

**RULEMAKING ISSUE**  
(Affirmation)

May 22, 2018

SECY-18-0058

FOR: The Commissioners

FROM: Victor M. McCree  
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SUBJECT: DRAFT FINAL RULE—ENHANCED WEAPONS, FIREARMS  
BACKGROUND CHECKS, AND SECURITY EVENT NOTIFICATIONS  
(RIN-3150-AI49; NRC-2011-0014, NRC-2011-0015, NRC-2011-0017,  
and NRC-2011-0018)

PURPOSE:

To request Commission approval to issue the enclosed draft final rule, “Enhanced Weapons, Firearms Background Checks, and Security Event Notifications.” This rule amends the security regulations of the U.S. Nuclear Regulatory Commission (Commission or NRC) to implement the Commission’s authority under Section 161A of the Atomic Energy Act of 1954, as amended (AEA), modify existing requirements for licensee physical security event notifications, and add new requirements for licensees to report suspicious activities.

SUMMARY:

This draft final rule (Enclosure 1) has three distinct parts. Part 1 implements the Commission’s authority under Section 161A of the AEA (Section 161A authority). Section 161A authorizes the Commission to designate those classes of licensees eligible to apply for permission to use certain firearms, weapons, ammunition, or devices, notwithstanding local, State, and certain Federal firearms laws and regulations prohibiting such use. These firearms may include enhanced weapons.

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Part 2 of the draft final rule adopts a graded approach that revises the requirements for physical security event notifications and adds two new notification requirements associated with imminent or actual hostile acts and the possession of enhanced weapons. Additionally, Part 2 reorganizes existing physical security event notification requirements into several timeliness categories. Part 3 adds requirements for reporting suspicious activities to law enforcement agencies and the NRC. Enclosure 2 contains the Regulatory Analysis for the draft final rule, and Enclosure 3 contains an Environmental Assessment.

#### BACKGROUND:

This rulemaking was initially part of a larger proposed rule on power reactor security requirements (71 FR 62664; October 26, 2006). Given the need for interagency coordination on the Firearms Guidelines that support a portion of this draft final rule, this rulemaking was bifurcated from the power reactor security rulemaking. On February 3, 2011, the NRC published the proposed rule, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications" in the *Federal Register* (76 FR 6200). The NRC subsequently published two supplemental proposed rules (78 FR 2214; January 10, 2013, and 80 FR 57106; September 22, 2015). The first supplemental proposed rule modified the 2011 proposed rule to include independent spent fuel storage installations (ISFSIs) located at power reactors (at-reactor ISFSIs) in the scope of the enhanced weapons portion of the rulemaking. The second supplemental proposed rule modified the firearms background check requirements of the proposed rule to align with the revised firearms background check requirements in the 2014 Firearms Guidelines (Revision 1). The NRC has addressed and dispositioned public comments on the 2011 proposed rule and both supplemental proposed rules in "NRC Response to Public Comments Received on Proposed Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Rule" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16264A004). As discussed more fully below, this document does not address public comments on the cyber security event notification (CSEN) requirements that were included in the 2011 proposed rule because these comments were already addressed in a separate CSEN final rule published on November 2, 2015 (80 FR 67264).

Part 1 of the draft final rule implements the statutory authority provided to the Commission by the Energy Policy Act of 2005 (EPAAct) (Pub. L. 109-58). Section 653 of the EPAAct amended the AEA by adding a new Section 161A (42 U.S.C. 2201a). Section 161A of the AEA authorizes the Commission to designate those classes of licensees eligible to apply for permission to use certain firearms, weapons, ammunition, or devices, notwithstanding local, State, and certain Federal firearms laws and regulations prohibiting such use.

Pursuant to Section 161A.d, this authority is not effective until the Commission, with the approval of the Attorney General (AG) of the, issues guidelines to carry out this authority. On September 11, 2009, the NRC, with the approval of the AG, published the NRC's Firearms Guidelines in the *Federal Register* (74 FR 46800). Subsequently, the NRC, with the approval of the AG, revised the Firearms Guidelines (Revision 1) and published them in the *Federal Register* on June 25, 2014 (79 FR 36100). The Firearms Guidelines provide guidance on how the Commission intends to implement the authority conferred on it by Section 161A of the AEA.

Part 1 of the draft final rule responds to the direction given to the staff in staff requirements memorandum (SRM) SRM-SECY-08-0050/0050A, "Firearms Guidelines Implementing Section 161A of the Atomic Energy Act of 1954 and Associated Policy Issues," dated August 15, 2008 (ADAMS Accession No. ML082280364). The SRM directed the staff to provide the Commission with a draft final rule implementing the Firearms Guidelines. In

SRM-SECY-12-0125, "Interim Actions to Execute Commission Preemption Authority Under Section 161A of the Atomic Energy Act of 1954, as Amended," dated November 21, 2012 (ADAMS Accession No. ML12326A653), the Commission directed the staff to include in the draft final rule a plan "to sunset the interim designation order and the confirmatory orders" that would authorize licensees to receive Section 161A authority. Enclosure 4 provides a detailed history of staff activities associated with the enhanced weapons portion of the rulemaking.

Part 2 of this draft final rule revises the physical security event notification requirements. The last major update to NRC's physical security event notification regulations was in 1987. The existing regulations require all physical security event notifications be provided on a timescale that may not reflect the event's actual security significance (i.e., all security events currently require a 1-hour notification). This part of the rule groups security events requiring notification into several timeliness categories, with events having a greater security significance requiring quicker notifications. Following the September 11, 2001, terrorist attacks, the NRC issued guidance requesting licensees to voluntarily notify the NRC of actual or imminent hostile acts. The draft final rule makes these voluntary notification requirements mandatory and adds new reporting requirements for those licensees possessing enhanced weapons.

Part 3 of the draft final rule establishes new suspicious activity reporting requirements for certain NRC licensees. The NRC issued guidance requesting licensees to voluntarily report suspicious activities to the local Federal Aviation Administration (FAA) control tower (for suspicious activities involving aircraft), local law enforcement agencies (LLEA), the local Federal Bureau of Investigation (FBI) field office, and the NRC.<sup>1</sup> However, licensees' voluntary reporting of suspicious activity has been inconsistent in terms of both the types of data reported and the timeliness of reports. The new mandatory suspicious activity reporting requirements increase regulatory clarity by establishing consistent reporting requirements. Enclosure 5 provides a detailed history of staff efforts associated with the suspicious activity reporting requirements in this rulemaking.

## DISCUSSION:

### Section 161A Authority

Designated NRC licensees may request permission from the Commission to transfer, receive, possess, transport, import, and use firearms, ammunition, or devices, notwithstanding local, State, and certain Federal firearms laws and regulations prohibiting such possession and use. For the purposes of this rule, this type of authority is referred to as "stand-alone preemption authority." Additionally, designated licensees may request permission to transfer, receive, possess, transport, import, and use firearms, ammunition, or devices that require registration under the National Firearms Act (26 U.S.C. Chapter 53). These types of weapons are typically referred to as "enhanced weapons" and for the purposes of this rule this type of authority is referred to as "combined preemption authority and enhanced weapons authority." Enhanced weapons include machine guns, short-barreled shotguns, and short-barreled rifles.

Section 161A requires that the security personnel of those designated licensees receiving stand-alone preemption authority or combined preemption authority and enhanced weapons authority complete a firearms background check conducted by the AG if their official duties require access to covered weapons as defined in the draft final rule. This background check is

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<sup>1</sup> Information Assessment Team Advisory IA-04-08, "Reporting Suspicious Activity Criteria," dated October 5, 2004 (ADAMS Accession No. ML090570321; non-publicly available).

necessary to determine if the individual is prohibited from possessing firearms or ammunition under Federal or State law.

This draft final rule designates the following classes of facilities as eligible to apply for the authority granted to the Commission by Section 161A of the AEA: power reactor facilities, Category I strategic special nuclear material (SSNM) facilities, all ISFSIs, and licensee activities involving the transportation of spent nuclear fuel (SNF). The proposed rule also included certificate holders under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 76, "Certification of Gaseous Diffusion Plants." However, on February 2, 2015, the NRC terminated the 10 CFR Part 76 Certificate of Compliance for the United States Enrichment Corporation's Paducah Gaseous Diffusion Plant (ADAMS Accession No. ML14318A328). There are no current 10 CFR Part 76 certificate holders and the agency expects no future Part 76 certificate holders. Accordingly, the staff has removed references to certificate holders from the draft final rule.

### Physical Security Event Notifications

Currently, all physical security event notifications must be submitted to the NRC within 1 hour. This approach does not take into account the significance of the security event. The draft final rule adopts a graded approach that establishes appropriate event notification categories (e.g., 15-minute, 1-hour, 4-hour, and 8-hour notifications) based on the security significance of the event. The 1-hour, 4-hour, and 8-hour notifications apply to all facilities and activities that are subject to the provisions of 10 CFR Part 73. The 15-minute notification requirement applies to a subset of these facilities. Development of this graded approach was based on stakeholder comments received on the 2011 proposed rule.

The draft final rule adds new notification requirements for events involving imminent or actual hostile acts and for certain events associated with enhanced weapons. The new notification requirements for imminent or actual hostile acts apply to power reactors (operating and decommissioning); ISFSIs; Category I SSNM facilities; and the activities involved in the transportation of Category I SSNM, SNF, and high-level radioactive waste. These notifications must be made to the NRC within 15 minutes. The new notification requirements for enhanced weapons apply to licensees of power reactors (operating and decommissioning); ISFSIs; Category I SSNM facilities; and the activities involved in the transportation of SNF that possess enhanced weapons. These notifications must be made to the NRC within 4 hours.

### Suspicious Activity Reporting

The draft final rule establishes new mandatory reporting requirements for suspicious activities at certain NRC licensed facilities. A licensee's timely submission of suspicious activity reports (SARs) to the NRC and Federal and local law enforcement agencies is an important part of the U.S. government's efforts to disrupt or dissuade malevolent acts against the nation's critical infrastructure. Despite the increasingly fluid and unpredictable nature of the threat environment, some elements of terrorist tactics, techniques, and procedures remain constant. For example, attack planning and preparation generally proceed through several predictable stages, including intelligence gathering and preattack surveillance or reconnaissance. These preattack stages, in particular, offer law enforcement a significant opportunity to identify and disrupt or dissuade acts of terrorism before they occur. However, to use this information most effectively, timely reporting of suspicious activities by licensees to both Federal and local law enforcement is of vital importance. Additionally, timely submission of SARs to the NRC supports one of the

agency's primary mission essential functions of threat assessment for licensed facilities, materials, and shipping activities.

Following the events of September 11, 2001, the NRC issued security advisories and other guidance requesting that certain licensees voluntarily report suspicious activities to the NRC. Licensee implementation of these voluntary reporting requirements has been inconsistent both in terms of participation and the timeliness of reports. Establishment of new mandatory reporting requirements will address these consistency concerns. Furthermore, these new reporting requirements are consistent with the suspicious activity reporting requirements for large byproduct material licensees at 10 CFR 37.57, "Reporting of events," and 10 CFR 37.81, "Reporting of events."

The staff has developed a new regulatory guide specifically for suspicious activity reporting requirements. Regulatory Guide (RG) 5.87, "Suspicious Activity Reports (U)" (ADAMS Accession Nos. ML17138A384 (redacted, publicly available) and ML17132A163 (non-publicly available)), provides licensees with reporting thresholds and examples of what is and is not considered a suspicious activity. In addition, the draft final rule provides licensees with the discretion to conclude that an activity is or is not suspicious and has provided licensees with the flexibility to query government agencies and surveillance records in assessing whether an activity is suspicious. Licensees can take into account their knowledge of their locale and the local population in assessing a potential suspicious activity, before reaching a conclusion on whether the activity should be reported. Based upon the current reporting data (see Figure 1 in Enclosure 5), the staff estimates that an average of two to three SARs would be submitted per affected licensee per year. The staff estimates that each SAR would require approximately 30 minutes to complete, and no written follow-up report is required.

The draft final rule exempts a small number of Category III special nuclear material (SNM) licensees from the SAR requirements. These licensees possess their SNM encapsulated in sealed sources that are used for research, development, and testing purposes. Therefore, there is a significantly reduced security risk posed by the SNM contained in these sealed sources. The draft final rule also exempts Category II and III SNM licensees engaged in fresh fuel fabrication and enrichment facilities because of the reduced security risk posed by this form of SNM. The draft final rule, however, does not apply this exemption to Category II and III SNM enrichment facilities possessing Restricted Data (RD). The rule applies to these facilities because of the national security concerns associated with the proliferation of RD information, technology, or materials.

The NRC received several comments on the proposed suspicious activity reporting requirements. The Nuclear Energy Institute (NEI) submitted a comment that indicated that the "industry understands the benefit of reporting suspicious activity to the NRC in a timely manner in light of the importance of detecting preoperational surveillance activities." NEI recommended that suspicious activities be reported within 8 hours of the time of discovery instead of 4 hours as proposed in the 2011 rule. Other stakeholders indicated that the draft final rule should be consistent with current NRC, FBI, and Department of Homeland Security guidance on reporting processes for suspicious activities (which licensees already follow). The staff agreed with these comments and has changed the draft final rule language to state "reporting must be completed as soon as possible, but within 8 hours of the time of discovery." Licensees are to report a suspicious activity first to the LLEA, then the FBI local field office, the NRC, and lastly to the local FAA control tower (for suspicious activities involving aircraft).

The draft final rule provides a 300-day compliance (i.e., implementation) period for the physical security event notification and suspicious activity reporting provisions. This allows licensees sufficient time to complete the training and develop the procedure updates required by the draft final rule. Finally, the staff intends to develop enforcement guidance that will concentrate any NRC inspection and enforcement activities on the programmatic issues of reporting suspicious activities, instead of the licensee's individual suspicious activity reports.

#### Applicability to Non-power Reactors

The draft final rule would impose new physical security event notification and suspicious activity reporting requirements on non-power production or utilization facilities (NPUF) licensees. NPUF licensees include non-power reactors (e.g., research and test reactors)). Consistent with SRM-SECY-06-0111, "Staff Recommendations Regarding Security at Research and Test Reactors," dated June 30, 2006 (ADAMS Accession No. ML061810214 (non-publicly available)), the staff recognizes the importance of ensuring that any new security requirements on these licensees are appropriately justified. Accordingly, the staff engaged in focused outreach activities with non-power reactor licensees to ensure that they were aware of and afforded an opportunity to comment on the proposed rule. The staff believes that this rule will clarify reporting for non-power reactor licensees. For this reason, and for the reasons provided above supporting the development of new physical security event notification and SAR requirements, the staff concludes that these new requirements are justified for non-power reactor licensees.

#### Withdrawal of Orders

On June 14, 2013, the Commission issued Order EA-13-092, "Order Designating an Interim Class of NRC-Licensed Facilities that are Eligible To Apply to the Commission for Authorization To Use the Authority Granted Under the Provisions of Section 161a of the Atomic Energy Act of 1954, as Amended." Between September 2015 and January 2016, the Commission issued seven confirmatory orders to eight licensees authorizing them to use the Commission's Section 161A authority at seven sites.<sup>2</sup> In SRM-SECY-12-0125, the Commission directed the staff to include a plan "to sunset [withdraw] the interim designation order and the confirmatory orders" in the rulemaking implementing the Commission's Section 161A authority. Accordingly, the draft final rule includes language in 10 CFR 73.15, "Authorization for use of enhanced weapons and preemption of firearms laws," to withdraw these orders in accordance with Commission direction. The draft final rule specifies that those licensees subject to orders granting them Section 161A authority must come into compliance with the requirements of the rule within 300 days from the date of publication of the final rule. The orders are withdrawn once the 300-day period is over.

#### Revision of Draft Final Rule Appeal Provision and Associated Firearms Guidelines

Section 161A of the AEA requires that licensees that receive either stand-alone preemption authority or combined preemption authority and enhanced weapons authority must require their security personnel to complete a firearms background check conducted by the AG. The FBI's Criminal Justice Information Services Division administers this background check requirement through the FBI's National Instant Criminal Background Check System (NICS) database. As

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<sup>2</sup> The designation order and 7 confirmatory orders can be found in ADAMS (ADAMS Accession No. ML18095A011). Two licensees at one additional site had also requested to obtain stand-alone preemption authority, but later withdrew their applications (ADAMS Accession No. ML15114A435).

part of this program, the FBI has established appeal procedures that may be used by any individual, including licensee security personnel, who receive a delayed or denied NICS response.

The FBI's NICS program does not contain any deadline for filing an appeal. However, the Firearms Guidelines currently state that a licensee's security personnel must file an appeal of a delayed or denied NICS response within 45 calendar days of being notified of the adverse response. The Firearms Guidelines further state that licensee security personnel must seek an extension of the 45-day appeal deadline from the licensee if needed. Consistent with the Firearms Guidelines, the proposed rule contained the same 45-day appeal deadline and extension request language.

Absent a corresponding appeal deadline in the FBI's NICS program, the NRC would need to have independent regulatory authority to impose the 45-day appeal deadline and extension request provisions on licensee security personnel. The NRC does not have statutory authority to regulate activities or individuals that do not have a nexus to radiological health and safety or the common defense and security. The staff has determined that the 45-day appeal deadline and extension request language in the draft final rule is purely procedural, serves no safety or security function, and therefore has no nexus to radiological health and safety or the common defense and security. Therefore, the NRC has no regulatory authority to impose these appeal requirements on licensee security personnel. Accordingly, the staff has removed the 45-day appeal deadline and extension request language from Section 73.17(p) of the draft final rule. Enclosure 6 contains the proposed revised rule language removing the 45-day appeal deadline and extension request.

Additionally, the staff is engaging in discussions at the working level with U.S. Department of Justice (DOJ) staff to revise the Firearms Guidelines to address the issue raised by the 45-day appeal deadline and extension request language. Enclosure 7 contains the staff's proposed revision to the Firearms Guidelines removing these provisions. Once NRC and DOJ staff have agreed upon a draft revision to the guidelines, it will be submitted to the Commission for review and approval. If the Commission approves the proposed draft revision, it will be formally submitted to DOJ to obtain the approval of the Attorney General. The staff recommends that the guidelines be published in the *Federal Register* prior to the publication of the final rule to avoid any inconsistency between the final rule and the guidelines. Enclosure 7 is not publicly available as the revisions to the Firearms Guidelines are considered sensitive internal predecisional information.

#### Significant Changes from the Proposed Rule to the Final Rule

The staff made significant changes in the draft final rule as a result of public comments and other considerations. The draft final rule differs from the proposed rule as follows:

- The draft final rule implements a graded approach for physical security event notifications to take into account the security significance of a particular security event. This change will typically result in licensees having additional time to evaluate a potential event and determine whether it needs to be reported.
- The draft final rule provides additional time for licensees to comply with the new physical security event notification and suspicious activity reporting requirements. Public comments indicated that 9 months would be an appropriate timeframe to complete the training and procedure updates necessary to implement these requirements.

Accordingly, the staff increased the time to come into compliance with the new rule requirements from the 210 days identified in the 2011 proposed rule to 300 days from the date of publication of the final rule.

- The draft final rule changes the periodicity of recurring firearms background checks for licensees with covered weapons under Section 161A authority. The proposed rule stated that periodic firearms background checks would be required every 3 years. Public comments showed that 5-year periods would be more appropriate, as this timeframe would allow licensees to align the firearms background checks with the other background checks required of security personnel. The staff determined that requiring recurring firearms checks once every 5 years was appropriate and incorporated this requirement into the draft final rule. Licensees are able to conduct checks more frequently, if they so desire.
- The draft final rule removes the 45-day appeal deadline and extension request provisions imposed on licensee security personnel who receive an adverse firearms background check.
- The draft final rule removes the physical security event notification and recordkeeping requirements regarding the loss or theft of Safeguards Information. The staff determined that it would be preferable to retain the existing notification procedures in licensee security plans.
- For certain licensees, the draft final rule adds notifications of suspicious activities to the LLEA, the FBI local field office, the NRC, and the FAA (for suspicious activities involving aircraft). The 2011 proposed rule contained language requiring that suspicious activities be reported within 4 hours from the time of discovery. The NRC received a public comment recommending that the reporting time be extended to 8 hours from the time of discovery. The NRC evaluated this comment and determined that an 8 hour reporting requirement is consistent with interagency terrorist threat reporting guidance. Accordingly, the draft final rule requires reporting of suspicious activities no longer than 8 hours from the time of discovery.
- The CSEN requirements in the proposed enhanced weapons rule are no longer within the scope of this draft final rule. In SRM-COMSECY-13-0031, "Bifurcation of the Enhanced Weapons, Firearms Background Checks, and Security Event Notification Rule," dated January 22, 2014 (ADAMS Accession No. ML14023A860), the Commission directed the staff to bifurcate the CSEN requirements from the enhanced weapons rulemaking. On November 2, 2015, the NRC published a final rule in the *Federal Register* on "Cyber Security Event Notifications" (80 FR 67264). This 2015 rule addressed public comments on the CSEN requirements contained in the 2011 proposed rule. Therefore, this draft final rule will not address those CSEN public comments.

### Regulatory Analysis

The staff prepared a regulatory analysis (RA) to determine anticipated quantitative costs and benefits of the draft final rule. In particular, the RA evaluates the costs and benefits associated with new and revised requirements. The RA concludes that the draft final rule as a whole results in an estimated cost of between \$2.73 million at a 7-percent discount rate and \$2.95 million at a 3-percent discount rate. These costs are associated with four affected attributes: industry implementation and operation and NRC implementation and operation.

Overall, the benefits of the final regulation include enhanced public safety and security resulting from increased defensive capability at regulated entities to interdict and neutralize an attack, or potentially to deter an attack, for those entities that opt to employ stand-alone preemption authority or combined preemption authority and enhanced weapons authority. Also, the draft final rule implements the mandates of Section 161A of the AEA, as described in the Firearms Guidelines. Additionally, the physical security event notification regulations clarify the regulatory requirements and provide in most instances additional time for licensees to notify the NRC consistent with the security significance of the event. Finally, the suspicious activity reporting regulations provide additional timely information to law enforcement agencies to potentially disrupt or dissuade terrorist attacks.

### Cumulative Effects of Regulation

The staff has engaged external stakeholders at public meetings and by requesting public comment on the proposed rules and associated draft guidance. The NRC issued the proposed rule and draft guidance for public comment on February 3, 2011 (76 FR 6200). The staff, with FBI and U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives representatives in attendance, held a public meeting at NRC Headquarters on June 1, 2011, to discuss the proposed rule, draft supporting documents, and the proposed implementation plan. A summary of the public meeting is available in ADAMS (ADAMS Accession No. ML111720007).

As previously discussed, NRC issued two supplemental proposed rules and associated draft guidance. The staff did not hold a public meeting to discuss the 2013 supplemental proposed rule. On November 19, 2015, the staff held a public meeting to discuss the 2015 supplemental proposed rule and to discuss the revised implementation period for the draft final rule. A summary of the November 2015 public meeting is available in ADAMS (ADAMS Accession No. ML15348A082). Based on feedback from the public meetings, and comments on the proposed rule and the two supplemental proposed rules, the staff has included in the draft final rule a 300-day implementation period for licensees transitioning from Section 161A orders to the new regulations, implementing the revised physical security event notification requirements, and implementing the new suspicious activity reporting requirements.

A fundamental means of addressing the cumulative effects of the regulation, as discussed in SRM-SECY-11-0032, "Consideration of the Cumulative Effects of Regulation in the Rulemaking Process," dated October 11, 2011 (ADAMS Accession No. ML112840466), is to issue the final guidance with the draft final rule and thus support effective implementation. The staff has prepared these regulatory guidance documents and will publish them simultaneously with the draft final rule:

- RG 5.62, Revision 2, "Physical Security Event Notifications, Reports and Records" (ADAMS Accession No. ML17131A285)
- RG 5.86, "Enhanced Weapons Authority, Preemption Authority, and Firearms Background Checks" (ADAMS Accession No. ML17131A296)
- RG 5.87, "Suspicious Activity Reports (U)" (ADAMS Accession Nos. ML17138A384 (redacted, publicly available) and ML17132A163 (non-publicly available))

- “Weapons Safety Assessment,” Volumes 1–5 (ADAMS Accession No. ML18108A014)
- “Weapons Safety Assessment,” Volume 6 (ADAMS Accession No. ML18115A418 (non-publicly available))

The staff intends to publish volumes 1–5 of the Weapons Safety Assessment as a NUREG. Volume 6 cannot be made public with the other Weapons Safety Assessment volumes that will be published as a NUREG because it contains security-related information on weapons design and performance information. As such, the staff intends to create a new non-publicly available document that will contain this information for licensees that apply for combined preemption authority and enhanced weapons authority.

The staff will temporarily withdraw NUREG-1304, “Reporting of Safeguards Events” (ADAMS Accession No. ML16012A188), from active use, pending licensee compliance with the new physical security event notification provisions. NUREG-1304 contains a set of questions and answers on security event notifications and reports; because the new and old physical security event notification regulations differ, the staff will temporarily withdraw this NUREG. The staff intends to revise NUREG-1304 at a future date based on stakeholder interactions after the implementation period is completed, should the draft final rule be approved by the Commission.

The staff also will withdraw Generic Letter (GL) 91-03, “Reporting of Safeguards Events,” dated March 6, 1991 (ADAMS Accession No. ML031140131), after the effective date of the new physical security event notification requirements in the draft final rule. GL 91-03 provides guidance to licensees on differentiating between reportable and recordable security events. However, it will not be consistent with the new physical security event reporting requirements and will be withdrawn. The staff has incorporated relevant topics from GL 91-03 into the new revision of Regulatory Guide 5.62.

The staff will update existing internal agency enforcement and allegation guidance. The updated guidance will address the possession of enhanced weapons, physical security event notifications, and suspicious activity reporting.

#### Backfitting and Issue Finality Considerations

The provisions of the enhanced weapons portion of the rule are voluntary in nature, and would not impose modifications or additions to existing structures, components, designs, or existing procedures or organizations if adopted in final form. Accordingly, these provisions of the draft final rule would not constitute backfitting or otherwise be inconsistent with any issue finality provision in 10 CFR Part 52.

This final rule contains three requirements that were not imposed by order on the eight licensees with stand-alone preemption authority: notification of disqualifying events or conditions (10 CFR 73.17(g)), training supporting notification of disqualifying events or conditions and information for appealing an adverse firearms background check to the FBI (10 CFR 73.17(j)), and protection of information from unauthorized disclosure (10 CFR 73.17(q)). Although these amendments represent new requirements, they involve recordkeeping, reporting requirements, or an appeals process, which do not constitute backfitting as defined in 10 CFR Chapter I or a violation of issue finality in 10 CFR part 52.

The portion of the draft final rule imposing new physical security event notifications and suspicious activity reporting affects information collection and reporting requirements, which are

outside the purview of the backfitting rules and are not considered a backfit. Therefore, a backfit analysis is not required and has not been completed for any of the provisions of the draft final rule.

#### Follow-on Enhanced Weapons Rulemaking

In SRM-SECY-08-0050/0050A, the Commission directed the staff to accomplish the rulemaking to implement the NRC's authority under Section 161A of the AEA via two separate rulemaking efforts. This draft final rule is the first of these two efforts. It designates the higher-security-risk facilities and radioactive material and provides the technical requirements for licensees to apply for and use Section 161A authority. The second rulemaking (referred to as the "follow-on rulemaking") would designate the remaining facilities and radioactive material considered appropriate for Section 161A authority.

With the Commission's approval of this draft final rule, the staff will commence the follow-on rulemaking to designate the remaining classes of facilities and radioactive material that were recommended in Enclosure 3 to SECY-08-0050, with one exception. The staff does not intend to include conversion and deconversion facilities licensed under 10 CFR Part 40, "Domestic Licensing of Source Material," in the follow-on rulemaking. Since providing SECY-08-0050 to the Commission, the staff determined that the regulatory infrastructure (e.g., provisions regarding physical security plans) necessary for including these facilities in the follow-on rulemaking does not exist in the current 10 CFR Part 40 regulations. In SECY-08-0050 it was assumed that development of this necessary infrastructure was to be included in a separate 10 CFR Part 40 rulemaking prior to development of the follow-on rulemaking. However, the Commission approved the staff's recommendation to terminate the 10 CFR Part 40 rulemaking in SRM-COMSECY-15-0002, "Termination of Rulemaking To Revise Title 10 of the *Code of Federal Regulations* Part 40, 'Domestic Licensing of Source Material' and Staff Plans to Address Other Items in Staff Requirements Memorandum for SECY-12-0071 (RIN 3150-A[[50)," dated April 17, 2015 (ADAMS Accession No. ML15107A488). The staff has concluded that development of this 10 CFR Part 40 regulatory infrastructure is outside the scope of the follow-on rulemaking, and therefore, does not plan to include 10 CFR Part 40 licensees in the follow-on rulemaking unless the Commission directs otherwise.

The staff will provide the draft regulatory basis for the follow-on rulemaking to the Commission via a Note to Commissioners' Assistants within 6 months of the publication of this draft final rule.

#### COMMITMENTS:

Upon Commission approval, the staff will submit the draft final rule to the Office of Management and Budget (OMB) for review of the information collection requirements. After the OMB review is complete, the staff will publish the draft final rule in the *Federal Register* and will issue guidance and new and revised NRC forms at the same time as publication of the final rule.

Once NRC and DOJ staff reach agreement on the draft revised Firearms Guidelines, they will be submitted to the Commission for review and approval.

The staff intends to conduct a workshop after licensees have implemented the revised physical security event notification and new suspicious activity reporting requirements. The staff will use the results of the workshop to update NUREG-1304, creating Revision 1, Volumes 1 and 2. Volume 1 will address physical security event notifications, and Volume 2 will address suspicious activity reporting.

The staff intends to develop revised and new enforcement and allegation guidance to reflect the revised and new provisions of the draft final rule.

The staff will provide the draft regulatory basis for the follow-on enhanced weapons rulemaking to the Commission 6 months after publication of this final rule.

### RECOMMENDATIONS:

The staff recommends that the Commission take the following actions:

- (1) Approve the draft final rule (Enclosure 1) for publication in the *Federal Register*, and
- (2) Certify that the rule 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)).
- (3) Note the following:
  - The staff has prepared a final regulatory analysis (Enclosure 2).
  - The staff has performed a final environmental assessment and reached a proposed finding of no significant impact (Enclosure 3).
  - The draft final rule modifies information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The new NRC Form 754 contains new information collection requirements. The revised NRC Form 366 also contains updated information collection requirements. If the Commission approves the draft final rule, the staff will submit the rule and NRC Forms 754 and 366 to OMB for review and approval of the information collection requirements (Section XII of Enclosure 1).
  - The staff recommends that the revised Firearms Guidelines be issued by the Commission, with the approval of the AG, before the publication of the final rule.
  - The staff will inform the appropriate Congressional committees and will coordinate with the Office of Public Affairs on the need for a press release upon publication of the final rule.

### RESOURCES:

The enhanced weapons rulemaking is budgeted in the Operating Reactors Business Line. There is no need to change the budgeted resources as a result of this paper.

### COORDINATION:

The Office of the General Counsel has reviewed the draft final rule and has no legal objections. Because budgeted resources have not changed as a result of this paper, the Office of the Chief Financial Officer has not reviewed this paper or the draft final rule. The Committee to Review Generic Requirements has reviewed the backfit and issue finality considerations of the draft final rule and has endorsed the staff's conclusion that a backfit analysis is not required for this draft final rule (ADAMS Accession No. ML17313A041). The Advisory Committee on Reactor

Safeguards (ACRS) did not review the draft final rule because the Commission determined in SRM-M031002, "Meeting with Advisory Committee on Reactor Safeguards (ACRS)," dated October 31, 2003 (ADAMS Accession No. ML033040278), that issues associated with threat assessment, physical security, or force-on-force assessments are outside the Committee's area of expertise and involve security intelligence information not available to ACRS.

*/RA/*

Victor M. McCree  
Executive Director  
for Operations

Enclosures:

1. Draft Final Rule
2. Regulatory Analysis
3. Environmental Assessment
4. History of the Enhanced Weapons Rulemaking
5. History of Suspicious Activity Reporting
6. 2011 Proposed Rule Text Changes to Remove the 45-Day Appeal Deadline and Extension Process
7. Preliminary Firearms Guidelines Changes to Remove the 45-Day Appeal Deadline and Extension Process (non-publicly available)

**SUBJECT:** FINAL RULE—ENHANCED WEAPONS, FIREARMS BACKGROUND CHECKS, AND SECURITY EVENT NOTIFICATIONS (RIN-3150-AI49, NRC-2011-0014, NRC-2011-0015, NRC-2011-0017, AND NRC-2011-0018) DATED: MAY 22, 2018

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 SECY: ML16264A002  
 FRN: ML16264A003  
 Encl 4: ML18142B056  
 Encl 5: ML18142B065  
 Encl 6: ML18121A011

**OUO-Encl 7: ML18121A013**

\* via e-mail

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<b>DATE</b>	10/05/2017	10/06/2017	05/09/2018	05/04/2018
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<b>DATE</b>	05/06/2018	05/22/2018		

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