

RULEMAKING ISSUE
(Notation Vote)

March 16, 2015

SECY-15-0036

FOR: The Commissioners

FROM: Mark A. Satorius */RA/*
Executive Director for Operations

SUBJECT: SUPPLEMENTAL PROPOSED RULE: ENHANCED WEAPONS,
FIREARMS BACKGROUND CHECKS, AND SECURITY EVENT
NOTIFICATIONS (10 CFR PART 73; RIN-3150-AI49)

PURPOSE:

To obtain Commission approval to publish a supplemental proposed rule that would modify the proposed requirements in the Enhanced Weapons, Firearms Background Checks, and Security Event Notifications rulemaking (hereafter referred to as the enhanced weapons rulemaking). This supplemental proposed rule would change the proposed regulations related to the voluntary application for enhanced weapons authority, preemption authority, and the mandatory firearms background checks under Section 161A of the Atomic Energy Act of 1954, as amended (AEA).

SUMMARY:

The U.S. Nuclear Regulatory Commission (NRC) staff prepared a supplemental proposed rule (Enclosure 1) that would modify the proposed enhanced weapons rulemaking so that it conforms with the updated Firearms Guidelines which were published in the *Federal Register* on June 25, 2014 (79 FR 36100). The supplemental proposed rule would also add language to the proposed enhanced weapons rulemaking that would address the staff's plan to sunset designation and confirmatory orders related to preemption authority and/or enhanced weapons authority. The supplemental proposed rule is necessary to implement the NRC's authority under Section 161A of the AEA, governing NRC licensee and certificate holder voluntary

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for preemption authority, voluntary application for enhanced weapons authority, and associated firearms background checks.

BACKGROUND:

The supplemental proposed rule responds to the direction from the Commission in the Staff Requirements Memorandum (SRM) on SECY-12-0125, "Interim Actions To Execute Commission Preemption Authority Under Section 161a of The Atomic Energy Act of 1954, As Amended" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12326A653). In SRM-SECY-12-0125, the Commission directed the NRC staff to revise the Firearms Guidelines in accordance with the agreement in principle with the U.S. Department of Justice on the requirements for background checks, and to provide the revised Firearms Guidelines to the Commission for review and approval. In SRM-SECY-12-0125, the Commission also directed the staff to make any conforming modifications to the associated text in the proposed enhanced weapons rule and publish the rule for public comment. A detailed history of staff activities on this rulemaking effort is provided in Enclosure 2.

Subsequently, the NRC staff provided revised Firearms Guidelines to the Commission, which were approved and published in the *Federal Register* on June 25, 2014 (79 FR 36100).

DISCUSSION:

The supplemental proposed rule would result in changes and additions to the following existing and proposed sections in Part 73 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Physical Protection of Plants and Materials:"

- Section 73.2, Definitions;
- Proposed Section 73.18, Authorization for use of enhanced weapons and preemption of firearms laws;
- Proposed Section 73.19, Firearms background checks for armed security personnel; and
- Section 73.51, Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

The enhanced weapons rulemaking would apply to power reactor facilities, Category I special nuclear material facilities, and at-reactor independent spent fuel storage installations.

Significant Changes from the Proposed Rule

The NRC made the following changes to the proposed rule so that it conforms with the updated Firearms Guidelines:

- Requiring firearms background checks for security personnel for only those licensees and certificate holders who have applied for Section 161A authority (i.e., either

stand-alone preemption authority or combined enhanced-weapons authority and preemption authority).

- Requiring periodic firearms background checks at least once every 5 years. Previously, the maximum periodicity was proposed to be at least once every 3 years. However, licensees and certificate holders would continue to be able to conduct periodic firearms background checks at a periodicity of less than every 5 years, at their discretion.
- Requiring that an application for Section 161A authority describe the applicant's purposes and objectives in requesting the authority. The description must include whether covered weapons are currently employed as part of the licensee's or certificate holder's existing protective strategy, or whether covered weapons will be used in a revised protective strategy.
- Conforming changes to the process for conducting firearms background checks and applying for stand-alone preemption authority or combined enhanced weapons authority and preemption authority, due to the modification of the requirements for completing firearms background checks specified in the revised Firearms Guidelines (e.g., removal of the required 30-day and 180-day milestones in conducting firearms background checks).
- Removing the definition of standard weapon and removing the references to standard weapon from the definitions of covered weapon and enhanced weapon.
- Revising the definitions of combined enhanced weapons authority and preemption authority, covered weapons, and stand-alone preemption authority.

The NRC is also preparing to make some clarifying and corrective changes in the supplemental proposed rule to the process for obtaining stand-alone preemption authority and the requirements for firearms background checks, based upon language approved by the Commission in the designation orders and confirmatory orders and lessons learned by the NRC staff in processing those orders.

Sunset of Orders

In SRM-SECY-12-0125, the Commission directed the NRC staff to include in the final enhanced weapons rule a plan "to sunset the interim designation order and the confirmatory orders." Accordingly, the staff has developed the following plan to sunset these orders and has taken advantage of this supplemental proposed rule to include new language in 10 CFR 73.18 and 73.19 to accomplish the Commission's direction. This proposed language would reduce potential regulatory confusion, provide for a transition from orders to regulations, permit the orders to be sunset after a final rule is issued, and provide an opportunity for stakeholder input on this transition process.

These new paragraphs in 10 CFR 73.18 and 73.19 would include the following specific provisions: (1) Commission approvals of applications for Section 161A authority prior to issuance of the final rule would remain valid and licensees would not have to reapply for Section

161A authority under the new regulations; (2) the implementation requirements contained in the orders would be superseded in their entirety by the final rule provisions; (3) licensees would be required to update procedures and training (to account for any differences between the regulations versus the orders) within 60 days of the effective date of the final rule; and (4) notify the NRC that the transition is complete within 70 days of the effective date of the final rule. The NRC staff would then rescind the orders. These sunset provisions would be applied to the preemption authority and firearms background check orders approved by the Commission and to enhanced weapons orders approved by the Commission prior to the issuance of the final rule. Finally, the staff envisions removing these “orphan” regulations from 10 CFR Part 73 as a component of the follow-on enhanced weapons rulemaking.¹

Cumulative Effects of Regulation

The NRC staff has engaged external stakeholders at a public meeting and by soliciting public comments on the proposed rules and associated draft guidance documents. A public meeting was held at NRC Headquarters on June 1, 2011, to discuss the proposed implementation plan for the February 2011 proposed rule (76 FR 6199). A summary of the public meeting is in ADAMS under Accession No. ML111720007. The feedback from this meeting informed the staff's recommended schedule for the implementation of the background check requirements in the *Federal Register* notice for this supplemental proposed rule (Enclosure 1). The staff also issued the proposed rule and draft guidance for public comment on February 3, 2011 (76 FR 6200), and issued for public comment a supplemental proposed rule that expanded the scope of the rulemaking to include at-reactor Independent Spent Fuel Storage Installations (78 FR 2214). Public comments from the proposed and supplemental proposed rules will be addressed in the final rule.

To address the cumulative effects of regulation, the staff included in the *Federal Register* notice for this supplemental proposed rule a request for specific comment on the cost estimates provided in the regulatory analysis, implementation schedule, and potential unintended consequences of the proposed rule. Additionally, a fundamental cumulative effects of regulation process discussed in SRM-SECY-11-0032 (ADAMS Accession No. ML110190027) is to publish draft guidance with proposed rules to support effective implementation. Accordingly, the staff has revised one guidance document to reflect the changes in this supplemental proposed rule. The draft guide will be published for public comment concurrent with the supplemental proposed rule.

Guidance Documents

The NRC staff will publish for comment the following revised draft guidance document in conjunction with the supplemental proposed rule:

¹ In SECY-08-0050 and SECY-08-0050A (ADAMS Accession Nos. ML072920478 and ML081910195, respectively), the NRC staff described the additional classes of facilities and activities that would be considered for designation as appropriate for Section 161A authority in a follow-on enhanced weapons rulemaking.

- Draft Guide 5020, Revision 1, “Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73” (ADAMS Accession No. ML14322A847).

COMMITMENT:

After Commission review, the NRC staff plans to publish this supplemental proposed rule and associated draft guidance in the *Federal Register*.

RECOMMENDATIONS:

The NRC staff recommends that the Commission take the following actions:

- (1) Approve the supplemental proposed rule (Enclosure 1) for publication in the *Federal Register*;
- (2) Certify that this supplemental proposed rule, if issued in final form, would not have a significant economic impact on a substantial number of small entities in order to satisfy requirements of the Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 605(b)); and
- (3) Note the following:
 - A regulatory analysis was prepared for the supplemental proposed regulations (Enclosure 3). It describes the costs averted to the industry and the NRC that would result from this supplemental proposed rule since fewer regulated entities would need to submit firearms background checks. The *Federal Register* notice requests public comment on the regulatory analysis as well as the proposed regulations;
 - The NRC staff has performed a final environmental assessment and reached a proposed finding of no significant impact (Section X of Enclosure 1);
 - This supplemental proposed rule would modify information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The NRC staff will submit this rule to the Office of Management and Budget for review and approval of the information collection requirements (Section XI of Enclosure 1);
 - The NRC staff will inform the appropriate congressional committees; and
 - The Office of Public Affairs will issue a press release upon publication of the supplemental proposed rule and associated guidance document.

RESOURCES:

The enhanced weapons supplemental proposed rule is budgeted in the Operating Reactors Business Line. Detailed resource information can be found in Enclosure 4.

COORDINATION:

The Office of the General Counsel has reviewed the supplemental proposed rule and has no legal objections. The Office of the Chief Financial Officer has reviewed the supplemental proposed rule for resource implications and has no objections. The Advisory Committee on Reactor Safeguards (ACRS) did not review the supplemental proposed rule because the Commission determined in SRM-M031002, dated October 31, 2003 (ADAMS Accession No. ML033040278), that issues associated with threat assessment, physical security, or force-on-force assessments are outside the ACRS's area of expertise, and involve intelligence information not available to the ACRS.

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Enclosures:

1. *Federal Register* notice
2. History of the Enhanced Weapons Rulemaking Activities
3. Regulatory Analysis
4. Resources For Enhanced Weapons Rulemaking Activities