

# U.S. NUCLEAR REGULATORY COMMISSION



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## NRC Response to Public Comments

### Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Rule

NRC-2011-0018; RIN 3150-AI49

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#### **U.S. Nuclear Regulatory Commission**

Office of Nuclear Security and Incident Response  
Office of Nuclear Material Safety and Safeguards  
Office of Nuclear Reactor Regulation

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## List of Acronyms

ADAMS	Agencywide Documents Access and Management System
AEA	<i>Atomic Energy Act of 1954</i> , as amended
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
CAA	controlled access area
CAP	Corrective Action Program
CFR	<i>Code of Federal Regulations</i>
CIKR	Critical Infrastructure and Key Resource
CJIS	FBI's Criminal Justice Information Services Division
CSEN	Cybersecurity Event Notification
CY	calendar year
DCJS	Department of Criminal Justice Services
DG	draft regulatory guide
DHS	U.S. Department of Homeland Security
DOE	U.S. Department of Energy
FAA	Federal Aviation Administration
FBI	Federal Bureau of Investigation
FFL	Federal firearms license
FRN	<i>Federal Register</i> notice
GTCC	greater than Class C
ILTAB	Intelligence Liaison and Threat Assessment Branch (NRC)
ILTAT	Intelligence Liaison and Threat Assessment Team (NRC-Region IV)
ISFSI	independent spent fuel storage installation
JTTF	Joint Terrorism Task Force
LLEA	local law enforcement agency
MAA	material access area
MILES	multiple integrated laser engagement system
NFA	<i>National Firearms Act of 1934</i>
NFAD	ATF's National Firearms Act Division
NEI	Nuclear Energy Institute
NICS	National Instant Criminal Background Check System
NPUF	non-power production or utilization facility
NRC	U.S. Nuclear Regulatory Commission
NTN	NICS transaction number

PA	protected area
RD	restricted data
SEL	Safeguards Event Log
SNF	spent nuclear fuel
SNM	special nuclear material
SSNM	strategic special nuclear material
TTRG	Terrorist Threats to the U.S. Homeland Reporting Guide for Critical Infrastructure and Key Resource Owners and Operators
TVA	Tennessee Valley Authority
USACE	U.S. Army Corps of Engineers
VA	vital area
VAF	voluntary appeal file
WSA	Weapons Safety Assessment

# INTRODUCTION

## **Summary:**

This document presents the U.S. Nuclear Regulatory Commission's (NRC's) responses to written public comments received on the "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications" (hereafter the enhanced weapons) proposed rule. The NRC published the proposed rule on February 3, 2011, in the *Federal Register* (76 FR 6200) for public comment with a 180-day public comment period. On January 10, 2013, the NRC published a first supplemental proposed rule (78 FR 2214) to add at-reactor independent spent fuel storage installation (ISFSI) facilities as a class of designated facilities that would be eligible to apply for Section 161A authority. On September 22, 2015, the NRC published a second supplemental proposed rule (80 FR 57106) to conform the rulemaking to Revision 1 of the Firearms Guidelines issued by the Commission with the approval of the U.S. Attorney General (79 FR 36100). This document identifies how the NRC dispositioned public comments received on the proposed rule and its two supplements.

In developing the final rule, the NRC considered all the comments received on the 2011 proposed rule and the 2013 and 2015 supplemental proposed rules. If a public comment resulted in a change to the rule language, the supporting statement of considerations, or the supporting guidance, the NRC's comment response indicates what was changed and where the change occurred.

The NRC also received public comments on the supporting regulatory guidance documents, including: two draft regulatory guides (DGs) and a draft weapons safety assessment (WSA) referenced in the February 3, 2011, *Federal Register* notices (FRNs) (76 FR 6085, 76 FR 6086, and 76 FR 6087). The NRC responses to the public comments on the supporting guidance are contained in a separate document, "Responses to Public Comments on Enhanced Weapons Guidance Documents" (Agencywide Document Access and Management System (ADAMS) Accession No. ML17123A319).

The 2011 proposed rule, 2013 first supplemental proposed rule, and 2015 second supplemental proposed rule and the public comment submittals are available from the Federal e-Rulemaking Web site at <https://www.regulations.gov/> under Docket ID No. NRC-2011-0018.

## **Comment Overview:**

The NRC received 18 comment submissions on the 2011 proposed rule, the two supplemental proposed rules, and the supporting guidance documents. The individual comment submissions are identified in Table 1 below and may be found in ADAMS under their respective accession numbers as specified in Table 1. The NRC has compiled and annotated a complete list of these public comment submissions into a single document, "Annotated Public Comments on: Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Rule and Supporting Regulatory Guidance Documents" (ML22287A158).

Of these 18 comment submissions, 15 were on the proposed and supplemental proposed rules and were made by 13 individuals or organizations. Two individuals or organizations submitted comments on both the 2011 proposed rule and the 2015 supplemental proposed rule. Five of these 18 comment submissions were on the supporting guidance documents and were made by 5 individuals or organizations. Three individuals or organizations submitted comments on both the 2011 proposed rule and the supporting guidance documents. In addition, the NRC received a request to extend the public comment period on the 2011 proposed rule. However, because this extension request did not contain any comments on the proposed rule text, Statement of Considerations, or any responses to specific questions, the NRC has not included this request in Table 1.

The NRC reviewed and annotated the comment submissions to identify what the NRC concluded were separate comments within each submission. Accordingly, a single comment submission may have several individual comments associated with it. The NRC gave each individual comment within a submission a unique identifier. The NRC's comment responses use this unique identifier to identify which individual comments are addressed in each comment response.

**Table 1 – Comment Submissions on Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Rule and Supporting Regulatory Guidance Documents**

Comment Submission Number <sup>1</sup>	Commenter Name	Affiliation	Abbreviation	Contains Comments On <sup>2</sup>		Identical Comment Submission <sup>5</sup>	Date	ADAMS Accession No.
				Rule <sup>3</sup>	Guidance <sup>4</sup>			
1	Anonymous	Private Citizen	ANON	Proposed			04-03-11	ML110950656
2	Ryan M. Spahr	Private Citizen	RMS	Proposed			04-17-11	ML11109A002
3	Craig J. Renitsky	Private Citizen	CR	Proposed			04-18-11	ML11110A001
4	Mark Elliott	Nuclear Fuel Services	NFS	Proposed			05-04-11	ML11130A041
5	Robert E. Andrews	Congressman– U.S. House of Representatives	RA	Proposed			05-05-11	ML11130A112
6	Brian Yip	Private Citizen	BY	Proposed			07-14-11	ML11200A092
7	Barry Cole	Babcock & Wilcox Nuclear Operating Group	B&W	Proposed	DG-5019, Rev. 1 Weapons Safety Assessment		07-25-11	ML11208B451
8	Patricia L. Campbell	GE Hitachi Nuclear Energy	GE	Proposed	DG-5019, Rev. 1	76FR6085	07-29-11 07-29-11	ML11213A210 ML11214A217
9	Roberta J. Gray	Federal Bureau of Investigation	FBI	Proposed			07-29-11	ML11216A026
10	S. Hardin	Private Citizen	SH1	Proposed			08-02-11	ML11216A027

**Table 1 – Comment Submissions on Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Rule and Supporting Regulatory Guidance Documents (continued)**

Comment Submission Number <sup>1</sup>	Commenter Name	Affiliation	Abbreviation	Contains Comments On <sup>2</sup>		Identical Comment Submission <sup>5</sup>	Date	ADAMS Accession No.
				Rule <sup>3</sup>	Guidance <sup>4</sup>			
11	R.M. Krich	Tennessee Valley Authority	TVA	Proposed			08-02-11	ML11217A106
12	David R. Kline	Nuclear Energy Institute	NEI1	Proposed	DG-5019, Rev. 1 DG-5020, Rev. 0 Weapons Safety Assessment	76FR6085 76FR6086 76FR6087	08-02-11 08-02-11 08-02-11 08-02-11	ML11229A109 ML11242A127 ML11242A126 ML11242A128
13	Anonymous	Palo Verde Nuclear Power Plant	PV		DG-5019, Rev. 1		08-02-11	ML11216A139
14	Jerry W. Moore	Vogtle Nuclear Power Plant	JM		DG-5020, Rev 0		08-04-11	ML11220A087
15	Anthony Dimitriadis	NRC Staff	AD		DG-5019, Rev. 1		08-05-11	ML11221A139
16	Michael DeAngelo	Private Citizen	MD	2013 Supplemental Proposed			01-25-13	ML13031A142
17	David R. Kline	Nuclear Energy Institute	NEI2	2015 Supplemental Proposed			12-07-15	ML15341A278
18	S. Hardin	Private Citizen	SH2	2015 Supplemental Proposed			12-07-15	ML15348A372

**Notes:**

1. The comment submission number corresponds to the order in which the NRC received and docketed each comment submission.
2. Some comment submissions only contained comments on the proposed rule or the supplemental proposed rule. Some comment submissions only contained comments on the draft supporting regulatory guidance documents. Others comment submissions contained comments on both the proposed rule(s) and draft supporting regulatory guidance documents in a single submission.
3. Comments submitted on the 2011 proposed rule and 2013 and 2015 supplemental proposed rules are dispositioned in this document.
4. Comments submitted on DG-5019, Revision 1; DG-5020, Revision 0; and the Weapons Safety Assessment are dispositioned in “Responses to Public Comments on the Regulatory Guidance Documents Supporting the Final Rule on Enhanced Weapons, Firearms Background Checks, and Security Event Notifications” (ML17123A319). No comments were submitted on DG-5020, Revision 1.
5. Two commenters submitted identical comments in response to the separate *Federal Register* notices for the proposed rule and draft regulatory guidance.

## **Public Meetings:**

On June 1, 2011, the NRC held a Category 3 public meeting at NRC Headquarters to discuss the enhanced weapons proposed rule with external stakeholders (see meeting summary at ML111720007). The NRC held another Category 3 public meeting at NRC Headquarters on November 19, 2015, to discuss the 2015 second supplemental proposed rule and the implementation period for the final rule (ML15348A082). The NRC intended that these meetings give stakeholders a better and more complete understanding of the proposed rule and supporting guidance and to enable more informed comments on the proposed rule and supplements. The NRC also discussed the basis for and solicited feedback on the proposed implementation period for the final rule.

## **Comment Categorization:**

This comment response document separates the comments into 19 categories identified below. In general, the NRC addresses each individual comment. However, where similar comments can be readily grouped together, the NRC has “binned” those comments and treated them as a single comment. The NRC’s response addresses the “binned” comment. The NRC has included the annotated comment number or numbers in a parenthetical list at the end of each comment to provide a cross-reference aid to the reader. The comments are divided into the following categories:

- A. General Comments on the 2011 Proposed Rule, and the 2013 and 2015 Supplemental Proposed Rules
- B. 2011 Proposed Rule and 2015 Supplemental Proposed Rule: Specific Questions
- C. Applying for Enhanced Weapons Authority
- D. Possession, Use, Transfers, and Transportation of Enhanced Weapons
- E. Training and Qualification on Enhanced Weapons
- F. Inventory of Enhanced Weapons
- G. Applying for Preemption Authority
- H. Firearms Background Checks
- I. Removing Personnel from Access to Covered Weapons
- J. Enhanced Weapons Event Notifications
- K. Physical Security Event Notifications
- L. Suspicious Activity Reports
- M. Written Follow-up Reports
- N. Recordkeeping of Physical Security Events (Safeguards Event Log)
- O. Definitions
- P. Miscellaneous
- Q. Information Collection
- R. NRC Forms
- S. Cybersecurity Event Notifications

## **Cross Reference Between Section Numbers in the Enhanced Weapons Proposed and Final Rules**

In response to comment submissions, the NRC has modified the section numbers used in the final rule from the section numbers used in the proposed rules. As an aid to the reader, Table 2 provides a cross reference between the section numbering in the proposed and final rules. In the comments below, the NRC has retained the proposed rule section numbers used by the



commenters. As a further aid to the reader in the NRC’s responses to the comments, the NRC has used the final rule section numbers and included the relevant proposed rule section number parenthetically.

**Table 2: Cross Reference Between the Proposed Rule Section Numbers and the Final Rule Section Numbers**

<b>Proposed Rule Section Numbers</b>	<b>Final Rule Section Numbers</b>
§ 73.2	§ 73.2, “Definitions”
§ 73.18	§ 73.15, “Authorization for use of enhanced weapons and preemption of firearms laws”
§ 73.19	§ 73.17, “Firearms background checks for armed security personnel”
§ 73.71 & Appendix G to Part 73	§ 73.1200, “Physical security event notifications”
	§ 73.1205, “Written follow-up reports”
	§ 73.1210, “Recordkeeping of physical security events”
	§ 73.1215, “Suspicious activity reports”

## RESPONSES TO SPECIFIC COMMENTS

### A. General Comments on the 2011 Proposed Rule, and the 2013 and 2015 Supplemental Proposed Rules

*Comment A-1:* One commenter strongly supported the proposed rule but wanted to “encourage further rulemaking on the use of deadly force by NRC licensees, especially at facilities where a weapons-grade quantities and types (“Category 1”) of Special Nuclear Material (SNM) is present.” The commenter continued, “While DOE [U.S. Department of Energy] protective forces are authorized under the Atomic Energy Act of 1954, as amended [AEA] to use deadly force to protect Category I SNM, the authority of NRC licensee security forces to protect this nuclear material is ambiguous under current regulation.” (RA-1, RA-2)

**NRC Response:** The NRC appreciates the commenter’s support of the proposed rule but notes that “further rulemaking on the use of deadly force by NRC licensees” is outside the scope of this rulemaking. The purpose of this rulemaking is to implement the Commission’s authority under Section 161A of the AEA, modify existing physical security event notification requirements in the NRC’s regulations and to establish new reporting requirements for suspicious activities. Current NRC regulations in 10 CFR Part 73, “Physical Protection of Plants and Materials,” require licensees to train their armed security personnel on the applicable State requirements on the use of deadly force. To the extent that this rulemaking mentions deadly force, it is only to ensure that licensee training requirements for enhanced weapons are consistent with existing training requirements, including training on the use of deadly force, in NRC regulations.

Accordingly, the NRC has made no change to the final rule language in response to this comment.

*Comment A-2:* One commenter requested assurance “that enhanced weapons are closely monitored, adequately secured, and disposed of properly...” and that “proper notification of the theft of such weapons and accountability of facility or security personnel in charge of the weapons” occurs. (ANON-1, ANON-2)

**NRC Response:** The NRC agrees with the comment. The final rule contains explicit NRC requirements governing the possession, use, and storage of enhanced weapons. Additionally, there are explicit NRC requirements for developing and implementing training on the use of enhanced weapons, conducting periodic inventories of enhanced weapons, reporting the loss or theft of enhanced weapons, and transferring and disposing of enhanced weapons. These requirements provide assurance that enhanced weapons are closely monitored, adequately secured, disposed of properly, and that the loss or theft of enhanced weapons are properly reported to the appropriate authorities. Furthermore, the NRC notes that in addition to the regulatory requirements in this final rule, NRC licensees possessing enhanced weapons must comply with the applicable Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) regulations in 27 CFR Part 479, “Machine Guns, Destructive Devices, and Certain Other Firearms,” and notification requirements to ATF regarding the loss or theft of enhanced weapons registered under the National Firearms Act (NFA) (26 U.S.C. Chapter 53).

The NRC has made no change to the final rule language in response to this comment given that language in the final rule already addresses the commenter’s concerns.

*Comment A-3:* One commenter indicated that the "...required safety I believe extends from the security personnel who employ covered weapons as part of their protective practice to the facilities of the NRC licensees and certificate holders and the general public at large. Enough flexibility must be given to security personnel and inventory agents to allow them to adequately perform their duties while keeping the facilities and the surrounding communities as safe as possible." (CR-1)

**NRC Response:** The NRC agrees with the comment. The NRC considers that the final rule provides the proper balance between operational flexibility for licensees to effectively deploy any enhanced weapons and implement necessary weapons-accountability controls to ensure the security of the facility and thereby minimize the potential for the undetected loss of any enhanced weapons.

Accordingly, the NRC has made no change to the final rule language in response to this comment.

*Comment A-4:* One commenter suggested "[t]he use of words such as 'could', 'may' and 'is likely to' in the draft rule and DG are not definitive; and therefore, require the licensee to use subjective reasoning to determine reportability and could cause excessive and unnecessary reporting." (NEI1A2-7)

**NRC Response:** The NRC disagrees with the comment. Standards for drafting the regulatory language contained in 10 CFR Chapter I that are used to convey an imperative action typically utilize words like "must," "shall," or "not." In contrast, standards for drafting regulatory language that conveys a permissive action typically utilize words like "may" or "can." However, in drafting regulatory guidance documents that are not binding requirements in and of themselves, the NRC's use of "could" or "is likely to" is intended to (1) convey a conditional requirement or (2) provide licensees with a degree of gradation or flexibility in meeting a range of thresholds for physical security event reporting.

Accordingly, the NRC has made no change to the final rule language in response to this comment.

*Comment A-5:* One commenter stated, "I think strict gun control is just what this country needs. Look how the regulations on drugs have influenced drug trafficking. Oops .....[sic] sorry that didn't work either. But this is a proposed rule, and not a law. Laws are made to be broken in the good old US of A. But a PROPOSED RULE!!! The people who shouldn't have guns, like criminals, will really be scared of this one." (MD-1)

**NRC Response:** The NRC notes that the comment contains no proposed changes to the final rule.

Accordingly, the NRC has made no change to the final rule language in response to this comment.

*Comment A-6:* One commenter stated that given modern stateless terrorism, as well as the growing threat of domestic terrorism, nuclear security has never been more important and that this rule provides the appropriate tools for nuclear and related facilities to protect themselves. The commenter also supported "access to machine guns and short barreled rifles" by licensees. (RMS-1, RMS-2)

**NRC Response:** The NRC notes that the comment contains no proposed changes to the final rule.

Accordingly, the NRC has made no change to the final rule language in response to this comment.

**B. 2011 Proposed Rule and 2015 Supplemental Proposed Rule: Specific Questions**

This section of the document addresses public comments in response to specific questions posed by the NRC in the 2011 proposed rule and 2015 supplemental proposed rule. The NRC posed no specific questions in the 2013 supplemental proposed rule.

*Comment B-1: Question on periodicity of recurring Firearms Background Checks.* Seven commenters expressed a range of views on the appropriate periodicity of recurring firearms background checks. These recommendations ranged from biannually (every 6 months), to once every 1 year, 3 years, or 5 years. Several commenters were concerned that a 5-year interval would allow disqualified persons to have access to covered weapons for too long a period of time. In contrast, several commenters recommended a longer period of 5 years versus the 3 years proposed by the NRC, with flexibility provided to licensees to conduct recurring checks more frequently (e.g., in conjunction with the power reactor's 3-year "critical group" access authorization background check frequency).

One commenter suggested that the periodicity for recurring checks should ensure "the re-checks are spaced out and do not come in one large quantity all at one time." Finally, several commenters indicated that the frequency of recurring firearms background checks should not be more restrictive than the frequency for periodic reinvestigations specified for a U.S. government staff's or U.S. government contractor's personnel security clearance. For example, current Office of Personnel Management reinvestigation requirements for a "Q" (Top Secret) security clearance are every 5 years.

One commenter indicated that requiring recurring checks every 3 years "is unnecessarily administratively burdensome and costly for those licensees not subject to the NRC's access authorization program background checks," such as licensees with "DOE security clearance reinvestigations." Furthermore, a 5-year reinvestigation period "would allow both classes of licensees to determine how best to reduce the administrative cost and burden." (ANON-3, CR-2, CR-3, CR-4, NFS-1, NFS-2, NFS-9, B&W-23, FBI-9, FBI-10, FBI-11, SH1-4, NE11A1-1)

**NRC Response:** The NRC agrees with the comment. The NRC sees value in conducting recurring firearms background checks at a 3-year periodicity to verify that security personnel are not disqualified from possessing and using firearms. The NRC agrees with the commenter that the hazards posed by the possession and use of covered weapons by such individuals are not significantly greater than the hazards posed by the possession and use of non-covered weapons. Consequently, the costs and burdens associated with accomplishing the firearms background checks on a 3-year periodicity do not appear to be warranted. In addition, Revision 1 to the Firearms Guidelines only requires that recurring firearms background checks be completed at least once every 5 years.

Synchronizing firearms background checks with the 3-year access authorization checks may reduce the burden for power reactor licensees; however, it would increase the burden for Category I SSNM licensees that have a 5-year reinvestigation period for "Q" clearances for their

security personnel. Therefore, the NRC has concluded that a 5-year periodicity for firearms background checks, with the ability for licensees to conduct checks more frequently if desired, is both consistent with the Firearms Guidelines and provides the greatest flexibility to the range of licensees implementing this requirement. Consequently, the NRC, in 10 CFR 73.19(b)(10) and 10 CFR 73.19(f) of the 2015 supplemental proposed rule, specified a 5-year periodicity for firearms background checks.

In this final rule the NRC has removed the 5-year periodicity requirement from 10 CFR 73.17(b)(10) (proposed rule 10 CFR 73.19(b)(10)). However, to provide licensees flexibility in the timing of firearms background checks (i.e., to synchronize these checks with separate access authorization checks) the NRC has retained the 5-year periodicity requirement in 10 CFR 73.17(f) (proposed rule 10 CFR 73.19(f)). In addition, 10 CFR 73.17(f)(3) of this final rule permits licensees to conduct periodic firearms background checks at intervals shorter than once every 5 years, at their discretion. As an additional benefit, allowing a 5-year periodicity for recurring checks will enable licensees to spread these periodic checks out over time.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.17(b)(10) to remove the 5-year periodicity requirement for recurring firearms background checks.

Additionally, the NRC has revised the final rule language in 10 CFR 73.17(f) to retain the 5-year periodicity for recurring firearms background checks but also allowing licensees to perform such checks more frequently at their discretion.

*Comment B-2: Question on enhanced weapon accountability inventory requirements.* Several commenters expressed a range of views on requirements for conducting in-depth accountability inventories (e.g., verification of individual weapons' serial numbers) on enhanced weapons possessed by a licensee. In general, the commenters supported the NRC's proposed concept of two levels of detail for inventory requirements for enhanced weapons. One commenter recommended that the in-depth inventory requirements be conducted every 3 months, rather than every 6 months. The commenter indicated that the extra assurance to the public (from the in-depth check) was worth the extra resources to the licensee or certificate holder (i.e., an increased number of annualized person-hours to complete the in-depth inventory). In contrast, the majority of commenters indicated that an annual in-depth inventory provided sufficient accountability, given the overall level of physical security and the controls imposed over all weapons inside facilities possessing enhanced weapons. (CR-7, NFS-3, SH1-5, NE11A1-5)

**NRC Response:** The NRC agrees with those commenters suggesting that the in-depth inventory of enhanced weapons verifying individual weapons serial numbers be conducted on an annual basis. The NRC disagrees with the commenter suggesting that this inventory be conducted every 3 months. The NRC has evaluated the security benefits and costs from conducting an in-depth inventory of enhanced weapons every three months. The NRC agrees that in-depth inventories should be conducted annually given the degree of physical security, inventory, and recordkeeping controls imposed on licensees possessing enhanced weapons as a result of this final rule. The NRC notes that the final rule also requires monthly standard inventories of enhanced weapons. These monthly standard inventories would continue to be required for the remaining 11 months of a year, other than the month when the annual in-depth inventory occurs.

Accordingly, the NRC revised the final rule language in 10 CFR 73.15(o)(3) to require annual in-depth inventories of enhanced weapons in response to this comment.

*Comment B-3: Question on the structure of NRC physical security event reporting and recordkeeping regulations.* Several commenters expressed a range of views on the structure of NRC security event reporting and recordkeeping regulations. A number of commenters indicated that these requirements should be consolidated to improve ease of use and provide greater regulatory clarity.

One commenter (NEI) indicated that requirements for initial telephonic reports and requirements for written follow-up reports should be separate but adjacent regulations. This commenter provided as an example the reactor safety-related event reports in 10 CFR 50.72, "Immediate notification requirements for operating nuclear power reactors," and 10 CFR 50.73, "Licensee event report system." (CR-8, NFS-4, GE-2, SH1-6, NEI1A2-8)

**NRC Response:** The NRC agrees in part, and disagrees in part, with the comment. The NRC consolidated the security event reporting and recordkeeping requirements into adjacent sections under a single subpart. This approach will provide greater regulatory clarity to the public, licensees, and the NRC staff. Accordingly, the NRC has created a new Subpart T, "Security Notifications, Reports, and Recordkeeping," to 10 CFR Part 73 that will contain three new and adjacent sections in one contiguous location (Subpart T). First, the new 10 CFR 73.1200, "Notification of physical security events," contains events previously listed under 10 CFR 73.71 and Appendix G to 10 CFR Part 73. Second, the new 10 CFR 73.1205, "Written follow-up reports of physical security events," contains requirements for written follow-up reports previously submitted under 10 CFR 73.71 and will now address written follow-up reports for notifications submitted under 10 CFR 73.1200. Third, the new 10 CFR 73.1210, "Recordkeeping of physical security events," will replace the Safeguards Event Log (SEL) regulations previously listed under 10 CFR 73.71 and Appendix G. This new subpart consolidates the security reporting and recording requirements previously contained in both 10 CFR 73.71, "Reporting of safeguards events," and Appendix G, "Reportable Safeguards Events."

The NRC disagrees with combining all the physical security event notifications, written follow-up reports, and recordkeeping requirements into a single large section. The NRC considers the creation of a large section would not improve regulatory clarity.

Accordingly, the NRC has added final rule language creating a new Subpart T in 10 CFR Part 73.

Additionally, the NRC in the final rule removed and reserved 10 CFR 73.71 and Appendix G to Part 73.

*Comment B-4: Question on the compliance date and submittal dates providing sufficient time to implement the new requirements for licensees subject to Section 161A authority via orders.* Two commenters expressed views that additional time was needed for licensees subject to Section 161A confirmatory orders to comply with the new regulations. One commenter indicated that the NRC had not included development of a firearms background check plan in the proposed rule language in the 10 CFR 73.19(r) transition requirements for licensees issued Section 161A authority orders. Consequently, the 2015 supplemental proposed rule had not accounted for this effort by licensees in the proposed transition time (i.e., compliance period).

The commenter suggested a 4-month compliance period. The other commenter indicated that for licensees to include a firearms background check plan within an NRC-approved, industry standard NEI template (e.g., the security officer training and qualification plan) would require additional time to revise this standard NEI template and then to obtain re-endorsement by the NRC. The commenter suggested a 9-month compliance period to revise the standard NEI template and to obtain NRC endorsement before the affected licensees develop and approve their plans. (NEI2-1, SH2-2)

**NRC Response:** The NRC agrees with the comment. The NRC agrees that more time is required for those licensees that received confirmatory orders implementing the Commission's Section 161A authority to come into compliance with the final rule's requirements under 10 CFR 73.15(s) and 73.17(r) (proposed rule 10 CFR 73.18(s) and 73.19(r)). Furthermore, licensees would have to revise their training and qualification plan to include the new firearms background check plan. This training and qualification plan is based on an NEI standard template that would have to be revised as well. Based on these factors, the NRC agrees that a 9-month transition period is appropriate.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.15(s)(3) to specify that licensees must complete transition activities within 300 days of the date of publication of the final rule in response to this comment. Under 10 CFR 73.15(s)(4), these orders are then automatically withdrawn. This provision applies to any orders issued under Section 161A prior to 30-days after the date of publication of the final rule.

Additionally, the NRC has revised the final rule language in 10 CFR 73.17(r) to cross reference to the 300-day withdrawal schedule specified in 10 CFR 73.15(s). This provision applies to any orders issued under Section 161A prior to 30-days after the date of publication of the final rule.

### **C. Applying for Enhanced Weapons Authority**

*Comment C-1:* One commenter indicated that the 2011 proposed language in 10 CFR 73.18(f)(1) requiring a licensee or certificate holder applying for enhanced weapons to "...submit to the NRC for prior review and written approval a new, or revised, physical security plan, security personnel training and qualification plan, safeguards contingency plan, and a weapons safety assessment" was unnecessarily restrictive. The commenter indicated that submitting an addendum to the licensee's or certificate holder's physical security plan and training and qualification plan for prior review and approval, instead of revising these entire plans, was an acceptable alternative. This is especially applicable in instances where the licensee already has enhanced weapons. The commenter also recommended that the proposed language in 10 CFR 73.18(f)(2)(iii), "[f]or the safeguards contingency plan, address how these enhanced and any standard weapons will be employed by the licensee's or certificate holder's security personnel..." should be modified to instead permit this information to be attached as an addendum to the licensee's physical security plan and not require the submission of a modified safeguards contingency plan, as the addition of the enhanced weapons would not affect the content of the safeguards contingency plan. (B&W-2, B&W-5)

**NRC Response:** The NRC agrees with this comment. A licensee submitting an application for combined preemption authority and enhanced weapons authority under 10 CFR 73.15(e) (proposed rule 10 CFR 73.18(e)) may either revise their physical security plan and training and qualifications plan or submit an addendum to one or both of those plans.

Additionally, those licensees that already possess enhanced weapons based on authorities other than Section 161A authority but nonetheless want to apply for combined preemption authority and enhanced weapons authority could also indicate in their application that no changes are necessary to their safeguards contingency plan due to the use of enhanced weapons.

The NRC notes that the commenter has not suggested modifying a WSA through the use of an addendum. The WSA NUREG Volume 2 template uses internal computations to perform a WSA assessment. Merely submitting an addendum to a WSA would not activate these internal computations. Consequently, the NRC continues to view the submission of a new WSA as necessary for it to fully assess the appropriateness of the specific enhanced weapons proposed by the licensee.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.15(f)(1)(i) to permit licensees submitting an application for combined preemption authority and enhanced weapons authority to either revise their physical security plan, training and qualification plan, or contingency response plan, or to submit an addendum to these plans. However, under 10 CFR 73.15(f)(1)(ii), a licensee is required to submit a new weapons safety assessment for each type of enhanced weapon the licensee is requesting authority to use.

Additionally, the NRC has revised the final rule language in 10 CFR 73.15(f)(2)(iii)(B) and 73.15(f)(2)(iii)(C) to permit a licensee to indicate in its application that possession of enhanced weapons would not affect the content of the licensee's NRC-approved safeguards contingency plan.

*Comment C-2:* One commenter recommended that the proposed language in 10 CFR 73.18(f)(2)(i) regarding the "numbers of enhanced weapons to be used" be replaced with "and how many [enhanced weapons] will normally be deployed." The commenter indicated this would "...remain consistent..." with the draft WSA, which is submitted with an application for combined preemption authority and enhanced weapons authority. (B&W-3)

**NRC Response:** The NRC agrees in part, and disagrees in part, with this comment. The NRC agrees that the licensee's application and security plans must contain information on the number of enhanced weapons to be deployed in security operations.

The NRC does not agree with the commenter's suggestion to only specify the number of enhanced weapons to be deployed. The total number of enhanced weapons possessed by a licensee is expected to be larger than the actual number of weapons to be deployed and would include enhanced weapons stored in armories (as reserves), stored in in-plant ready-service lockers, and used for training and qualification activities.

The licensee's application must specify the total quantity, types, and caliber or gauge of enhanced weapons requested. The NRC will include the specific quantities, types, and calibers or gauges of enhanced weapons approved under an application for combined preemption authority and enhanced weapons authority in the authorizing documentation issued to the licensee. The NRC licensee will need to provide this information to the ATF Federal firearms licensee (FFL) who will provide the enhanced weapons to the NRC licensee. The FFL provides this information to ATF to request preapproval of the transfer of any enhanced weapons from the FFL to the NRC licensee. ATF will only approve the transfer of enhanced weapons consistent with these NRC-specified limits.



Accordingly, the NRC has revised the final rule language in 10 CFR 73.15(f)(2)(i) to require licensees to identify in their physical security plan the quantities, types, and calibers or gauges of enhanced weapons that will be deployed.

Additionally, the NRC has revised the final rule language by adding new paragraph (iv) to 10 CFR 73.15(e)(3) and redesignating proposed paragraphs (iv) and (v), as (v) and (vi), respectively. The new paragraph (iv) requires licensees to identify in their application the total quantities, types, and calibers or gauges of enhanced weapons being requested.

Separately, the NRC has revised the final WSA to remove information on the total number of weapons to be deployed and to focus on the safety impact of the types of enhanced weapons that are proposed for deployment, which will resolve the commenter's concern with consistency.

*Comment C-3:* One commenter inquired whether "an enhanced weapon that has been modified to be used as a Multiple Integrated Laser Engagement System (MILES)" was still considered and treated as an enhanced weapon. The commenter indicated that "[w]hen modified, the MILES weapons support a blank fire-only system not capable of nor easily returned to live fire." (B&W-4)

**NRC Response:** The ATF has informed the NRC that the installation of MILES equipment on an enhanced weapon (i.e., machine guns) would not affect that modified weapon's status as an enhanced weapon. The use of MILES equipment neither affects the weapon's ability to expel a projectile nor destroys the frame or receiver of the firearm. Therefore, the weapon is still considered an enhanced weapon. Other types of enhanced weapons (i.e., short-barreled rifles and short-barreled shotguns) may also be considered enhanced weapons with MILES equipment installed. The licensee should contact ATF for additional information.

*Comment C-4:* Two commenters recommended that the proposed language in 10 CFR 73.18(f)(2)(iv)(D), requiring the assessment of potential safety impacts caused by both accidental and deliberate discharge of an enhanced weapon, should be modified to include only consideration of accidental discharges from enhanced weapons. The commenters indicated that a deliberate discharge would only occur during an actual assault against the facility. (B&W-6, NE11A1-7)

**NRC Response:** The NRC disagrees with this comment. The intent behind the NRC's inclusion of deliberate discharges was to require licensees to assess, in advance, reasonably predictable hazards arising from the deliberate firing of enhanced weapons, especially from fixed positions. This assessment enables a licensee to identify, consider, and implement measures to mitigate these reasonably predictable hazards while also providing licensees with broad flexibility in developing and implementing their protective strategy and insider mitigation programs. Under 10 CFR 73.15(f)(2)(iv)(D) (proposed rule 10 CFR 73.18(f)(2)(iv)(D)), the final rule requiring licensees to consider both deliberate and accidental discharges when conducting a weapons safety assessment.

Accordingly, the NRC has made no change to the final rule language in response to this comment.

*Comment C-5:* One commenter indicated that an NRC licensee that is also a Federal agency (e.g., the Tennessee Valley Authority (TVA) under the Tennessee Valley Authority Act of 1933, as amended, 16 U.S.C. 831–831ee) already has the capacity to “obtain, possess, and implement the use of enhanced weapons under current Federal laws.” Therefore, such licensees “should not be required to submit an application to the NRC for stand-alone preemption authority and/or enhanced weapons authority as prescribed in the proposed rule.” The commenter recommended adding a section to the subject rule that would “recognize TVA’s ability to obtain, possess, and implement the use of enhanced weapons without processing application through the NRC.” (TVA-3)

**NRC Response:** The NRC agrees with the comment. The final rule makes clear that obtaining either stand-alone preemption authority or combined preemption authority and enhanced weapons authority is voluntary. No licensee, including a licensee that already possesses weapons under other authorities that would be considered enhanced weapons under this rule, is required to apply to the Commission for Section 161A authority. The NRC does not feel it is necessary to modify the final rule language to make it clear that any specific licensee does not have to apply to the NRC for Section 161A authority if it has other authority to possess weapons that would be considered enhanced weapons under this rule.

Accordingly, the NRC has made no change to the final rule language in response to this comment.

*Comment C-6:* One commenter recommended that the NRC “take advantage of this current rulemaking” and “include stand-alone spent fuel storage facilities and transportation of spent fuel within the classes of designated facilities and activities in 10 CFR 73.18(c).” The commenter indicated that “objective reality” has changed since the NRC added at-reactor ISFSIs to 10 CFR 73.18(c) in the 2013 supplemental proposed rule. This change in environment is caused by the pending applications in 2016 by two firms for 10 CFR Part 72 licenses for away-from-reactor ISFSIs. Moreover, the commenter mentioned that these applicants had publicly indicated in meetings with the NRC that they would each expect to receive 3,000 to 4,000 shipments of spent fuel.

The commenter argued that changing 10 CFR 73.18(c) to include any NRC-regulated facility storing spent fuel was within the scope of this rulemaking, because the NRC had included at-reactor ISFSIs (storing spent fuel) in the 2013 supplemental proposed rule. The commenter also argued that, if the facility at each end of a spent fuel shipment is considered appropriate for Section 161A authority, then, during the shipment, the spent fuel itself should also be considered appropriate for Section 161A authority and within the scope of this rulemaking. The commenter indicated that addressing this issue in this final rulemaking would be “more effective and efficient for the NRC and would also support a national strategy for moving shutdown reactors [spent nuclear fuel] to central ISFSIs.” (SH2-3)

**NRC Response:** The NRC agrees with this comment. With the application of two centralized “away-from-reactor” ISFSIs for licenses under 10 CFR Part 72, the factors that established the boundaries for appropriate classes of facilities for Section 161A authority have changed since the NRC issued the 2011 proposed rule and the 2013 supplemental proposed rules. The NRC considers the inclusion of both at-reactor ISFSIs and away-from-reactor ISFSIs as designated classes of facilities under 10 CFR 73.15(c) (proposed rule 10 CFR 73.18(c)) as both reasonable and appropriate, because the spent nuclear fuel (SNF) is the same material of concern at both types of facilities. Additionally, because the material of concern in shipments of

SNF from either reactors or at-reactor ISFSIs to a centralized ISFSI is the same, the inclusion of “spent nuclear fuel transportation” under 10 CFR 73.15(c) as a Commission-designated activity under Section 161A of the AEA is also considered reasonable and appropriate.

Therefore, the NRC agrees that the inclusion of away-from-reactor ISFSIs and SNF transportation in this final rulemaking to be a more effective and efficient use of NRC resources than including these classes of facilities and activities in a separate follow-on enhanced weapons rulemaking.

As a conforming change, the NRC has added a cross reference in 10 CFR 73.2, “Definitions,” for the term “ISFSI” found in 10 CFR 72.3, “Definitions.”

As a second conforming change to include all types of ISFSIs, the NRC revised the 2013 proposed 10 CFR 73.51(b)(4)(ii) to remove references to “at-reactor ISFSIs” and explain that the provisions of 10 CFR 73.51(b)(4) apply only to ISFSI licensees subject to firearms background checks.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.15(c)(1)(iii) and (c)(2)(iii) to include all types of ISFSIs and added new paragraphs (c)(1)(iv) and (c)(2)(iv) to include SNF transportation.

Additionally, the NRC has revised the final rule language in 10 CFR 73.2 to add a definition for the term “Independent Spent Fuel Storage Installation or ISFSI.”

Finally, the NRC has revised the final rule language in 10 CFR 73.51(b)(4)(ii) to make clear that 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 10 CFR 73.17.

#### **D. Possession, Use, Transfers, and Transportation of Enhanced Weapons**

*Comment D-1:* One commenter indicated that the proposed rule:

...dangerously limits the affected facilities’ [possessing enhanced weapons] ability to keep their firearms in good repair...the rule does not allow for covered weapons to be taken off premises for repairs without a full-scale transfer in accordance with the National Firearms Act (NFA) and other restrictions. The process governing the transfers for machine guns and short-barreled rifles is extremely cumbersome and is generally accompanied by a series of long waits as various tax stamps are approved, mailed, and transfers ...are performed and approved. Such a process discourages preventive maintenance and creates the risk that affected facilities will be stuck without sufficient operable safe weapons while they wait.

(RMS-4)

**NRC Response:** The NRC disagrees with the comment. The commenter indicated that the proposed rule applied transfer restrictions under the NFA to all covered weapons. This is incorrect. Transfer restrictions only apply to enhanced weapons, not to all types of covered weapons (i.e., enhanced weapons are a subset of covered weapons).

The 2011 proposed rule stated that removal of an enhanced weapon from a licensee's facility to a gunsmith or manufacture for the purposes of repair or maintenance and subsequent return of the weapon to the licensee or certificate holder was an example of a transfer of an enhanced weapon that required prior ATF approval. On February 18, 2000, ATF had issued an open letter entitled "Repair of NFA Firearms" (ML14227A666).<sup>1</sup> This letter made clear that ATF does not consider the temporary conveyance of an NFA-registered firearm to a gunsmith for repair to be a "transfer" under the terms of the NFA.

Accordingly, to be consistent with ATF's February 2000 open letter the NRC has revised the final rule language in 10 CFR 73.15(m)(5)(i) by removing this paragraph and relocating it as new 10 CFR 73.15(m)(3)(iii).

Additionally, the NRC has revised the final rule language in 10 CFR 73.15(m)(7) by deleting paragraph (i) and redesignating paragraphs (ii), (iii), and (iv) as paragraphs (i), (ii), and (iii), respectively.

*Comment D-2:* Several commenters indicated that the proposed 10 CFR 73.18(m)(6), "Transfer of Enhanced Weapons," could be interpreted as preventing the turnover of an enhanced weapon from one authorized security officer to another authorized security officer during a shift change, or rotation between posts during the course of a shift. The commenters indicated this was unnecessarily burdensome and would require significantly more enhanced weapons to be possessed in inventory, "while providing no discernible benefit." One commenter also recommended that enhanced weapons be permitted to be secured in the same location as standard weapons. (NFS-5, B&W-8, NE11A1-3)

**NRC Response:** The NRC agrees with the comment. The proposed rule language could be misinterpreted to consider the turnover of an enhanced weapon to be a transfer. The NRC and the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, agreed that the issuance for duty, return to storage, or exchange of weapons between security personnel during post rotation would not be a "transfer" of the enhanced weapon (see ML090080191). The NRC agrees that authorized storage locations for enhanced weapons may be the same as those used by the licensee for the storage of other (non-enhanced) covered weapons, provided these weapons storage locations are described in the licensee's physical security plan.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.15(m)(8) to make clear that security personnel, following the completion of their official duties, must either return the enhanced weapon to the licensee's authorized enhanced weapons storage locations or turn over responsibility for the enhanced weapon to another authorized, on-shift security personnel and do not constitute a "transfer" of the enhanced weapon.

## **E. Training and Qualification on Enhanced Weapons**

*Comment E-1:* One commenter recommended that the proposed language in 10 CFR 73.19(f)(3) on the training and qualification plan for enhanced weapons include standards developed by local and State agencies as well as "Department of Criminal Justice

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<sup>1</sup> "NFA Firearms" means a weapon that is required to be registered with ATF under the National Firearms Act (26 U.S.C. Chapter 53) in the "National Firearms Registration and Transfer Record" (see 26 U.S.C. 5841). This includes machineguns, short-barreled rifles, and short-barreled shotguns, which the NRC has defined as "enhanced weapons." (See [https://www.atf.gov/firearms/docs/repair-nfa-firearms.](https://www.atf.gov/firearms/docs/repair-nfa-firearms))

Services (DCJS) Training Academies” to the list. The commenter indicated that “[a]dding Local, State, and DCJS agencies would provide licensees an opportunity to receive specialized/enhanced training from a number of qualified agencies.” (B&W-7)

**NRC Response:** The NRC agrees in part, and disagrees in part, with the comment. The NRC agrees that State law enforcement training centers and State DCJS training academies can be a source of material for training on enhanced weapons and should be included in 10 CFR 73.15(f)(3) (proposed rule 10 CFR 73.18(f)(3)).

However, the NRC disagrees with the comment on the use of standards developed by local agencies. The NRC is concerned that incorporating the standards developed by local agencies would introduce too great a degree of variability.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.15(f)(3) to permit licensees to use information provided by State law enforcement training centers, Federal training centers, or State DCJS training centers in the development of training and qualification plans for enhanced weapons.

#### **F. Inventory of Enhanced Weapons**

*Comment F-1:* Several commenters indicated that the proposed 10 CFR 73.18(o)(3)(vi), “Periodic inventories of enhanced weapons,” was unnecessarily restrictive in specifying an interval between monthly inventories of “30 ± 3 days.” The commenters suggested that an interval of “30 + 3 days” from the previous monthly inventory was more appropriate. Permitting intervals shorter than 27 days would cause no degradation in the effectiveness of the inventory and would allow licensees and certificate holders the necessary flexibility in managing their enhanced weapons activities. Another commenter recommended that monthly inventories be conducted every 30 ± 7 days to provide consistency between the proposed monthly and semiannual inventory requirements. (NFS-6, B&W-9, NE11A1-4)

**NRC Response:** The NRC agrees in part, and disagrees in part, with the comment. The NRC disagrees with those commenters that recommended an interval of “30 + 3 days” from the previous monthly inventory as this is now considered too short of a variance.

The NRC agrees in principle with the commenter who recommended that monthly inventories be conducted every 30 ± 7 days. The consistency between the variance requirements for both monthly and the annual inventory should both be 7 days, rather than the proposed 3 days. The NRC also agrees with the commenters that a minimum variance on the inventory period is not necessary (i.e., 30 + 7 days vs. 30 ± 7 days). Therefore, the NRC has integrated these issues and is requiring monthly inventories to be completed at intervals of at least every “30 + 7 days” under 10 CFR 73.15(o)(2)(vi) (proposed rule 10 CFR 73.18(o)(3)(vi)).

Accordingly, the NRC has revised the final rule language in 10 CFR 73.15(o)(2)(vi) to specify a variance of “+ 7 days” for monthly enhanced weapons inventories.

*Comment F-2:* Several commenters indicated that the proposed 10 CFR 73.18(o)(4)(iii), was unnecessarily restrictive in specifying an interval between semiannual inventories of 180 ± 7 days. The commenters suggested that an interval of 180 + 7 days from the previous semiannual inventory was more appropriate. Permitting intervals shorter than 173 days would cause no degradation in the effectiveness of the inventory and would allow licensees and

certificate holders the necessary flexibility in managing their enhanced weapons activities. Several other commenters (licensees) also recommended the in-depth inventory be conducted annually instead of semiannually. These commenters indicated that annual in-depth inventories provided adequate accountability, given the level of security inside these licensee facilities and their controls over both standard and enhanced weapons. In contrast, one commenter recommended that the in-depth semiannual inventory be conducted quarterly versus semiannually. (CR-7, NFS-3, NFS-7, NE11A1-5)

**NRC Response:** The NRC agrees in part, and disagrees in part, with the comment. The NRC disagrees with the commenter who suggested performing in-depth inventories every 3 months. Given the degree of physical security at a licensee facility possessing enhanced weapons, such a frequency would be excessively burdensome without sufficient corresponding benefit.

The NRC agrees with those commenters suggesting that the variability for in-depth inventories should be “+ 7 days” rather than “± 7 days.” Also, the NRC agrees with these commenter’s rationale that, given the degree of physical security at a licensee facility possessing enhanced weapons, the in-depth enhanced weapons inventories need only be conducted annually. Therefore, the NRC has integrated these issues and is requiring that licensees possessing enhanced weapons conduct an in-depth inventory annually, at an interval of 365 + 7 days under 10 CFR 73.15(o)(3)(iii) (proposed rule 10 CFR 73.18(o)(4)(iii)).

Accordingly, the NRC has revised the final rule language in 10 CFR 73.15(o)(3)(iii) to specify that annual inventories must be completed at an interval of less than 365 + 7 days. The NRC also made conforming changes to 10 CFR 73.15 (o)(3)(iv) to refer to an annual inventory.

Additionally, the NRC has revised the final rule language in 10 CFR 73.15(o)(3)(iv) by making a corrective change to the cross-reference language from “the normal monthly inventory required under paragraph (n) of this section” to “the normal monthly inventory for that particular month, as required under paragraph (o) of this section.”

*Comment F-3:* Two commenters indicated that the proposed 10 CFR 73.18(o)(5) requiring two-person teams to conduct periodic inventories of enhanced weapons was unnecessarily restrictive, if the personnel conducting these inventories were subject to the licensee’s behavioral observation or human reliability programs. The commenters suggested that participation in such a program would mitigate the NRC’s concerns over a single individual surreptitiously manipulating the enhanced weapons’ inventory results. (B&W-10, NE11A1-6)

**NRC Response:** The NRC agrees with the comment. The NRC agrees that for security personnel who are included within a licensee’s behavioral observation or human reliability programs mitigates the NRC’s concerns on falsifying inventories; and therefore, under 10 CFR 73.15(o)(4) (proposed rule 10 CFR 73.18(o)(5)), a two-person team for inventorying enhanced weapons is not necessary.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.15(o)(4) to permit single individuals (who are subject to behavioral observation or human reliability programs) to conduct inventories of enhanced weapons.

Additionally, the NRC has revised the final rule language in 10 CFR 73.15(o)(6) (proposed rule 10 CFR 73.18 (o)(6)) as a conforming change to permit such single individuals to also reseal secure weapons containers with a new tamper-indicating device.

#### **G. Applying for Preemption Authority**

*Comment G-1:* One commenter indicated that the 2011 proposed rule language in 10 CFR 73.18(d)(3)(ii) required licensees and certificate holders "...[to] indicate that a sufficient number of security personnel have completed satisfactory firearms background checks to meet the licensee's or certificate holder's security personnel minimum staffing and fatigue requirements, in accordance with § 73.19." However, there is no reference to fatigue requirements in 10 CFR 73.19, "Firearms Background Checks for Armed Security Personnel." The commenter recommended citing the fatigue requirements from 10 CFR 73.19 in 10 CFR 73.18, "Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws." (B&W-1)

**NRC Response:** The NRC agrees with the comment. The NRC agrees that the 2011 proposed rule language was not clear on fatigue requirements. In the 2015 supplemental proposed rule, the NRC relocated the requirements from 10 CFR 73.18(d)(3)(ii) to 10 CFR 73.18(d)(4)(i) for licensees applying for stand-alone preemption authority and revised the language to specify "any applicable fatigue requirements under 10 CFR Part 26 of this chapter" (10 CFR Part 26, "Fitness for Duty Programs") to reflect varying fatigue requirements for different types of licensees. The NRC also made a similar change to 10 CFR 73.18(e)(5)(i) of the 2015 supplemental proposed rule for licensees applying for combined preemption authority and enhanced weapons authority. These revised requirements in the proposed rule were carried forward into 10 CFR 73.15(d)(4)(i) and 73.15(e)(5)(i) of the final rule.

Accordingly, the NRC has made no change to the final rule language in response to this comment.

#### **H. Firearms Background Checks**

*Comment H-1:* One commenter indicated that the FRN does not clearly state whether security personnel would continue to be granted access to covered weapons while the results of their initial firearms background check are pending. The commenter also indicated that the notice does not clearly state whether security personnel would continue to be granted access to covered weapons while the results of their recurring firearms background checks are pending. (CR-5)

**NRC Response:** The NRC agrees with the comment. The NRC agrees the 2011 proposed rule language was not clear on security personnel's access to covered weapons while their firearms background check results are pending. In the 2015 supplemental proposed rule, the NRC revised the language previously contained in 10 CFR 73.19(b)(8) and (b)(9) of the 2011 proposed rule, to clarify that security personnel may continue to have access to covered weapons pending the results of the initial firearms background check. However, the 2011 proposed rule in 10 CFR 73.19(f)(3)(ii) did state that security personnel may continue to be granted access to covered weapons while the results of their periodic firearms background check are pending.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.17(b)(4)(ii) and 10 CFR 73.17(f)(4)(i) to clarify the continuation of access to covered weapons for licensee security personnel pending the completion of an initial and periodic firearms background check, respectively.

*Comment H-2:* One commenter indicated that “requiring firearms background checks for all employees at Commission-designated facilities with access to covered weapons will likely result in a significant increase in applications for enhanced weapons authority. Requiring background checks only for access to enhanced weapons was a deterrent to applying for such weapons.” (CR-6)

**NRC Response:** The NRC disagrees with the comment. The NRC does not agree that requiring firearms background checks for security personnel whose official duties require access to covered weapons will serve as an inducement for a licensee to apply for combined preemption authority and enhanced weapons authority. More importantly, requiring such firearms background checks for the security personnel of a licensee applying for either stand-alone preemption authority or combined preemption authority and enhanced weapons authority is consistent with Section 161A of the AEA and the Firearms Guidelines, Revision 2, that were issued by the NRC, with the approval of the U.S. Attorney General, on March 8, 2019 (84 FR 8546).

Accordingly, the NRC has made no change to the final rule language in response to this comment.

*Comment H-3:* Several commenters expressed concern that the term “break in service” in 10 CFR 73.19(b)(9) (used to trigger a new firearms background check) of the 2011 proposed rule, was not clear. The commenters indicated that, while a termination of employment would clearly meet this term, it was unclear whether an extended leave of absence (for medical leave) or active-duty service with the military reserves or National Guard also meet the proposed “break in service” criteria. (NFS-8, B&W-22, NEI1A1-9)

**NRC Response:** The NRC agrees with the comment. The NRC had included in the 2011 proposed rule a provision in 10 CFR 73.19(b)(9) to require a firearms background check for breaks in service greater than 1 week. However, this requirement contained no exceptions. Consequently, in the 2015 supplemental proposed rule, the NRC included two exceptions for the break-in-service firearms background check in proposed 10 CFR 73.19(b)(11)(iv). The first exception is for active-duty military service in the military reserves or in the National Guard, without a time limit. The second exception was for 12 months and had two conditions. The first condition would require the licensee to verify (using an industrywide information-sharing database) that the individual had completed a satisfactory firearms background check within the previous 12 months, rather than completing a new firearms background check. The second condition would require this previous firearms background check to include a duty station location within the State or Territory where the current licensee facility or activity was occurring (to permit the FBI to check for applicable State restrictions).

The NRC included these exceptions based on insights gained as a result of this comment, the development of the stand-alone preemption authority facility designation Order EA-13-092, and discussions with NEI on the capabilities of the commercial nuclear power industry’s Personnel Access Database System (PADS). In the final rule under



10 CFR 73.17(b)(9)(iv) (proposed rule 10 CFR 73.19(b)(11)(iv)) the NRC has retained these two exceptions for conducting a break-in-service firearms background check.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.17(b)(9)(iv) to retain these two exceptions.

*Comment H-4:* Two commenters supported a periodicity of 5 years for recurring firearms background checks. In addition, the commenters suggested alternate wording for 10 CFR 73.19(f)(1), (f)(2), and (f)(3) in the 2011 proposed rule to reflect that firearms background checks shall be completed “at least once every five calendar years” and that licensee and certificate holders may conduct firearms background checks “at an interval of less than once every five calendar years, at their discretion.” (NFS-9, B&W-23)

**NRC Response:** The NRC agrees with the comment. The NRC, in the 2015 supplemental proposed rule, revised 10 CFR 73.19(f) to require periodic (i.e., recurring) firearms background checks “at least once every 5 calendar years.” Separately, in the 2015 supplemental proposed rule, the NRC removed discretionary language from 10 CFR 73.19(f)(2) that would have permitted licensees to conduct firearms background checks more frequently (“at their discretion”) than required by the proposed regulations. The NRC intended relocating this discretionary language to 10 CFR 73.19(b)(10) of the 2015 supplemental proposed rule. However, this discretionary language was inadvertently omitted from the new proposed 10 CFR 73.19(b)(10) in the 2015 supplemental proposed rule. Therefore, in this final rule under 10 CFR 73.17(f)(3), the NRC is reinstating language from the 2011 proposed rule permitting licensees to conduct firearms background checks more frequently than once every 5 years, at their discretion. This approach will reduce impacts on licensees by permitting them to synchronize firearms background checks with other access authorization and criminal history records checks performed upon security personnel.

Accordingly, the NRC has retained the final rule language in 10 CFR 73.17(f)(1) to require licensee to conduct firearms background checks at least once every 5 calendar years.

Additionally, the NRC has revised the final rule language in 10 CFR 73.17(f)(3) to permit licensees to conduct periodic firearms background checks at intervals of less than every 5 years, at the licensee’s discretion.

*Comment H-5:* One commenter inquired if the term “any security personnel” in proposed 10 CFR 73.19(b)(4)(iii) includes “security management, security staff members and members of the security organization who maintains the lock controls to the approved weapons storage area(s) who normally do not have access to covered weapons, but at times may have access to an armory or observe firearms training on a firing range?” (B&W-20)

**NRC Response:** The NRC agrees with the comment. The NRC agrees the term “any security personnel” in 10 CFR 73.19(b)(4)(iii) was not sufficiently clear about who would be subject to a firearms background check. In the 2015 supplemental proposed rule, the NRC revised 10 CFR 73.19(b)(2) to identify the individuals who would be considered “security personnel whose official duties require access to covered weapons” and thus be subject to firearms background checks. These individuals include security management and staff with access to armories and weapons storage lockers containing covered weapons. The revised requirement in 10 CFR 73.19(b)(2)(v) of the proposed rule identifying the security personnel

subject to firearms background checks was carried forward into 10 CFR 73.17(b)(2) of the final rule. Therefore, the commenter's concerns are already addressed in the final rule.

Accordingly, the NRC has made no change to the final rule language in response to this comment.

*Comment H-6:* One commenter suggested in the Preamble (Statement of Considerations [of the final rule]) that the phrase "...to conduct a firearms background check and would specify a retention period for this information" should instead only state the retention period for this information. The commenter recommended that the retention period information should state:

On proceed transactions, all personally identifiable information is purged within 24 hours of notification to the licensee/certificate holder; the FFL number and state of residence are purged within 90 days from the creation date; and the [NICS transaction number] NTN and creation date are retained indefinitely. On denied transfers, all information is retained for 110 years after the subject's date of birth or 110 years after the creation date of the transaction, whichever is sooner. For cancelled requests, all information is purged within 90 days from the creation date.

(FBI-11)

**NRC Response:** The NRC disagrees with the comment. The information on the FBI's records retention requirements is not germane to how licensees implement the final rule.

Accordingly, the NRC has made no change to the final rule language in response to this comment.

*Comment H-7:* One commenter indicated that NRC licensees that are also a Federal agency (e.g., TVA, under the Tennessee Valley Authority Act of 1933, as amended, 16 U.S.C. 831-831ee) already have "the capacity to conduct firearms background checks without processing through the NRC as prescribed in the proposed rule." The commenter indicated "TVA Nuclear Security currently completes firearms background checks of all security personnel with access to covered weapons, which includes a check of the individual's fingerprints against the ... (FBI's) fingerprint system and a check of the individual's identifying information against the FBI's National Instant Criminal Background Check System (NICS)." The commenter indicated that "[r]equiring TVA to process these checks through the NRC would not be of benefit for either agency, would be an unnecessary administrative and cost burden to all agencies involved." The commenter recommended adding wording similar to 10 CFR 73.57(b)(2)(iii) to this rulemaking that would "recognize TVA's ability to continue processing firearms background checks without submitting such requests through the NRC [as specified] under [proposed] § 73.19." (TVA-2)

**NRC Response:** The NRC agrees with the comment. The NRC agrees that NRC licensees that are also a Federal agency are permitted to submit fingerprints and identifying information directly to the FBI to accomplish firearms background checks. Therefore, these licensees may submit fingerprints and other identifying information directly to the FBI in support of an application to the NRC for stand-alone preemption authority or combined preemption authority and enhanced weapons authority. However, such licensees will be required to comply with the remaining provisions of the final rule contained in 10 CFR 73.17.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.17(e)(5), 10 CFR 73.17(m)(4), and 10 CFR 73.17(n)(2) to permit licensees who are also federal agencies to directly submit firearms background checks to the FBI.

Additionally, the NRC has revised the final rule language in 10 CFR 73.17(n)(3) as a conforming change by redesignating proposed rule 10 CFR 73.19(n)(2) as paragraph (n)(3).

*Comment H-8:* One commenter indicated that 10 CFR 73.19(r) of the 2015 supplemental proposed rule did not mention the development of a firearms background check plan for licensees previously issued confirmatory orders granting them Section 161A authority. In 10 CFR 73.19(b)(1) of the 2015 supplemental proposed rule, licensees that have applied for “stand-alone preemption authority or for combined enhanced weapons and preemption authority” must establish a firearms background check plan. The NRC, in Order EA-13-092 (78 FR 35984; June 14, 2013), did not require those affected licensees to develop a firearms background check plan. (SH2-1)

**NRC Response:** The NRC agrees with the comment. The NRC agrees that a firearms background check plan under 10 CFR 73.17(b) is required for any licensee applying for either stand-alone preemption authority or for combined preemption authority and enhanced weapons authority under 10 CFR 73.15. However, the NRC did not include a requirement to develop a firearms background check plan provision when developing the requirements of Order EA-13-092.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.15(s)(3) to require licensees transitioning from a confirmatory order granting them Section 161A authority to the requirements of the final rule to develop a firearms background check plan that meets the requirements of 10 CFR 73.17(b).

*Comment H-9:* One commenter supported the appeals process for “delayed” and “denied” NICS responses in the 2011 proposed rule. The commenter stated that it is not unusual for checks to be “delayed” only to be approved days later. (RMS-3)

**NRC Response:** The NRC agrees with the comment. Security personnel who receive an adverse firearms background check may appeal or provide additional information directly to the FBI.

Accordingly, the NRC has made no change to the final rule language in response to this comment.

## **I. Removing Personnel from Access to Covered Weapons**

*Comment I-1:* One commenter stated that the 2011 proposed 10 CFR 73.19(b)(6) was too restrictive and suggested “individuals [with access to enhanced weapons] who receive a delayed response [to a firearms background check during the proposed 180-day transition period following final rule issuance should] be allowed access to covered weapons while the individual obtains additional information to resolve the delayed response.” The commenter indicated “[i]f the individual is not allowed access to covered weapons while collecting additional information, it will place a burden on the licensee and may unfairly punish the individual.” (B&W-21, B&W-24)

**NRC Response:** The NRC disagrees with the comment. During the development of the Firearms Guidelines implementing Section 161A of the AEA, the U.S. Department of Justice (DOJ) specifically requested the provision restricting NRC licensees that currently possess machine guns (a type of enhanced weapons) to only permit security personnel who receive a “proceed” NICS response to continue access to those machine guns. This provision remains in the Firearms Guidelines, Revision 2, that were issued by the NRC, with the approval of the U.S. Attorney General, on March 8, 2019. Therefore, this provision is reflected in the final rule.

The NRC has determined, based on interactions with the FBI on the processing of firearms background checks, that these checks can be accomplished quickly and efficiently with minimum impact on licensees. Furthermore, based on 7 years of operational experience with the FBI on processing firearms background checks submitted from those licensees who have received confirmatory orders, the volume of delayed or denied NICS responses has been minimal.

Additionally, the 180-day transition period was removed from Revision 1 to the Firearms Guidelines. Consequently, under the final rule provisions in 10 CFR 73.15(d)(4)(i) and 10 CFR 73.15(e)(5)(i), licensees are not required to complete their initial firearms background checks within a specific time period. Therefore, the NRC does not expect that the requirement that security personnel who receive a “denied” or “delayed” NICS response not be assigned to any official duties requiring access to covered weapons will pose a burden to licensees.

Accordingly, the NRC has made no change to the final rule language in response to this comment.

*Comment I-2:* One commenter indicated that the requirement in 10 CFR 73.19(b)(6) of the 2011 proposed rule on the removal of access to enhanced weapons by personnel who have received a “delayed” response should specify when the individual must be removed from duties requiring access to weapons). The commenter indicated this could be immediately or within 3 business days or 30 calendar days of the “delayed” NICS response. The commenter recommended 3 business days as an appropriate delay, because this would be consistent with the delay provisions for NICS checks under the Brady Handgun Violence Prevention Act. (FBI-13)

**NRC Response:** The NRC disagrees with the comment. The commenter recommends that security personnel receiving a delayed NICS response be removed from official duties requiring access to covered weapons within three business days. The NRC disagrees with the commenter’s suggestion because the security personnel may currently have access to covered weapons. Therefore, the NRC seeks to minimize the potential security risk by only permitting licensee security personnel who have received a “proceed” NICS response to have access to covered weapons. In the 2015 supplemental proposed rule, the NRC revised proposed 10 CFR 73.19(b)(8)(ii) to require licensees to remove “without delay” security personnel who received a “delayed” NICS response from duties requiring access to enhanced weapons. The revised requirement in 10 CFR 73.19(b)(8)(ii) to remove “without delay” security personnel who receive a “delayed” NICS response was carried forward into 10 CFR 73.17(b)(8) of the final rule.

Accordingly, the NRC has made no change to the final rule language in response to this comment.

*Comment I-3:* One commenter inquired whether 10 CFR 73.19(g) in the 2011 proposed rule, the FBI would be subsequently notified after the NRC received, from a licensee or certificate holder, notice that it was “removing a security officer from duties requiring access to covered weapons due to the discovery of any disqualifying status or the occurrence of any disqualifying event.” The commenter indicated the FBI could use this information to change the individual’s status in the FBI’s voluntary appeal file (VAF). (FBI-14)

**NRC Response:** The NRC agrees with the comment. The NRC, in 10 CFR 73.19(g)(1) of the 2015 supplemental proposed rule, that licensees would be required to notify the NRC “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 event that would prohibit them from possessing, receiving, or using firearms or ammunition.” It is both reasonable and appropriate for the NRC to forward such licensee information to the FBI to enable it to maintain accurate VAFs.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.17(g)(2) to indicate that the NRC would notify the FBI of any notifications that the NRC has received from licensees under 10 CFR 73.17(g)(1).

*Comment I-4:* One commenter suggested that the language in 10 CFR 73.19(p)(9) of the 2011 proposed rule on “... maintain information about himself or herself in a Voluntary Appeal File (VAF) to be established by the FBI and checked...” should be replaced with “...maintain information about himself or herself in a Voluntary Appeal File (VAF) established by the FBI and checked....” (FBI-16)

**NRC Response:** The NRC disagrees with the comment. The NRC has reevaluated the need to address the VAF provisions in the final rule based on this comment. The FBI is responsible for establishing and implementing the VAF process. The final rule requires licensees to inform their security personnel of the FBI’s appeal process for resolving “delayed” or “denied” NICS responses. The FBI’s appeal process also addresses the VAF process. Consequently, the NRC has determined that it is appropriate to remove information related to the VAF process from the final rule.

Accordingly, the NRC has revised the final rule language 10 CFR 73.17(p) to remove proposed rule provision 10 CFR 73.19(p)(9), which contained language relating to the FBI’s VAF process.

## **J. Enhanced Weapons Event Notifications**

*Comment J-1:* One commenter indicated that event notifications for lost or stolen enhanced weapons “should include notification to local police agencies affected by the event.” (ANON-4)

**NRC Response:** The NRC agrees with the comment. The 2011 proposed rule included provisions in proposed 10 CFR 73.71(g)(iii) that would require licensees authorized to possess enhanced weapons to “[N]otify the appropriate local law enforcement officials [LLEA]...of the discovery of stolen or lost enhanced weapons.” The NRC retained this provision in the final rule and has redesignated it as 10 CFR 73.1200(m)(1)(iii).

Accordingly, the NRC has retained in the final rule language in 10 CFR 73.1200(m)(1)(iii) requiring a licensee to report lost or stolen enhanced weapons to the appropriate LLEA as soon as possible, but not later than 48 hours after the time of discovery.

*Comment J-2:* One commenter indicated that the language of 10 CFR 73.71(g)(1)(iii) was too restrictive in that it would only permit telephonic notifications to LLEA [local law enforcement agency] officials about stolen or lost enhanced weapons. The commenter indicated that an in-person notification to law enforcement officials about stolen or lost enhanced weapons would also be acceptable. (NFS-10)

**NRC Response:** The NRC agrees with the comment. The NRC's proposed language was intended to preclude e-mail notifications of such events to ensure human-to-human contact and thus provide the LLEA recipient with the immediate opportunity to ask follow-up questions. The commenter's suggestion permitting in-person notifications would also accomplish these objectives.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1200(m)(1)(iii) to permit licensees to make notifications to LLEA officials of stolen or lost enhanced weapons by telephone or in person.

#### **K. Physical Security Event Notifications**

*Comment K-1:* One commenter was concerned that several of the 1-hour reportable events in Appendix G refer to an individual's "malevolent intent." The commenter indicated that malevolent intent should not be a factor for licensees in determining the reportability of an event, as this was both impractical and inappropriate. This is because (1) it is unlikely that a licensee could make such a determination within the 1-hour notification period, and (2) similar to the NRC's previous statements on evaluations of threats—only the appropriate part of the NRC (i.e., the Office of Investigations), the intelligence community, or a law enforcement agency has the capability and authority to assess the presence or absence of malevolent intent associated with a potential security event notification.

In contrast, the second commenter recommended that malevolent intent should be added to the proposed 1-hour notification in Appendix G, Section I.(b)(1), about an actual entry of an unauthorized person into a protected area (PA), vital area (VA), material access area (MAA), or controlled access area (CAA), which would provide clarity on unintended acts. The commenter also recommended that malevolent intent should be added to the 1-hour, 4-hour, and 8-hour notifications in proposed Appendix G, Sections I.(a)(4), I.(a)(5), II.(a)(1)(B), III.(1), III.(2), and III.(3), respectively, on unauthorized operation of controls or structures, systems, and components, to eliminate reporting [inadvertent] human error events.

The second commenter also recommended that the 8-hour notifications in proposed Appendix G, Sections III.(1), III.(2), and III.(3) be modified to exclude events where the licensee "has reason to believe the event was caused by malicious intent." (BY-1, NE11A2-12, NE11A2-17, NE11A2-18, NE11A2-35, NE11A2-40)

**NRC Response:** The NRC agrees with the first commenter and disagrees with the second commenter. The NRC agrees that licensees do not possess the personnel resources and qualifications to assess whether malevolent intent was present in a physical security event. A determination of malevolent intent may only be made by the NRC's Office of Investigations,

the intelligence community, or a law enforcement agency. Therefore, a determination of whether malevolent intent was present is not considered appropriate for use by a licensee as a screening criterion in determining whether a security event is reportable. However, a licensee may use a government determination that malevolent intent was not present as a basis for subsequently withdrawing a previous security event notification as invalid.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1200 to remove the term “malevolent intent” as a screening criterion for licensees to use in evaluating whether a notification should be made under this section.

*Comment K-2:* One commenter was concerned that “although willful unauthorized attempted introduction of contraband into a PA is now a federal crime [see 42 U.S.C. 2278a.a(1) and 10 CFR 73.81(c)], the reportability regulations place the agency’s ability to investigate such potential crimes on whether licensees first determine the crime was committed, and [then to] report it.” If the licensee concluded that the event did not involve malevolent intent, then it would only be required to be logged in the SEL [Safeguards Event Log]. As these logs may only be inspected by the NRC staff at an extended frequency (e.g., annually), the NRC would be deprived of the ability to investigate such events in a timely manner. The commenter recommended that “[a]ll attempts to introduce contraband should be reported to allow the agency to independently assess the threat, regardless of the licensee’s determination of intent.” (BY-2)

**NRC Response:** The NRC agrees with the comment. As with the NRC’s response to Comment K-1, the NRC has removed “malevolent intent” as a screening criterion for use by licensees in determining whether an event is reportable under the new physical security event notification requirements.

The NRC also agrees with the recommendation that the attempted introduction of contraband should be reported. Consequently, the NRC in the final rule has retained a notification requirement in 10 CFR 73.1200(e)(1)(iv) on the attempted introduction of contraband.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1200(e) and (f) to remove the term “malevolent intent” as a screening criterion for licensees use in evaluating whether a notification should be made for the attempted introduction of contraband.

*Comment K-3:* One commenter suggested that all 4-hour and 8-hour reportable events be consolidated into the 24-hour reportable events. (B&W-30)

**NRC Response:** The NRC disagrees with the comment. The NRC’s approach in the proposed rule was to ensure timely receipt of information while reducing an unnecessary burden on licensees. Currently licensees are required to report physical security events within 1 hour. This approach does not take into account the security significance of the event being reported. The proposed rule adopted a risk informed, graded approach to security event notifications similar to current NRC safety-related notifications for power reactor licensees (e.g., 1-hour, 4-hour, and 8-hour safety event notification requirements for power reactors under the current regulations in 10 CFR 50.72). The use of 1-hour, 4-hour, and 8-hour notification requirements take into account the security significance of the event being recorded while giving licensees increased flexibility and preserving the NRC’s ability to be made aware of more significant

issues within an appropriate timeframe. This risk-informed, graded approach was carried forward into the final rule.

Accordingly, the NRC did not make any changes to the final rule language in response to this comment.

*Comment K-4:* One commenter suggested that the preamble (i.e., the introductory text) of the proposed Appendix G to 10 CFR Part 73 was both incomplete and duplicated the language in the proposed 10 CFR 73.71 and, therefore, recommended its deletion. (GE-3)

**NRC Response:** The NRC agrees with the comment. The NRC agrees that this introductory text was confusing. The NRC is consolidating in the final rule the current requirements of 10 CFR 73.71 and Appendix G to 10 CFR Part 73 into three new sections under new Subpart T to 10 CFR Part 73. These include: 10 CFR 73.1200, 73.1205, and 73.1210 (i.e., physical security event notification requirements, written follow-up reports to physical security event notification requirements, and recordkeeping of physical security event requirements, respectively). Accordingly, Section 73.71 and Appendix G to 10 CFR Part 73 are removed and reserved in the final rule. This action of consolidating notification requirements into 10 CFR 73.1200 resolves the commenter's issue of incomplete and redundant language in the preamble of the 2011 proposed Appendix G.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.71 and Appendix G to 10 CFR Part 73 to remove and reserve these provisions.

Additionally, the NRC has revised the final rule language to create a new Subpart T to 10 CFR Part 73, which includes new sections: 10 CFR 73.1200, 73.1205, and 73.1210.

*Comment K-5:* Two commenters suggested that the proposed Appendix G, Section I(j) on the loss or theft of classified information is inconsistent with the NRC's current equivalent requirements in 10 CFR 95.57(a) and (b). The first commenter recommended that the NRC delete the duplicative language on classified information in Appendix G or reconsider these notification requirements. The commenter also indicated that "the organization and wording of the proposed changes to 10 CFR 73.71 and Appendix G to 10 CFR Part 73 could create a requirement which results in the unnecessary disclosure of classified information related security events to individuals without a need-to-know."

The second commenter indicated that 10 CFR Part 73 did not define the term "Restricted Data" used in Section I(j) of proposed Appendix G. (GE-1, GE-5, NE11A2-38)

**NRC Response:** The NRC agrees with the comment. The NRC agrees that the classified information reporting events described in the proposed rule in Appendix G to 10 CFR Part 73, Section I.(j), are duplicative of the NRC's current reporting requirements in 10 CFR Part 95, "Facility Security Clearance and Safeguarding of National Security Information and Restricted Data," regarding the loss, compromise, or possible compromise of classified information under 10 CFR 95.57, "Reports." Moreover, 10 CFR 95.5, "Definitions," defines the term "Restricted Data" (RD).

As for the first commenter's concern on the "unnecessary disclosure of classified information-related security events to individuals without a need-to-know," the NRC views that the continued use of the current 10 CFR 95.57 reporting process and the notification process



methods in Appendix A to 10 CFR Part 73, “U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses,” Sections III. and IV., will ensure that classified information is only available to personnel with an appropriate security clearance and the need-to-know.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1200 to remove the provisions on reporting the loss or theft of classified information that were in the proposed rule Appendix G to 10 CFR Part 73, Section I.(j).

Additionally, the NRC has revised the final rule language in 10 CFR 73.1200(t) by adding a cross-reference to the current reporting requirements in 10 CFR 95.57 on the loss or compromise of classified national security information or RD.

Additionally, the NRC has retained the final rule language in Appendix A to 10 CFR Part 73, Sections III. and IV., regarding the secure communication of classified event notifications to the NRC Headquarters Operations Center.

Finally, the NRC has revised the final rule language in 10 CFR 73.2 by adding a cross-reference to the definition of Restricted Data under 10 CFR 95.5.

*Comment K-6:* One commenter suggested that the NRC’s proposed requirement in 10 CFR 73.71(a)(3)(ii) for licensees and certificate holders to use a spoken authentication code when reporting to the NRC imminent or actual hostile actions for facilities was “operationally complex and burdensome.” The commenter indicated that “[t]en years after [the events of] 9/11, the NRC should be able to transition to a secure communications methodology providing built-in authentication and non-repudiation capabilities to validate such messages.” The commenter also noted the NRC had not included in proposed 10 CFR 73.71(b)(3) a similar requirement to use a spoken authentication code when reporting imminent or actual hostile actions for transportation (shipping) events, “nor explained the basis for this disparate treatment.” The commenter recommended the use of a spoken authentication code be removed for facility-based notifications, or “the NRC should use a hardware-based solution that is effective, but transparent to the user, and thus reduces operational and regulatory burdens while achieving these important notification and communication purposes.” (SH1-1)

**NRC Response:** The NRC agrees with the comment. Under the current operational structure, NRC staff’s reliance on an authentication code is not necessary for the NRC Headquarters Operations Center (HOC) to receive and then effectively act in response to a licensee’s report of an imminent or actual hostile action. Such events could be received from either an operating power reactor facility or an activity involving the shipment of Category I SSNM, SNF, or high-level radioactive waste. Therefore, the NRC agrees that the requirement should be removed for licensees to include an authentication code in the 15-minute notification from facilities subject to 10 CFR 73.1200(a) (proposed rule 10 CFR 73.71(a)(3)(ii)) that are under an imminent or actual hostile action.

The NRC has determined that the implementation of a hardware-based authentication process suggested by the commenter is not considered feasible at this time because of unresolved logistical, policy, cost, and legal issues.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1200(a)(3) by removing the requirement for licensees to include an authentication code in the data transmitted to the NRC for an imminent or actual hostile action against a facility.

Additionally, the NRC has not revised the final rule language in 10 CFR 73.1200(b)(3) [imminent or actual hostile action against a transportation activity] in response to this comment.

*Comment K-7:* One commenter indicated that the requirement to report imminent or actual hostile actions [see proposed 10 CFR 73.71(a) and (b)] to the NRC “as soon as possible, but not later than 15 minutes of the discovery ... would increase administrative burden and could potentially result in a negative impact on a licensee’s response to the event.” The commenter suggested instead using a notification time period of “approximately 15 minutes” for such security-based events. This language is contained in previously issued NRC Bulletin 2005-02, “Emergency Preparedness Response Actions for Security-Based Events,” dated July 18, 2005 (ML051740058). The commenter also indicated that “15 minutes is an unrealistic timeframe...to make a correct assessment and gather the necessary information” required by a notification. The commenter recommended the 15-minute notifications be deleted altogether. (NEI1CL-3, NEI1A2-2, NEI1A2-9)

**NRC Response:** The NRC disagrees with the comment. Licensees must balance their responsibility to immediately respond to an imminent or actual hostile action with the responsibility to promptly communicate such an imminent or actual hostile action to the NRC. The NRC HOC must immediately disseminate the reports of imminent or actual reports to other NRC licensees and to the U.S. Department of Homeland Security’s National Operations Center. This rapid dissemination heightens situational awareness and facilitates defensive preparations if an adversary intends to initiate coordinated attacks against other NRC-regulated facilities, other Critical Infrastructure and Key Resource (CIKR) facilities, or other U.S. government civilian or military facilities. Consequently, the NRC disagrees with the commenter’s second recommendation to delete the 15-minute notifications altogether. Moreover, the Commission views the current language of “as soon as possible but within 15 minutes” as providing licensee’s the appropriate balance in 10 CFR 73.1200(a) and (b).

Accordingly, the NRC did not make any changes to the final rule language in response to this comment.

*Comment K-8:* One commenter raised concerns with the term “discovery” (of a reportable security event) and suggested modifications to “improve the efficiency and effectiveness of event reporting and eliminate redundant requirements.” The commenter indicated “[i]ndustry recognizes and appreciates the need for timely reporting of security events to the NRC. However, industry considers ‘discovery’ to have occurred after the initial event has been observed, appropriate internal notifications made, and a licensee determination made that the event meets the applicable reporting requirements. Industry recognizes for many events and most conditions, the time of ‘discovery’ begins when a cognizant individual such as a manager, [or] supervisor for the security function has been notified. However, for some less obvious conditions, a thorough investigation and evaluation is necessary which may lead to the discovery of a potentially reportable event. Therefore, industry believes that the time of ‘discovery’ will vary because it is event driven and should not be considered to have occurred in each case at the time that the actual event occurred or condition is initially observed.” Consequently, the time period for reporting an event starts “at the time of discovery.” The commenter suggested the following language (that the NRC had previously suggested as guidance for reporting safety events at fuel cycle facilities) should also be used for security-based events:

The time of discovery begins when a cognizant individual observes, identifies, or is notified of a safety significant event or condition. A cognizant individual is anyone who, by position or experience, is expected to understand that the particular condition or event adversely impacts safety. For some conditions ... an investigation and evaluation is necessary and may lead to the discovery of a potentially reportable situation. This evaluation should proceed on a time scale commensurate with the safety significance of the issue.

(NEI1CL-2, NEI1A2-5, NEI1A2-8, NEI1A3-1)

**NRC Response:** The NRC agrees with the comment. The notification clock starts at the time of discovery. Consequently, the NRC has determined that clarifying the term “time of discovery” will provide greater regulatory clarity and facilitate licensees’ evaluation and reporting of 15-minute, 1-hour, 4-hour, and 8-hour physical security event notifications. The NRC supports licensees having sufficient time to evaluate an event or condition to determine if a security event notification is required. Therefore, the NRC has included in 10 CFR 73.2 a definition of the term “time of discovery” in the final rule that is generally consistent with, but not identical to, the commenter’s suggested language.

The NRC intends to make clear in guidance that the purpose of the assessment conducted by licensees is to obtain sufficient information to reasonably conclude that the security event should be reported. This approach balances the NRC’s requirement for timely notification to initiate response activities with providing licensees a reasonable amount of time to make a prompt assessment of the facts and then make a notification commensurate with the actual security significance of the event. The NRC also notes that 10 CFR 73.1200(q) permits licensees to retract a previous physical security event notification, if the licensee had insufficient time but subsequently determines that the notification was invalid, not reportable under 10 CFR 73.1200, or instead was recordable under 10 CFR 73.1210.

Accordingly, the NRC has revised the final rule in 10 CFR 73.2 to include a definition for “time of discovery.”

*Comment K-9:* One commenter indicated that the requirement to report events to the NRC within 1 hour (under the proposed 10 CFR 73.71(c)) should be revised to simplify the requirements and “bring them more in line with reporting requirements for reactor safety issues that do not involve emergencies (10 CFR 50.72).” The commenter indicated that “[i]t is understandable that certain issues that involve actual or potential threats to the facility should be reported in a timelier manner to assure the appropriate Federal and law enforcement agencies are notified, but other events do not require this urgency. In these cases, the licensee should be provided adequate time to collect the facts and evaluate the issues. The additional time would not interfere with the NRC or law enforcement agency goals to assess the ‘current threat environment.’” The commenter recommended that 10 CFR 73.71(c) and Appendix G to 10 CFR Part 73, Section I, “should not require 1-hour notifications for events not related to either a specific threat or attempted threat to the facility.” “Certain events may be significant from a security program implementation perspective; however, if there is no imminent threat then additional time should be afforded the licensee. The licensee should be given such time to collect the facts and evaluate issues such as (1) uncompensated failures or discovered vulnerabilities in security or cyber security systems, (2) loss of SGI, [or] (3) an authorized standard weapon uncontrolled in the PA/VA.” (NEI1A2-8)

**NRC Response:** The NRC agrees with the comment. The 1-hour event notifications should be reserved for the most significant security events; that is, those events that had an actual impact on the security of the facility or a shipment. Events that had a potential to impact the security of the facility or a shipment require a 4-hour notification. Events involving challenges to the security program that did not result in an actual or potential impact on the facility or shipment require an 8-hour notification. This approach balances the NRC's requirement for timely notification to initiate response activities with providing licensees a reasonable amount of time to make a prompt assessment of the facts and then make a notification commensurate with the actual security significance of the event.

The NRC has retained a 1-hour notification requirement for lost, unaccounted for, and accounted for shipments of Category I SSNM, SNF, and high-level radioactive waste, because of the higher risk posed by these materials. The NRC has also determined that licensees may provide 4-hour notifications for lost, unaccounted for, and accounted for shipments of Category II and III SNM given the reduced risk posed by these types of materials.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1200(c) and 10 CFR 73.1200(d) to require 1-hour notifications only for those events expected to have an actual security impact on the physical security of the facility or shipment activity.

Additionally, the NRC has revised the final rule language 10 CFR 73.1200(c)(1)(iii) and 10 CFR 73.1200(d)(1)(iv) to add new 1-hour notifications of potential sabotage events received from law enforcement or the government officials where the expected occurrence of the event is greater than 12 hours in the future or the time of expected occurrence is indeterminate.

Finally, the NRC has revised the final rule language in 10 CFR 73.67(e)(3)(vii) and (g)(3)(iii) to require 4-hour notifications for lost, unaccounted for, and accounted for shipments of Category II and III SNM.

*Comment K-10:* One commenter indicated that the proposed rule's provisions for reporting physical security events and the recording of safeguards events were an entirely separate regulatory area from the proposed rule's provisions on enhanced weapons. The commenter recommended that these two areas be separated into two final rulemakings. Specifically, the proposed rulemaking on reporting physical security events and recording safeguards events should use a "risk-informed graded approach that considers the differences between facilities subject to the reporting requirements (e.g., reactors and fuel cycle facilities)." The issuance of these two areas together in a single proposed rule "caused significant confusion throughout the industry." (NEI1CL-1, NEI1A2-1)

**NRC Response:** The NRC disagrees with the comment. The requirements for reporting and recording physical security events are separate from the regulatory requirements for enhanced weapons. However, both requirements affect 10 CFR Part 73 security requirements. However, new notification requirements for lost or stolen enhanced weapons and adverse ATF notifications for licensees possessing enhanced weapons have been added to 10 CFR 73.1200(m) and (n) (proposed rule 10 CFR 73.71(g)). Consequently, combining the requirements for physical security event notification and the recording of physical security events in the safeguards log with the enhanced weapons requirements increases the regulatory efficiency of the rulemaking process by addressing multiple, related changes to 10 CFR Part 73 in one rulemaking.

Accordingly, the NRC has made no change to the final rule language in response to this comment.

*Comment K-11:* One commenter indicated that the discovery that an authorized “standard” weapon is uncontrolled within the PA, VA, MAA, or CAA should be an 8-hour report instead of a 1-hour report, as long as there is no specific threat associated with the event. The commenter indicated the licensee should have sufficient time to collect the facts, and this change would not interfere with law enforcement goals. (NEI1A2-13)

**NRC Response:** The NRC agrees in part, and disagrees in part, with the comment. The NRC agrees that this type of event is not appropriate for a 1-hour notification. However, the NRC does not agree that this type of event should be subject to an 8-hour notification requirement. The NRC has instead determined that any uncontrolled weapon event inside the PA, VA, MAA, or CAA should be subject to a 4-hour notification. This approach is consistent with how other weapons and contraband events are treated.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1200(e)(1)(v) to require 4-hour notifications for lost or uncontrolled authorized weapon events.

*Comment K-12:* One commenter indicated that a definition for an uncontrolled authorized weapon in proposed Appendix G, Section I(d)(2) was more appropriate for a glossary. (NEI1A2-14)

**NRC Response:** The NRC agrees with the intent of the comment. The term “uncontrolled authorized weapon” (found in 10 CFR 73, Appendix G, Section I(d)(2)) is only used in 10 CFR 73.1200(e)(1)(v)(A) of the final rule. Additionally, the NRC has discussed the meaning for this specialized term in the adjacent paragraph 10 CFR 73.1200(e)(1)(v)(B) for greater regulatory clarity. Finally, as a further aid to licensees and staff, the NRC has also added this term to the glossary in associated Regulatory Guide 5.62, “Physical Security Event Notification, Reports, and Records” (ADAMS Accession No ML17131A285).

Accordingly, the NRC has made no change to the final rule language in response to this comment.

*Comment K-13:* One commenter indicated that uncompensated security events under 10 CFR Part 73, Appendix G, Section I.(f) should be treated as 8-hour reportable events, not 1-hour reportable events. While such events may indicate decreased effectiveness of the security plan, they do not represent an immediate threat to the facility. (NEI1A2-15)

**NRC Response:** The NRC agrees with the comment. The final rule considers uncompensated security events, by themselves, as requiring an 8-hour notification under 10 CFR 73.1200(g)(1)(i) and 10 CFR 73.1200(h)(1) (proposed rule Appendix G, Section I.(f)).

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1200(g)(1)(i) to require 8-hour notifications for uncompensated security events.

*Comment K-14:* One commenter indicated that vehicle barrier systems are designed to defend against a specific quantity of explosives. The commenter indicated that “only introduction of contraband beyond a barrier [e.g., PA barrier] and associated search process...should be reportable.” Therefore, the commenter recommended removing “incendiaries” from the 1-hour

notifications for explosive and incendiary material beyond vehicle barriers in proposed 10 CFR Part 73, Appendix G, Sections I.(e) and I.(f)(1).

Separately, the commenter indicated that reports under proposed Appendix G, Sections I.(e) and I.(f)(1) should not apply to explosives and incendiaries introduced for “valid and authorized activities.” (NEI1A2-16, NEI1A2-36, NEI1A2-37)

**NRC Response:** The NRC agrees with the comment. The NRC has revised the 1 hour notifications under 10 CFR 73.1200(c)(1)(ii) and 4-hour notifications under 10 CFR 73.1200(e)(1)(ix) (proposed rule Appendix G, Sections I.(e) and I.(f)(1), respectively) to remove incendiaries and refer only to the actual introduction of unauthorized explosives that meet or exceed the relevant facility’s adversary characteristics. The NRC also agrees that the introduction of explosives and incendiaries introduced for valid and authorized activities is appropriate and is not considered contraband. The NRC has clarified this in a new definition for “contraband” in 10 CFR 73.2.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1200(c)(1)(ii) and (e)(1)(ix) to remove “incendiaries” from the 1-hour and 4-hour vehicle barrier notifications, respectively.

Additionally, the NRC has revised the final rule language in 10 CFR 73.2 to add a new definition for “contraband.”

*Comment K-15:* One commenter indicated that events involving the loss of Safeguards Information should be an 8-hour notification instead of a 1-hour notification, provided the event does not involve theft and there is no evidence of a specific threat. The commenter indicated the proposed rule was not clear on when such events should be treated as 1-hour notifications rather than 8-hour notifications. (NEI1A2-20, NEI1A2-21)

**NRC Response:** The NRC has reevaluated the need to address the loss or theft of Safeguards Information in the final rule. Based on this reevaluation, the NRC staff determined that it would be preferable to retain the existing notification procedures in licensee security plans.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1200(g)(1) and 10 CFR 73.1200(h)(1) to remove the notification of the loss or theft of material containing Safeguards Information.

Additionally, the NRC has revised the final rule language in 10 CFR 73.1210(e) to remove and reserved this paragraph.

*Comment K-16:* One commenter indicated that the NRC should reference additional regulations [in 10 CFR Chapter I] that would require a 4-hour report because of public or media inquiries (as examples of instances that do not require a 4-hour report) under the provisions of proposed 10 CFR Part 73, Appendix G. The commenter suggested adding 10 CFR 50.72(b)(2)(xi). (NEI1A2-22)

**NRC Response:** The NRC agrees with the comment. The NRC has revised the final rule to include language making clear that the notifications made under 10 CFR 50.72(b)(2)(xi) are examples of events that do not require 4-hour notification.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1200(e)(3) to include notifications made under “§ 50.72(b)(2)(xi) of this chapter” as an additional example of instances that do not require a 4-hour notification under 10 CFR 73.1200(e).

*Comment K-17:* One commenter indicated that the NRC should revise the threshold for reporting law enforcement responses to the facility under 10 CFR Part 73, Appendix G, Section II.(d)(2) to exclude events that involve minor incidents (e.g., traffic accidents or trespassing without malevolent intent). (NEI1A2-22)

**NRC Response:** The NRC agrees with the comment. Excluding such minor incidents is reasonable. Therefore, while the final rule in 10 CFR 73.1200(e)(3)(i) (proposed rule Appendix G, Section II.(d)(2)) requires licensees to notify the NRC of events “involving a law enforcement response to the facility that could reasonably be expected to result in public or media inquiries,” the NRC has revised 10 CFR 73.1200(e)(3)(ii) to provide an exception for law enforcement’s response to minor incidents (e.g., traffic accidents or inadvertent trespassing on licensee property). However, licensees should also evaluate events such as trespasses to determine whether they qualify separately for reporting as suspicious activities under 10 CFR 73.1215(d). For example, licensees should consider whether the trespassing activity is innocent or potentially indicative of surveillance, preoperational reconnaissance, or challenges to the security system.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1200(e)(3)(ii) to provide an exception to the reporting requirements for law enforcement’s response to minor incidents.

*Comment K-18:* One commenter indicated that the NRC should specify that a licensee having knowledge (for example, through the news media) of an ongoing security event at a separate facility not licensed by the NRC is not required to notify the NRC of such a security event under proposed 10 CFR 73.71(a). (NEI1A2-32)

**NRC Response:** The NRC agrees with the comment. The NRC in 10 CFR 73.1200(a) has specified two criteria requiring a licensee to make a 15-minute notification subsequent to the discovery of an actual or imminent hostile action or notification from a government agency. Criterion one involves the licensee’s initiation of a security response at its facility. Criterion two involves the licensee’s receipt of a notification from law enforcement or other government officials of a potential hostile action or act of sabotage affecting its facility. Consequently, the NRC agrees that a licensee’s knowledge of an ongoing security event at a non-licensee facility would not require a notification under 10 CFR 73.1200, since there is no impact (relationship) of the off-site event to the licensee’s facility or activity.

Accordingly, the NRC has not made any change in the final rule language in response to this comment.

*Comment K-19:* One commenter indicated that the phrase “or make provisions to notify” in proposed 10 CFR 73.71(b) is unclear. The commenter recommended using the phrase “or implement proceduralized actions to notify.” (NEI1A2-33)

**NRC Response:** The NRC agrees in part, and disagrees in part, with the comment. The NRC agrees that this phrase is unclear. The NRC had intended the phrase “or make provisions to notify” to permit a licensee shipping radioactive material or SNM to use a movement control

center rather than monitoring the shipment itself. To increase regulatory clarity, the NRC revised 10 CFR 73.1200(b) (proposed rule 10 CFR 73.71(b)) by adding the phrase, “or its designated movement control center,” to provide the necessary flexibility.

The NRC disagrees with the commenter’s suggestion to use “implement proceduralized actions,” as this language would not provide the flexibility for a licensee to use a third-party monitoring vendor (movement control center) for such shipments.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1200(b) to add the phrase “or its designated movement control center” and remove the phrase “or make provisions to notify the NRC Headquarters Operations Center.”

Additionally, the NRC has revised the final rule language in 10 CFR 73.1200(d), (f), and (h) to make conforming changes to allow the use of a movement control center for 1-hour, 4-hour, and 8-hour shipping-related physical security event notifications.

Additionally, the NRC has revised the final rule language in 10 CFR 73.1215(c)(4) by adding the phrase “or its designated movement control center” regarding reporting suspicious activities.

Finally, the NRC Has revised the final rule in 10 CFR 73.2 to make a conforming change to the definition of “movement control center.”

*Comment K-20:* The commenter also indicated that the 15-minute facility notification provisions in proposed 10 CFR 73.71(a)(1) and (a)(2) were redundant. Similarly, 15-minute shipment notification provisions in proposed 10 CFR 73.71(b)(1) and (b)(3) were redundant. The commenter recommended these redundant provisions be deleted. (NEI1A2-10, NEI1A2-11)

**NRC Response:** The NRC agrees with the comment. The NRC agrees that the proposed language is redundant. Consequently, the NRC has revised the language in the final rule in 10 CFR 73.1200(a)(1) (proposed rule 10 CFR 73.71(a)(1)) to refer to a 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. In 10 CFR 73.1200(a)(2) (proposed rule 10 CFR 73.71(a)(2)), the NRC revised the final rule to refer to licensee’s notification by law enforcement or government officials of a potential hostile action or act of sabotage. The NRC has taken similar approach in 10 CFR 73.1200(b)(1) and (b)(2).

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1200(a)(1), (a)(2), (b)(1), and (b)(2) to remove redundant language.

*Comment K-21:* The commenter states that there appears to be an inconsistency in the use of the term “credible threat” as an example of the type of hostile action in a 15-minute event notification in the proposed 10 CFR 73.71(a)(3)(iii)(A) and in the supporting DG-5019, “Reporting and Recording Safeguards Events,” and. The commenter recommended that the term “threat” be changed to the term “credible threat.” (NEI1A2-28, NEI1A2-34)

**NRC Response:** The NRC disagrees with the comment. The NRC has eliminated the term “credible threat” in the final rule. In the 2011 proposed rule the NRC had indicated that “[m]odifying language referring to credible threats would be removed.” (see 76 FR 6223). This was because “The NRC views the determination of whether a threat is credible or not



appropriately rests with government officials, such as the NRC [Office of Investigation], the intelligence community, or an LLEA; rather than with the licensee or certificate holder.” The final rule requires that a licensee notified by law enforcement or government officials of a potential hostile action or act of sabotage to notify the NRC under 10 CFR 73.1200(a)(2) or 73.1200(c)(1)(iii) (proposed rule 10 CFR 73.71(a) or 10 CFR Part 73, Appendix G, Section I.(a)).

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1200(a)(3)(ii)(A) and 10 CFR 73.1200(c)(1)(iii) to remove the term “credible.”

## **L. Suspicious Activity Reports**

*Comment L-1:* One commenter suggested that the NRC’s requirement in proposed Appendix G, Section II, paragraph (a) for licensees and certificate holders to report suspicious events was appropriate. However, the commenter indicated the NRC had not provided a rationale or basis for the 4-hour timeliness requirement for these reportable events “either for internal NRC purposes or for purposes of forwarding this suspicious information to the law-enforcement or intelligence communities.” The commenter recommended the NRC articulate a “rationale or basis for the 4-hour timeliness,” or “the NRC should require that suspicious events should be reported within 24 hours or the next business day.” In contrast, a second commenter indicated that the “industry understands the benefit of reporting suspicious activity to the NRC in a timely manner in light of the importance of detecting preoperational surveillance activities.” The commenter recommended that all suspicious activity be reported in a timely manner but within 8 hours from time of discovery. (SH1-2, NEI1CL-4, NEI1A2-3)

**NRC Response:** The NRC agrees in part, and disagrees in part, with the comment. The NRC agrees with one commenter’s statement that requiring suspicious activity reports is appropriate. The Commission has determined that requiring affected licensees to report a suspicious activity as soon as possible but within 4 hours of discovery permits the LLEA and the FBI to initiate investigations of the suspicious activity with the objective of disrupting or dissuading potential terrorist attacks. Additionally, the FBI can disseminate such suspicious activity information in a timely manner to national law enforcement and intelligence community information-sharing networks. The NRC disagrees with the second commenter’s suggestion to report suspicious activities within 24 hours or the next business day. A 24-hour reporting requirement would not be effective for initiating timely investigations, nor the dissemination of suspicious activity information to national law enforcement and intelligence community information-sharing networks.

Accordingly, the NRC has retained in the final rule language in 10 CFR 73.1215(c)(2)(i) a requirement for licensees to report “as soon as possible, but within 4-hours of the time of discovery” a suspicious activity.

*Comment L-2:* One commenter indicated that the phrase “[e]licitation of information from facility personnel...” is vague and subject to interpretation on what is a suspicious activity under proposed Appendix G, Section II.(a)(1)(B). The commenter recommended adding “non-routine” before “elicitation” to exclude legitimate inquiries from the public on how the licensee safely and securely operates the facility. (NEI1A2-39)

**NRC Response:** The NRC agrees in part, and disagrees in part, with the comment. The proposed language on elicitation of information from facility personnel was vague and subject to interpretation. Therefore, the NRC has clarified new 10 CFR 73.1215(d)(1)(ii), (e)(1)(iv), and

(f)(1)(iii) (proposed rule 10 CFR Part 73, Appendix G, Section II.(a)(1)(B)) to refer to elicitation of non-public information from knowledgeable licensee or contractor personnel regarding the licensee's security or emergency response programs.

The NRC does not agree with the commenter's suggestion to use the term "non-routine." The NRC has chosen to use the modifier "non-public" since "non-routine" information can be publicly available (e.g., the status of licensee emergency response actions during a declared emergency). The NRC also believes that the term "non-public" provides greater regulatory clarity.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1215(d)(1)(ii), (e)(1)(iv), and (f)(1)(iii) to refer to "non-public information."

*Comment L-3:* One commenter indicated that the notification process for reporting suspicious activities under proposed 10 CFR 73.71(j) "did not include a requirement for licensees to notify their local FBI joint terrorism task force (JTTF)." The commenter indicated that the direction to notify the local JTTF of suspicious events occurs in previous NRC and existing FBI guidance.<sup>2</sup> Additionally, the commenter noted that proposed 10 CFR 73.71(j) did not require a licensee to establish a point of contact and notification protocol with its local FBI JTTF to facilitate the effective communication of these suspicious activity reports. The commenter indicated that a requirement for "licensees to notify their local JTTF of suspicious events (in accordance with FBI guidance) would appear to obviate the need for rapid [i.e., 4-hour] notification to the NRC and would speed up the processing [and dissemination] of the information by the intelligence and law-enforcement communities."

The commenter recommended several actions. First, the "final rule should be revised to require licensees to report suspicious activities to their local JTTF consistent with existing FBI direction." Second, the "NRC should consider whether reporting such events to the local FBI JTTF obviates the need for an NRC reporting requirement, or just reduces the NRC's timeliness need to a next business day approach." (SH1-3)

**NRC Response:** The NRC agrees in part, and disagrees in part, with the comment. Based upon discussions between the NRC and the FBI, the FBI has requested that suspicious activity reports be submitted to the applicable local FBI field office instead of the JTTF. Consequently, the NRC in the final rule is requiring licensees that are subject to the suspicious activity reporting requirements in 10 CFR 73.1215 report suspicious activity to the applicable local FBI field office. In addition, the NRC views a licensee's establishment of a point of contact with the LLEA, FBI, and FAA would include a discussion of a notification protocol. Therefore, a separate notification protocol requirement is unnecessary.

The NRC disagrees with the commenter that reporting suspicious activities to the FBI obviates the need to also report these suspicious activities to the NRC. The timely submission of suspicious activity reports to the NRC supports one of the agency's primary mission essential functions of threat assessment for licensed facilities, materials, and shipping activities.

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<sup>2</sup> The documents referenced by the commenter in associated Draft Guide 5019 are the FBI and U.S. Department of Homeland Security (DHS) memorandum on "Suspicious Activity Reporting Criteria for Infrastructure Owners and Operators," dated August 3, 2004 (ML17081A390 (nonpublic)), and the DHS reporting guide, "Terrorist Threats to the U.S. Homeland Reporting Guide for Critical Infrastructure and Key Resource Owners and Operators (TTRG)," dated January 24, 2005 (ML17081A395 (nonpublic)).

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1215(c)(3) to report suspicious activities to the applicable local FBI field office and subsequently to the NRC.

**M. Written Follow-up Reports**

*Comment M-1:* One commenter recommended that 10 CFR 73.71(m)(13)(i) of the 2011 proposed rule on the exception to a licensee's submission of a written follow-up report, after the licensee's retraction of a previous telephonic report, be expanded from only "invalid" security events to also include "not reportable" security events. For example, an event that is determined to be recordable in the SEL but is not reportable may then be retracted. In such a case, the licensee is not required to submit a written follow-up report. (NEI1A2-27b)

**NRC Response:** The NRC agrees with the comment. In the final rule, the NRC has added 10 CFR 73.1200(q)(1) addressing the retraction of previous physical security event notifications to include invalid events, events considered not reportable in accordance with the provisions of 10 CFR 73.1200, and events subsequently re-characterized as recordable under 10 CFR 73.1210 rather than requiring notification under 10 CFR 73.1200. Consequently, the NRC has added parallel language to 10 CFR 73.1205(a)(3)(i) to indicate the licensee is not required to submit a written follow-up report, using the same invalid, not reportable, and re-characterized criteria specified in 10 CFR 73.1200(q)(1).

However, as indicated in 10 CFR 73.1205(a)(3)(ii), this exception would not apply if the licensee retracted a telephonic notification made under 10 CFR 73.1200 after the submission of a written follow-up report. Once a licensee has submitted a written follow-up report, the licensee must document a subsequent retraction of the telephonic notification in a revised written follow-up report submitted to the NRC. This approach will ensure the NRC's docket file for a licensee is complete and accurate.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1200(q)(1) and 10 CFR 73.1205(a)(3)(ii) to relieve licensees of the requirement to submit a written follow-up report if the licensee has retracted the physical security event notification before the 60-day written follow-up report timeliness submission requirement.

*Comment M-2:* One commenter indicated that, for the written follow-up reports from licensees subject to 10 CFR 50.73 (power reactor licensees), proposed 10 CFR 73.71(m)(5) required such licensees to use NRC Form 366 to submit a written follow-up report. However, the 2011 proposed rule did not specify the content of the abstract, if NRC Form 366 is used. The commenter recommended that the requirement be clarified or left to the licensee's discretion. (NEI1A2-31)

**NRC Response:** The NRC agrees with the comment. In 10 CFR 73.71(m)(5) of the 2011 proposed rule, the NRC's description of its requirements for the content of written follow-up reports, for both the abstract and other key pieces of information, was insufficient.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1205(c) adding a new requirement describing the contents of written follow-up reports that includes an abstract.

**N. Recordkeeping of Physical Security Events (Safeguards Event Log)**

*Comment N-1:* One commenter recommended “eliminating the proposed requirement to maintain a separate Safeguards Event Log (SEL).” The commenter stated:

[t]his requirement [the SEL], which was implemented in 1981, was a valuable tool for tracking and trending security failures, degradations, and vulnerabilities. The need for this tool for that purpose has been eliminated by use of the Corrective Action Program (CAP) as required by the current 10 CFR Part 73 rule requirements. All issues required to be entered into the SEL are captured by the CAP; therefore, this requirement has become redundant and an administrative burden which produces no real value.

The commenter also referred to 10 CFR 73.55(b)(10) in the Commission’s “Power Reactor Security” final rule [74 FR 13926; March 27, 2009], which states, “[t]he licensee shall use the site corrective action program to track, trend, correct and prevent recurrence of failures and deficiencies in the physical protection program.” Other provisions of 10 CFR 73.55, “Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors against Radiological Sabotage,” refer to the licensee’s use of the CAP (e.g., see 10 CFR 73.55(m)(4), (n)(1)(iii), and (n)(1)(iv)). (NEI1CL-5, NEI1A2-4)

**NRC Response:** The NRC agrees in part, and disagrees in part, with the comment. As historical background information, the requirement for licensees to record certain security failures, degradations, and vulnerabilities in the SEL within 24 hours of the event’s occurrence was originally a requirement for licensees to telephonically report to the NRC these lesser significant security events within 24 hours of their occurrence. The NRC revised this reporting provision in 1981 and replaced it with a requirement for licensees to record, in the new SEL, certain lesser significant security events or conditions adverse to security. NRC security inspectors review the SEL during periodic onsite NRC inspections to assess licensee performance and compliance with 10 CFR Part 73 regulations and the facility’s approved security plan.

The NRC agrees that many events and conditions recorded in the SEL may also be captured in the licensee’s CAP. However, the provisions of 10 CFR 73.55 only apply to power reactor licensees.

Accordingly, the NRC disagrees that the CAP can be the only location for recording security events under 10 CFR 73.1210. Other types of licensees are subject to security event recording requirements under 10 CFR 73.1210 (proposed rule 10 CFR 73.71(k)(1) and 10 CFR Part 73, Appendix G, Section IV.). The security regulations in 10 CFR Part 73 for these other types of licensees do not necessarily contain equivalent language to 10 CFR 73.55(b)(10) to track, trend, correct and prevent recurrence of failures and deficiencies in the physical protection program. Thus, 10 CFR 73.55(b)(10) cannot serve as a basis for the elimination of the SEL for licensees not subject to 10 CFR 73.55.

Accordingly, the NRC has revised 10 CFR 73.1210(b)(3) to permit power reactor licensees to use their CAP, instead of a stand-alone SEL to record such events or conditions adverse to security. However, other types of licensees not subject to 10 CFR 73.55 may continue to use a standalone SEL or their CAP to record such events or conditions adverse to security. If these licensees use their CAP, they must ensure that sufficient information is

contained in these records to permit the effective tracking, trending, and performance monitoring of these events and conditions; and the implementation of corrective actions. The use of a CAP that does not contain a sufficient level of detail due to information security restrictions or need-to-know controls is not appropriate. Therefore, paragraph (b)(3) also permits licensees to bifurcate data between the CAP and the SEL to ensure the protection of Safeguards Information or classified information and ensures that personnel who have access to such systems have an appropriate need-to-know.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1210(b)(3) to permit licensees, with certain limitations, to record certain security events and conditions adverse to security in their CAP.

*Comment N-2:* Several commenters expressed concern with the proposed SEL requirement in 10 CFR Part 73, Appendix G, Section IV.(b)(1), on the discovery of ammunition inside a PA, VA, MAA, or CAA that is lost or uncontrolled. One commenter indicated that blank cartridges used by security personnel during exercises pose no security risk and such cartridges are likely to become lost during the “highly dynamic nature of force-on-force security exercises.” The commenter recommended that blank cartridges be exempt from this notification requirement.

One commenter indicated that small quantities of ammunition that are lost or stolen “do not constitute a significant vulnerability” and “do not equate to an actual threat” and, therefore, should not require recording in the SEL. (NFS-13, NEI1A1-8, NEI1A2-25, NEI1A2-42)

**NRC Response:** The NRC agrees with the comment. The NRC agrees that blank ammunition does not present a security risk if found uncontrolled inside a PA, VA, MAA, or CAA. Therefore, the licensee does not need to record it as a security event. Similarly, small quantities of live ammunition that are found uncontrolled inside a PA, VA, MAA, or CAA also do not present a security risk and, therefore, the licensee does not need to record such events. The NRC is setting the threshold for a small quantity of ammunition at five rounds or fewer.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1210(d)(3)(ii) to clarify that the discovery of blank ammunition is not a recordable security event.

Additionally, the NRC has revised the final rule language in 10 CFR 73.1210(d)(2)(ii) to clarify that a small quantity of ammunition means “five live rounds or fewer.”

*Comment N-3:* One commenter expressed concern with the proposed SEL record in 10 CFR Part 73, Appendix G, Section IV.(c), on the loss of control over, or protection of, classified information and indicated the wording was overly restrictive and does not appear to fit with the 1-hour, 4-hour, and 8-hour reporting criteria of Appendix G in the 2011 proposed rule. Another commenter indicated the proposed record [in Appendix G] was duplicative and inconsistent with current NRC requirements in 10 CFR 95.57(b) [regarding classified information].

One commenter recommended defining the term “restricted data” in 10 CFR Part 73. (NFS-14, GE-1, GE-6, NEI1A2-43)

**NRC Response:** The NRC agrees with the comment. The NRC has removed the requirement in 10 CFR 73.1210 from the final rule that licensees record the possible loss or

compromise of classified information. Inclusion of this requirement in the final rule is duplicative of current requirements in 10 CFR 95.57. The NRC also agrees that a definition of the term “restricted data” needs to be added to 10 CFR 73.2.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1210 to remove the requirement for recording the possible loss or compromise of classified information.

Additionally, the NRC has revised the final rule language in 10 CFR 73.1210(g) to provide a cross-reference for the recordkeeping requirements in 10 CFR 95.57 on any recordable infraction, loss, compromise, or potential compromise of classified information.

Additionally, the NRC has revised the final rule language in 10 CFR 73.2 to include a cross-reference to the definition of “restricted data” in 10 CFR 95.5.

*Comment N-4:* One commenter expressed concern with the proposed SEL record in 10 CFR Part 73, Appendix G, Section IV, paragraph (d), on the loss of control over, or protection of, “classified material containing Safeguards Information” and indicated the wording was overly restrictive and does not appear to fit with the 1, 4, and 8-hour telephonic reporting criteria of proposed Appendix G. The commenter indicated “it makes more sense to require reporting in the Safeguards Event Log when the conditions of (1), (2), and (3) are not met,” rather than reporting when the conditions of (1), (2), and (3) are met. The commenter provided alternative wording.

A second commenter indicated the phrase “classified material containing Safeguards Information” is unclear and recommended deletion. A third commenter recommended replacing “classified” with “designated.” (NFS-15, GE-7, NE11A2-26)

**NRC Response:** The NRC agrees in part, and disagrees in part, with the comment. The NRC agrees that the rule language in the 2011 proposed rule was duplicative of current requirements in 10 CFR 95.57. As such, the NRC has removed the recording of events involving the loss or compromise of classified information from the final rule. [see comment N-3]

The NRC disagrees with replacing the term “classified” with “designated.” Classified information and Safeguards Information are separate information security categories. Therefore, the term “classified information containing Safeguards Information” is incorrect. Consequently, the NRC is using the phrasing “material containing Safeguards Information.”

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1210 to remove the requirement for recording the possible loss or compromise of classified information.

*Comment N-5:* One commenter expressed concern with the proposed SEL record in 10 CFR Part 73, Appendix G, Section IV(a)(1)(i), on compensated security measures for undetected explosives and incendiaries beyond a vehicle barrier. The commenter indicated that a vehicle barrier was designed to defend against explosives, not incendiaries. Therefore, the commenter recommended that incendiaries be removed from this recording requirement.

Separately, the commenter recommended that valid and authorized explosives and incendiaries be excluded from this recording requirement. (NE11A2-24, NE11A2-41)

**NRC Response:** The NRC agrees with the comment. The NRC agrees that the purpose of a vehicle barrier is not to prevent the unauthorized introduction of incendiaries; and therefore, has removed the recording of events involving “incendiaries beyond a vehicle barrier.” The NRC also agrees that authorized explosives and incendiary material does not require recording under 10 CFR 73.1210 (proposed rule 10 CFR 73.71(k)(1) and 10 CFR Part 73, Appendix G, Section IV.).

Accordingly, the NRC has revised the final rule language in 10 CFR 73.1210(c)(1) to require the recording of compensated security events involving the potential for “Undetected access of unauthorized explosives beyond a vehicle barrier.”

## **O. Definitions**

*Comment O-1:* One commenter suggested that a definition be added to 10 CFR 73.2 or 10 CFR 73.71 for the term “contraband.” The commenter indicated the term contraband was used in proposed Appendix G to 10 CFR Part 73, Section I, paragraphs (c) and (f) but was not defined in 10 CFR Part 73. The commenter suggested the language for “contraband” in the “Glossary” to DG-5019 was appropriate. However, the commenter indicated that, for its facility, “locally deemed contraband” is specified in security procedures and includes items such as cell phones and cameras, which are not the intended subject of the proposed word “contraband.” (GE-4)

**NRC Response:** The NRC agrees in part, and disagrees in part, with the comment. The term contraband appears in several places in 10 CFR Part 73 and is not clearly defined. Therefore, the term contraband, as used in DG-5019, has been clarified and expanded in the final rule to include material that is unacceptable for introduction into facilities subject to 10 CFR Part 73. Consequently, the NRC has added a definition for “contraband” in 10 CFR 73.2 (proposed rule 10 CFR 73.2) to increase regulatory clarity.

The NRC disagrees with the suggestion to add the term “locally deemed contraband” to the final rule. The NRC recognizes that licensees sometimes identify other items prohibited from entry into its facility. These prohibited items are not considered contraband unless they meet the new definition in 10 CFR 73.2. The identification of these types of items is left to the discretion of the licensee. Consequently, the NRC has not included the term “locally deemed contraband” in the final rule.

Accordingly, the NRC has revised the final rule language in 10 CFR 73.2 to add a new definition for the term “contraband.”

Additionally, the NRC has made no change to the final rule language to add the term “locally deemed contraband” in response to this comment.

*Comment O-2:* One commenter indicated the term “NICS transaction number,” rather than the FBI’s approved acronym “NTN,” is used in multiple places in proposed 10 CFR 73.19(n) and (p). The commenter suggested the NRC establish the acronym “NTN” and use it in the final rule. (FBI-15)

**NRC Response:** The NRC agrees with the comment. Because the acronym would be used in multiple places in this final rule, the NRC is adding “NTN” as a definition in 10 CFR 73.2 after the definition for “NICS response.”

Accordingly, the NRC has revised the final rule language in 10 CFR 73.2 to add a definition for the term “NICS transaction number” and the associated acronym “NTN.”

*Comment O-3:* One commenter suggested that the proposed definition of “covered weapons” in 10 CFR 73.2 be revised to define covered weapons as “any enhanced weapon or standard weapon, as defined below.” The commenter indicated the “proposed definition combines both of these definitions and makes it difficult to discern whether or not large capacity ammunition feeding devices would constitute an enhanced weapon.” (NEI1A2-29)

**NRC Response:** The NRC disagrees with the comment. The NRC, in the 2011 proposed rule, had listed the scope of firearms, ammunition, and devices included in covered weapons consistent with the language of 42 U.S.C. 2201a, Subsection (b) and replicated the applicable portions of this list in the separate definitions of enhanced weapons and standard weapons. However, Revision 1 to the Firearms Guidelines (79 FR 36100; June 25, 2014) issued by the Commission with the approval of the Attorney General revised the definition of covered weapons and removed the definition of standard weapons (i.e., “standard weapons” are no longer considered a subset of “covered weapons”). Consequently, in the 2015 supplemental proposed rule, the NRC revised the definitions of covered weapons and enhanced weapons and removed the definition of standard weapons from proposed 10 CFR 73.2 to be consistent with the Firearms Guidelines.

Accordingly, the NRC has made no change to the final rule language in response to this comment.

## **P. Miscellaneous**

*Comment P-1:* One commenter provided multiple technical comments on the NRC’s use of incorrect terminology in the Preamble (i.e., the statement of considerations) of the 2011 proposed rule FRN (e.g., background information, explanatory information, and the discussion of differences with the 2006 original proposed rulemaking). The commenter suggested the phrase “incorrect ‘delayed’ or ‘denied’ NICS response” should be replaced with “extended delays and erroneous denials.” The commenter indicated that delays are not necessarily incorrect. The commenter suggested the phrase “ATF FFL” should be replaced with “FFL.” The commenter suggested that the phrase “[i]ndividuals who have been removed from duties requiring access to covered weapons and who subsequently complete a satisfactory firearms background check would be permitted to be returned to duties...” should be replaced with “...duties requiring access to covered weapons and who successfully appeal would be permitted to be returned to duties.” The commenter suggested that the phrase “...individuals can apply to the FBI to check their status under the NICS databases...” should be changed to state that “individuals can request the NICS Section to maintain specific information about them for use in subsequent background checks to determine their eligibility to receive firearms.” The commenter indicated that “[i]ndividuals should not apply to the VAF to check their status.” (FBI-1, FBI-2, FBI-3, FBI-4, FBI-5, FBI-6, FBI-7)

**NRC Response:** The NRC agrees in part, and disagrees in part, with the comment. In the final rule, the NRC has revised the statement of considerations to address the incorrect terminology identified by the commenter, as appropriate. The NRC has also replaced the phrase “ATF FFL” with “FFL.”



The NRC disagrees with using the terms “extended delays and erroneous denials.” The NRC uses the terms “delayed” and “denied” NICS response in the final rule which is consistent with the terminology in the FBI’s firearms background check process and the Firearms Guidelines.

Accordingly, the NRC has made appropriate changes to the statement of considerations of the final rule in response to this comment. These changes did not require any modifications to the final rule language.

Additionally, the NRC has retained final rule language in 10 CFR 73.2(c) providing a cross reference to the terms “proceed,” “delayed,” and “denied” from the FBI’s regulation at 28 CFR 25.2, “Definitions.”

*Comment P-2:* One commenter suggested that the terms, “Firearms background check, NICS check, NICS response, and Satisfactory firearms background check,” in the Preamble be replaced with the terms “Firearm background check, NICS check, NICS response, and Proceed firearm background check.” (FBI-8)

**NRC Response:** The NRC disagrees with the comment. The terms “Firearms background checks” and “Satisfactory firearms background check” (where the commenter had proposed alternate wording) are specified in the definitions section of the Firearms Guidelines, issued by the Commission with the approval of the Attorney General. The NRC is using these terms in the final rule to maintain necessary consistency with the Firearms Guidelines.

Accordingly, the NRC has made no change to the final rule language in response to this comment.

*Comment P-3:* One commenter suggested that in the Preamble, the sentence “[e]xcept for VAF records, the FBI purges the results of all NICS checks after 30 days ...” should be replaced with, “Except for VAF records, all personally identifying information is purged within 24 hours of notification to the licensee or certificate holder of an allowed transfer; the FFL number and state of residence are purged within 90 days from the creation date; and the NTN and creation date are retained indefinitely. On denied transfers, all information is retained for 110 years after the subject’s date of birth or 110 years after the creation date of the transaction, whichever is sooner. For cancelled requests, all information is purged within 90 days from the creation date.” The commenter indicated the NRC’s language was incorrect. (FBI-12)

**NRC Response:** The NRC agrees in part, and disagrees in part, with the comment. In the final rule, the NRC has revised the statement of considerations to correct the language identified by the commenter, as appropriate.

However, the NRC disagrees with the commenter’s suggested language on “allowed transfers” or “denied transfers.” These terms are not included in the final rule as the reference to “transfers” refers to the original purpose of the Brady Handgun Violence Prevention Act (i.e., the transfer of a firearm from an FFL holder to a non-FFL), rather than the firearms background checks accomplished under Section 161A of the AEA.

Accordingly, the NRC has made appropriate changes to the statement of considerations of the final rule in response to this comment. These changes did not require any modifications to the final rule language.

*Comment P-4:* One commenter identified two generic comments that appeared throughout both the Preamble and the proposed rule text. The commenter suggested the phrase “NICS check response” should be replaced with “NICS response,” and the phrase “firearms background checks” should be replaced with “firearm background checks.” (FBI-17, FBI-18)

**NRC Response:** The NRC agrees in part, and disagrees in part, with the comment. The NRC agrees that the phrase “NICS check response” should be replaced with the phrase “NICS response.”

However, the NRC disagrees that the phrase “firearms background checks” should be replaced with the phrase “firearm background checks.” The phrase “firearms background checks” is defined in the Firearms Guidelines, issued by the NRC with the approval of the Attorney General. Consistent with the Firearms Guidelines, the NRC will continue to use this phrase in the final rule.

Accordingly, the NRC has revised the final rule language in 10 CFR Part 73 to use the term “NICS response” where appropriate.

Additionally, the NRC has not revised the final rule language to use the phrase “firearm background checks.”

*Comment P-5:* One commenter suggested that the statement on page 6322 of the 2011 proposed rule FRN that states “Standard Weapons Move statement. "3. In §73.8, paragraphs (b) and (c) are revised to read as follows:" [be revised] to precede the terms [in § 73.2].” (NEI1A2-30)

**NRC Response:** The NRC disagrees with the comment. The commenter has misinterpreted the 2011 proposed rule text at the end of 10 CFR 73.2 and the amendatory language at the beginning of the subsequent proposed change to 10 CFR 73.8 in the FRN. These changes to § 73.2 would have revised the existing definitions and added new terms with the subsequent amendatory language describing the proposed changes to § 73.8. This amendatory language (relative to § 73.8) describes the actions that the NRC would take in 10 CFR Part 73 under a final rule (i.e., the replacement of paragraphs (b) and (c) in 10 CFR 73.8 with the subsequent text set forth in the final rule FRN).

Accordingly, the NRC has made no change to the final rule language in response to this comment.

#### **Q. Information Collection**

*Comment Q-1:* One commenter recommended the NRC assess the information collection (reporting and recording) burden under 10 CFR 73.71(j) with respect to reporting suspicious events to the FBI. (SH1-3)

**NRC Response:** The NRC agrees with the comment. The final rule contains suspicious activity reporting requirements to LLEA, the applicable local FBI field office, the applicable local FAA control tower (for suspicious aircraft involving aircraft), and the NRC. Consequently, the NRC has revised the final Regulatory Analysis (ML16278A235) associated with this final rule to

reflect the information collection burden associated with reporting suspicious activities to LLEA, the applicable local FBI field office, the applicable local FAA control tower, and the NRC.

Accordingly, the NRC has made no change to the final rule language in response to this comment.

**R. NRC Forms**

The NRC requested public comment on the potential impact of the information collections contained in the 2011 proposed rule for new NRC Form 754, “Armed Security Personnel Firearms Background Check,” and revised NRC Form 366, “License Event Report (LER).” The NRC received no public comments in response to this request.

**S. Cyber Security Event Notifications**

Public comments related to the cyber security event notification (CSEN) requirements in the 2011 proposed rule are no longer within the scope of final enhanced weapons rule. The NRC received public comment submissions on the 2011 proposed rule containing comments on CSEN requirements. However, the NRC has bifurcated the final CSEN requirements from the physical security event notification requirements in the final enhanced weapons rule. On November 2, 2015, the NRC published a final rule in the *Federal Register* on “Cyber Security Event Notifications” (80 FR 67264). The final CSEN rule contained public comments and the NRC’s responses on the proposed CSEN requirements that were contained in the 2011 proposed rule. Accordingly, the NRC has removed any CSEN provisions from this final enhanced weapons rule. (NFS-11, NFS-12)