



# DRAFT REGULATORY GUIDE

Technical Lead  
Philip Brochman

## DRAFT REGULATORY GUIDE DG-5020, Revision 1

*(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

##### Purpose

This regulatory guide (RG) describes methods that the staff of the U.S. Nuclear Regulatory Commission (NRC) considers acceptable for licensees and certificate holders to comply with NRC regulations for implementing the provisions of Section 161A, “Use of Firearms by Security Personnel,” of the Atomic Energy Act (AEA) of 1954, as amended (Ref. 1), as implemented by Title 10 of the *Code of Federal Regulations*, Part 73, (10 CFR Part 73), “Physical Protection of Plants and Materials” (Ref. 2), specifically 10 CFR 73.18, “Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws,” and 10 CFR 73.19, “Firearms Background Checks for Armed Security Personnel.”

Section 161A of the AEA confers upon the Commission the authority to permit the security personnel of designated NRC-licensed facilities or certificate holders, to transfer, receive, possess, transport, import, and use firearms and devices that were not previously permitted to be owned or possessed under Commission authority, notwithstanding certain local, state, or federal firearms laws, including regulations that prohibit such actions. The categories and types of firearms, ammunition, and devices that are subject to Section 161A are identified in Section 161A(b). In addition, Section 161A mandates that each security officer who falls within the designated classes of facilities, radioactive material, and other property, complete a satisfactory fingerprint-based firearms background check by the U.S. Attorney General (AG) for licensees and certificate holders if the licensee or certificate holder has applied to the NRC for Section 161A authority. Firearms background checks are required for such licensees and certificate holders where the security officer’s official duties require access to any covered weapon.

---

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 and its associated regulatory analysis. Comments should be accompanied by appropriate supporting data. Comments may be submitted through the Federal-rulemaking Web site, <http://www.regulations.gov>, by searching for Docket ID NRC-2011-0015. Alternatively, comments may be submitted to the Rules, Announcements, and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Comments must be submitted by the date indicated in the *Federal Register* notice.

Electronic copies of this draft regulatory guide, previous versions of this guide, and other recently issued guides are available through the NRC’s public Web site under the Regulatory Guides document collection of the NRC Library at <http://www.nrc.gov/reading-rm/doc-collections/reg-guides/>. The draft regulatory guide is also available through the NRC’s Agencywide Documents Access and Management System (ADAMS) at <http://www.nrc.gov/reading-rm/adams.html>, under Accession No. ML14322A847. The regulatory analysis may be found in ADAMS under Accession No. ML15007A248.

---

## Applicable Regulations

- Section 161A of the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2201a) provides the statutory authority for the NRC to develop regulations implementing the Commission’s ability to approve applications for combined enhanced weapons authority and preemption authority or stand-alone preemption authority.
- 18 U.S.C. Chapter 44, “Firearms,” (Ref. 3), describes the rights, duties, and requirements for individuals requesting authorization to purchase and transfer firearms.
- 26 U.S.C. Chapter 53, “Machine Guns, Destructive Devices, and Certain Other Firearms,” contains the National Firearms Act. (Ref. 4)
- Title 10 of the *Code of Federal Regulations*, Part 73, “Physical Protection of Plants and Materials,” contains the security regulations for nuclear material.
  - (i) Section 73.18, “Authorization for use of enhanced weapons and preemption of firearms laws,” designates the classes of facilities, radioactive material, and other property to which stand-alone preemption authority and combined enhanced weapons authority and preemption authority apply; and provides requirements for obtaining, possessing, and terminating both stand-alone preemption authority and combined enhanced weapons authority and preemption authority.
  - (ii) Section 73.19, “Firearms background checks for armed security personnel,” requires the completion of a satisfactory firearms background check for all security personnel whose official duties require access to covered weapons, which includes enhanced weapons, for licensees and certificate holders who apply for combined enhanced weapons authority and preemption authority or stand-alone preemption authority.
  - (iii) Section 73.21, “Protection of Safeguards Information: Performance requirements,” requires the marking, storage, handling, and transmission of Safeguards Information. Portions of certain licensees’ applications for enhanced weapons authority are expected to contain Safeguards Information.
- 10 CFR Part 95, “Facility Security Clearance and Safeguarding of National Security Information and Restricted Data,” (Ref. 5), contains the regulations for obtaining a facility security clearance and safeguarding Secret and Confidential National Security Information and Restricted Data. **Note:** Portions of certain licensees’ applications for enhanced weapons authority are expected to contain classified information.
- 27 CFR Part 479, “Machine Guns, Destructive Devices, and Certain Other Firearms,” (Ref. 6) contains the ATF regulations for the transfer, registration, notification, and inspector-access requirements under the National Firearms Act (26 U.S.C. Chapter 53).

## Related Guidance

- NRC, “Revision of Guidelines on Use of Firearms by Security Personnel,” 79 FR 36100, published June 25, 2014 (Ref. 7) provides direction for implementing the authority in Section 161A.

- Regulatory Guide (RG) 5.62, “Reporting and Recording of Safeguards Events,” (Ref. 8), contains NRC guidance on such notifications, including notification of lost or stolen enhanced weapons.

### **Purpose of Regulatory Guides**

The NRC issues RGs 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 applicants. Regulatory guides are not substitutes for regulations and compliance with them is not required. Methods and solutions that differ from those set forth in RGs will be deemed acceptable if they provide a basis for the findings required for the issuance or continuance of a permit or license by the NRC.

### **Paperwork Reduction Act**

This RG contains information collections that are covered by 10 CFR Part 73 and NRC Form 754, “Armed Security Personnel Background Check” (Ref. 9) under Office of Management and Budget (OMB) control numbers 3150-0002 and 3150-0204, respectively. However, the OMB has not approved these revised or new information collections. They will be approved by OMB before the NRC issues the final rule and 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 RG is not a major rule as designated by the Congressional Review Act and has verified this determination with the OMB.

## TABLE OF CONTENTS

<b>A. INTRODUCTION</b> .....	<b>1</b>
<b>Purpose</b> .....	<b>1</b>
<b>Applicable Statutes and Regulations</b> .....	<b>2</b>
<b>Related Guidance</b> .....	<b>2</b>
<b>B. DISCUSSION</b> .....	<b>7</b>
<b>Reason for Issuance</b> .....	<b>7</b>
<b>Background</b> .....	<b>7</b>
<b>C. STAFF REGULATORY GUIDANCE</b> .....	<b>9</b>
<b>1. Applicability</b> .....	<b>9</b>
1.1.1 Facilities - Stand-alone Preemption Authority.....	10
1.1.2 Facilities – Combined Enhanced Weapons Authority and Preemption Authority .....	10
1.2 Radioactive Material – Both Stand-alone Preemption Authority and Combined Enhanced Weapons Authority and Preemption Authority .....	11
1.3 Other Property – Both Stand-alone Preemption Authority and Combined Enhanced Weapons Authority and Preemption Authority .....	11
1.4 Firearms Background Checks for Armed Security Personnel .....	11
1.5 Authorized Covered Weapons (Firearms, Ammunition, and Devices) .....	12
1.6 Unauthorized Weapons, Ammunition, and Devices.....	12
<b>2. Other Applicable Federal Firearms Laws, Regulations, and Licensing Requirements</b> .....	<b>13</b>
2.1 National Firearms Act Requirements.....	13
2.2 Gun Control Act Requirements .....	13
2.3 Licensee and Certificate Holder Restrictions on Issuing Covered Weapons.....	13
2.4 Specific State Restrictions on Possessing Covered Weapons.....	14
<b>3. General Requirements for Section 161A Authority</b> .....	<b>15</b>
<b>4. Authorization for Stand-alone Preemption Authority</b> .....	<b>16</b>
4.1 Applying for Stand-alone Preemption Authority .....	16
4.2 NRC Approval of Stand-alone Preemption Authority.....	17
<b>5. Authorization for Combined Enhanced Weapons Authority and Preemption Authority</b> ....	<b>18</b>
5.1 Applying for Combined Enhanced Weapons Authority and Preemption Authority .....	18
5.2 NRC Approval of Combined Enhanced Weapons Authority and Preemption Authority.....	20
5.3 Applying for Different Quantities, Types, or Calibers of Enhanced Weapons .....	20
<b>6. Additional Technical Information for Applications to Obtain Combined Enhanced Weapons Authority and Preemption Authority</b> .....	<b>21</b>
6.1 Physical Security Plans .....	21
6.2 Training and Qualification Plans .....	21
6.3 Safeguards Contingency Plans.....	22
6.4 Weapons Safety Assessment.....	22
<b>7. Specific Conditions Required to Possess Enhanced Weapons</b> .....	<b>23</b>
7.1 Documentation for FFL Holders.....	24
7.2 Registration of Enhanced Weapons .....	24
7.3 National Firearms Act Tax Stamps.....	24
<b>8. Completion of Training and Qualification before Use of Enhanced Weapons</b> .....	<b>24</b>
8.1 Initial Training and Qualification .....	24
8.2 Recurring Training and Qualification .....	25
8.3 Training on the Use of Enhanced Weapons.....	25
<b>9. Notification of Adverse ATF Inspection Findings</b> .....	<b>25</b>
<b>10. Transfer of Enhanced Weapons</b> .....	<b>26</b>

10.1	Entities Authorized to Receive Enhanced Weapons.....	26
10.2	Control of Enhanced Weapons During Their Offsite Movement .....	26
10.3	Recordkeeping .....	26
10.4	ATF Prior Approval Required for Transfers of Enhanced Weapons.....	26
10.5	Removal of Enhanced Weapons for Repair or Maintenance .....	27
10.6	Enhanced Weapons Issuance versus Transfer .....	27
10.7	Permissible Reasons for Removing Enhanced Weapons from an Authorized Facility ...	28
10.8	Removal of Enhanced Weapons Due to Change in Protective Strategy.....	28
<b>11.</b>	<b>Transportation of Enhanced Weapons .....</b>	<b>29</b>
<b>12.</b>	<b>Periodic Accountability Inventories of Enhanced Weapons.....</b>	<b>30</b>
12.1	General Requirements for Inventories .....	30
12.2	Simplified Monthly Inventories of Enhanced Weapons .....	30
12.3	Detailed Semiannual Inventories of Enhanced Weapons .....	31
12.4	Discrepancies in Inventories of Enhanced Weapons .....	31
12.5	Notifications for Lost or Stolen Enhanced Weapons.....	31
<b>13.</b>	<b>Recordkeeping for Enhanced Weapons.....</b>	<b>32</b>
13.1	Receipt of Enhanced Weapons .....	32
13.2	Transfer of Enhanced Weapons .....	32
13.3	Transportation of Enhanced Weapons.....	33
13.4	Stolen or Lost Enhanced Weapons .....	33
13.5	Results of Inventories of Enhanced Weapons.....	33
13.6	Records Retention.....	33
<b>14.</b>	<b>Termination, Modification, Suspension, Revocation, and Reapplication of Section 161A Authority.....</b>	<b>33</b>
14.1	Termination and Modification .....	34
14.2	Suspension and Revocation .....	34
14.3	Reapplication for Section 161A Authority .....	35
<b>15.</b>	<b>Firearms Background Check for Armed Security Personnel.....</b>	<b>35</b>
15.1	General Requirements for Fingerprints and Firearms Background Checks .....	35
15.2	Firearms Background Check Submittals .....	39
15.3	Periodic Firearms Background Check Submittals .....	40
15.4	Break in Service Firearms Background Checks .....	40
15.5	Notification of the Removal of a Security Officer.....	41
15.6	Security Personnel Responsibilities .....	42
15.7	Training Security Personnel on Disqualifying Events and Appealing Adverse Firearms Background Checks .....	42
15.8	Submission of Fingerprint Cards .....	42
15.9	Fees for Firearms Background Checks and Fingerprinting .....	43
15.10	NRC Processing of the NICS Portion of the Firearms Background Check.....	44
15.11	Appeals and Resolution of Erroneous System Information.....	44
15.12	Untimely Appeals .....	46
15.13	Protection of Information in Firearms Background Checks .....	46
<b>16.</b>	<b>Sunsetting of Section 161A Orders.....</b>	<b>47</b>
<b>16.1</b>	<b>General Provisions on the Sunsetting of Section 161A Orders.....</b>	<b>47</b>
16.1	Updating of Procedures, Instructions, and Training Material.....	47
16.2	Notification of Completion of Transition Actions .....	48
<b>D.</b>	<b>IMPLEMENTATION .....</b>	<b>49</b>
<b>GLOSSARY</b>	<b>.....</b>	<b>51</b>

**REFERENCES..... 53**

## B. DISCUSSION

### Reason for Issuance

The terrorist attacks of September 11, 2001, demonstrated the determination and capabilities of adversaries to accomplish malevolent operations against multiple targets within the United States. On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (EPAAct 2005) (Ref. 10). Section 653 of the EPAAct 2005 amended the AEA by adding new Section 161A. Section 161A provides authority to the NRC to enhance security for certain NRC-regulated facilities and activities by allowing the security personnel of designated NRC licensees and certificate holders to possess and use certain types of firearms, ammunition, and ammunition feeding devices notwithstanding any State, local, and certain Federal laws (including regulations) that would prohibit such possession and use by these security personnel.

This RG is being issued to provide licensees and certificate holders with one method of demonstrating compliance with new regulations in 10 CFR Part 73 on applying for, possessing, and terminating “combined enhanced weapons authority and preemption authority” or “stand-alone preemption authority”; and with conducting firearms background checks of armed security personnel.

### Background

The NRC staff worked closely with staff from the U.S. Department of Justice (DOJ), including the Federal Bureau of Investigation (FBI) and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), to develop the Firearms Guidelines which provide requirements and implementing instructions for the authority provided to the Commission by Section 161A of the AEA. The NRC issued the Firearms Guidelines with the approval of the AG as required by Section 161A.d, and published them in the *Federal Register* on September 11, 2009 (74 FR 46800) (Ref. 11). The NRC also issued, “Revision of Guidelines on Use of Firearms by Security Personnel,” Revision 1 to the Firearms Guidelines, with the approval of the AG and published them in the *Federal Register* on June 25, 2014 (79 FR 36100). The Firearms Guidelines provide direction on implementing the authority in Section 161A. The NRC regulations in 10 CFR 73.2, 10 CFR 73.18, and 10 CFR 73.19 are consistent with the NRC Firearms Guidelines.

The NRC has split this authority into two components under 10 CFR 73.18 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 these designated classes may apply to the NRC for the applicable authority.

Application for either authority under Section 161A is voluntary and the decision to apply for this authority rests solely with the licensee or certificate holder. Licensees and certificate holders who do not seek to possess enhanced weapons may apply only for stand-alone preemption authority. However, licensees and certificate holders who wish to possess enhanced weapons must first, or concurrently, receive stand-alone preemption authority before receiving combined enhanced weapons authority and preemption authority. Additionally, 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.

In 10 CFR 73.18(c) the Commission has designated classes of facilities and activities that are eligible to apply to the NRC for combined enhanced weapons authority and preemption authority or for stand-alone preemption authority. This includes entities issued a license under 10 CFR Parts 50, 52, 70, and 72 and entities issued a Certificate of Compliance (CoC) under 10 CFR Part 76.

Applicants for a license or a CoC, who fall within the designated classes of facilities and activities under 10 CFR 73.18, may apply to the NRC for combined enhanced weapons authority and preemption authority or for stand-alone preemption authority. The NRC may not take action on an application for Section 161A authority until the NRC has approved the issuance of a license under 10 CFR Parts 50, 52, 70, and 72 or a CoC under Part 76. Therefore, to simplify the language of this RG, the use of the term “licensees” in this RG refers to both licensees and applicants for a license and the term “certificate holder” refers to both certificate holders and applicants for a CoC.

The NRC staff anticipates that licensees and certificate holders could use enhanced weapons to increase their defensive capability to protect their facility or activity from violent attacks. Licensees and certificate holders who consider applying for enhanced weapons should evaluate and identify site specific conditions that may affect the implementation of these weapons to ensure that these weapons will not have a negative impact on their physical protection program, protective strategy, or overall safety.

In 10 CFR 73.19 the NRC requires the completion of a satisfactory firearms background check for all security personnel whose official duties require access to covered weapons, which includes enhanced weapons, by licensees and certificate holders who apply for combined enhanced weapons authority and preemption authority or stand-alone preemption authority. Firearms background checks are not required for licensees and certificate holders that fall within these designated classes if they do not apply for combined enhanced weapons authority and preemption authority or stand-alone preemption authority.

A firearms background check consists of a fingerprint-based background check by the AG 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).

The activities, considerations, and guidance included in the staff regulatory guidance listed below are intended to assist licensees, certificate holders, and their security personnel in understanding their responsibilities in implementing 10 CFR 73.18 and 10 CFR 73.19. These include:

- understanding the process for applying to the NRC to obtain stand-alone preemption authority or combined enhanced weapons authority and preemption authority;
- understanding their responsibilities and obligations regarding stand-alone preemption authority, combined enhanced weapon authority and preemption authority, and any enhanced weapons they subsequently obtain;
- understanding the requirements of the firearms background checks;
- understanding the training requirements for security personnel on Federal disqualifying status conditions or events and on applicable State disqualifying status conditions or events;



- understanding the ongoing obligation of security personnel subject to a firearms background check to notify their licensee's or certificate holder's security management of the occurrence of such a disqualifying status condition or event; and
- understanding the process for security personnel to appeal adverse firearms background check results.

### **Harmonization with International Standards**

The NRC staff reviewed guidance from the International Atomic Energy Agency (IAEA), International Organization for Standardization (ISO), and International Electrotechnical Commission (IEC) and did not identify any standards that provided useful guidance to NRC staff, applicants, or licensees.

### **Documents Discussed in Staff Regulatory Guidance**

This regulatory guide endorses, in part, the use of one or more codes or standards developed by external organizations, and other third party guidance documents. These codes, standards and third party guidance documents may contain references to other codes, standards or third party guidance documents ("secondary references"). If a secondary reference has itself been incorporated by reference into NRC regulations as a requirement, then licensees and applicants must comply with that standard as set forth in the regulation. If the secondary reference has been endorsed in a regulatory guide as an acceptable approach for meeting an NRC requirement, then the standard constitutes a method acceptable to the NRC staff for meeting that regulatory requirement as described in the specific regulatory guide. If the secondary reference has neither been incorporated by reference into NRC regulations nor endorsed in a regulatory guide, then the secondary reference is neither a legally-binding requirement nor a "generic" NRC approved acceptable approach for meeting an NRC requirement. However, licensees and applicants may consider and use the information in the secondary reference, if appropriately justified, consistent with current regulatory practice, and consistent with applicable NRC requirements.

## **C. STAFF REGULATORY GUIDANCE**

### **1. Applicability**

Under the Firearms Guidelines, the Commission must, by rule or order, designate the classes of licensees and certificate holders eligible to apply for "stand-alone preemption authority" or "combined enhanced weapons authority and preemption authority." Commission regulations or orders will designate the specific classes of facilities, radioactive material, or other property owned, operated, or possessed by NRC licensees and certificate holders for which an application to the Commission may be made to use the authority of Section 161A. The NRC's regulations in 10 CFR 73.18(c) set forth the eligible classes of facilities, radioactive material, and other property for which a licensee or certificate holder may apply for Section 161A authority. For those licensees and certificate holders who fall within the NRC-designated classes of facilities, radioactive material, and other property, application for either combined enhanced weapons authority and preemption authority or stand-alone preemption authority is voluntary.

Under the Firearms Guidelines, Section 161A of the AEA authority is split into two categories. While these terms are separate, they are also interrelated. Therefore, to provide clarity, the NRC has used the terminology "stand-alone preemption authority" and "combined enhanced weapons authority and preemption authority." As these terms indicate, preemption authority may be obtained by itself. However,

a licensee or certificate holder seeking to obtain enhanced weapons must obtain “combined enhanced weapons authority and preemption authority.”

A licensee’s or certificate holder’s application for either stand-alone preemption authority or combined enhanced weapons authority and preemption authority is voluntary. Additionally, only licensees and certificate holders who have applied to the NRC for stand-alone preemption authority or combined enhanced weapons authority and preemption authority are required to conduct firearms background check of security personnel whose duties require access to covered weapons.

**Note:** Construction Permit holders under 10 CFR Part 50 and applicants for a license under 10 CFR Part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” (Ref. 12) may not obtain Section 161A authority until after they have received a Part 50 or Part 52 operating license.

The provisions of 10 CFR 73.19 describe the requirements for firearms background checks. Firearms background checks are required for the security personnel of licensees or certificate holders who apply for either of these two authorities; and whose official duties require access to covered weapons.

Licensees, certificate holders, applicants for a license, or applicants for a Certificate of Compliance (CoC), who have not applied for Section 161A authority, are not subject to the requirements of 10 CFR 73.18 and 10 CFR 73.19.

#### 1.1.1 Facilities - Stand-alone Preemption Authority

Under 10 CFR 73.18(c)(1), the NRC has designated the following classes of facilities as eligible to apply for stand-alone preemption authority:

- Power reactor facilities, including both facilities that are operating and facilities that have permanently shut down.
- 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) (3.3 feet [ft.]), without regard to any intervening shielding.
- Specific or generally licensed independent spent fuel storage installations (ISFSI) that are co-located with an operating power reactor facility licensed under parts 50 or 52 of this chapter. An ISFSI co-located at a decommissioned power reactor may not apply for this authority, as the NRC considers it equivalent to an away-from-reactor ISFSI (which are not currently included in 10 CFR 73.18(c)(1)).

The NRC in the future may designate additional applicable classes of facilities as appropriate for stand-alone preemption authority by rulemaking or orders. Any such changes would be added in future revisions of this RG.

#### 1.1.2 Facilities – Combined Enhanced Weapons Authority and Preemption Authority

Under 10 CFR 73.18(c)(2), the NRC has designated the following classes of facilities as eligible to apply for combined enhanced weapons authority and preemption authority:

- Power reactor facilities, including facilities that are operating and facilities that have permanently shut down.
- Facilities authorized to possess or use a formula quantity or greater of 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 (3.3 ft), without regard to any intervening shielding.
- Specific or generally licensed ISFSI that are co-located with an operating power reactor facility licensed under parts 50 or 52 of this chapter. An ISFSI co-located at a decommissioned power plant may not apply for this authority, as the NRC considers it equivalent to an away-from-reactor ISFSI (which are not currently included in 10 CFR 73.18(c)(2)).

The NRC in the future may designate additional applicable classes of facilities as appropriate for combined enhanced weapons authority and preemption authority by rulemaking or orders. Any such changes would be added in future revisions of this RG.

#### 1.2 Radioactive Material – Both Stand-alone Preemption Authority and Combined Enhanced Weapons Authority and Preemption Authority

The NRC in the future may designate certain classes of radioactive material being transported to or from a facility owned or operated by a licensee or certificate holder as appropriate for either combined enhanced weapons authority and preemption authority or stand-alone preemption authority by rulemaking or orders. Any such changes would be added in future revisions of this RG.

#### 1.3 Other Property – Both Stand-alone Preemption Authority and Combined Enhanced Weapons Authority and Preemption Authority

The NRC in the future may designate certain classes of other property being transported to or from a facility owned or operated by a license or certificate holder as appropriate for either combined enhanced weapons authority and preemption authority or stand-alone preemption authority by rulemaking or orders. Any such changes would be added in future revisions of this RG.

#### 1.4 Firearms Background Checks for Armed Security Personnel

Firearms background checks are mandatory only for the security personnel of licensees and certificate holders who (1) fall within these designated classes of facilities, radioactive material, and other property and (2) have applied for Section 161A authority.

##### 1.4.1 Firearms background checks apply to all security personnel who handle, use, repair and/or maintain accountability of covered weapons, including enhanced weapons, in accordance with 10 CFR 73.19(b) and 10 CFR Part 73, Appendix B, section VI.G.3. Specifically, this should include, but is not limited to, the following security personnel:

- individuals who carry covered weapons, including enhanced weapons, (e.g., 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 and maintain accountability covered weapons from a licensee's or certificate holder's weapons storage facilities (e.g., an armory).

- individuals who perform periodic inventories of enhanced weapons.
  - 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, including enhanced weapons).
- 1.4.2 Firearms background checks apply to all such 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.
- 1.4.3 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 or enhanced 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 covered weapons are secured and sealed in a shipping container.

#### 1.5 Authorized Covered Weapons (Firearms, Ammunition, and Devices)

The following types of weapons, ammunition, and devices are included under the term “covered weapons, as authorized under Section 161A.b of the AEA:

- handguns, rifles and shotguns,
- short-barreled shotguns and short-barreled rifles,
- semi-automatic assault weapons and machine guns, and
- ammunition for these firearms and large-capacity ammunition-feeding devices.

Enhanced weapons include machine guns, short-barreled shotguns, and short-barreled rifles. Enhanced weapons are a subset of covered weapons. This definition of “enhanced weapons” is consistent with that in the Firearms Guidelines. **Note:** enhanced weapons are required to be registered and transferred, in accordance with the National Firearms Act and applicable ATF regulations.

#### 1.6 Unauthorized Weapons, Ammunition, and Devices

The following types of weapons, ammunition, and devices are **not** included within the scope of the term “covered weapons” as authorized under Section 161A.b of the AEA:

- rifled weapons with a bore diameter greater than 12.7-millimeter (mm) (0.5-inches (in.)) or .50-caliber (this includes single-shot weapons, semi-automatic weapons, and automatic weapons),
- armor-piercing ammunition restricted under 18 U.S.C. 922, “Unlawful Acts,”

- destructive devices (e.g., hand grenades, explosives, missiles, and mortars), and
- certain flash-bang grenades that are not considered destructive devices as defined in Section 5845 of the National Firearms Act (26 U.S.C. 5845, “Definitions”);

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

### 2.1 National Firearms Act Requirements

In addition to complying with NRC 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. NRC licensees and certificate holders should discuss any questions on these requirements issues with the Federal Firearms License (FFL) holder supplying the enhanced weapons and/or ATF’s National Firearms Act Branch staff in Martinsburg, WV.

### 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 an FFL under the Gun Control Act (18 U.S.C. Chapter 44) or comply with ATF’s FFL regulations under 27 CFR Part 478, “Commerce in Firearms and Ammunition” (Ref. 13). 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 enhanced 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, including those providing for ATF access to facilities and records.

### 2.3 Licensee and Certificate Holder Restrictions on Issuing Covered Weapons

Licensees and certificate holders may not issue covered weapons to security personnel unless the individual has completed a satisfactory Firearms Background Check under 10 CFR 73.19. Moreover, the occurrence of Federal disqualifying status conditions or events, or for the applicable State, State disqualifying status conditions or events is grounds for not issuing covered weapons to security personnel.

- 2.3.1 Consistent with 10 CFR 73.19(b)(9) and (10), security personnel may not be assigned to duties requiring access to covered weapons if the individual has received an “adverse” firearms background check.
- 2.3.2 Consistent with 10 CFR 73.19(h), security personnel assigned to duties requiring access to covered weapons must notify their employing licensee’s or certificate holder’s security management within 72 hours of identification or occurrence of any Federal or State disqualifying status condition or event that would prohibit them from possessing, receiving, or using firearms or ammunition.
- 2.3.3 This notification requirement is applicable to all security personnel assigned duties requiring access to covered weapons, irrespective of whether they are directly employed by the licensee or certificate holder or employed by a contractor providing security services to the licensee or certificate holder.

## 2.4 Specific State Restrictions on Possessing Covered Weapons

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 required by 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). 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.

**Note:** As of the date of this RG, the final version of NRC Form 754 has not been approved by OMB under the provisions of the Paperwork Reduction Act. Therefore, NRC Form 754 has not been placed on the NRC’s Electronic Reading Room Web site for forms. A copy of the proposed NRC Form 754, dated 12-2010 (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.

**Note:** FBI staff have indicated to NRC staff that listing multiple states or Continental United States (CONUS) on NRC Form 754 may increase the length of time required by the FBI to complete a firearms background check. The NRC and FBI will provide additional guidance in the future on conducting firearms background checks for multiple states.

As an example, consider three hypothetical situations regarding firearms background checks. 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 possession of long weapons (e.g., rifles or shotguns). 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 prior misdemeanor drug conviction (i.e., that was not punishable by more than two-years’ State 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 require access to multiple types of covered weapons (i.e., both handguns and rifles); would be denied access to these weapons at an NRC-regulated nuclear facility located in State A. In State B the security officer would be permitted access to rifles for official duty purposes, but not handguns. Consequently, the licensee would have to determine if an individual with a constrained weapon’s access could be used as an armed security personnel. Finally, in State C the individual does not face any restrictions on possessing and using these weapons for official duty purposes.

Similar to the preceding facility example, this same security officer is being considered for assignment to official duties escorting a designated shipment of radioactive material transiting through States A, B, and C. The official duties require access to the same multiple weapons. Consequently, the results are the same. The security officer cannot perform armed escort duties in State A; cannot possess handguns in State B and thus cannot perform armed escort duties; and has no restrictions on escort duties in State C.

Consequently, licensees and certificate holders should consider these location-dependent implications when considering assigning armed security personnel to specific duties or when submitting armed security personnel for firearms background checks.

### 3. General Requirements for Section 161A Authority

An application by a licensee or certificate holder to utilize the authority granted the Commission under Section 161A of the AEA is voluntary either for combined enhanced weapons authority and preemption authority or stand-alone preemption authority. Based on the submitted application, the NRC will determine whether the proposed use of this authority is appropriate. 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.

The term “stand-alone preemption authority” indicates that the licensee or certificate holder is only applying for the ability to possess and use covered weapons, but not to possess and use enhanced weapons. The term “combined enhanced weapons authority and preemption authority” indicates that the licensee is applying for the ability to possess and use any type of covered weapon, including enhanced weapons (see Staff Regulatory Guidance position 1.5 above).

The following hypothetical examples provide clarification on this interrelationship:

- Licensee “A” uses semi-automatic assault weapons and large capacity magazines in its security program. The State in which the licensee located enacts legislation banning the possession of semi-automatic assault weapons and large capacity magazines. The licensee does not want to obtain enhanced weapons. The licensee applies for “stand-alone preemption authority.” If the NRC approves its application, the licensee would be able to possess these covered weapons, (i.e., the semi-automatic assault weapons and large capacity magazines) notwithstanding this State law.
- Licensee “B” uses semi-automatic assault weapons and large capacity magazines in its security program. The licensee wants to obtain enhanced weapons (e.g., machine guns) to increase its defensive firepower. The State in which the licensee is located does not have any restrictions on semi-automatic assault weapons and large capacity magazines. Therefore, they are not considered covered weapons. However, the licensee is prohibited under State and Federal law from obtaining machine guns. The licensee applies for “combined enhanced weapons authority and preemption authority.” If the NRC approves its application, the licensee would be able to possess these machine guns; and would be able to apply to ATF to have the machine guns transferred to it. In this example, only the machine guns are considered covered weapons.
- Licensee “C” uses semi-automatic assault weapons and large capacity magazines in its security program. The State in which the licensee located enacts legislation banning the possession of semi-automatic assault weapons and large capacity magazines. The licensee also wants to obtain enhanced weapons (e.g., machine guns). Under Federal law the licensee is not eligible to obtain machine guns. The licensee applies for “combined enhanced weapons authority and preemption authority.” If the NRC approves its application, the licensee would be able to possess these machine guns; and would be able to apply to ATF to have the machine guns transferred to it. The licensee would also be able to possess the semi-automatic assault weapons and large capacity magazines. In this example, the semi-automatic assault weapons, the large capacity magazines, and the machine guns are all considered covered weapons.

- Licensee “D” uses shotguns and pistols in its security program. The State in which the licensee located enacts legislation which limits the number of pistols that can be purchased in a month; thereby affecting the licensee’s ability to maintain and update its current weapons. The licensee applies for “stand-alone preemption authority.” If the NRC approves its application, the licensee would be able to purchase these covered weapons (i.e., pistols), notwithstanding the State restrictions. Subsequent the licensee decides to replace the shotguns with automatic carbines (i.e., machine guns). Under State and Federal law the licensee is not eligible to obtain machine guns. The licensee now applies for “combined enhanced weapons authority and preemption authority.” If the NRC approves its application, the licensee would be able to possess these machine guns; and would be able to apply to ATF to have the machine guns transferred to it. The licensee would also be able to purchase pistols. In this example, the pistols and the machine guns are both considered covered weapons. In considering the licensee’s application for “combined enhanced weapons authority and preemption authority,” the NRC credits the previous approval of “stand-alone preemption authority” (i.e., the preemption authority component does not need to be repeated).

#### **4. Authorization for Stand-alone Preemption Authority**

The NRC regulations in 10 CFR 73.18(d) set forth the requirements for licensees and certificate holders applying to the NRC to obtain stand-alone preemption authority. Only licensees and certificate holders who fall within the NRC-designated classes of facilities specified in 10 CFR 73.18(c)(1) may apply to the NRC for this authority (see Staff Regulatory Guidance position 1.1.1 above). Applying for this authorization 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 certain weapons that may be prohibited by any 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, or large-capacity ammunition magazines. 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., 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. An application for preemption authority approved by the NRC may be employed by a licensee or certificate holder prospectively, not just retrospectively (i.e., preemption authority may be applied to a State or local law or regulation enacted subsequent to the NRC’s approval of the licensee’s or certificate holder’s application). Furthermore, a licensee or certificate holder, whose application for preemption authority has been approved by the NRC, has discretion to choose to comply with a State or local law or regulation; or to apply preemption authority and not comply.

##### **4.1 Applying for Stand-alone Preemption Authority**

Licensees and certificate holders falling within the classes of facilities, radioactive material, and other property listed in Staff Regulatory Guidance positions 1.1.1 thru 1.3 above, who choose to apply for stand-alone preemption authority must submit an application in writing to the NRC in accordance with 10 CFR 73.4, “Communications.” This application may be mailed, hand delivered, or electronically submitted. The application and supplemental submissions should be in writing, signed under oath or affirmation and follow the guidance below:



- Include a statement indicating that the licensee or certificate holder is applying for stand-alone preemption authority under Section 161A of the AEA.
- Include the name of the licensee or certificate holder and the NRC-designated facility, to be protected by the licensee's or certificate holder's security personnel using the covered weapons. Include the docket number and the license or CoC number.
- Include a description of the licensee's or certificate holder's purposes and objectives in requesting stand-alone preemption 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 requirements. This must address, at a minimum, the following topics as required by 10 CFR 73.18(d)(3):
  - (1) The relevant State, local, and/or Federal prohibitions or restrictions and how they impact the licensee's or certificate holder's security personnel's use of the covered weapons; and
  - (2) Whether these covered weapons are currently employed as part of the licensee's or certificate holder's existing protective strategy or whether these covered weapons will be utilized in a revised protective strategy. Submission of the existing or revised section of the licensee's or certificate holder's physical security or security training plan would be an acceptable means of meeting this requirement.
- A description of the licensee's or certificate holder's Firearms Background Check Plan required by 10 CFR 73.19(b). Submission of this plan would be an acceptable means of meeting this requirement.
- Licensees and certificate holders must supplement their initial application for stand-alone preemption authority with the following additional information in accordance with 10 CFR 73.18(d)(4) before it can be approved:
  - (1) A confirmation that a sufficient number of security personnel have completed a satisfactory firearms background check to meet the licensee's or certificate holder's security-personnel minimum staffing requirements as specified in its physical security plan and any applicable fatigue requirements under 10 CFR Part 26, "Fitness for Duty Programs" (Ref. 14).
  - (2) A confirmation that the necessary training modules and notification procedures have been developed under their Firearms Background Check Plan, and
  - (3) A confirmation that all security personnel whose official duties require access to covered weapons have been trained on these modules and notification procedures.

#### 4.2 NRC Approval of Stand-alone Preemption Authority

The NRC will review the application and supplemental information and 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.

Upon the effective date of the NRC's approval of the licensee's or certificate holder's application for stand-alone preemption authority, the licensee or certificate holder may only assign security personnel who have completed a satisfactory firearms background check to duties requiring access to covered weapons.

If stand-alone preemption authority is granted, the licensee or certificate holder may choose to provide a copy of the NRC's approval letter to any Government entity whose statutory or regulatory authority has been preempted by the Commission's grant of authority under Section 161A of the AEA.

## **5. Authorization for Combined Enhanced Weapons Authority and Preemption Authority**

The NRC regulations in 10 CFR 73.18(b), (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 NRC-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 Staff Regulatory Guidance positions 1.1.2, 1.2, and 1.3 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 any State, local and certain Federal laws (i.e., machine guns, short-barreled shotguns, and short-barreled rifles).

Under 10 CFR 73.18(e) licensees and certificate holders applying for enhanced weapons authority are also required to also apply for and receive NRC approval of preemption authority. Such application may have been previously made to the NRC (i.e., an application for stand-alone preemption authority) or may be contained in a single 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 which apply to "non-enhanced, covered weapons."

If the NRC approves an application for combined enhanced weapons authority and preemption authority, the licensee or certificate holder is required to comply with the conditions set forth in 10 CFR 73.18(g) and (h) (see Staff Regulatory Guidance position 7 below).

The licensee or certificate holder may only begin the firearms background checks of its security personnel after receiving notification from the NRC that the agency has accepted its application for review.

### **5.1 Applying for Combined Enhanced Weapons Authority and Preemption Authority**

5.1.1 Licensees and certificate holders applying for the combined enhanced weapons authority and preemption authority must submit its 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"; 10 CFR 72.56, "Application for amendment of license"; or 10 CFR 76.45, "Application for amendment of certificate," as appropriate.

5.1.2 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. Refer to 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.

5.1.3 The application should be in writing and under oath or affirmation and contain the following information:

- A statement indicating that the licensee or certificate holder is applying for combined enhanced weapons authority and preemption authority under Section 161A of the AEA.
- The docket number and the license or CoC number of the NRC-designated facility to be protected by the licensee's or certificate holder's security personnel using the enhanced weapons.
- Include a description of the licensee's or certificate holder's purposes and objectives in requesting combined enhanced weapons and preemption authority. Examples include 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. This must address, at a minimum, the following topics:
  - (1) The relevant State, local, and/or Federal prohibitions or restrictions and how they impact the licensee's or certificate holder's security personnel's use of covered weapons; and
  - (2) Whether these covered weapons are currently employed as part of the licensee's or certificate holder's existing protective strategy; or whether these covered weapons will be part of a revised protective strategy.
- A description of the licensee's or certificate holder's Firearms Background Check Plan required by 10 CFR 73.19(b).
- The effective date of the NRC's previous approval of preemption authority if the NRC has previously approved the licensee's or certificate holder's application for stand-alone preemption authority. Submission of a copy of the NRC's approval or reference to the approval including the ADAMS accession number will satisfy this requirement.
- 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 submitted for NRC prior review and written approval. These plans and assessments must be specific to the facilities, radioactive material, or other property being protected. Staff Regulatory Guidance position 6 contains additional information on this requirement.

- Except those licensees and certificate holder exempted by 10 CFR 73.18(e)(5)(iv), all other licensees and certificate holders should supplement its application with the following information as required by 10 CFR 73.18(e)(5)(i) – (iii):
  - (1) A confirmation that a sufficient number of security personnel have completed a satisfactory firearms background check to meet the licensee's or certificate holder's security-personnel minimum staffing requirements as specified in its physical security plan and any applicable fatigue requirements under 10 CFR Part 26.
  - (2) A confirmation that the necessary training modules and notification procedures have been developed under their Firearms Background Check Plan, and
  - (3) A confirmation that all security personnel whose official duties require access to covered weapons have been trained on these modules and notification procedures.

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

After the NRC makes a determination on the license or certificate amendment application for combined enhanced weapons authority and preemption authority, the NRC will document in writing to the applying licensee or certificate holder that the agency has approved or disapproved its application.

## 5.3 Applying for Different Quantities, Types, or Calibers of 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 quantities, types, or calibers of enhanced weapons must submit a new application to the NRC under 10 CFR 73.18(e) and (f) to modify its combined enhanced weapons authority and preemption authority application previously approved by the NRC.

The information on the specific quantities, types, and calibers of enhanced weapons (contained in the licensee's or certificate holder's application) are important, as these are the only weapons that ATF will authorize to be transferred to the licensee or certificate holder. Once the NRC approves the new application to obtain the different quantities, types, or calibers of enhanced weapons, the ATF will perform the licensing functions to authorize the transfer of these new enhanced weapons to the licensee or certificate holder,

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). Similarly, 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). Both of these actions are contingent upon the licensee's or certificate holder's total additional enhanced weapons inventory not exceeding the NRC authorized maximum enhanced weapons possession limits as stated in the NRC's approval letter.

## **6. Additional Technical Information for Applications to Obtain Combined Enhanced Weapons Authority and Preemption Authority**

In addition to the requirements discussed above in Staff Regulatory Guidance position 5.1, the NRC regulations in 10 CFR 73.18(f) set forth additional requirements for licensees and certificate holders applying for combined enhanced weapons authority and preemption authority. These include incorporating 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 combined enhanced weapons authority and preemption authority are subject to various regulations in 10 CFR Part 73 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 approved under a licensee or certificate holder's application for enhanced weapons authority (i.e., the weapons safety assessment does not need to include non-enhanced, covered weapons employed by the licensee or certificate holder).

### **6.1 Physical Security Plans**

Under 10 CFR 73.18(f), licensees or certificate holders must submit proposed modifications to their security plans to the NRC for prior review and approval incorporating the use of enhanced weapons as part of the facility's protective strategy. The NRC staff will evaluate the technical acceptability of the proposed use of enhanced weapons at a specific facility or for a specific activity.

The NRC regulations in 10 CFR 50.54(p), 10 CFR 70.32(e), 10 CFR 72.44(e), and 10 CFR 76.60 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..." However, the NRC is required to conduct prior review and approval on combined enhanced weapons authority and preemption authority applications to ensure the specific weapons and their deployment are appropriate to the facility or activity. Consequently, these "no decrease in effectiveness" regulations cannot be used with applications for enhanced weapons (i.e., changes to security plans due to enhanced weapons must be submitted for NRC prior review and approval).

### **6.2 Training and Qualification Plans**

- 6.2.1 For the training and qualification plan, the licensee or certificate holder should address the additional training and qualification requirements needed to use their 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. Consistent with Appendix B of 10 CFR 73, 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.

Under 10 CFR 73.19(b), the licensee or certificate holder is required to establish a Firearms Background Check Plan. The NRC views the Firearms Background Check Plan

as a component of the licensee's or certificate holder's overall Training and Qualification plan for its armed security personnel.

6.2.2 The training modules of the Firearms Background Check Plan should include the following topics:

- Federal disqualifying status conditions or disqualifying 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, receiving, or using any firearms or ammunition;
- Any applicable State disqualifying status conditions or disqualifying events;
- The continuing responsibility of security personnel subject to a firearms background check to promptly notify their employing licensee or certificate holder of the occurrence of any disqualifying status condition or disqualifying event under either Federal or State provisions; and
- The process for appealing to the FBI a "denied" or "delayed" NICS response.

### 6.3 Safeguards Contingency Plans

For the safeguards contingency plan required by 10 CFR Part 73, Appendix C, "Licensee Safeguards Contingency Plans," licensees or certificate holders should address how their security personnel will employ these enhanced weapons, including tactical approaches and maneuvers, to satisfy the NRC protective strategy requirements.

### 6.4 Weapons Safety Assessment

The NRC regulations in 10 CFR 73.18 (f) require licensees and certificate holders to also submit to the NRC for prior review and written approval a weapons safety assessment (WSA) incorporating the use of the specific enhanced weapons the licensee or certificate holder intends to use. These assessments must be specific to the facilities, radioactive material, or other property being protected.

- 6.4.1 For the WSA, the licensees or certificate holders should assess, the potential safety impact from the accidental or deliberate use of the proposed enhanced weapons. The weapons safety assessment guidance was developed by the U.S. Army Corps of Engineers, Protective Design Center (USACE, PDC) under a contract with the NRC and is based upon a model employed by the U.S. Department of Energy's Strategic Petroleum Reserve. The WSA 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. All five volumes will be made available to licensees upon request.
- 6.4.2 To mitigate the risks of armed security officers using enhanced weapons to conduct malevolent acts, the licensee or certificate holder should rely on personnel- and behavioral-monitoring programs (e.g., a fitness for duty program or insider-mitigation program). These programs are required by NRC regulations to significantly reduce the likelihood of security personnel malevolently using their weapons against structures,

systems, and components (SSCs) or against licensee or certificate holder personnel performing critical functions. Therefore, licensees and certificate holders completing a WSA are not required to evaluate the malevolent discharge of enhanced weapons by security personnel against plant personnel or equipment (i.e., an active-violent insider).

The NRC staff has reached this conclusion because a security officer's "inside knowledge" would likely allow them to circumvent any potential mitigation or preventive measures (established in response to the WSA) or that installation of preventive measures would likely impose unacceptable operations, maintenance, radiation protection, or design impacts on the SSCs otherwise being protected.

6.4.3 Licensees and certificate holders should follow the below guidance in developing their WSA. Any required additional safety measures should be reflected in a licensee's or certificate holder's physical security and/or training and qualification plans.

- Assess any potential safety impact on the facility, radioactive material, or other property from the accidental or deliberate use of these enhanced weapons.
- 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.
- 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.

6.4.4 Based on the WSA results, 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 fixed-position 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 the WSA are influenced by the caliber and type of ammunition. Consequently, licensees or certificate holders should repeat this assessment anytime they make changes to the enhanced weapons or selected ammunition.

6.4.5 Finally, the licensee's or certificate holder's firing of larger caliber enhanced weapons or any weapon under conditions in which the maximum ordinate of fire will exceed 45 meters above ground level may create a risk to aircraft, thereby establishing a need to involve the Federal Aviation Administration to determine whether additional aircraft safety restrictions around the facility or training ranges are needed. Any required additional safety measures should be reflected in the licensee's or certificate holder's physical security and/or training and qualification plans.

## **7. Specific Conditions Required to Possess Enhanced Weapons**

The NRC regulations in 10 CFR 73.18(g) set forth specific conditions required of licensees and certificate holders who have been approved for combined enhanced weapons authority and preemption authority.

## 7.1 Documentation for FFL Holders

Licensees and certificate holders should provide a copy of the NRC's authorization approving an application for combined enhanced weapons authority and preemption authority to the ATF 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 quantities, types, and calibers 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 prior approval by ATF of requests to transfer weapons registered under the National Firearms Act (NFA) (i.e., enhanced weapons). The information on the specific quantities, types, and calibers of enhanced weapons the NRC has approved under the licensee's or certificate holder's application is contained in the NRC's approval letter. ATF will rely upon this NRC information in reviewing and approving a transfer request. That is, the licensee or certificate holder will not be able to request the transfer of different types of enhanced weapons, or quantities of enhanced weapons in excess of the maximum specified in the NRC's approval letter.

## 7.2 Registration of Enhanced Weapons

Licensees and certificate holders must register with ATF (i.e., under the licensee's or certificate holder's name) all the enhanced weapons they possess under Section 161A, pursuant to the ATF regulations under 27 CFR Part 479. 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.

## 7.3 National Firearms Act Tax Stamps

Licensees and certificate holders receiving enhanced weapons should also obtain any required NFA tax stamps for the transfer of enhanced weapons registered under the NFA, 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. The licensee shall retain all reports, records, or other documentation required by 10 CFR 73.18 in accordance with the requirements of 10 CFR 72.184, 10 CFR 73.46, and 10 CFR 73.55(q).

## 8.1 Initial Training and Qualification

- 8.1.1 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 in the protection of the facility, radioactive material, or other property.



8.1.2 Licensees and certificate holders should document the completion of their 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

8.2.1 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.

8.2.2 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. Records of security personnel recurring training and qualification with enhanced weapons should be documented consistent with the NRC approved Training and Qualification Plan.

## 8.3 Training on the Use of Enhanced Weapons

As required by NRC regulations in Appendix B to Part 73, "General Criteria for Security Personnel," the licensee's or certificate holder's training and qualification plan should include direction on the "use-of-force," up to and including deadly force, for security personnel whose official duties require the use of covered weapons, including enhanced weapons, to defend the facility, activity, or personnel from malevolent acts. This training should include information on the applicable State restrictions on the use-of-force up to and including deadly force for the location of the facility or activity. The licensee's and certificate holder's plans should address the use of enhanced weapons in the same manner as they address the use of existing non-enhanced 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 Inspection 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."

Licensees and certificate holders who also possess an ATF FFL should notify the NRC, in accordance with 10 CFR 73.71, of the receipt of adverse ATF inspection or enforcement findings related to their FFL. Note: NRC licensees and certificate holders who are approved by the NRC for "combined enhanced weapons authority and preemption authority" are not required to obtain an ATF FFL to possess the enhanced weapons; however, they may choose to obtain an FFL voluntarily.

Regulatory Guide 5.62, "Reporting and Recording of Safeguards Events," 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. The NRC regulations in 10 CFR 73.18(q) set forth the requirements for licensees and certificate holders regarding recordkeeping for the receipt, transfer, and issuance of enhanced weapons. Separately, NRC licensees and certificate holders transferring enhanced weapons must also comply with applicable ATF regulations in 27 CFR Part 479.

### **10.1 Entities Authorized to Receive Enhanced Weapons**

Under the Firearms Guidelines, ATF will only approve the transfer (i.e., receipt) of enhanced weapons to an authorized NRC licensee or certificate holder, not a security contractor providing security services to the licensee or certificate holder.

### **10.2 Control of Enhanced Weapons During Their Offsite Movement**

Under 10 CFR 73.18(n)(5), the offsite transportation of enhanced weapons will not be considered a transfer of enhanced weapons if a licensee or certificate holder employee is involved in the offsite transportation. If the licensee's or certificate holder's security personnel are contract guards, they cannot take enhanced weapons outside of the authorized facility's site boundary unless they are accompanied by a licensee or certificate holder's employee. (See Staff Regulatory Guidance position 10.6 below for additional information on what is meant by the "facility site" and "facility boundary.")

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 closely control the issuance and transport of enhanced weapons.

### **10.3 Recordkeeping**

Licensees and certificate holders should maintain records documenting the issuance, removal, and return of all enhanced weapons. Licensees and certificate holders should verify that the enhanced 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.

### **10.4 ATF Prior Approval Required for Transfers of Enhanced Weapons**

Licensees and certificate holders must receive the approval of the ATF prior to transferring enhanced weapons to entities authorized to receive such weapons. 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 their destruction is also an acceptable option.

Because the NRC approves applications for combined enhanced weapons authority and preemption authority for an individual licensee or certificate holder, ATF also approves the transfer of enhanced weapons to, or from, these licensees and certificate holders on an individual basis. For example, two nearby licensees ("A" and "B"), who are part of the same nuclear fleet,

each apply for combined enhanced weapons authority and preemption authority. Both are approved by the NRC and are authorized to possess the same type and quantity of M-4 automatic carbines. Subsequent to ATF's approval of the transfer of the M-4 carbines from an FFL to each licensee, Licensee "A" wants to move five M-4 carbines to Licensee "B." Provided that Licensee "B" remains within the maximum enhanced-weapons possession limits specified in its approval, the NRC does not require prior review and approval of this movement of these enhanced weapons. However, ATF requires prior approval of this movement of enhanced weapons and payment of tax stamps. This movement is considered a transfer of enhanced weapons.

#### 10.5 Removal of Enhanced Weapons for Repair or Maintenance

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 is not considered a transfer under the National Firearms Act and ATF's regulations in 27 CFR Part 479. This waiver is based on an open letter from the ATF titled "Repair of NFA Firearms," dated February 18, 2000 (Ref. 20). A licensee employee must be present during such removals as discussed in Staff Regulatory Guidance position 10.2.

#### 10.6 Enhanced Weapons 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), under the Firearms Guidelines, are not considered a transfer of the enhanced weapon under the National Firearms Act. This issuance and return of the enhanced weapons is not considered a transfer, provided the enhanced weapons remain within the boundary of the "site of the facility." Remaining on the "site of a facility" means within the site boundary or owner-controlled-area, as defined by the licensee's or certificate holder's final safety analysis report.

For activities occurring outside an authorized licensee's or certificate holder's facility's site boundary (e.g., use of the enhanced weapons at a firing range or training facility beyond the site boundary, 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:

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

Authorized licensee or certificate holder employees accompanying contract security personnel possessing enhanced weapons are not required to be trained and qualified to use the enhanced weapons. However, these licensee or certificate holder employees are required to have completed a satisfactory firearms background check. Moreover, they should be trained on the requirements for control and issuance of enhanced weapons and on requirements for notification of the NRC and ATF for lost or stolen enhanced weapons.

## 10.7 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) are listed below.

- removal of enhanced weapons to a firing range or training facility for the conduct of training and qualification as specified by the licensees or certificate holders in their training and qualification plans;
- 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; or
- removal of enhanced weapon for repair by a qualified gunsmith or manufacture.

**Note:** The licensee's or certificate holder's security personnel are not required to remain present at the repair facility while the enhanced weapon is being repaired. However, in accordance with the suggestion in the ATF February 18, 2000 letter titled "Repair of Firearms," the NRC recommends that an ATF Form 5 application be submitted for approval prior to conveying the firearm for repair. This will provide legal protection to the parties involved by documenting the repair and verifying that a "transfer" did not take place.

As discussed in Staff Regulatory Guidance position 10.2 above, licensee or certificate holder employees must accompany enhanced weapons off the authorized facility's site. If the licensee's or certificate holder's security personnel are contract guards, they must be accompanied by licensee or certificate holder employees.

**Note:** The Firearms Guidelines allows the NRC to specify additional permissible reasons to remove enhanced weapons from an authorized NRC regulated facility (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 specifying any additional reasons for removing enhanced weapons from an authorized facility. However, this flexibility is available, should the NRC need it in the future.

## 10.8 Removal of Enhanced Weapons Due to Change in Protective Strategy

For licensee's or certificate holder's that cease their use of enhanced weapons as part of an existing protective strategy; the NRC will require such licensees and certificate holders to transfer any enhanced weapons possessed under combined enhanced weapons authority and preemption authority to: (1) a Federal, State, or local government entity (e.g., a law enforcement agency) authorized to possess such weapons; (2) a federal firearms licensee authorized to receive the enhanced weapons under applicable law and regulations; or (3) other NRC licensees and certificate holders who are approved for combined enhanced weapons authority and preemption authority and are authorized to receive and possess these specific weapons (i.e., these enhanced weapons are authorized for the receiving licensee or certificate holder and they are within their authorized enhanced weapons possession limits). Licensees and certificate holders may also abandon any enhanced weapons to ATF for destruction.

Power reactor facilities that were previously approved for combined enhanced weapons authority and preemption authority and that are now undergoing decommissioning should inform the NRC of their plans for continuing and subsequently terminating their combined enhance weapon and preemption

authority. Licensees should submit their plans to the NRC to terminate their combined enhanced weapons authority and preemption authority, in accordance with the NRC regulations in 10 CFR 73.18(r) and 10 CFR 73.4.

## **11. Transportation of Enhanced Weapons**

The NRC regulations in 10 CFR 73.18(n) set forth requirements for licensees and certificate holders regarding the transportation of enhanced weapons. These provisions apply to the transportation of enhanced weapons outside the site of the licensee's or certificate holder's facility. This includes the carrying of enhanced weapons to escort a shipment of radioactive material or other property; the prepositioning of armed personnel and enhanced weapons to accompany such a shipment (e.g., a relief crew); or the return of armed personnel and enhanced weapons following the conclusion of a shipment. To meet these requirements licensees should maintain copies of their transportation security plan and records relating to the receipt, transfer, and transportation of such enhanced weapons.

Licensees and certificate holders are responsible for ensuring the safe and secure transportation of enhanced weapons outside of their site consistent with applicable State, local, and Federal laws.

Transporting enhanced weapons potentially results in an inherent vulnerability in the protection and accountability of these enhanced weapons. This staff regulatory guidance position describes guidance relating to the transportation of enhanced weapons for activities that are not considered a transfer of these weapons. Licensees and certificate holders transporting or shipping enhanced weapons and ammunition via common carriers should also comply with applicable U.S. Department of Transportation safety regulations on the shipment of firearms and ammunition.

Armed 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 such shipments should be aware of the firearms 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.

Armed security personnel transporting enhanced weapons to or from a licensee's or certificate holder's facility following the completion of, or in preparation for, escorting shipments of designated radioactive material or other property (see Staff Regulatory Guidance positions 1.2 and 1.3 above) 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 are subject to the requirements of 10 CFR 73.19.

**Note:** The NRC is seeking clarification from ATF on whether the existing exemptions for the possession of loaded weapons on "private property not part of school grounds," which are found in 18 U.S.C. 922(q)(2)(B)(i) and (q)(3)(B)(i), apply to shipments of radioactive material or other property via railroads.

## 12. Periodic Accountability Inventories of Enhanced Weapons

The NRC regulations in 10 CFR 73.18(o) set forth requirements for licensees and certificate holders regarding conducting periodic accountability inventories of its enhanced weapons. Licensees and certificate holders possessing enhanced weapons shall 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 the enhanced weapons it possesses, document the results, and retain these results in accordance with the records requirements of 10 CFR 73.18(q).

### 12.1 General Requirements for Inventories

General requirements for periodic accountability inventories of enhanced weapons include, but are not limited to, the following:

- Licensees and certificate holders should include their inventory requirement for enhanced weapons in their physical security plan. This inventory should verify that the licensee's or certificate holder's internal movement of enhanced weapons does not adversely affect their accountability and control.
- These regulations require licensees and certificate holders to conduct both a simplified monthly inventory of its enhanced weapons and a detailed semiannual inventory of its enhanced weapons. However, a detailed semiannual inventory may be substituted in lieu of a simplified monthly inventory. This would yield the following yearly inventory schedule: a simplified monthly inventory in months 1, 2, 3, 4, 5, 7, 8, 9, 10, and 11; and a detailed semiannual inventory in months 6 and 12.
- Licensees and certificate holders may affix permanent bar-code information or tags to enhanced weapons to facilitate the use of electronic scanning devices and techniques in conducting simplified monthly inventories.
- Personnel conducting periodic inventories of enhanced weapons are subject to the firearms background check requirements of 10 CFR 73.19. However, these individuals are not required to be trained and qualified to use enhanced weapons. For efficiency, increased accuracy, and to minimize the potential for theft and diversion of the weapons, a team of two qualified persons should conduct each inventory.
- When a locked secure weapons container located within a licensee's or certificate holder's protected area, vital area, or material access area (e.g., a ready-service firearms locker) has been opened, licensees and certificate holders should inventory and reseal the weapons container 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 of issued TIDs.

### 12.2 Simplified Monthly Inventories of Enhanced Weapons

- 12.2.1 As part of the periodic accountability inventories of enhanced weapons, licensees and certificate holders should conduct a simplified monthly inventory (e.g., a "piece-count"

inventory) of the enhanced weapons possessed in the licensee's or certificate holder's facility. The objective of the inventory should be to verify that these enhanced weapons are present in their specified locations. Under 10 CFR 73.18(o), the time interval between monthly inventories shall not exceed  $30 \pm 3$  days. Licensees and certificate holders should verify the presence of each individual, accessible enhanced weapon, except for enhanced weapons that are stored in a locked, secure weapons container.

12.2.2 For enhanced weapons stored in a locked, secure weapons container, located within a licensee's or certificate holder's protected area, vital area, or material access area, the inventory may, instead of verifying the presence of individual weapons, verify the presence of an intact TID on the weapons container. Licensees and certificate holders should 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 (i.e., fixed) positions, for example, in a tower, should be verified by their ID tag or serial number, rather than through the use of an intact TID.

12.2.3 For the month that a semiannual accountability inventory is completed (per Staff Regulatory Guidance position 12.3), the licensee or certificate holder is not required to conduct a separate monthly inventory.

### 12.3 Detailed Semiannual Inventories of Enhanced Weapons

12.3.1 As part of the periodic accountability of enhanced weapons, licensees and certificate holders should conduct a detailed 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 their specified locations. Licensees and certificate holders should ensure the presence of each individual enhanced weapon through the verification of each enhanced weapon's individual serial number.

12.3.2 Under 10 CFR 73.18(o), the time interval between semiannual inventories shall not exceed  $180 \pm 7$  days. Licensees and certificate holders should verify the presence of each enhanced weapon during each semiannual inventory. The semiannual inventory includes enhanced weapons that are checked during the monthly inventories, plus those 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), and sealed with a TID. For such weapons, the TID should be removed from the storage container and the serial numbers of the individual weapons verified during the semiannual inventories.

### 12.4 Discrepancies in Inventories of Enhanced Weapons

Licensees and certificate holders should resolve any inventory discrepancies within 24 hours of discovering the discrepancy. Licensees and certificate holders should treat unresolved discrepancies as a lost or stolen enhanced weapon; and make the appropriate notifications required by 10 CFR 73.18(p) and 10 CFR 73.71. (See Staff Regulatory Guidance position 12.5.)

### 12.5 Notifications for Lost or Stolen Enhanced Weapons

The NRC regulations in 10 CFR 73.18(p) and 10 CFR 73.71 set forth requirements for licensees and certificate holders regarding the discovery that any enhanced weapons they are authorized to possess have been lost or stolen or lost. Upon the discovery of a lost or stolen enhanced weapon, licensees and

certificate holders should notify the NRC and local law enforcement officials in accordance with 10 CFR 73.71 and the ATF 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.

### **13. Recordkeeping for Enhanced Weapons**

The NRC regulations in 10 CFR 73.18(q) set forth requirements for licensees and certificate holders on recordkeeping regarding the receipt, transfer, and transportation of enhanced weapons.

- Licensees and certificate holders may integrate any records required under 10 CFR 73.18(q) with records required by ATF relating to the possession of enhanced weapons.
- Under 10 CFR 73.18(q), licensees and certificate holders must make these records available to NRC inspectors and ATF inspectors upon request.

#### **13.1 Receipt of Enhanced Weapons**

Under 10 CFR 73.18(q), licensees and certificate holders must maintain a record of each enhanced weapon received. The record of each receipt transaction must contain, at a minimum, the following information:

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

#### **13.2 Transfer of Enhanced Weapons**

Under 10 CFR 73.18(q), licensees and certificate holders must maintain a record of each enhanced weapon they transfer. The record of each transfer transaction must contain, at a minimum, the following information:

- date of shipment of the enhanced weapon;
- name and address of the transferee (i.e., person, company, or corporation) who received the enhanced weapon; and
- model or type, serial number, and caliber or gauge of the enhanced weapon including any internally assigned control number.



### 13.3 Transportation of Enhanced Weapons

Under 10 CFR 73.18(q), licensees and certificate holders must maintain a record of each enhanced weapon they transport. The record of each transportation transaction must contain, at a minimum, the following information:

- date of departure of the enhanced weapon;
- date of return of the enhanced weapon;
- purpose of removal of the enhanced weapon from the facility;
- name of the security personnel transporting the enhanced weapon;
- name of the licensee employee accompanying the transportation, if the security personnel transporting the enhanced weapons are employees of a security contractor providing security services to the licensee or certificate holder;
- name of the person or facility to whom the enhanced weapon is being transported; and
- model or type, serial number, and caliber or gauge of the enhanced weapon including any internally assigned control number.

### 13.4 Stolen or Lost Enhanced Weapons

Under 10 CFR 73.18(q), licensees and certificate holders must maintain a record of any stolen or lost enhanced weapon, from those possessed by the licensee or certificate holder.

### 13.5 Results of Inventories of Enhanced Weapons

Under 10 CFR 73.18(q), licensees and certificate holders must maintain a record of the results of inventories of enhanced weapons possessed by the licensee or certificate holder. This should include both simplified monthly and detailed semiannual inventory results.

### 13.6 Records Retention

Under NRC regulations in 10 CFR 73.18(q)(6), licensees and certificate holders must maintain a record of enhanced weapons for a minimum period of at least 1 year after the licensee no longer possesses enhanced weapons. This 1 year period does not begin until (1) the licensee's or certificate holder's authority to possess enhanced weapons is terminated, suspended, or revoked per 10 CFR 73.18(r), and (2) all enhanced weapons have been transferred from the licensee's or certificate holder's facility to an authorized entity. (See also Staff Regulatory Guidance positions 10.1 and 10.4 above on transfers of enhanced weapons.)

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

Within 3 business days of the NRC 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 in accordance with 10 CFR 73.18(r)(5).

**Note:** The ATF point of contact in the National Firearms Act Branch for such NRC notifications is specified in the ATF-NRC Memorandum of Understanding on enhanced weapons.

#### 14.1 Termination and Modification

Licenses and certificate holders who desire to modify their combined enhanced weapons authority and preemption authority (e.g., to obtain different types or quantities of enhanced weapons) should apply to the NRC, in accordance with 10 CFR 73.4 and the applicable license amendment provisions of 10 CFR 50.90, 70.34, and 72.56 or CoC amendment provisions of 10 CFR 76.45, to modify their combined enhanced weapons authority and preemption authority. The licensee's or certificate holder's application to modify their enhanced weapons authority and preemption authority should provide the same information as is required in an initial application under 10 CFR 73.18(e) and (f) (see Staff Regulatory Guidance position 5.1 above).

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 and the applicable license amendment provisions of 10 CFR 50.90, 70.34, and 72.56, or the applicable CoC amendment provisions of 76.45, 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 its application to terminate this authority.

Licenses and certificate holders replacing their enhanced weapons with different types or models of enhanced weapons should also include within its application 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 weapons 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.

Under 10 CFR 73.18(r)(3), licenses and certificate holders who desire to dispose of enhanced weapons, or transfer enhanced weapons that they are no longer authorized to possess, must transfer such weapons to an authorized transferee, in accordance with 10 CFR 73.18(m). (See also Staff Regulatory Guidance positions 10.1, 10.4, and 10.8 above on transfers 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 could include, but are not limited to, licensee or certificate holder actions associated with deliberate misconduct involving enhanced weapons; material false statements in applying for combined enhanced weapons authority and preemption authority or standalone preemption authority; 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. 21), regarding the opportunity to request a hearing, are applicable to this type of agency action.

#### 14.3 Reapplication for Section 161A Authority

Licensees 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 applicable provisions of 10 CFR 73.18.

### **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 conduct firearms background checks for all security personnel whose official duties require or allow access to covered weapons. A firearms background check consists of the submission of fingerprints to the AG and other identifying information to the NRC for forwarding to the FBI for a check against the National Instant Criminal Background Check System (NICS). The requirements also provide information on how security personnel who have received an adverse firearms background check – and believe this to be incorrect – may appeal these results directly to the FBI.

#### 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 or allow access to covered weapons. Only licensees and certificate holders that fall within the NRC-designated classes of facilities, radioactive material, or other property specified in 10 CFR 73.18(c) (see Staff Regulatory Guidance positions 1.1.1 thru 1.3 above) and apply for stand-alone preemption authority or combined enhanced weapons authority and preemption authority are subject to this requirement firearms background checks. Completion of firearms background checks on security personnel for such licensees and certificate holders is a required element of the process set forth in 10 CFR 73.18 for obtaining stand-alone preemption authority or combined enhanced weapons authority and preemption authority.

The NRC regulations in 10 CFR 73.19(b)(1) require a licensee or certificate holder to develop a Firearms Background Check Plan. The NRC regulations in 10 CFR 73.19(b)(3) specifies the overall performance objectives the licensee's or certificate holder's plan must meet.

- 15.1.1 The requirements of 10 CFR 73.19 apply to individuals in the licensee's or certificate holder's organization performing official duties (hereafter referred to as security personnel) 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. Conducting or verifying firearms background checks of licensed commercial firearms manufacturers and dealers are not the responsibility of the licensee. 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). This regulation applies whether these security personnel are directly employed by the licensee or certificate holder, or are employed by a security contractor who provides security services to the licensee or certificate holder.

15.1.2 Under 10 CFR 73.19(b)(7), a licensee or certificate holder may not commence firearms background checks until after receiving notification from the NRC that the agency has accepted for review its application for either stand-alone preemption authority or for combined enhanced weapons authority and preemption authority. However, once accepted for review, these applications require a firearms background check for all security personnel whose official duties require access to covered weapons.

15.1.3 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, 10 CFR 73.19 requires licensees and certificate holders to submit a new set of fingerprints and the personal information required by new NRC Form 754 to the NRC to accomplish the firearms background check required by Section 161A of the AEA. The FBI 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 NICS Responses: “proceed,” “delayed,” or “denied”:

- (1) “Proceed” means the individual has satisfactorily completed the check.
- (2) “Delayed” means the FBI needs additional information to complete the check.
- (3) “Denied” means the FBI has concluded the individual is prohibited from possessing firearms under 18 U.S.C. 922 and/or applicable State law.

The NRC will forward the response and the associated NICS Transaction Number (NTN) to the submitting licensee or certificate holder, who will provide the information to the individual.

15.1.4 During the period of time from the licensee’s or certificate holder’s commencement of firearms background checks until the NRC approves its application for Section 161A authority, security personnel who receive a “delayed” response would be permitted to continue in duties that require access to any, non-enhanced, covered weapons currently in use at the site. However, for licensees or certificate holders currently possessing enhanced weapons under an alternate authority and who are seeking to transitioning to Section 161A authority, only a “Proceed” response will permit the security personnel to be assigned duties requiring access to enhanced weapons. These security personnel may be assigned to duties requiring access to non-enhanced, covered weapons. This difference is based upon language in the Firearms Guidelines agreed to by NRC and DOJ.

- 15.1.5 Once the NRC has approved a licensee's or certificate holder's application for Section 161A authority, only a "proceed" NICS response will permit the security personnel to be assigned duties requiring access to any covered weapons.
- 15.1.6 If the individual is on duty at the time of the licensee's or certificate holder's receipt of a "denied" or "delayed" NICS responses, then the licensee or certificate holder should remove the individual, without delay, from duties requiring access to covered weapons. The licensee should reconstitute any security force staffing shortages in accordance with the time limits specified in its physical security plan.
- 15.1.7 Under 10 CFR 73.19(p), licensees and certificate holders may not assign security personnel who have received a "denied" NICS response to duties requiring access to covered weapons during the pendency of any appeals of a "denied" NICS response to the FBI by the security personnel. Also, licensees and certificate holders may not assign security personnel who have received a "delayed" NICS response to duties requiring access to covered weapons during the pendency of providing the FBI any additional information resolve a "delayed" NICS response to the FBI by the security personnel.
- 15.1.8 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 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 appeals brochure titled "NICS Guide for Appealing a Firearms Transfer, Your Rights and Responsibilities" (Ref. 22).
- 15.1.9 Under the NRC regulations in 10 CFR 73.19(p)(5), 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 of the date the licensee or certificate holder notifies the individual of the adverse response. The appeal request must include appropriate documentation or record(s) establishing the legal or factual basis, or both, for the challenge. It is the responsibility of the person who is appealing or resolving an adverse firearms background check to provide the FBI with any requested additional information 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.
- 15.1.10 Extensions of the time period to supply additional requested information in support of a timely appeal or resolution request may be granted by the licensee or certificate holder for good cause shown, as determined by the licensee or certificate holder. Failure to initiate a timely appeal or resolution request or provide additional information requested by the FBI in a timely manner 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 any 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.
- 15.1.11 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.

- 15.1.12 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 per 10 CFR 73.19 (b). See Staff Regulatory Guidance position 15.4 (below) for the definition of “a break in service.”
- 15.1.13 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 currently working at the facility whose official duties still require access to covered weapons and have not had a break in service.
- 15.1.14 Under 10 CFR 73.19(b)(3), a licensee or certificate holder must maintain records of a decision to remove security personnel from duties requiring access to covered weapons, due to the identification or occurrence of any Federal or State disqualifying status condition or event.
- 15.1.15 Under 10 CFR 73.19(b)(3), a licensee or certificate holder must develop and implement procedures to notify the NRC of a decision to remove security personnel from duties requiring access to covered weapons, due to the identification or occurrence of any Federal or State disqualifying status condition or event.
- 15.1.16 Security personnel who have completed a satisfactory firearms background check under NRC orders issued before the final rule is issued are not subject to a new initial firearms background check under 10 CFR 73.19(e). However, they are subject to the requirements for break in service and periodic firearms background checks in 10 CFR 73.19(f).
- 15.1.17 Under 10 CFR 73.19(b)(15), a licensee or certificate holder that withdraws its application for Section 161A authority must discontinue conducting firearms background checks.
- 15.1.18 Under 10 CFR 73.19(b)(16), a licensee or certificate holder whose application for Section 161A authority has been terminated or revoked must discontinue conducting firearms background checks.

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 (e.g., “R” and “U” material access authorizations, “Q” and “L” personal security clearances, or criminal history and background checks for unescorted access to nuclear power reactors or access to Safeguards Information).

To facilitate licensee and certificate holder preparation for conducting firearms background checks, on May 13, 2008, the NRC issued Regulatory Issue Summary (RIS) 2008-10, “Notice Regarding Forthcoming Federal Firearms Background Checks” (Ref. 23), 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. 24). One of the issues discussed in RIS 2008-10 is the FBI’s Voluntary Appeal File (VAF) program,

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(b), (d), and (e) set forth the requirements for licensees and certificate holders to conduct firearms background checks for all security personnel whose official duties require access to covered weapons. A firearms background check consists of two parts: a check of an individual’s fingerprints against the FBI’s National Crime Information Center (NCIC) fingerprint databases and a check of the individual’s identity against the FBI’s NICS.

15.2.1 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:

- a set of fingerprint impressions, in accordance with 10 CFR 73.19(k); and
- a completed NRC Form 754.

15.2.2 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 the protection of personal identity information contained in a completed form.

15.2.3 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 contained within these documents is protected, in accordance with 10 CFR 73.4.

15.2.4 Under 10 CFR 73.19(e)(4), licensees and certificate holders must retain a copy of each NRC Form 754 (or consolidated set of data) 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.

15.2.5 The NRC will return the results of the firearms background check to the submitting licensee or certificate holder. Under 10 CFR 73.19(n)(2), 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 the 45-day time clock for any appeals by the individual, if needed.

### 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 conduct firearms background checks 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(d) at least once every 5 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 5 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).

15.3.1 Under 10 CFR 73.19(f), licensees and certificate holders should submit the new fingerprint images and a new NRC Form 754 within 5 years of the most recent completed satisfactory firearms background check. Licensees and certificate holders must complete a periodic firearms background check no later than the same calendar month as the most recent firearms background check; with an allowance period to midnight (i.e., 23:59 local time) of the last day of the calendar month of expiration. Licensees and certificate holders may continue a security officer's access to covered weapons pending the completion of these periodic firearms background checks. However, licensees and certificate holders must remove security personnel from duties requiring access to covered weapons if the satisfactory completion of a periodic firearms background check does not occur before the expiration of the allowance period.

15.3.2 Under 10 CFR 73.19(b)(8), licensees and certificate holders should, without delay, remove any individual from duties requiring access to covered weapons, if the individual receives an adverse NICS response (i.e., a "delayed" or "denied" NICS response) during a periodic 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. If the security personnel to be removed is on duty at the time of removal, then the licensee and certificate holder must reconstitute the vacated position within the timeframe specified in their NRC-approved physical security plan.

### 15.4 Break in Service Firearms Background Checks

15.4.1 The licensee or certificate holder must complete a new satisfactory firearms background check in accordance with 10 CFR 73.19(b), if the security personnel has had a break in service with their employing licensee, certificate holder, or their security contractor of greater than one week; and the licensee or certificate holder must complete a new satisfactory firearms background check, if the security personnel transfer from a different licensee or certificate holder.

A break in service means the security personnel's cessation of employment with the licensee, certificate holder, or their security contractor; and notwithstanding that the previous licensee or certificate holder completed a satisfactory firearms background check on the individual within the last five years.

15.4.2 Under 10 CFR 73.19(b)(12), a change in the licensee's or certificate holder's ownership of the facility, radioactive material, or other property does not trigger the break in service firearms background check requirement. Similarly, a change in the security contractor



providing security services to the licensee or certificate holder also does not trigger the break in service firearms background check requirement.

15.4.3 Under 10 CFR 73.19(b)(11), the NRC has identified two exceptions to the requirement to perform a break in service firearms background check. These exceptions are:

- Temporary active duty with the U.S. military reserves or National Guard; or
- The licensee or certificate holder has verified via an industry-wide information-sharing database (e.g., “PADS”) that the security personnel has completed a satisfactory firearms background check within 12 months prior to the break in service, provided that the previous firearms background check included a duty station location where the licensee or certificate holder (who would otherwise be performing a firearms background check) is located or the activity is occurring. This previous firearms background check must have included the State or Territory where the new licensee or certificate holder’s facility or activity is located to ensure State prohibitions were correctly checked by NICS.

## 15.5 Notification of the Removal of a Security Officer

15.5.1 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 a previously cleared individual from access to covered weapons, because of the identification or occurrence of any Federal or State disqualifying status condition or event that would prevent them from possessing, receiving, or using firearms or ammunition. See the conditions or events listed under 18 U.S.C. 922(g) or (n), and the ATF’s implementing regulations in 27 CFR Part 478 for further details on disqualifying conditions or events.

15.5.2 Under 10 CFR 73.19(g), 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.

**Exception:** 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 72 hours of the occurrence of the disqualification. The NRC has created this provision to encourage security personnel to self-identify by promptly providing such information to the licensee or certificate holder.

15.5.3 Under 10 CFR 73.19(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 potential violation of Federal or State law.

## 15.6 Security Personnel Responsibilities

- 15.6.1 The NRC regulations in 10 CFR 73.19(h) set forth the requirements for security personnel whose official duties require access to covered weapons to notify their licensee's and certificate holder's security management within 72 hours of the identification or occurrence of any Federal or State disqualifying status condition or events. See the status conditions and 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 the individual from possessing, receiving, or using firearms or ammunition.
- 15.6.2 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.

## 15.7 Training Security Personnel on Disqualifying Events and Appealing Adverse Firearms Background Checks

- 15.7.1 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 the identification or occurrence of any Federal or State disqualifying conditions or events that would prohibit personnel from possessing, receiving, or using firearms or ammunition. See the conditions and events listed under 18 U.S.C. 922(g) or (n) and the ATF's implementing regulations in 27 CFR Part 478.
- 15.7.2 This training requirement is intended to assist security personnel in understanding their continuing obligation to promptly report disqualifying conditions or events, and thus to encourage self-identification as required by 10 CFR 73.19(h). The obligation to report disqualifying events remains as long as the security personnel's official duties require access to covered weapons.
- 15.7.3 The NRC regulations in 10 CFR 73.19(j) also set forth requirements for licensees and certificate holders to include training on how an individual security officer may appeal to the FBI an adverse firearms background check (i.e., a "denied" NICS response or a "delayed" NICS response).

## 15.8 Submission of Fingerprint Cards

- 15.8.1 The NRC regulations in 10 CFR 73.19(e) 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). 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, ORIMDNR000Z) or, where practicable, other fingerprint records, for each individual requiring a firearms background check, to the NRC's Director, Division of Facilities and Security, ATTN: Criminal History Program, Mail Stop T-03B46M. Copies of this form may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by visiting the NRC's online library at <http://www.nrc.gov/reading-rm/doc-collections/forms/>, or by e-mail to [Forms.Resource@nrc.gov](mailto:Forms.Resource@nrc.gov). Other guidance in

10 CFR 73.4 includes alternative formats, including electronic submissions, which are acceptable and may be practicable.

15.8.2 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:

- 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.
- For fingerprints submitted to the NRC for the completion of both an access authorization check or criminal history 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.

15.8.3 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. There is no fee for fingerprint cards returned by the NRC.

15.8.4 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. This 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 submission transaction control numbers may not be included with subsequent submissions, because the submittal will be rejected automatically.

15.8.5 The NRC 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 security personnel’s 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.

## 15.9 Fees for Firearms Background Checks and Fingerprinting

15.9.1 The NRC regulations in 10 CFR 73.19(m) set forth the requirements for licensees and certificate holders to submit payment of 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).

15.9.2 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."<sup>1</sup> Combined payment for multiple applications is acceptable. The NRC publishes the amount of the application fee for the firearms background check on the NRC's public Web site.<sup>2</sup> The NRC will directly notify licensees and certificate holders who are subject to 10 CFR 73.19 of any fee changes.

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

#### 15.11 Appeals and Resolution of Erroneous System Information

The NRC regulations in 10 CFR 73.19(p) set forth the requirements for security personnel to appeal adverse firearms background checks (i.e., a "denied" or "delayed" NICS response).

15.11.1 Security personnel should file any appeals directly to the FBI. Security personnel should use FBI appeals brochure titled "NICS Guide for Appealing a Firearms Transfer, - Your Rights and Responsibilities" to submit appeals to the FBI. The FBI appeals brochure contains further information on appealing a "denied" NICS response or providing additional information to the FBI regarding a "delayed" response.

15.11.2 Security personnel or applicants for a security 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).

15.11.3 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.

15.11.4 Licensees and certificate holders should provide (as part of the training for armed security personnel) 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.

---

1 For guidance on making electronic payments, contact the NRC's Facility 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.

15.11.5 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 numbers (NTNs) associated with his or her specific firearms background check. (Note: A firearms background check involving multiple states would create multiple NTNs. In such a case, the individual should include all of the NTNs on the appeal form.) The process for requesting from the FBI the reason for a "denied" or "delayed" NICS response includes the following:

- (1) 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 applicable NTN(s).
- (2) 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.

15.11.6 The FBI will directly 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 desires to challenge the accuracy of the record upon which the "denied" or "delayed" response is based, or if the individual desires 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:

- (1) The individual should file any appeal of a "denied" response or file a request to resolve a "delayed" response with the FBI within 45 calendar days of the date the licensee or certificate holder notifies the individual of the adverse response.
- (2) 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 initial response is issued.
- (3) 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. These extension requests must be made to the licensee or certificate holder. The licensee or certificate holder may grant an extension request for good cause, as determined by the licensee or certificate holder.
- (4) 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 appropriate authority.
- (5) 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.

- (6) 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.

15.11.7 An individual who has satisfactorily appealed a “denied” response or resolved a “delayed” response may provide written consent to the FBI to establish the information in a Voluntary Appeal File (VAF). A VAF is checked by the FBI NICS staff for the purpose of preventing the erroneous denial or extended delay response from any future firearms background checks. Individuals should apply for the VAF under the FBI Brochure “Voluntary Appeal File Brochure” (Ref. 25). 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.

## 15.12 Untimely Appeals

The NRC regulations in 10 CFR 73.19(p) 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.

## 15.13 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.

15.13.1 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.

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

- 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

- the licensee or certificate holder verifies from the gaining licensee such information as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification.

15.13.3 Licenses and certificate holders may enter the results of completed firearms background checks (both satisfactory and adverse) for individual security personnel in an industry-wide information-sharing database. This should include the name of the security personnel, the results of the NICS response, the date of the NICS response, and the State(s) under which the firearms background check was conducted.

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

## **16. Sunsetting of Section 161A Orders**

### **16.1 General Provisions on the Sunsetting of Section 161A Orders**

As discussed in Staff Regulatory Guidance position 1 above, the Commission must, by rule or order, designate classes of facilities and activities who are eligible to apply for stand-alone preemption authority and/or combined enhanced weapons authority and preemption authority. Prior to the issuance of a final rule the NRC issued orders designating several licensees as part of an interim class of facilities eligible to apply for stand-alone preemption authority. The NRC also issued orders approving applications from these licensees for stand-alone preemption authority.

The NRC regulations in 10 CFR 73.18(s) and 10 CFR 73.19(r) set forth the requirements for licensees and certificate holders issued such orders to transition from the requirements of the orders to the requirements of the final rule. Once licensees and certificate holders have transitioned from these orders to the final rule, the requirements of these orders are superseded in their entirety by the requirements of the final rule.

Licensees or certificate holders issued orders designating them as part of an interim class of facilities eligible to apply for Section 161A authority are no longer considered part of that interim class, effective with the issuance of a final rule. Rather these licensees and certificate holders are encompassed within the list of Commission-designated facilities, radioactive material, or other property contained in 10 CFR 73.18(c). (See Staff Regulatory Guidance positions 1.1.1 thru 1.3.)

The NRC's previous approval of applications for either stand-alone preemption authority or combined enhanced weapons authority and preemption authority that were issued pursuant to orders remain valid following the issuance of the final rule. Affected licensees are not required to reapply for stand-alone preemption authority or combined enhanced weapons authority and preemption authority they were previously approved by the NRC for such authority. Nor are these licensees or certificate holders required to repeat its initial firearms background checks (conducted under designation orders). However, they must conduct break in service and periodic firearms background checks.

### **16.1 Updating of Procedures, Instructions, and Training Material**

Under 10 CFR 73.18(s) and 73.19(r), licensees who were issued such orders must update their applicable procedures, instructions and training materials associated with stand-alone preemption

authority, combined enhanced weapons authority and preemption authority, and firearms background checks to reflect any new, revised, or superseded requirements in the final rule. Such licensees must complete these transition actions within 60 days after the effective date of the final rule.

## 16.2 Notification of Completion of Transition Actions

Under 10 CFR 73.18(s) and 73.19(r), licensees who were issued such orders must notify the NRC, in accordance with 10 CFR 73.4, of the completion of these transition actions. Licensees must submit this notification to the NRC within 70 days after the effective date of the final rule.



## D. IMPLEMENTATION

The purpose of this section is to provide information on how licensees and certificate holders<sup>3</sup> may use this RG and information regarding the NRC's plans for using this RG. In addition, it describes how the NRC staff complies with 10 CFR 50.109, "Backfitting," 10 CFR 70.76, "Backfitting," 10 CFR 72.62, "Backfitting," and 10 CFR 76.76, "Backfitting"; and any applicable finality provisions in 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants."

### Use by Licensees

Licensees and certificate holders may voluntarily<sup>4</sup> use the guidance in this document to demonstrate compliance with the underlying NRC regulations. Methods or solutions that differ from those described in this RG may be deemed acceptable if they provide sufficient basis and information for the NRC staff to verify that the proposed alternative demonstrates compliance with the appropriate NRC regulations.

Licensees and certificate holders may use the information in this RG for actions which do not require NRC review and approval such as changes to a facility design under 10 CFR 50.59, "Changes, Tests, and Experiments," 10 CFR 70.72 "Facility Changes and Change Process," and 10 CFR 72.48, "Changes, Tests, and Experiments," that do not require prior NRC review and approval. Licensees may use the information in this RG or applicable parts to resolve regulatory or inspection issues.

### Use by NRC Staff

The NRC staff does not intend or approve any imposition or backfitting of the guidance in this RG. The NRC staff does not expect any existing licensee or certificate holder to use or commit to using the guidance in this RG, unless the licensee or certificate holder makes a change to its licensing basis. The NRC staff does not expect or plan to request licensees or certificate holders to voluntarily adopt this RG to resolve a generic regulatory issue. The NRC staff does not expect or plan to initiate NRC regulatory action which would require the use of this RG. Examples of such unplanned NRC regulatory actions include issuance of an order requiring the use of the RG, requests for information under 10 CFR 50.54(f) as to whether a licensee intends to commit to use of this RG, generic communication, or promulgation of a rule requiring the use of this RG without further backfit consideration.

During regulatory discussions on plant specific operational issues, the staff may discuss with licensees various actions consistent with staff positions in this RG, as one acceptable means of meeting the underlying NRC regulatory requirement. Such discussions would not ordinarily be considered backfitting even if prior versions of this RG are part of the licensing basis of the facility. However, unless this RG is part of the licensing basis for a facility, the staff may not represent to the licensee or certificate

---

3 In this section, "licensees" refers to licensees of nuclear power plants under 10 CFR Parts 50 and 52; licensees of special nuclear material facilities under 10 CFR Part 70, licensees of an independent spent fuel storage installation under 10 CFR Part 72; and "certificate holders" refers to certificate holders of gaseous diffusion plants under 10 CFR Part 76. The term "applicants," refers to applicants for licenses and permits for (or relating to) nuclear power plants under 10 CFR Parts 50 and 52, applicants for standard design approvals and standard design certifications under 10 CFR Part 52, applicants for a special nuclear material license under 10 CFR Part 70, applicants for an independent spent fuel storage installation license under 10 CFR Part 72, and applicants for a gaseous diffusion plant certificate of compliance under 10 CFR Part 76.

4 In this section, "voluntary" and "voluntarily" means that the licensee or certificate holder is seeking the action of its own accord, without the force of a legally binding requirement or an NRC representation of further licensing or enforcement action.

holder that the licensee's or certificate holder's failure to comply with the positions in this RG constitutes a violation.

If an existing licensee or certificate holder voluntarily seeks a license or CoC amendment or change and (1) the NRC staff's consideration of the request involves a regulatory issue directly relevant to this new or revised RG and (2) the specific subject matter of this RG is an essential consideration in the staff's determination of the acceptability of the licensee's request, then the staff may request that the licensee either follow the guidance in this RG or provide an equivalent alternative process that demonstrates compliance with the underlying NRC regulatory requirements. This is not considered backfitting as defined in 10 CFR 50.109(a)(1), 10 CFR 70.76, 10 CFR 72.62, or 10 CFR 76.76; or a violation of any of the issue finality provisions in 10 CFR Part 52.

If a licensee believes that the NRC is either using this RG or requesting or requiring the licensee or certificate holder to implement the methods or processes in this RG in a manner inconsistent with the discussion in this Implementation section, then the licensee may file a backfit appeal with the NRC in accordance with the guidance in NUREG-1409, "Backfitting Guidelines," (Ref. 26) and the NRC Management Directive 8.4, "Management of Facility-Specific Backfitting and Information Collection" (Ref. 27).

## GLOSSARY

The following terms are used in this RG 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 granted the NRC, pursuant to 42 U.S.C. § 2201a, (Section 161A of the Atomic Energy Act) 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 covered weapons, including enhanced weapons, notwithstanding any State, local, or certain Federal firearms laws (including regulations).

Licensees and certificate holders desiring to obtain enhanced weapons authority must also apply for and obtain preemption authority. Such applications may be in series, or in a single application. The terms “combined enhanced weapons authority and preemption authority” and “stand-alone preemption authority” were created by the NRC in 10 CFR 73.18 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 enhanced 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.”

**Enhanced weapon**— includes 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). Destructive devices include, but are not limited to, explosives, incendiaries, or firearms with a bore diameter greater than 12.7 millimeters (0.5-inches) or .50-caliber.

**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 NRC and the U.S. Attorney General in accordance with Section 161A that provides guidance and direction to the three Federal agencies (NRC, FBI, and ATF) implementing the provisions of Section 161A. The Firearms Guidelines were published in the *Federal Register* on September 11, 2009. Revision 1 to the Firearms Guidelines was published in the *Federal Register* on June 25, 2014 (Ref. 7).

**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 granted the NRC, pursuant to Section 161A, 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 covered weapons, other than enhanced weapons, notwithstanding any State, local, or certain Federal firearms laws (including regulations).

The terms “combined enhanced weapons authority and preemption authority” and “stand-alone preemption authority” were created by the NRC in 10 CFR 73.18 to clarify the differences and interrelationship between these two authorities.

## REFERENCES<sup>5</sup>

1. *United States Code* (U.S.C.), “Use of Firearms by Security Personnel,” Part 2201a, Chapter 23, Development and Control of Atomic Energy, Title 42, “The Public Health and Welfare,” also known as Section 161A of the Atomic Energy Act of 1954, as amended.
2. *U.S. Code of Federal Regulations* (CFR), “Physical Protection of Plants and Materials,” Part 73, Chapter 1, Title 10, “Energy.”
3. U.S.C., “Firearms,” Chapter 44, Part I, Title 18, “Crimes and Criminal Procedures.”<sup>6</sup>
4. U.S.C. “Machine Guns, Destructive Devices, and Certain Other Firearms,” Chapter 53, Subtitle E, Title 26, “Internal Revenue Code.”
5. CFR, “Facility Security Clearance and Safeguarding of National Security Information and Restricted Data,” Part 95, Chapter 1, Title 10, “Energy.”
6. CFR, “Machine Guns, Destructive Devices, and Certain Other Firearms,” Part 479, Subchapter B, Chapter II, Title 27, “Alcohol, Tobacco Products and Firearms.”
7. NRC, “Revision of Guidelines on Use of Firearms by Security Personnel,” *Federal Register (FR)* Vol. 79, No. 122, June 25, 2014, pp 36100-36104.
8. NRC, Regulatory Guide (RG) 5.62, “Reporting of Safeguards Events,” Washington, DC.
9. NRC, Form 754, “Armed Security Personnel Firearms Background Check”. (ADAMS Accession No. ML092650459).
10. Energy Policy Act of 2005, Public Law 109-58, 119 Stat. 594 (2005).
11. NRC, “Notice of Issuance of Guidelines on Use of Firearms by Security Personnel; Notice of Effective Date of Statute,” FR, Vol. 74, No. 175, September 11, 2009, pp 46800-46806.
12. CFR, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” Part 52, Chapter 1, Title 10, “Energy.”
13. CFR, “Commerce in Firearms and Ammunition,” Part 478, Subchapter B, Chapter II, Title 27, “Alcohol, Tobacco Products and Firearms.”
14. CFR, “Fitness for Duty Programs,” Part 26, Chapter 1, Title 10, “Energy.”

---

5 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](mailto:pdr.resource@nrc.gov).

6 Publicly available U.S. Government published documents are available electronically through the public Web site at: <http://www.gpo.gov/about/bookstore.htm> or U.S. Government Publishing Office Bookstore, 710 North Capitol Street N.W. Washington, DC, (corner of North Capitol and H Streets)

15. U.S. Army Corps of Engineers, Protective Design Center (USACE-PDC), Technical Report USACE PDC NRC TR 06-10.1, "Weapons Safety Assessment Volume 1 of 5 – Template Instructions," Draft, Rev. 2, October 2010. (ADAMS Accession No. ML103230088).
16. USACE-PDC, Technical Report USACE PDC NRC TR 06-10-2, "Weapons Safety Assessment Volume 2 of 5 – Template," Draft, Rev. 3, October 2010. (ADAMS Accession No. ML103230098).
17. USACE-PDC, Technical Report USACE PDC NRC TR 06-10.3, "Weapons Safety Assessment Volume 3 of 5 – Review Criteria," Draft, Rev. 2, October 2010. (ADAMS Accession No. ML103230111).
18. USACE-PDC, Technical Report USACE PDC NRC TR 06-10.4, "Weapons Safety Assessment Volume 4 of 5 – Appendices and References," Draft, Rev. 2, October 2010. (ADAMS Accession No. ML103400257).<sup>7</sup>
19. USACE-PDC, Technical Report USACE PDC NRC TR 06-10.5, "Weapons Safety Assessment Volume 5 of 5 – Sample Template," Draft, Rev. 3, October 2010. (ADAMS Accession No. ML103230142).<sup>7</sup>
20. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, open letter, February 18, 2000, "Repair of NFA Firearms". (ADAMS Accession No. ML14227A666).
21. CFR, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders" Part 2, Chapter 1, Title 10, "Energy."
22. U.S. Department of Justice (DOJ), Federal Bureau of Investigation (FBI), brochure titled "NICS Guide for Appealing a Firearms Transfer, Your Rights and Responsibilities," September 2013. ([http://www.fbi.gov/about-us/cjis/nics/appeals/nics\\_appeals\\_brochure\\_eng](http://www.fbi.gov/about-us/cjis/nics/appeals/nics_appeals_brochure_eng)) accessed 1/29/2015.
23. NRC, Regulatory Issue Summary (RIS) 2008-10, "Notice Regarding Forthcoming Federal Firearms Background Checks" May 13, 2008. (ADAMS Accession No. ML073480158).
24. NRC, RIS, 2008-10, Supplement 1, "Notice Regarding Forthcoming Federal Firearms Background Checks," December 22, 2008. (ADAMS Accession No. ML082340897).
25. DOJ, FBI, brochure titled "Voluntary Appeals File," available on-line at: (<http://www.fbi.gov/about-us/cjis/nics/nics>), accessed 1/28/2015.
26. NRC, NUREG-1409, "Backfitting Guidelines," July 1990, Washington, DC. (ADAMS Accession No. ML032230247).
27. NRC, Management Directive 8.4, "Management of Facility Specific Backfitting and Information Collection," Washington, DC.

---

<sup>7</sup> Volumes 1, 2, and 3 of the Weapons Safety Assessment are publicly available. However, volumes 4 and 5 of the Weapons Safety Assessment are controlled as "Official Use Only – Security-Related Information" and are not available for public release. If you are an NRC applicant, licensee, or certificate holder and want to review these documents, please contact your company's licensing manager, onsite NRC inspector, or NRC Project Manager to request a copy. If you are not an NRC applicant, licensee, or certificate holder, and wish to obtain a copy of this document, please send a request to [FOIA.Resource@nrc.gov](mailto:FOIA.Resource@nrc.gov), in accordance with NRC Management Directive 3.1, "Freedom of Information Act."