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# **Environmental Assessment Supporting Final Rule— Enhanced Weapons, Firearms Background Checks, and Security Event Notifications**

**NRC-2011-0018; RIN 3150-AI49**

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

Office of Nuclear Material Safety and Safeguards

Office of Nuclear Reactor Regulation

Office of Nuclear Security and Incident Response

2018



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## 1.0 INTRODUCTION

The U.S. Nuclear Regulatory Commission (Commission or NRC) is amending its regulations to implement its authority under Section 161A of the *Atomic Energy Act of 1954*, as amended (AEA) (hereinafter referred to as “Section 161A authority”), revising physical security event notification requirements and adding requirements to report suspicious activity. These amendments are applicable to multiple types of licensees, including nuclear power reactor licensees, non-power production or utilization facilities (NPUF) licensees, Category I strategic special nuclear material (SSNM) licensees, Category II and III special nuclear material licensees, monitored retrievable storage installations (MRSs), independent spent fuel storage installation (ISFSI) facilities, geologic repository operations areas (GROAs), and hot cell licensees. This rulemaking, the “Enhanced Weapons, Firearms Background Checks, and Security Event Notifications” final rule, is best understood and discussed as a collection of three separate regulatory requirements: Part 1) the NRC’s authority under Section 161A of the AEA; Part 2) modifications to the requirements for physical security event notifications; and Part 3) requirements for suspicious activity reporting.

In support of this final rulemaking, the NRC has updated its environmental assessment associated with this rulemaking, which was first published in 2006 for the “Power Reactor Security Requirements” proposed rule (ADAMS Accession No. ML061920093). The conclusion, a finding of no significant environmental impact, remains the same. However for completeness, the EA has been updated to include applicable categorical exclusions in accordance with 10 CFR 51.22, “Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.”

### 1.1 Background

Following the events of September 11, 2001, the NRC reviewed the security programs at nuclear power plants and other licensed facilities to ensure that they continued to provide effective security measures, given the changing threat environment. The Commission used generic communications to specify voluntary expectations for enhanced notifications to the NRC for certain physical security events or suspicious activities. The requirements related to physical security event notifications and the suspicious activity reporting requirements in this final rule were derived, in part, from those generic communications.

On August 8, 2005, President George W. Bush signed into law the Energy Policy Act of 2005 (EPAct), Pub. L. 109-58, 119 Stat. 594 (2005). Section 653 of the EPAct modified the AEA by adding Section 161A, “Use of Firearms by Security Personnel” (42 U.S.C. 2201a). Section 161A of the AEA, provides the NRC with authority to permit a licensee’s or certificate holder’s security personnel to transfer, receive, possess, transport, import, and use weapons, devices, ammunition, or other firearms, notwithstanding local, State, and certain Federal firearms laws (and implementing regulations) that may prohibit or restrict these actions (hereafter referred to as “stand-alone preemption authority”). Additionally, Section 161A of the AEA, authorizes the Commission to permit the security personnel of licensees to obtain enhanced weapons (hereafter referred to as “combined preemption authority and enhanced weapons authority”). Section 161A also allows the Commission to designate the classes of facilities, radioactive material, and other property that are eligible to apply for either:

1) stand-alone preemption authority or 2) combined preemption authority and enhanced weapons authority.

## 1.2 Document Organization

This environmental assessment presents a discussion of the basic subjects specified in 10 CFR 51.30, “Environmental assessment,” and fulfills the requirements of the *National Environmental Policy Act of 1969*, as amended. A discussion of the need for the action is contained in Section 2.0. The classes of facilities impacted and which parts of the regulations are impacted by the final rule are discussed in Section 3.0. Section 4.0 discusses the environmental impacts of the final rule. The NRC’s finding of no significant impact is discussed in Section 5.0.

## **2.0 NEED FOR THE ACTION**

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

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

Part 3 of the final rule amends the NRC’s regulations in 10 CFR Part 73 to add requirements for licensees to report suspicious activities. Currently, licensees voluntarily report suspicious activities. Licensee implementation of voluntary suspicious activity reporting has been inconsistent in terms of both the types of data reported and the timeliness of reports. Because licensees’ timely submission of suspicious activity reports to law enforcement is an important part of the U.S. government’s efforts to disrupt or dissuade malevolent acts against critical infrastructure, it’s necessary to make suspicious activity reporting mandatory.

## **3.0 IMPACTED LICENSEES AND CHANGES IN REGULATIONS**

Section 161A of the AEA, requires the Commission to designate the classes of facilities, radioactive material, and other property eligible to apply for stand-alone preemption authority or for combined preemption authority and enhanced weapons authority. Additionally, all security personnel of licensees that apply for Section 161A authority who receive, possess, transport, import, or use a weapon, ammunition, or a device otherwise prohibited by local, State, or certain Federal laws, including regulations, as provided by Section 161A.b (42 U.S.C. 2201a(b)), shall

be subject to a fingerprint-based background check by the U.S. Attorney General and a firearms background check against the FBI's National Instant Criminal Background Check System. This final rule implements the NRC's authority under Section 161A.

Part 1 of the final rule implements the NRC's Section 161A authority by adding 10 CFR 73.15, 10 CFR 73.17, and NRC Form 754, "Armed Security Personnel Firearms Background Check" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18142B083), to the security requirements of 10 CFR Part 73. The final rule also adds several new definitions to 10 CFR 73.2. The NRC has focused the scope of the first part of the rulemaking on designating those classes of licensees eligible to apply to the Commission to implement Section 161A authority. These designated facilities include commercial nuclear power reactors, facilities authorized to possess strategic special nuclear material (Category I SSNM facilities), ISFSIs, and activities involving the transportation of spent nuclear fuel.

The following existing 10 CFR Part 73 sections and appendices were changed to reflect the revisions to the physical security event notification requirements and the new requirements for Section 161A authority, firearms background checks, and suspicious activity reports; and revises existing NRC Form 366:

- 10 CFR 73.2, "Definitions";
- 10 CFR 73.37, "Requirements for physical protection of irradiated reactor fuel in transit";
- 10 CFR 73.46, "Fixed site physical protection systems, subsystems, components, and procedures";
- 10 CFR 73.51, "Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste";
- 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage";
- 10 CFR 73.71, "Reporting of safeguards events" (removed);
- Appendix B, "General Criteria for Security Personnel"; and
- Appendix G, "Reportable Safeguards Events" (removed).

The amendment also adds the following new sections to 10 CFR Part 73 as well as a new NRC Form 754:

- 10 CFR 73.15, "Authorization for use of enhanced weapons and preemption of firearms laws";
- 10 CFR 73.17, "Firearms background checks for armed security personnel";
- 10 CFR 73.1200, "Notification of physical security events";
- 10 CFR 73.1205, "Written follow-up reports of physical security events";
- 10 CFR 73.1210, "Recordkeeping of physical security events";
- 10 CFR 73.1215, "Suspicious activity reports"; and

- NRC Form 754, “Firearms Background Checks for Armed Security Personnel” (under new 10 CFR 73.17).

To ensure the cross-references among the various 10 CFR Part 73 security regulations are preserved in 10 CFR Chapter I (i.e., 10 CFR Parts 20, 21, 50, 70, 72, 74, and 76 and other sections and appendices of 10 CFR Part 73), conforming changes were made to the following sections:

- 10 CFR 20.2201, “Reports of theft or loss of licensed material”;
- 10 CFR 21.2, “Scope”;
- 10 CFR 50.55, “Conditions of construction permits, early site permits, combined licenses, and manufacturing licenses”;
- 10 CFR 50.72, “Immediate notification requirements for operating nuclear power reactors”;
- 10 CFR 70.20a, “General license to possess special nuclear material for transport”;
- 10 CFR 70.20b, “General license for carriers of transient shipments of formula quantities of strategic special nuclear material, special nuclear material of moderate strategic significance, special nuclear material of low strategic significance, and irradiated reactor fuel”;
- 10 CFR 74.11, “Reports of loss or theft or attempted theft or unauthorized production of special nuclear material”;
- 10 CFR 76.113, “Formula quantities of strategic special nuclear material—Category I”;
- 10 CFR 76.115, “Special nuclear material of moderate strategic significance—Category II”;
- 10 CFR 76.117, “Special nuclear material of low strategic significance—Category III”;
- and
- NRC Form 366, “Licensee Event Reports.”

## **4.0 ENVIRONMENTAL ASSESSMENT**

### **4.1 Identification of the Action**

The action consists of a number of changes to 10 CFR Part 73 to implement the provisions of Section 161A of the AEA, to clarify and update the physical security event notification requirements, and to add new requirements for reporting suspicious activity, as described above.

Many of these proposed changes fall within the categorical exclusions listed in 10 CFR 51.22. The Commission has previously determined that such actions, either individually or cumulatively, will not have significant impacts on the human environment, and the impacts of those changes are not evaluated in detail in this Environmental Assessment. Specifically, the NRC has determined that the cross-reference changes in this final rule are subject to the

categorical exemption in 10 CFR 51.22(c)(2), as detailed in Table 1. Additionally, the NRC has determined that Parts 2 and 3 of the final rule regarding physical security event notifications and the suspicious activity reporting requirements in this final rule are subject to the exemptions in 10 CFR 51.22(c)(3)(ii), 51.22(c)(3)(iii), and 51.22(c)(3)(iv) as detailed in Tables 2, 3, and 4 discussed herein. The following four tables identify these changes.

**Table 1: Changes Qualifying for Categorical Exclusions under 10 CFR 51.22(c)(2)**

<b>10 CFR 51.22(c)(2) provides a categorical exclusion for amendments to the NRC’s regulations which are corrective or of a minor or non-policy nature and do not substantially modify existing regulations, and actions on petitions for rulemaking relating to these amendments.</b>
10 CFR 20.2201, “Reports of theft or loss of licensed material”
10 CFR 21.2, “Scope”
10 CFR 50.55, “Conditions of construction permits, early site permits, combined licenses, and manufacturing licenses”
10 CFR 50.72, “Immediate notification requirements for operating nuclear power reactors”
10 CFR 70.20a, “General license to possess special nuclear material for transport”
10 CFR 70.20b, “General license for carriers of transient shipments of formula quantities of strategic special nuclear material, special nuclear material of moderate strategic significance, special nuclear material of low strategic significance, and irradiated reactor fuel”
10 CFR 73.8, “Information collection requirements”
10 CFR 73.22, “Protection of Safeguards Information: Specific Requirements”
10 CFR 73.23, “Protection of Safeguards Information—Modified Handling: Specific Requirements”
10 CFR 73.27, “Notification requirements”
10 CFR Part 73, Appendix A, “U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses”
10 CFR Part 73, Appendix B, “General Criteria for Security Personnel”
10 CFR 74.11, “Reports of loss or theft or attempted theft or unauthorized production of special nuclear material”
10 CFR 76.113, “Formula quantities of strategic special nuclear material—Category I”
10 CFR 76.115, “Special nuclear material of moderate strategic significance—Category II”
10 CFR 76.117, “Special nuclear material of low strategic significance—Category III”

**Table 2: Change Qualifying for Categorical Exclusion under 10 CFR 51.22(c)(3)(ii)**

<b>10 CFR 51.22(c)(3)(ii) provides a categorical exclusion for amendments (including Part 73) which relate to recordkeeping requirements.</b>
10 CFR 73.1210, “Recordkeeping of physical security events”

**Table 3: Changes Qualifying for Categorical Exclusions under 10 CFR 51.22(c)(3)(iii)**

<b>10 CFR 51.22(c)(3)(iii) provides a categorical exclusion for amendments (including Part 73) which relate to reporting requirements.</b>
10 CFR 73.1200, "Notification of physical security events"
10 CFR 73.1205, "Written follow-up reports of physical security events"
10 CFR 73.1215, "Suspicious activity reports"
10 CFR 73.67, "Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance"
10 CFR 73.71, "Reporting of safeguards events" (Removed and reserved)
10 CFR Part 73, Appendix G, "Reportable Safeguards Events" (Removed and reserved)

**Table 4: Change Qualifying for Categorical Exclusions under 10 CFR 51.22(c)(3)(iv)**

<b>10 CFR 51.22(c)(3)(iv) provides a categorical exclusion for amendments (including Part 73) which relate to education, training, experience, qualification or other employment suitability requirements</b>
10 CFR Part 73, Appendix B, "General Criteria for Security Personnel," section I, paragraph A.

The changes to Part 1 of this final rule implementing NRC's Section 161A authority do not fall within the categorical exclusions listed in 10 CFR 51.22, and are evaluated as part of this Environmental Assessment. Therefore, this Environmental Assessment will only address those revisions not specified in Tables 1, 2, 3, and 4 of this Environment Assessment.

#### 4.2 Environmental Impacts of the Action

This Environmental Assessment focuses on those aspects of the rulemaking in which the revised requirements could potentially affect the environment. The NRC concludes that there will be no significant radiological environmental impacts associated with implementation of the proposed action for the following reasons. Part 1 of this rulemaking implementing the NRC's Section 161A authority is procedural in nature and does not have an impact on occupational exposures, radiological effluents, or accidental releases of radiation to the environment. The revision to the 10 CFR Part 73 security requirements does not result in changes to the design-basis requirements for the structures, systems, and components (SSCs) in a facility that function to limit the release of radiological effluents during and following postulated accidents. As a result, all of the SSCs associated with limiting the releases of offsite radiological effluents will continue to be able to perform their functions, and as a result, there will be no significant radiological effluent impact. Consequently, the NRC has concluded that this action will not have an impact on occupational exposure.

Additionally, this rulemaking will not affect the standards and requirements applicable to radiological releases and effluents, and those standards and requirements will continue to apply to the SSCs affected by this rulemaking. The action implementing the NRC's Section 161A authority neither significantly increases the probability or consequences of accidents, nor results in changes in the types of effluents that may be released off site as the change to the regulations is procedural in nature. Therefore, there will be no significant increase in public radiation exposure.

With regard to potential nonradiological impacts, implementation of this final rule will not involve land disturbances, as stated above, and, therefore, will not affect historic or cultural properties, protected species or habitats, or land use. The requirements of this final rule will not affect nonradiological facility effluents and the revisions to the regulations are procedural and implement NRC's 161A authority. Therefore, there will be no significant nonradiological environmental impacts associated with the action.

Accordingly, the NRC staff concludes that there will be no significant environmental impacts associated with the action.

#### 4.3 Alternatives to the Action

As an alternative to the rulemaking action described above, the NRC staff considered not taking the action (i.e., the "no-action" alternative). The no-action alternative would result in no change in current environmental impacts as the current regulations would remain in place. The environmental impacts of this rulemaking and the no-action alternative are similar. Therefore, the staff did not further consider the no-action alternative.

#### 4.4 Alternative Use of Resources

This action will not involve the use of any resources not previously considered by the NRC in its past environmental statements for issuance of operating licenses for the facilities that will be affected by this action.

#### 4.5 Agencies and Persons Consulted

The NRC staff developed the final rule and this Environmental Assessment. The NRC staff determined that the action does not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the *Endangered Species Act*. Likewise, the NRC staff determined that the action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the *National Historic Preservation Act*.

### **5.0 FINDING OF NO SIGNIFICANT IMPACT**

The NRC staff have prepared this Environmental Assessment in support of this rulemaking. On the basis of this Environmental Assessment, the NRC concludes that the action will not have a significant effect on the quality of the human environment. Accordingly, an environmental impact statement is not required for this proposed action.

Documents may be examined and copies of public documents may be purchased at the NRC's Public Document Room, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Publicly-available records can be accessible electronically from the ADAMS Public Library component on the NRC Web site <http://www.nrc.gov/reading-rm/adams.html> (Electronic Reading Room).

**SUBJECT:** ENVIRONMENTAL ASSESSMENT SUPPORTING FINAL RULE – ENHANCED WEAPONS, FIREARMS BACKGROUND CHECKS, AND SECURITY EVENT NOTIFICATIONS (RIN-3150-AI49, NRC-2011-0014, NRC-2011-0015, NRC-2011-0017, AND NRC-2011-0018)

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