "Firearms background check," "High-level radioactive waste," "NICS," "NICS response," "Satisfactory firearms background check," "Spent nuclear fuel or spent fuel (SNF)," "Stand-alone preemption authority," and "Standard weapon" are added in alphabetical order; and paragraphs (b) and (c) are added to read as follows:

§ 73.2 Definitions.

* * * * *

(a) * * *

Adverse firearms background check means a firearms background check that has resulted in a "denied" or "delayed" NICS response.

* * * * *

Combined enhanced weapons authority and preemption authority means the authority granted the Commission, at 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 category of enhanced weapons,

notwithstanding any local, State, or certain Federal firearms laws (including regulations).

* * * * *

Covered weapon means any handgun, rifle, shotgun, short-barreled shotgun, short-barreled rifle, semi-automatic assault weapon, machine gun, ammunition for any of these weapons, or a large capacity ammunition feeding device as specified under 42 U.S.C. 2201a. Covered weapons include both enhanced weapons and standard weapons.

* * * * *

Enhanced weapon means any short-barreled shotgun, short-barreled rifle, or machine gun. Enhanced weapons do not include destructive devices as defined at 18 U.S.C. 921(a)(4) (e.g., explosives or weapons with a bore diameter greater than 12.7 mm (0.5-in or 50-caliber)). Enhanced weapons do not include standard weapons.

Firearms background check means a background check by the U.S. Attorney General as defined at 42 U.S.C. 2201a and that includes a check against the Federal Bureau of Investigation's (FBI's) fingerprint system and the National Instant Criminal Background Check System (NICS).

* * * * *

High-level radioactive waste means—

(1) The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

(2) Other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

* * * * *

NICS means the National Instant Criminal Background Check System established by Section 103(b) of the Brady Handgun Violence Prevention Act, Public Law 103-159 (107 Stat. 1536), that is operated by the FBI.

NICS response means 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."

* * * * *

Satisfactory firearms background check means a firearms background check that has resulted in a "proceed" NICS response.

* * * * *

Spent nuclear fuel or Spent fuel (SNF) means the fuel that has been withdrawn

from a nuclear reactor following irradiation and has not been chemically separated into its constituent elements by reprocessing. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive materials associated with a fuel assembly.

Stand-alone preemption authority means the authority granted by the Commission, under 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).

Standard weapon means any handgun, rifle, shotgun, semi-automatic assault weapon, or a large capacity ammunition feeding device. Standard weapons do not include enhanced weapons.

* * * * *

(b) The terms "ammunition," "handgun," "rifle," "machine gun," "large capacity ammunition feeding device," "semi-automatic assault weapon," "short-barreled shotgun," "short-barreled rifle," and "shotgun" specified in this section have the same meaning as provided for these terms in the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives' regulations at 27 CFR 478.11.

(c) The terms "delayed," "denied," and "proceed" that are used in NICS responses specified in this section have the same meaning as is provided for these terms in the FBI's regulations in 28 CFR 25.2.

3. In § 73.8, paragraphs (b) and (c) are revised to read as follows:

§ 73.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 73.5, 73.18, 73.19, 73.20, 73.21, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.54, 73.55, 73.56, 73.57, 73.58, 73.60, 73.67, 73.70, 73.71, 73.72, 73.73, 73.74, and Appendices B, C, and G to this part.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and control numbers under which they are approved are as follows:

(1) In § 73.19, NRC Form 754 is approved under control number 3150-0204;

(2) In §§ 73.19 and 73.57, FBI Form FD-258 is approved under control number 1110-0046; and

(3) In § 73.71, NRC Form 366 is approved under control number 3150-0104.

4. Section 73.18 is added to read as follows:

§ 73.18 Authorization for use of enhanced weapons and preemption of firearms laws.

(a) *Purpose.* This section presents the requirements for licensees and certificate holders to obtain NRC approval to use the authorities provided under 42 U.S.C. 2201a, in protecting Commission-designated classes of facilities, radioactive material, or other property. These authorities include “preemption authority” and “enhanced-weapons authority.”

(b) *General Requirements.* (1) Licensees and certificate holders listed in paragraph (c) of this section may apply to the NRC, in accordance with the provisions of this section, to receive stand-alone preemption authority or combined enhanced weapons authority and preemption authority.

(2) With respect to the possession and use of firearms by all other NRC licensees or certificate holders, the Commission’s requirements in effect before (**effective date of final rule**) remain applicable, except to the extent those requirements are modified by Commission order or regulations applicable to these licensees and certificate holders.

(c) *Applicability.* (1) Stand-alone preemption authority. The following classes of facilities, radioactive material, or other property are designated by the Commission pursuant to 42 U.S.C. 2201a—

(i) Power reactor facilities; and
(ii) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level 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.

(2) Combined enhanced-weapons authority and preemption authority. The following classes of facilities, radioactive material, or other property are designated by the Commission under 42 U.S.C. 2201a—

(i) Power reactor facilities; and
(ii) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level 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.

(d) *Application for stand-alone preemption authority.* (1) Licensees and

certificate holders listed in paragraph (c)(1) of this section may apply to the NRC for stand-alone preemption authority using the procedures outlined in this section.

(2) Licensees and certificate holders shall submit an application to the NRC in writing, in accordance with § 73.4, and indicate that the licensee or certificate holder is applying for stand-alone preemption authority at 42 U.S.C. 2201a.

(3)(i) Licensees and certificate holders shall indicate that they have completed satisfactory firearms background checks for their security personnel whose official duties require access to covered weapons, in accordance with § 73.19.

(ii) Alternatively, licensees and certificate holders shall indicate they have commenced firearms background checks for their security personnel whose official duties require access to covered weapons; and they shall subsequently 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 security personnel minimum staffing and fatigue requirements, in accordance with § 73.19.

(4) The NRC will document in writing to the licensee or certificate holder that the Commission has approved or disapproved the licensee’s or certificate holder’s application for stand-alone preemption authority.

(e) *Application for combined enhanced-weapons authority and preemption authority.* (1) Licensees and certificate holders listed in paragraph (c)(2) of this section may apply to the NRC for combined enhanced-weapons authority and preemption authority.

(2) Licensees and certificate holders shall submit an application to the NRC indicating that the licensee or certificate holder is applying for combined enhanced-weapons authority and preemption authority at 42 U.S.C. 2201a, in accordance with § 73.4, and the license or certificate amendment provisions of §§ 50.90, 70.34, or 76.45 of this chapter, as applicable. Licensees and certificate holders who have previously been approved for stand-alone preemption authority under paragraph (d) of this section are not required to reapply for preemption authority.

(3) Licensees and certificate holders shall include with their application—

(i) The specific information required by paragraph (f) of this section; and
(ii) If applicable, the date they applied to the NRC for stand-alone preemption

authority and the date the NRC approved their application.

(4)(i) Licensees and certificate holders shall indicate that they have completed satisfactory firearms background checks for their security personnel whose official duties require access to covered weapons, in accordance with § 73.19.

(ii) Alternatively, licensees and certificate holders shall indicate that they have commenced firearms background checks for their security personnel whose official duties require access to covered weapons. Licensees and certificate holders shall subsequently 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 security personnel minimum staffing and fatigue requirements, in accordance with § 73.19.

(5) The NRC will make a final determination on the license application in accordance with § 50.92, 70.35, or 76.45 of this chapter, as applicable, and will document in writing to the licensee or certificate holder that the Commission has approved or disapproved the licensee’s or certificate holder’s application for combined enhanced-weapons authority and preemption authority.

(6) Subsequent to the NRC’s approval of a licensee’s or certificate holder’s application for combined enhanced weapons authority and preemption authority, if the licensee or certificate holder wishes to use a different type, caliber, or quantity of enhanced weapons from that previously approved by the NRC, then the licensee or certificate holder must submit revised plans and assessments specified by this section to the NRC for prior review and written approval in accordance with the license or certificate amendment provisions of §§ 50.90, 70.34, or 76.45 of this chapter, as applicable.

(f) *Application for enhanced-weapons authority additional information.* (1) Licensees and certificate holders shall also submit to the NRC for prior review and written approval a new, or revised, physical security plan, security personnel training and qualification plan, safeguards contingency plan, and a weapons safety assessment incorporating the use of the specific enhanced weapons the licensee or certificate holder intends to use. These plans and assessments must be specific to the facilities, radioactive material, or other property being protected.

(2) In addition to other requirements presented in this part, these plans and assessments must—

(i) For the physical security plan, identify the specific types or models, calibers, and numbers of enhanced weapons to be used;

(ii) For the training and qualification plan, address the training and qualification requirements to use these specific enhanced weapons;

(iii) For the safeguards contingency plan, address how these enhanced and any standard weapons will be employed by the licensee's or certificate holder's security personnel in meeting the NRC-required protective strategy, including tactical approaches and maneuvers; and

(iv) For the 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, public or private property, or on members of the public in areas outside of the site boundary from the use of these enhanced weapons; and

(C) Assess any potential safety impact on public or private facilities, 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.

(D) In assessing potential safety impacts, licensees and certificate holders shall consider both accidental and deliberate discharges of these enhanced weapons. However, licensees and certificate holders are not required to assess malevolent discharges of these enhanced weapons by trained and qualified security personnel who have been screened and evaluated by the licensee's or certificate holder's insider mitigation or personnel reliability programs.

(3) 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, and the U.S. Department of Defense.

(g) *Conditions of approval.* (1) Licensees and certificate holders who have applied to the NRC for and received combined enhanced-weapons authority and preemption authority shall provide a copy of the NRC's authorization to the U.S. Bureau of Alcohol, Tobacco, Firearms, and

Explosives' (ATF's) Federal firearms license (FFL) holder (*e.g.*, manufacturer or importer) for forwarding to ATF to request the transfer of the enhanced weapons to the licensee or certificate holder.

(2) Licensees and certificate holders receiving enhanced weapons must also obtain any required ATF tax stamps and register these weapons under ATF's regulations under 27 CFR part 479.

(3) All enhanced weapons possessed by the licensee or certificate holder, must be registered under the name of the licensee or certificate holder. Enhanced weapons may not be registered under the name of a licensee's or certificate holder's security contractor.

(4) Licensees and certificate holders obtaining enhanced weapons may, at their discretion, also apply to ATF to obtain an FFL or a special occupational tax stamp in conjunction with obtaining these enhanced weapons.

(h) *Completion of training and qualification before use of enhanced weapons.* (1) Licensees and certificate holders who have applied for and received combined enhanced-weapons authority and preemption authority under this section shall ensure 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.

(2) Initial training and qualification on enhanced weapons must be completed before the security personnel's use of enhanced weapons and must be documented in accordance with the requirements of the licensee's or certificate holder's training and qualification plan.

(3) Recurring training and qualification on enhanced weapons by security personnel must be completed and documented in accordance with the requirements of the licensee's or certificate holder's training and qualification plan.

(i) [Reserved]

(j) *Use of enhanced weapons.*

Requirements regarding the use of enhanced weapons by licensee or certificate holder security personnel, in the performance of their official duties, are contained in §§ 73.46 and 73.55 and in appendices B, C, and H of this part, as applicable.

(k) *Notification of adverse ATF findings.* (1) NRC licensees and certificate holders with enhanced weapons shall notify the NRC, in accordance with § 73.71, of the receipt of adverse ATF inspection or enforcement findings related to their

receipt, possession, or transfer of enhanced weapons.

(2) NRC licensees and certificate holders that also possess an ATF FFL shall notify the NRC, in accordance with § 73.71, of the receipt of adverse ATF inspection or enforcement findings related to their FFL.

(l) [Reserved].

(m) *Transfer of enhanced weapons.*

(1) A licensee's or certificate holder's issuance of enhanced weapons to security personnel is not considered a transfer of those weapons under 26 U.S.C. chapter 53, as specified under ATF's regulations in 27 CFR part 479, if the weapons remain within the site of a facility. Remaining within the site of a facility means within the site boundary, as defined by the licensee's or certificate holder's safety analysis report submitted to the NRC.

(2) A licensee's or certificate holder's issuance of enhanced weapons to security personnel for the permissible reasons specified in paragraph (m)(3) of this section, for activities that are outside of the facility's site boundary, are not considered a transfer at 26 U.S.C. chapter 53, as specified under ATF's regulations in 27 CFR part 479, if—

(i) The security personnel possessing the enhanced weapons are employees of the licensee or certificate holder; or

(ii) The security personnel possessing the enhanced weapons are employees of a contractor providing security services to licensee or certificate holder; and these contractor security personnel are under the direction of, and accompanied by, an authorized licensee or certificate holder employee.

(3) Permissible reasons for removal of enhanced weapons from the licensee's or certificate holder's facility include—

(i) Removal of enhanced weapons for use at a firing range or training facility that is used by the licensee or certificate holder in accordance with its NRC-approved training and qualification plan for enhanced weapons; and

(ii) Removal of enhanced weapons for use in escorting shipments of radioactive material or other property designated under paragraph (c) of this section that are being transported to or from the licensee's or certificate holder's facility.

(4) Removal of enhanced weapons from and/or return of these weapons to the licensee's or certificate holder's facility shall be documented in accordance with the records requirements of paragraph (p) of this section.

(5) Removal of enhanced weapons from a licensee's or certificate holder's facility for other than the permissible

reasons set forth in paragraph (m)(3) of this section shall be considered a transfer of those weapons under 26 U.S.C. chapter 53, as specified under ATF's regulations in 27 CFR part 479. The licensee or certificate holder may only transfer enhanced weapons pursuant to an application approved by ATF in accordance with ATF's regulations. Examples of transfers include, but are not limited to:

(i) Removal of an enhanced weapon from a licensee's or certificate holder's facility to a gunsmith or manufacturer for the purposes of repair or maintenance and subsequent return of the weapon to the licensee or certificate holder;

(ii) Sale or disposal of an enhanced weapon to another authorized NRC licensee or certificate holder;

(iii) Sale or disposal of an enhanced weapon to an authorized Federal firearms license holder, government agency, or official police organization; or

(iv) Abandonment of an enhanced weapon to ATF.

(6) Security personnel shall return enhanced weapons issued from armories to the custody of the licensee or certificate holder following the completion of their official duties.

(7) A licensee or certificate holder obtaining enhanced weapons shall assist the transferor in completing an application to transfer these weapons in accordance with 26 U.S.C. 5812, and shall provide the transferor with a copy of the NRC's written approval of its application for combined enhanced weapons authority and preemption authority.

(8) Enhanced weapons may only be transferred to a licensee or certificate holder, not to a contractor providing security services to the licensee or certificate holder.

(9) A licensee or certificate holder that has authorized the removal of enhanced weapons from its facility, for any of the permissible reasons listed under paragraph (m)(3) of this section, shall verify that these weapons are returned to the facility upon the completion of the authorized activity.

(10) Enhanced weapons that are not returned to the licensee's or certificate holder's facility, following permissible removal, shall be considered a transfer of a weapon under this paragraph, or a stolen or lost weapon under paragraph (o) of this section, as applicable. Information on the transfer, theft, or loss of an enhanced weapon shall be documented as required under paragraph (p) of this section.

(n) *Transport of weapons.* (1) Security personnel transporting enhanced

weapons to or from a firing range or training facility used by the licensee or certificate holder shall ensure that these weapons are unloaded and locked in a secure container during transport. Unloaded weapons and ammunition may be transported in the same locked secure container.

(2) Security personnel transporting covered weapons to or from a licensee's or certificate holder's facility following the completion of, or in preparation for, the duty of escorting shipments of radioactive material or other property, designated under paragraph (c) of this section that is being transported to or from the licensee's or certificate holder's facility shall ensure that these weapons are unloaded and locked in a secure container during transport. Unloaded weapons and ammunition may be transported in the same locked secure container.

(3) Security personnel using covered weapons to protect shipments of radioactive material or other property designated under paragraph (c) of this section that are being transported to or from the licensee's or certificate holder's facility (whether intrastate or interstate) shall ensure that these weapons are maintained in a state of loaded readiness and available for immediate use except when prohibited by 18 U.S.C. 922q.

(4) Security personnel transporting covered weapons to or from the licensee's or certificate holder's facility shall also comply with the requirements of § 73.19.

(5) Situations where security personnel transport enhanced weapons to or from the licensee's or certificate holder's facility are not considered transfers of these weapons at 26 U.S.C. chapter 53, as specified under ATF's regulations in 27 CFR part 479, if—

(i) The security personnel transporting the enhanced weapons are employees of the licensee or certificate holder; or

(ii) The security personnel transporting the enhanced weapons are employees of a contractor providing security services to licensee or certificate holder; and these contractor security personnel are under the direction of, and accompanied by, an authorized licensee employee.

(o) *Periodic inventories of enhanced weapons.* (1) Licensees and certificate holders possessing enhanced weapons under this section shall conduct periodic accountability inventories of the enhanced weapons in their possession to verify the continued presence of each enhanced weapon the licensee or certificate holder is authorized to possess.

(2) The results of any periodic inventories of enhanced weapons shall be retained in accordance with the records requirements of paragraph (q) of this section.

(3) Licensees and certificate holders possessing enhanced weapons under this section shall perform inventories of their enhanced weapons monthly, as follows—

(i) Licensees and certificate holders shall conduct an inventory to verify that the authorized quantity of enhanced weapons are present at the licensee's or certificate holder's facility.

(ii) Licensees and certificate holders shall verify the presence of each individual enhanced weapon.

(iii) Licensees and certificate holders that store enhanced weapons in a locked secure weapons container (e.g., a ready-service arms locker) located within a protected area, vital area, or material access area may verify the presence of an intact tamper-indicating device (TID) on the locked secure weapons container, instead of verifying the presence of each individual weapon.

(iv) Verification of the presence of enhanced weapons via the presence of an intact TID shall be documented in the inventory records and include the serial number of the TID.

(v) Licensees and certificate holders may use electronic technology (e.g., bar-codes on the weapons) in conducting such inventories.

(vi) The time interval from the previous monthly inventory shall not exceed 30 ± 3 days.

(4) Licensees and certificate holders possessing enhanced weapons under this section shall perform inventories of their enhanced weapons semi-annually, as follows—

(i) Licensees and certificate holders shall conduct an inventory to verify that each authorized enhanced weapon is present at the licensee's or certificate holder's facility through the verification of the serial number of each enhanced weapon.

(ii) Licensees and certificate holders shall verify the presence of each enhanced weapon located in a locked secure weapons container (e.g., a ready-service arms locker) through the verification of the serial number of each enhanced weapon located within the container.

(iii) The time interval from the previous semi-annual inventory shall not exceed 180 ± 7 days.

(iv) Licensees and certificate holders conducting a semi-annual inventory may substitute this semi-annual inventory in lieu of conducting the normal monthly inventory required under paragraph (n) of this section.

(5) Licensees and certificate holders shall conduct monthly and semi-annual inventories of enhanced weapons using a two-person team.

(6) Licensees and certificate holders shall inventory using a two-person team any locked secure weapons container that was sealed with a TID and has subsequently been opened and shall verify the serial number of enhanced weapons stored in the weapons container. The team shall reseal the locked secure weapons container with a new TID and record the TID's serial number in the monthly inventory records.

(7) Licensees and certificate holders shall use TIDs with unique serial numbers on locked secure weapons containers containing enhanced weapons.

(8) Licensees and certificate holders shall store unused TIDs in a manner similar to other security access control devices (*e.g.*, keys, lock cores, *etc.*) and shall maintain a log of issued TID serial numbers.

(9) Licensees and certificate holders must resolve any discrepancies identified during periodic inventories within 24 hours of their identification; otherwise the discrepancy shall be treated as a stolen or lost weapon and notifications made in accordance with paragraph (o) of this section.

(p) *Stolen or lost enhanced weapons.* (1) Licensees and certificate holders that discover any enhanced weapons they are authorized to possess under this section are stolen or lost shall notify the NRC and local law enforcement officials in accordance with § 73.71.

(2) Licensees and certificate holders that discover any enhanced weapons they are authorized to possess under this section are stolen or lost are required to notify ATF in accordance with ATF's regulations.

(q) *Records requirements.* (1) Licensees and certificate holders possessing enhanced weapons under this section shall maintain records relating to the receipt, transfer, and transportation of such enhanced weapons.

(2) Licensees and certificate holders shall maintain the following minimum records regarding the receipt of each enhanced weapon, including—

- (i) Date of receipt of the weapon;
- (ii) Name and address of the transferor who transferred the weapon to the licensee or certificate holder;
- (iii) Name of the manufacturer of the weapon, or the name of the importer (for weapons manufactured outside the U.S.); and
- (iv) Model, serial number, type, and caliber or gauge of the weapon.

(3) Licensees and certificate holders shall maintain the following minimum records regarding the transfer of each enhanced weapon, including—

- (i) Date of shipment of the weapon;
 - (ii) Name and address of the transferee who received the weapon; and
 - (iii) Model, serial number, type, and caliber or gauge of the weapon.
- (4) Licensees and certificate holders shall maintain the following minimum records regarding the transportation of each enhanced weapon away from the licensee's or certificate holder's facility, including—
- (i) Date of departure of the weapon;
 - (ii) Date of return of the weapon;
 - (iii) Purpose of the weapon removal from the facility;
 - (iv) Name(s) of the security personnel transporting the weapon;
 - (v) Name(s) of the licensee employee accompanying and directing the transportation, where the security personnel transporting the weapons are employees of a security contractor providing security services to the licensee or certificate holder;
 - (vi) Name of the person/facility to whom the weapon is being transported; and
 - (vii) The model, serial number, type, and caliber or gauge of the weapon.

(5) Licensees and certificate holders shall document in these records the discovery that any enhanced weapons they are authorized to possess pursuant to this section are stolen or lost.

(6) Licensees and certificate holders possessing enhanced weapons pursuant to this section shall maintain records relating to the inventories of enhanced weapons for a period up to one year after the licensee's or certificate holder's authority to possess enhanced weapons is terminated, suspended, or revoked under paragraph (x) of this section and all enhanced weapons have been transferred from the licensee's or certificate holder's facility.

(7) Licensees and certificate holders may integrate any records required by this section with records maintained by the licensee or certificate holder under ATF's regulations.

(8) Licensees and certificate holders shall make any records required by this section available to NRC and ATF inspectors or investigators upon the request of such staff.

(r) *Termination, modification, suspension, or revocation of Section 161A authority.*

(1) Licensees and certificate holders who desire to terminate their stand-alone preemption authority or combined enhanced weapons authority and preemption authority, issued under this

section, shall apply to the NRC, in accordance with § 73.4, and the license amendment provisions of §§ 50.90, 70.34, or 76.45 of this chapter, as applicable, to terminate their authority. These licensees and certificate holders must have transferred or disposed of any enhanced weapons obtained under the provisions of this section prior to the NRC approval of a request for termination.

(2) Licensees and certificate holders who desire to modify their combined enhanced weapons authority and preemption authority, issued under this section, shall apply to the NRC, in accordance with § 73.4 and the license amendment provisions of §§ 50.90, 70.34, or 76.45 of this chapter, as applicable, to modify their authority. Licensee and certificate holder applications to modify their enhanced weapons authority shall provide the information required under paragraphs (e) and (f) of this section.

(i) Licensees and certificate holders replacing their enhanced weapons with different types or models of enhanced weapons must include a plan to transfer or dispose of their existing enhanced weapons once the new weapons are deployed.

(ii) Licensees and certificate holders adding additional numbers, models, or types of enhanced weapons do not require a transfer or disposal plan.

(3) Licensees and certificate holders must transfer any enhanced weapons that they are no longer authorized to lawfully possess under this section in accordance with the provisions of paragraph (m) of this section. Licensees and certificate holders must dispose of any enhanced weapons to—

(i) A Federal, State, or local government entity authorized to possess enhanced weapons under applicable law and ATF regulations;

(ii) A Federal firearms licensee authorized to receive the enhanced weapons under applicable law and ATF regulations; or

(iii) Another NRC licensee or certificate holder subject to this section that is authorized to receive and possess these specific types of enhanced weapons.

(iv) Alternatively, licensees and certificate holders may also abandon any enhanced weapons to ATF for destruction.

(4) Licensees and certificate holders who had their stand alone preemption authority or combined enhanced weapons and preemption authority terminated, suspended, or revoked may reapply for such authority by filing a new application under the provisions of this section.

(5) The NRC will notify ATF within three business days of issuing a decision to the licensee or certificate holder that the NRC has taken action to terminate, modify, suspend, or revoke a licensee's or certificate holder's stand-alone preemption authority or combined enhanced weapons authority and preemption authority issued under this section of the NRC's action. The NRC shall make such notifications to the position or point of contact designated by ATF.

(6) The Commission may revoke, suspend, or modify, in whole or in part, any approval issued under this section for any material false statement in the application or in the supplemental or other statement of fact required of the applicant; or because of conditions revealed by the application or statement of fact of any report, record, inspection, or other means that would warrant the Commission to refuse to grant approval of an original application; or for violation of, or for failure to observe, any of the terms and provisions of the act, regulations, license, permit, approval, or order of the Commission.

5. Section 73.19 is added to read as follows:

§ 73.19 Firearms background checks for armed security personnel.

(a) *Purpose.* This section presents the requirements for completion of firearms background checks at 42 U.S.C. 2201a for security personnel whose official duties require access to covered weapons at Commission-designated classes of facilities, radioactive material, or other property. Firearms background checks are intended to verify that such armed security personnel are not prohibited from receiving, possessing, transporting, importing, or using firearms under applicable Federal or State law, including 18 U.S.C. 922(g) and (n).

(b) *General Requirements.* (1) Licensees and certificate holders who fall within the classes of facilities, radioactive material, or other property listed in paragraph (c) of this section and who use covered weapons as part of their protective strategy shall ensure that a satisfactory firearms background check has been completed for all security personnel requiring access to covered weapons as part of their official duties in protecting such facilities, radioactive material, or other property and for all security personnel who inventory enhanced weapons.

(2) The provisions of this section apply to all security personnel of the licensees or certificate holders whose duties require access to covered weapons, whether employed by the

licensee or certificate holder, or a security contractor who provides security services to the licensee or certificate holder.

(3) By **[30 days after the effective date of the final rule]** licensees and certificate holders specified in paragraph (c) of this section shall commence firearms background checks of all security personnel whose duties require, or will require, access to covered weapons.

(4) By **[180 days after effective date of the final rule]** licensees and certificate holders specified in paragraph (c) of this section shall—

(i) Remove from duty any existing security personnel whose duties require access to covered weapons, unless the individual has completed a satisfactory firearms background check per this section; and

(ii) Not assign any security personnel to duties that require access to covered weapons, unless the individual has completed a satisfactory firearms background check per this section; and

(iii) Not permit any security personnel access to covered weapons, unless the individual has completed a satisfactory firearms background check per this section.

(5) After **[30 days after the effective date of the final rule]** licensees and certificate holders specified in paragraph (c) of this section must remove any security personnel who receive a “denied” NICS response from duties requiring access to covered weapons.

(6) Within the 180-day transition period specified in paragraph (b)(4) of this section, affected licensees and certificate holders that currently possess enhanced weapons under an authority other than 42 U.S.C. 2201a must remove any security personnel who receive a “delayed” NICS response from duties requiring access to enhanced weapons.

(7) After the **[effective date of the final rule]**, any applicants for a license or a certificate of compliance within the classes of facilities, radioactive material, or other property specified in paragraph (c) of this section and who plan to use covered weapons as part of their protective strategy shall complete satisfactory firearms background checks of their security personnel who will require access to covered weapons as follows—

(i) Licensees and certificate holders may not commence these firearms background checks until after the NRC has issued their license or certificate of compliance.

(ii) Licensees and certificate holders shall complete satisfactory firearms background checks for applicable

security personnel before those personnel are permitted access to covered weapons.

(iii) Licensees and certificate holders shall complete satisfactory firearms background checks for applicable security personnel 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 certificate of compliance.

(8) Licensees and certificate holders may return to duties requiring access to covered weapons any individual who has received an adverse firearms background check after the individual completes a satisfactory firearms background check.

(9) 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 one week subsequent to their most recent firearms background check, or who have transferred from a different licensee or certificate holder (even though the other licensee or certificate holder completed a satisfactory firearms background check on these individuals within the last three years), are required to complete a new satisfactory firearms background check.

(10) A change in the licensee, certificate holder, or ownership of a facility, radioactive material, or other property designated under paragraph (c) of this section, 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 who require access to covered weapons.

(11) Firearms background checks are not a substitute for any other background checks or investigations required for the licensee's or certificate holder's personnel under this chapter.

(12) Security personnel who have completed a satisfactory firearms background check under Commission orders issued before the NRC issues a final rule designating classes of facilities, radioactive material, or other property under paragraph (c) of this section are not subject to a new initial firearms background check under this section. However, security personnel are subject to the periodic firearms background check requirement of paragraph (f) of this section.

(c) *Applicability.* For the purposes of firearms background checks, the following classes of facilities, radioactive material, or other property

are designated by the Commission at 42 U.S.C. 2201a—

(1) Power reactor facilities; and
 (2) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level less than or equal to 1 Gray (Gy) (100 Rad) per hour at a distance of 1 meter (3.28 ft), without regard to any intervening shielding.

(d) *Firearms background check requirements.* A firearms background check for security personnel must include—

(1) A check of the individual's fingerprints against the Federal Bureau of Investigation's (FBI's) fingerprint system; and

(2) A check of the individual's identifying information against the FBI's National Instant Criminal Background Check System (NICS).

(e) *Firearms background check submittals.* (1) Licensees and certificate holders shall submit to the NRC, in accordance with § 73.4, for all security personnel requiring a firearms background check under this section—

(i) A set of fingerprint impressions, in accordance with paragraph (k) of this section; and

(ii) A completed NRC Form 754.

(2) 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 consolidating the NRC Forms 754 data for multiple security personnel.

(3) Licensees and certificate holders submitting via an electronic method an individual NRC Form 754 or consolidated data from multiple NRC Forms 754 to the NRC shall ensure that any personally identifiable information contained within these documents is protected in accordance with § 73.4.

(4) Licensees and certificate holders shall retain a copy of all NRC Forms 754 submitted to the NRC for one year subsequent to the termination or denial of an individual's access to covered weapons.

(f) *Periodic firearms background checks.* (1) Licensees and certificate holders shall also complete a satisfactory firearms background check at least once every three calendar years to continue the security personnel's access to covered weapons.

(2) Licensees and certificate holders may conduct these periodic firearms background checks at an interval of less than once every three calendar years, at their discretion.

(3)(i) Licensees and certificate holders must submit the information specified in paragraph (f) of this section within three calendar years of the individual's

most recent satisfactory firearms background check.

(ii) Licensees and certificate holders may continue the security personnel's access to covered weapons pending completion of the firearms background check.

(4) Licensees and certificate holders shall remove from duties requiring access to covered weapons any individual who receives an adverse firearms background check.

(5) Licensees and certificate holders may return individuals who have received an adverse firearms background check to duties requiring access to covered weapons, if the individual subsequently completes a satisfactory firearms background check.

(g) *Notification of removal.* Licensees and certificate holders shall telephonically notify the NRC Headquarters Operations Center at the phone numbers specified in Table 1 of Appendix A of this part within 72 hours after removing a security officer from duties requiring access to covered weapons due to the discovery of any disqualifying status or the occurrence of any disqualifying event. However, this requirement does not apply if the removal was due to the prompt notification of the licensee or certificate holder by the security individual under paragraph (h) of this section.

(h) *Security personnel responsibilities.* Security personnel assigned duties requiring access to covered weapons shall notify their employing licensee's or certificate holder's security management within three working days (whether directly employed by the licensee or certificate holder or employed by a security contractor providing security services to the licensee or certificate holder) of the existence of any disqualifying status or upon the occurrence of any disqualifying events listed at 18 U.S.C. 922(g) or (n), and the ATF's implementing regulations in 27 CFR part 478 that would prohibit them from possessing or receiving firearms or ammunition.

(i) [Reserved]

(j) *Training on disqualifying events.* Licensees and certificate holders shall include within their NRC-approved security training and qualification plans instructions on—

(1) Disqualifying status or events specified in 18 U.S.C. 922(g) and (n), and the ATF's implementing regulations in 27 CFR part 478 (including any applicable definitions) identifying categories of persons who are prohibited from possessing or receiving any firearms or ammunition; and

(2) The continuing responsibility of security personnel assigned duties that require access to covered weapons to promptly notify their employing licensee or certificate holder of the occurrence of any disqualifying event.

(k) *Procedures for processing fingerprint checks.* (1) Licensees and certificate holders, using an appropriate method listed in § 73.4, shall submit one completed, legible standard fingerprint card (FBI Form FD-258, ORIMDNRCOOOZ) or, where practicable, other electronic fingerprint record 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) 415-7232, or by e-mail to *Forms.Resource@nrc.gov*.

(2) Licensees and certificate holders shall indicate on the fingerprint card or other electronic fingerprint record that the purpose for this fingerprint check is the accomplishment of a firearms background check for personnel whose duties require, or will require, access to covered weapons. Licensees and certificate holders shall add the following information to the FBI Form FD-258 fingerprint card or electronic fingerprint records submitted to the NRC:

(i) For fingerprints submitted to the NRC for the completion of a firearms background check only, the licensee or certificate holder will enter the terms "MDNRCNICZ" in the "ORI" field and "Firearms" in the "Reasons Fingerprinted" field of the FBI Form FD-258.

(ii) 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 will enter the terms "MDNRC000Z" in the "ORI" field and "Employment and Firearms" in the "Reasons Fingerprinted" field of the FBI Form FD-258.

(3) Licensees and certificate holders shall establish procedures that produce high quality fingerprint images, cards, and records with a minimal rejection rate.

(4) The Commission will review fingerprints for firearms background checks for completeness. Any Form FD-258 or other fingerprint record containing omissions or evident errors will be returned to the licensee or certificate holder for corrections. The fee for processing fingerprint checks

includes one free resubmission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free resubmission must have the FBI Transaction Control Number reflected on the resubmission. If additional submissions are necessary, they will be treated as an initial submittal and 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 the third submission because the submittal will be rejected automatically.

(5) 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 and will not provide the FBI's fingerprint record.

(l) [Reserved]

(m) *Fees.* (1) Fees for the processing of firearms background checks are due upon application. The fee for the processing of a firearms background check consists of a fingerprint fee and a NICS check fee. Licensees and certificate holders shall submit payment with the application for the processing of fingerprints, and payment must be made by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. Nuclear Regulatory Commission." Combined payment for multiple applications is acceptable. The Commission publishes the amount of the firearms background check application fee on the NRC's public Web site.⁴ The Commission will directly notify licensees and certificate holders who are subject to this regulation of any fee changes.

(2) The application fee for the processing of fingerprint checks is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee or certificate holder, and an administrative processing fee assessed by the NRC. The NRC processing fee covers administrative costs associated with NRC handling of licensee and certificate holder fingerprint submissions.

(3) The application fee for the processing of NICS checks is an administrative processing fee assessed by the NRC. The FBI does not charge a fee for processing NICS checks.

(n) *Processing of the NICS portion of a firearms background check.* (1) The NRC will forward the information contained in the submitted NRC Forms 754 to the FBI for evaluation against the NICS databases. Upon completion of the NICS portion of the firearms background check, the FBI will inform the NRC of the results with one of three responses under 28 CFR part 25: "proceed," "delayed," or "denied," and the associated NICS transaction number. The NRC will forward these results and the associated NICS transaction number to the submitting licensee or certificate holder.

(2) The submitting licensee or certificate holder shall provide these results to the individual who completed the NRC Form 754.

(o) *Reporting violations of law.* The NRC will promptly report suspected violations of Federal law to the appropriate Federal agency or suspected violations of State law to the appropriate State agency.

(p) *Appeals and resolution of erroneous system information.*

(1) Individuals who require a firearms background check under this section and who receive a "denied" or a "delayed" NICS response may not be assigned duties requiring access to covered weapons, except as provided under paragraph (b) of this section, during the pendency of an appeal of the results of the check or during the pendency of providing and evaluating any necessary additional information to the FBI to resolve the "delayed" response, respectively.

(2) Licensees and certificate holders shall 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.

(3) An individual who receives a "denied" or "delayed" NICS response to a firearms background check under this section may request the reason for the response from the FBI. The licensee or certificate holder shall provide to the individual who has received the "denied" or "delayed" response the unique NICS transaction number associated with their specific firearms background check.

(4)(i) These requests for the reason for a "denied" or "delayed" NICS response must be made in writing, and must include the NICS transaction number. The request must be sent to the Federal Bureau of Investigation, NICS Section,

Appeals Service Team, Module A-1; PO Box 4278, Clarksburg, WV 26302-9922.

(ii) The FBI will provide the individual with the reasons for the "denied" response or "delayed" response. The FBI will also indicate whether additional information or documents are required to support an appeal or resolution, for example, where there is a claim that the record in question does not pertain to the individual who received the "denied" response.

(5) 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 by lawful process, he or she may first contact the FBI at the address stated in paragraph (p)(4)(i) of this section.

(i) The individual shall 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.

(ii) Individuals appealing a "denied" response or resolving a "delayed" response are responsible for providing the FBI any additional information the FBI requires to resolve the adverse response. These individuals must supply this information to the FBI within 45 calendar days after the FBI's response is issued.

(iii) Individuals may request extensions of the time to supply the additional information requested by the FBI in support of a timely appeal or resolution request. These extension requests shall be made directly to the FBI. The FBI may grant an extension request for good cause, as determined by the FBI.

(iv) The appeal or request must include appropriate documentation or record(s) establishing the legal and/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 by the court or other government entity or official as a true copy.

(v) The individual may supplement their 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 their appeal or request any information or records that are being obtained, but are not yet available.

⁴ For information on the current fee amount, go to the Electronic Submittals page at <http://www.nrc.gov/site-help/e-submittals.html>, and see the link for Firearms Background Checks under Electronic Submission Systems.

(6) If the individual is notified that the FBI is unable to resolve the appeal, the individual may then apply for correction of the record directly to the agency from which the information forming the basis of the denial was originated. If the individual is notified by the originating agency that additional information or documents are required, 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 may so notify the FBI and submit written proof of the correction.

(7) The failure of an individual to timely initiate an appeal or resolution request or timely provide additional information requested by the FBI will result in the barring of the individual or abandonment of the individual's appeal or resolution request.

(8) Appeals or resolution requests that are abandoned or result in debarment because of an individual's failure to comply with submission deadlines may only be pursued, at the sole discretion of a licensee or certificate holder, after the resubmission of a firearms background check request on the individual.

(9) 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.

(q) *Protection of information.* (1) Each licensee or certificate holder who obtains a firearms background check and NRC Form 754 information on individuals under this section shall establish and maintain a system of files and procedures to protect the records and personal information from unauthorized disclosure.

(2) The licensee or certificate holder may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to have access to the information in performing assigned duties in the process of granting access to covered weapons. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need to know.

(3) The personal information obtained on an individual from a firearms background check may be transferred to another licensee or certificate holder—

(i) Upon the individual's written request to the licensee or certificate holder holding the data to re-disseminate the information contained in his/her file; and

(ii) Upon verification from the gaining licensee or certificate holder of information such as name, date of birth, social security number, sex, and other applicable physical characteristics for identification.

(4) The licensee or certificate holder shall make firearms background check records and NRC Forms 754 obtained under this section available for examination by an authorized representative of the NRC to determine compliance with applicable regulations and laws.

6. In § 73.46, paragraph (b)(13) is added to read as follows:

§ 73.46 Fixed site physical protection systems, subsystems, components, and procedures.

* * * * *

(b) * * *

(13)(i) The licensee shall ensure that the firearms background check requirements of § 73.19 of this part are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons.

(ii) For licensees who are issued a license after **[effective date of final rule]**, the licensee shall ensure that the firearms background check requirements of § 73.19 of this part are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons. Additionally and notwithstanding the implementation schedule provisions of § 73.19(b), such licensees shall ensure that the firearms background check requirements of § 73.19 are satisfactorily completed within 6 months of the issuance of the license, or within 6 months of the implementation of a protective strategy that uses covered weapons, whichever is later.

* * * * *

7. In § 73.55, paragraph (b)(12) is added to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(b) * * *

(12)(i) The licensee shall ensure that the firearms background check requirements of § 73.19 of this part are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons.

(ii) For licensees who are issued a license after **[effective date of final rule]**, the licensee shall ensure that the firearms background check requirements of § 73.19 of this part are met for all members of the security organization whose official duties require access to covered weapons or to inventory enhanced weapons. Additionally and notwithstanding the implementation schedule provisions of § 73.19(b), such licensees shall ensure that the firearms background check requirements of § 73.19 are satisfactorily completed within 6 months of the issuance of the license, or within 6 months of the implementation of a protective strategy that uses covered weapons, whichever is later.

* * * * *

8. Section 73.71 is revised to read as follows:

§ 73.71 Reporting and recording of safeguards events.

(a) *15-minute notifications—facilities.* Each licensee or certificate holder subject to the provisions of §§ 73.20, 73.45, 73.46, or 73.55 shall notify the NRC Headquarters Operations Center, as soon as possible but not later than 15 minutes after—

(1) The discovery of an imminent or actual hostile action against a nuclear power or production reactor or Category I SSNM facility; or

(2) The initiation of a security response in accordance with a licensee's or certificate holder's safeguards contingency plan or protective strategy, based on an imminent or actual hostile action against a nuclear power reactor or Category I SSNM facility;

(3) These notifications shall:

- (i) Identify the facility name;
- (ii) Include the authentication code; and
- (iii) Briefly describe the nature of the hostile action or event, including:
 - (A) Type of hostile action or event (e.g., armed assault, vehicle bomb, credible bomb threat, etc.); and
 - (B) Current status (i.e., imminent, in progress, or neutralized).

(4) Notifications must be made according to paragraph (j) of this section, as applicable.

(5) The licensee or certificate holder is not required to report security responses initiated as a result of threat or warning information communicated to the licensee or certificate holder by the NRC.

(6) A licensee's or certificate holder's request for immediate local law enforcement agency (LLEA) assistance can take precedence over the notification to the NRC.

(b) *15-minute notifications—shipments.* Each licensee or certificate holder subject to the provisions of §§ 73.20, 73.25, 73.26, or 73.37 shall notify the NRC Headquarters Operations Center or make provisions to notify the NRC Headquarters Operations Center, as soon as possible but not later than 15 minutes after—

(1) The discovery of an actual or attempted act of sabotage against shipments of spent nuclear fuel or high-level radioactive waste;

(2) The discovery of an actual or attempted act of sabotage or of theft against shipments of strategic special nuclear material; or

(3) The initiation of a security response in accordance with a licensee's or certificate holder's safeguards contingency plan or protective strategy, based on an imminent or actual hostile action against a shipment of spent nuclear fuel, high-level radioactive waste, or strategic special nuclear material.

(4) These notifications shall:

(i) Identify the name of the facility making the shipment, the material being shipped, and the last known location of the shipment; and

(ii) Briefly describe the nature of the threat or event, including:

(A) Type of hostile threat or event (e.g., armed assault, vehicle bomb, theft of shipment, etc.); and

(B) Threat or event status (i.e., imminent, in progress, or neutralized).

(5) Notifications must be made according to paragraph (j) of this section, as applicable.

(6) The licensee or certificate holder is not required to report security responses initiated as a result of threat or warning information communicated to the licensee or certificate holder by the NRC.

(7) A licensee's or certificate holder's request for immediate LLEA assistance can take precedence over the notification to the NRC.

(c) *One-hour notifications—facilities.*

(1) Each licensee or certificate holder subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.60, or 73.67 shall notify the NRC Headquarters Operations Center within one hour after discovery of the facility safeguards events described in paragraph I of Appendix G to this part.

(2) Notifications must be made according to paragraph (j) of this section, as applicable.

(3) Notifications made under paragraph (a) of this section are not required to be repeated under this paragraph.

(d) *One-hour notifications—shipments.* (1) Each licensee or

certificate holder subject to the provisions of §§ 73.25, 73.26, 73.27, 73.37, and 73.67 shall notify the NRC Headquarters Operations Center within one hour after discovery of the transportation safeguards events described in paragraph I of Appendix G to this part.

(2) Notifications must be made according to paragraph (j) of this section, as applicable.

(3) Notifications made under paragraph (b) of this section are not required to be repeated under this paragraph.

(e) *Four-hour notifications—facilities.*

(1) Each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.60, or 73.67 shall notify the NRC Headquarters Operations Center, as soon as possible but not later than four hours after discovery of the safeguards events described in paragraph II of Appendix G to this part.

(2) Notifications must be made according to paragraph (j) of this section, as applicable.

(f) *Eight-hour notifications—facilities.*

(1) Each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.60, or 73.67 shall notify the NRC Headquarters Operations Center, as soon as possible but not later than eight hours after discovery of the safeguards events described in paragraph III of Appendix G to this part.

(2) Notifications must be made according to paragraph (j) of this section, as applicable.

(g) *Enhanced weapons—stolen or lost.*

(1) Each licensee or certificate holder possessing enhanced weapons in accordance with the provisions of § 73.18 shall—

(i) Notify the NRC Headquarters Operations Center, as soon as possible but not later than one hour after the discovery of any stolen or lost enhanced weapons possessed by the licensee or certificate holder. This notification applies to enhanced weapons that were stolen or lost from within a licensee's or certificate holder's protected area, vital area, or material access area.

(ii) Notify the NRC Headquarters Operations Center, as soon as possible but not later than four hours subsequent to the notification of the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) of the discovery of any stolen or lost enhanced weapons possessed by the licensee or certificate holder. This notification applies to enhanced weapons that were stolen or lost from outside of the licensee's or certificate holder's protected area, vital area, or material access area.

(iii) Notify the appropriate local law enforcement officials, as soon as possible but not later than 48 hours of the discovery of stolen or lost enhanced weapons. These notifications must be made by telephone to the appropriate local law enforcement officials.

Licensees and certificate holders shall identify the appropriate local law enforcement officials for these notifications and include their contact phone number(s) in written procedures.

(2) Notifications must be made according to paragraph (j) of this section, as applicable.

(3) Independent of the requirements of this section, licensees and certificate holders possessing enhanced weapons in accordance with § 73.18 also have an obligation under ATF's regulations to immediately upon discovery notify ATF of any stolen or lost enhanced weapons (see 27 CFR 479.141).

(h) *Enhanced weapons—adverse ATF findings.* (1) Each licensee or certificate holder possessing enhanced weapons in accordance with § 73.18 shall—

(i) Notify the NRC Headquarters Operations Center as soon as possible but not later than 24 hours after receipt of an adverse inspection or enforcement finding or other adverse notice from the ATF regarding the licensee's or certificate holder's possession, receipt, transfer, or storage of enhanced weapons; and

(ii) Notify the NRC Headquarters Operations Center as soon as possible but not later than 24 hours after receipt of an adverse inspection or enforcement finding or other adverse notice from the ATF regarding the licensee's or certificate holder's ATF issued Federal firearms license.

(2) Notifications must be made according to paragraph (j) of this section, as applicable.

(i) [Reserved]

(j) *Notification process.* (1) Each licensee and certificate holder shall make the telephonic notifications required by paragraphs (a), (b), (c), (d), (e), (f), (g), and (h) of this section to the NRC Headquarters Operations Center via any available telephone system. Commercial telephone numbers for the NRC Headquarters Operations Center are specified in Table 1 of Appendix A of this part.

(2) Licensees and certificate holders shall make required telephonic notifications via any method that will ensure that a report is received by the NRC Headquarters Operations Center or other specified government officials within the timeliness requirements of paragraphs (a), (b), (c), (d), (e), (f), (g), and (h) of this section, as applicable.

(3) Notifications required by this section that contain Safeguards Information may be made to the NRC Headquarters Operations Center without using secure communications systems under the exception of § 73.22(f)(3) of this part for emergency or extraordinary conditions.

(4)(i) Notifications required by this section that contain classified national security information and/or restricted data must be made to the NRC Headquarters Operations Center using secure communications systems appropriate to the classification level of the message. Licensees and certificate holders making classified telephonic notifications shall contact the NRC Headquarters Operations Center at the commercial numbers specified in Table 1 of Appendix A to this part and request a transfer to a secure telephone, as specified in paragraph III of Appendix A to this part.

(ii) If the licensee's or certificate holder's secure communications capability is unavailable (e.g., due to the nature of the security event), the licensee or certificate holder shall provide as much information to the NRC as is required by this section, without revealing or discussing any classified information, in order to meet the timeliness requirements of this section. The licensee or certificate holder shall also indicate to the NRC that its secure communications capability is unavailable.

(iii) Licensees and certificate holders using a non-secure communications capability may be directed by the NRC Emergency Response management to provide classified information to the NRC over the non-secure system, due to the significance of the ongoing security event. In such circumstances, the licensee or certificate holder shall document this direction and any information provided to the NRC over a non-secure communications capability in the follow-up written report required in accordance with paragraph (m) of this section.

(5)(i) For events reported under paragraph (a) of this section, the NRC may request that the licensee or certificate holder maintain an open and continuous communication channel with the NRC Headquarters Operations Center as soon as possible. Licensees and certificate holders shall establish the requested continuous communication channel once the licensee or certificate holder has completed other required notifications under this section, § 50.72 of this chapter, Appendix E of part 50 of this chapter, or § 70.50 of this chapter; or completed any immediate actions

required to stabilize the plant, to place the plant in a safe condition, to implement defensive measures, or to request assistance from the LLEA.

(ii) When established, the continuous communications channel shall be staffed by a knowledgeable individual in the licensee's security, operations, or emergency response organizations from a location deemed appropriate by the licensee.

(iii) The continuous communications channel may be established via any available telephone system.

(6)(i) For events reported under paragraph (b) of this section, the NRC may request that the licensee or certificate holder maintain an open and continuous communication channel with the NRC Headquarters Operations Center as soon as possible. Licensees and certificate holders shall establish the requested continuous communication channel once the licensee or certificate holder has completed other required notifications under this section, § 50.72 of this chapter, Appendix E of part 50 of this chapter, or § 70.50 of this chapter; or requested assistance from the LLEA.

(ii) When established, the continuous communications channel shall be staffed by a knowledgeable individual in the communication center monitoring the shipment.

(iii) The continuous communications channel may be established via any available telephone system.

(7) For events reported under paragraphs (c), (d), (e), (f), (g), and (h) of this section, the NRC may request that the licensee or certificate holder maintain an open and continuous communication channel with the NRC Headquarters Operations Center.

(8) Licensees and certificate holders desiring to retract a previous security event report that has been determined to be invalid shall telephonically notify the NRC Headquarters Operations Center in accordance with paragraph (j) of this section and shall indicate the report being retracted and basis for the retraction.

(k) *Safeguards event log.* Each licensee or certificate holder subject to the provisions of §§ 73.20, 73.25, 73.26, 73.37, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.60, or 73.67 shall maintain a safeguards event log.

(1) The licensee or certificate holder shall record the facility-based or transportation-based events described in paragraph IV of Appendix G of this part within 24 hours of discovery in the safeguards event log.

(2) The licensee or certificate holder shall retain the safeguards event log as a record for three years after the last

entry is made in each log or until the termination of the license or certificate of compliance.

(l) (Reserved).

(m) *Written reports.* (1) Each licensee or certificate holder making an initial telephonic notification under paragraphs (a), (b), (c), (d), (e), (f), and (g) of this section shall also submit a written follow-up report to the NRC within 60 days of the telephonic notification, in accordance with § 73.4.

(2) Licensees and certificate holders are not required to submit a written report following a telephonic notification made under paragraphs (g) and (h) of this section.

(3) Licensees and certificate holders are not required to submit a written report following a telephonic notification made under paragraph (j) of this section involving suspicious event or law enforcement interaction specified in paragraphs II(a), II(c), or II(d) of Appendix G.

(4) Each licensee and certificate holder shall submit to the Commission written reports that are of a quality that will permit legible reproduction and processing.

(5) Licensees subject to § 50.73 of this chapter shall prepare the written report on NRC Form 366.

(6) Licensees and certificate holders not subject to § 50.73 of this chapter shall prepare the written report in letter format.

(7) In addition to the addressees specified in § 73.4, the licensee or certificate holder shall also provide one copy of the written report addressed to the Director, Office of Nuclear Security and Incident Response (NSIR). The copy of a classified written report to the Director, NSIR, shall be provided to the NRC headquarters' classified mailing address specified in Table 2 of Appendix A to this part or in accordance with paragraph IV of Appendix A to this part.

(8) The report must include sufficient information for NRC analysis and evaluation.

(9) Significant supplemental information that becomes available after the initial telephonic notification to the NRC Headquarters Operations Center or after the submission of the written report must be telephonically reported to the NRC Headquarters Operations Center under paragraph (j) of this section and also submitted in a revised written report (with the revisions indicated) as required under paragraph (m) of this section.

(10) Errors discovered in a written report must be corrected in a revised written report with the revisions indicated.

(11) The revised written report must replace the previous written report; the update must be complete and not be limited to only supplementary or revised information.

(12) Each licensee and certificate holder shall maintain a copy of the written report of an event submitted under this section as a record for a period of three years from the date of the report or until termination of the license or the certificate of compliance.

(13)(i) If the licensee or certificate holder subsequently retracts a telephonic notification made under this section as invalid and has not yet submitted a written report required by paragraph (m) of this section, then submission of a written report is not required.

(ii) If the licensee or certificate holder subsequently retracts a telephonic notification made under this section as invalid, after it has submitted a written report required by paragraph (m) of this section, then the licensee or certificate holder shall submit a revised written report in accordance with paragraph (m) of this section.

(14) Each written report containing Safeguards Information or classified information must be created, stored, marked, labeled, handled, and transmitted to the NRC in accordance with the requirements of §§ 73.21 and 73.22 of this part or with part 95 of this chapter, as applicable.

(n) *Declaration of emergencies.* Notifications made to the NRC for the declaration of an emergency class shall

be performed in accordance with §§ 50.72, 70.50, 72.75, and 76.120 of this chapter, as applicable.

(o) *Elimination of duplication.* Separate notifications and reports are not required for events that are also reportable in accordance with §§ 50.72, 50.73, 70.50, 72.75, and 76.120 of this chapter. However, these notifications should also indicate the applicable § 73.71 reporting criteria.

9. In appendix A to part 73, a heading is added for Table 1, the first row in Table 1 is revised, the heading for Table 2 is revised, and paragraphs III and IV are added to read as follows:

APPENDIX A TO PART 73—U.S. NUCLEAR REGULATORY COMMISSION OFFICES AND CLASSIFIED MAILING ADDRESSES

TABLE 1—MAILING ADDRESSES, TELEPHONE NUMBERS, AND E-MAIL ADDRESSES

| | Address | Telephone (24 hour) | E-Mail |
|---|--|---|--|
| NRC Headquarters Operations Center | USNRC, Division of Preparedness and Response, Washington, DC 20555-0001. | (301) 816-5100, and (301) 816-5151 (fax). | Hoo.Hoc@nrc.gov Hoo.Hoc@usnrc.sgov.gov (secure) |

* * * * *

Table 2—Classified Mailing Addresses

* * * * *

III. Classified telephone calls must be made to the telephone numbers for the NRC Headquarters Operations Center in Table 1 of this appendix and the caller shall request transfer to a secure telephone to convey the classified information.

IV. Classified e-mails must be sent to the secure e-mail address specified in Table 1 of this appendix.

10. In appendix B to part 73, the heading for section I.A in the Table of Contents and section I.A are revised to read as follows:

Appendix B to Part 73—General Criteria for Security Personnel

* * * * *

I. * * *

A. Employment suitability.

* * * * *

I. Employment suitability and qualification.

A. Employment suitability.

1. Suitability.

(a) Before employment, or assignment to the security organization, an individual shall:

(1) Possess a high school diploma or pass an equivalent performance examination designed to measure basic mathematical, language, and reasoning skills, abilities, and knowledge required to perform security duties and responsibilities;

(2) Have attained the age of 21 for an armed capacity or the age of 18 for an unarmed capacity; and

(3) Not have any felony convictions that reflect on the individual's reliability.

(4) Individuals in an armed capacity would not be disqualified from possessing or using firearms or ammunition in accordance with applicable State or Federal law, to include 18 U.S.C. 922. Licensees shall use information that has been obtained during the completion of the individual's background investigation for unescorted access to determine suitability. Satisfactory completion of a firearms background check for the individual under § 73.19 of this part will also fulfill this requirement.

(b) The qualification of each individual to perform assigned duties and responsibilities must be documented by a qualified training instructor and attested to by a security supervisor.

* * * * *

11. Appendix G to part 73 is revised to read as follows:

Appendix G to Part 73—Reportable and Recordable Safeguards Events

Under the provisions of § 73.71(c), (e), and (j), licensees and certificate holders subject to the provisions of §§ 73.20, 73.45, 73.46, 73.54, and 73.55 of this part shall telephonically report the safeguards events specified under paragraphs I, II, and III of this appendix. Under the provisions of § 73.71(c), (d), and (j), licensees and certificate holders subject to the provisions of §§ 73.25, 73.26, 73.27, 73.37, 73.50, 73.51, 73.60, and 73.67 of this part shall telephonically report the safeguards events specified under paragraphs I and III of this appendix. Licensees and certificate holders shall make such telephonic reports to the Commission in accordance with the

provisions of § 73.71 and appendix A to this part.

Under the provisions of § 73.71(k), licensees and certificate holders subject to the provisions of §§ 73.20, 73.25, 73.26, 73.37, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.60, and 73.67 of this part shall record in a safeguards event log the safeguards events specified under paragraph IV of this appendix. Licensees and certificate holders shall record these events in accordance with the provisions of § 73.71.

I. Events To Be Reported Within One Hour of Discovery

(a) *Significant security events.* Any event in which there is reason to believe that a person has committed or caused, or attempted to commit or cause, or has made a threat to commit or cause:

(1) A theft or diversion of special nuclear material;

(2) Significant physical damage to any nuclear reactor or facility possessing or using Category I strategic special nuclear material;

(3) Significant physical damage to any vehicle transporting special nuclear material, spent nuclear fuel, or high-level radioactive waste; or to the special nuclear material, spent nuclear fuel, or high-level radioactive waste itself;

(4) The unauthorized operation, manipulation, or tampering with any nuclear reactor's controls or with structures, systems, and components (SSCs) that results in the interruption of normal operation of the reactor; or

(5) The unauthorized operation, manipulation, or tampering with any Category I strategic special nuclear material (SSNM) facility's controls or SSCs that

results in the interruption of normal operation of the facility.

(b) *Unauthorized entry events.*

(1) An actual entry of an unauthorized person into a facility's protected area (PA), vital area (VA), material access area (MAA), or controlled access area (CAA).

(2) An actual entry of an unauthorized person into a transport vehicle.

(3) An attempted entry of an unauthorized person with malevolent intent into a PA, VA, MAA, or CAA.

(4) An attempted entry of an unauthorized person with malevolent intent into a vehicle transporting special nuclear material, spent nuclear fuel, or high-level radioactive waste; or to the special nuclear material, spent nuclear fuel, or high-level radioactive waste itself.

(c) *Contraband events.*

(1) The actual introduction of contraband into a PA, VA, MAA, or CAA.

(2) The actual introduction of contraband into a transport.

(3) An attempted introduction of contraband by a person with malevolent intent into a PA, VA, MAA, or CAA.

(4) An attempted introduction of contraband by a person with malevolent intent into a vehicle transporting special nuclear material, spent nuclear fuel, or high-level radioactive waste; or to the special nuclear material, spent nuclear fuel, or high-level radioactive waste itself.

(d) *Authorized weapon events.*

(1) The discovery that a standard weapon that is authorized by the licensee's security plan is lost or uncontrolled within a PA, VA, MAA, or CAA.

(2) Uncontrolled authorized weapons means weapons that are authorized by the licensee's or certificate holder's security plan and are not in the possession of authorized personnel or are not in an authorized weapons storage location.

(e) *Vehicle barrier system events.* For licensees and certificate holders with a vehicle barrier system protecting their facility, the actual or attempted introduction of explosives or incendiaries beyond the vehicle barrier.

(f) *Uncompensated security events.* Any failure, degradation, or the discovered vulnerability in a safeguard system, for which compensatory measures have not been employed, that could allow unauthorized or undetected access of—

(1) Explosives or incendiaries beyond a vehicle barrier;

(2) Personnel or contraband into a PA, VA, MAA, or CAA; or

(3) Personnel or contraband into a vehicle transporting special nuclear material, spent nuclear fuel, or high-level radioactive waste; or to the special nuclear material, spent nuclear fuel, or high-level radioactive waste itself.

(g) *Lost shipments of nuclear or radioactive material.*

(1) The discovery of the loss of a shipment of Category I SSNM, Category II and III special nuclear material, spent nuclear fuel, or high-level radioactive waste.

(2) The recovery of or accounting for a lost shipment.

(h) *Cyber security events.*

(1) Any event in which there is reason to believe that a person has committed or caused, or attempted to cause, or has made a threat to commit or cause, an act to modify, destroy, or compromise any systems, networks, or equipment that falls within the scope of § 73.54 of this part.

(2) *Uncompensated cyber security events.* Any failure, degradation, or the discovered vulnerability in systems, networks, and equipment that falls within the scope of § 73.54 of this part, for which compensatory measures have not been employed and that could allow unauthorized or undetected access into such systems, networks, or equipment.

(i) [Reserved]

(j) *Loss or theft of classified information.*

The discovery of the loss or theft of classified material (e.g., documents, drawings, analyses, or data) that contains either National Security Information or Restricted Data.

(k) *Loss or theft of Safeguards Information.*

The discovery of the loss or theft of material (e.g., documents, drawings, analyses, or data) that contains Safeguards Information—

(1) Provided that such material could substantially assist an adversary in the circumvention of the facility or transport security or protective systems or strategies; or

(2) Provided that such material is lost or stolen in a manner that could allow a significant opportunity for the compromise of the Safeguards Information.

II. Events To Be Reported Within Four Hours of Discovery

(a) *Suspicious events.* Any information received by the licensee of suspicious or surveillance activities or attempts at access, including:

(1) Any event or incident involving suspicious activity that may be indicative of potential pre-operational surveillance, reconnaissance, or intelligence-gathering activities directed against the facility. This type of activity may include, but is not limited to—

(A) Attempted surveillance or reconnaissance activity. Commercial or military aircraft activity considered routine or non-threatening by the licensee or certificate holder is not required to be reported;

(B) Elicitation of information from facility personnel relating to the security or safe operation of the facility; or

(C) Challenges to security systems (e.g., willful failure to stop for security checkpoints, possible tests of security response and security screening equipment, or suspicious entry of watercraft into posted off-limits areas).

(2) Any event or incident involving suspicious aircraft activity over or in close proximity to the facility. Commercial or military aircraft activity considered routine or non-threatening by the licensee or certificate holder is not required to be reported.

(b) *Unauthorized operation or tampering events.* An event involving—

The unauthorized operation, manipulation, or tampering of any nuclear reactor's or Category I SSNM facility's SSCs that could

prevent the implementation of the licensee's or certificate holder's protective strategy for protecting any target set.

(c) *Suspicious cyber security events.*

(1) Any information received or collected by the licensee or certificate holder of suspicious activity that may be indicative of tampering, malicious or unauthorized access, use, operation, manipulation, modification, potential destruction, or compromise of the systems, networks, and equipment that falls within the scope of § 73.54 of this part, or the security measures that could weaken or disable the protection for such systems, networks, or equipment.

(2) An attempted but unsuccessful cyber attack or event that could have caused significant degradation to any system, network, or equipment that falls within the scope of § 73.54 of this part.

(d) *Law enforcement interactions.* (1) An event related to the licensee's or certificate holder's implementation of their security program for which a notification was made to local, State, or Federal law enforcement officials and that does not otherwise require a notification under paragraph I or the other provisions of paragraph II of this appendix.

(2) An event involving a law enforcement response to the facility that could reasonably be expected to result in public or media inquiries and that does not otherwise require a notification under paragraphs I or the other provisions of paragraph II of this appendix.

III. Events To Be Reported Within Eight Hours of Discovery

Unauthorized operation or tampering events. An event involving—

(1) The unauthorized operation, manipulation, or tampering with any nuclear reactor's controls or SSCs that does not result in the interruption of the normal operations of the reactor;

(2) The unauthorized operation, manipulation, or tampering with any Category I SSNM facility's controls or SSCs that does not result in the interruption the normal operations of the facility; or

(3) The tampering, malicious or unauthorized access, use, operation, manipulation, or modification of any security measures associated with systems, networks, and equipment that falls within the scope of § 73.54 of this part; that does not result in the interruption of the normal operation of such systems, networks, or equipment.

IV. Events To Be Recorded in the Safeguards Event Log Within 24 Hours of Discovery

(a) *Compensated security events.* Any failure, degradation, or discovered vulnerability in a safeguards system, had compensatory measures not been established, that could have—

(1) Allowed unauthorized or undetected access of—

(i) Explosives or incendiaries beyond a vehicle barrier;

(ii) Personnel or contraband into a PA, VA, MAA, or CAA; or

(iii) Personnel or contraband into a vehicle transporting special nuclear material, spent nuclear fuel, or high-level radioactive waste; or to the special nuclear material, spent nuclear fuel, or high-level radioactive waste itself.

(2) Degrade the effectiveness of the licensee's or certificate holder's cyber security program or allow unauthorized or undetected access to any systems, networks, or equipment that fall within the scope of § 73.54 of this part. Decreases in the effectiveness of the cyber security program include any other threatened, attempted, or committed act not previously defined in this appendix that has resulted in or has the potential for decreasing the effectiveness of the cyber security program in a licensee's or certificate holder's NRC-approved cyber security plan.

(b) *Ammunition events.*

(1) A discovery that ammunition that is authorized by the licensee's security plan has been lost or uncontrolled inside a PA, VA, MAA, or CAA.

(2) A discovery that unauthorized ammunition is inside a PA, VA, MAA, or CAA.

(3)(i) Uncontrolled authorized ammunition means ammunition authorized by the licensee's or certificate holder's security plan or contingency response plan that is not in the possession of authorized personnel or is not in an authorized ammunition storage location.

(ii) Uncontrolled unauthorized ammunition means ammunition that is not authorized by the licensee's or certificate

holder's security plan or contingency response plan.

(iii) Ammunition in the possession of law-enforcement personnel performing official duties inside a PA, VA, MAA, or CAA is considered controlled and authorized.

(4) The discovery of lost or uncontrolled authorized or unauthorized ammunition under circumstances that indicate the potential for malevolent intent shall be reported under paragraph I(f) of this appendix.

(c) *Loss of control or protection of classified information.* A discovery that a loss of control over, or protection of, classified material containing National Security Information or Restricted Data has occurred, provided—

(1) There does not appear to be evidence of theft or compromise of the material, and

(2) The material is recovered or secured within one hour of the loss of control or protection.

(d) *Loss of control or protection of Safeguards Information.* A discovery that a loss of control over, or protection of, classified material containing Safeguards Information has occurred, provided—

(1) There does not appear to be evidence of theft or compromise of the material, and

(2) The material is recovered or secured within one hour of the loss of control or protection; or

(3) The material would not have allowed unauthorized or undetected access to facility or transport contingency response procedures or strategies.

(e) *Decreases in the effectiveness of the physical security program or the cyber security program.* Any other threatened, attempted, or committed act not previously defined in this appendix that has resulted in or has the potential for decreasing the effectiveness of the licensee's or certificate holder's physical security program or cyber security program below that committed to in a licensee's or certificate holder's NRC-approved physical security plan or cyber security plan.

(f) *Non duplication.* Events reported under paragraphs I, II, or III of this appendix are not required to be recorded under the safeguards event log.

Dated at Rockville, Maryland, this 21st day of January 2011.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

[FR Doc. 2011-1766 Filed 2-2-11; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC-2011-0018; NRC-2011-0014; NRC-2011-0015; NRC-2011-0017]

RIN 3150-A149

Enhanced Weapons, Firearms Background Checks, and Security Event Notifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On February 3, 2011 (76 FR 6200), the Nuclear Regulatory Commission (NRC or the Commission) published a proposed rule [NRC-2011-0018] for a 90-day public comment period that would implement its authority under the new Section 161A of the Atomic Energy Act of 1954 (AEA), as amended, and revise existing regulations governing security event notifications. These proposed regulations are consistent with the provisions of the Firearms Guidelines the NRC published under Section 161A with the approval of the U.S. Attorney General on September 11, 2009 (74 FR 46800). In addition, the NRC proposed revisions addressing security event notifications from different classes of facilities and the transportation of radioactive material and would add new event notification requirements on the theft or loss of enhanced weapons.

Concurrent with the amendments described in this proposed rule, the NRC published for comment the draft "Weapons Safety Assessment" (76 FR 6087) [NRC-2011-0017], the draft Regulatory Guide DG-5020, "Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73" (76 FR 6086) [NRC-2011-0015], and the revised Regulatory Guide DG-5019, "Reporting and Recording Safeguards Events" (76 FR 6085) [NRC-2011-0014]. A 90-day comment period was provided for the proposed rule, the weapons safety assessment, and the associated regulatory guidance documents that would have expired on May 4, 2011.

The NRC is extending the comment period submittal deadline by an additional 90 days for the proposed rule, the associated regulatory guidance documents, and the weapons safety assessment from the original May 4, 2011, deadline to August 2, 2011.

DATES: The comment period for the proposed rule, the draft weapons safety

assessment, and the draft regulatory guides (DG-5019 and DG-5020) has been extended and now expires on August 2, 2011. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: Please include the applicable Docket ID: NRC-2011-0018 (proposed rule); NRC-2011-0014 (DG-5019); NRC-2011-0015 (DG-5020); or NRC-2011-0017 (draft weapons safety assessment) in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site <http://www.Regulations.gov>. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments on the proposed rule [NRC-2011-0018] by any one of the following methods:

- *Federal rulemaking Web site:* Go to <http://www.regulations.gov> and search for documents filed under the applicable Docket ID: NRC-2011-0018. Address questions about NRC dockets to Carol Gallagher, telephone: 301-492-3668; e-mail: Carol.Gallagher@nrc.gov.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

- *E-mail comments to:* Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677.

- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays, (telephone: 301-415-1677).

- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

You may submit comments on DG-5019 [NRC-2011-0014]; DG-5020 [NRC-2011-0015]; or the draft weapons safety assessment [NRC-2011-0017] by any one of the following methods:

- *Federal rulemaking Web site:* Go to <http://www.regulations.gov> and search

for documents filed under Docket ID NRC-2011-0014 (DG-5019); NRC-2011-0015 (DG-5020); or NRC-2011-0017 (draft weapons safety assessment). Address questions about NRC dockets to Carol Gallagher, telephone: 301-492-3668; e-mail: Carol.Gallagher@nrc.gov.

- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

- *Fax comments to:* RADB at 301-492-3446.

You can access publicly available documents related to the proposed rule and draft regulatory guides documents using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>.

From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

- *Federal Rulemaking Web Site:* Public comments and supporting materials related to the proposed rule and draft regulatory guides can be found at <http://www.regulations.gov> by searching the applicable Docket ID: NRC-2011-0018 (proposed rule); NRC-2011-0014 (DG-5019); NRC-2011-0015 (DG-5020); or NRC-2011-0017 (draft weapons safety assessment).

FOR FURTHER INFORMATION CONTACT: Mr. Robert Beall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone 301-415-3874; e-mail: Robert.Beall@nrc.gov; or Mr. Philip Brochman, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone 301-415-6557; e-mail: Phil.Brochman@nrc.gov.

SUPPLEMENTARY INFORMATION: On February 16, 2011, the NRC received a letter (ADAMS Accession Number ML110480470) requesting that the

comment period for the proposed rule, the draft weapons safety assessment, and the draft regulatory guides be extended. The request was to extend the comment period by an additional 90 days for a total of 180 days. The requestor states they are coordinating the industry comments on the proposed ruling and associated documents to ensure that the comments are of high quality and that they reflect a consensus industry perspective. They also state that the comment period provided in the February 3, 2011, **Federal Register** notice is insufficient, given the complexity of the topical area and the number of documents associated with the rule. The requestor states that extending the comment period would provide the time necessary to more fully assess the content of the proposed ruling and associated documents and arrive at a set of comments that are of value to the NRC staff.

The NRC's objective is to ensure the public and other stakeholders have a reasonable opportunity to provide the NRC with comments on this proposed action that will improve the quality of these regulations and the supporting guidance documents. The NRC acknowledges this is a new area of regulation and that a significant quantity of information must be reviewed by the public and other stakeholders. Accordingly, the NRC is extending the comment period for the proposed rulemaking, the draft regulatory guides, and the draft weapons safety assessment for an additional 90 days. Based on feedback from stakeholders, the NRC believes that a 90-day extension provides a reasonable opportunity for all stakeholders to review these documents and to develop informed comments on these documents.

Accordingly, the NRC is extending the comment submittal deadlines for the proposed rule, the draft weapons safety assessment, and the two draft regulatory guides (DG-5019 and DG-5020) from May 4, 2011, to August 2, 2011.

Dated at Rockville, Maryland, this 21st day of April 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011-10163 Filed 4-26-11; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 366

[Docket No. RM11-12-000]

Availability of E-Tag Information to Commission Staff

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations to require the Commission-certified Electric Reliability Organization to make available to Commission staff, on an ongoing basis, access to complete electronic tagging data used to schedule the transmission of electric power in wholesale markets. This information will aid the Commission in market monitoring and preventing market manipulation, help assure just and reasonable rates, and aid in monitoring compliance with certain business practice standards adopted by the North American Energy Standards Board and incorporated by reference into its regulations and public utility tariffs by the Commission. The Commission is also considering making this information available to entities involved in market monitoring functions and invites comments on this option.

DATES: Comments on the proposed rule are due June 27, 2011.

ADDRESSES: You may submit comments identified by Docket No. RM11-12-000, by one of the following methods:

- *Agency Web Site:* <http://ferc.gov>.

Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.

- *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

Maria Vouras (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502-8062, E-mail: maria.vouras@ferc.gov.

William Sauer (Technical Information), Office of Enforcement, Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

(202) 502-6639, E-mail:

william.sauer@ferc.gov.

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502-8321, E-mail: gary.cohen@ferc.gov.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

(April 21, 2011)

1. In this Notice of Proposed Rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) proposes, pursuant to § 307(a) and § 309 of the Federal Power Act (FPA),¹ to amend its regulations to require the Electric Reliability Organization (ERO) certified by the Commission under § 39.3 of the Commission's regulations² to make available to Commission staff, on an ongoing basis, access to the complete electronic tags (e-Tags) used to schedule the transmission of electric power interchange transactions in wholesale markets.³ The Commission proposes to require the ERO to provide access to e-Tags, rather than requiring individual market participants to provide such access, so as to avoid imposing this burden on market participants of submitting e-Tags with both the ERO and the Commission.

I. Background

2. The North American Electric Reliability Corporation (NERC), formerly known as the North American Electric Reliability Council, was established in 1968, in response to the 1965 electricity blackout in the northeast. At that time, the industry-created council included nine regional reliability groups, began regional planning coordination, and developed voluntary operations criteria and guides. Over the years, NERC modified its membership rules and governing structure and, in 2006, the Commission approved NERC's application to become the ERO for the United States.⁴

¹ 16 U.S.C. 791a, *et seq.*

² 18 CFR 39.3 (2010).

³ For purposes of this NOPR, "complete e-Tags" refers to (1) e-Tags for interchange transactions scheduled to flow into, out of or within the United States' portion of the Eastern or Western Interconnections, or into or out of the Electric Reliability Council of Texas and into or out of the United States' portion of the Eastern or Western Interconnections, and (2) information on every aspect of the e-Tag, including all applicable e-Tag-IDs, transaction types, market segments, physical segments, profile sets, transmission reservations, and energy schedules.

⁴ *North American Electric Reliability Corporation*, 116 FERC ¶ 61,062 (2006), *order on reh'g*, 117 FERC

Proposed Rules

Federal Register

Vol. 78, No. 7

Thursday, January 10, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC-2011-0018]

RIN 3150-AI49

Enhanced Weapons, Firearms Background Checks, and Security Event Notifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplemental proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is proposing regulations that would implement its authority under Section 161A of the Atomic Energy Act of 1954, as amended (AEA), and revise existing regulations governing security event notifications. The NRC proposed new regulations on February 3, 2011, that would implement its authority under Section 161A. The NRC is now proposing to further revise its regulations that address the voluntary application for enhanced weapons authority, preemption authority, and the mandatory firearms background checks under Section 161A to include as a class of designated facilities at-reactor, independent spent fuel storage installations (ISFSIs).

DATES: Submit comments on this supplemental proposed rule by February 25, 2013. Submit comments specific to the information collection burden aspects of this supplemental proposed rule by February 11, 2013. Comments received after these dates will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before these dates.

ADDRESSES: You may access information and comment submissions related to this supplemental proposed rule, which the NRC possesses and are publicly available, by searching on <http://www.regulations.gov> under Docket ID NRC-2011-0018. You may submit comments by any of the following

methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0018. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; email: Carol.Gallagher@nrc.gov.

- **Email Comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

- **Fax Comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

- **Mail Comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

- **Hand Deliver Comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677.

For additional direction on accessing information and submitting comments, see "Accessing Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret E. Stambaugh, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-7069; email: Margaret.Stambaugh@nrc.gov; or Mr. Philip Brochman, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6557; email: Phil.Brochman@nrc.gov.

SUPPLEMENTARY INFORMATION:

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I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC-2011-0018 when contacting the NRC about the availability of information for this supplemental proposed rule. You may access information related to this supplemental proposed rule, which the NRC possesses and is publicly available, by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0018.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in Section VIII, "Availability of Documents," of this document.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC-2011-0018 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS.

The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

A. Implementation of Section 161A of the AEA

On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (EPAct), Public Law 109-58, 119 Stat. 594 (2005). Section 653 of the EPAct amended the AEA by adding Section 161A, "Use of Firearms by Security Personnel" (42 U.S.C. 2201a). Section 161A of the AEA provides the NRC with authority that will enhance security at designated NRC licensee and certificate holder facilities. As required by Section 161A.d, the provisions of Section 161A took effect when the Commission, with the approval of the U.S. Attorney General, published the approved Firearms Guidelines in the **Federal Register** (FR) on September 11, 2009 (74 FR 46800). The issued Firearms Guidelines may be found on <http://www.regulations.gov> under Docket IDs NRC-2008-0465 and NRC-2011-0018.

Section 161A requires the Commission to designate the classes of facilities, radioactive material, and other property eligible to apply for preemption or enhanced weapon authority. Section 161A also mandates that all security personnel with duties requiring access to covered weapons, as defined in the Firearms Guidelines, who are engaged in the protection of Commission-designated facilities, radioactive material, or other property owned or operated by an NRC licensee or certificate holder, be subject to a fingerprint-based background check by the U.S. Attorney General and a firearms background check against the Federal Bureau of Investigation's (FBI) National Instant Background Check System (NICS).

B. October 2006 Proposed Rule—Implementation of Section 161A of the AEA

In parallel with the development of the Firearms Guidelines, the NRC initiated a rulemaking to develop implementing regulations. On October 26, 2006, the NRC published proposed regulations (71 FR 62664) to implement the provisions of Section 161A as part of a larger proposed amendment to its regulations under parts 50, 72, and 73 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Power Reactor Security Requirements." These proposed implementing regulations were based upon the draft version of the Firearms Guidelines that existed in September 2006.

The NRC had proposed that the provisions of Section 161A would apply only to power reactor facilities and Category I Strategic Special Nuclear Material (Cat. I SSNM) facilities (*i.e.*, facilities possessing or using formula quantities or greater of strategic special nuclear material). This would permit these two highest risk classes of licensed facilities to apply to the NRC for Section 161A authority (either combined enhanced weapons authority and preemption authority or stand-alone preemption authority). The NRC had also indicated that it would consider making Section 161A authority available to additional classes of facilities, radioactive material, or other property (including ISFSIs) in a separate, future rulemaking.

C. February 2011 Proposed Rule—Implementation of Section 161A of the AEA

Once the approved Firearms Guidelines were published in the FR on September 11, 2009 (74 FR 46800), the NRC continued developing the proposed rulemaking based upon the Firearms Guidelines. On February 3, 2011, the NRC published proposed regulations in the FR (76 FR 6200) that would implement the provisions of Section 161A and make several changes to the security event notification requirements in 10 CFR part 73 to address imminent attacks or threats against power reactors as well as suspicious events that could be indicative of potential reconnaissance, surveillance, or challenges to security systems by adversaries. The public was provided a total of 180 days to review and comment on the February 2011 proposed rule and associated guidance.

III. Discussion

Section 161A allows the NRC to authorize licensees and certificate

holders to use, as part of their protective strategies, an expanded arsenal of weapons, including machine guns and semi-automatic, large-capacity, assault weapons. As indicated in the February 2011 proposed rule, an NRC licensee or certificate holder interested in obtaining Section 161A authority (either combined enhanced weapons authority and preemption authority or preemption authority alone) could voluntarily apply to the NRC to take advantage of this new authority. Licensees and certificate holders within the designated classes eligible to apply for Section 161A authority would be required to complete the firearms background check requirements mandated by Section 161A and the Firearms Guidelines.

In a recent letter, a licensee requested that the NRC grant preemption authority for two operating power reactors and the at-reactor ISFSI co-located at the plant site (ADAMS Accession No. ML113610556). The February 2011 proposed rule did not contemplate at-reactor ISFSIs under the applicability statement, but rather identifies ISFSIs as a class of facility that would be considered for inclusion under a future rulemaking. The staff's intent in the February 2011 proposed rule was first to establish the regulatory framework for granting preemption and enhanced weapons authority to those facilities deemed to be of greatest significance (*i.e.*, power reactors and Cat. I SSNM facilities). In light of the request from the licensee, the staff recommended to the Commission in SECY-12-0027 (ADAMS Accession No. ML113130015) that at-reactor ISFSIs be designated as a class of licensees eligible to apply for the authority granted under Section 161A. In Staff Requirements Memorandum SRM-SECY-12-0027 (ADAMS Accession No. ML12124A377), the Commission disapproved the staff's recommendation in SECY-12-0027 regarding the issuance of confirmatory orders for at-reactor ISFSIs. Instead, the Commission directed the staff to consider expanding the scope of the *current enhanced weapons rule* to include at-reactor ISFSIs. This supplemental proposed rule responds to the Commission's direction.

In this supplemental proposed rule, the NRC would add at-reactor ISFSIs to the scope of the enhanced weapons proposed rule. The NRC considers an at-reactor ISFSI to be an ISFSI whose physical security program is conducted as a support activity of the co-located power reactor facility licensed under 10 CFR parts 50 or 52. As previously noted, the NRC is taking this approach to address the facilities of highest concern first. At-reactor ISFSIs have been added

to the facilities of highest concern because the same security personnel and weaponry that protect a power reactor, also protect the at-reactor ISFSI. An ISFSI that is co-located with a power reactor facility that has been decommissioned (*i.e.*, the power complex and spent fuel pool have been removed), but has not yet terminated its reactor license, does not rely on the power reactor security force to implement its protective strategy. Therefore, an ISFSI co-located at a decommissioned power reactor is not considered an at-reactor ISFSI for the purposes of this supplemental rule. The NRC considers this approach consistent with that for a standalone ISFSI, which was never co-located with a power reactor.

The February 2011 proposed rule recommends adding two new sections to 10 CFR part 73. The proposed § 73.18(c) would identify the specific classes of licensee facilities, radioactive material, and other property designated by the Commission under Section 161A that would be eligible to apply for stand-alone preemption authority or for combined enhanced weapons authority and preemption authority. The proposed § 73.19(c) would identify the specific classes of facilities, radioactive material, and other property designated by the Commission under Section 161A that would be subject to the firearms background check requirements. In this supplemental proposed rule, the NRC would designate three classes of facilities as subject to the requirements of proposed §§ 73.18 and 73.19: power reactor facilities, at-reactor ISFSIs, and Cat. I SSNM facilities.

In the February 2011 proposed rule that would implement the Firearms Guidelines, the NRC proposed amendments to 10 CFR part 73 by adding new definitions, processes for obtaining enhanced weapons, requirements for firearms background checks, and event notification requirements for stolen or lost enhanced weapons. This supplemental proposed rule continues those proposed changes and adds to or modifies the following regulations in 10 CFR part 73:

- Section 73.2, Definitions.
- Section 73.18, Authorization for use of enhanced weapons and preemption of firearms laws.
- Section 73.19, Firearms background checks for armed security personnel.
- Section 73.51, Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

IV. Section-by-Section Analysis

A. Overview

The following section-by-section analysis discusses proposed revisions to the NRC's regulations that were not part of the proposed rule published on February 3, 2011 (76 FR 6200). At this time, the NRC is only seeking comments on the revisions proposed by this supplemental rule. The NRC will address public comments on both the February 2011 proposed rule and this supplemental proposed rule in the **Federal Register** notice for the final rule.

This supplemental proposed rulemaking to 10 CFR part 73 would revise two new sections (§§ 73.18 and 73.19) proposed to be added to the NRC's regulation in the February 2011 rule, and revise two existing sections (§§ 73.2 and 73.51) to make conforming changes.

B. Definitions (§ 73.2)

New definition for the term *At-reactor independent spent fuel storage installation or at-reactor ISFSI* would be added in alphabetical order to the definitions in § 73.2(a). The NRC would consider an at-reactor ISFSI to be an ISFSI whose physical security program is conducted as a support activity of the co-located power reactor facility licensed under 10 CFR parts 50 or 52.

C. Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws (§ 73.18)

Paragraph (c) would list the designated classes for either stand-alone preemption authority or combined enhanced weapons authority and preemption authority. In addition to the classes of facilities identified in the February 2011 proposed rule, the NRC would include at-reactor ISFSIs within the designated classes. The NRC continues to intend to specify any additional classes of authorized facilities, radioactive material, and other property in a separate, future rulemaking.

D. Firearms Background Checks for Armed Security Personnel (§ 73.19)

In paragraph (c), the NRC would designate the classes of facilities, radioactive material, and other property that are appropriate for firearms background checks. In addition to the classes of facilities identified in the February 2011 proposed rule, the NRC would include at-reactor ISFSIs within the designated classes. The NRC intends to specify any additional classes of authorized facilities, radioactive

material, and other property in a separate, future rulemaking.

E. Requirements for the Physical Protection of Stored Spent Nuclear Fuel and High-Level Radioactive Waste (§ 73.51)

In paragraph (b)(4), the NRC would add a conforming change to provide a cross reference to the new firearms background check requirements in § 73.19 for armed security personnel. Additionally, the NRC would provide implementation schedule information for future licensees. This conforming change is identical to the conforming changes proposed to §§ 73.46 and 73.55 for Cat. I SSNM and power reactor facilities, respectively, in the February 2011 proposed rule (see Sections V.F and V.G at pp 6221 and 6222 of that **Federal Register** notice).

V. Guidance

The NRC prepared a new draft regulatory guide (DG), DG-5020, "Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR part 73" (ADAMS Accession No. ML100321956), which contains detailed guidance on the implementation of the proposed requirements for applying for enhanced weapons and conducting firearms background checks. The DG was made available for public comment on February 3, 2011 (76 FR 6086). Public comments and supporting materials related to DG-5020 can be found on <http://www.regulations.gov> by searching on Docket ID NRC-2011-0015.

However, DG-5020 did not include at-reactor ISFSIs under the applicability section; rather, the DG reserved a section for additional facilities to be added by future rulemakings or Commission orders. The addition of at-reactor ISFSIs facilities to the DG as an eligible class of licensees to receive preemption authority would not appreciably change the guidance contained in the DG. A licensee with an at-reactor ISFSI would have to take the same steps to request this authority as the facilities currently listed in the DG (*i.e.*, power reactor and Cat. I SSNM facilities).

The NRC will issue a final regulatory guide coincident with the publication of a final rule that will include at-reactor ISFSIs in the applicability section of DG-5020 so that it conforms to the requirements of the supplemental proposed rule. Since those conforming changes to the DG do not constitute a significant change to the guidance, the NRC has determined that further public

and stakeholder opportunity to comment on DG-5020 is not necessary for this supplemental proposed rule notice.

VI. Criminal Penalties

For the purposes of Section 223 of the AEA, as amended, the Commission is proposing to amend 10 CFR part 73 under Sections 161b, 161i, or 161o of the AEA. Criminal penalties, as they apply to regulations in 10 CFR part 73, are discussed in § 73.81. The new §§ 73.18 and 73.19 are issued under Sections 161b, 161i, or 161o of the AEA. Violations of these new sections are subject to possible criminal penalties; and therefore they are not included in § 73.81(b).

VII. Compatibility of Agreement State Regulations

Under the "Policy Statement on Adequacy and Compatibility of Agreement States Programs," approved by the Commission on June 20, 1997, and published in the FR (62 FR 46517; September 3, 1997), this supplemental proposed rule is classified as compatibility Category "NRC" and new §§ 73.18 and 73.19 are designated as Category "NRC" regulations. Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the

CFR, and although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

VIII. Availability of Documents

The NRC is making the documents identified in the following table available to interested persons through one or more of the following methods as indicated.

| Document | PDR | Web | NRC Library (ADAMS) |
|--|-----|-------|---|
| Firearms Guidelines | X | X | ML082560848 |
| Environmental Assessment (October 2006 proposed rule) | X | X | ML061920093 |
| Regulatory Analysis Regulatory Analysis-appendices (October 2006 proposed rule) | X | X | ML061380803 ML061380796 ML061440013 |
| Information Collection Analysis | X | X | ML092640277 |
| NRC Form 754 | X | X | ML092650459 |
| Commission: SECY-08-0050 (April 17, 2008) | X | X | ML072920478 |
| Commission: SECY-08-0050A (July 8, 2008) | X | X | ML081910207 |
| Commission: SRM-SECY-08-0050/0050A (August 15, 2008) | X | X | ML082280364 |
| Letter Opinion from Bureau of Alcohol, Tobacco, Firearms, and Explosives' Office of Enforcement on the Transfer of Enhanced Weapons (January 5, 2009). | X | X | ML090080191 |
| Proposed Enhanced Weapons, Firearms Background Checks, and Security Event Notifications rule (February 3, 2011). | X | X | ML103410132 |
| DG-5020 "Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73" (February 3, 2011). | X | X | ML100321956 |
| Letter of Christopher E. Earls, on Behalf of Nuclear Energy Institute, on the proposed "Enhanced Weapons, Firearms Background Checks and Security Event Notifications" rule, Request for 90-Day Extension to Comment Period (February 15, 2011). | X | | ML110480470 |
| Diablo Canyon, Units 1 and 2, Independent Spent Fuel Storage Installation, Application for Stand-Alone Preemption Authority Under 42 U.S.C. 2201a (December 22, 2011). | X | | ML113610556 |
| Commission: SECY-12-0027 (February 17, 2012) | X | X | ML113130015 |
| Commission: SRM-SECY-12-0027 (May 3, 2012) | X | X | ML12124A377 |
| NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Revision 4 (September 30, 2004). | X | X | ML042820192 |

IX. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274), requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883). The NRC requests comment on the supplemental proposed rule with respect to the clarity and effectiveness of the language used.

X. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113), requires that Federal agencies use technical standards that are

developed or adopted by voluntary consensus standards bodies, unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this supplemental proposed rule, the NRC proposes to use standards from applicable firearms standards developed by nationally recognized firearms organizations or standard setting bodies or from standards developed by (1) 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, and the U.S. Department of Defense; (2) State law-enforcement training centers; or (3) State Division (or Department) of Criminal Justice Services (DCJS)

Training Academies. The NRC invites comment on the use of consensus standards.

XI. Finding of No Significant Environmental Impact

In the proposed rule published on February 3, 2011, the Commission determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that the proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

The determination of the environmental assessment for this

supplemental proposed rule is that there will be no significant offsite impact to the public from this action. Availability of the environmental assessment is provided in Section VIII, "Availability of Documents," of this document. Due to the nature of the changes to the firearms background checks and enhanced weapons provisions presented in this supplemental proposed rule, the assumptions in the February 2011 proposed rule have not changed. Accordingly, the Commission is not seeking additional comments on the environmental assessment.

XII. Paperwork Reduction Act Statement

The proposed rule published on February 3, 2011 (76 FR 6200), would impose new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C 3501, *et seq.*). These new or amended information collection requirements were submitted to the Office of Management and Budget (OMB) for review under clearance numbers 3150-0002 and 3150-0204. The existing requirements for part 73 were previously approved by OMB, approval number 3150-0002.

This supplemental proposed rule does not contain new or amended information collection requirements not already identified in the February 3, 2011, proposed rule. However, it would apply these requirements to the at-reactor ISFSI class of designated facilities. The estimated number of respondents and licensee burden remain unchanged from the February 2011 proposed rule. The inclusion of at-reactor ISFSI facilities will be reflected in the revised OMB clearance package prepared for the final rule.

The NRC is seeking public comment on the potential impact of the information collections contained in this supplemental proposed rule and on the following issues:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package for the proposed rule may be viewed free of charge at the NRC PDR, One White Flint North, 11555 Rockville Pike, Room O1-F21, Rockville, Maryland 20852. The OMB clearance

package and supplemental proposed rule are available at the NRC's Web site, <http://www.nrc.gov/public-involve/doc-comment/omb/> for 30 days after the signature date of this document.

Send comments on any aspect of these proposed regulations related to information collections, including suggestions for reducing the burden and on the above issues, by February 11, 2013 to the Information Services Branch (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 205550001, or by email to INFCOLLECTS.Resource@nrc.gov; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0002 and 3150-0204), Office of Management and Budget, Washington, DC 20503. You may also email comments to Chad_S_Whiteman@omb.eop.gov or comment by telephone at 202-395-4718.

Public Protection Notification

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

XIII. Regulatory Analysis

The NRC prepared a draft regulatory analysis for the proposed rule published on February 3, 2011, (see Section VIII, "Availability of Documents," of this document). The analysis examined the costs and benefits of the Implementation of Section 161A of the AEA. The regulatory analysis has been updated to reflect the addition of at-reactor ISFSI facilities.

The NRC is taking action to conform implementing regulations to the Firearms Guidelines issued by the Commission, with the approval of the U.S. Attorney General. The requirements identified by this supplemental proposed rule were also identified in the February 2011 proposed rule. In this regulatory analysis, the NRC is providing a summary of the cost and benefit estimates from the February 2011 proposed rule and noting the changes necessitated by this supplemental proposed rule. The NRC considers the costs and benefits associated with applying for enhanced weapons to be unchanged from those described by the draft regulatory analysis in the February 2011 proposed rule, as the plans and analysis required to accompany an application have not changed. However, additional requirements have been added because of the addition of at-

reactor ISFSI facilities. These proposed regulations have been developed to be consistent with the issued Firearms Guidelines. This regulatory analysis was developed following the guidance contained in NUREG/BR-0058,

"Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Revision 4, issued September 2004 (ADAMS Accession No. ML042820192).

1. Statement of the Problem and Objective

The NRC is proposing regulations that would implement its authority under Section 161A of the AEA and revise existing regulations governing security event notifications. On September 11, 2009, with the approval of the U.S. Attorney General, the NRC published the Firearms Guidelines (74 FR 46800); these guidelines relate to the NRC's implementation of the new statutory authority.

The NRC proposed new regulations on February 3, 2011 (76 FR 6200), that would implement the new statutory authority. The NRC is now proposing further revisions that will address the voluntary application for enhanced weapons and the mandatory firearms background checks under Section 161A to include as a class of designated facilities called at-reactor ISFSIs.

2. Identification and Analysis of Alternative Approaches to the Problem

Because this rulemaking is in response to the statutorily mandated provisions of Section 161A of the AEA and the direction provided by the Firearms Guidelines issued by the Commission, there are no acceptable alternatives to the proposed rulemaking. Application for enhanced weapons authority and preemption authority under Section 161A is voluntary; however, licensee and certificate holder compliance with the firearms background checks under Section 161A is mandatory for certain designated classes of licensees. Consequently, the no-action option is used only as a basis against which to measure the costs and benefits of this rulemaking.

3. Estimation and Evaluation of Values and Impacts

In general the parties that would be affected by this supplemental proposed rule are the licensees and certificate holders (there is no impact on applicants since they are not subject to the firearms background check requirements), the NRC, the public surrounding the plants, the on-site employees of the licensees and certificate holders, the FBI, and the

Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

The following attributes are expected to be affected by this rulemaking. Their impacts are quantified where possible. Impacts to accident-related attributes are qualified because estimates of occurrences of possible attacks and their successful repulsions are unknown. Further, even if reliable estimates were available, they would be considered Safeguards Information and not to be released for public dissemination.

• *Safeguards and Security Considerations*—The proposed actions regarding access to enhanced weapons and mandatory firearms background checks will comply with statutory requirements and provide high assurance that public health and safety and the common defense and security will be enhanced because of licensees' and certificate holders' increased ability to repulse an attack.

• *Industry Implementation*—The supplemental proposed rule would require licensees and certificate holders with at-reactor ISFSI facilities to subject their security personnel to a fingerprint-based background check and a firearms background check against the NICS. Also, the rule would give licensees and certificate holders in Commission-designated classes of facilities the option to apply for combined enhanced weapons authority and preemption authority or standalone preemption authority. If a licensee or certificate holder is so inclined, it must submit plans and analysis to the NRC on their proposed deployment of enhanced weapons. The NRC must then act on the request. If the NRC approves the request, a licensee or certificate holder would apply to ATF to transfer the authorized enhanced weapons to its facility. Industry would need to develop

procedures to comply with these requirements.

For purposes of this analysis, the NRC staff assumed that all licensees and certificate holders who fall within the proposed designated classes of facilities would take advantage of making use of enhanced weapons protection (*i.e.*, 65 operating power reactor sites (which includes 53 at-reactor ISFSI facilities), 15 decommissioning power reactor sites, and 2 Cat. I SSNM facilities for a total of 82 facilities). The staff assumed that the licensee's or certificate holder's security personnel required to protect the operating power reactor site would also protect any at-reactor ISFSI facility without any increase in onsite staff. Since the total number of facilities is the same as was used in the draft regulatory analysis in the February 2011 proposed rule, the industry implementation cost and assumptions have not changed and are summarized in Table 1.

TABLE 1

| Enhanced Weapons Costs | |
|---|------------|
| Enhanced weapons cost per site | \$50,000 |
| 1/2 staff year to change security, training and qualification, contingency response plans and security event notification reports and to develop the weapons safety assessment and submit these documents to the NRC for its review and approval per site | 80,000 |
| 1/4 staff year to complete ATF paperwork, acquire the enhanced weapons, develop new training standards and then train security personnel, and deploy the weapons per site | 40,000 |
| Total individual site's implementation cost for the voluntary enhanced weapons regulations | 170,000 |
| Total enhanced weapons implementation cost for the industry ¹ | 13,940,000 |
| Firearms Background Checks Costs | |
| 1/6 staff year to establish a program for the mandatory firearms background checks per site | 26,700 |
| Total program cost for mandatory firearms background checks to industry ¹ | 2,190,000 |
| NRC fees and staff time to complete NRC Form 754 for the mandatory firearms background checks for each operating reactor and Cat. I SSNM facility | 11,400 |
| NRC fees and staff time to complete NRC Form 754 for the mandatory firearms background checks for each decommissioned reactor site | 5,700 |
| Total industry cost for performing the first-time background checks | 849,000 |
| Total industry implementation costs | 16,979,000 |

¹ Please note that throughout this analysis sums may not equal shown total values because of rounding. Also, this cost analysis does not include any transfer tax payments required from a licensee to register an enhanced weapon with ATF under the National Firearms Act (26 U.S.C. Chapter 53), since those costs fall under ATF's sole regulatory purview.

• *Industry Operation*—Enhanced weapon inventories' requirements of the February 2011 proposed rule, both monthly and semi-annually, would result in operating expenses for

industry. Since the total number of facilities, including sites with at-reactor ISFSIs, are the same as was used in the draft regulatory analysis in the February 2011 proposed rule, the industry

inventory cost and assumptions have not changed and are summarized in Table 2.

TABLE 2

| Annual Enhanced Weapons Costs | |
|---|------------|
| Monthly and semi-annual automatic weapon inventories cost per site | \$5,600 |
| Total enhanced weapons implementation cost for the industry | 460,000 |
| Total enhanced weapons implementation cost for the industry with a 7 percent discount rate over remaining lifetime | 6,100,000 |
| Total enhanced weapons implementation cost for the industry with a 3 percent discount rate over remaining lifetime | 11,200,000 |
| Annual Firearms Background Checks Costs | |
| Annual mandatory firearms background checks per site | 3,800 |
| Total program cost for mandatory firearms background checks to industry with a 7 percent discount rate over remaining life-time | 3,401,000 |
| Total program cost for mandatory firearms background checks to industry with a 3 percent discount rate over remaining life-time | 6,468,000 |

With respect to the security event notification reporting requirements, cyber and physical intrusions, suspicious activity reports, unauthorized operation or tampering events, reporting enhanced weapons being lost or stolen or adverse ATF findings, and the impact of events requiring entry in the safeguards event log the addition of at-reactor facilities will not have an impact on this analysis.

The total industry operating costs are the sum of the recurring inventory requirements (\$6.1 million given the 7

percent real discount rate and \$11.2 million with the 3 percent rate), the background checks (\$3.7 million at 7 percent and \$6.5 million at 3 percent), and the security event notification reports (\$15.1 million using the 7 percent rate and \$28.6 million with the 3 percent rate). This total is estimated to range from \$24.9 million (7 percent) to \$46.3 million (3 percent rate) which is unchanged from the February 2011 proposed rule.

- *NRC Implementation*—The NRC's implementation costs include the labor

cost for the development of the final rule and the supporting regulatory guidance (two regulatory guides and the weapons safety assessment). The NRC would also need to develop appropriate inspection procedures to confirm compliance with this rule. As with the cost associated with the industry implementation, the addition of the at-reactor facilities will not increase the labor cost to the NRC beyond what was outlined in the February 2011 proposed rule. The NRC's implementation costs are summarized in Table 3.

TABLE 3

| NRC Implementation Costs | |
|---|-----------|
| Develop final rule, final regulatory guidance, and inspection procedures | \$280,000 |
| NRC review of each licensee's and certificate holder's security plan, training and qualification plan, contingency response plan, weapons safety assessment, and one round of Requests for Additional Information questions | 3,280,000 |
| Total NRC Implementation Costs | 3,600,000 |

- *NRC Operation*—The NRC would need to inspect the licensees' and certificate holders' periodic inventories, recordkeeping, and training and

qualification of enhanced weapons as a result of this rule. The addition of the at-reactor facilities will not increase the operational cost to the NRC beyond

what was assumed in the February 2011 proposed rule. The NRC's operational costs are summarized in Table 4.

TABLE 4

| NRC Inventory Inspection Costs | |
|--|-----------|
| 1st year of NRC inspections of licensee's and certificate holder's automatic weapon inventories | \$131,200 |
| Annual NRC inspections of licensee's and certificate holder's automatic weapon inventories after 1st year | 65,600 |
| Total NRC costs for inspections of licensee's and certificate holder's automatic weapon inventories of the industry with a 7 percent discount rate over remaining lifetime | 934,000 |
| Total NRC costs for inspections of licensee's and certificate holder's automatic weapon inventories of the industry with a 3 percent discount rate over remaining lifetime | 1,665,000 |
| NRC Records Inspection Costs | |
| 1st year of NRC record inspections of licensee's and certificate holder's background checks | 131,200 |
| Annual NRC record inspections of licensee's and certificate holder's background checks after 1st year | 65,600 |

TABLE 4—Continued

| | |
|--|-----------|
| Total NRC costs for record inspections of licensee's and certificate holder's background checks of the industry with a 7 percent discount rate over remaining lifetime | 934,000 |
| Total NRC costs for record inspections of licensee's and certificate holder's background checks of the industry with a 3 percent discount rate over remaining lifetime | 1,665,000 |
| NRC's total operating costs with a 7 percent discount rate | 1,900,000 |
| NRC's total operating costs with a 3 percent discount rate | 3,300,000 |

• *Regulatory Efficiency*—The proposed action would result in enhanced regulatory efficiency through regulatory and compliance improvements based upon statutory mandates involving the voluntary possession of enhanced weapons and mandatory firearms background checks at power reactor facilities, at-reactor ISFSIs, and Cat. I SSNM facilities. The proposed action would also result in enhanced regulatory efficiency involving the NRC's ability to monitor ongoing security events at a range of licensed facilities, and the ability to rapidly communicate information on security events at such facilities to other NRC-regulated facilities and other government agencies, as necessary.

• *Public Health (Accident)*—The proposed action could reduce the risk that public health will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.

• *Occupational Health (Accident)*—The proposed action could reduce the risk that occupational health will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.

• *Off-Site Property*—The proposed action could reduce the risk that off-site property will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.

• *On-Site Property*—The proposed action could reduce the risk that on-site property will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.

• *Other Government Agencies*—The FBI would be affected by this rule because of its role in processing the mandatory fingerprint checks and firearms background checks the statute requires. The ATF would be affected by this rule because of its involvement with the approval to transfer enhanced weapons to and from an authorized NRC licensee or certificate holder. Note: The FBI's fees for fingerprinting checks are incorporated within the NRC's fee previously discussed. The FBI does not charge a fee for processing firearms

background checks. Also, as previously noted in the February 2011 proposed rule, the ATF taxes to transfer enhanced weapons are not included in this analysis.

Attributes that are *not* expected to be affected under any of the rulemaking options include the following: occupational health (routine); public health (routine); environmental considerations; general public; improvements in knowledge; and antitrust considerations.

4. Presentation of Results

Section 161A of the AEA requires several modifications to 10 CFR part 73. The pertinent sections and appendices which are being revised in this supplemental proposed rule are §§ 73.2, "Definitions," 73.18, "Authorization for use of enhanced weapons and preemption of firearms laws," 73.19, "Firearms background checks for armed security personnel," and 73.51, "Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste."

The fundamental incentive for a licensee or certificate holder to choose to obtain enhanced weapons is to increase their defensive capabilities to provide high assurance that public health and safety and the common defense and security will be adequately protected from any attempts at radiological sabotage. A licensee's or certificate holder's decision to apply for enhanced weapons authority is voluntary. They must evaluate for their specific site whether the costs and benefits of using enhanced weapons are appropriate in general; and if appropriate in general, which specific types of weapons are appropriate for their particular site and protective strategy. The firearms background checks will provide assurance that security personnel possessing enhanced weapons are not barred under Federal and State law from receiving, possessing, transporting, or using any covered weapons and ammunition. The NRC staff notes that while licensees and certificate holders would be required to pay an excise tax when transferring enhanced weapons, the tax is not

considered a cost of this proposed rule because it is a result of ATF regulations.

The total industry enhanced weapons implementation costs is \$13,940,000. The total enhanced weapons mandatory background checks program costs to the industry is \$2,190,000, and the total first-time background checks for the industry is \$849,000. The sum of the total industry implementation cost is \$17.0 million. The industry operating costs for this supplemental proposed rule when discounted as flows of funds and based on the assumed lengths of lives of the various facilities ranged from \$9.5 million to \$17.7 million, given the 7 percent and 3 percent real discount rates, respectively.

The total costs to industry, including both implementation and operating expenses for this supplemental proposed rule are estimated to range from \$26.5 million to \$34.7 million, again given the 7 percent and 3 percent real discount rates, respectively.

The NRC's implementation costs are almost \$3.6 million. The recurring or annual costs are calculated to have a present value of \$1.9 million (7 percent rate) to \$3.3 million (3 percent rate). Therefore, the total estimated NRC costs range from about \$5.5 million (7 percent rate) to \$6.9 million (3 percent rate).

The total quantitative costs estimates for this supplemental proposed rulemaking are estimated to be from \$32.0 million (7 percent) to \$41.6 million (3 percent).

• Disaggregation

In order to comply with the guidance provided in Section 4.3.2 (Criteria for the Treatment of Individual Requirements) of the NRC's Regulatory Analysis Guidelines, the NRC conducted a screening review to ensure that the aggregate analysis does not mask the inclusion of individual rule provisions that are not cost-beneficial when considered individually and not necessary to meet the goals of the rulemaking. Consistent with the Regulatory Analysis Guidelines, the NRC evaluated, on a disaggregated basis, each new regulatory provision expected to result in incremental costs. Given that the NRC is required to comply with Section 161A of the AEA, the NRC

believes that each of these provisions is necessary and cost-justified based on its resulting qualitative benefits, as previously discussed.

5. Decision Rationale

Relative to the "no-action" alternative, the supplemental proposed rule would cost the industry from around \$26.5 million to \$34.7 million over the average lifetime of the plants. The total NRC costs would range from \$5.5 million to slightly under \$7 million. Total costs of the supplemental proposed rule are estimated to range from around \$32 million to \$42 million. The requirements in this supplemental proposed rule are the result of the new Section 161A of the AEA. The NRC concluded that for all of these requirements, and their corresponding costs, the proposed approach is appropriate.

Although the NRC did not quantify the benefits of this rule, the staff did qualitatively examine benefits and concluded that the rule would provide safety and security-related benefits. Offsetting this net cost, the NRC believes that the rule would result in substantial non-quantified benefits related to safety and security, as well as enhanced regulatory efficiency and effectiveness. Therefore, the NRC believes that the rule is cost-justified for several qualitative reasons. First, the supplemental proposed rule would provide increased defensive capability of licensees and certificate holders and thus would increase the assurance that a licensee can adequately protect an at-reactor ISFSI facility against an external assault. Second, the supplemental proposed rule would provide a mechanism to accomplish a statutory mandate to verify that security officers protecting such facilities are not disqualified under Federal or State law from possessing or using firearms and ammunition. Lastly, as previously indicated, application for enhanced weapons authority and preemption authority under Section 161A is voluntary.

Based on the NRC's assessment of the costs and benefits of the supplemental proposed rule on licensee and certificate holder facilities, the agency has concluded that the supplemental proposed rule provisions would be justified.

6. Implementation

The final rule is to take effect 60 days after publication in the FR. A compliance date of 180 days after publication of the final rule will also be established for some provisions of this rule. The NRC staff does not expect this

rule to have any impact on other requirements.

XIV. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. With respect to the enhanced weapons and firearms background check provisions, this supplemental proposed rule affects only the licensing and operation of nuclear power reactors, at-reactor ISFSIs, and fuel cycle facilities authorized to possess and use Category I quantities of SSNM. The companies that own or operate these facilities or conduct these activities do not fall within the scope of the definition of "small entities" presented in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XV. Backfitting and Issue Finality

The NRC evaluated the aggregated set of requirements in this supplemental proposed rule that constitute backfitting in accordance with 10 CFR 50.109, 70.76, 72.62, and the finality provisions in 10 CFR part 52. The NRC's evaluation of changes in accordance with 10 CFR 10.109, 70.76, and the finality provisions in 10 CFR part 52 is described in the draft regulatory analysis on the proposed rule published on February 3, 2011. The Availability information for the draft regulatory (and backfit) analysis is provided in Section VIII, "Availability of Documents," of this document. This analysis examined the costs and benefits of the alternatives considered by the NRC. The regulations in 10 CFR 72.62 pertain to changes in requirements for ISFSI facilities, which is the subject of the supplemental proposed rule. However, the supplemental proposed rule will not change the requirements from the proposed rule; it simply applies the proposed requirements to an additional class of facilities. Therefore the evaluation of changes presented in the proposed rule from February 2011 also applies to this supplemental proposed rule and the evaluation is in accordance with 10 CFR 72.62.

The provisions of this supplemental proposed rule do not constitute backfitting because they are voluntary in nature, and would therefore not impose modifications or additions to existing structures, components, or designs, or existing procedures or organizations. These provisions include those related to application for the use of enhanced weapons and/or preemption authority. Other provisions of the rule

implementing Section 161A of the AEA, such as the mandatory firearms background checks, are not backfits because they implement mandatory provisions required by statute.

To the extent that some of the specific implementing details of the firearms background checks described in this proposed rule 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.

Therefore, for the reasons previously stated, a backfit analysis is not required and has not been completed for any of the provisions of this supplemental proposed rule.

List of Subjects in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the AEA, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC proposes to amend 10 CFR part 73 and proposes to further amend 10 CFR part 73, as proposed to be amended at 76 FR 6200, February 3, 2011, as follows:

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

- 1. The authority citation for part 73 continues to read as follows:

Authority: Atomic Energy Act sections 53, 147, 161, 223, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2273, 2282, 2297(f), 2210(e)); Energy Reorganization Act sections 201, 204 (42 U.S.C. 5841, 5844); Government Paperwork Elimination Act section 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Section 73.1 also issued under Nuclear Waste Policy Act sections 135, 141 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

- 2. In § 73.2, paragraph (a), a definition for "At-reactor independent spent fuel storage installation" is added in alphabetical order to read as follows:

§ 73.2 Definitions.

* * * * *
(a) * * *

At-reactor independent spent fuel storage installation or *at-reactor ISFSI* means an ISFSI whose physical security program is conducted as a support activity of the co-located power reactor facility licensed under parts 50 or 52 of this chapter.

* * * * *

■ 3. In § 73.18, paragraph (c), as proposed to be added at 76 FR 6233, February 3, 2011, is revised to read as follows:

§ 73.18 Authorization for use of enhanced weapons and preemption of firearms laws.

* * * * *

(c) *Applicability.* (1) Stand-alone preemption authority. The following classes of facilities, radioactive material, or other property are designated by the Commission pursuant to 42 U.S.C. 2201a—

(i) Power reactor facilities;
(ii) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level less than or equal to 1 Gray (Gy) (100 Rad) per hour at a distance of 1 meter (m) (3.3 feet [ft]), without regard to any intervening shielding; and

(iii) At-reactor independent spent fuel storage installations.

(2) Combined enhanced-weapons authority and preemption authority. The following classes of facilities, radioactive material, or other property are designated by the Commission under 42 U.S.C. 2201a—

(i) Power reactor facilities;
(ii) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level less than or equal to 1 Gy (100 Rad) per hour at a distance of 1 m (3.3 ft), without regard to any intervening shielding; and

(iii) At-reactor independent spent fuel storage installations.

* * * * *

■ 4. In § 73.19, paragraph (c), as proposed to be added at 76 FR 6237, February 3, 2011, is revised to read as follows:

§ 73.19 Firearms background checks for armed security personnel.

* * * * *

(c) *Applicability.* For the purposes of firearms background checks, the following classes of facilities, radioactive material, or other property are designated by the Commission at 42 U.S.C. 2201a—

(1) Power reactor facilities;
(2) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level less

than or equal to 1 Gray (100 Rad) per hour at a distance of 1 meter (3.3 feet), without regard to any intervening shielding; and

(3) At-reactor independent spent fuel storage installations.

* * * * *

■ 5. In § 73.51, paragraph (b)(4) is added to read as follows:

§ 73.51 Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

* * * * *

(b) * * *

(4)(i) The licensee shall ensure that the firearms background check requirements of § 73.19 of this part are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons.

(ii) For licensees who are issued a license after [effective date of final rule], the licensee shall ensure that the firearms background check requirements of § 73.19 of this part are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons. Additionally and notwithstanding the implementation schedule provisions of § 73.19(b), such licensees shall ensure that the firearms background check requirements of § 73.19 are satisfactorily completed within 180 days of the issuance of the license, or within 180 days of the implementation of a protective strategy that uses covered weapons, whichever is later.

(iii) The provisions of this paragraph are only applicable to licensees subject to this section who store spent nuclear fuel in an at-reactor ISFSI.

* * * * *

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 7th day of December, 2012.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2013-00237 Filed 1-9-13; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2012-1305; Directorate Identifier 2010-SW-041-AD]

RIN 2120-AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Eurocopter Deutschland GmbH (Eurocopter) Model BO-105A, BO-105C, BO-105S, BO-105LS A-1, BO-105LS A-3, EC135 P1, EC135 P2, EC135 P2+, EC135 T1, EC135 T2, EC135 T2+, MBB-BK 117 A-1, MBB-BK 117 A-3, MBB-BK 117 A-4, MBB-BK 117 B-1, MBB-BK 117 B-2, MBB-BK 117 C-1, and MBB-BK 117 C-2 helicopters with certain part-numbered cantilever assemblies, cyclic stick locking devices, or cyclic stick holder assemblies installed. This proposed AD would require modifying and identifying the cyclic stick cantilever or lock. This proposed AD is prompted by pilots inadvertently taking off with the cyclic locked. The proposed actions are intended to prevent a pilot taking off with the cyclic in the locked position, which could result in loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by March 11, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.

- *Fax:* 202-493-2251.

- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to the "Mail" address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD