

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Parts 20, 21, 50, 70, 73, 74, and 76**

**[NRC-2011-0014; NRC-2011-0015; NRC-2011-0017; NRC-2011-0018]**

**RIN 3150-AI49**

**Enhanced Weapons, Firearms Background Checks,  
and Security Event Notifications**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule and guidance; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to implement its authority under Section 161A of the Atomic Energy Act of 1954, as amended (AEA). This final rule applies to several classes of facilities as well as activities involving the transportation of radioactive material and other property designated by the NRC. This final rule also revises the physical security event notification requirements for different classes of facilities and the transportation of radioactive material to add consistency and clarity. Further, the NRC is adding new event notification requirements associated with the possession of enhanced weapons and imminent or actual hostile acts, and new reporting requirements for suspicious activity.

**DATES:** *Effective date:* This final rule is effective **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. *Compliance date:* Compliance with

this final rule is required by **[INSERT DATE 300 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**, for those licensed under parts 50, 52, 60, 63, 70, and 72 of title 10 of the *Code of Federal Regulations* (10 CFR) and subject to §§ 73.1200, 73.1205, 73.1210, and 73.1215.

**ADDRESSES:** Please refer to Docket IDs NRC-2011-0014, NRC-2011-0015, NRC-2011-0017, and NRC-2011-0018 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket IDs NRC-2011-0014, NRC-2011-0015, NRC-2011-0017, or NRC-2011-0018. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section. For the convenience of the reader,

instructions about obtaining materials referenced in the document are also provided in the “Availability of Documents” section.

- **NRC’s PDR:** You may examine and purchase copies of public documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Robert Beall, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-3874; e-mail: [Robert.Beall@nrc.gov](mailto:Robert.Beall@nrc.gov); or Philip Brochman, Office of Nuclear Security and Incident Response, telephone: 301-287-3691; e-mail: [Phil.Brochman@nrc.gov](mailto:Phil.Brochman@nrc.gov). Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

**SUPPLEMENTARY INFORMATION:**

**EXECUTIVE SUMMARY:**

This final rule has three distinct parts. Part 1 implements the Commission’s authority under Section 161A of the AEA. Section 161A authorizes the Commission to designate those classes of licensees permitted to use firearms, weapons, ammunition, or devices, notwithstanding local, State, and certain Federal firearms laws and regulations prohibiting such use. Part 2 revises the requirements for physical security event notifications and adds two new notification requirements associated with imminent or actual hostile acts and possession of enhanced weapons. Additionally, Part 2 simplifies and reorganizes existing physical security event notification requirements into several timeliness categories (e.g., 15-minute, 1-hour, 4-hour, and 8-hour notifications).

Part 3 adds requirements for reporting suspicious activities to law enforcement agencies and the NRC.

#### A. Need for the Regulatory Action

Part 1 of this final rule amends the NRC's regulations to implement the Commission's authority under Section 161A of the AEA (Section 161A authority). Without implementing regulations, the Commission would need to grant Section 161A authority through confirmatory orders. This process is unnecessarily burdensome on licensees and the NRC. Additionally, this process lacks the transparency and regulatory certainty provided by regulations. These amendments will establish a clear and consistent regulatory process to enable licensees to apply for and effectively implement the Commission's Section 161A authority.

Part 2 of this final rule amends the NRC's regulations in 10 CFR part 73 to modify the physical security event notification requirements. Currently, all physical security event notifications must be submitted to the NRC within 1 hour. The revised regulations provide a graded approach that takes into account the security significance of the physical security event, which in most cases will provide licensees greater flexibility. Additionally, this final rule adds new requirements to notify the NRC following actual or imminent hostile action as well as lost or stolen enhanced weapons. These new requirements will ensure licensees provide notification to the NRC of all appropriate physical security events.

Part 3 of this final rule amends the NRC's regulations in 10 CFR part 73 to add requirements for licensees to report suspicious activities. Currently, licensees voluntarily report suspicious activities. Licensee implementation of voluntary suspicious activity reporting has been inconsistent in terms of both the types of data reported and the timeliness of reports. Because licensees' timely and consistent submission of

suspicious activity reports (SARs) to the NRC and to law enforcement is an important part of the U.S. government's efforts to disrupt or dissuade malevolent acts against the nation's critical infrastructure, it is necessary to make suspicious activity reporting mandatory.

## B. Major Provisions

Major provisions of this final rule include:

- Implementation of the Commission's Section 161A authority. Section 161A authorizes the Commission to designate those classes of licensees eligible to apply for stand-alone preemption authority or combined preemption authority and enhanced weapons authority. Stand-alone preemption authority allows regulated entities to possess and use weapons that would otherwise be prohibited by State, local, and certain Federal firearms laws. Combined preemption authority and enhanced weapons authority allows a regulated entity to possess and use a certain category of covered weapon called an "enhanced weapon." Enhanced weapons include machine guns, short-barreled shotguns, and short-barreled rifles.
- Modification of the requirements for physical security event notifications using a graded approach that reflects the security significance of the event. Additionally, this final rule adds new notification requirements for imminent or actual hostile actions and lost or stolen enhanced weapons.
- Establishment of new suspicious activity reporting requirements to clarify and ensure consistency in reporting to law enforcement agencies and the NRC.

Concurrent with this final rule, the NRC is issuing Regulatory Guide (RG) 5.86, "Enhanced Weapons Authority, Preemption Authority, and Firearms Background Checks"; RG 5.62, Revision 2, "Physical Security Event Notifications, Reports and Records"; and RG 5.87, "Suspicious Activity Reports (U)."

### C. Costs and Benefits

The NRC has prepared a regulatory analysis to determine the expected quantitative costs and benefits of this final rule, as well as qualitative factors considered in the NRC's rulemaking decision. The quantitative analyses evaluates four attributes—industry implementation, industry operation, NRC implementation, and NRC operation. Qualitative analyses were used because monetizing the full impact of each attribute is not possible or practical. Monetizing the impact of these attributes would require estimation of factors such as the frequency of security-related events and the consequences of such events.

The analysis concluded that this final rule will result in net costs to the industry and the NRC. The total costs of the rule reflect, in part, the costs that will be incurred by eight NRC licensees at seven sites that were granted stand-alone preemption authority by confirmatory orders to update their applicable procedures, instructions, and training to reflect the final rule's requirements.

The total costs of the rule also reflect the implementation and operations costs to comply with the new physical security event notification and suspicious activity reporting requirements. These costs apply to the following licensed sites: nuclear power reactor sites (operating and under construction), decommissioning nuclear power reactor sites, away-from-reactor independent spent fuel storage installations (ISFSIs), non-power production or utilization facilities (NPUFs),<sup>1</sup> and strategic special nuclear material (SSNM) facilities. The costs result from these licensees having to update their procedures to reflect the new requirements as well as estimated costs associated with providing event notification and suspicious activity reporting.

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<sup>1</sup> The term "NPUF" will be defined in a separate NRC rulemaking called "Non-Power Production or Utilization Facility License Renewal" (Docket ID NRC-2011-0087, RIN 3150-AI96).

The costs for the NRC to implement this final rule include the costs associated with licensees' transitioning from the confirmatory orders to the requirements of the final rule. The NRC operational costs include reviewing and receiving both the physical security event notifications and SARs. The benefits to the NRC are avoided costs associated with not issuing confirmatory orders to future licensees requesting Section 161A authority. The regulatory analysis concludes that this 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.

The regulatory analysis also considered the following qualitative considerations: security-related attributes such as the occurrence of a possible attack and the successful thwarting and mitigation of such an attack, flexibility of response to physical security events, suspicious activity reporting, and enhancements to regulatory efficiency. Based on the assessment of the costs and benefits of this final rule, including those benefits which are unquantified, the NRC has concluded that the final rule provisions are justified to protect public health and safety and the common defense and security. For more information, please see the regulatory analysis (ADAMS Accession No. ML16278A235).

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## I. Background

### A. Section 161A of the AEA

On August 8, 2005, President George W. Bush signed into law the Energy Policy Act of 2005 (EPAAct), Pub. L. 109-58, 119 Stat. 594 (2005). Section 653 of the EPAAct amended the AEA by adding a new Section 161A, "Use of Firearms by Security Personnel" (42 U.S.C. 2201a). Section 161A of the AEA provides the NRC with authority to permit a licensee's or certificate holder's security personnel to transfer, receive, possess, transport, import, and use weapons, devices, ammunition, or other firearms, notwithstanding State, local, and certain Federal firearms laws (and implementing regulations) that may prohibit or restrict these actions. This could include, if approved by the NRC, the use of enhanced weapons such as machine guns, short-barreled shotguns, and short-barreled rifles.

The Commission designates the classes of NRC licensees eligible to apply for Section 161A authority. Designated 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.b requires that licensees ensure that their security personnel that receive, possess, transport, import, or use a weapon, ammunition, or device otherwise prohibited by State, local, or certain Federal laws, including regulations, shall be subject to a fingerprint-based background check by the U.S. Attorney General (AG) and a firearms background check against the Federal Bureau of Investigation’s (FBI) National Instant Criminal Background Check System (NICS).

#### B. The Firearms Guidelines

Section 161A.d of the AEA requires that the Commission, with the approval of the AG, develop and publish guidelines for the implementation of the authority granted to the Commission under section 161A. The Firearms Guidelines provide guidance on how the Commission intends to implement the authority conferred on it by Section 161A of the AEA. On September 11, 2009, the NRC published the Firearms Guidelines in the *Federal Register* (74 FR 46800). Section 161A of the AEA took effect upon publication of the Firearms Guidelines. 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 are available at <http://www.regulations.gov> under Docket ID NRC-2008-0465.

### C. October 2006 Proposed Rule

In 2006, the NRC initiated a rulemaking that would, among other changes: 1) implement the new authority granted to the Commission in Section 161A of the AEA and 2) modify existing physical security event notification requirements. On October 26, 2006, the NRC published a proposed rule, "Power Reactor Security Requirements," in the *Federal Register* (71 FR 62664) to implement the provisions of Section 161A as one component of a larger proposed amendment to its regulations under 10 CFR parts 50, 72, and 73.

That portion of the proposed rule implementing the authority granted the Commission under Section 161A of the AEA was consistent with ongoing discussions between the NRC and the U.S. Department of Justice on the development of the Firearms Guidelines. In those discussions, the NRC had proposed that the provisions of Section 161A of the AEA would apply only to nuclear power reactor facilities, including both operating and decommissioning nuclear power reactors, and Category I SSNM facilities (i.e., facilities possessing or using formula quantities or greater of SSNM). This structure was proposed to permit these two highest-risk classes of licensed facilities to apply to the NRC for Section 161A authority. The NRC had also indicated that it would consider making Section 161A authority available to additional classes of facilities, radioactive material, or other property (including ISFSIs) in a separate, future rulemaking.

On March 27, 2009, the NRC published the final rule, "Power Reactor Security Requirements" in the *Federal Register* (74 FR 13926). The requirements in the proposed rule to implement the NRC's authority under Section 161A of the AEA were not included in that final rule because the Firearms Guidelines had not been published and therefore the NRC's authority under Section 161A had not yet taken effect.

Consequently, final regulations implementing the Commission's Section 161A authority could not be promulgated at that time. The physical security event notification regulations were also not included in the "Power Reactor Security Requirements" rule because the NRC intended to add new requirements associated with notifying local law enforcement of the theft or loss of enhanced weapons.

#### D. February 2011 Proposed Rule

On February 3, 2011, the NRC published a proposed rule, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications," in the *Federal Register* (76 FR 6200). The proposed enhanced weapons rule was consistent with the approved 2009 Firearms Guidelines. With the publication of the Firearms Guidelines, Section 161A of the AEA took effect. The 2011 proposed rule included provisions to implement the Commission's authority under Section 161A of the AEA. It also made several changes to the physical security event notification requirements in 10 CFR part 73 to address imminent attacks or threats against nuclear power reactors, as well as suspicious activities that could be indicative of potential preoperational reconnaissance, surveillance, or challenges to security systems by adversaries (hereinafter referred to as the event notifications part of the rule, which at that time also included the suspicious activity reporting part of the rule). The initial public comment period to review and comment on the 2011 proposed rule and associated guidance was 90 days. The comment period was extended to 180 days at the request of stakeholders.

#### E. Preemption Designation Orders and Confirmatory Orders

Subsequent to the publication of the 2011 proposed rule, the NRC received requests from ten licensees (located at eight separate sites) to obtain stand-alone

preemption authority. In response to these requests, the NRC issued designation Order EA-13-092 on June 14, 2013 (78 FR 35984).

Order EA-13-092 designated the ten licensees as an interim class of licensed facilities eligible to apply for stand-alone preemption authority under Section 161A of the AEA. Order EA-13-092 also contained direction related to completing firearms background checks for security personnel whose official duties require access to covered weapons, and contained direction for the licensees on submitting applications and supporting information to obtain stand-alone preemption authority via a confirmatory order. Subsequent to the NRC's issuance of Order EA-13-092, two licensees (located at the same site) withdrew their applications for stand-alone preemption authority.

The NRC approved applications for stand-alone preemption authority for the eight remaining licensees at seven sites under Order EA-15-006 on September 4, 2015 (80 FR 53588), and under Orders EA-14-134, EA-14-135, EA-14-136, EA-14-137, EA-14-138, EA-14-139, and EA-14-140 on January 15, 2016 (81 FR 2247).

#### F. January 2013 Supplemental Proposed Rule

On January 10, 2013, the NRC published a supplemental proposed rule, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications," (78 FR 2214) to add at-reactor ISFSIs as a class of designated facilities eligible to apply for Section 161A authority under the proposed § 73.18(c) [renumbered § 73.15(c) in this final rule]. The NRC had concluded that including at-reactor ISFSIs in the proposed rule would ensure a consistent transition from the designation order and confirmatory orders to the final implementing regulations for reactor licensees and any ISFSIs co-located at the reactor site.

When a reactor facility and an ISFSI share a common security guard force, as is the case for at-reactor ISFSIs, the NRC staff recognizes that if the licensee applies for stand-alone preemption authority and is approved, it may be beneficial for both facilities at the site to have that authority. In the 2013 supplemental proposed rule, the NRC indicated that other classes of facilities and activities (e.g., away-from-reactor ISFSIs and transportation of spent nuclear fuel) would be addressed in a separate, future rulemaking (as originally discussed by the NRC in the October 2006 proposed rule). The public comment period for the 2013 supplemental proposed rule was 45 days.

#### G. December 2013 Bifurcation of the Cyber Security Event Notification Requirements

On December 20, 2013, in COMSECY-13-0031, “Bifurcation of the Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Rule” (ADAMS Accession No. ML13280A366), the NRC staff requested approval from the Commission to bifurcate the cyber security event notification (CSEN) requirements from the event notifications part of the enhanced weapons rule and to address these requirements in a separate rulemaking. In SRM-COMSECY-13-0031, “Bifurcation of the Enhanced Weapons, Firearms Background Checks, and Security Event Notification Rule” (ADAMS Accession No. ML14023A860), the Commission approved the NRC staff’s plan to bifurcate the CSEN requirements from the enhanced weapons rule. The NRC received comments on the proposed CSEN requirements contained in the 2011 proposed enhanced weapons rule. The NRC’s responses to these comments were addressed in the “Cyber Security Event Notifications” final rule published in the *Federal Register* on November 2, 2015 (80 FR 67264) and are not addressed in this rulemaking.

Additionally, draft Regulatory Guide (DG) 5019, Revision 1, “Reporting and Recording Safeguards Events” (ADAMS Accession No. ML100830413), was issued for

public comment on February 3, 2011 (76 FR 6085). The portions of DG-5019, Revision 1, related to CSEN were also bifurcated from the original draft guide, and are now included in the final CSEN guidance in RG 5.83, "Cyber Security Event Notifications" (ADAMS Accession No. ML14269A388).

Accordingly, the NRC has removed all CSEN provisions from this final rule and associated guidance.

#### H. September 2015 Supplemental Proposed Rule

On September 22, 2015, the NRC published a second supplemental proposed rule, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications" (80 FR 57106), to conform Part 1 of the rule with the 2014 Revision 1 to the Firearms Guidelines. The 2009 Firearms Guidelines provided that the security personnel for all licensees and certificate holders that fall within the designated classes of facilities must undergo firearms background checks, whether or not a particular licensee or certificate holder intends to seek Section 161A authority. The NRC staff determined that this requirement placed an undue burden on licensees who had not applied for Section 161A authority without serving any relevant security purpose. Consequently, under Revision 1 of the 2014 Firearms Guidelines, the requirement for background checks applies to only those licensees and certificate holders who apply for Section 161A authority.

In addition to conforming the 2011 proposed rule to Revision 1 of the 2014 Firearms Guidelines, the 2015 supplemental proposed rule also made three other changes. First, the 2015 supplemental proposed rule made several clarifying and corrective changes to the process for obtaining stand-alone preemption authority and the requirements for firearms background checks. This was based upon language approved

by the Commission in the designation and confirmatory orders issued by the NRC, subsequent to the publication of the 2011 proposed rule (i.e., Orders EA-13-092, EA-14-134, EA-14-135, EA-14-136, EA-14-137, EA-14-138, EA-14-139, EA-14-140, and EA-15-006).

Second, the NRC made several additional changes to clarify the agency's review and acceptance criteria for evaluating applications for stand-alone preemption authority. These changes were based on lessons learned by the NRC staff in developing confirmatory orders for those licensees requesting stand-alone preemption authority, as well as comments received in response to prior versions of the proposed rule. Furthermore, to ensure consistency between processes, the NRC planned to make corresponding changes to the proposed process for obtaining combined preemption authority and enhanced weapons authority.

Third, the NRC staff implemented Commission direction from SRM-SECY-12-0125, "Interim Actions to Execute Commission Preemption Authority Under Section 161A of the Atomic Energy Act of 1954, as Amended" (ADAMS Accession No. ML12326A653). In SRM-SECY-12-0125, the Commission directed the NRC staff to include a plan "to sunset [withdraw] the interim designation order and the confirmatory orders" in the final rule. Accordingly, the NRC included new language in §§ 73.18(s) and 73.19(r) [renumbered §§ 73.15(s) and 73.17(r) in this final rule] of the 2015 supplemental proposed rule to accomplish the Commission's direction.

Other changes in the 2015 supplemental proposed rule included the removal of the definition of "standard weapon" and the removal of references to standard weapons in the definitions of "covered weapon" and "enhanced weapon."

## II. Discussion

This final rule reflects the proposed changes from the 2011 proposed rule and the 2013 and 2015 supplemental proposed rules. Part 1 of the rule implements the NRC's authority under Section 161A of the AEA to permit a licensee security personnel to transfer, receive, possess, transport, import, and use weapons, devices, ammunition, or other firearms notwithstanding State, local, and certain Federal firearms laws (and any implementing regulations) that may prohibit or restrict these actions. The types of weapons include, for example, machine guns, semi-automatic assault weapons, and large-capacity ammunition feeding devices (i.e., magazines). As indicated in the 2011 proposed rule, an NRC licensee may voluntarily apply to the NRC to obtain Section 161A authority (either stand-alone preemption authority or combined preemption authority and enhanced weapons authority). This part applies to nuclear power reactors, Category I SSNM facilities, ISFSIs, and the transportation of spent nuclear fuel (SNF).

Part 2 of this final rule modifies existing physical security event notification requirements. The existing regulations require all physical security event notifications to be provided on a timescale that may not reflect the event's actual security significance (i.e., the existing physical security events require a 1-hour notification). This final rule groups physical security events requiring notification into several timeliness categories, with events having a greater security significance requiring quicker notifications. These requirements apply to nuclear power reactors, fuel cycle facilities authorized to possess and use Category I quantities of SSNM, facilities that possess Category II and Category III quantities of special nuclear material (SNM), hot cell facilities, ISFSIs, and NPUFs. In addition, these requirements will apply to future licensees such as monitored retrievable



storage installations (MRSs), geologic repository operations areas (GROAs), and production facilities. This final rule also separates the physical security event notification requirements, written follow-up reports, and recordable security events into separate regulations to improve regulatory clarity and ease of use, and to improve the quality of information provided to the NRC. The NRC is also incorporating clarifying and editorial changes to these regulations.

Following the events of September 11, 2001, the NRC issued guidance requesting licensees to voluntarily notify the NRC of actual or imminent hostile acts. This final rule makes these voluntary notification requirements mandatory and adds new reporting requirements for those licensees possessing enhanced weapons. Licensees that obtain combined preemption authority and enhanced weapons authority are required to notify the NRC when the licensee makes a separate notification to the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the applicable local law enforcement agency (LLEA) regarding a stolen or lost enhanced weapon. These requirements apply to nuclear power reactors, ISFSIs, Category I SSNM facilities, or those licensees engaged in the transportation of Category I SSNM or SNF.

Part 3 of this final rule establishes new requirements for licensees to report suspicious activities to the LLEA, the FBI, the NRC, and the Federal Aviation Administration (FAA) if the suspicious activity involves an aircraft. Following the events of September 11, 2001, the NRC issued security advisories and other guidance on suspicious activities and requested that such activity be voluntarily reported to the NRC. The new requirements make the reporting of suspicious activities to these various agencies mandatory.

Licensees' timely submission of SARs to the NRC and to law enforcement is an important part of the U.S. government's efforts to disrupt or dissuade malevolent acts

against the nation's critical infrastructure. Attack planning and preparation generally proceed through several predictable stages, including intelligence gathering and pre-attack surveillance. Reporting suspicious activities that could be indicative of preoperational surveillance or reconnaissance efforts, challenges to security systems and protocols, or elicitation of non-public information related to security or emergency response programs, offer law enforcement and security personnel the greatest opportunity to disrupt or dissuade acts of terrorism before they occur. Additionally, licensees' 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.

In this new regulation, the NRC is seeking to balance agency and national objectives of reporting suspicious activities, while not imposing unnecessary or undue burden on licensees. In this regard, it is not the NRC's intent to dispute a licensee's conclusions about whether an event is considered to be suspicious. Accordingly, the NRC intends to focus any inspection and enforcement efforts regarding this new regulation on programmatic aspects (e.g., procedures, training, establishing points of contact, and the reporting process). The NRC objective is to increase the flow of information to the law enforcement and intelligence communities and thus, potentially disrupt or dissuade potential terrorist attacks.

These new provisions apply to nuclear power reactors, fuel cycle facilities authorized to possess and use Category I quantities of SSNM, certain facilities that possess Category II and Category III quantities of SNM using Restricted Data (RD) materials, technology, and information in the enrichment process, hot cell facilities, ISFSIs, and NPUFs. In addition, these requirements will apply to future licensees such as MRSs, GROAs, and production facilities. This final rule does not apply these

provisions to licensees operating Category II and III SNM fuel fabrication facilities; licensees possessing SNM in a form that has been encapsulated into sealed sources that are used for research, development, and testing purposes; and licensees engaging in the transportation of Category II and III SNM. The NRC has taken this approach because of the national security non-proliferation concerns associated with RD materials, technology, and information.

The proposed rule contained the term “certificate holder.” As used in the proposed rule, the term referred only to entities holding a 10 CFR part 76 certificate of compliance (CoC), not to entities holding a 10 CFR part 72 CoC. Entities possessing a part 72 CoC are not authorized to possess radioactive material. Consequently, these entities have no need for Section 161A authority. Subsequent to the publication of the 2015 supplemental proposed rule, the NRC terminated the remaining CoC for gaseous diffusion facilities certified to enrich SNM under 10 CFR part 76. The NRC does not expect to issue any new CoCs under 10 CFR part 76. Therefore, consistent with plain language objectives and increased regulatory clarity, this final rule eliminates the terms “certificate holder” and “certificate of compliance” from the final rule text.

The proposed rule also contained physical security event notification and recordkeeping requirements regarding the loss or theft of Safeguards Information. The NRC has reevaluated the need to address the loss or theft of Safeguards Information in the final rule. Based on this reevaluation, these provisions have been removed as the NRC has determined that it is preferable to retain the existing notification procedures in licensee security plans.

#### *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 stand-alone preemption authority at seven sites.

In SRM-SECY-12-0125, the Commission directed the NRC staff to include in the final rule a plan “to sunset [withdraw] the interim designation order and the confirmatory orders” that would later be issued by the Commission. This final rule designates the classes of facilities eligible to apply to use the Commission’s Section 161A authority. Additionally, this final rule specifies that those licensees subject to confirmatory orders granting them stand-alone preemption authority must update their applicable procedures, instructions, and training, and come into compliance with the requirements of the rule as of the compliance date specified in the final rule. In accordance with the Commission’s direction in SRM-SECY-12-0125, this final rule includes language in 10 CFR 73.15, “Authorization for use of enhanced weapons and preemption of firearms laws,” and 10 CFR 73.17, “Firearms background checks for armed security personnel,” to withdraw the designation order and confirmatory orders 300 days from the date of publication of the final rule.

### **III. Opportunity for Public Comment**

As stated in the background section, the NRC published the proposed rule and the two supplemental proposed rules for public comment in the *Federal Register*. Additionally, the NRC staff hosted two public meetings to discuss issues associated with

the proposed rule and supplemental rules. A public meeting was held at NRC Headquarters on June 1, 2011, to discuss the proposed implementation plan for the 2011 proposed rule published on February 3, 2011 (76 FR 6200). A summary of the June 2011 public meeting is available in ADAMS under Accession No. ML111720007. The NRC did not hold a public meeting to discuss the 2013 supplemental proposed rule because of the limited scope of the proposed change. Another public meeting was held at NRC Headquarters on November 19, 2015, to discuss the 2015 supplemental proposed rule that was published for public comment on September 22, 2015 (80 FR 57106), and to discuss the implementation period for the final rule. A summary of the November 2015 public meeting is available in ADAMS under Accession No. ML15348A082. The feedback from the two public meetings informed the NRC staff's recommended schedule for both the implementation of the background check requirements and for the implementation of the physical security event notification and suspicious activity reporting requirements.

#### **IV. Public Comment Analysis**

The NRC staff prepared a summary and analysis of public comments received on both the 2011 proposed rule and the 2013 and 2015 supplemental proposed rules, respectively. This summary and analysis is available in ADAMS under Accession No. ML16264A004. In response to the proposed and supplemental proposed rules, the NRC received 13 comment submissions. Private citizens provided 6 comment submissions, 4 licensees provided comment submissions, 1 federal agency provided a comment submission, 1 nuclear industry organization provided a comment submission, and 1 former U.S. Congressman provided a comment submission. Most comment

submissions were generally supportive of the regulatory action. The public comment submittals are available on the Federal e-Rulemaking Web site at <http://www.regulations.gov> under Docket ID Nos. NRC-2011-0014, NRC-2011-0015, NRC-2011-0017, and NRC-2011-0018.

The NRC staff developed separate draft regulatory guides and a weapons safety assessment document to support this rulemaking effort. The NRC received 6 comment submissions on the draft regulatory guides and weapons safety assessment document. The NRC prepared a separate summary and analysis of the public comments received on the associated draft regulatory guides and draft weapons safety assessment, which is available in ADAMS under Accession No. ML17123A319.

Responses to the public comments, including a summary of how the final rule text or guidance changed as a result of the public comments, can be found in the two public comment analysis documents identified above. For more information about the associated supporting and guidance documents see the “Availability of Guidance” section of this final rule.

## **V. Section-by-Section Analysis**

The following paragraphs describe the specific changes that are reflected in this final rule.

### *§ 20.2201 Reports of theft or loss of licensed material*

Paragraph 20.2201(c) contains a cross reference to § 73.71. The relevant regulations from § 73.71 are now found in § 73.1205. This final rule updates the cross reference.

*§ 21.2 Scope*

Paragraph 21.2(c) contains a cross reference to § 73.71. The relevant regulations from § 73.71 are now found in §§ 73.1200 and 73.1205. This final rule updates the cross reference.

*§ 50.55 Conditions of construction permits, early site permits, combined licenses, and manufacturing licenses*

Paragraph 50.55(e)(8) contains a cross reference to § 73.71. The relevant regulations from § 73.71 are now found in § 73.1205. This final rule updates the cross reference.

*§ 50.72 Immediate notification requirements for operating nuclear power reactors*

Paragraph 50.72(a), footnote 1, contains a cross reference to § 73.71. The relevant regulations from § 73.71 are now found in § 73.1200. This final rule updates the cross reference.

*§ 70.20a General license to possess special nuclear material for transport*

Paragraph 70.20a(e)(2) contains a cross reference to § 73.71. The relevant regulations from § 73.71 are now found in § 73.1200. This final rule updates the cross reference.

*§ 70.20b General license for carriers of transient shipments of formula quantities of strategic special nuclear material, special nuclear material of moderate strategic significance, special nuclear material of low strategic significance, and irradiated reactor fuel*

Paragraphs 70.20b(c), (d), and (e) contain a cross reference to § 73.71. The relevant regulations from § 73.71 are now found in § 73.1200. This final rule updates the cross reference.

*Part 73—Physical Protection of Plants and Materials*

This final rule restructures 10 CFR part 73 to add Subparts A through T. The new structure uses subparts to provide a logical structure and increase clarity for part 73. These new subparts incorporate existing regulations, add new regulations, and provide for future regulations, within this logical structure. Subparts J through S are reserved for future rulemakings. The subpart structure is as follows:

- **Subpart A – General Provisions:** contains existing §§ 73.1 through 73.8. Detailed descriptions of the revisions to §§ 73.2 and 73.8 are provided later in this section. No amendments are made to the requirements for the remaining sections.
- **Subpart B – Enhanced Weapons, Preemption, and Firearms Background Checks:** contains new sections §§ 73.15 and 73.17. These sections contain the requirements associated with implementation of stand-alone preemption authority, combined preemption authority and enhanced weapons authority, and firearms background checks pursuant to Section 161A of the AEA. Detailed descriptions of those sections are provided later in this section.
- **Subpart C – General Performance Objective of Strategic Special Nuclear Material:** contains the existing § 73.20. No amendments are made to this section.
- **Subpart D – Protection of Safeguards Information:** contains the existing §§ 73.21 through 73.23. Detailed descriptions of the revisions to §§ 73.22 and



73.23 are provided later in this section. No amendments are made to the requirements for the remaining sections.

- **Subpart E – Physical Protection Requirements of Special Nuclear Material and Spent Nuclear Fuel in Transit:** contains the existing §§ 73.24 through 73.38. Detailed descriptions of the revisions to §§ 73.27 and 73.37 are provided later in this section. No amendments are made to the requirements for the remaining sections.
- **Subpart F – Physical Protection Requirements at Fixed Sites:** contains the existing §§ 73.40 through 73.55. Detailed descriptions of the revisions to §§ 73.46, 73.51, and 73.55 are provided later in this section. No amendments are made to the requirements for the remaining sections.
- **Subpart G – Background Check and Access Authorization Requirements:** contains the existing §§ 73.56 through 73.67. Detailed descriptions of revisions to § 73.67 are provided later in this section. No amendments are made to the requirements for the remaining sections.
- **Subpart H – Records and Postings:** contains the existing §§ 73.70 through 73.75. Section 73.71 has been removed and reserved. No amendments are made to the requirements for the remaining sections.
- **Subpart I – Enforcement:** contains the existing §§ 73.76 through 73.81 with no amendments to the requirements in those sections.
- **Subparts J through S – Reserved**
- **Subpart T – Security Notifications, Reports, and Recordkeeping:** contains new §§ 73.1200, 73.1205, 73.1210, and 73.1215. These requirements were previously located in § 73.71 and appendix G to 10 CFR part 73. This final rule

also removes and reserves both § 73.71 and appendix G to 10 CFR part 73.

Detailed descriptions of those sections are provided later in this section.

### § 73.2 Definitions

This final rule adds new terms to the list of defined terms in § 73.2 and revises one existing term. Added terms include new definitions of *Adverse firearms background check*, *Combined preemption authority and enhanced weapons authority*, *Covered weapon*, *Enhanced weapon*, *Firearms background check*, *NICS*, *NICS response*, *NICS transaction number*, *Satisfactory firearms background check*, and *Stand-alone preemption authority*. These terms are used in the Firearms Guidelines and in the new enhanced weapons regulations to describe the types of weapons, background check characteristics, and authority relevant to Section 161A of the AEA.

Other new terms being added to clarify the physical event notification requirements, include: *Contraband*, *Greater than class C waste*, *High-level radioactive waste*, *Independent spent fuel storage installation*, *Restricted Data*, *Spent nuclear fuel or spent fuel*, and *Time of discovery*. This final rule also revises the existing term *Movement control center*.

Additionally, this final rule adds new paragraphs (b) and (c) to § 73.2, which provide cross references to appropriate ATF and FBI regulations for terms that are relevant to Section 161A activities (e.g., *Handgun*, *Machine gun*, or *Short-barreled shotgun*), which fall under the original purview of these agencies.

### § 73.8 Information collection requirements: OMB approval

This final rule revises paragraphs (b) and (c) of § 73.8 to update the list of paragraphs in 10 CFR part 73 that contain information collection requirements.

Paragraph (b) removes § 73.71 and appendix G (which are removed from 10 CFR part 73) and adds new §§ 73.1200, 73.1205, 73.1210, and 73.1215 (which contain notification, reporting, and recordkeeping requirements in 10 CFR part 73).

Paragraph (c) references three forms and their associated OMB control numbers. These control numbers are separate from the control number associated with 10 CFR part 73 itself. Two existing forms (*NRC Form 366* and *FBI Form FD-258*) are used by NRC licensees and are added to this paragraph as a corrective change under OMB control numbers 3150-0104 (NRC) and 1110-0046 (FBI), respectively. New *NRC Form 754* is added to this paragraph under OMB control number 3150-0204. The *NRC Form 754* is used by licensees to submit security personnel for a firearms background check under the provisions of § 73.17. The NRC has also made conforming changes to *NRC Form 366* to reflect the submission of written follow-up security event reports (under § 73.1205) following notifications made by licensees, pursuant to § 73.1200. Conforming changes to *NRC Form 366* were necessary to reflect the restructuring of the physical security event notifications requirements in 10 CFR part 73.

#### *§ 73.15 Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws*

New § 73.15 contains requirements for a licensee to apply for: 1) stand-alone preemption authority or 2) combined preemption authority and enhanced weapons authority, under Section 161A of the AEA.

Paragraph (a) describes the purpose of the section and paragraph (b) contains general requirements applicable to both types of authority.

Paragraph (c) lists the designated classes for either stand-alone preemption authority or combined preemption authority and enhanced weapons authority.

Paragraph (d) sets forth the requirements and process for licensees who are included within the designated classes of facilities, radioactive material, and other property specified in § 73.15(c)(1) and desire to voluntarily apply for stand-alone preemption authority under Section 161A of the AEA.

Paragraph (e) sets forth the requirements and process for eligible licensees (as specified in § 73.15(c)(2)) who choose to voluntarily apply for combined preemption authority and enhanced weapons authority under Section 161A of the AEA. Paragraph (e) requires that the licensee in its application provide sufficient information to justify its request for combined preemption authority and enhanced weapons authority and how that authority will be implemented. Applicants for combined preemption authority and enhanced weapons authority that already have stand-alone preemption authority under § 73.15(d) are not required to reapply for stand-alone preemption authority in their § 73.15(e) application.

Paragraph (f) requires the licensee to submit additional information to the NRC in support of a request for combined preemption authority and enhanced weapons authority addressing the specific enhanced weapons that the licensee requests permission to use and the required training for security personnel whose official duties require access to the enhanced weapons.

Paragraph (g) requires licensees to provide a copy of the NRC's letter approving the licensee's request for combined preemption authority and enhanced weapons authority to the entity that will be transferring the enhanced weapons to the licensee. The ATF must approve, in advance, all transfers of enhanced weapons to an NRC licensee. This final rule revises § 73.15(g)(1) and adds new subparagraphs (g)(2) and (g)(3) to cross-reference NRC-licensee responsibilities to comply with relevant ATF regulations in 27 CFR part 479.

Paragraph (h) requires licensees to ensure that security personnel complete training and qualification on any enhanced weapons prior to their use. Recurring training and requalification on any enhanced weapons is also required in accordance with the licensee's approved training and qualification plan.

Paragraph (i) is reserved.

Paragraph (j) lists those sections of part 73 that contain requirements applicable to the use of enhanced weapons by licensee security personnel.

Paragraph (k) requires NRC licensees to notify the ATF of any adverse ATF inspection or enforcement findings received by the licensee regarding the receipt, possession, or transfer of enhanced weapons.

Paragraph (l) is reserved.

Paragraph (m) defines what constitutes a transfer of enhanced weapons. The paragraph describes requirements for the transfer of enhanced weapons including, but not limited to, prior approval from the ATF as well as records and reporting requirements. The issuance of an enhanced weapon by a licensee to a security individual with the subsequent return of the weapon to the licensee upon the individual's completion of official duties would not constitute a transfer under ATF's regulations.

Paragraph (n) describes requirements to transport enhanced weapons for activities that are not considered a transfer of the enhanced weapons. Additionally, this final rule adds new subparagraph (6) to § 73.15(n) to clarify that NRC licensees planning interstate transport of enhanced weapons must obtain prior ATF approval, as required by 27 CFR 478.28.

Paragraph (o) describes requirements for conducting periodic inventories of enhanced weapons to verify that these weapons are not stolen or lost. These inventories include a monthly inventory that involves counting the number of enhanced

weapons that are present at the licensee's facility and an annual inventory that verifies the serial number of each weapon that is present at the licensee's facility. The paragraph requires that records be maintained on inventory results. The paragraph also provides minimum requirements for tamper-indicating devices used for securing enhanced weapons. Finally, the paragraph requires that inventory discrepancies be resolved within 24 hours of identification. Otherwise, the discrepancy should be treated as if an enhanced weapon had been stolen or lost.

This final rule adds new subparagraph (8) to § 73.15(o) to clarify that NRC licensees conducting periodic inventories while enhanced weapons are offsite for an authorized purpose must document the absence of such weapons in the periodic inventory.

Paragraph (p) describes requirements for notification of the NRC and local law enforcement officials of lost or stolen enhanced weapons.

Paragraph (q) describes the records requirements for licensees relating to the receipt, transfer, and transportation of enhanced weapons. Licensees are permitted to integrate any records required under this paragraph with records required by ATF relating to the possession of enhanced weapons. This final rule also includes conforming changes to § 73.15(q)(1) to clarify the records requirements for the inventories in paragraph (o).

Paragraph (r) describes requirements regarding the termination, modification, suspension, and revocation of a licensee's Section 161A authority. Licensees seeking termination or modification of their authority to possess enhanced weapons, or different types, calibers, gauges, or quantities of enhanced weapons, are required to apply to the NRC in accordance with § 73.4 and the license amendment provisions of §§ 50.90, 70.34, or 72.56 of this chapter. Licensees are required to transfer any enhanced

weapons that they will no longer be authorized to possess to an appropriate party in accordance with ATF's requirements. Alternatively, the weapons can be surrendered to the ATF for destruction.

This final rule revises paragraphs (r)(1) and (2) to include a cross reference to the license amendment application regulations in § 72.56. This conforming change is made as a result of including all ISFSIs within the scope of the rule. Additionally, consistent with the global removal of the term "certificate holders" from the final rule text, this final rule also removes the cross reference to § 76.45 (for amendments to a 10 CFR part 76 CoC) from paragraphs (r)(1) and (r)(2).

Paragraph (s) adds provisions to provide for licensees' transitions from stand-alone preemption authority or combined preemption authority and enhanced weapons authority previously approved by the NRC via orders to the requirements of this final rule. The NRC expects that a licensee would complete its transition to the requirements of this final rule without the need for any additional applications or notifications to the NRC. Paragraph (s)(4) of § 73.15 provides that as of **[INSERT DATE 300 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**, any orders implementing the Commission's Section 161A authority are withdrawn.

#### *§ 73.17 Firearms Background Checks for Armed Security Personnel*

New § 73.17 contains requirements for a licensee to conduct firearms background checks mandated under Section 161A of the AEA. Only licensees that voluntarily apply for Section 161A authority under § 73.15 are required to conduct firearms background checks under § 73.17.

Paragraph (a) states that the firearms background checks are intended to verify that the licensee's armed security personnel are not prohibited from receiving,

possessing, transporting, importing, or using covered weapons under Federal, State, or local law or regulations.

Paragraph (b) provides general requirements regarding the completion of firearm background checks, including the establishment and implementation of a Firearms Background Check Plan. The Firearms Background Check Plan is a component of the licensee's 10 CFR part 73, appendix B, required Training and Qualification plan for security personnel whose official duties require access to covered weapons.

Paragraph (b)(2) describes the groups of individuals included within the phrase *security personnel whose official duties require access to covered weapons*.

Paragraph (b)(3) specifies the elements of the Firearms Background Check Plan.

Paragraphs (b)(4) through (b)(8) address the requirements for conducting firearms background checks and specify, among other things, that the licensee can only assign security personnel who have completed a satisfactory firearms background check to duties requiring access to covered weapons. This section also includes a requirement to remove individuals from duties requiring access to covered weapons if they receive a "denied" or "delayed" NICS response.

Paragraph (b)(9) requires licensees to complete a new satisfactory firearms background check for security personnel who experience a break-in-service.

Paragraph (b)(10) specifies that changes in license ownership or changes in the licensee's security guard contractor do not constitute a break-in-service that would require a new firearms background check.

Paragraph (b)(11) prohibits licensees from using a satisfactory firearms background check in lieu of completing other required criminal history records checks or background investigations specified in the NRC's access authorization or personnel security clearance programs under other provisions of 10 CFR chapter I.



Paragraph (b)(12) specifies that a new firearms background check is not required for security personnel who have completed a satisfactory firearms background check, pursuant to a Commission designation order issued before the effective date of this final rule. However, these security personnel remain subject to the periodic firearms background checks and the break-in-service firearms background check requirements of § 73.17.

Paragraph (b)(13) requires a licensee to stop conducting firearms background checks if it withdraws its application for Section 161A authority.

Paragraph (b)(14) requires a licensee to discontinue conducting firearms background checks if the NRC rescinds or revokes the licensee's Section 161A authority, in accordance with § 73.15.

Paragraph (c) is reserved.

Paragraph (d) describes the components of a firearms background check. A firearms background check consists of two parts: 1) a check of an individual's fingerprints against the FBI's fingerprint system, and 2) a check of the individual's identity against the FBI's NICS databases.

Paragraph (e) describes the information that a licensee must submit to the NRC for each individual subject to a firearms background check. This paragraph also specifies how long the licensee must retain this information as a record.

Paragraph (f) describes the requirements for periodic firearms background checks, which are to be completed at least once every 5 calendar years. The paragraph also specifies an allowance period for completion of a satisfactory periodic firearms background check of midnight of the end of the month that is 5 years from the date of the most recent firearms background check. Security personnel may remain assigned to duties requiring access to covered weapons, while pending completion of a periodic

firearms background check (started before the end of the allowance period). However, if a satisfactory firearms background check is not completed by the end of the allowance period, then the security personnel must be removed from duties requiring access to covered weapons. Paragraph (f) also specifies that an individual who receives a “denied” or “delayed” NICS response during a periodic firearms background check must be removed, without delay, from duties requiring access to covered weapons.

Paragraph (g) requires affected licensees to notify the NRC that an individual with access to covered weapons has been removed from all duties requiring such access because of the discovery of a disqualifying status condition or disqualifying event under applicable Federal, State, or local law. The licensee is not required to notify the NRC if the licensee’s security management was notified by the affected security personnel within 72 hours of the identification or occurrence of any Federal or State disqualifying status condition or disqualifying event. However, in all circumstances, the licensee is required to maintain records of such removals under the Firearms Background Check Plan, as required under revised paragraph (b)(3)(vi).

Paragraph (h) requires affected security personnel to make timely disclosure within 72 hours of the occurrence of a disqualifying event or status condition specified in 27 CFR 478.32 that would prevent them from receiving or possessing firearms.

Paragraph (i) is reserved.

Paragraph (j) requires training for security personnel who are subject to firearms background checks under the licensee’s Firearms Background Check Plan on the following: 1) Federal and State disqualifying status conditions or disqualifying events specified in 27 CFR 478.32, 2) ATF’s implementing regulations defining such status conditions or disqualifying events, 3) the ongoing obligation of security personnel who are subject to a firearms background check to notify their licensee’s security

management of the occurrence of such a disqualifying status condition or disqualifying event, and 4) the process for appealing adverse firearms background check results. Finally, periodic refresher training on these modules is required annually.

Paragraph (k) describes the requirements for processing fingerprint checks as part of the firearms background checks. This includes the submission of fingerprint cards or electronic fingerprint records to the NRC.

Paragraph (l) is reserved.

Paragraph (m) describes the requirements for fees associated with processing firearms background checks. The amount of the fee will be specified on the NRC's public Web site.

Paragraph (n) describes NRC responsibilities regarding the processing of firearms background checks.

Paragraph (o) is reserved.

Paragraph (p) states that licensees may not assign security personnel who have received a "denied" or a "delayed" NICS response to any official duties requiring access to covered weapons during the pendency of an appeal of the firearms background check.

Paragraph (q) requires licensees to establish and maintain a system of files and procedures to protect the firearms background check, NRC Form 754 records, and personal information from unauthorized disclosure.

Paragraph (r) provides a cross reference to § 73.15(s) for the withdrawal of the orders issued under Section 161A of the AEA.

*§ 73.22 Protection of Safeguards Information: Specific requirements*

Paragraph (f)(3) contains a cross reference to § 73.71. The relevant regulations from § 73.71 are now found in § 73.1200. This final rule updates the cross reference.

*§ 73.23 Protection of Safeguards Information-Modified Handling: Specific requirements*

Paragraph (f)(3) contains a cross reference to § 73.71. The relevant regulations from § 73.71 are now found in § 73.1200. This final rule updates the cross reference.

*§ 73.27 Notification requirements*

Paragraph (c) contains a cross reference to § 73.71. The relevant regulations from § 73.71 are now found in §§ 73.1200 and 73.1205. This final rule updates the cross reference.

*§ 73.37 Requirements for physical protection of irradiated reactor fuel in transit*

Paragraphs (b)(3)(iii) and (b)(3)(v)(C) contain a cross reference to § 73.71. The relevant regulations from § 73.71 are now found in § 73.1200. This final rule updates the cross references.

New paragraph (b)(3)(viii) requires a licensee to ensure that the firearms background check requirements of § 73.17 are met for all armed escorts whose official duties require access to covered weapons or who inventory enhanced weapons.

*§ 73.46 Fixed site physical protection systems, subsystems, components, and procedures*

This final rule updates paragraph (b) to cross reference to the firearms background check requirements of § 73.17, and requires that security personnel subject

to § 73.46 and who are using covered weapons are also subject to the firearms background check requirements in § 73.17.

*§ 73.51 Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste*

New paragraph (b)(4)(i) is added to § 73.51 to cross reference to the firearms background check requirements of § 73.17.

Paragraph (d)(13) contains a cross reference to § 73.71. The relevant regulations from § 73.71 are now found in § 73.1210. This final rule updates the cross reference.

Paragraph (f) is added as a conforming change to the change to § 73.15(j) to reflect the potential for a specific license ISFSI to possess covered weapons. This modified provision follows from the change described in § 73.15(c) in which all ISFSI licensees are included in the scope of this final rule, meaning all ISFSI licensees are eligible to apply for Section 161A authority. Paragraph (f) also requires ISFSI licensees employing covered weapons to train their security personnel on the use of sufficient force, including deadly force.

*§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage*

This final rule updates § 73.55(b)(12) to cross reference to the firearms background check requirements of § 73.17. Additionally, § 73.55(p)(3) is updated to reflect the reporting requirements for suspension of security measures in accordance with §§ 73.1200 and 73.1205 instead of § 73.71.

*§ 73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance*

This final rule updates § 73.67(e)(3)(vii) and (g)(3)(iii) to update the cross reference to the new §§ 73.1200 and 73.1205.

*§ 73.71 Reporting of safeguard events*

This final rule removes and reserves § 73.71. The regulations on physical security event notifications, written follow-up reports, and lesser-significance recordable physical security events that were previously located in § 73.71 and appendix G to 10 CFR part 73 are relocated to new §§ 73.1200, 73.1205, and 73.1210, respectively.

*§ 73.1200 Notification of physical security events*

This final rule adds new § 73.1200 on physical security event notifications. This section describes categories of physical security events and the timeframes by which the licensee must notify the NRC of these events.

Paragraph (a) adds 15-minute notifications for imminent or actual hostile actions against facilities where the licensee has initiated a response under its protective strategy (e.g., in response to LLEA or government official notifications of potential hostile action or sabotage anticipated within the next 12 hours). These notifications apply only to nuclear power reactors, fuel cycle facilities authorized to possess and use Category I quantities of SSNM, and ISFSIs. In addition, these requirements will apply to future licensees such as MRSs, GROAs, and production facilities.

Paragraph (b) adds 15-minute notifications for imminent or actual hostile actions against shipments where the licensee has initiated a response under its protective strategy (e.g., in response to LLEA or government official notifications of potential

sabotage anticipated within the next 12 hours). These notifications apply only to shipments of Category I SSNM, SNF, and high-level radioactive waste (HLW).

Paragraph (c) clarifies the 1-hour notifications for significant security events against facilities. These notifications apply to nuclear power reactors, fuel cycle facilities authorized to possess and use Category I quantities of SSNM, facilities that possess Category II and Category III quantities of SNM, hot cell facilities, ISFSIs, and NPUFs. In addition, these requirements will apply to future licensees such as MRSs, GROAs, and production facilities. Significant security events requiring notification include actual, attempted, or a threat to cause: theft or diversion of Category I SSNM or Category II or III SNM; significant physical damage to a facility; unauthorized operation, manipulation, or tampering that results in interruption of normal operation of a reactor or an accidental criticality at a Category I SSNM facility or a Category II or III SNM; introduction of a quantity of explosives that exceeds the facility's adversary characteristics beyond a protected area's vehicle barrier system; and notification from LLEA or other government agency of potential hostile action or sabotage against a nuclear power reactor or a Category I SSNM facility that is anticipated to occur in more than 12 hours.

Paragraph (d) adds 1-hour notifications for significant security events against shipments. These notifications apply to shipments of Category I SSNM, SNF, HLW, and Category II and III SNM. Significant security events requiring notification include actual, attempted, or threat to cause: theft or diversion of shipments of Category I SSNM or Category II or III SNM, SNF, or HLW; significant physical damage to a conveyance (vehicle) transporting such material; significant physical damage to such transported material itself; discovery of the loss of, and recovery or accounting for, a lost shipment of Category I SSNM; and notification from LLEA or other government agency of potential

hostile action or sabotage against a shipment that is anticipated within greater than the next 12 hours.

Paragraph (e) adds 4-hour notifications for security events against facilities. These notifications apply to the same classes of facilities as specified under paragraph (c). Examples of events that require notification include but are not limited to: actual or attempted entry of an unauthorized individual into a protected area (PA), vital area (VA), material access area (MAA), or controlled access area (CAA); actual or attempted introduction of contraband into a PA, VA, MAA, or CAA; an authorized weapon is lost or uncontrolled inside a PA, VA, MAA, or CAA; and unauthorized operation, manipulation, or tampering with a Category II or III SNM facility's controls or structures, systems, and components (SSCs) that results in the interruption of normal operation of the facility.

Paragraph (f) adds 4-hour notifications for security events against shipments. These notifications apply to the same classes of shipments as specified under paragraph (d). Examples of events that require notification include but are not limited to: actual or attempted entry of unauthorized persons into a transport vehicle or the material being transported, which involves shipment of Category I SSNM, Category II or III SNM, SNF, or HLW; and actual or attempted introduction of contraband into a transport vehicle or the material being transported, which involves shipment of Category I SSNM, Category II or III SNM, SNF, or HLW.

Paragraph (g) adds 8-hour notifications for security program failure events at facilities. These notifications apply to the same classes of facilities as specified under paragraph (c). A security program failure is a programmatic failure of a security system, process, or procedure. Examples of security program failures include but are not limited to: the failure, degradation, or vulnerability of a security system, process, or procedure (for which compensatory measures have not been implemented) that could have allowed



an unauthorized individual or contraband into a PA, VA, MAA, or CAA or that could have allowed a quantity of explosives exceeding the facility's adversary characteristics beyond a vehicle barrier; and the unauthorized operation, manipulation, or tampering with a nuclear reactor's controls or SSCs that does not interrupt the normal operation of a reactor.

Paragraph (h) adds 8-hour notifications for security program failure events for those classes of shipments as specified under paragraph (d). Examples of security program failures include but are not limited to: failure, degradation, or discovered vulnerability (for which compensatory measures have not been implemented) that could have allowed an unauthorized individual or contraband into a transport vehicle or the material being transported.

Paragraphs (i), (j), (k), and (l) are reserved.

Paragraph (m) adds a requirement for licensees to notify the ATF immediately upon the discovery of any stolen or lost enhanced weapons. After which, licensees must notify the NRC as soon as possible, but not later than 4 hours.

Paragraph (n) adds a requirement for a 24-hour notification to the NRC when a licensee receives an adverse inspection finding, enforcement finding, or other adverse notice from the ATF regarding any ATF-issued federal firearms license or the licensee's possession, receipt, transfer, transportation, or storage of enhanced weapons.

Paragraph (o) adds requirements for making telephonic notifications to the NRC Headquarters Operations Center (i.e., the notification process) under § 73.1200. Provisions address the communication of security events where the information contains safeguards or classified information.

Paragraph (p) adds requirements for licensees providing significant supplementary information to a previously submitted notification to the NRC in compliance with paragraph (o).

Paragraph (q) adds provisions regarding retraction of previous security event reports. Based upon the NRC's response to public comments, the retraction provisions have been expanded from only "invalid" security events to also include "not reportable" security events.

Paragraphs (r) and (s) add provisions clarifying the importance of emergency notifications and eliminating unnecessary duplication.

Paragraph (t) adds provisions regarding the deliberate disclosure, theft, loss, compromise, or possible compromise of classified documents, information, or material. For such events, the licensee's notification should be made in accordance with the requirements of § 95.57.

#### *§ 73.1205 Written follow-up reports of physical security events*

This final rule adds new § 73.1205 addressing the submission of written follow-up reports following a licensee's telephonic notification of a physical security event under § 73.1200. This section is applicable to licensees who are also subject to the various provisions of § 73.1200.

Paragraph (a) adds the general requirement to submit written follow-up reports to the NRC within 60 days of the licensee's notification made under § 73.1200.

Paragraph (a) also adds several exceptions to the requirement to submit written follow-up reports for certain security events.

Paragraph (b) adds criteria for written follow-up report development and submission, including the development of significant supplemental information.

Paragraph (c) adds requirements on the contents of a written follow-up report.

Paragraph (d) adds requirements regarding the transmission of a written follow-up report to the NRC.

Paragraph (e) adds requirements for licensees to retain records of written follow-up reports submitted to the NRC for 3 years from the date of the report.

#### *§ 73.1210 Recordkeeping of physical security events*

This final rule adds new § 73.1210 on the recording of less significant security events and conditions adverse to security. It consolidates and clarifies the safeguards event log requirements into this new section. This section is applicable to licensees who are also subject to the various provisions of § 73.1200.

Paragraph (a) specifies the broad categories of events and conditions that must be recorded and adds the objective and purpose for recording such events. The recording of appropriate events is intended to facilitate the licensee's monitoring of the effectiveness of its physical security program as part of the licensee's overall quality assurance program.

Paragraph (b) adds the general requirement to record the events or conditions specified in § 73.1210(c) through (f) within 24 hours of the time of discovery. Paragraph (b)(2) provides record retention requirements. Paragraph (b)(3) adds flexibility by allowing licensees to record these events or conditions in either a standalone safeguards event log or in the licensee's corrective action program. Licensees must implement information security requirements of 10 CFR parts 73 or 95, as applicable, on the protection of this information. Paragraph (b)(4) describes the content of the information in these records. Paragraph (b)(5) specifies that an event or condition, for which a notification was made under § 73.1200, is not also required to be recorded under §

73.1210. Paragraph (b)(6) specifies that an event or condition, for which a SAR was made under § 73.1215, is not also required to be recorded under § 73.1210.

Paragraph (c) specifies compensated events which must be recorded pursuant to paragraph (b)(1). Compensated events include any failure, degradation, or discovered vulnerability in a security or safeguards system for which compensatory measures were established within the required timeframe and that could have resulted in a security event (e.g., entry of unauthorized personnel into a PA, VA, MAA, CAA, transport vehicle or transported material or entry of contraband into these areas).

Paragraph (d) specifies ammunition events which must be recorded pursuant to paragraph (b)(1). Ammunition events involve lost or uncontrolled small quantities of ammunition.

Paragraph (e) is reserved.

Paragraph (f) requires that events or conditions involving other decreases in the effectiveness of the physical security program be recorded in accordance with paragraph (b)(1).

Paragraph (g) requires that events or conditions involving infractions, losses, compromises, or possible compromise of classified information or classified documents be recorded under the requirements found in § 95.57.

#### *§ 73.1215 Suspicious activity reports*

This final rule adds new § 73.1215, which requires that licensees report suspicious activities to their off-site LLEA, their FBI local field office, the NRC, and the local FAA control tower (for suspicious activities involving aircraft), as soon as possible, but within 8 hours of the time of discovery. The NRC's objective is to encourage licensees to use their best judgement to promptly assess whether a potential activity is

suspicious and must be reported. As part of this assessment, licensees may discuss a potential event with local authorities or review electronic information (e.g., surveillance video) before concluding that a potential activity is suspicious.

The new suspicious activity reporting requirement is applicable to all licensees subject to provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.55, 73.60, or 73.67 with the following exceptions: 1) licensees subject to § 73.67 that are SNM enrichment facilities do not need to report the suspicious activities defined in § 73.1215(d) but must report those suspicious activities related to RD discussed in § 73.1215(f), and 2) licensees subject to § 73.67 that are Category II or III SNM fuel fabrication facilities are also exempt from suspicious activity reporting requirements.

Paragraphs (a) and (b) add the NRC's purpose and objective of this new requirement.

Paragraph (c) adds general requirements for the reporting of suspicious activities, the establishment of points of contact with the licensee's LLEA, local FBI field office, and local FAA control tower (for suspicious activities involving aircraft) and the inclusion of this information in security communication procedures.

Paragraph (d) adds reporting of suspicious activities for facilities and material involving: challenges to the licensee's security systems and procedures; elicitation of non-public information from knowledgeable personnel relating to security or emergency response programs; or observed preoperational surveillance or reconnaissance activities. Paragraphs (d)(1) and (2) also specify which licensees are subject to suspicious activity reporting.

Paragraph (e) adds reporting of suspicious activities for shipments involving: challenges to transportation communication systems or security systems; interference with in-progress shipments; elicitation of non-public information from knowledgeable

personnel relating to security or emergency response programs; or observed preoperational surveillance or reconnaissance activities.

Paragraph (f) adds reporting of suspicious activities for facilities engaged in the enrichment of SNM using RD technology. Such suspicious activities include, but are not limited to: aggressive noncompliance by visitors involving willful departure from tour groups or unauthorized entry into restricted areas; unauthorized recording or imaging of RD information, technology, or materials; or elicitation of non-public information from knowledgeable individuals regarding physical and information systems for protecting RD information, technology, or materials.

Paragraph (f)(2) adds an exception for the reporting of a licensee's identification of alleged or suspected activities involving actual, attempted, or conspiracies to obtain RD, communicate RD, remove RD, or disclose RD in violation of Sections 224, 225, 226, and 227 of the AEA under § 95.57 instead of § 73.1215.

Paragraph (g) adds an exemption to the reporting of suspicious activities for three specific licensees possessing Category III quantities of SNM in the form of sealed sources that are used for research, development, and testing purposes.

#### *Appendix A to Part 73 - U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses*

This final rule updates appendix A to 10 CFR part 73 to add a secure e-mail address for licensees authorized to transmit classified information to the NRC Headquarters Operations Center. Paragraphs III and IV are also added to appendix A to require the use of classified telephone numbers, secure telephones, and secure e-mail when licensees are communicating classified information to the NRC Headquarters Operations Center unless directed otherwise by the NRC.

*Appendix B to Part 73 - General Criteria for Security Personnel*

This final rule updates appendix B to 10 CFR part 73, section VI, paragraph B.1(a)(4), which contains a cross reference to § 73.19. The relevant regulations from proposed § 73.19 are now found in § 73.17. This final rule corrects this cross reference. Appendix B is also revised to clarify employment suitability for armed security personnel.

*Appendix G to Part 73 – Reportable Safeguards Events*

This final rule removes and reserves appendix G to 10 CFR part 73. The regulations on physical security event notifications, written follow-up reports, and lesser-significance recordable physical security events and conditions adverse to security, which were previously located in § 73.71 and appendix G to 10 CFR part 73, are relocated to new §§ 73.1200, 73.1205, and 73.1210, respectively.

*§ 74.11 Reports of loss or theft or attempted theft or unauthorized production of special nuclear material*

Paragraph 74.11(c) contains a cross reference to § 73.71. The relevant regulations from § 73.71 are now found in § 73.1200. This final rule updates the cross reference.

*§ 76.113 Formula quantities of strategic special nuclear material—Category I*

Paragraph (b) to § 76.113 contains a cross reference to § 73.71. The relevant regulations from § 73.71 are now found in § 73.1200. This final rule updates the cross reference.

*§ 76.115, Special nuclear material of moderate strategic significance—Category II*

Paragraph (b) to § 76.115 contains a cross reference to § 73.71. The relevant regulations from § 73.71 are now found in § 73.1200. This final rule updates the cross reference.

*§ 76.117 Special nuclear material of low strategic significance—Category III*

Paragraph (b) to § 76.117 contains a cross reference to § 73.71. The relevant regulations from § 73.71 are now found in § 73.1200. This final rule updates the cross reference.

## **VI. Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power reactor facilities, including both operating and decommissioning nuclear power reactors, Category I quantities of SSNM facilities, Category II quantities of SNM facilities, Category III quantities of SNM facilities, hot cell facilities, ISFSIs, MRSs, GROAs, and NPUFs. The companies, universities, and government agencies that own and operate these facilities do not fall within the scope of the definition of “small entities” set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).



## **VII. Regulatory Analysis**

The NRC has prepared a regulatory analysis for this final rule. The analysis examines the costs and benefits of the alternatives considered by the NRC. The final regulatory analysis can be found under ADAMS Accession No. ML16278A235. The NRC requested comment on the draft regulatory analyses prepared for the 2011 proposed rule and the 2015 supplemental proposed rule. No public comments were received.

## **VIII. Backfitting and Issue Finality**

The provisions of this final rule implementing the statutory authority of Section 161A of the AEA are voluntary in nature. These amendments do not impose modifications or additions to existing licensee SSCs, designs, procedures, or organizations required to operate an NRC-licensed facility. Accordingly, the provisions of this final rule do not constitute backfitting, as defined in 10 CFR 50.109, 70.76, and 72.62, and are not otherwise 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.

This final rule also imposes new physical security event notification and suspicious activity reporting requirements. These amendments involve information collection and reporting activities, which are outside the purview of the backfitting and issue finality provisions. Therefore, a backfit analysis is not required and has not been prepared for this final rule.

## **IX. Cumulative Effects of Regulation**

Cumulative Effects of Regulation (CER) consists of the challenges licensees may face in addressing the implementation of new regulatory positions, programs, and requirements (e.g., rulemaking, guidance, generic letters, backfits, inspections). The CER may manifest in several ways, including the total burden imposed on licensees by the NRC from simultaneous or consecutive regulatory actions that can adversely affect the licensee's capability to implement those requirements, while continuing to operate or construct its facility in a safe and secure manner.

The goals of the NRC's CER effort were met throughout the development of this final rule. The NRC staff has engaged external stakeholders at public meetings 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 (ADAMS Accession No. ML111720007), to discuss the proposed implementation plan for the February 2011 proposed rule (76 FR 6199). The staff also issued two supplemental proposed rules that: 1) expanded the scope of the rulemaking to include at-reactor ISFSIs (January 10, 2013; 78 FR 2214) and 2) revised the firearms background check

requirements to align with the updated Firearms Guidelines from 2014 (September 22, 2015; 80 FR 57106). Another public meeting was held at NRC Headquarters on November 19, 2015 (ADAMS Accession No. ML15348A082), to discuss the supplemental proposed rule that was published on September 22, 2015 (80 FR 57106) and to discuss the implementation period for the final rule. The feedback from the two public meetings informed the staff's implementation schedule for both the background check requirements and the physical security event notifications requirements. The staff also issued the draft guidance for public comment at the same time as the February 2011 proposed rule (February 3, 2011; 76 FR 6085).

Based upon input from the public and affected licensees, and in consideration of the need to promulgate the regulations on Section 161A authority and to update the regulations on physical security event notifications, the NRC has specified that this final rule will take effect 30 days from the date of publication of this notice. The NRC is not providing licensees a compliance period to apply for Section 161A authority because such application is voluntary. However, in §§ 73.15 and 73.17, the NRC is specifying a compliance period of 300 days from the date of publication of this final rule for licensees who have applied for and received stand-alone preemption authority via confirmatory orders to transition to the requirements of this final rule. Finally, the NRC is also specifying a compliance period of 300 days from the date of publication of this final rule for licensees to implement and train key personnel on the revised physical security event notification and suspicious activity reporting requirements. Information on the effective and compliance dates for the various provisions of this final rule are found in the DATES section of this notice.

## **X. Plain Writing**

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31883).

## **XI. Environmental Assessment and Final Finding of No Significant Environmental Impact**

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission’s regulations in 10 CFR part 51 subpart A that this final rule will not have a significant effect on the quality of the human environment and, therefore, an environmental impact statement is not required. The principal effect of this action is to revise the security regulations to implement Section 161A of the AEA, to clarify existing requirements for notification of physical security events, and to add several new requirements for physical security event notification and suspicious activity reporting.

Many of the changes in this final rule fall under a categorical exclusion for which the Commission has previously determined that such actions, neither individually nor cumulatively, will have significant impacts on the human environment. The NRC has determined that Parts 2 and 3 of this final rule regarding physical security event notifications and the suspicious activity reporting requirements are subject to the exemptions in 10 CFR 51.22(c)(3)(ii), 51.22(c)(3)(iii), and 51.22(c)(3)(iv). The NRC has

also determined that the cross-reference changes are subject to the exemption in 10 CFR 51.22(c)(2).

The remaining changes in this final rule not qualifying for a categorical exclusion were evaluated for their environmental impacts and the effects of these changes are addressed in the Environmental Assessment. The determination of this Environmental Assessment is that there will be no significant radiological or non-radiological environmental impacts associated with this rule. The environmental assessment is available as indicated under the “Availability of Documents” section.

## **XII. Paperwork Reduction Act**

This final rule contains new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et. seq). The collections of information were approved by the Office of Management and Budget, approval numbers 3150-0002, 3150-0104, and 3150-0204.

The burden to the public for the information collections is estimated to average 1.4 hours per response for information collection requirements contained in part 73 and 2.2 hours per response for NRC Form 754, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. There is no additional burden for NRC Form 366.

The information collection contained in part 73 is being conducted to implement Section 161A of the AEA and to add several new requirements to event notification requirements that resulted from insights from implementation of the security orders, review of site security plans, and implementation of the enhanced baseline inspection

program and force-on-force exercises. Responses to this collection of information are voluntary in the case of Section 161A authority. This information will be used by the NRC to review and approve applications for Section 161A authority. In the case of the physical security event notifications, responses to this collection of information are required under the new 10 CFR 73.1200. In the case of the written follow-up reports associated with the physical security event notifications, responses to this collection of information are required under the new 10 CFR 73.1205. The information will be used by the NRC to provide oversight of security events at licensed facilities. Information submitted on NRC Form 754 is being collected to fulfill requirements for the firearms background checks from Section 161A of the AEA. Use of NRC Form 754 is voluntary under Section 161A of the AEA and only those licensees that apply for Section 161A authority will be required to use the form to submit security personnel for firearms background checks against the FBI's NICS system. Confidential and proprietary information submitted to the NRC is protected in accordance with NRC regulations at §§ 9.17(a) and 2.390(b) of chapter 10.

You may submit comments on any aspect of the information collections, including suggestions for reducing the burden, by the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2011-0018**.
- **Mail comments to:** Information Services Branch, Office of the Chief Information Officer, Mail Stop: T-2 F43, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 or to Matthew Oreska, Desk Officer, Office of Information and Regulatory Affairs (3150-AI49), NEOB-10202, Office of Management and Budget, Washington, DC 20503; telephone: 202-395-3621, e-mail: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

## **Public Protection Notification**

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

### **XIII. Congressional Review Act**

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

### **XIV. Criminal Penalties**

For the purposes of Section 223 of the AEA, the NRC is issuing this final rule that amends 10 CFR part 73 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule are subject to criminal enforcement. Criminal penalties as they apply to regulations in 10 CFR part 73 are already discussed in § 73.81. Accordingly, §§ 73.15, 73.17, 73.1200, 73.1205, 73.1210, and 73.1215 will not be included in § 73.81(b).

### **XV. Compatibility of Agreement State Regulations**

Under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs,” approved by the Commission on June 20, 1997, and published in the

*Federal Register* (62 FR 46517; September 3, 1997), this rule is classified as compatibility Category “NRC.” Compatibility is not required for Category “NRC” regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of 10 CFR, and although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with a particular State’s administrative procedure laws, but does not confer regulatory authority on the State.

## **XVI. Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is using standards from applicable firearms standards developed by nationally recognized firearms organizations or standard setting bodies or from standards developed by: 1) Federal agencies, such as the U.S. Department of Homeland Security’s Federal Law Enforcement Training Center, the U.S. Department of Energy’s National Training Center, and the U.S. Department of Defense; 2) State law-enforcement training centers; or 3) State Division (or Department) of Criminal Justice Services Training Academies.



## **XVII. Availability of Guidance**

The NRC is issuing the following new or revised guidance documents in support of the implementation of the requirements set forth in this final rule:

- RG 5.62, Revision 2, “Physical Security Event Notifications, Reports, and Records”;
- RG 5.86, “Enhanced Weapons Authority, Preemption Authority, and Firearms Background Checks”;
- RG 5.87, “Suspicious Activity Reports (U)”;
- “Weapons Safety Assessment,” Volumes 1–5; and
- “Weapons Safety Assessment,” Volume 6.

Revision 2 to RG 5.62, new RG 5.86, and new RG 5.87 (redacted) are publicly available and may be found in ADAMS under Accession Nos. ML17131A285, ML17131A296, and ML17138A384, respectively. The complete version of RG 5.87 contains sensitive security information and is not publicly available. However, the complete version of RG 5.87 is available to affected licensees through their NRC licensing project managers. Volumes 1–5 of the Weapons Safety Assessment may be found in ADAMS under Accession No. ML18108A014. Volume 6 may be found in ADAMS under Accession No. ML18115A418 but is not publicly available. Information and comment submissions related to the guidance can be accessed by searching on <http://www.regulations.gov> under Docket IDs NRC-2011-0014, NRC-2011-0015, and NRC-2011-0017. Analysis of public comments received on these guidance documents are discussed in Section IV, “Public Comment Analysis.”

The NRC is issuing RG 5.86 that contains detailed guidance on the implementation of the proposed requirements on applying for enhanced weapons

authority, preemption authority, and conducting firearms background checks. The associated draft regulatory guide (DG-5020) and Revision 1 to DG-5020 were published for public comment in conjunction with the 2011 proposed rule and the 2015 supplemental proposed rule, respectively. These draft regulatory guides and public comments can be found under docket ID NRC-2011-0015. The final guidance reflects public comments received on both draft regulatory guides.

The NRC has published a six volume “Weapons Safety Assessment” to assist licensees in completing the weapons safety assessment required under § 73.15(e) as part of an application for combined preemption authority and enhanced weapons authority. Volumes 1 and 3 contain introductory and explanatory material. Volume 2 contains the weapons safety assessment template that licensees will complete and submit with their applications under § 73.15. Volume 4 contains a completed sample template for a hypothetical power reactor facility. Volume 5 contains reference information. Volume 6 contains additional reference information on weapons capabilities and characteristics and is not publicly available for security reasons. Licensees that are considering applying for combined preemption authority and enhanced weapons authority may request Volume 6 through their NRC licensing project manager. The NRC considered public comments in developing the final weapons safety assessment. Additional information can be found under docket ID NRC-2011-0017.

The NRC is also issuing a revision to RG 5.62. Revision 2 to RG 5.62 provides guidance on the implementation of physical security event notification requirements, as modified by this final rule. The NRC published DG-5019, Revision 1, on February 3, 2011 (76 FR 6085) for public comment after the publication of the 2011 proposed rule. The final guidance reflects public comments received on the draft regulatory guide.

The NRC has bifurcated the guidance in DG-5019, Revision 1, regarding suspicious activity reporting into a separate new RG 5.87. The final guidance reflects public comments received on the draft regulatory guide.

The NRC is temporarily withdrawing NUREG-1304, "Reporting of Safeguards Events," dated February 1988, (ADAMS Accession No. ML16012A188). NUREG-1304 contains a set of questions and answers on physical security event notifications and reports. Since the new and old physical security event notification regulations differ, the NRC will temporarily withdraw this NUREG to prevent regulatory confusion. The NRC will conduct a workshop after licensees have implemented the revised physical security event notification and new suspicious activity reporting requirements. The NRC will publish the results of the workshop as NUREG-1304, Revision 1, Volumes 1 and 2. Volume 1 will address physical security event notifications, and Volume 2 will address suspicious activity reporting.

The NRC is withdrawing Generic Letter (GL) 91-03, "Reporting of Safeguards Events" (ADAMS Accession No. ML031140131). This GL is no longer consistent with the revised physical security event notification regulations in §§ 73.1200 and 73.1205 and will be withdrawn to prevent regulatory confusion. The staff has incorporated relevant topics from GL 91-03 into the new revision of RG 5.62.

### **XVIII. Availability of Documents**

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

<b>Document</b>	<b>ADAMS Accession No. / <i>Federal Register</i> Citation</b>
Firearms Guidelines (September 11, 2009)	74 FR 46800
Firearms Guidelines, Revision 1 (June 25, 2014)	79 FR 36100

<b>Document</b>	<b>ADAMS Accession No. / Federal Register Citation</b>
Environmental Assessment (October 2006 proposed rule)	ML061920093
Environmental Assessment for Final Rule	ML16270A086
Regulatory Analysis Regulatory Analysis—appendices (October 2006 proposed rule)	ML061380803 ML061380796 ML061440013
Regulatory Analysis for Final Rule	ML16278A235
Information Collection Analysis	ML092640277
NRC Form 754, “Armed Security Personnel Firearms Background Check”	ML18142B083
Commission: SECY-08-0050, “Firearms Guidelines Implementing Section 161A of the Atomic Energy Act of 1954 and Associated Policy Issues” (April 17, 2008)	ADAMS Package - ML072920478 <sup>1</sup>
Commission: SECY-08-0050A, “Firearms Guidelines Implementing Section 161A of the Atomic Energy Act of 1954 and Associated Policy Issues - Supplemental Information” (July 8, 2008)	ML081910207
Commission: SRM-SECY-08-0050/0050A, “Firearms Guidelines Implementing Section 161A of the Atomic Energy Act of 1954 and Associated Policy Issues” (August 15, 2008)	ML082280364
Letter Opinion from Bureau of Alcohol, Tobacco, Firearms and Explosives’ Office of Enforcement on the Transfer of Enhanced Weapons (January 5, 2009)	ML090080191
Commission: SECY-10-0085, “Proposed Rule: Enhanced Weapons, Firearms Background Checks and Security Event Notifications (RIN: 3150-AI49)” (June 23, 2010)	ML101110121
Commission: SRM-SECY-10-0085, “Proposed Rule: Enhanced Weapons, Firearms Background Checks and Security Event Notifications (RIN: 3150-AI49)” (October 19, 2010)	ML102920342
Proposed Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Rule (February 3, 2011)	76 FR 6199
Supplemental Proposed Enhanced Weapons Firearms Background Checks and Security Event Notifications Rule (January 10, 2013)	78 FR 2214
Supplemental Proposed Enhanced Weapons Firearms Background Checks and Security Event Notifications Rule (September 22, 2015)	80 FR 57106
Public Comment Analysis for the Final Rule	ML16264A004
Public Comment Analysis for the Final Rule Supporting Regulatory Guides and Weapons Safety Assessment	ML17123A319

<b>Document</b>	<b>ADAMS Accession No. / Federal Register Citation</b>
DG-5019, Revision 0, "Reporting and Recording Safeguards Events" (June 2007)	ML071710233
DG-5019, Revision 1, "Reporting and Recording Safeguards Events" (January 2011)	ML100830413
DG-5020, Revision 0, "Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73" (February 3, 2011)	ML100321956
DG-5020, Revision 1, "Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73" (September 2015)	ML14322A847
Regulatory Guide 5.62, Revision 2, "Physical Security Event Notifications, Reports, and Records"	ML17131A285
Regulatory Guide 5.86, "Enhanced Weapons Authority, Preemption Authority, and Firearms Background Checks"	ML17131A296
Regulatory Guide 5.87, "Suspicious Activity Reports (U)"	ML17138A384
Commission: SECY-12-0027, "Preemption Authority Pursuant to Section 161A, 'Use of Firearms by Security Personnel,' of the Atomic Energy Act of 1954, as Amended" (February 17, 2012)	ML113130015
Commission: SRM-SECY-12-0027, "Preemption Authority Pursuant to Section 161A, 'Use of Firearms by Security Personnel,' of the Atomic Energy Act of 1954, as Amended" (May 3, 2012)	ML12124A377
Commission: SECY-12-0125, "Interim Actions to Execute Commission Preemption Authority Under Section 161A of the Atomic Energy Act of 1954, as Amended" (September 20, 2012)	ADAMS Package - ML12164A839
Commission: SRM-SECY-12-0125, "Interim Actions to Execute Commission Preemption Authority Under Section 161A of the Atomic Energy Act of 1954, as Amended" (November 21, 2012)	ML12326A653
NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Revision 4 (September 30, 2004)	ML042820192
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	78 FR 35984

<b>Document</b>	<b>ADAMS Accession No. / Federal Register Citation</b>
Section 161a of the Atomic Energy Act of 1954, as Amended” (June 14, 2013)	
Order EA-15-004, “BWXT Preemption Order” (September 4, 2015)	80 FR 53588
Orders EA-14-134, EA-14-135, EA-14-136, EA-14-137, EA-14-138, EA-14-139, and EA-14-140, “Reactor Preemption Orders” (January 15, 2016)	81 FR 2247
Draft Supporting Statement for the second supplemental proposed rule	ML15035A633
Supporting Statement for the Final Rule	ML17067A164
“Weapons Safety Assessment”, Volumes 1 – 5	ML18108A014
“Weapons Safety Assessment,” Volume 6 (non-publicly available)	ML18115A418
Generic Letter 91-03, “Reporting of Safeguards Events” (March 6, 1991)	ML031140131

<sup>1</sup> Enclosure 1 to SECY-08-0050 is not publicly available.

Throughout the development of this rule, the NRC staff has posted documents related to this rule, including public comments, on the Federal Rulemaking Web site at <http://www.regulations.gov> under Docket IDs NRC-2011-0014, NRC-2011-0015, NRC-2011-0017, and NRC-2011-0018. The Federal Rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: 1) navigate to the docket folders (NRC-2011-0014, NRC-2011-0015, NRC-2011-0017, or NRC-2011-0018); 2) click the “Sign up for E-mail Alerts” link; and 3) enter your e-mail address and select how frequently you would like to receive e-mails (daily, weekly, or monthly).

### **List of Subjects**

#### **10 CFR Part 20**

Byproduct material, Criminal penalties, Hazardous waste, Licensed material, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Occupational

safety and health, Packaging and containers, Penalties, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

#### **10 CFR Part 21**

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

#### **10 CFR Part 50**

Administrative practice and procedure, Antitrust, Classified information, Criminal penalties, Education, Fire prevention, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

#### **10 CFR Part 70**

Classified information, Criminal penalties, Emergency medical services, Hazardous materials transportation, Material control and accounting, Nuclear energy, Nuclear materials, Packaging and containers, Penalties, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material, Whistleblowing.

### **10 CFR Part 73**

Criminal penalties, Exports, Hazardous materials transportation, Incorporation by reference, Imports, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Security measures.

### **10 CFR Part 74**

Accounting, Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear energy, Nuclear materials, Packaging and containers, Penalties, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

### **10 CFR Part 76**

Certification, Criminal penalties, Nuclear energy, Penalties, Radiation protection, Reporting and record keeping requirements, Security measures, Special nuclear material, Uranium, Uranium enrichment by gaseous diffusion.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 20, 21, 50, 70, 73, 74, and 76:



## **PART 20 -- STANDARDS FOR PROTECTION AGAINST RADIATION**

1. The authority citation for part 20 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 11, 53, 63, 65, 81, 103, 104, 161, 170H, 182, 186, 223, 234, 274, 1701 (42 U.S.C. 2014, 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2210h, 2232, 2236, 2273, 2282, 2021, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Low-Level Radioactive Waste Policy Amendments Act of 1985, sec. 2 (42 U.S.C. 2021b); 44 U.S.C. 3504 note.

### **§ 20.2201 [Amended]**

2. In § 20.2201, paragraph (c), remove the number “73.71” and add in its place the number “73.1205”.

## **PART 21 -- REPORTING OF DEFECTS AND NONCOMPLIANCE**

3. The authority citation for part 21 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 53, 63, 81, 103, 104, 161, 223, 234, 1701 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

### **§ 21.2 [Amended]**

4. In § 21.2, paragraph (c), remove the reference “§ 73.71” and add in its place the reference “§§ 73.1200 and 73.1205”.

## **PART 50 -- DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES**

5. The authority citation for part 50 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96-295, 94 Stat. 783.

**§ 50.55 [Amended]**

6. In § 50.55, paragraph (e)(8), remove the number “73.71” and add in its place the number “73.1205”.

**§ 50.72 [Amended]**

7. In § 50.72, paragraph (a), footnote 1, remove the number “73.71” and add in its place the number “73.1200”.

**PART 70 -- DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL**

8. The authority citation for part 70 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 51, 53, 57(d), 108, 122, 161, 182, 183, 184, 186, 187, 193, 223, 234, 274, 1701 (42 U.S.C. 2071, 2073, 2077(d), 2138, 2152, 2201, 2232, 2233, 2234, 2236, 2237, 2243, 2273, 2282, 2021, 2297f); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

**§ 70.20a [Amended]**

9. In § 70.20a, paragraph (e)(2), remove the number “73.71” and add in its place the number “73.1200”.

**§ 70.20b [Amended]**

10. In § 70.20b:

a. In paragraph (c), remove the reference “73.71(b)” and add in its place the number “73.1200”;

b. In paragraph (d), remove the reference “73.71(b)” and add in its place the number “73.1200”; and

c. In paragraph (e), remove the reference “73.71(b)” and add in its place the number “73.1200”.

## **PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS**

11. The authority citation for part 73 is revised to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 53, 147, 149, 161, 161A, 170D, 170E, 170H, 170I, 223, 229, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2201a, 2210d, 2210e, 2210h, 2210i, 2273, 2278a, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

Section 73.37(b)(2) also issued under Sec. 301, Public Law 96-295, 94 Stat. 789 (42 U.S.C. 5841 note).

12. Remove undesignated center headings “General Provisions,” “Physical Protection of Special Nuclear Material in Transit,” “Physical Protection Requirements at Fixed Sites,” “Physical Protection of Special Nuclear Material or Moderate and Low Strategic Significance,” “Records and Reports,” and “Enforcement.”

Subpart A – General Provisions

13. Add subpart A, consisting of existing §§ 73.1 through 73.8, under the heading set forth above.

### **§ 73.2 [Amended]**

14. In § 73.2:

a. In paragraph (a) remove the phrase “and 70” and add in its place the phrase “70, and 95”;

b. Add the definitions for *Adverse firearms background check*, *Combined preemption authority and enhanced weapons authority*, *Contraband*, *Covered weapon*,

*Enhanced weapon, Firearms background check, Greater than class C waste, High-level radioactive waste, Independent spent fuel storage installation, NICS, NICS response, NICS transaction number, Restricted Data, Satisfactory firearms background check, Spent nuclear fuel (SNF) or spent fuel, Stand-alone preemption authority, and Time of discovery, in alphabetical order;*

c. Revise the definition for *Movement control center*, and

d. Add new paragraphs (b) and (c).

The additions and revision read as follows:

**§ 73.2 Definitions.**

\* \* \* \* \*

(a) \* \* \*

*Adverse firearms background check* means a firearms background check that has resulted in a “denied” or “delayed” NICS response from the Federal Bureau of Investigation (FBI).

\* \* \* \* \*

*Combined preemption authority and enhanced weapons authority* means the authority granted to the Commission, pursuant to 42 U.S.C. 2201a, to authorize licensees or the designated security personnel of a licensee to transfer, receive, possess, transport, import, and use one or more categories of enhanced weapons, notwithstanding any State, local, or certain Federal firearms laws, including regulations, that prohibit or restrict such conduct.

\* \* \* \* \*

*Contraband* means unauthorized firearms, explosives, incendiaries, or other dangerous materials (e.g., disease causing agents), which are capable of causing acts of sabotage against a licensed facility or licensed radioactive material, as specified under 42 U.S.C. 2284. For licensees that possess or conduct activities involving classified national security information or classified Restricted Data (RD) as defined in § 95.5 of this chapter, contraband also means unauthorized electronic devices or unauthorized electronic media that are capable of facilitating acts of espionage; unauthorized communication, transmission, disclosure, or receipt of RD; or tampering with RD, pursuant to 18 U.S.C. 793 or 42 U.S.C. 2274-2276, respectively. Contraband items are banned from a licensee's protected area, vital area, materials access area, or controlled access area.

\* \* \* \* \*

*Covered weapon* means any handgun, rifle, shotgun, short-barreled shotgun, short-barreled rifle, semi-automatic assault weapon, machine gun, ammunition for any such weapons, or large capacity ammunition feeding device otherwise prohibited by State, local, or certain Federal firearms laws, including regulations, as specified under 42 U.S.C. 2201a(b).

\* \* \* \* \*

*Enhanced weapon* means 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).

\* \* \* \* \*

*Firearms background check* means 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 National Instant Criminal Background Check System.

\* \* \* \* \*

*Greater than Class C waste or GTCC waste* has the same meaning as defined in § 72.3 of this chapter.

\* \* \* \* \*

*High-level radioactive waste or HLW* has the same meaning as defined in § 72.3 of this chapter.

\* \* \* \* \*

*Independent spent fuel storage installation or ISFSI* has the same meaning as defined in § 72.3 of this chapter.

\* \* \* \* \*

*Movement control center* means an operations center which is remote from the transport activity and which maintains position information on the movement of special nuclear material or radioactive material; receives reports of actual or attempted attacks, thefts, or sabotage; provides a means for notifying these and other problems to the NRC and appropriate agencies; and can request and coordinate appropriate aid.

\* \* \* \* \*

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

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

*NICS transaction number* or *NTN* means the identification number created by the FBI to track firearms background checks upon entry of the information into the FBI's system. The NICS response and the NTN are the information returned by the FBI, following a firearms background check.

\* \* \* \* \*

*Restricted Data* or *RD* has the same meaning as defined in § 95.5 of this chapter.

\* \* \* \* \*

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

\* \* \* \* \*

*Spent nuclear fuel (SNF)* or *spent fuel* means the fuel that has been withdrawn from a nuclear reactor following irradiation and has not been chemically separated into its constituent elements by reprocessing. Spent nuclear fuel includes the special nuclear material, byproduct material, source material, and other radioactive materials associated with a fuel assembly.

\* \* \* \* \*

*Stand-alone preemption authority* means the authority granted to the Commission, pursuant to 42 U.S.C. 2201a, to authorize licensees or the designated security personnel of a licensee to transfer, receive, possess, transport, import, and use one or more categories of covered weapons, notwithstanding any State, local, or certain Federal firearms laws, including regulations, that prohibit or restrict such conduct. Such covered weapons do not include enhanced weapons as defined in this part.

\* \* \* \* \*

*Time of discovery* means the time at which a cognizant individual observes, identifies, or is notified of a security-significant event or condition. A cognizant individual is considered anyone who, by position, experience, and/or training, is expected to understand that a particular condition or event adversely impacts security.

\* \* \* \* \*

(b) The terms “ammunition,” “handgun,” “rifle,” “machine gun,” “large capacity ammunition feeding device,” “semi-automatic assault weapon,” “short-barreled shotgun,” “short-barreled rifle,” and “shotgun” specified in §§ 73.15 and 73.17 have the same meaning as provided for these terms in the U.S Bureau of Alcohol, Tobacco, Firearms and Explosives' regulations at 27 CFR 478.11.

(c) The terms “delayed,” “denied,” and “proceed” that are used in NICS responses specified in this section have the same meaning provided these terms in the FBI’s regulations at 28 CFR 25.2.

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

**§ 73.8 Information collection requirements: OMB approval.**

\* \* \* \* \*

(b) The approved information collection requirements contained in this part appear in §§ 73.5, 73.15, 73.17, 73.20, 73.21, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.54, 73.55, 73.56, 73.57, 73.58, 73.60, 73.67, 73.70, 73.72, 73.73, 73.74, 73.1200, 73.1205, 73.1210, 73.1215, and appendices B and C to this part.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These



information collection requirements and control numbers under which they are approved are as follows:

(1) In § 73.17, NRC Form 754 is approved under control number 3150-0204;

(2) In §§ 73.17 and 73.57, Federal Bureau of Investigation Form FD-258 is approved under control number 1110-0046; and

(3) In § 73.1205, NRC Form 366 is approved under control number 3150-0104.

16. Add subpart B – Enhanced Weapons, Preemption, and Firearms

Background Checks and new §§ 73.15 and 73.17 to read as follows:

**Subpart B – Enhanced Weapons, Preemption, and Firearms Background Checks**

Sec.

73.15 Authorization for use of enhanced weapons and preemption of firearms laws.

73.17 Firearms background checks for armed security personnel.

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

(a) *Purpose.* This section presents the requirements for licensees to obtain approval to use the authority provided to the Commission under Section 161A of the Atomic Energy Act of 1954, as amended (AEA), in protecting Commission-designated classes of facilities, radioactive material, or other property. This authority includes “stand-alone preemption authority” and “combined preemption authority and enhanced weapons authority.”

(b) *General Requirements.* (1) Licensees of facilities, activities, and other property listed in paragraph (c) of this section may apply to the NRC, in accordance with

the provisions of this section, to receive stand-alone preemption authority or combined preemption authority and enhanced weapons authority.

(2) With respect to the possession and use of firearms by all other NRC licensees, the Commission's requirements in effect before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]** remain applicable, except to the extent that those requirements are modified by an NRC order or regulations applicable to these licensees.

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

(i) Nuclear power reactor facilities;

(ii) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level less than or equal to 1 Gray (Gy) (100 Rad) per hour at a distance of 1 meter (m) (3.3 feet (ft)), without regard to any intervening shielding;

(iii) Independent spent fuel storage installations; and

(iv) Spent nuclear fuel transportation.

(2) Combined preemption authority and enhanced weapons authority. The license holders for the following classes of facilities, radioactive material, or other property are designated by the Commission as eligible to apply for combined enhanced weapons authority and preemption authority pursuant to 42 U.S.C. 2201a—

(i) Nuclear power reactor facilities;

(ii) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level less than or

equal to 1 Gy (100 Rad) per hour at a distance of 1 m (3.3 ft), without regard to any intervening shielding;

(iii) Independent spent fuel storage installations; and

(iv) Spent nuclear fuel transportation.

(d) *Application process for stand-alone preemption authority.* (1) Only licensees included within the classes of facilities, radioactive material, and other property listed in paragraph (c)(1) of this section may apply to the NRC for stand-alone preemption authority.

(2) Licensees applying for stand-alone preemption authority must submit an application to the NRC using the procedures specified in this section.

(3) The contents of the application must include the following information:

(i) A statement indicating that the licensee is applying for stand-alone preemption authority;

(ii) The Commission-designated facility, radioactive material, or other property to be protected by the licensee's security personnel using the covered weapons;

(iii) A description of the licensee's purposes and objectives in requesting stand-alone preemption authority. This description must include whether these covered weapons are currently employed as part of the licensee's existing protective strategy or whether these covered weapons will be used in a revised protective strategy; and

(iv) A description of the licensee's Firearms Background Check Plan, as required by § 73.17 of this part.

(4) Once a licensee has been notified that its application for stand-alone preemption authority has been accepted for review by the NRC, the licensee must provide the following supplemental information once it becomes available:

(i) A confirmation that a sufficient number of security personnel have completed a satisfactory firearms background check to meet the licensee's security personnel minimum staffing requirements, as specified in its physical security plan and any applicable fatigue requirements under part 26 of this chapter;

(ii) A confirmation that the necessary training modules and notification procedures have been developed under its Firearms Background Check Plan; and

(iii) A confirmation that all security personnel whose official duties require access to covered weapons have been trained on these modules and notification procedures.

(5) The licensee must submit both the application and the supplementary information to the NRC in writing, under oath or affirmation, and in accordance with § 73.4 of this part.

(6) Upon the effective date of the NRC's approval of its application for stand-alone preemption authority, the licensee must only assign security personnel who have completed a satisfactory firearms background check to duties requiring access to any covered weapons.

*(e) Application process for combined preemption authority and enhanced weapons authority.*

(1) Only licensees included within the classes of facilities, radioactive material, and other property listed in paragraph (c)(2) of this section may apply to the NRC for combined preemption authority and enhanced weapons authority.

(2) Licensees applying for combined preemption authority and enhanced weapons authority must submit an application to the NRC using the procedures specified in this section.

(3) The contents of the application must include the following information:

(i) A statement indicating that the licensee is applying for combined preemption authority and enhanced weapons authority;

(ii) The Commission-designated facility, radioactive material, or other property to be protected by the licensee's security personnel using the covered weapons, including enhanced weapons;

(iii) A description of the licensee's purposes and objectives in requesting combined preemption authority and enhanced weapons authority. This must include whether these enhanced weapons are currently employed as part of the licensee's existing protective strategy or whether these enhanced weapons will be used in a revised protective strategy;

(iv) The total quantities of enhanced weapons, including the types and calibers or gauges, requested; and

(v) A description of the licensee's Firearms Background Check Plan, required by § 73.17 of this part.

(vi) If the NRC has previously approved the licensee's application for stand-alone preemption authority under either paragraph (d) of this section or under an NRC Order issued before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**, then the licensee must include the effective date of the NRC's approval for stand-alone preemption authority in its application for combined preemption authority and enhanced weapons.

(4) The licensee must include with its application the additional technical information required by paragraph (f) of this section.

(5) Once a licensee has been notified that its application for combined preemption authority and enhanced weapons authority has been accepted for review by

the NRC, the licensee must provide the following supplemental information once it becomes available:

(i) A confirmation that a sufficient number of security personnel have completed a satisfactory firearms background check to meet the licensee's security personnel minimum staffing requirements, as specified in its physical security plan, and any applicable fatigue requirements under part 26 of this chapter;

(ii) A confirmation that the necessary training modules and notification procedures have been developed under its Firearms Background Check Plan; and

(iii) A confirmation that security personnel, whose official duties require access to enhanced weapons, have been trained on these modules and notification procedures.

(iv) Exceptions: Licensees that were previously approved by the NRC for stand-alone preemption authority do not have to submit the supplemental information required by paragraph (e)(5) since it has been previously submitted under paragraph (d)(4) of this section or in response to an NRC Order.

(6) The licensee must submit its application in accordance with the applicable license amendment provisions specified in §§ 50.90, 70.34, or 72.56 of this chapter. The licensee must submit both the application and the supplementary information to the NRC in writing, under oath or affirmation, and in accordance with § 73.4 of this part.

(7) If a licensee wishes to use a different type or caliber or gauge of an enhanced weapon or obtain a different quantity of enhanced weapons from that previously approved by the Commission under this section, then the licensee must submit a new application to the NRC in accordance with paragraph (e) of this section (to address these different weapons or different quantities of weapons).

(f) *Application for combined preemption authority and enhanced weapons authority additional technical information.* (1) A licensee must also submit to the NRC for

prior review and approval the following plans and assessments. These plans and assessments must be specific to the facility, radioactive material, or other property being protected.

(i) A new or revised physical security plan, security personnel training and qualification plan, and safeguards contingency plan; and

(ii) A new weapons safety assessment.

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

(i) For the physical security plan, identify the quantities, types, and calibers or gauges of enhanced weapons that will be deployed;

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

(iii) For the safeguards contingency plan –

(A) The licensee must address how these enhanced weapons will be employed by the security personnel in implementing the protective strategy, including tactical approaches and maneuvers;

(B) In such instances where the addition of the enhanced weapons would not affect the content of the safeguards contingency plan, the required information on how the weapons will be employed may instead be incorporated into the licensee's physical security plan or an addendum thereto;

(C) Furthermore, in such instances, the licensee's application shall indicate that the proposed enhanced weapons do not affect the content of the NRC-approved safeguards contingency plan and it remains unchanged; and

(iv) For the weapons safety assessment, assess any potential safety impact by the use of enhanced weapons —

(A) At the facility, radioactive material, or other property being protected;

(B) On public or private facilities, public or private property, or on members of the public in areas outside of the site boundary; and

(C) On public or private facilities, public or private property, or on members of the public from the use of these enhanced weapons at training facilities; and

(D) Such assessments must consider both accidental and deliberate discharge of the enhanced weapons. However, licensees are not required to assess malevolent discharges of these enhanced weapons by trained and qualified security personnel, who have been screened and evaluated by the licensee's insider mitigation or human reliability programs.

(3) The licensee's training and qualification plan for enhanced weapons must be based upon applicable firearms standards developed by nationally-recognized firearms organizations or standard setting bodies or from standards developed by—

(i) Federal agencies, such as the U.S. Department of Homeland Security's Federal Law Enforcement Training Center, the U.S. Department of Energy's National Training Center, and the U.S. Department of Defense;

(ii) State law-enforcement training centers; or

(iii) State Division (or Department) of Criminal Justice Services Training Academies.

(g) *Conditions of approval.* (1) Licensees that have been approved by the NRC for combined preemption authority and enhanced weapons authority must provide a copy of the NRC's authorization to the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Federal firearms license (FFL) holder (i.e., the transferor) for inclusion with the application to request ATF's pre-approval of the transfer and registration of the enhanced weapons to the NRC licensee (i.e., the transferee).



(2) Licensees receiving enhanced weapons must comply with applicable ATF regulations in 27 CFR part 479.

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

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

*(h) Completion of training and qualification before deployment of enhanced weapons.*

(1) Licensees that have received combined preemption authority and enhanced weapons authority must ensure that their security personnel with access to enhanced weapons have completed the required firearms training and qualification, in accordance with the licensee's training and qualification plan.

(2) Initial training and qualification on enhanced weapons must be completed before the security personnel's deployment of enhanced weapons to implement the licensee's protective strategy.

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

(4) All training must be documented in accordance with the requirements of the licensee's training and qualification plan.

(i) [Reserved]

(j) *Use of enhanced weapons.* The requirements regarding the use of force by the licensee's security personnel, in the performance of their official duties, are

contained in §§ 73.46, 73.51, and 73.55 and in appendices B, C, and H of this part, as applicable.

(k) *Notification of adverse ATF findings.* Requirements on notification of adverse ATF inspection or enforcement findings can be found under § 73.1200 of this part.

(l) [Reserved]

(m) *Transfer of enhanced weapons.* (1)(i) A licensee's issuance of enhanced weapons to its security personnel is not considered a transfer of those weapons as specified under ATF's regulations in 27 CFR part 479, provided the enhanced weapons remain within the site of a facility.

(ii) Remaining within the site of a facility means within the site boundary, as defined by the licensee's safety analysis report submitted to the NRC.

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

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

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

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

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

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

(iii) Removal of an enhanced weapon from a licensee's facility to a gunsmith for the purposes of repair or maintenance and the subsequent return of the enhanced weapon to the licensee's facility.

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

(5) Removal of enhanced weapons from and/or return of these weapons to the licensee's facility must be documented in accordance with the records requirements of paragraph (q) of this section.

(6) Removal of enhanced weapons from a licensee's facility for reasons other than those set forth in paragraph (m)(3) of this section are considered a transfer as specified under ATF's regulations in 27 CFR part 479.

(7) The licensee may only transfer enhanced weapons pursuant to an ATF application to transfer and register the weapons that is approved by ATF in advance of the transfer, as required by ATF's regulations under 27 CFR part 479. Examples of transfers include, but are not limited to:

(i) Sale or disposal of an enhanced weapon to another authorized NRC licensee;

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

(iii) Abandonment of an enhanced weapon to ATF.

(8) Following the completion of their official duties, security personnel must either—

(i) Return issued enhanced weapons to a licensee's authorized enhanced weapons storage location, as specified in the licensee's physical security plan, or

(ii) Turn over responsibility for the issued enhanced weapon to another on-shift security personnel authorized to use enhanced weapons as part of their official duties.

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

(n) *Transport of weapons.* (1) Security personnel transporting enhanced weapons to or from a firing range or training facility used by the licensee must ensure that these weapons are unloaded and locked in a secure container during transport. Unloaded weapons and ammunition may be transported in the same locked secure container.

(2) Security personnel transporting enhanced weapons to or from a licensee's facility following the completion of, or in preparation for, escorting shipments of radioactive material or other property must ensure that these weapons are unloaded and locked in a secure container during transport. Security personnel may transport unloaded weapons and ammunition in the same locked secure container.

(3) Security personnel using enhanced weapons to protect shipments of radioactive material or other property that are being transported to or from the licensee's facility must ensure that these weapons are maintained in a state of loaded readiness and available for immediate use, except when otherwise prohibited by 18 U.S.C. 922(q).

(4) Security personnel transporting enhanced weapons to or from the licensee's facility must also comply with the requirements of § 73.17 of this part.

(5) Situations where security personnel transport enhanced weapons to or from the licensee's facility are not considered transfers of these weapons under ATF's regulations in 27 CFR part 479, provided—

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

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

(6) For the interstate transportation of enhanced weapons, pursuant to this section, the licensee must obtain prior written approval from ATF, as required by 27 CFR part 478.

(o) *Periodic inventories of enhanced weapons.* (1) Licensees possessing enhanced weapons under this section must conduct the following periodic accountability inventories of the enhanced weapons in their possession to verify the continued presence of each enhanced weapon that the licensee is authorized to possess.

(2) Monthly enhanced weapons inventory. (i) Licensees must conduct a monthly inventory to verify that the authorized quantity of enhanced weapons are present at the licensee's facility.

(ii) Licensees must verify the presence of each individual enhanced weapon.

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

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

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

(vi) The time interval from the previous monthly inventory must not exceed 30 + 7 days.

(3) Annual enhanced weapons inventory.

(i) Licensees must conduct an annual inventory to verify that each authorized enhanced weapon is present at the licensee's facility through the verification of the serial number of each enhanced weapon.

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

(iii) The time interval from the previous annual inventory must not exceed 365 + 7 days.

(iv) Licensees conducting an annual inventory may substitute this annual inventory in lieu of conducting the normal monthly inventory for that particular month, as required under paragraph (o) of this section.

(4) Licensees must conduct periodic inventories of enhanced weapons using either a two-person team or a single individual, provided the individual is subject to the licensee's behavioral observation or human reliability programs.

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

(6) Licensees must inventory any locked secure weapons container that was sealed with a TID and has subsequently been opened and must verify the serial number for each of the enhanced weapons stored in the weapons container. The inventoried weapons container must be relocked and resealed with a new TID and the new TID's serial number must be recorded in the periodic inventory records. The inventory must be conducted in accordance with the requirements of paragraph (o)(4) of this section.

(i) Licensees must use TIDs with unique serial numbers on locked secure weapons containers containing enhanced weapons.

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

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

(8) Exception. Enhanced weapons that are offsite for authorized purposes, in accordance with paragraphs (m) and (n) of this section, are required to be included in a periodic inventory but are not considered lost or stolen. The licensee must document the absence of these weapon(s) from the licensee's facility in the report of the results of

a completed periodic enhanced weapons inventory, as required under paragraph (q) of this section.

(p) *Stolen or lost enhanced weapons.* (1) Licensees that discover that any enhanced weapons they are authorized to possess under this section are stolen or lost, must notify the NRC and local law enforcement officials in accordance with § 73.1200 of this part.

(2) Licensees that discover that any enhanced weapons they are authorized to possess under this section are stolen or lost are also required to notify ATF in accordance with ATF's regulations in 27 CFR part 479.

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

(2) Licensees must maintain the following minimum records regarding the receipt of each enhanced weapon, including—

(i) Date of receipt of the weapon;

(ii) Name and address of the transferor, who transferred the weapon to the licensee;

(iii) Name of the manufacturer of the weapon, or the name of the importer (for weapons manufactured outside the U.S.); and

(iv) Serial number, type, and caliber or gauge of the weapon.

(3) Licensees must maintain the following minimum records regarding the transfer of each enhanced weapon—

(i) Date of shipment of the weapon;

(ii) Name and address of the transferee who received the weapon; and

(iii) Serial number, type, and caliber or gauge of the weapon.



(4) Licensees must maintain the following minimum records regarding the transportation of each enhanced weapon away from the licensee's facility—

(i) Date of departure of the weapon;

(ii) Date of return of the weapon;

(iii) Purpose of the weapon's removal from the facility;

(iv) Name(s) of the security personnel transporting the weapon;

(v) Name(s) of the licensee employee accompanying and directing the transportation, where the security personnel transporting the weapons are employees of a security contractor providing security services to the licensee;

(vi) Name of the person/facility to whom the weapon is being transported; and

(vii) Serial number, type, and caliber or gauge of the weapon.

(5) Licensees possessing enhanced weapons pursuant to this section must document in these records the discovery that any of these enhanced weapons are stolen or lost.

(6) Licensees possessing enhanced weapons pursuant to this section must maintain records relating to the inventories of enhanced weapons for a period of up to one year after the licensee's authority to possess enhanced weapons is terminated, suspended, or revoked under paragraph (r) of this section and all enhanced weapons have been transferred from the licensee's facility.

(7) Licensees may integrate any records required by this section with records maintained by the licensee pursuant to ATF's regulations.

(8) Licensees must make any records required by this section available to NRC staff and ATF staff upon request.

(r) *Termination, modification, suspension, or revocation of Section 161A authority.*

(1)(i) Licensees seeking to terminate their stand-alone preemption authority must apply to the NRC in writing, under oath or affirmation, and in accordance with § 73.4 of this part.

(ii) Licensees seeking to terminate their combined enhanced weapons authority and preemption authority must apply to the NRC in writing, under oath or affirmation, and in accordance with § 73.4 of this part, and the license amendment provisions of §§ 50.90, 70.34, or 72.56 of this chapter, as applicable. These licensees must have transferred or disposed of any enhanced weapons, in accordance with the provisions of paragraph (m) of this section, prior to the NRC approval of a request for termination of their authority.

(2) Licensees seeking to modify their combined preemption authority and enhanced weapons authority, issued under this section, must apply to the NRC in writing, under oath or affirmation, and in accordance with § 73.4 of this part, and the license amendment provisions of §§ 50.90, 70.34, or 72.56 of this chapter, as applicable. Licensees' applications to modify their enhanced weapons authority must provide the information required under paragraphs (e) and (f) of this section.

(i) Licensees seeking to replace their enhanced weapons with different types of enhanced weapons must amend their original application to include the different quantities, types, and calibers or gauges of the new enhanced weapons. This amended application must include a plan to transfer or dispose of their existing enhanced weapons once the new weapons are deployed.

(ii) Licensees adding additional quantities or types of enhanced weapons do not require a transfer or disposal plan.

(3) The Commission may revoke, suspend, or modify, in whole or in part, any approval issued under this section for any material false statement in the application or

other statement of fact required of the licensee; or because of conditions revealed by the application or statement of fact or any report, record, inspection, or other means that would warrant the Commission refusing to grant approval of an original application; or for violation of, or for failure to observe, any of the terms and provisions of the act, regulations, license, permit, approval, or order of the Commission, or for any other reason that the Commission determines is appropriate.

(4) Licensees that have their stand-alone preemption authority or combined preemption authority and enhanced weapons authority terminated, suspended, or revoked may reapply for such authority by filing a new application under the provisions of this section.

(5) The NRC will notify ATF within 3 business days after taking action to terminate, modify, suspend, or revoke a licensee's stand-alone preemption authority or combined preemption authority and enhanced weapons authority issued under this section.

(s) Withdrawal of orders. For licensees that received an order issued under Section 161A (42 U.S.C. 2201a) prior to **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**, the following provisions apply.

(1) Licensees are not required to reapply for this authority.

(2) The requirements of such orders are superseded in their entirety by the requirements of this section and § 73.17 of this part.

(3) Licensees must complete their transition from the confirmatory orders to the requirements of this rule by **[INSERT DATE 300 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

(4) On **[INSERT DATE 300 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]** the following orders are withdrawn:

(i) 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” (78 FR 35984; June 14, 2013);

(ii) Confirmatory Order EA-15-006, “In the Matter of BWXT Nuclear Operations Group, Inc.” (80 FR 53588; September 4, 2015);

(iii) Confirmatory Orders EA-14-135 and EA-14-136, “In the Matter of Entergy Nuclear Operations Inc.; Entergy Nuclear Indian Point 2, LLC; and Entergy Nuclear Indian Point 3, LLC (Indian Point Nuclear Generating Unit (Nos. 1, 2, and 3)” (81 FR 2247; January 15, 2016);

(iv) Confirmatory Order EA-14-137, “In the Matter of Entergy Nuclear Fitzpatrick, LLC and Entergy Nuclear Operations Inc. (James A. Fitzpatrick Nuclear Power Plant)” (81 FR 2247; January 15, 2016);

(v) Confirmatory Order EA-14-138, “In the Matter of Exelon Generation Company, LLC (Nine Mile Point Nuclear Station Units 1 and 2)” (81 FR 2247; January 15, 2016);

(vi) Confirmatory Order EA-14-139, “In the Matter of Exelon Generation Company, LLC (R.E. Ginna Nuclear Power Plant)” (81 FR 2247; January 15, 2016);

(vii) Confirmatory Order EA-14-134, “In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2, and DCCP Independent Spent Fuel Storage Installation)” (81 FR 2247; January 15, 2016); and

(viii) Confirmatory Order EA-14-140, “In the Matter of Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3, and Independent Spent Fuel Storage Installation)” (81 FR 2247; January 15, 2016).

**§ 73.17 Firearms background checks for armed security personnel.**

(a) *Purpose.* This section presents the requirements for completion of firearms background checks pursuant to Section 161A of the Atomic Energy Act, as amended (AEA) (42 U.S.C. 2201a), for security personnel whose official duties require access to covered weapons at Commission-designated classes of facilities, radioactive material, or other property specified in § 73.15(c), of this part. Firearms background checks are intended to verify that such armed security personnel are not prohibited from receiving, possessing, transporting, importing, or using covered weapons under applicable Federal, State, or local law.

(b) *General Requirements.* (1) Licensees that have applied to the NRC under § 73.15 of this part for stand-alone preemption authority or for combined preemption authority and enhanced weapons authority must comply with the provisions of this section. Such licensees must establish a Firearms Background Check Plan. Licensees must establish this plan as part of their overall NRC-approved Training and Qualification plan for security personnel whose official duties require access to covered weapons.

(2) For the purposes of § 73.15 of this part and this section only, the term security personnel whose official duties require access to covered weapons includes, but is not limited to, the following groups of individuals:

(i) Security officers using covered weapons to protect a Commission-designated facility, radioactive material, or other property;

(ii) Security officers undergoing firearms training on covered weapons;

(iii) Firearms-training instructors conducting training on covered weapons;

(iv) Armorers conducting maintenance, repair, and testing of covered weapons;

(v) Individuals with access to armories and weapons storage lockers containing covered weapons;

(vi) Individuals conducting inventories of enhanced weapons;

(vii) Individuals removing enhanced weapons from the site for repair, training, and escort-duty purposes; and

(viii) Individuals whose duties require access to covered weapons, whether the individuals are employed directly by the licensee or employed by a security contractor who provides security services to the licensee.

(3) The Firearms Background Check Plan must describe how the licensee will accomplish the following objectives:

(i) Completing firearms background checks for all security personnel whose duties require, or will require, access to covered weapons;

(ii) Establishing a process for completing initial, periodic, and break-in-service firearms background checks;

(iii) Defining the training objectives and modules for security personnel who are subject to firearms background checks;

(iv) Completing the initial and periodic training for security personnel whose official duties require access to covered weapons;

(v) Maintaining records of completed firearms background checks, required training, and any supporting documents;

(vi) Maintaining 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 disqualifying event; and

(vii) Developing and implementing procedures for notifying the NRC of the removal of security personnel from access to covered weapons, due to the identification or occurrence of any Federal or State disqualifying status condition or disqualifying event.

(4)(i) Licensees that have applied to the NRC for stand-alone preemption authority or for combined preemption authority and enhanced weapons authority under § 73.15 of this part must ensure that a satisfactory firearms background check has been completed for all security personnel whose official duties require access to covered weapons.

(ii) Security personal may continue to have access to covered weapons pending the results of the initial firearms background check.

(5) Only licensees that have applied for Section 161A authority under § 73.15 of this part may conduct the firearms background checks required by this section.

(6) The licensee must commence firearms background checks only after receiving notification from the NRC that the agency has accepted for review its application for stand-alone preemption authority or for combined preemption authority and enhanced weapons authority.

(7) Applicability of firearms background checks to applicants for an NRC license:

(i) Applicants for a license who have also submitted an application for Section 161A authority must only commence firearms background checks after:

(A) The NRC has issued its license; and

(B) The NRC has accepted its application for stand-alone preemption authority or for combined preemption authority and enhanced weapons authority for review.

(ii) Subsequent to **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**, applicants for a license who have also applied for Section 161A authority and been issued their license must ensure that a satisfactory firearms background check (as defined in § 73.2 of this part) has been completed for all security personnel who require access to covered weapons, before the licensee's initial receipt of

any source material, special nuclear material, or radioactive material specified under the license.

(8) Licensee actions in response to an adverse firearms background check (as defined in § 73.2 of this part):

(i) The licensee must remove, without delay, from duties requiring access to covered weapons, any security personnel who receive a “denied” or “delayed” NICS response.

(ii) If the security personnel to be removed is on duty at the time of removal, then the licensee must fill the vacated position within the timeframe specified in its physical security plan.

(9) Accomplishment of break-in-service firearms background checks. (i) The licensee must complete a new satisfactory firearms background check for any of its security personnel that has had a break-in-service greater than 1 week.

(ii) The licensee must complete a new satisfactory firearms background check if the security personnel has transferred from a different licensee.

(iii) A break-in-service means the security personnel’s cessation of employment with the licensee or its security contractor, notwithstanding that the previous licensee completed a satisfactory firearms background check on the individual within the last 5 years.

(iv) Exceptions: (A) For the purposes of this section, a break-in-service does not include a security personnel’s temporary active duty with the U.S. military reserves or National Guard.

(B) The licensee, in lieu of completing a new satisfactory firearms background check, may instead verify, via an industry-wide information-sharing database, that the security personnel has completed a satisfactory firearms background check within the



previous 12 months, provided that this previous firearms background check included a duty station location in the State or Territory where the licensee (who would otherwise be accomplishing the firearms background check) is located or the activity is solely occurring.

(10) Changes in the licensee's ownership or its security contractor services are not considered a break-in-service for current security personnel whose duties require access to covered weapons. Licensees are not required to conduct a new firearms background check for these security personnel.

(11) With regard to accomplishing the requirements for other background (e.g., criminal history records) checks or personnel security investigations under the NRC's access authorization or personal security clearance program requirements of this chapter, the licensee may not substitute a satisfactory firearms background check in lieu of completing these other required background checks or security investigations.

(12) If a licensee has completed initial satisfactory firearms background checks pursuant to an NRC order issued before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**, then the licensee is not required to conduct a new initial firearms background check for its current security personnel. However, the licensee must conduct initial firearms background checks on new security personnel and periodic and break-in-service firearms background check on current security personnel in accordance with the provisions of this section.

(13) A licensee who withdraws its application for Section 161A authority or who has its application disapproved by the NRC, must discontinue conducting firearms background checks.

(14) A licensee whose authority under Section 161A has been rescinded or whose authority has been revoked by the NRC must discontinue conducting firearms background checks.

(c) [Reserved]

(d) *Firearms background check requirements.* A firearms background check for security personnel must include—

(1) A check of the individual's fingerprints against the Federal Bureau of Investigation's (FBI's) fingerprint system; and

(2) A check of the individual's identifying information against the FBI's National Instant Criminal Background Check System (NICS).

(e) *Firearms background check submittals.* (1) Licensees must submit to the NRC, in accordance with § 73.4 of this part, for all security personnel requiring a firearms background check under this section—

(i) A set of fingerprint impressions, in accordance with paragraph (k) of this section; and

(ii) A completed NRC Form 754.

(2) In lieu of submitting a copy of each individual completed NRC Form 754 to the NRC, licensees may submit a single document consolidating the NRC Forms 754 data for multiple security personnel.

(3) Licensees submitting to the NRC via an electronic method an individual NRC Form 754 or consolidated data from multiple NRC Forms 754 must ensure that any personally identifiable information contained within these documents is protected in accordance with § 2.390 of this chapter.

(4) Licensees must retain a copy of all NRC Forms 754 submitted to the NRC for one year subsequent to the termination or denial of an individual's access to covered weapons.

(5) Licensees that are Federal agencies with authority to submit fingerprints directly to the FBI may do so provided that they also include the requested information from NRC Form 754. However, such licensees are still required to comply with the other provisions of this section.

(f) *Periodic firearms background checks.* (1) Licensees must complete a satisfactory periodic firearms background check at least once every 5 calendar years for security personnel whose continuing duties require access to covered weapons.

(2) Licensees must complete a periodic firearms background check within the same calendar month as the initial, or most recent, firearms background check with an allowance period to midnight (local time) of the last day of the calendar month of expiration.

(3) The licensee may conduct periodic firearms background checks at an interval of less than once every 5 calendar years, at its discretion.

(4) (i) Licensees may assign security personnel to duties requiring access to covered weapons while the results of the periodic firearms background check are pending.

(ii) Licensees 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.

(5) Licensees must remove, without delay, from duties requiring access to covered weapons, any security personnel who receive either a "denied" or "delayed" NICS response during a periodic firearms background check.

(g) *Notification of removal.* (1) Licensees must notify the NRC Headquarters Operations Center by telephone within 72 hours after removing security personnel from duties requiring access to covered weapons due to the identification or occurrence of any Federal or State disqualifying status condition or disqualifying event that would prohibit them from possessing, receiving, or using firearms or ammunition. Licensees must contact the NRC Headquarters Operations Center at the phone numbers specified in Table 1 of appendix A of this part.

(2) Exception. The licensee is not required to notify the NRC if the licensee's security management was notified by the affected security personnel within 72 hours of the identification or occurrence of any Federal or State disqualifying status condition or disqualifying event that would prohibit the individual from possessing, receiving, or using firearms or ammunition.

(3) The NRC will subsequently inform the FBI of any notifications received under this paragraph.

(h) *Security personnel responsibilities.* Security personnel assigned to duties requiring access to covered weapons must notify the licensee's security management within 72 hours of the identification or occurrence of any Federal or State disqualifying status condition or disqualifying event that would prohibit the individual from possessing, receiving, or using firearms or ammunition. This requirement is applicable to security personnel directly employed by the licensee or employed by a contractor providing security services to the licensee.

(i) [Reserved]

(j) *Training for security personnel subject to firearms background checks on disqualifying status conditions and disqualifying events.* (1) Licensees must include, within their Firearms Background Check Plan, training modules for security personnel

assigned to official duties requiring access to covered weapons that provide training on the following topics:

(i) Federal disqualifying status conditions or disqualifying events specified in 27 CFR 478.32;

(ii) Applicable State disqualifying status conditions or disqualifying events;

(iii) The responsibility of security personnel subject to a firearms background check and assigned to official duties that require access to covered weapons to promptly notify their employing licensee of the occurrence of any disqualifying status condition or disqualifying event; and

(iv) Information for appealing an adverse firearms background check (i.e., a “denied” or “delayed” NICS response) to the FBI.

(2) Licensees must conduct periodic refresher training on these modules at an annual frequency for security personnel assigned official duties requiring access to covered weapons.

(k) *Procedures for processing fingerprint checks.* (1) Licensees, using an appropriate method listed in § 73.4 of this part, must manually or electronically submit to the NRC one completed, legible standard fingerprint card (FBI Form FD-258, ORIMDNRCOOOZ) or, where practicable, other electronic fingerprint records for each individual requiring a firearms background check. Information on how to obtain FBI Form FD-258 and the process for manual or electronic submission of fingerprint records to the NRC is on the NRC’s public Web site at: [\[INSERT new persistent URL\]](#).

(2) Licensees must indicate on the fingerprint card (or other electronic fingerprint records) that the submittal is part of a firearms background check for personnel whose duties require, or will require, access to covered weapons. Licensees must add the

following information to the FBI Form FD-258 fingerprint card or the electronic fingerprint records submitted to the NRC:

(i) For fingerprints submitted to the NRC for the completion of a firearms background check only, the licensee must enter the terms “MDNRCNICZ” in the “ORI” field and “Firearms” in the “Reasons Fingerprinted” field of the FBI Form FD-258 or the electronic fingerprint records submitted to the NRC.

(ii) For fingerprints submitted to the NRC for the completion of both an access authorization check or personnel security clearance check and a firearms background check, the licensee must enter the terms “MDNRC000Z” in the “ORI” field and “Employment and Firearms” in the “Reasons Fingerprinted” field of the FBI Form FD-258 or the electronic fingerprint records submitted to the NRC.

(3) Licensees must establish procedures that produce high-quality fingerprint images, cards, and records with a minimal rejection rate.

(4) The NRC will review fingerprints for firearms background checks for completeness. Any FBI Form FD-258 or other electronic fingerprint records containing omissions or evident errors will be returned to the licensee for correction. The fee for processing fingerprint checks includes one free resubmission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free resubmission must have the FBI Transaction Control Number reflected on the resubmission. If additional submissions are necessary, they will be treated as an initial submittal and require a second payment of the processing fee. The payment of a new processing fee entitles the submitter to an additional free resubmittal, if necessary. Previously rejected submissions may not be included with the third submission because the submittal will be rejected automatically.

(5) The NRC will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for a firearms background check. This will include the FBI's "proceed," "delayed," or "denied" NICS response and the NICS transaction number.

(l) [Reserved]

(m) *Fees.* (1) Fees for the processing of firearms background checks are due upon application. The fee for the processing of a firearms background check consists of a fingerprint fee and a NICS check fee. Licensees must submit payment with the application for the processing of fingerprints, and payment must be made by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. Nuclear Regulatory Commission." Combined payment for multiple applications is acceptable. Licensees can find fee information for firearms background checks on the NRC's public Web site at: [\[INSERT new persistent URL – the same URL as in paragraph \(k\)\]](#).

(2) The application fee for the processing of fingerprint checks is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint records submitted by the NRC on behalf of a licensee, and an administrative processing fee assessed by the NRC. The NRC processing fee covers administrative costs associated with NRC handling of licensee fingerprint submissions.

(3) The application fee for the processing of NICS checks is an administrative processing fee assessed by the NRC.

(4) Licensees that are also Federal agencies and submit fingerprints and information contained in the NRC Form 754 directly to the FBI are not assessed an application fee by the NRC.

(n) *Processing of the NICS portion of a firearms background check.* (1) The NRC will forward the information contained in the submitted NRC Form 754 to the FBI for evaluation against the NICS databases. Upon completion of the NICS portion of the firearms background check, the FBI will inform the NRC of the results with one of three responses under 28 CFR part 25; “proceed,” “delayed,” or “denied,” and the associated NICS transaction number (NTN). The NRC will forward these results and the associated NTN to the submitting licensee.

(2) Licensees that are Federal agencies and submit fingerprints and information contained in the NRC Form 754 directly to the FBI for evaluation against the NICS databases will receive one of three responses under 28 CFR part 25; “proceed,” “delayed,” or “denied,” and the associated NTN.

(3) The submitting licensee must provide these results to the individual who completed the NRC Form 754.

(o) [Reserved]

(p) *Appeals and resolution of adverse firearms background checks.* (1) Licensees may not assign security personnel who have received a “denied” or a “delayed” NICS response to any official duties requiring access to covered weapons—

(i) During the pendency of an appeal to the FBI of a “denied” NICS response; or

(ii) During the pendency of providing to the FBI any necessary additional information to resolve a “delayed” NICS response.

(2) Licensees must provide the NICS Transaction Number (NTN) or NTNs associated with the adverse firearms background check to the affected individual. It is the affected individual’s responsibility to initiate an appeal or resolution of a “delayed” or “denied” NICS response.



(3) Licensees may assign security personnel to official duties requiring access to covered weapons subsequent to the individual's satisfactorily resolving a "denied" or "delayed" NICS response.

(q) *Protection of information.* (1) Each licensee that obtains a firearms background check and NRC Form 754 information on individuals under this section shall establish and maintain a system of files and procedures to protect these records and any enclosed personally identifiable information (PII) from unauthorized disclosure.

(2) The licensee may not disclose these records or PII to persons other than the subject individual, his/her representative, or to those with a need to have access to the information in performing assigned duties in the process of granting access to covered weapons. No individual authorized to have access to this information may disseminate the information to any other individual who does not have a need to know.

(3) The record or PII may be disclosed to an appropriate Federal or State agency in the performance of its official duties, in the course of an administrative or judicial proceeding, or in response to a Congressional inquiry.

(4) The licensee must make firearms background check records and NRC Forms 754 obtained under this section available for examination by an authorized representative of the NRC to determine compliance with applicable regulations and laws.

(5) The record obtained on an individual from a firearms background check may be transferred to another licensee—

(i) Upon an individual's written request to transfer the individual's record to the licensee identified in the written request; and

(ii) Upon verification from the gaining licensee of the individual's name, date of birth, social security number, and sex.

(r) *Withdrawal of orders.* In accordance with the provisions of § 73.15(s) of this part, orders issued under Section 161A (42 U.S.C. 2201a) prior to **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]** are withdrawn.

Accordingly, the requirements of those orders are superseded in their entirety by the requirements of §§ 73.15 and 73.17.

Subpart C – General Performance Objective of Strategic Special Nuclear Material  
17. Add subpart C, consisting of existing § 73.20, under the heading set forth above.

#### **Subpart D –Protection of Safeguards Information**

18. Add subpart D, consisting of existing §§ 73.21 through 73.23, under the heading set forth above.

#### **§ 73.22 [Amended]**

19. In § 73.22, paragraph (f)(3), remove the number “73.71” and add in its place the number “73.1200”.

#### **§ 73.23 [Amended]**

20. In § 73.23, paragraph (f)(3), remove the number “73.71” and add in its place the number “73.1200”.

**Subpart E – Physical Protection Requirements of Special Nuclear Material and Spent Nuclear Fuel in Transit**

21. Add subpart E, consisting of existing §§ 73.24 through 73.38, under the heading set forth above.

**§ 73.27 [Amended]**

22. In § 73.27, paragraph (c), remove the reference “§ 73.71” and add in its place the reference “§§ 73.1200 and 73.1205”.

23. In § 73.37:

a. In paragraphs (b)(3)(iii) and (b)(3)(v)(C), remove the number “73.71” and add in its place the number “73.1200”; and

b. Add paragraph (b)(3)(viii) to read as follows:

**§ 73.37 Requirements for physical protection of irradiated reactor fuel in transit.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(viii)(A) The licensee must ensure that the firearms background check requirements of § 73.17 of this part are met for all armed escorts whose official duties require access to covered weapons or who inventory enhanced weapons.

(B) The provisions of this paragraph are only applicable to licensees subject to this section who are also subject to the firearms background check provisions of § 73.17 of this part.

(C) The provisions of this paragraph are not applicable to members of local law enforcement agencies serving as armed escorts or ship's officers serving as unarmed escorts.

\* \* \* \* \*

**Subpart F - Physical Protection Requirements at Fixed Sites**

24. Add subpart F, consisting of existing §§ 73.40 through 73.55, under the heading set forth above.

25. In § 73.46, paragraph (b)(13) is added to read as follows:

**§ 73.46 Fixed site physical protection systems, subsystems, components, and procedures.**

\* \* \* \* \*

(b) \* \* \*

(13)(i) The licensee must ensure that the firearms background check requirements of § 73.17 of this part are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons.

(ii) The provisions of this paragraph are only applicable to licensees subject to this section who are also subject to the firearms background check provisions of § 73.17 of this part.

\* \* \* \* \*

26. In § 73.51:

a. In paragraph (d)(13), remove the number “73.71” and add in its place the number “73.1210”.

b. Add paragraphs (b)(4) and (f) to read as follows:

**§ 73.51 Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.**

\* \* \* \* \*

(b) \* \* \*

(4)(i) The licensee must ensure that the firearms background check requirements of § 73.17 of this part are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons.

(ii) The provisions of this paragraph are only applicable to licensees subject to this section who are also subject to the firearms background check provisions of § 73.17 of this part.

\* \* \* \* \*

(f) Response requirements. Licensees must train each armed member of the security organization with access to enhanced weapons on the use of deadly force when the armed member of the security organization has a reasonable belief that the use of deadly force is necessary in self-defense or in the defense of others, or any other circumstances as authorized by applicable State or Federal law.

27. In § 73.55, paragraph (b)(12) is added; and paragraph (p)(3) is revised to read as follows:

**§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.**

\* \* \* \* \*

(b) \* \* \*

(12)(i) The licensee must ensure that the firearms background check requirements of § 73.17 of this part are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons.

(ii) The provisions of this paragraph are only applicable to licensees subject to this section that are also subject to the firearms background check provisions of § 73.17 of this part.

\* \* \* \* \*

(p) \* \* \*

(3) The suspension of security measures must be reported and documented in accordance with the provisions of §§ 73.1200 and 73.1205 of this part.

\* \* \* \* \*

**Subpart G – Background Check and Access Authorization Requirements**

28. Add subpart G, consisting of existing §§ 73.56 through 73.67, under the heading set forth above.

29. In § 73.67, paragraphs (e)(3)(vii) and (g)(3)(iii) are revised to read as follows:

**§ 73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance.**

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(vii) Notify the NRC Operations Center after the discovery of the loss of the shipment and after recovery of or accounting for such lost shipment, in accordance with the provisions of §§ 73.1200 and 73.1205 of this part.

\* \* \* \* \*

(g) \* \* \*

(3) \* \* \*

(iii)(A) Immediately conduct a trace investigation of any shipment that is lost or unaccounted for after the estimated arrival time; and

(B) Notify the NRC Operations Center after the discovery of the loss of the shipment and after recovery of or accounting for such lost shipment, in accordance with the provisions of §§ 73.1200 and 73.1205 of this part.

\* \* \* \* \*

**Subpart H – Records and Postings**

30. Add subpart H, consisting of existing §§ 73.70 through 73.75, under the heading set forth above.

**§ 73.71 [Reserved]**

31. Remove and reserve § 73.71.

**Subpart I – Enforcement**

32. Add subpart I, consisting of existing §§ 73.76 through 73.81, under the heading set forth above. **Subparts J through S [Reserved]**

33. Add and reserve subparts J through S.

34. Add Subpart T – Security Notifications, Reports, and Recordkeeping to read as follows:

**Subpart T – Security Notifications, Reports, and Recordkeeping**

*Sec.*

73.1200 Notification of physical security events.

73.1205 Written follow-up reports of physical security events.

73.1210 Recordkeeping of physical security events.

73.1215 Suspicious activity reports

**§ 73.1200 Notification of physical security events.**

(a) *15-minute notifications—facilities.* Each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.51, or 73.55 of this part must notify the NRC Headquarters Operations Center, as soon as possible but within approximately 15 minutes after—

(1) The licensee's initiation of a security response in accordance with its safeguards contingency plan or protective strategy, based on an imminent or actual hostile action against a licensee's facility; or

(2) The licensee's notification by law enforcement or government officials of a potential hostile action or act of sabotage anticipated within the next 12 hours against a licensee's facility.



(3) Licensee notifications to the NRC must:

(i) Identify the facility's name; and

(ii) Briefly describe the nature of the hostile action or event, including:

(A) The type of hostile action or event (e.g., armed assault, vehicle bomb, bomb threat, sabotage, etc.); and

(B) The current status (i.e., imminent, in progress, or neutralized).

(4) Notifications must be made according to paragraph (o) of this section, as applicable.

(5) Exceptions: (i) The licensee is not required to notify the NRC of security responses initiated as a result of threat or warning information communicated to the licensee from the NRC.

(ii) The licensee's request for immediate local law enforcement agency (LLEA) assistance or initiation of a contingency response may take precedence over the notification to the NRC. However, in such instances, the licensee must notify the NRC as soon as possible thereafter.

(b) *15-minute notifications—shipments.* Each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, or 73.37 of this part or its designated movement control center must notify the NRC Headquarters Operations Center, as soon as possible but within approximately 15 minutes after—

(1) The licensee's initiation of a security response in accordance with its safeguards contingency plan or protective strategy, based on an imminent or actual hostile action against a shipment of Category I SSNM, spent nuclear fuel (SNF), or high-level radioactive waste (HLW); or

(2) The licensee's notification by law enforcement or government officials of a potential hostile action or attempted act of sabotage anticipated within less than the next 12 hours against a shipment of Category I SSNM, SNF, or HLW.

(3) Licensee notifications to the NRC must:

(i) Identify the name of the facility making the shipment, the material being shipped, and the last known location of the shipment; and

(ii) Briefly describe the nature of the threat or event, including:

(A) Type of hostile threat or event (e.g., armed assault, vehicle bomb, theft of shipment, sabotage, etc.); and

(B) Threat or event status (i.e., imminent, in progress, or neutralized).

(4) Notifications must be made according to paragraph (o) of this section, as applicable.

(5) Exceptions: (i) The licensee is not required to notify the NRC of security responses initiated as a result of threat or warning information communicated to the licensee from the NRC.

(ii) The licensee's request for immediate LLEA assistance may take precedence over the notification to the NRC. However, in such instances, the licensee must notify the NRC as soon as possible thereafter.

(c) *One-hour notifications—facilities.* (1) Each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.55, 73.60, or 73.67 of this part must notify the NRC Headquarters Operations Center within 1 hour after time of discovery of the following significant facility security events involving—

(i) Any event in which there is reason to believe that a person has committed or caused, or attempted to commit or cause, or has made a threat to commit or cause:

(A) The theft or diversion of Category I SSNM, Category II special nuclear material (SNM), or Category III SNM;

(B) Significant physical damage to any nuclear power reactor, to a facility possessing or using Category I SSNM, or to a facility storing or disposing of SNF and/or HLW;

(C) The unauthorized operation, manipulation, or tampering with any nuclear power reactor's controls or with structures, systems, and components (SSCs) that results in the interruption of normal operation of the reactor;

(D) The unauthorized operation, manipulation, or tampering with any Category I SSNM facility's controls or SSCs that results in the interruption of normal operation of the facility or an accidental criticality; or

(E) The unauthorized operation, manipulation, or tampering with any Category II or III SNM facility's controls or SSCs that results in an accidental criticality.

(ii)(A) For licensees with a vehicle barrier system protecting their facility, the introduction beyond the vehicle barrier of a quantity of unauthorized explosives that meets or exceeds the relevant facility's adversary characteristics.

(B) This provision is applicable to facilities where the vehicle barrier system protecting the facility is located at the Protected Area boundary.

(iii) The licensee's notification by law enforcement or government officials of a potential hostile action or act of sabotage anticipated within greater than 12 hours against a licensee's facility.

(2) Notifications must be made according to paragraph (o) of this section, as applicable.

(3) Notifications made under paragraph (a) of this section are not required to be repeated under this paragraph.

(d) *One-hour notifications—shipments.* (1) Each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, 73.37, or 73.67 of this part or its designated movement control center must notify the NRC Headquarters Operations Center within 1 hour after time of discovery of the following significant transportation security events involving—

(i) Any event in which there is reason to believe that a person has committed or caused, or attempted to commit or cause, or has made a threat to commit or cause:

(A) The theft or diversion of the Category I SSNM, Category II or III SNM, SNF, or HLW being transported;

(B) Significant physical damage to any vehicle transporting Category I SSNM, Category II or III SNM, SNF, or HLW; or

(C) Significant physical damage to the Category I SSNM, Category II or III SNM, SNF, or HLW being transported.

(ii) The discovery of the loss of a shipment of Category I SSNM.

(iii) The recovery of, or accounting for, a lost shipment of Category I SSNM.

(iv) The licensee's notification by law enforcement or government officials of a potential hostile action or attempted act of sabotage anticipated within greater than the next 12 hours against a shipment of Category I SSNM, Category II or III SNM, SNF, or HLW.

(2) Notifications must be made according to paragraph (o) of this section, as applicable.

(3) Notifications made under paragraph (b) of this section are not required to be repeated under this paragraph.

(e) *Four-hour notifications—facilities.* (1) Each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.55, 73.60, or 73.67 of this part must notify

the NRC Headquarters Operations Center within 4 hours after time of discovery of the following facility security events involving—

(i) The actual entry of an unauthorized person into a facility's protected area (PA), vital area (VA), material access area (MAA), or controlled access area (CAA);

(ii) The attempted entry of an unauthorized person into a PA, VA, MAA, or CAA;

(iii) The actual introduction of contraband into a PA, VA, MAA, or CAA;

(iv) The attempted introduction of contraband into a PA, VA, MAA, or CAA.

(v)(A) The discovery that a weapon that is authorized by the licensee's security plan is lost or uncontrolled within a PA, VA, MAA, or CAA;

(B) Uncontrolled authorized weapons are defined as weapons that are authorized by the licensee's security plan and are not in the possession of authorized personnel or are not in an authorized weapons storage location;

(vi) The unauthorized operation, manipulation, or tampering with any Category II or III SNM facility's controls or SSCs that results in the interruption of normal operation of the facility;

(vii) The unauthorized operation, manipulation, or tampering of any nuclear reactor's or Category I SSNM facility's controls or SSCs that could prevent the implementation of the licensee's protective strategy for protecting any target set;

(viii) The identification or discovery of a previously unrecognized or unidentified vulnerability that could prevent the implementation of the licensee's protective strategy for protecting any target set; or

(ix)(A) For licensees with a vehicle barrier system protecting their facility, the introduction beyond the vehicle barrier of a quantity of unauthorized explosives that meets or exceeds the relevant facility's adversary characteristics.

(B) This provision is applicable to facilities where the vehicle barrier system protecting the facility is located at a distance from the Protected Area boundary greater than that assumed in the facility's blast analysis.

(2) An event related to the licensee's implementation of their security program for which a notification was made to local, State, or Federal law enforcement officials provided that the event does not otherwise require a notification under paragraphs (a) through (h) of this section.

(3)(i) An event involving a law enforcement response to the facility that could reasonably be expected to result in public or media inquiries and that does not otherwise require a notification under paragraphs (a) through (h) of this section, or in other NRC regulations such as § 50.72(b)(2)(xi) of this chapter.

(ii) Exceptions: Licensees need not report law enforcement responses to minor incidents (e.g., traffic accidents).

(4) An event involving the licensee's suspension of security measures.

(5) Notifications must be made according to paragraph (o) of this section, as applicable.

(6) Notifications made under paragraphs (a) and (c) of this section are not required to be repeated under this paragraph.

(f) *Four-hour notifications—shipments.* (1) Each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, 73.37, or 73.67 of this part or its designated movement control center must notify the NRC Headquarters Operations Center within 4 hours after time of discovery of the following transportation security challenges involving—

(i) The actual entry of an unauthorized person into a transport vehicle transporting Category I SSNM, Category II or III SNM, SNF, or HLW;

(ii) The attempted entry of an unauthorized person into a transport vehicle transporting Category I SSNM, Category II or III SNM, SNF, or HLW;

(iii) The actual entry of an unauthorized person into the Category I SSNM, Category II or III SNM, SNF, or HLW material being transported;

(iv) The attempted entry of an unauthorized person into the Category I SSNM, Category II or III SNM, SNF, or HLW material being transported;

(v) The actual introduction of contraband into a transport vehicle transporting Category I SSNM, Category II or III SNM, SNF, or HLW;

(vi) The attempted introduction of contraband into a transport vehicle transporting Category I SSNM, Category II or III SNM, SNF, or HLW;

(vii) The actual introduction of contraband into the Category I SSNM, Category II or III SNM, SNF, or HLW material being transported;

(viii) The attempted introduction of contraband into the Category I SSNM, Category II or III SNM, SNF, or HLW material being transported;

(ix) The discovery of the loss of a shipment of Category II or III SNM, SNF, or HLW; or

(x) The recovery of or accounting for a lost shipment of Category II or III SNM; SNF, or HLW.

(2) An event related to the licensee's implementation of their security program for which a notification was made to local, State, or Federal law enforcement officials, provided that the event does not otherwise require a notification under paragraphs (a) through (h) of this section.

(3) Notifications must be made according to paragraph (o) of this section, as applicable.

(4) Notifications made under paragraphs (b) and (d) of this section are not required to be repeated under this paragraph.

(g) *Eight-hour notifications—facilities.* (1) Each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.55, 73.60, or 73.67 of this part must notify the NRC Headquarters Operations Center within 8 hours after time of discovery of the following facility security program failures involving—

(i) Any failure, degradation, or vulnerability in a security or safeguards system, for which compensatory measures have not been employed within the required timeframe, that could allow unauthorized or undetected access of—

(A) Unauthorized personnel into a PA, VA, MAA, or CAA;

(B) Contraband into a PA, VA, MAA, or CAA; or

(C) Unauthorized explosives in quantities that meet or exceed the relevant facility's adversary characteristics beyond a vehicle barrier where the vehicle barrier system protecting the facility is located at the Protected Area boundary;

(ii) The unauthorized operation, manipulation, or tampering with any nuclear power reactor's controls or with SSCs that does not result in the interruption of normal operation of the reactor;

(iii) The unauthorized operation, manipulation, or tampering with any Category I SSNM facility's controls or SSCs that does not result in the interruption of normal operation of the facility or an accidental criticality; or

(iv) The unauthorized operation, manipulation, or tampering with any Category II or III SNM facility's controls or SSCs that does not result in the interruption of normal operation of the facility or an accidental criticality.

(2) Notifications must be made according to paragraph (o) of this section, as applicable.



(3) Notifications made under paragraphs (a), (c), and (e) of this section are not required to be repeated under this paragraph.

(h) *Eight-hour notifications—shipments.* (1) Each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, 73.37, or 73.67 of this part or its designated movement control center must notify the NRC Headquarters Operations Center within 8 hours after time of discovery of the following transportation security program failures involving any failure, degradation, or vulnerability in a security or safeguards system, for which compensatory measures have not been employed within the required timeframe, that could allow unauthorized or undetected access of—

(i) Personnel or contraband into a transport vehicle transporting Category I SSNM, Category II or III SNM, SNF, or HLW; or

(ii) Personnel or contraband into the Category I SSNM, Category II or III SNM, SNF, or HLW material being transported;

(2) Notifications must be made according to paragraph (o) of this section, as applicable.

(3) Notifications made under paragraphs (b), (d), and (f) of this section are not required to be repeated under this paragraph.

(i) [Reserved]

(j) [Reserved]

(k) [Reserved]

(l) [Reserved]

(m) *Enhanced weapons notifications—stolen or lost.* (1) Each licensee possessing enhanced weapons in accordance with § 73.15 must—

(i) Immediately notify the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) upon discovery of any stolen or lost enhanced weapons (see 27 CFR 479.141).

(ii) Notify the NRC Headquarters Operations Center as soon as possible, but not later than 4 hours, after notification to the ATF of the discovery of any stolen or lost enhanced weapons possessed by the licensee.

(iii) Notify the appropriate local law enforcement agency (LLEA) officials as soon as possible, but not later than 48 hours, after the discovery of stolen or lost enhanced weapons. This notification must be made by telephone or in person to the appropriate LLEA officials. Licensees must include appropriate point of contact information in their security event notification procedures.

(2) Notifications to the NRC must be made according to paragraph (o) of this section, as applicable.

(n) *Enhanced weapons—adverse ATF findings.* (1) Each licensee possessing enhanced weapons in accordance with § 73.15 of this part must—

(i) Notify the NRC Headquarters Operations Center as soon as possible, but not later than 24 hours, after receipt of an adverse inspection finding, enforcement finding, or other adverse notice from the ATF regarding the licensee's possession, receipt, transfer, transportation, or storage of enhanced weapons; and

(ii) Notify the NRC Headquarters Operations Center as soon as possible, but not later than 24 hours after receipt of an adverse inspection or enforcement finding or other adverse notice from the ATF regarding any ATF issued Federal firearms license to the NRC licensee.

(2) Notifications must be made according to paragraph (o) of this section, as applicable.

(o) *Notification process.* (1) Each licensee must make the telephonic notifications to the NRC required by paragraphs (a) through (n) of this section to the NRC Headquarters Operations Center via any available telephone system. Commercial telephone numbers for the NRC Headquarters Operations Center are specified in Table 1 of appendix A of this part.

(2) Licensees must make required telephonic notifications via any method that will ensure that a report is received by the NRC Headquarters Operations Center or other specified government officials within the timeliness requirements of paragraphs (a) through (n) of this section, as applicable.

(3) Notifications required by this section that contain Safeguards Information may be made to the NRC Headquarters Operations Center without using secure communications systems under the exception of § 73.22(f)(3) of this part for the communication of emergency or extraordinary conditions.

(4)(i) Notifications required by this section that contain classified national security information and/or classified restricted data must be made to the NRC Headquarters Operations Center using secure communications systems appropriate to the classification level of the message. Licensees making classified telephonic notifications must contact the NRC Headquarters Operations Center at the commercial numbers specified in Table 1 of appendix A to this part and request a transfer to a secure telephone, as specified in paragraph III of appendix A to this part.

(ii) If the licensee's secure communications capability is unavailable (e.g., due to the nature of the security event), the licensee must provide to the NRC the information required by this section, without revealing or discussing any classified information, in order to meet the timeliness requirements of this section. The licensee must also indicate to the NRC that its secure communications capability is unavailable.

(iii) Licensees using a non-secure communications capability may be directed by the NRC emergency response management to provide classified information to the NRC over the non-secure system, due to the significance of the ongoing security event. In such circumstances, the licensee must document this direction and any information provided to the NRC over a non-secure communications capability in the follow-up written report required in accordance with § 73.1205.

(5) For events reported under paragraph (a) of this section, the NRC may request that the licensee establish and maintain an open and continuous communications channel with the NRC Headquarters Operations Center as soon as possible.

(i) Licensees must establish the requested continuous communications channel once the licensee has completed other required notifications under this section, § 50.72 of this chapter, appendix E of part 50 of this chapter, § 70.50 of this chapter; or § 72.75 of this chapter; as appropriate.

(ii) Complete any immediate actions required to stabilize the plant, to place the plant in a safe condition, to implement defensive measures, or to request assistance from the LLEA.

(iii) When established, the continuous communications channel must be staffed by a knowledgeable individual in the licensee's security, operations, or emergency response organizations from a location deemed appropriate by the licensee.

(iv) The continuous communications channel may be established via any available telephone system.

(6) For events reported under paragraph (b) of this section, the NRC may request that the licensee or its movement control center establish and maintain an open and continuous communications channel with the NRC Headquarters Operations Center as soon as possible.

(i) Licensees must establish the requested continuous communications channel once the licensee or the movement control center has completed other required notifications under this section, § 50.72 of this chapter, appendix E of part 50 of this chapter, or § 70.50 of this chapter; § 72.75 of this chapter; or requested assistance from the LLEA, as appropriate.

(ii) When established, the continuous communications channel must be staffed by a knowledgeable individual in the licensee's security, operations, or emergency response organizations or the movement control center monitoring the shipment.

(iii) The continuous communications channel may be established via any available telephone system.

(7)(i) For events reported under paragraphs (c), (e), (g), and (m) of this section, the NRC may request that the licensee establish and maintain an open and continuous communications channel with the NRC Headquarters Operations Center.

(ii) When established, the continuous communications channel must be staffed by a knowledgeable individual in the licensee's security, operations, or emergency response organizations from a location deemed appropriate by the licensee.

(iii) The continuous communications channel may be established via any available telephone system.

(8)(i) For events reported under paragraphs (d), (f), and (h) of this section, the NRC may request that the licensee or the movement control center establish and maintain an open and continuous communications channel with the NRC Headquarters Operations Center.

(ii) When established, the continuous communications channel must be staffed by a knowledgeable individual in the movement control center monitoring the shipment.

(iii) The continuous communications channel may be established via any available telephone system.

(p) *Significant supplemental information.* Licensees identifying significant supplemental information for events reported under paragraphs (a) through (h), (m), and (n) of this section, subsequent to the initial telephonic notification to the NRC Headquarters Operations Center, must notify the NRC Headquarters Operations Center of such supplemental information under paragraph (o) of this section.

(q) *Retraction of previous security event reports.* (1) Licensees desiring to retract a previous physical security event notification made under paragraphs (a) through (h), (m), and (n) of this section, which have been determined to be invalid, not reportable in accordance with the requirements of paragraphs (a) through (h), (m), and (n) of this section, or recharacterized as recordable under § 73.1210 of this part (instead of reportable under § 73.1200), must telephonically notify the NRC Headquarters Operations Center in accordance with paragraph (o) of this section and indicate the report that is being retracted and the basis for the retraction.

(2) Invalid, not reportable, or recharacterized events include, but are not limited to, events for which the licensee subsequently receives new information regarding the event or relevant information from an external entity (e.g., the initial information on a reportable event is subsequently determined to be incorrect or a law enforcement determination is made on the absence of a malevolent intent).

(r) *Declaration of emergencies.* Licensees notifying the NRC of the declaration of an emergency class must do so in accordance with §§ 50.72, 63.73, 70.50, and 72.75 of this chapter, as applicable.

(s) *Elimination of duplication.* Licensees with notification obligations under paragraphs (a) through (h), (m), and (n) of this section and §§ 50.72, 63.73, 70.50, and

72.75 of this chapter may notify the NRC of events in a single communication. This communication must identify each regulation under which the licensee is reporting.

(t) *Classified information.* Licensee notifications regarding security events associated with the deliberate disclosure, theft, loss, compromise, or possible compromise of classified documents, information, or material must comply with the requirements found in § 95.57 of this chapter.

### **§ 73.1205 Written follow-up reports of physical security events.**

(a) *General requirements.* (1) Licensees making a telephonic notification under § 73.1200 of this part must also submit a written follow-up report to the NRC within 60 days of such notifications, in accordance with § 73.4 of this part.

(2) Exceptions: Licensees are not required to submit a written follow-up report subsequent to a telephonic notification made—

(i) Under the provisions of §§ 73.1200(e) and (f) of this part regarding interactions with a Federal, State, or local law-enforcement agency;

(ii) Under the provisions of § 73.1200(m) of this part regarding lost or stolen enhanced weapons; or

(iii) Under the provisions of § 73.1200(n) of this part regarding adverse findings from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for enhanced weapons possessed by the licensee.

(3)(i) Licensees are not required to submit a written follow-up report if the licensee subsequently retracts a telephonic notification made under § 73.1200 of this part as invalid, not reportable under § 73.1200, or recharacterized as recordable under

§ 73.1210 of this part (instead of reportable under § 73.1200), and has not yet submitted a written follow-up report under this section.

(ii) If the licensee subsequently retracts a telephonic notification made under § 73.1200 of this part after it has submitted a written follow-up report under this section, then the licensee must submit a revised written follow-up report documenting the retraction.

(b) *Submission criteria.* (1) Each licensee must submit to the NRC written follow-up reports that contain sufficient information for NRC analysis and evaluation and are of a quality that will permit legible reproduction and processing.

(2)(i) Licensees subject to § 50.73 of this chapter must prepare the written follow-up report on NRC Form 366.

(ii) Licensees not subject to § 50.73 of this chapter must prepare the written follow-up report in a letter format.

(3)(i) If significant supplemental information becomes available after the submission of the initial written follow-up report, then the licensee must submit a revised report with the revisions indicated.

(ii) The revised written follow-up report must replace the previous written report in its entirety. The update must be complete and not be limited to only supplementary or revised information.

(iii) Errors discovered in a written follow-up report must be corrected in a revised report with the revisions indicated.

(c) *Contents.* A written follow-up report must contain:

(1) A brief abstract describing the major occurrences during the event or condition, including all component or system failures that contributed to the event or condition, and significant corrective actions taken or planned to prevent recurrence.



(2) A clear, specific, narrative description of what occurred so that a knowledgeable reader conversant with general security program requirements, but not familiar with the security requirements for the specific facility or activity, can understand the complete event.

(3) The narrative description must include, as a minimum, the following information, as applicable—

- (i) The date and time the event or condition was discovered;
- (ii) The date and time the event or condition occurred;
- (iii) The affected structures, systems, components, equipment, or procedures;
- (iv) The environmental conditions at the time of the event or occurrence, if relevant;
- (v) The root cause of the event or condition;
- (vi) Whether any human performance errors were the cause or were a contributing factor to the event or condition, including: personnel errors, inadequate procedures, or inadequate training;
- (vii) Whether previous events or conditions are relevant to the current event or condition and whether corrective actions to prevent recurrence were ineffective or insufficient;
- (viii) Whether this event or condition is a recurring failure of a structure, system, component, or procedure important to security;
- (ix) What compensatory measures, if any, were implemented in response to the event or condition;
- (x) What corrective actions, if any, were taken in response to the event or condition; and
- (xi) When corrective actions, if any, were taken or will be completed.

(d) *Transmission criteria.* (1) In addition to the addressees specified in § 73.4 of this part, the licensee must also provide one copy of the written follow-up report addressed to the Director, Office of Nuclear Security and Incident Response (NSIR).

(2) For copies of a classified written follow-up report, the licensee must transmit them to the NRC via either the NRC Headquarters classified mailing address specified in Table 2 of appendix A to this part or via the NRC's secure e-mail address specified in Table 1 of appendix A to this part.

(3) Each written follow-up report containing classified information must be created, stored, marked, labeled, handled, transmitted to the NRC, and destroyed in accordance with the requirements of part 95 of this chapter.

(4) Each written follow-up report containing Safeguards Information must be created, stored, marked, labeled, handled, transmitted to the NRC, and destroyed in accordance with the requirements of §§ 73.21 and 73.22 of this part.

(e) *Records retention.* Licensees must maintain a copy of a written follow-up report as a record for a period of 3 years from the date of the report or until termination of the license, whichever is later.

#### **§ 73.1210 Recordkeeping of physical security events.**

(a) *Objective and purpose.* (1) Licensees with facilities or shipment activities subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, 73.37, 73.45, 73.46, 73.50, 73.51, 73.55, 73.60, or 73.67 of this part must record the less significant physical security events and conditions adverse to security that are specified in paragraphs (c) through (f) of this section.

(2) These records facilitate the licensee's monitoring of the effectiveness of its physical security program. These records also facilitate the licensee's effective tracking,

trending, and performance monitoring of these security events and conditions adverse to security; and the subsequent identification and implementation of corrective actions to prevent recurrence.

(3) These physical security events and conditions adverse to security include, but are not limited to, human performance security errors; failure to comply with security procedures; insufficient or inadequate security procedures; security equipment failures and malfunctions; security structures, systems, and components design deficiencies; and inadequate or insufficient security structures, systems, and components. This includes, events or conditions where the licensee has implemented compensatory measures within the required timeframe specified in its physical security plan.

(b) *General requirements.* (1) Licensees must record within 24 hours of the time of discovery the physical security events and conditions adverse to security specified in paragraphs (c) through (f) of this section.

(2) Licensees must retain these records for a period up to 3 years after the last entry is recorded, or until their license is terminated, whichever is later.

(3)(i) Licensees must record these physical security events and conditions adverse to security in either a stand-alone safeguards event log or as part of the licensee's corrective action program, as specified under the applicable quality assurance program provisions of parts 50, 52, 60, 63, 70, and 72 of this chapter, or both.

(ii) Licensees choosing to use their corrective action program to record these physical security events and conditions adverse to security must ensure that the records contain sufficient information to permit the effective tracking, trending, and performance monitoring of these events and conditions and the implementation of corrective actions.

(iii) Licensees must ensure that Safeguards Information or classified security information associated with these records is created, stored, and handled in accordance with the provisions of § 73.21 of this part, or of part 95 of this chapter, as applicable.

(iv) Licensees choosing to use their corrective action program for these records may also choose to bifurcate the information in such records systems so as to maximize the use and advantages of their corrective action programs' tracking, trending, and performance monitoring capabilities while simultaneously compartmenting sensitive security information and security vulnerabilities (i.e., by controlling access and limiting need to know to necessary personnel), in order to ensure information protection requirements are effectively implemented.

(4) These records must include, but are not limited to, information on the following data elements, as applicable—

(i) The date and time the event or condition was discovered;

(ii) The date and time the event or condition occurred;

(iii) The affected structures, systems, components, equipment, or procedures;

(iv) A description of the event or condition;

(v) The environmental conditions at the time of the event or occurrence, if relevant;

(vi) The root cause of the event or condition;

(vii) Whether any human performance errors were the cause or were a contributing factor of the event or condition, including: personnel errors, inadequate procedures, or inadequate training;

(viii) Whether previous events or conditions are relevant to the current event or condition and whether corrective actions were ineffective or insufficient;

(ix) Whether this event or condition is a recurring failure of a structure, system, component, or procedure;

(x) What compensatory measures, if any, were implemented in response to the event or condition;

(xi) What corrective actions, if any, were taken in response to the event or condition; and

(xii) When corrective actions, if any, were taken or will be completed.

(5) Physical security events and conditions adverse to security for which notifications were made to the NRC under § 73.1200 of this part are not required to be recorded under this section.

(6) Suspicious activities that are reported under § 73.1215 of this part are not required to be recorded under this section.

(7) Enhanced weapons events that are reported under § 73.1200 of this part are not required to be recorded under this section.

(c) *Compensated security events.* Any failure, degradation, or discovered vulnerability in a security or safeguards system for which compensatory measures were established within the required timeframe and for which the following could have resulted in—

(1) Undetected access of unauthorized explosives beyond a vehicle barrier;

(2) Unauthorized personnel gaining access to a protected area (PA), vital area (VA), material access area (MAA), or controlled access area (CAA);

(3) Undetected access of contraband into a PA, VA, MAA, or CAA;

(4) Unauthorized personnel into a vehicle transporting Category I strategic special nuclear material (SSNM), Category II or III special nuclear material (SNM), spent nuclear fuel (SNF), or high-level radioactive waste (HLW);

(5) Unauthorized personnel into the Category I SSNM, Category II or III SNM, SNF, or HLW material being transported;

(6) Undetected access of contraband into a vehicle transporting Category I SSNM, Category II or III SNM, SNF, or HLW; or

(7) Undetected access of contraband into the Category I SSNM, Category II or III SNM, SNF, or HLW material being transported.

(d) *Ammunition events.* (1) The discovery that greater than a small quantity of live ammunition authorized by the licensee's security plan:

(i) Has been lost inside a PA, VA, MAA, or CAA; or

(ii) Has been found uncontrolled inside a PA, VA, MAA, or CAA.

(2)(i) The discovery that greater than a small quantity of unauthorized live ammunition is inside a PA, VA, MAA, or CAA.

(ii) A small quantity of live ammunition means five rounds or fewer of ammunition.

(iii) Uncontrolled authorized ammunition means ammunition authorized by the licensee's security plans that is not in the possession of authorized personnel or is not in an authorized ammunition storage location.

(iv) Unauthorized ammunition means ammunition that is not authorized by the licensee's security plans.

(3) Exceptions: (i) Ammunition that is in the possession of Federal, State, or local law-enforcement personnel performing official duties inside a PA, VA, MAA, or CAA is considered controlled and authorized; or

(ii) Blank ammunition used for training purposes by the licensee is not subject to this recording requirement.

(e) [Reserved]

(f) *Decreases in the effectiveness of the physical security program.* Any other threatened, attempted, or committed act not previously defined in this section that has resulted in or has the potential for decreasing the effectiveness of the licensee's physical security program below that committed to in a licensee's NRC-approved physical security plan.

(g) *Classified Information.* Licensee recordkeeping requirements regarding any security events or conditions adverse to security involving any infractions, losses, compromises, or possible compromise of classified information or classified documents are found in § 95.57 of this chapter.

#### **§ 73.1215 Suspicious activity reports.**

(a) *Purpose.* This regulation sets forth the reporting criteria and process for licensees to use in reporting suspicious activities. Licensees are required to report suspicious activities to the local law enforcement agency (LLEA), the Federal Bureau of Investigation (FBI) local field office, the NRC, and the Federal Aviation Administration (FAA) local control tower if aircraft are a part of the suspicious activity.

(b) *Objective.* (1) A licensee's timely submission of suspicious activity reports (SARs) to 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 and security personnel 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.

(2) Licensee's 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.

(c) *General requirements.* (1)(i) Licensees subject to paragraphs (d), (e), and (f) of this section must report suspicious activities that are applicable to their facility, material, or shipping activity.

(ii) If a suspicious activity requires a physical security event notification pursuant to § 73.1200 of this part, then the licensee is not required to also report the occurrence as a suspicious activity pursuant to this section.

(iii) If a suspicious activity report results in a LLEA response and that response may result in public or media inquiries to the NRC, the licensee must notify the NRC in accordance with the requirements of § 73.1200 of this part.

(2)(i) Licensees must promptly assess whether an activity is suspicious. Licensees may review additional information as part of an assessment process, including interactions with their off-site LLEA. However, such assessments and any subsequent reporting must be completed as soon as possible, but within 8 hours of the time of discovery. The licensee must base its assessment upon its best available information on the activity, which may include its knowledge of its locale and the local population.

(ii) The licensee's assessment of a potential suspicious activity, and any discussion of this activity with its off-site LLEA, does not constitute a conclusion, in and of itself, that the activity is suspicious.



(iii) Licensees are not required to report activities that, based on their assessment, appear to be innocent or innocuous.

(3) For a suspicious activity specified under paragraphs (d) and (f) of this section, the licensee must make the following reports:

(i) First, to their off-site LLEA;

(ii) Second, to their applicable FBI local field office;

(iii) Third, to the NRC Headquarters Operations Center; and

(iv) Lastly, to the local FAA control tower if the suspicious activity involves aircraft overflights in proximity to the licensee's facility.

(4) For a suspicious activity specified under paragraph (e) of this section, the licensee or its designated movement control center must make the following reports, in the order indicated:

(i) First, to the applicable LLEA;

(ii) Second, to the applicable FBI local field office; and

(iii) Lastly, to the NRC Headquarters Operations Center.

(iv) For licensees making such reports related to shipping activities, the licensee responsible for the security of the shipment must contact the applicable FBI local field office.

(v) For a movement control center making such reports related to shipping activities, the applicable FBI local field office is as requested by the FBI. As such, the FBI may direct the use of the FBI local field office applicable to the movement control center itself or to the FBI local field office applicable to the licensee responsible for the security of the shipment.

(5)(i) Licensees subject to paragraphs (d) and (f) of this section must establish a point of contact with their local FBI field office.

(ii) Licensees subject to paragraph (d) of this section must establish a point of contact with their local FAA control tower.

(6)(i) For licensees subject to paragraph (e) of this section who are responsible for the security of the shipment(s), the licensee must establish a point of contact with their local FBI field office.

(ii) For licensees subject to paragraph (e) of this section who are employing the services of a movement control center, the movement control center must establish a point of contact with its local FBI field office.

(7) Licensees and movement control centers reporting suspicious activities to the NRC must notify the NRC Headquarters Operations Center via the telephone number specified in Table 1 of appendix A of this part.

(8)(i) Licensees and movement control centers reporting suspicious activities must document the LLEA and FBI points of contact in written security communication procedures or route approvals, as applicable.

(ii) Licensees reporting suspicious aircraft overflight activities must document the FAA point of contact in written communication procedures.

(d) *Suspicious activities—facilities and materials.* (1) For licensees subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.55, 73.60, or 73.67 of this part, the licensees must report activities they assess are suspicious. Examples include, but are not limited to, the following:

(i) Challenges to the licensee's security systems and procedures;

(ii) Elicitation of non-public information from knowledgeable licensee or contractor personnel regarding the licensee's security or emergency response programs;

(iii) Observed surveillance or reconnaissance activity from within posted or restricted areas (i.e., non-public areas), including surface activity, underwater activity, manned aerial activity, and unmanned aerial activity;

(iv) Observed surveillance activity from public spaces outside of the licensee's control; or

(v) Unauthorized aircraft activities in close proximity to the facility (i.e., above or near), involving either manned or unmanned aircraft, operating in a manner potentially indicative of surveillance or reconnaissance activity.

(2) Exceptions. (i) This paragraph does not apply to licensees who are subject to the provisions of § 73.67 of this part, and who do not engage in the enrichment of special nuclear material using Restricted Data (RD) information, technology, or materials.

(ii) This paragraph does not apply to licensees who are subject to the provisions of § 73.67 of this part, and who are also engaged in the fabrication of new fuel assemblies.

(iii) Licensees are not required to report commercial or military aircraft activity that is assessed as routine or non-threatening.

(e) *Suspicious activity—shipping activities.* (1) For licensees subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, or 73.37 of this part, the licensee must report activities they assess are suspicious. Examples include, but are not limited to, the following:

(i) Challenges to the licensee's or its transportation contractor's communications subsystems regarding the transport system;

(ii) Challenges to the licensee's or its transportation contractor's security subsystems for the transport system;

(iii) Interference with or harassment of in-progress shipments;

(iv) Elicitation of non-public information from knowledgeable licensee personnel or the licensee's transportation contractor personnel regarding transportation program elements, including: security programs, operations programs, communication protocols, shipment routes, safe haven locations, and emergency response programs; or

(v) Observed surveillance or reconnaissance activity of ongoing shipments.

(2) For licensees using a movement control center for shipments of radioactive material or special nuclear material (SNM), the movement control center may report suspicious activities to LLEA, the FBI, and the NRC, in lieu of the licensee making such reports.

(f) *Suspicious activities—enrichment facilities.* (1) For licensees subject to the provisions of § 73.67 of this part, who are also engaged in the enrichment of SNM using RD information, technology, or materials; the licensee must report activities they assess are suspicious. Examples include, but are not limited to, the following:

(i) Aggressive noncompliance by visitors to the licensee's facility involving willful unauthorized departure from a tour group or willful unauthorized entry into restricted areas;

(ii) Unauthorized recording or imaging of sensitive technology, equipment, or materials; or

(iii) Elicitation of non-public information from knowledgeable licensee or contractor personnel regarding physical or information security programs intended to protect RD information, technology, or materials.

(2) Exception. (i) Licensees must report, in accordance with § 95.57 of this chapter, alleged or suspected activities involving actual, attempted, or conspiracies to obtain RD, communicate RD, remove RD, or disclose RD in potential violation of

Sections 224, 225, 226, and 227 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2274, 2275, 2276, and 2277).

(ii) In such instances, the licensee is not required to also report such actual, attempted, or conspiracies to obtain RD, communicate RD, remove RD, or disclose RD as suspicious activities pursuant to this section.

(g) *Suspicious activities—exceptions.* The following licensees are exempt from the provisions of this section:

- (1) Docket number 70-7019;
- (2) Docket number 70-7020; and
- (3) Docket number 70-7021.

35. In appendix A to part 73, add a heading before Table 1, revise the first row in Table 1 and the heading before Table 2, and add paragraphs III and IV to read as follows:

**APPENDIX A TO PART 73—U.S. NUCLEAR REGULATORY COMMISSION OFFICES AND CLASSIFIED MAILING ADDRESSES.**

**Table 1 — Mailing Addresses, Telephone Numbers, and E-mail Addresses**

	<b>Address</b>	<b>Telephone (24-hour)</b>	<b>E-Mail</b>
NRC Headquarters Operations Center	USNRC, Division of Preparedness and Response, Washington, DC 20555-0001	(301) 816-5100 (301) 816-5151 (fax)	<a href="mailto:Hoo.Hoc@nrc.gov">Hoo.Hoc@nrc.gov</a> <a href="mailto:Hoo1@nrc.sgov.gov">Hoo1@nrc.sgov.gov</a> (secure)
* * * * *			

## Table 2 — Classified Mailing Addresses

\* \* \* \* \*

III. Classified telephone calls must be made to the telephone numbers for the NRC Headquarters Operations Center in Table 1 of this appendix and the caller must request transfer to a secure telephone to communicate the classified information.

IV. Classified e-mails must be sent to the secure e-mail address specified in Table 1 of this appendix.

36. In appendix B to part 73 revise the heading and section I.A to read as follows:

### **Appendix B to Part 73 — General Criteria for Security Personnel.**

\* \* \* \* \*

I. \* \* \*

A. Employment Suitability and Qualification.

1. Suitability.

(a) Before employment, or assignment to the security organization, an individual shall:

(1) Possess a high school diploma or pass an equivalent performance examination designed to measure basic mathematical, language, and reasoning skills, abilities, and knowledge required to perform security duties and responsibilities;

(2) Have attained the age of 21 for an armed capacity or the age of 18 for an unarmed capacity;

(3) Not have any felony convictions that reflect on the individual's reliability; and

(4) Not be disqualified, in accordance with applicable state or Federal law from possessing or using firearms or ammunition.

(i) Licensees may use the information that has been obtained during the completion of the individual's background investigation for unescorted access to determine suitability; or

(ii) Licensees may use the satisfactory completion of a firearms background check for the individual under § 73.17 of this part to also fulfill this requirement.

(b) The qualification of each individual to perform assigned duties and responsibilities must be documented by a qualified training instructor and attested to by a security supervisor.

\* \* \* \* \*

#### **Appendix B to part 73 [Amended]**

37. In appendix B to part 73, section VI, paragraph B.1(a)(4), remove the reference "10 CFR 73.19" and add in its place the reference "§ 73.17".

#### **Appendix G to part 73 [Reserved]**

38. Remove and reserve appendix G to part 73.

### **PART 74 – MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL**

39. The authority citation for part 74 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 53, 57, 161, 182, 223, 234, 1701 (42 U.S.C. 2073, 2077, 2201, 2232, 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

40. In § 74.11, paragraph (c) is revised to read as follows:

**§ 74.11 Reports of loss or theft or attempted theft or unauthorized production of special nuclear material.**

\* \* \* \* \*

(c) Notifications required under § 73.1200 of this chapter need not be duplicated under the requirements of this section.

**PART 76 – CERTIFICATION OF GASEOUS DIFFUSION PLANTS**

41. The authority citation for part 76 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 122, 161, 193(f), 223, 234, 1701 (42 U.S.C. 2152, 2201, 2243(f), 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 206, 211 (42 U.S.C. 5841, 5846, 5851); 44 U.S.C. 3504 note.

**§ 76.113 [Amended]**

42. In § 76.113, paragraph (b), remove the number “73.71” and add in its place the number “73.1200”.

**§ 76.115 [Amended]**

43. In § 76.115, paragraph (b), remove the number “73.71” and add in its place the number “73.1200”.



**§ 76.117 [Amended]**

44. In § 76.117, paragraph (b), remove the number “73.71” and add in its place the number “73.1200”.

Dated at Rockville, Maryland, this            day of            ,  
2018.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,  
Secretary of the Commission.

SUBJECT: FEDERAL REGISTER NOTICE: ENHANCED WEAPONS, FIREARMS  
 BACKGROUND CHECKS, AND SECURITY EVENT NOTIFICATIONS RULEMAKING  
 (ENHANCED WEAPONS RULE) DATED: \_\_\_\_\_

**DISTRIBUTION: WITS:** 200800390, 201200245, 201200151

PUBLIC	RidsRgn1MailCenter
RidsNrrOd	RidsRgn2MailCenter
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RidsNsirOd	RidsNmssOd
RidsOgcMailCenter	RBeall, NMSS
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<b>OFFICE</b>	NRR/DPR/PRMB: PM	NRR/DPR/PRMB: RS	NRR/DPR/PRMB: BC	NSIR/DPCP/MWSB: BC
<b>NAME</b>	RBeall	GLappert*	MKhanna	TMossman
<b>DATE</b>	08/25/2017	09/07/2017	09/04/2017	09/06/2017
<b>OFFICE</b>	NRR/DPR: D	NSIR/DPCP: D	NMSS/FCSE: D	NMSS/DSFM: D
<b>NAME</b>	LLund (GBowman* for)	JAndersen*	CErlanger*	MLayton*
<b>DATE</b>	09/27/2017	09/15/2017	09/28/2017	09/18/2017
<b>OFFICE</b>	RES/DE: D	ADM/DAS/RADB: BC	NSIR: D	OE: D
<b>NAME</b>	BThomas*	CBladey	SWest (MKohen* for)	Pholahan (DFurst* for)
<b>DATE</b>	09/14/2017	11/28/2017	10/05/2017	10/05/2017
<b>OFFICE</b>	NMSS: D	OCIO/CSD/FPIB: TL	OGC (NLO)	NRR: D
<b>NAME</b>	MDapas (SMoore* for)	DCullison*	NStAmour*	BHolian (MEvans* for)
<b>DATE</b>	10/06/2017	05/09/2018	05/04/2018	05/06/2018
<b>OFFICE</b>	EDO	SECY		
<b>NAME</b>	VMcCree	AVietti-Cook		
<b>DATE</b>	05/18/2018			

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