

# U.S. NUCLEAR REGULATORY COMMISSION

## REGULATORY GUIDE 5.86, REVISION 0



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# PREEMPTION AUTHORITY, ENHANCED WEAPONS AUTHORITY, AND FIREARMS BACKGROUND CHECKS

## A. INTRODUCTION

### Purpose

This regulatory guide (RG) describes methods and procedures that the staff of the U.S. Nuclear Regulatory Commission (NRC) considers acceptable for use by licensees to comply with NRC regulations for implementing the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, “Physical Protection of Plants and Materials” (Ref. 1).

### Applicability

This RG applies to NRC licensees who are subject to the provisions of 10 CFR 73.15, “Authorization for use of enhanced weapons and preemption of firearms law,” and 10 CFR 73.17, “Firearms background checks for armed security personnel.” This includes licensees of facilities licensed under both 10 CFR Part 50, “Domestic Licensing of Production and Utilization Facilities” (Ref. 2), and 10 CFR Part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants” (Ref. 3). This RG also applies to licensees possessing special nuclear material licensed under 10 CFR Part 70, “Domestic Licensing of Special Nuclear Material” (Ref. 4), and licensees of radioactive waste storage facilities licensed under 10 CFR Part 72, “Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste” (Ref. 5). Moreover, this RG also applies to licensees transporting certain types of special nuclear material and radioactive waste. A detailed discussion of the applicability of 10 CFR 73.15 and 10 CFR 73.17 to licensees who are subject to 10 CFR Part 50, Part 52, Part 70, or Part 72 is found in this RG’s section B, “Discussion,” under the subsection “Eligible Classes of Facilities, Radioactive Material, and Other Property.”

### Applicable Statutes and Regulations

- Title 42 of the *United States Code* (42 U.S.C.) Section 2201a (Section 161A of the *Atomic Energy Act of 1954*, as amended, (AEA)) (Ref. 6) provides the Commission with the authority to permit the security personnel of designated classes of licensees to transfer, receive, possess, transport, import and use weapons, devices, ammunition, or other firearms, notwithstanding State, local, or certain Federal firearms laws prohibiting or restricting these actions.

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Electronic copies of this RG, previous versions of this guide, and other recently issued guides are also available through the NRC’s public Web site in the NRC Library at <https://www.nrc.gov/reading-rm/doc-collections/>, under Document Collections, in Regulatory Guides. This RG is also available through the NRC’s Agencywide Documents Access and Management System (ADAMS) at <https://www.nrc.gov/reading-rm/adams.html>, under Accession Number (No.) ML17131A296. The regulatory analysis may be found under ML19045A003. The associated draft guide DG-5020, Rev. 1, may be found under ML14322A847. NRC staff’s responses to the public comments on DG-5020, Rev. 1, may be found under ML17123A319.

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- 10 CFR Part 73 requires licensees to establish and maintain a physical protection system which will have capabilities for the protection of special nuclear material (SNM) at fixed sites and in transit and of the plants or facilities in which SNM is used. This includes production and utilization facilities, including both operating and decommissioning production reactors, power reactors, non-power reactors, and other non-power production and utilization facilities. It also includes facilities possessing or transportation activities involving strategic special nuclear material (SSNM), SNM, spent nuclear fuel (SNF), and high-level radioactive waste (HLW).
  - 10 CFR 73.15 designates the classes of facilities, radioactive materials undergoing transport, and other property, to which either stand-alone preemption authority or combined preemption authority and enhanced weapons authority apply;<sup>1</sup> and contains the requirements for obtaining, possessing, and terminating either authority. These requirements apply only to licensees who voluntarily apply for Section 161A authority.
  - 10 CFR 73.17 contains requirements for licensees granted either stand-alone preemption authority or combined preemption authority and enhanced weapons authority to complete firearms background checks for all security personnel whose official duties require access to covered weapons. This includes initial checks, break-in-service checks, and periodic checks. These requirements apply only to licensees who voluntarily apply for Section 161A authority.
  - 10 CFR 73.21, “Protection of Safeguards Information: Performance Requirements,” requires licensees to protect against the unauthorized disclosure of safeguards information (SGI).
  - 10 CFR 73.22, “Protection of Safeguards Information: Specific Requirements,” requires licensees to create, store, handle, and transmit SGI in accordance with specific requirements.
- 10 CFR Part 95, “Facility Security Clearance and Safeguarding of National Security Information and Restricted Data,” establishes procedures for obtaining facility security clearances and for safeguarding Secret and Confidential National Security Information (NSI) and Restricted Data (RD) received or developed in conjunction with activities licensed or regulated by the Commission (Ref. 7).
- 10 CFR Part 9, “Public Records,” (Ref. 8) establishes, in part, procedures for implementing the provisions of the *Social Security Number Fraud Prevention Act of 2017* (SSNFPA) (Ref. 9) concerning the protection of Social Security account numbers (SSNs) in documents sent by mail.
  - 10 CFR 9.301, “Social Security account numbers in documents sent by mail,” requires licensees submitting forms to the NRC that contain an SSN to ensure that any SSNs are not visible on the outside of the mailing package containing these forms.
- 18 U.S.C. Chapter 44, “Firearms” (Ref. 10), also known as the *Gun Control Act of 1968*, sets forth the rights, duties, and requirements for individuals requesting authorization to purchase and transfer of firearms.

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<sup>1</sup> The NRC created the terms “stand-alone preemption authority” and “combined preemption authority and enhanced weapons authority” in 10 CFR 73.15 to clarify the differences and interrelationship between these two authorities under Section 161A of the AEA. See the additional information on this topic in this RG’s section B, “Discussion,” under the subsection “Stand-Alone Preemption Authority and Combined Preemption Authority and Enhanced Weapons Authority.”

- 27 CFR Part 478, “Commerce in Firearms and Ammunition” (Ref. 11), contains the Bureau of Alcohol, Tobacco, Firearms, and Explosives’ (ATF’s) regulations for obtaining and possessing a Federal firearms license (FFL) (18 U.S.C. Chapter 44) and other relevant requirements.
  - 27 CFR 478.11, “Meaning of terms,” contains definitions for terms used in Part 478. Of note for this RG are the terms associated with disqualifying events or status conditions.
  - 27 CFR 478.28, “Transportation of destructive devices and certain firearms,” contains requirements for obtaining ATF’s prior approval via ATF Form 5320.20, “Application to Transport Interstate or to Temporarily Export Certain National Firearms Act (NFA) Firearms,” for the interstate transport of weapons registered under the *National Firearms Act*. This would include enhanced weapons used by armed escorts while escorting shipments of designated radioactive material specified under 10 CFR 73.15(c).
  - 27 CFR 478.32, “Prohibited shipment, transportation, possession, or receipt of firearms and ammunition by certain individuals,” contains disqualifying events or status conditions that would prohibit an individual under State or Federal law from possessing firearms or ammunition.
- 26 U.S.C. Chapter 53, "Machine Guns, Destructive Devices, and Certain Other Firearms" (Ref. 12), contains the *National Firearms Act* (NFA) under which enhanced weapons are registered, transferred, and other relevant requirements.
- 27 CFR Part 479, “Machine Guns, Destructive Devices, and Certain Other Firearms” (Ref. 13), contains the ATF’s regulations for the transfer, registration, notification, and inspector-access requirements under the NFA (26 U.S.C. Chapter 53).
  - 27 CFR 479.84, “Application to transfer,” contains requirements for obtaining ATF prior approval for the transfer of enhanced weapons (i.e., firearms that are required to be registered under 27 CFR Part 479) from an ATF FFL holder to an NRC licensee or from an NRC licensee to another authorized entity. This section also requires the transferee or responsible person to notify the chief law enforcement officer (of the applicable destination) of the application to transfer weapons registered under the NFA.
  - 27 CFR 479.85, “Identification of transferee,” contains specific requirements for the identification of the party receiving NFA firearms. This would include licensees receiving enhanced weapons.
- *Brady Handgun Violence Prevention Act* (Brady Act), Public Law 103-159, 107 Stat. 1536 (Ref.14), established the Federal Bureau of Investigation’s (FBI’s) National Instant Criminal Background Check System (NICS).
- 28 CFR Part 25, “Department of Justice Information Systems” (Ref. 15), contains requirements regarding the FBI’s NICS.
  - 28 CFR 25.2, “Definitions,” defines the terms “Proceed,” “Delayed,” or “Denied” relating to the FBI’s NICS response. These terms are used in 10 CFR 73.15 and 10 CFR 73.17.

## Applicable Forms

- (1) NRC Form 754, “Armed Security Personnel Firearms Background Check,” (Ref. 16). This form is used by licensee security personnel undergoing a firearms background check to provide identifying and reference information.
- (2) FBI Form FD-258, “Applicant Fingerprint Form” (Ref. 17). This form is used by licensee security personnel undergoing a firearms background check to provide their fingerprints.
- (3) ATF Form 4 (5320.4), “Application for Tax Paid Transfer and Registration of Firearm” (Ref. 18). This form is used by licensees to request ATF’s prior approval to transfer an enhanced weapon from its facility to another authorized entity.
- (4) ATF Form 5320.20, “Application to Transport Interstate or to Temporarily Export Certain National Firearms Act (NFA) Firearms” (Ref. 19). This form is used by licensees who have been approved for combined preemption authority and enhanced weapons authority, possess enhanced weapons, and desire to transport or use the enhanced weapons in interstate activities (e.g., escorting shipments of spent nuclear fuel).
- (5) ATF Form 5320.23, “National Firearms Act (NFA) Responsible Person Questionnaire” (Ref. 20). This form is used by licensees who have been approved for combined preemption authority and enhanced weapons authority, are seeking to receive enhanced weapons, but are not an ATF federal firearms license (FFL) holder themselves.

## Related Guidance

- RG 5.62, “Physical Security Event Notifications, Reports, and Records” (Ref. 21), contains NRC guidance to licensees regarding physical security event notifications, reports and records. Of relevance to licensees possessing enhanced weapons are the requirements for licensees to notify the NRC and applicable local law enforcement agency (LLEA) of stolen or lost enhanced weapons and the NRC of the receipt of adverse ATF enforcement actions.
- RG 5.75, “Training and Qualification of Security Personnel at Nuclear Power Reactor Facilities” (Ref. 22), contains NRC guidance to licensees regarding the training and qualification of security personnel at nuclear power reactor facilities, including weapons training and qualification.
- NUREG-2264, “Weapons Safety Assessment,” Volumes 1–4, (Ref. 23), contains NRC guidance on an acceptable method for performing a weapons safety assessment (WSA). Applicants are required to submit a completed WSA for each type of enhanced weapon as part of an application under 10 CFR 73.15 for combined preemption authority and enhanced weapons authority.
- Memorandum of Understanding (MOU), “Implementation of Firearms Background Check Provisions under Section 161A of the *Atomic Energy Act of 1954*, as amended,” (Ref. 24) between the NRC and the FBI provides direction to NRC and FBI staffs on the implementation of firearms background check provisions.

## **Purpose of Regulatory Guides**

The NRC issues regulatory guides to describe to the public methods that the staff considers acceptable for use in implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated events, and information that the staff needs in its review of applications for permits and licenses. Regulatory guides are not a substitute for regulations and compliance with regulatory guides is not required. Methods and solutions that differ from those set forth in regulatory guides will be deemed acceptable if they provide a basis for the findings required for the issuance or continuance of a permit or license by the Commission.

## **Paperwork Reduction Act**

This RG provides voluntary guidance for implementing the mandatory information collections in 10 CFR Part 73 and NRC Form 754 that are subject to the *Paperwork Reduction Act of 1995* (44 U.S.C. 3501 et seq.). These information collections were approved by the Office of Management and Budget (OMB) under control numbers 3150-0002 and 3150-0204, respectively. Send comments regarding these information collections to the FOIA, Library, and Information Collections Branch (T6-A10M), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by email to [Infocollects.Resource@nrc.gov](mailto:Infocollects.Resource@nrc.gov), and to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150-0002 and 3150-0204), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street, NW Washington, DC 20503; email: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

## **Public Protection Notification**

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

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## B. DISCUSSION

### Reason for Issuance

This regulatory guide is being issued because the NRC has promulgated new requirements in 10 CFR 73.15 and 10 CFR 73.17 implementing the authority provided to the Commission by Section 161A of the AEA. These new requirements are part of the final rule titled “Enhanced Weapons, Firearms Background Checks, and Security Event Notifications” (Ref. 25) (hereafter the enhanced weapons rule).

### Background

On August 8, 2005, President George W. Bush signed into law the *Energy Policy Act of 2005* (EPAct) (Public Law 109-58, 119 Stat. 594 (2005)). Section 653 of the EPAct amended the AEA by adding a new Section 161A (42 U.S.C. 2201a). Section 161A of the AEA provides the NRC with authority to permit a licensee’s security personnel to transfer, receive, possess, transport, import, and use weapons, devices, ammunition, or other firearms, notwithstanding State, local, and certain Federal firearms laws (and implementing regulations) that may prohibit or restrict these actions. This is commonly referred to as preemption authority. Section 161A took effect on September 11, 2009, with the issuance of Firearms Guidelines by the Commission, with the approval of the Attorney General of the United States (AG), (74 FR 46800). The NRC published Revision 1 to the Firearms Guidelines, with the approval of the AG, on June 25, 2014 (79 FR 36100). The NRC published Revision 2 to the Firearms Guidelines, with the approval of the AG, on March 8, 2019 (Ref. 26).

Section 161A of the AEA requires the Commission to designate the classes of facilities, radioactive materials, or other property, that are within the scope of the Commission’s authority under Section 161A. Classes of radioactive material may include material being transported to or from an NRC-regulated facility. Only licensees within these designated classes may apply to the NRC for such authority. Applications for such authority are voluntary. If approved, these licensees may be granted stand-alone preemption authority or combined preemption authority and enhanced weapons authority. In addition, Section 161A requires that the security personnel of licensees who apply for Section 161A authority must complete a satisfactory fingerprint-based firearms background check by the AG.

On February 3, 2011, the NRC issued a proposed enhanced weapons rule (Ref. 27). The proposed rule set forth requirements for licensees seeking to apply for either stand-alone preemption authority or combined preemption authority and enhanced weapons authority. On the same date, the NRC issued Draft Regulatory Guide (DG)-5020, Revision 0, “Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73” (Ref. 28), for public comment. The DG provided licensees with guidance in implementing the requirements in the proposed enhanced weapons rule. On September 22, 2015, the NRC issued a supplemental proposed enhanced weapons rule and Revision 1 to DG-5020 (Ref. 29) for further public comment to address changes required by the issuance of Revision 1 to the Firearms Guidelines and other clarifications.

This regulatory guide provides acceptable methods that applicants and licensees (collectively referred to as licensees in this RG) subject to 10 CFR 73.15 and 10 CFR 73.17 may use to request and use either stand-alone preemption authority or combined preemption authority and enhanced weapons authority and to conduct related firearms background checks. This guide also includes examples, considerations, and guidance to assist licensees and their security personnel in understanding their responsibilities in implementing the provisions of 10 CFR 73.15 and 10 CFR 73.17.

## **Stand-Alone Preemption Authority and Combined Preemption Authority and Enhanced Weapons Authority**

Section 161A of the AEA provides the NRC with two different types of preemption authority. The NRC has termed the first type of preemption authority as “stand-alone preemption authority.” Stand-alone preemption authority refers to the authority granted the Commission by 42 U.S.C. 2201a to authorize licensees or their designated security personnel to possess, use, and transport certain “covered weapons” otherwise prohibited by State, local, or certain Federal firearms laws. The term covered weapons, as defined in 10 CFR 73.2, means handguns, rifles and shotguns, short-barreled shotguns, short-barreled rifles, semi-automatic assault weapons, machine guns, ammunition for such firearms, and large capacity ammunition feeding devices. Stand-alone preemption authority does not authorize a licensee to possess and use enhanced weapons as defined in 10 CFR 73.2 and discussed below.

The second type of preemption authority authorized by Section 161A of the AEA is “combined preemption authority and enhanced weapons authority.” Combined preemption authority and enhanced weapons authority refers to the authority granted to the Commission by 42 U.S.C. 2201a to authorize licensees or their designated security personnel to possess, use, and transport certain “enhanced weapons” as defined in 10 CFR 73.2 otherwise prohibited by State, local, or certain Federal firearms laws. Enhanced weapons are a subset of covered weapons and include short-barreled shotguns, short-barreled rifles, and machine guns.

A licensee seeking access to enhanced weapons must first possess stand-alone preemption authority. Accordingly, a licensee may first apply for stand-alone preemption authority and then subsequently apply for combined preemption authority and enhanced weapons authority in a second, separate application. Alternatively, a licensee that does not already possess stand-alone preemption authority may directly apply for stand-alone preemption authority and combined preemption authority and enhanced weapons authority in a single application. A licensee that has previously received stand-alone preemption authority need not apply for it again if that authority remains in good standing when seeking combined preemption authority and enhanced weapons authority.

Consistent with 10 CFR 73.15(g)(2) and 10 CFR 73.15(n)(6), licensees granted combined preemption authority and enhanced weapons authority who possess enhanced weapons are required to comply with ATF’s applicable regulations in 27 CFR Part 478 and 27 CFR Part 479 to possess, receive, transfer, and transport these enhanced weapons. However, NRC licensees obtaining enhanced weapons are not required to obtain an ATF FFL. However, NRC licensees may choose to voluntarily obtain an FFL to take advantage of certain provisions of ATF’s regulations.

The NRC staff has created the following hypothetical examples in this guide to clarify the purpose of these two authorities and the interrelationship between these two authorities:

- Licensee A uses semiautomatic assault weapons and large-capacity magazines in its security program for a facility. (Note: Such weapons are considered covered weapons, but not enhanced weapons.) The State where the licensee’s facility is located enacts legislation banning the possession of semiautomatic assault weapons and large-capacity magazines. The licensee does not want to obtain enhanced weapons. As the weapons employed by the licensee are now prohibited by State law where the licensee’s facility is located, the licensee would have a reason to apply for stand-alone preemption authority. If granted, this authority would allow the licensee to continue to possess and use these covered weapons, notwithstanding the State law.
- Licensee B uses semiautomatic assault weapons and large-capacity magazines in its security program for a facility. The State where the licensee’s facility is located has no restrictions on the

possession and use of such weapons and magazines or exempts NRC-regulated facilities from such State restrictions. The licensee does not want to obtain enhanced weapons. Consequently, the licensee would not have a reason to apply for stand-alone preemption authority.

- Licensee C uses semiautomatic assault weapons and large-capacity magazines in its security program for escorting shipments of SNF to another SNF storage facility in a different state. Transportation of SNF is designated as one of the activities in 10 CFR 73.15(c) that may serve as the basis for applying for stand-alone preemption authority or combined preemption authority and enhanced weapons authority. These shipments traverse States that prohibit the possession of semiautomatic assault weapons and large-capacity magazines or require such armed escorts have special weapons permits and training. The licensee does not want to obtain enhanced weapons. The licensee applies for “stand-alone preemption authority” for activities associated with the transportation of designated radioactive material (i.e., the SNF). If the NRC approves its application, the licensee would be able to continue to possess these weapons during the armed escorting of these SNF shipments, notwithstanding various State laws prohibiting such possession.
- Licensee D uses semiautomatic assault weapons and large-capacity magazines in its security program for a facility. The licensee also wants to obtain enhanced weapons (i.e., machine guns) to increase its defensive firepower. The State where the licensee’s facility is located does not have any restrictions on semiautomatic assault weapons and large-capacity magazines so they are not considered covered weapons. However, under State and Federal law, the licensee is prohibited from obtaining machine guns. The licensee applies for “combined preemption authority and enhanced weapons authority.” If the NRC approves its application, the licensee would be able to possess these machine guns and would be able to apply to ATF to have the specified machine guns transferred to it.
- Licensee E wants to use enhanced weapons (i.e., machine guns) in its security program for escorting shipments of SNF from multiple licensees to its central interim storage facility (interstate shipments). Under State and Federal law, the licensee is prohibited from obtaining machine guns. The licensee applies for “combined preemption authority and enhanced weapons authority.” If the NRC approves its application, the licensee would be able to possess these machine guns and would be able to apply to ATF to have the specified machine guns transferred to it.
- Licensee F uses semiautomatic assault weapons and large-capacity magazines in its security program for a facility. The State where the licensee’s facility is located enacts a ban on the possession of semiautomatic assault weapons and large-capacity magazines. The licensee also wants to obtain enhanced weapons (i.e., machine guns) to enhance its security. Under State and Federal law, the licensee is prohibited from obtaining machine guns. The licensee applies for “combined preemption authority and enhanced weapons authority.” If the NRC approves its application, the licensee would be able to possess these machine guns and would be able to apply to ATF to have the machine guns transferred to it. The licensee would also be able to possess the semiautomatic assault weapons and large-capacity magazines, notwithstanding the State prohibition.
- Licensee G uses shotguns and pistols in its security program for a facility. The State where the licensee’s facility is located limits the number of pistols that can be purchased in a month, thereby affecting the licensee’s ability to maintain and update its current weapons inventory as required under 10 CFR Part 73. The licensee applies for “stand-alone preemption authority.” If the NRC

approves its application, the licensee would be able to purchase these covered weapons (i.e., the pistols), notwithstanding the State restrictions.

- Licensee H is a sister plant to Licensee G in the same State and also uses shotguns and pistols in its security program for a facility. The licensee applies for “stand-alone preemption authority” to address the issue with the number of pistols that can be purchased in a month. Subsequently the licensee decides to replace the shotguns with machine guns. Under State and Federal law, the licensee is prohibited from obtaining machine guns. The licensee now applies for “combined preemption authority and enhanced weapons authority.” This application would include both the pistols and the machine guns under the “combined preemption authority and enhanced weapons authority.” If the NRC approves its application, the licensee would be able to purchase these covered weapons (i.e., pistols), notwithstanding the State restrictions. Additionally, the licensee would be able to possess these machine guns and would be able to apply to ATF to have the machine guns transferred to it.

### **Examples of Weapons, Ammunition, and Devices not Authorized under Section 161A**

The NRC staff has received inquiries on whether certain weapons, devices, or ammunition could be obtained under the authority of Section 161A of the AEA. In some cases, the answer is no. There are certain types of weapons, ammunition, and devices that NRC licensees are not authorized to possess under Section 161A. These include, but are not limited to, the following:

- rifled weapons with a bore diameter greater than 12.7 millimeters (0.5 inches) or .50 caliber (including single-shot weapons, semiautomatic weapons, and automatic weapons);
- armor-piercing ammunition restricted under 18 U.S.C. 922, “Unlawful Acts”;
- destructive devices (e.g., hand grenades, explosives, missiles, and mortars) as defined under ATF’s regulations in 27 CFR 479.11, “Meaning of terms”; and
- certain flash-bang grenades that are not considered destructive devices as defined in Section 5845 of the NFA (26 U.S.C. 5845, “Definitions”).

### **Eligible Classes of Facilities, Radioactive Material, and Other Property**

The Commission is required designate the classes of facilities, radioactive material, and other property that are eligible to apply for either stand-alone preemption authority or for combined preemption authority and enhanced weapons authority, or both. Accordingly, under 10 CFR 73.15(c), the NRC has designated the following classes of licensees as eligible to apply for either type of authority:

- Licensees of the following types of facilities are eligible to apply for either type of authority:
  - nuclear power reactor facilities licensed under 10 CFR Part 50 or Part 52, including both facilities that are operating and facilities that have permanently shutdown;
  - facilities licensed under 10 CFR Part 70 authorized to possess a Category I quantity of strategic special nuclear material (i.e., a formula quantity), where the material has a radiation level of less than or equal to 1 Gray (Gy) per hour at a distance of 1 meter (100 rad/hr at a distance of 3.3 feet), without regard to any intervening shielding; and

- specific-licensed or general-licensed independent spent fuel storage installations (ISFSIs) licensed under 10 CFR Part 72.
- Licensee’s transporting the following types of radioactive material are eligible to apply for either authority:
  - SNF licensed under 10 CFR Part 50, Part 52, or Part 72 that is being transported to or from an NRC-licensed facility, including both intrastate and interstate shipments.

The Commission has not designated any other classes of licensees as eligible to apply for either type of authority. In the future, the Commission may designate by regulation or by order additional classes of facilities, radioactive material, or other property eligible to apply for either stand-alone preemption authority or combined preemption authority and enhanced weapons authority, or both. The NRC will revise this guide as appropriate to reflect any such changes.

### **General Requirements for Section 161A Authority**

An eligible licensee’s application for Section 161A authority is voluntary. The Commission will not grant such authority unless the licensee can provide a demonstrated need for such authority. Such a need typically requires the licensee to document that State or local requirements prohibit access to firearms necessary to implement the licensee’s protective strategy implemented in accordance with the NRC approved physical security plan. Alternatively, an eligible licensee may document that complying with State or local requirements; for example, registration or weapons permit processes, impose a substantial burden on the licensee’s implementation of its NRC approved protective strategy. The staff’s view is that such State or local requirements would not typically impose a substantial burden on eligible licensees. However, the Commission will review all applications for Section 161A authority on a case-by-case basis.

The NRC’s regulations in 10 CFR 73.15(b) state the general requirements for licensees to voluntarily apply to the NRC for Section 161A authority. The NRC’s regulations in 10 CFR 73.15(d) state the required contents of a licensee’s application for stand-alone preemption authority. Staff Regulatory Guidance position 1 in Section C of this regulatory guide discusses the application process to be used by a licensee when applying for stand-alone preemptive authority. Under 10 CFR 73.15(d)(5), the licensee must submit its application and any supplementary information to the NRC in writing and under oath or affirmation in accordance with 10 CFR 73.4, “Communications.”

The NRC’s regulations in 10 CFR 73.15(e) and (f) state the required contents of a licensee’s application for combined preemption authority and enhanced weapons authority. Staff Regulatory Guidance position 2 discusses the application process to be used by a licensee when applying for combined preemptive authority and enhanced weapons authority. NRC regulations in 10 CFR 73.15(f) state additional requirements for a licensee applying for combined preemption authority and enhanced weapons authority. Staff Regulatory Guidance position 8 describes the need to incorporate the specific enhanced weapons a licensee intends to employ into a new or revised physical security plan. Position 8 also describes how the use of the specific enhanced weapons should be integrated into a security personnel training and qualification plan, a safeguards contingency plan, and a WSA. Under 10 CFR 73.15(e)(6), a licensee applying for combined preemption authority and enhanced weapons authority must submit its application to the NRC, in accordance with 10 CFR 73.4, and the applicable license amendment provisions of 10 CFR 50.90, “Application for Amendment of License, Construction Permit, or Early Site Permit”; 10 CFR 70.34, “Amendment of Licenses”; or 10 CFR 72.56, “Application for Amendment of License.”

The NRC will review each application on a case by case basis and determine if the requested Section 161A authority should be granted. Licensees who have not applied for Section 161A authority are not subject to the requirements of either 10 CFR 73.15 or 10 CFR 73.17. Consequently, licensees who have not applied for Section 161A authority do not possess “covered weapons.”

### **Termination, Modification, Suspension, Revocation, and Reapplication of a Licensee’s Section 161A Authority**

Licensees may seek modifications to or termination of their Section 161A authority from the NRC. Guidance regarding such requests includes, but is not limited to, the following:

- Under 10 CFR 73.15(r)(1)(i), licensees seeking to terminate their stand-alone preemption authority must apply to the NRC in writing, under oath or affirmation, in accordance with 10 CFR 73.4. The request for termination must describe the basis for the request (e.g., weapons are no longer needed to protect the facility or activity). The request for termination should include any necessary changes to the licensee’s physical security plan that would be required under 10 CFR Part 73 regulations, due to the change or removal of weaponry.
- Under 10 CFR 73.15(r)(1)(ii), licensees seeking to terminate their combined preemption authority and enhanced weapons authority must apply to the NRC in writing, under oath or affirmation, in accordance with 10 CFR 73.4, and the applicable license amendment provisions of 10 CFR 50.90, 70.34, and 72.56. The request for termination must describe the basis for the request. The request for termination should include any necessary changes to the licensee’s physical security plan that would be required under 10 CFR Part 73 regulations, due to the change or removal of weaponry. Licensees seeking to terminate their combined preemption authority and enhanced weapons authority must also develop a plan to transfer or dispose of any enhanced weapons they possess (see Staff Regulatory Guidance position 13). Licensees must include this disposal plan with their application to terminate this authority.
- Under 10 CFR 73.15(r)(2), licensees seeking to modify their combined preemption authority and enhanced weapons authority (e.g., to obtain different types, calibers, or quantities of enhanced weapons) must apply to the NRC in writing, under oath or affirmation, in accordance with 10 CFR 73.4 and the applicable license amendment provisions of 10 CFR 50.90, 70.34, and 72.56. The licensee’s application for a modification of the authority should provide the same information as required in an initial application under 10 CFR 73.15(e) and (f). However, the licensee must also provide a plan to transfer or dispose of their existing enhanced weapons, once the required training on the new weapons has been completed and the new weapons are deployed (see Staff Regulatory Guidance position 13). Licensees who are only adding to their enhanced weapons inventory do not require a transfer or disposal plan.
- Under 10 CFR 73.15(m)(7), licensees who want to dispose of enhanced weapons, or transfer enhanced weapons that they are no longer authorized to possess, must transfer such weapons to an authorized transferee, after receiving approval of the transfer from ATF. (See also Staff Regulatory Guidance position 8.3 on transfers of enhanced weapons.)

Under 10 CFR 73.15(r)(3), the NRC may act on its own initiative to suspend, modify, or revoke a licensee’s 161A authority. Some criteria that the NRC may consider in suspending or revoking a licensee’s Section 161A authority include, but are not limited to, a materially false statement made by a licensee in applying for stand-alone preemption authority or combined preemption authority and enhanced weapons authority or deliberate licensee misconduct involving covered weapons.

If the NRC determines that a licensee's 161A authority should be revoked, it will document the agency's proposed enforcement action in a written notice of the intent to revoke the licensee's stand-alone preemption authority or combined preemption authority and enhanced weapons authority. Such revocation may be in whole or in part. The provisions of Subpart B, "Procedure for Imposing Requirements by Order, or for Modification, Suspension, or Revocation of a License, or for Imposing Civil Penalties," of 10 CFR Part 2, "Agency Rules of Practice and Procedure" (Ref. 30), regarding the opportunity to request a hearing, are applicable to this type of agency action.

In accordance with 10 CFR 73.15(r)(5), the NRC will notify ATF within 3 business days of the issuance of a final decision to terminate, modify, suspend, or revoke a licensee's combined preemption authority and enhanced weapons authority.

### **Reapplication for Section 161A Authority**

Under 10 CFR 73.15(r)(4), licensees who have had their stand-alone preemption authority or their combined preemption authority and enhanced weapons authority terminated, suspended, or revoked may reapply to the NRC for such authority by filing a new application under the applicable provisions of 10 CFR 73.15.

### **Firearms Background Check**

The NRC regulations in 10 CFR 73.17 sets forth the requirements for completing firearms background checks. Firearms background checks are intended to verify that armed security personnel assigned to duties requiring access to covered weapons are not prohibited from receiving, possessing, transporting, importing, or using covered weapons under applicable Federal, State, or local law. The requirement to conduct firearms background checks extends only to those eligible licensees who apply for Section 161A authority.

Under 10 CFR 73.17(b)(6), licensees may commence firearms background checks only after the NRC has notified the licensee that the agency has accepted the licensee's application for stand-alone preemption authority or combined preemption authority and enhanced weapons authority for review. Alternatively, licensees may commence firearms background checks after the NRC has issued a confirmatory order designating the licensee as an interim class of facilities, radioactive material, or other property; eligible to apply for; and to conduct firearms background checks.

Under 10 CFR 73.17(b)(5), licensees must complete a satisfactory firearms background check for all security personnel whose official duties require access to any covered weapons (hereafter referred to as security personnel). This includes individuals who are employed directly by the licensee or employed by a security contractor who provides security services to the licensee. The regulations in 10 CFR 73.17(b)(2) identify the various classes of individuals who meet the term "security personnel whose official duties require access to covered weapons." These include, but are not limited to, the following:

- Security officers using covered weapons to protect a Commission-designated facility, radioactive material (being transported), or other property (being transported);
- Security officers undergoing firearms training on covered weapons;
- Firearms-training instructors conducting training on covered weapons;

- Armorers conducting maintenance, repair, and testing of covered weapons;
- Individuals with access to armories and weapons storage lockers containing covered weapons;
- Individuals maintaining accountability over covered weapons (e.g., checking weapons in and out of armories or storage locations);
- Individuals conducting inventories of enhanced weapons; and
- Individuals removing enhanced weapons from the site for repair, training, and escort-duty purposes.

A licensee is not responsible for conducting firearms background checks on ATF-licensed commercial firearms manufacturers, dealers, or armorers. Additionally, a licensee is not responsible for conducting firearms background checks on law enforcement personnel involved in the escorting of shipments of radioactive material specified under 10 CFR 73.15(c).

A firearms background check consists of a fingerprint-based background check by the AG and a check against the FBI's NICS databases. Under 10 CFR 73.17(e), licensees are required to submit to the NRC: (1) the individual's fingerprint images (using a hard copy or electronic version of FBI Form FD-258); and (2) the individual's identifying information (using a hard copy or electronic version of NRC Form 754), for each security officer whose official duties require access to covered weapons. The NRC will forward this information to the FBI to perform checks against the FBI's NICS databases. The FBI will return one of three NICS responses (Proceed, Delayed, or Denied) and an NICS transaction number (NTN). The NRC will return the NICS response and the NTN to the submitting licensee for its information and for forwarding to the individual security officer.

Under 10 CFR 73.17(e)(2), a licensee may submit to the NRC a copy of each individual completed NRC Form 754 or a single document consolidating the data from multiple NRC Forms 754 electronically or by mail. Under 10 CFR 73.17(e)(3), a licensee may submit a copy of each completed NRC Form 754 or a single document consolidating the data from multiple NRC Forms 754 electronically or by mail. Submission of these forms electronically is considered more secure and efficient.

NRC Form 754 requires inclusion of an individual's SSN to meet FBI requirements. The NRC's regulations under 10 CFR 9.301 require that Social Security account numbers shall not be visible on the outside of any package sent to the NRC by mail. Licensees submitting NRC Form 754 must ensure that an SSN is not visible on the outside of any mailing package containing these forms. Consistent with the SSNFPA, the Chairman of the NRC, as the head of the agency, has determined that the criteria specified in 10 CFR 9.301(c)(2) have been met because the inclusion of an individual's full SSN on NRC Form 754 is necessary to identify a specific individual, and no substitute is available.

These firearms background checks do not replace any other required background checks or criminal history records checks required for access to: a facility, special nuclear material; radioactive material, Safeguards Information, or classified information (either NSI or RD).

Licensees who have been approved for Section 161A authority must not issue covered weapons to security personnel unless the individuals have completed a satisfactory firearms background check under 10 CFR 73.17. In 10 CFR 73.2, "Definitions," the NRC defines a "satisfactory firearms background check" as a "proceed" NICS response. In all instances, a "proceed" NICS response is sufficient to permit access to covered weapons. Similarly, licensees who have been approved for Section 161A authority must

not issue covered weapons to security personnel who receive a “delayed” or “denied” NICS response. In 10 CFR 73.2, the NRC defines an “adverse firearms background check as either a “delayed” NICS response” or a “denied” NICS response. A “delayed” NICS response means the FBI requires additional information to determine whether an individual is prohibited from possessing and using firearms and ammunition. A “denied” NICS response means the FBI has concluded that the individual is prohibited from possessing and using firearms and ammunition.

Under 10 CFR 73.17(b)(4)(i) and (b)(8), security personnel may not be assigned to duties requiring access to covered weapons if the individual has received an “adverse” firearms background check. Additionally, security personnel who are on duty when an “adverse” firearms background check is received must be removed duties requiring access to covered weapons without delay. In such circumstances, the licensee must reconstitute the vacated position with the time constraints specified in its NRC-approved physical security plan. Under 10 CFR 73.17(b)(4)(ii), current security personnel may continue to have access to covered weapons pending the receipt of their initial firearms background check. However, once a licensee’s application for Section 161A authority has been approved by the NRC, any new security personnel must have satisfactorily completed a firearms background check before being to any duties requiring access to covered weapons, including training on such weapons.

Under 10 CFR 73.17(b)(13), a licensee who has withdrawn its application for stand-alone preemption authority or combined preemption authority and enhanced weapons authority must discontinue conducting firearms background checks. Additionally, a licensee whose application for stand-alone preemption authority or combined preemption authority and enhanced weapons authority has been disapproved by the NRC must also discontinue conducting firearms background checks. Under 10 CFR 73.17(b)(14), a licensee whose stand-alone preemption authority or combined preemption authority and enhanced weapons authority has been rescinded, revoked, or terminated must discontinue conducting firearms background checks.

Under 10 CFR 73.17(f), licensees must complete a satisfactory periodic firearms background check on security personnel whose duties require access to covered weapons. The licensee must complete the periodic firearms background check within 5 calendar years of the individual’s initial, or most recent, firearms background check. However, licensees may complete a periodic firearms background check at a shorter periodicity (i.e., less than every 5 years) at its own discretion.

- Under 10 CFR 73.17(f)(2), licensees are provided an allowance period until midnight local time of the last day of the month, which is 5 years from the most recent completed satisfactory firearms background check. For example, a satisfactory firearms background check is completed on individual “A” on May 2, 2013. A periodic firearms background check must be satisfactorily completed by 23:59 local time on May 31, 2018. If not completed by the end of the allowance period, the licensee must not assign the individual to any duties requiring access to covered weapons as of 00:00 local time on June 1, 2018. However, the licensee may assign the individual to other duties that do not require access to covered weapons, pending the completion of a satisfactory firearms background check.
- The FBI has indicated to the NRC that any FBI correspondence regarding a security personnel’s appeal of a “denied” NICS response or providing additional information on a “delayed” NICS response are provided directly to the individual. The FBI does not provide such correspondence to the NRC for forwarding to the submitting licensee.

Under 10 CFR 73.17(g)(1), licensees must remove security personnel from duties requiring access to covered weapons upon the occurrence of a Federal disqualifying status condition or event, or an applicable State disqualifying status condition or event. Additionally, licensees must notify the NRC

Headquarters Operations Center of this action within 72 hours of the removal. Such notifications must be made to the NRC Headquarters Operations Center telephone numbers specified in Table 1 of Appendix A to 10 CFR Part 73. However, under the exception in 10 CFR 73.17(g)(2), licensees are not required to notify the NRC if the affected individual (i.e., security personnel) notifies the licensee's security management within 72 hours of the identification or occurrence of any Federal or State disqualifying status condition or disqualifying event that would prohibit the individual from possessing, receiving, or using firearms or ammunition.

Under 10 CFR 73.17(h), security personnel assigned to duties requiring access to covered weapons must notify their employing licensee's security management within 72 hours of the occurrence of any Federal disqualifying status condition or event or an applicable State disqualifying status condition or event that would prohibit the individual from possessing, receiving, or using firearms or ammunition. This notification requirement applies to all security personnel who are assigned duties requiring access to covered weapons, whether they are directly employed by the licensee or they are employed by a contractor providing security services to the licensee. A list of Federal disqualifying status conditions or events is set forth in ATF's regulations under 27 CFR 478.32, "Prohibited shipment, transportation, possession, or receipt of firearms and ammunition by certain persons." The individual may also notify the contract guard force management but is responsible for ensuring the licensee's security management are notified of the condition or event within the required time period.

### **Firearms Background Check Plan**

Under 10 CFR 73.17(b)(1), licensees performing firearms background checks must establish a Firearms Background Check Plan covering security personnel whose official duties require access to covered weapons. Licensees must establish this plan as part of their overall NRC-approved Training and Qualification plan. The licensee must describe in the Firearms Background Check Plan how it will meet the requirements set forth in 10 CFR 73.17(b)(3)(i)-(vii).

### **ATF Requirements**

In addition to complying with NRC regulations in 10 CFR 73.15 and 10 CFR 73.17, licensees who obtain enhanced weapons must also comply with the applicable provisions of certain other Federal firearms laws and regulations, including the transfer, registration, notification, and inspector-access, and interstate transportation requirements, currently in ATF's applicable regulations under 27 CFR Part 479. Licensees using enhanced weapons to escort shipments of designated radioactive material in interstate transportation must also comply with ATF's applicable regulations, currently set forth in 27 CFR 478.32. It is a licensee's responsibility to understand and comply with all applicable ATF regulations. Therefore, NRC licensees are encouraged to discuss any questions on these requirements with ATF's NFA Division staff in Martinsburg, West Virginia. Contact information for the NFA Division may be found on the ATF web site: <https://www.atf.gov/firearms/national-firearms-act-division>.

### **Notification of Adverse ATF Inspection Findings**

Under 10 CFR 73.15(k), the NRC requires licensees (including those with an ATF FFL) to notify the NRC of adverse inspection and enforcement findings issued against them by ATF. Staff Regulatory Guidance position 3.9 describes how licensees must notify the NRC of such findings in accordance with 10 CFR 73.1200, "Physical Security Event Notifications."

## **Receipt, Transfer, and Issuance of Enhanced Weapons**

Under 10 CFR 73.15(m), the NRC has set forth requirements for licensees regarding the transfer of enhanced weapons. Under 10 CFR 73.15(q) NRC sets forth the requirements for licensees regarding recordkeeping for the receipt, transfer, and issuance of enhanced weapons. Separately, NRC licensees transferring enhanced weapons must also comply with applicable ATF regulations in 27 CFR Part 479 on ATF's prior approval of the transfer of enhanced weapons.

- Receipt means a permanent action by an NRC licensee receiving (obtaining possession) of an enhanced weapon from another FFL (e.g., a manufacturer or distributor).
- Transfer means a permanent action by an NRC licensee sending an enhanced weapon to another FFL, LLEA, or ATF (i.e., the NRC licensee no longer has possession).
- While receipt and transfer are permanent actions, issuance is a temporary action whereby the NRC licensee issues the weapon to an authorized security personnel for the performance of official duties and the individual returns the weapon to the licensee (e.g. an armory or another authorized individual) at the end of their shift or activity.

## **Removal of Enhanced Weapons from a Licensee's Facility**

Removal of enhanced weapons from a licensee's facility would typically be considered a transfer of such weapons requiring prior ATF approval. However, there are permissible reasons for a licensee to remove enhanced weapons from its facility that would not be considered a transfer requiring prior ATF approval. These reasons are set forth in 10 CFR 73.15(m)(3). Additionally, under 10 CFR 73.15(m)(4), the licensee must verify these enhanced weapons are returned to the facility when the activity is completed.

Under 10 CFR 73.17(a) and (b)(2)(vii), such removal must be accomplished by security personnel who have completed a satisfactory firearms background check. Additionally, if the security personnel are employees of a contractor that is providing security services to the licensee, then these contractor employees must be under the direction of, and accompanied by, an authorized licensee employee. Such licensee employees are subject to a firearms background check, but do not need to be trained and qualified on the enhanced weapons, assuming they are not handling the weapons.

## **Withdrawal of Section 161A Orders Issued Before the Final Rule**

Under the Firearms Guidelines, the Commission must, by regulation or order, designate classes of facilities and activities that are eligible to apply for stand-alone preemption authority and/or combined preemption authority and enhanced weapons authority. Before the issuance of a final rule, the NRC issued one or more orders designating several licensees as part of an interim class of facilities eligible to apply for stand-alone preemption authority. The NRC also issued confirmatory orders approving applications from these licensees for stand-alone preemption authority.

The NRC regulations in 10 CFR 73.15(s) requires licensees issued such confirmatory orders to transition from the requirements of these orders to the requirements of 10 CFR 73.15 and 10 CFR 73.17. This transition must be completed within 300 days of the date of publication of the final rule. Once licensees have transitioned from these confirmatory orders to the final rule, the requirements of these orders are superseded in their entirety by the requirements of 10 CFR 73.15 and 10 CFR 73.17. The NRC will withdraw these designation and confirmatory orders 300 days after publication of the final rule.

Licensees previously subject to these orders are not required to reapply for Section 161A authority. Nor are these licensees required to repeat their initial firearms background checks (conducted in accordance with the designation order). However, these licensees must update their applicable procedures, instructions and training materials to reflect any new or revised requirements in 10 CFR 73.15 and 10 CFR 73.17. This also includes the development of a firearms background check plan required by 10 CFR 73.17(b). Licensees must complete such transition actions within 300 days of the date of publication of the final rule.

### **Consideration of International Standards**

The International Atomic Energy Agency (IAEA) works with member states and other partners to promote the safe, secure, and peaceful use of nuclear technologies. The IAEA develops Safety Requirements and Safety Guides for protecting people and the environment from harmful effects of ionizing radiation. This system of safety fundamentals, safety requirements, safety guides, and other relevant reports, reflects an international perspective on what constitutes a high level of safety. To inform its development of this RG, the NRC considered IAEA Safety Requirements and Safety Guides pursuant to the Commission's International Policy Statement (Ref. 31), and Management Directive and Handbook 6.6, "Regulatory Guides" (Ref. 32). The NRC staff did not identify any IAEA Safety Requirements or Guides with information related to the topic of this RG.

## C. STAFF REGULATORY GUIDANCE

### 1. Application for Stand-Alone Preemption Authority

The NRC regulations in 10 CFR 73.15(b) and (d) set forth the requirements for licensees to voluntarily apply to the NRC to obtain stand-alone preemption authority. A licensee who has applied for and been granted stand-alone preemption authority would be permitted to use, possess, or obtain certain weapons that may be prohibited by any local or State laws and by certain Federal laws (and any implementing regulations). This authority does not include obtaining enhanced weapons. Only licensees included within the NRC-designated classes of facilities specified in 10 CFR 73.15(c)(1) may apply to the NRC for this authority (see “Eligible Classes of Facilities, Radioactive Material, and Other Property” above). Applying for stand-alone preemption authority is voluntary.

A licensee may begin the required firearms background checks of its security personnel only after receiving notification from the NRC that the agency has accepted its application for review.

#### 1.1 Applying for Stand-Alone Preemption Authority

Eligible licensees who choose to apply for stand-alone preemption authority must submit an application and supplemental submissions in writing to the NRC, signed under oath or affirmation, in accordance with the requirements of 10 CFR 73.15(d). This application must be submitted in accordance with the requirements in 10 CFR 73.4. Consistent with the requirements in 10 CFR 73.15(d), the application and supplemental submissions must:

- (1) Include a statement indicating that the licensee is applying for stand-alone preemption authority under Section 161A of the AEA.
- (2) Include the name of the licensee and the NRC-designated facility to be protected by the licensee’s security personnel using the covered weapons. Include the docket number and the license number. Alternatively, the docket number and the license number of the facility shipping or receiving the NRC-designated radioactive material to be escorted by the licensee’s security personnel using the enhanced weapons.
- (3) Describe the licensee’s purposes and objectives in requesting stand-alone preemption authority. This description must address, at a minimum, whether these covered weapons are currently employed as part of the licensee’s existing protective strategy or whether these covered weapons will be used in a revised protective strategy. The licensee should describe how any State, local, or Federal restrictions on the use of covered weapons impact the licensee’s implementation of its protective strategy. Some examples of the types of information that a licensee may wish to provide in its application include, but are not limited to, the following:
  - (a) Any State, local, or Federal prohibition or restriction on the licensee’s current weaponry that if complied with would adversely affect the licensee’s ability to implement its protective strategy;
  - (b) Any State, local, or Federal prohibition or restriction on the licensee’s current weaponry that is due to recently enacted legislation that has not yet taken effect and if complied with would adversely affect the licensee’s ability to implement its protective strategy;

- (c) Any State, local, or Federal prohibition or restriction on the licensee obtaining more powerful weapons (e.g., a limitation on weapon caliber) or larger capacity weapons (e.g., large capacity magazines);
  - (d) Obtaining relief from State or local restrictions on purchasing replacement weapons stocks in sufficient quantities to maintain serviceable weapons; or
  - (e) Excessive length of time to obtain State or local weapons permits or registration for armed security personnel at facilities with a limited number of security personnel or constrained operational flexibility to address work-stoppage or emergency response reallocation of personnel within a larger fleet of facilities.
- (4) Describe the licensee’s firearms background check plan as required by 10 CFR 73.17(b). Submission of this plan would be an acceptable means of meeting this requirement.
- (5) Include the following supplemental information once it becomes available:
- (a) A confirmation that a sufficient number of security personnel have completed a satisfactory firearms background check to meet the licensee’s minimum staffing requirements for security personnel as specified in its physical security plan and any applicable fatigue requirements under 10 CFR Part 26, “Fitness for Duty Programs” (Ref. 33);
  - (b) A confirmation that the necessary training modules and notification procedures have been developed under the licensee’s firearms background check plan; and
  - (c) A confirmation that all security personnel whose official duties require access to covered weapons have been trained on these modules and notification procedures.

## 1.2 Licensee Actions Subsequent to Approval of Stand-Alone Preemption Authority

Under 10 CFR 73.15(d)(6), as of the effective date of the NRC’s approval of the licensee’s application for stand-alone preemption authority, the licensee must assign only security personnel who have completed a satisfactory firearms background check to duties requiring access to any covered weapons.

If the NRC grants stand-alone preemption authority, the licensee may choose to provide a copy of the NRC’s approval letter to any Government entity whose statutory or regulatory authority has been preempted by the Commission’s approval of Section 161A authority.

## 2. Application for Combined Preemption Authority and Enhanced Weapons Authority

NRC regulations in 10 CFR 73.15(b), (e), and (f) set forth the requirements for licensees to apply to the NRC to obtain combined preemption authority and enhanced weapons authority. A licensee granted combined preemption authority and enhanced weapons authority would be permitted to obtain, possess, and use enhanced weapons that are otherwise prohibited by any State, local, and certain Federal firearms laws. Only licensees included within the NRC-designated classes of facilities, radioactive material, or other property specified in 10 CFR 73.15(c)(2) may apply to the NRC for this authority. Applying for combined preemption authority and enhanced weapons authority is voluntary.

## 2.1. Applying for Combined Preemption Authority and Enhanced Weapons Authority

Eligible licensees who choose to apply for combined preemption authority and enhanced weapons authority must submit an application and supplemental submissions in writing to the NRC, signed under oath or affirmation, in accordance with the requirements of 10 CFR 73.15(e) and (f). This application must be submitted in accordance with the requirements in 10 CFR 73.4. Consistent with the requirements in 10 CFR 73.15(e) and (f), the application and supplemental submissions must:

### (1) Include the following information:

- (a) A statement indicating that the licensee is applying for combined preemption authority and enhanced weapons authority under Section 161A of the AEA.
- (b) The name of the licensee and the NRC-designated facility to be protected by the licensee's security personnel using the enhanced weapons. Include the docket number and the license number. Alternatively, the docket number and the license number of the facility shipping or receiving the NRC-designated radioactive material to be escorted by the licensee's security personnel using the enhanced weapons.
- (c) Describe the licensee's purposes and objectives in requesting combined enhanced weapons and preemption authority. This description must address, at a minimum, whether these enhanced weapons are currently employed as part of the licensee's existing protective strategy or whether these enhanced weapons will be used in a revised protective strategy. The licensee should describe how any State, local, or Federal restrictions on the use of enhanced weapons impact the licensee's implementation of its protective strategy. Some examples of the types of information that a licensee may wish to provide in its application include, but are not limited to, the following:
  - i) Why enhanced weapons are needed to increase the licensee's defensive capabilities to effectively protect against the design basis threats of radiological sabotage or theft or diversion, as specified in 10 CFR 73.1(a)(1) and 10 CFR 73.1(a)(2), "Purpose and scope," respectively;
  - ii) The licensee should describe how enhanced weapons provide substantially increased defensive capabilities in instances where LLEA response may be significantly delayed (e.g., remote locations or during transportation activities of designated radioactive materials or other property); or
  - iii) The licensee should describe how enhanced weapons provide substantially increased defensive capabilities in instances where adversary task times for achieving target set neutralization are relatively short.
  - iv) The licensee should describe the basis for the total number of enhanced weapons requested, as well as the types and calibers or gauges of the weapons. Licensees may use a manufacturer's specific model (e.g., an H & K SCAR-L automatic carbine) or use a more generic description (e.g., a Colt M-4 type automatic carbine) in specifying the type of enhanced weapons. The licensee's description of the type of weapon may be specific or generic; however, the caliber or gauge must be specific (e.g., calibers 5.56mm or 7.62mm).

- v) The NRC's approval of an application for combined preemption authority and enhanced weapons authority will result in the issuance of an approval letter specifying the total number of enhanced weapons by type and caliber or gauge. That the licensee is authorized to possess.

(d) Describe the licensee's firearms background check plan required by 10 CFR 73.17(b).

(e) Include the effective date of any previous NRC approval of stand-alone preemption authority granted to the licensee. Submission of a copy of the NRC's approval of stand-alone preemption authority or reference to the approval including the date and ADAMS accession number will satisfy this requirement.

(f) Include a new, revised, or addendum to the licensee's current physical security plan, security personnel training and qualification plan, safeguards contingency plan, and a WSA incorporating the use of the specific enhanced weapons the licensee intends to use. These plans must be specific to the facilities, radioactive material undergoing transport, or other property undergoing heapsort that is being protected.

(g) Include the following supplemental information once it becomes available:

- i) A confirmation that a sufficient number of security personnel have completed a satisfactory firearms background check to meet the licensee's minimum staffing requirements for security personnel as specified in its physical security plan and any applicable fatigue requirements under 10 CFR Part 26;
- ii) A confirmation that the necessary training modules and notification procedures have been developed under the licensee's firearms background check plan; and
- iii) A confirmation that all security personnel whose official duties require access to covered weapons have been trained on these modules and notification procedures.

**Note:** Licensees are not required under 10 CFR 73.15(e)(5)(iv) to submit this supplemental information if the licensee has previously been approved for stand-alone preemption authority via confirmatory order or via 10 CFR 73.15, since these tasks have already been completed.

(2) Submit their application in accordance with the appropriate license amendment requirements of 10 CFR 50.90, 10 CFR 70.34, or 10 CFR 72.56.

(3) Transmit an application that contains Safeguards Information or classified information in accordance with the applicable information security requirements for transmission of Safeguards Information or classified information in 10 CFR 73.21 and 10 CFR 73.22, or 10 CFR Part 95, respectively.

## 2.2 Licensee Actions Subsequent to Approval of Combined Preemption Authority and Enhanced Weapons Authority

Under 10 CFR 73.15(e)(8), once the NRC has approved a licensee's application for combined preemption authority and enhanced weapons authority, the licensee can only assign security personnel who have completed a satisfactory firearms background check to duties requiring access to any covered

weapons. Additionally, the licensee is required to comply with the conditions in 10 CFR 73.15(g) and (h) (see Staff Regulatory Guidance position 4.0).

As discussed in Staff Regulatory Guidance positions below, the licensee should initiate any training and notification (position 5), inventory (position 10), and recordkeeping (position 11) requirements upon receipt of the enhanced weapons.

### 2.3 Applying for Different Quantities, Types, or Calibers of Enhanced Weapons

A licensee who has previously received Section 161A authority from the NRC to obtain enhanced weapons and now seeks to obtain different quantities, types, or calibers of enhanced weapons should submit a new application to the NRC under 10 CFR 73.15(e) and (f) to modify its combined preemption authority and enhanced weapons authority previously approved by the NRC.

The information on the specific quantities, types, and calibers of enhanced weapons (contained in the licensee's application) are important, as these are the only weapons that ATF will authorize to be transferred to the licensee. Subsequent to the NRC's approval of the new application to obtain the different quantities, types, or calibers of enhanced weapons, the FFL holder will provide the revised information to ATF by requesting approval to transfer these new or additional weapons to the NRC licensee. (See Staff Regulatory Guidance position 4.1)

### 2.4 Obtaining Replacement Enhanced Weapons

Licensees seeking to replace enhanced weapons that are identical to weapons for which they have already received approval from the NRC are not required to reapply to the NRC under 10 CFR 73.15(e) and (f). Similarly, licensees seeking to obtain additional enhanced weapons that have already been authorized by the NRC (i.e., the licensee currently possesses less than the authorized maximum quantity limit) are not required to reapply to the NRC under 10 CFR 73.15(e) and (f). These actions are contingent on the licensee's total additional enhanced weapons inventory not exceeding the NRC's authorized maximum enhanced weapons possession limits as stated in the NRC's authorization letter.

### 2.5 Potential Need for Exemptions for Certain Licensees Obtaining Enhanced Weapons

Certain licensees that have received enhanced weapons pursuant to a request for combined preemption authority and enhanced weapons authority under 10 CFR 73.15 may determine that they no longer need the weapons specified in 10 CFR 73.26(d)(5), 10 CFR 73.46(b)(6), and the associated equipment specification, training, and qualification provisions under Appendix B to 10 CFR Part 73, Sections V.A.1, V.A.4, V.B.1, and V.B.4. These licensees may wish to submit an exemption request from some or all of these weapons requirements.

Submission of an exemption request is at the licensee's discretion and the licensee may tailor the exemption request to its specific needs. For example, a licensee granted enhanced weapons authority may determine that it no longer needs semiautomatic rifles or shotguns but wishes to retain pistols. Alternatively, a licensee may determine that it no longer needs any of the weapons identified in 10 CFR 73.26(d)(5) or 10 CFR 73.46(b)(6). A licensee is responsible for determining its needs and submitting an appropriate exemption request.

A licensee may submit an exemption request in conjunction with its application for combined preemption authority and enhanced weapons authority. Alternatively, a licensee may submit an exemption request after the Commission has considered the licensee's application and dispositioned it favorably. The NRC will address the request in accordance with its normal process for dispositioning exemptions.

### **3. Additional Information Required in Applying for Combined Preemption Authority and Enhanced Weapons Authority**

The NRC regulations in 10 CFR 73.15(f) set forth additional technical requirements for licensees applying for combined preemption authority and enhanced weapons authority. These include incorporating the use of the specific enhanced weapons it intends to employ into a new, revised, or an addendum to the physical security plan, a security personnel training and qualification plan, a safeguards contingency plan, and a WSA. These plans and assessment must be specific to the facilities, radioactive material, or other property being protected. A licensee may submit individual plans or a single integrated plan. Licensees applying for combined preemption authority and enhanced weapons authority should follow the applicable regulations in 10 CFR Part 73 regarding the development of their physical security plan, security personnel training and qualification plan, and safeguards contingency plan.

#### **3.1 Physical Security Plans**

Under 10 CFR 73.15(f), licensees must incorporate the use of enhanced weapons as part of the facility's protective strategy into a new or revised physical security plan or as an addendum to the plan. The updated security plan or addendum to the plan must be submitted to the NRC for review and approval. The NRC staff will review and evaluate the acceptability of the new or revised physical security plan. Examples of updated components may include, but are not limited to, a licensee's description of weapons used by licensee security personnel, defensive strategy procedures, or the security assessment for a new reactor.

#### **3.2. Training and Qualification Plans**

- (1) Under 10 CFR 73.15(f)(1)(i), the licensee must revise its training and qualification plan to address the additional training and qualification requirements needed to use the specific enhanced weapons. This information should be integrated into the revised training and qualification plan in the same format and structure as the existing training and qualification plan. Consistent with Appendix B, "General Criteria for Security Personnel," to 10 CFR Part 73, the licensee's training and qualification plan for enhanced weapons must include information from applicable firearms standards developed by nationally recognized firearms organizations or standard-setting bodies or from standards developed by:
  - (a) Federal agencies, such as the U.S. Department of Homeland Security's Federal Law Enforcement Training Center, the U.S. Department of Energy's National Training Center, or the U.S. Department of Defense;
  - (b) State law-enforcement training centers; or
  - (c) State Division (or Department) of Criminal Justice Services Training Academies.
- (2) Under 10 CFR 73.17(b)(1), the licensee is required to establish a firearms background check plan as part of their overall NRC-approved Training and Qualification plan for security personnel. The firearms background check plan may be a separate document, integrated directly into the licensee's security training and qualification plan, or an appendix to that plan. The training modules of the Firearms Background Check Plan should include the following topics at a minimum:

- (a) A discussion of Federal and State disqualifying status conditions or disqualifying events specified in ATF's regulations in 27 CFR 478.32 (including any applicable definitions in 27 CFR 478.11) identifying categories of persons who are prohibited from possessing, receiving, or using any firearms or ammunition;
- (b) A discussion of the continuing responsibility under 10 CFR 73.17(h) of security personnel subject to a firearms background check to promptly notify their employing licensee of the occurrence of any disqualifying status condition or disqualifying event under either Federal or State provisions; and
- (c) Information for security personnel on the FBI's process and procedures for appealing an adverse firearms background check (i.e., a "denied" or "delayed" NICS response). (See Staff Regulatory Guidance position 6.13)

### 3.3. Safeguards Contingency Plans

The licensee's safeguards contingency plan as specified in 10 CFR Part 73, Appendix C, "Licensee Safeguards Contingency Plans," should address how security personnel will use (i.e., deploy) these enhanced weapons, including tactical approaches and maneuvers, to implement their NRC-approved protective strategy. Examples of tactical approaches and maneuvers may include, but are not limited to, the following:

- (1) Policies or considerations for the use of select-fire versus full-automatic fire settings with enhanced weapons having this capability;
- (2) Consideration of down-range impacts before discharging portable enhanced weapons; and
- (3) The use of elevation and traverse limits on the firing of enhanced weapons from fixed positions.

### 3.4. Weapons Safety Assessment

The NRC regulations in 10 CFR 73.15(f) require licensees to also submit to the NRC, for prior review and approval, a WSA incorporating the use of the specific enhanced weapons the licensee is proposing to use. Licensees are required only to address the use of enhanced weapons in a WSA. Other types of covered weapons are not required to be addressed in a WSA, even if those other types of covered weapons are approved as part of an application for combined preemption authority and enhanced weapons authority.

The NRC staff has developed NUREG-2264 setting forth an acceptable method an applicant may wish to use in developing a required weapons safety assessment. Applicants are not required to use the WSA template in Volume 2 of the NUREG. However, if an applicant elects to develop its own weapons safety assessment, the NRC staff recommends an applicant look at the NUREG for guidance on the types of information that should be addressed in a completed WSA. The purpose of a WSA is to evaluate the onsite and offsite risks associated with the deployment and potential use of a specific enhanced weapon and the need to implement preventive or mitigative measures to address those risks. The NRC staff will evaluate an applicant's WSA to: 1) to determine if the potential risks associated with the use of a specific enhanced weapon have been properly identified and any necessary mitigative measures implemented; and 2) taking into account the risks and proposed mitigative measures, determine whether the applicant's requested enhanced weapon in specific deployments is appropriate. Applicants are reminded that they must prepare a separate WSA for each type of enhanced weapon they are requesting authority to use.

Finally, applicants using the NUREG-2264, Vol. 2, template process are required to submit a new WSA, rather than amending a previous WSA. The NRC is requiring a new WSA because of the mathematical calculation macros built into the Vol. 2 template document.

The WSA NUREG consists of four volumes that are publicly available and can be found on the NRC's electronic reading room <https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/> under (ML18108A014). Additionally, a separate "WSA Reference Information (U)" volume (Ref. 34) contains weapons design and capability information and firing range safety considerations that is considered security sensitive by the U.S. Government; and therefore, is not publicly available. Licensees considering applying for combined preemption authority and enhanced weapons authority or other stakeholders with a need-to-know may request a copy of this reference information via either their licensing project manager (preferred) or via NRC email: [wsa\\_request.resource@nrc.gov](mailto:wsa_request.resource@nrc.gov).

The WSA NUREG contains detailed guidance and examples that licensee can use in completing a weapons safety assessment. Volumes 1, 3, and 4 of the NUREG contain directions and examples on completing a weapons safety assessment. The WSA NUREG Volume 2 template allows an applicant to enter data to complete a weapons safety assessment. The version of Volume 2 contained in the NRC public documents website is a "PDF image" and does not contain the executable code necessary for licensees to complete the WSA template process. Therefore, licensees applying for combined preemption authority and enhanced weapons authority and electing to use the WSA NUREG template should request an executable-code copy of Volume 2 and the supporting help files from either their licensing project manager (preferred) or via NRC email: [wsa\\_request.resource@nrc.gov](mailto:wsa_request.resource@nrc.gov).

The NRC staff notes that the executable-code copies of Volume 2 of the WSA will have pre-installed (non-changeable) banner markings for the applicable information security level of a completed WSA. For example, the available WSA banner markings include: "SAFEGUARDS INFORMATION," "CONFIDENTIAL," or "SECRET." The NRC staff expects that a completed assessment using the Volume 2 template of the WSA will have the same information security level as the licensee's physical security plan. Consequently, a licensee should request the appropriate information security level for an executable-code copy of the WSA Volume 2 template. A completed WSA Volume 2 template must be created, stored, handled, transmitted, and portion marked as applicable in accordance with the information security marking of the requested template.

A licensee may apply for different types of enhanced weapons. For example, a licensee could apply for M-4 style, 5.56 millimeter (mm), magazine-fed, automatic carbines; M-249, 5.56 mm, magazine-fed, squad automatic weapons; and M-240, 7.62 mm, belt-fed, machine guns (for use in a mix of both anti-personnel and anti-vehicle roles). Each of these enhanced weapons has different deployment capabilities, calibers, effective ranges, effects, and down-range safety considerations. Therefore, the licensee must complete a separate WSA template for each type of enhanced weapon and include a copy of each completed WSA template with its application.

A licensee should complete a WSA template for either a new or revised application for combined preemption authority and enhanced weapons authority. The licensee may include a completed WSA template in its application via an electronic copy in Word format or a pdf image format or a printed copy.

Licensees should consider, among other factors, the following in completing their WSA template:

- (1) Assess any potential safety impact on the facility, radioactive material, or other property from the accidental discharge of an enhanced weapon or deliberate use of these enhanced weapons in implementing the licensee's protective strategy.

- (2) Assess any potential safety impact on public or private facilities, on public or private property, or on members of the public in areas outside the site boundary, from the off-site travel of rounds fired from these enhanced weapons.
- (3) Assess any potential safety impact on public or private facilities, on public or private property, or on members of the public from the off-site travel of rounds fired from these enhanced weapons at training facilities intended for proficiency demonstration and qualification purposes.

Licensees should not include in the WSA template an evaluation of the potential safety impact arising from licensee's armed security personnel using the enhanced weapons in a malevolent manner against the facility, radioactive material, or other property. Instead, to mitigate the risks of armed security officers using enhanced weapons to conduct malevolent acts, the licensee should rely on its personnel and behavioral monitoring programs (e.g., insider-mitigation or human reliability programs). These programs significantly reduce the likelihood of security personnel malevolently using their weapons against structures, systems, and components or against licensee personnel performing critical functions

Based on the WSA results, the licensee may choose to implement restrictions on the use of enhanced weapons to control the risk (e.g., the use of traverse and elevation limits on fixed-position machine guns) or use mitigation measures (e.g., the use of engineered security features to prevent bullet penetration or damage to sensitive structures or equipment). Any such additional restrictions or safety measures should be included in the licensee's physical security and/or training and qualification plans. The caliber and type of ammunition can significantly influence the results of the WSA. Consequently, licensees should repeat this assessment anytime they make changes to the enhanced weapons (i.e., a different caliber) or selected ammunition (e.g., from ball ammunition to armor piercing or to frangible ammunition).

Finally, the licensee's use of larger caliber enhanced weapons (e.g., use of 7.62x51 mm or 12.7x99 mm machine guns versus a 5.56x45 mm machine gun) or the use of any enhanced weapon (machine gun) under conditions in which the maximum ballistic ordinate of fire could be expected to exceed 305 meters (m) [1,000 feet (ft)] elevation above ground level (AGL) may create a safety risk to aircraft traversing over the licensee's facility. The licensee should discuss such issues with its local Federal Aviation Administration (FAA) officials to determine whether the FAA may need to consider if any aircraft safety restrictions are necessary in the airspace surrounding the facility or training range, should the licensee obtain such enhanced weapons. Federal Aviation Administration regulations<sup>2</sup> specify a minimum safe altitude of 305 m (1,000 ft) AGL above the highest obstacle within a horizontal distance of less than 610 m (2,000 ft) of the aircraft (Ref. 35). The licensee's WSA, physical security and/or training and qualification plans should reflect any required additional safety measures following discussions with the FAA (e.g., for example use of elevation limits on enhanced weapons fired from fixed positions).

#### **4. Specific Conditions Required to Possess Enhanced Weapons**

The NRC regulations in 10 CFR 73.15(g) set forth specific conditions required of licensees who have been approved for combined preemption authority and enhanced weapons authority.

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<sup>2</sup> 14 CFR 91.119, "Minimum safe altitudes: General."

#### 4.1 Documentation for Federal Firearms License Holders Use

Under 10 CFR 73.15(g)(1), licensees must provide a copy of the NRC's authorization approving an application for combined preemption authority and enhanced weapons authority to the ATF FFL holder (e.g., the manufacturer, importer, or dealer possessing the enhanced weapons) that will be supplying the enhanced weapons to the NRC licensee. The NRC's authorization letter would identify the total number, types, and calibers or gauges of enhanced weapons that the licensee is authorized to possess. Licensees may not possess enhanced weapons in excess of the total number authorized in the NRC's approval letter. Additionally, licensees may only possess the type and caliber or gauge of enhanced weapons specified in the NRC's approval letter.

ATF's regulations require prior approval by ATF of requests to transfer weapons registered under the NFA (i.e., enhanced weapons). The FFL holder will submit an application to ATF using ATF Form 4 (5320.4) to transfer the enhanced weapons to the NRC licensee. The FFL holder should include a copy of the NRC's authorization letter with the FFL's application to ATF to request the transfer of the enhanced weapons to the NRC licensee. ATF will rely on this NRC authorization letter's information in reviewing and approving a request to transfer enhanced weapons to the NRC licensee.

#### 4.2 Notification to the Chief Law Enforcement Officer

NRC licensees are not required to obtain an ATF FFL to receive enhanced weapons pursuant to the NRC's approval of an application under Section 161A of the AEA. However, if the NRC licensee does not hold also hold an ATF FFL (authorizing the possession of NFA registered weapons), then under current ATF regulations in 27 CFR 479.84 the NRC licensee is required to notify the chief law enforcement officer (CLEO) in the applicable jurisdiction of the forthcoming transfer of enhanced weapons from the ATF FFL to the NRC licensee. Under ATF's regulation licensees who are part of a corporation or company should notify the CLEO at their principal office or principal place of business of the corporation or company.

However, the NRC staff notes that the "principal office or principal place of business of the corporation or company" may not be the location of the facility that will possess the enhanced weapons. For example, a reactor facility that is part of a larger corporate fleet of reactor facilities is obtaining enhanced weapons may be located in a different state than the fleet's corporate offices. In this situation, NRC staff has verified with ATF staff that ATF has no objections if a licensee (that is part of a larger corporate fleet) also chooses to notify the CLEO for the location of its facility, in addition to the required notification made to the appropriate CLEO at the corporation's or company's principal office or principal place of business as required under 27 CFR 479.84.

#### 4.3 Identification of the Transferee

NRC licensees are not required to obtain an ATF FFL to receive enhanced weapons pursuant to the NRC's approval of an application under Section 161A of the AEA. However, if the NRC licensee does not hold an ATF FFL (authorizing the possession of NFA registered weapons), then under ATF's regulations in 27 CFR 479.85 the NRC licensee is required to provide additional information (as the transferee) to accompany the application to transfer the enhanced weapons. This information is submitted to ATF by the FFL holder (transferor). This includes information on the licensee and on any "responsible persons." Information on responsible persons is required for companies and corporations possessing NFA-registered firearms. ATF's definition of "responsible person" is specified in 27 CFR 479.11, "Meaning of terms." These ATF checks of "responsible persons" are separate from the firearms background checks required under 10 CFR 73.17 for security personnel whose official duties require access to covered weapons.

#### 4.4. Registration of Enhanced Weapons

Under ATF's regulations in 27 CFR 479.101, "Registration of firearms," NRC licensees must register under the National Firearms Registration and Transfer Record (NFRTR) all the enhanced weapons they possess under Section 161A authority. Enhanced weapons possessed by an NRC licensee must be registered with ATF under the name of the licensee. These enhanced weapons may not be registered under the name of the licensee's security contractor that provides security services to the licensee.

### 5. Completion of Training and Qualification before Use of Enhanced Weapons

Under 10 CFR 73.15(h) and 73.15(j), a licensee that has been approved for combined preemption authority and enhanced weapons authority must ensure that their security personnel with access to enhanced weapons complete firearms training and qualification requirements on the approved enhanced weapons, in accordance with the licensee's NRC-approved training and qualification plan. The licensee must retain all reports, records, or other documentation of such training as required by 10 CFR 73.15(h)(4).

#### 5.1. Initial Training and Qualification

- (1) Under 10 CFR 73.15(h)(2), licensee security personnel who will use enhanced weapons to implement the licensee's protective strategy must complete their initial training and qualification on these enhanced weapons before using such weapons in the protection of the facility, radioactive material, or other property.
- (2) Licensees must document the completion of their security personnel's training and qualification on the specific enhanced weapons in accordance with the requirements of the licensee's NRC-approved training and qualification plan.

#### 5.2. Recurring Training and Qualification

- (1) Under 10 CFR 73.15(h)(3), licensee security personnel who will use enhanced weapons to implement the licensee's protective strategy must complete their recurring training and qualification in accordance with the requirements of the licensee's training and qualification plan.
- (2) Licensees should document and record the completion of security personnel's recurring training and qualification on the specific enhanced weapons in accordance with the requirements of the licensee's NRC-approved training and qualification plan.

#### 5.3. Training on the Use of Enhanced Weapons

Under 10 CFR 73.15(j), licensee security personnel who will use enhanced weapons to implement the licensee's protective strategy must be trained on the use of force, including deadly force, in accordance with applicable State or Federal law. The licensee's training on the use of deadly force should address the potential use of enhanced weapons in the same manner as this training addresses the use of existing non-enhanced weapons.

Licensees do not need to repeat use-of-force training regarding the employment of enhanced weapons for security personnel who are currently trained and qualified on the use of force in accordance with the requirements of the licensee's approved training and qualification plan.

#### 5.4. Instructor Qualification for Training Security Personnel on Enhanced Weapons

The NRC staff considers as a good practice that instructors training security personnel on the use and handling of enhanced weapons be trained or certified by a State or nationally recognized entity for the specific type of enhanced weapons for which the individual will be providing instruction. Licensees may wish to refer to the appropriate guidance in RG 5.75 when developing firearms instructor qualifications. Licensees who are not covered by the regulatory requirements addressed in RG 5.75 may also find this guidance helpful.

### 6. Firearms Background Check for Armed Security Personnel

The NRC regulations in 10 CFR 73.17 set forth the requirements for licensees to conduct firearms background checks for all security personnel whose official duties require access to covered weapons or enhanced weapons. A firearms background check consists of the submission of fingerprints and other identifying information to the NRC for forwarding to the FBI for a check against the FBI's databases, including the NICS.

Under 10 CFR 73.17(b), firearms background checks must apply to all security personnel who handle, use, repair, and/or maintain accountability of covered weapons, including enhanced weapons, whether these security personnel are employed directly by the licensee or are employed by a security contractor who provides security services to the licensee.

Under 10 CFR 73.17(b)(6), a licensee can only begin firearms background checks after receiving notification from the NRC that the agency has accepted for review its application for either stand-alone preemption authority or for combined preemption authority and enhanced weapons authority. However, once accepted for review, these applications require a firearms background check for all security personnel whose official duties require access to covered weapons.

Under 10 CFR 73.17(b)(7), an entity that has applied for an NRC license and also applied for either stand-alone preemption authority or for combined preemption authority and enhanced weapons authority can only begin firearms background checks after the NRC has issued its license. This requirement applies to licenses issued under 10 CFR Part 50, Part 52, Part 70, and Part 72.

#### 6.1. General Requirements for Fingerprints and Firearms Background Checks

Only licensees that (1) fall within the NRC-designated classes of facilities, radioactive material, or other property specified in 10 CFR 73.15(c) (see Section B of this RG) and (2) apply for either stand-alone preemption authority or combined preemption authority and enhanced weapons authority are subject to the firearms background check requirements set forth in 10 CFR 73.17(b). Completion of firearms background checks on security personnel for such licensees is a required element of the process described in 10 CFR 73.15 for obtaining Section 161A authority.

The NRC regulations in 10 CFR 73.17(b)(1) require a licensee to develop a firearms background check plan. The NRC regulations in 10 CFR 73.17(b)(3) specify the overall performance objectives the licensee's plan must meet.

- (1) The NRC regulations in 10 CFR 73.17 apply to all individuals in the licensee's organization performing official duties involving access to covered weapons. The licensee is not responsible for conducting or verifying firearms background checks of licensed commercial firearms manufacturers and dealers.
- (2) Firearms background checks should not apply to personnel at a licensee's warehouse or supply organization who may receive or dispatch shipments of covered or enhanced weapons at the facility, provided the following conditions are met:
  - (a) When such personnel receive any incoming weapons shipments that remain sealed in their shipping containers and those containers are promptly turned over to appropriate security personnel or are promptly moved to an approved security storage area (e.g., an armory); or
  - (b) When such personnel handle outgoing weapons shipments that are secured and sealed in a shipping container.
- (3) Licensees may have already submitted the fingerprints of their security personnel as part of an access authorization or personal security clearance programs. However, pursuant to 10 CFR 73.17(e)(1), licensees are required to submit an additional set of fingerprints and NRC Form 754. This form is used by the licensee to provide identifying and reference information on security personnel undergoing a firearms background check in support of a licensee's application for 161A authority.
- (4) Under 10 CFR 73.17(k), the fingerprint images must be submitted on FBI form FD-258 and coded with the correct information for a firearms background check. The FBI requires a new set of fingerprint images on Form FD-258, along with the information from NRC Form 754, to perform the firearms background check.
  - (a) After completing the firearms background check, the FBI will return to the NRC one of three possible NICS responses: "proceed," "delayed," or "denied" and the associated NTN:
    - i) "Proceed" means the individual has satisfactorily completed the check.
    - ii) "Delayed" means the FBI needs additional information to complete the check.
    - iii) "Denied" means the FBI has concluded the individual is prohibited from possessing firearms under Federal (27 CFR 478.32) and/or applicable State law.
  - (b) The NRC will forward the NICS response and the associated NTN(s) received from the FBI to the submitting licensee, who must provide this information to the individual undergoing the firearms background check.
- (5) Once the licensee begins initial firearms background checks, security personnel would be permitted to continue duties that require access to any covered weapons currently in use at the site while the check is pending. Consistent with the requirements in 10 CFR 73.15(d)(4) or 10 CFR 73.15(e)(5) the licensee must provide confirmation to the NRC that a sufficient number of security personnel have completed a satisfactory firearms background check. Once the NRC has received that confirmation it will complete its review and make an appropriate determination on the licensee's application.

- (6) Consistent with the requirements in 10 CFR 73.15(d)(6) or 10 CFR 73.15(e)(8), once the NRC has approved a licensee's application for stand-alone preemption authority or combined preemption authority and enhanced weapons authority, respectively, the licensee must only assign security personnel who have completed a satisfactory firearms background check to duties requiring access to any covered weapons.
- (7) However, under the NRC requirements in 10 CFR 73.17(b)(8), if a "denied" or "delayed" NICS response (i.e., an adverse firearms background check) is received, then the security personnel must be removed from duties requiring access to covered weapons. If the individual is on duty at the time of removal, the licensee must fill the vacated position in accordance with the time frames specified in its physical security plan. Removed security personnel may be assigned to other security duties that do not require access to covered weapons, at the licensee's discretion.
- (8) Under 10 CFR 73.17(p)(1), licensees may not assign security personnel who have received a "denied" or "delayed" NICS response to duties requiring access to covered weapons while the security personnel's appeal of a "denied" response or resolution of a "delayed" response is pending with the FBI.
- (9) If an individual wants to appeal a "denied" NICS response or provide additional information to resolve a "delayed" NICS response, they must file directly with the FBI in accordance with the FBI's established procedures. (See Staff Regulatory Guidance position 6.13 for additional information and on timeliness considerations.)
- (10) Licensees may return security personnel who receive an adverse firearms background check to duties requiring access to covered weapons if they subsequently receive a "proceed" response from the FBI in a subsequent firearms background check.
- (11) Security personnel who have completed a satisfactory firearms background check, but who have had a break in service with the licensee or their security contractor of greater than 1 week are required to complete a new satisfactory firearms background check per 10 CFR 73.17(b)(9). (See Staff Regulatory Guidance position 6.5 for further discussion of "break in service.")
- (12) A licensee may accept a satisfactory firearms background check completed by another licensee that meets the requirements in 10 CFR 73.17(b)(9)(iv)(B).
- (13) A change in the licensee or ownership of a facility, radioactive material, or other property, or a change in the security contractor that provides security services for protecting such facilities, radioactive material, or other property, does not require a new firearms background check for security personnel currently working at the facility or escorting the radioactive material or other property. This applies to security personnel whose official duties still require access to covered weapons and who have not had a break in service.
- (14) Under 10 CFR 73.17(b)(3)(vi), a licensee must maintain records of a decision to remove security personnel from duties requiring access to covered weapons because of the identification or occurrence of any Federal or State disqualifying status condition or event.

- (15) Under 10 CFR 73.17(g), a licensee must develop and implement procedures to notify the NRC within 72-hours of a decision to remove security personnel from duties requiring access to covered weapons because of the identification or occurrence of any Federal or State disqualifying status condition or event.
- (16) Under 10 CFR 73.17(b)(12), security personnel who have completed a satisfactory firearms background check under NRC orders issued before 10 CFR 73.17 took effect (i.e., their most recent firearms background check was accomplished under NRC order) are not subject to a new initial firearms background check under 10 CFR 73.17(e). However, these security personnel are subject to the requirements for break-in-service and periodic firearms background checks in 10CFR 73.17(b)(9) and 10 CFR 73.17(f), respectively.
- (17) Under 10 CFR 73.17(b)(13), a licensee who withdraws its application for Section 161A authority must discontinue conducting the firearms background checks required by 10 CFR 73.17.
- (18) Under 10 CFR 73.17(b)(14), a licensee whose application for Section 161A authority has been rescinded or revoked must discontinue conducting the firearms background checks required by 10 CFR 73.17.

The firearms background checks required by 10 CFR 73.17 are not a substitute for any other NRC regulatory requirements governing security personnel background checks or investigations (e.g., “R” and “U” material access authorizations, “Q” and “L” personal security clearances, or criminal history and background checks for unescorted access to nuclear power reactors or access to Safeguards Information).

## 6.2. Specific State Restrictions on Classes of Individuals Possessing Covered Weapons

Many States have enacted specific restrictions applicable to classes of individuals convicted of certain crimes that prevent members of those classes from having access to firearms. These restrictions are above and beyond the Federal disqualification criteria specified in 27 CFR 478.32. Consequently, a licensee’s security personnel may be disqualified from possessing or receiving any firearms or ammunition in a specific State or States because of a previous conviction. Accordingly, a licensee must identify each State in which an individual security officer will have access to covered weapons when submitting that officer’s firearms background check.

Consider the following three examples regarding a hypothetical 45-year-old security officer with a 25-year-old prior misdemeanor drug conviction (i.e., one that was not punishable by more than 2 years of State incarceration). The security officer has no other adverse issues and has been adjudicated by the licensee as acceptable for access to a facility under 10 CFR 73.57, “Requirements for Criminal History Records Checks of Individuals Granted Unescorted Access to a Nuclear Power Facility, a Non-Power Reactor, or Access to Safeguards Information.” This security officer’s official duties require access to multiple types of covered weapons (i.e., both handguns and rifles).

- (1) State A prohibits an individual with any misdemeanor drug conviction from possessing any firearms. Accordingly, this security officer would be prohibited from access to any weapons at a licensee facility in State A or while transporting licensee property or material through State A, even if the licensee had received Section 161A authority because of the existence of a State disqualifying event that would prevent completion of a satisfactory FBI firearms background check.

- (2) State B prohibits an individual with any misdemeanor drug conviction from possessing handguns, but permits possession of long weapons (e.g., rifles or shotguns). Accordingly, the security officer would be permitted access to rifles or shotguns. However, the security officer would be prohibited access to any handguns at a licensee facility in State B or while transporting licensee property or material through State B, even if the licensee had received Section 161A authority because of the existence of a State disqualifying event that would prevent completion of a satisfactory FBI firearms background check.
- (3) State C has no firearms restrictions triggered by a misdemeanor drug conviction. Consequently, the security officer would be permitted access to all covered weapons at a licensee facility in State C or while transporting licensee property or material through State C.

Consequently, for the FBI to correctly conduct a firearms background check required by Section 161A of the AEA, security personnel are required to identify on NRC Form 754 the specific State or States that are or would be their official duty location(s). Security personnel may enter multiple States on their NRC Form 754 to address frequent reassignments, such as reassignment for outage or strike support purposes to facilities located in different States, but owned by the same utility, or security personnel who are employed by a security contractor operating at multiple sites. Additionally, security personnel may enter Continental United States or “CONUS” (i.e., all 48 contiguous states) on Form 754 for security personnel escorting interstate shipments of designated radioactive material or other property through multiple states. Applicants may obtain copies of NRC Form 754 from the NRC’s public web site at: <https://www.nrc.gov/reading-rm/doc-collections/forms/index.html>.

**Note:** FBI staff have indicated to NRC staff that listing multiple states or CONUS on NRC Form 754 would increase the time required for the FBI to complete a firearms background check. The NRC and FBI will update this guidance in the future on conducting firearms background checks for multiple states.

### 6.3. Firearms Background Check Submittals

The NRC regulations in 10 CFR 73.17(b), (d), and (e) set forth the requirements for licensees to conduct firearms background checks for all security personnel whose official duties require access to covered weapons.

- (1) Under 10 CFR 73.17(e)(1) licensees must submit the following to the NRC, in accordance with 10 CFR 73, for all security personnel requiring a firearms background check:
  - (a) a set of fingerprint impressions taken in accordance with 10 CFR 73.17(k); and
  - (b) a completed NRC Form 754.
- (2) The NRC developed NRC Form 754 for licensee security personnel to submit the necessary information that the NRC forwards to the FBI for performance of the NICS portion of the firearms background check. Security officers can view or print the blank form electronically, or they can complete the form online and then print it. However, because a completed form contains personally identifiable information (PII), the NRC staff recommends that completed forms should only be stored on secure systems and transmitted via secure means. An SSN contained on a completed NRC Form 754 must not be visible on the outside of any mailing package sent to the NRC. Licensees can find additional details on the process for manual or electronic submission of fingerprint impressions and NRC Form 754 information and the

NRC's mailing address for hard copy submission on the NRC's public Web site at:  
<https://www.nrc.gov/security/chp.html>.

- (3) Instead of submitting a copy of each completed NRC Form 754 to the NRC, licensees may submit a single document to the NRC containing a consolidated set of data from the NRC Form 754 completed by multiple security personnel. For example, information from the data fields in NRC Forms 754 for individual security personnel can be consolidated as multiple entries in a single Excel spreadsheet or Access database file for submission to the NRC. Licensees electronically submitting to the NRC either an individual Form 754 or consolidated data from multiple forms should ensure that any PII contained in these documents is protected in accordance with 10 CFR 73.4. Additionally, under 10 CFR 9.301(a), a licensee must ensure that the SSNs from consolidated NRC Forms 754 are not be visible on the outside of any mailing package sent to the NRC.
- (4) Under 10 CFR 73.17(e)(4), licensees must retain a copy of each NRC Form 754 (or consolidated set of data) submitted to the NRC for a period of 1 year following the termination of an individual's access to covered weapons or the denial of an individual's access to covered weapons.
- (5) The NRC will return the results of the firearms background check and the NTN, or NTNs, to the submitting licensee. Under 10 CFR 73.17(n)(3), the licensee must provide these results to the individual security officer who completed the form. Providing this information will ensure that the security officer has the necessary information to initiate an appeal under the FBI's established appeals processes should the individual elect to do so.
  - (a) Security officers receiving a firearms background check for activities in a single state (e.g., a single facility) will receive only a single NTN along with the NICS check results.
  - (b) Security officers receiving a firearms background check for activities involving multiple states (e.g., escorting interstate transportation of radioactive material) may receive multiple NTNs. Individuals initiating an appeal to the FBI must include all of the NTNs associated with their firearms background check with their appeal.

#### 6.4. Periodic Firearms Background Checks

The NRC regulations in 10 CFR 73.17(f) set forth the requirements for licensees to periodically conduct firearms background checks for all security personnel whose official duties require access to covered weapons. Licensees must complete a satisfactory firearms background check by submitting the information required by 10 CFR 73.17(d) at least once every 5 years for all security personnel whose official duties require access to covered weapons. Licensees must complete the periodic firearms background check no later than the same calendar month as the most recent firearms background check. The allowance period for completion of the periodic firearms background check is midnight (i.e., 23:59 local time) on the last day of the calendar month of expiration. The following examples are provided to assist in applying this requirement.

- (1) Individual A completes an initial satisfactory firearms background check on May 14, 2014. The individual must complete a satisfactory periodic firearms background check by 23:59 local time on May 31, 2019.
- (2) Individual B completes an initial satisfactory firearms background check on May 14, 2014. The individual completes a satisfactory periodic firearms background check on July 2, 2017

(i.e., the licensee chose to accomplish the firearms background check in conjunction with a criminal history records check at a shorter periodicity). The individual must complete a satisfactory periodic firearms background check by 23:59 local time on July 31, 2022, five years after the last completed firearms background check in 2017.

- (3) Individual C completes an initial satisfactory firearms background check on August 14, 2014, for State X. The individual subsequently completes a satisfactory firearms background check on March 29, 2016, for States Y and Z to escort shipments of radioactive material. If the March 2016 check included States X, Y, and Z; then the individual must complete a satisfactory periodic firearms background check by 23:59 local time on March 31, 2021. However, if the March 2016 check only included States Y and Z, then to use covered weapons to protect a facility or escort a shipment in State X the individual must complete a satisfactory periodic firearms background check by 23:59 local time on August 31, 2019.

Licensees, at their discretion, may perform periodic (or recurring) firearms background checks more frequently than once every 5 years. For example, a licensee may wish to synchronize the submission of fingerprints for access authorization checks for security personnel with fingerprints submitted for firearms background checks.

Under 10 CFR 73.17(f)(4), licensees may continue a security remove security personnel personnel's access to covered weapons pending the completion of these periodic firearms background checks. However, licensees must remove security personnel from duties requiring access to covered weapons if the satisfactory completion of a periodic firearms background check does not occur before the allowance period expires.

Under 10 CFR 73.17(f)(5), licensees must remove any security personnel from duties requiring access to covered weapons "without delay" if the individual receives an adverse NICS response (i.e., a "delayed" or "denied" NICS response) during a periodic firearms background check. Without delay means that the licensees should take all reasonable and prompt steps to remove such security personnel from duties requiring access to covered weapons. If the security personnel are on duty, the licensee must reconstitute its security force in accordance with its physical security plan.

Under 10 CFR 73.17(p)(3), licensees may return individuals who have received an adverse firearms background check to duties requiring access to covered weapons, if the individual:

- (1) Subsequently completes a satisfactory firearms background check; or
- (2) Satisfactorily appeals a "denied" NICS response or satisfactorily resolves a "delayed" NICS response.

#### 6.5. Break in Service Firearms Background Checks

Under 10 CFR 73.17(b)(9), the licensee must complete a new satisfactory firearms background check if the security personnel have had a break in service with their employing licensee or their security contractor of greater than 1 week. A "break in service" means that employment of the security personnel with the licensee or the security contractor has ended. It does not matter if the previous employing licensee has completed a satisfactory firearms background check on the individual within the last 5 years.

Activities that are not considered a "break in service," even if a security personnel is in a non-paid status, include, but are not limited to, the following:

- (1) Vacation time or annual leave;
- (2) Sick time or sick leave;
- (3) Short-term disability;
- (4) Long-term disability; or
- (5) Family Medical Leave Act.

Under 10 CFR 73.17(b)(10), a change in the licensee's ownership of the facility, radioactive material, or other property does not trigger the break-in-service firearms background check requirement. Similarly, a change in the security contractor providing security services to the licensee also does not trigger the break-in-service firearms background check requirement if the new contractor retains the security personnel employed by the previous contractor and those security personnel have a current firearms background check. However, if the new security contractor brings in new personnel, then under 10 CFR 73.17(b)(9)(ii) these personnel are subject to a new satisfactory firearms background check.

Under 10 CFR 73.17(b)(9)(iv), the NRC has identified two exceptions to the requirement to perform a break-in-service firearms background check:

- (1) The individual is on temporary active duty with the U.S. military reserves or National Guard;  
or
- (2) The licensee has verified via an industry-wide information-sharing database (e.g., the Nuclear Energy Institute's Personnel Access Data System (PADS) database) that the individual has completed a satisfactory firearms background check within the previous 12 months before the break in service occurred. However, this exception is only applicable if the previous firearms background check was for a duty station in the same state where the current licensee (who would otherwise be performing this break-in-service firearms background check) is located or the activity is occurring. That is, this previous firearms background check must have included the State or Territory where the new licensee facility or activity is located to ensure that NICS checks the correct State's prohibitions on access to firearms.

#### 6.6. Notification of the Removal of a Security Officer

The NRC regulations in 10 CFR 73.17(g) set forth the requirements for licensees to notify the NRC of actions taken to remove a previously cleared individual from access to covered weapons, because of the identification or occurrence of any Federal or State disqualifying status condition or disqualifying event that would prevent the individual from possessing, receiving, or using firearms or ammunition. ATF's regulations in 27 CFR 478.32 list the Federal disqualifying status conditions and disqualifying events that would prohibit the individual from possessing, receiving, or using firearms or ammunition. Licensees should refer to their applicable State regulations regarding any State disqualifying status conditions and disqualifying events.

- (1) Under 10 CFR 73.17(g), licensees must notify the NRC Headquarters Operations Center of such occurrences within 72 hours after acting to remove security personnel from duties requiring access to covered weapons. Licensees must make such notifications to the NRC Headquarters Operations Center by telephone at the number specified in Table 1 of Appendix A to 10 CFR Part 73, "Appendix A – U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses."

## 6.7. Security Personnel Responsibilities

The NRC regulations in 10 CFR 73.17(h) set forth the requirements for security personnel whose official duties require access to covered weapons to notify their licensee's security management within 72 hours of the identification or occurrence of any Federal or State disqualifying status conditions or disqualifying events. See the status conditions and events listed under ATF regulations in 27 CFR 478.32 that would prohibit the individual from possessing, receiving, or using firearms or ammunition.

Under 10 CFR 73.17(h), the individual must make such notifications to the licensee's security management, regardless of whether the security personnel are employed by the licensee or by a security contractor providing security services to the licensee. After the security officer notifies the licensee's security management, they may also notify their security contractor management, if applicable.

## 6.8. Training Security Personnel on Disqualifying Events and Appealing Adverse Firearms Background Checks

The NRC regulations in 10 CFR 73.17(j) set forth the requirements for licensees to include, within their NRC-approved training and qualification plans, information on the identification or occurrence of any Federal or State disqualifying status conditions or disqualifying events that would prohibit personnel from possessing, receiving, or using firearms or ammunition. This training must be provided to affected security personnel on an annual basis.

This training requirement is intended to assist security personnel in understanding their continuing obligation to promptly report disqualifying conditions or events and thus to encourage self-identification as required by 10 CFR 73.17(h). The obligation to report disqualifying status conditions and disqualifying events remains as long as the security personnel's official duties require access to covered weapons.

Licensees must also provide security personnel with information on how to appeal a "denied" NICS response to the FBI or to provide the FBI with additional information to resolve a "delayed" NICS response. (See Staff Regulatory Guidance position 6.13 for additional information).

## 6.9. Submission of Fingerprint Cards

The NRC regulations in 10 CFR 73.17(k) set forth the requirements for licensees to submit fingerprint cards to the NRC in support of firearms background checks. The NRC's process for submitting fingerprint checks is similar to the existing regulations in 10 CFR 73.57(d) for criminal history records checks. Licensees should submit one completed, legible standard fingerprint card (FBI Form FD-258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records, for each individual requiring a firearms background check. Information on how to obtain FBI Form FD-258 and the process for manual or electronic submission of fingerprint records to the NRC is provided on the NRC's public web site at: <https://www.nrc.gov/security/chp.html>.

- (1) Under 10 CFR 73.17(k)(2), licensees must add the following information to the FBI Form FD-258 fingerprint card or electronic fingerprint records submitted to the NRC:
  - (a) For fingerprints submitted to the NRC for the completion of a firearms background check **only**, the licensee must enter the terms "MDNRCNICZ" in the "ORI" field and "Firearms" in the "Reasons Fingerprinted" field of FBI Form FD-258.

- (b) For fingerprints submitted to the NRC for the simultaneous completion of **both** (1) an access authorization check or criminal history records check and (2) a firearms background check, the licensee must enter the terms “MDNRC000Z” in the “ORI” field and “Employment and Firearms” in the “Reasons Fingerprinted” field of FBI Form FD-258.
- (2) Under 10 CFR 73.17(k)(3), licensees must establish procedures to ensure that the quality of the fingerprints minimizes the rejection rate of fingerprint cards or records caused by illegible or incomplete information. Under 10 CFR 73.17(k)(4), the NRC will review fingerprints for firearms background checks for completeness and will return any FBI Form FD-258 or other fingerprint record containing omissions or evident errors to the licensee for corrections. There is no fee for fingerprint cards returned by the NRC.
- (3) Under 10 CFR 73.17(n), the FBI’s response to a licensee firearms background check request is transmitted solely to the NRC. The NRC will forward the FBI’s response to the submitting licensee. For a firearms background check by itself, the FBI will provide the NRC with only the “proceed,” “delayed,” or “denied” NICS responses and the associated NTN(s) and will not provide the FBI’s fingerprint record. If the firearms background check involves only a single State, typically the FBI will return only a single NTN to the NRC. However, if the firearms background check includes more than one State, then the FBI may return more than one NTN to the NRC.
- (4) Under 10 CFR 9.301(a), because a completed FBI Form FD-258 contains a full SSN, a licensee must ensure that the SSN is not visible on the outside of any mailing package sent to the NRC

#### 6.10. Fees for Firearms Background Checks and Fingerprinting

The NRC regulations in 10 CFR 73.17(m) set forth the requirements for licensees to pay fees to the NRC in support of firearms background checks. The NRC intends to charge the same fee for fingerprints submitted for a firearms background check as the fee currently imposed for fingerprints submitted for other NRC-required criminal history checks, including fingerprints (i.e., an NRC administrative fee plus the FBI’s processing fee). In addition, the NRC may charge an administrative fee for processing the NICS check information, but no FBI fee will be charged for the NICS check. Licensees can find fee information for firearms background checks on the NRC’s public web site at: <https://www.nrc.gov/security/chp.html>.

#### 6.11. Processing of Firearms Background Checks for NRC Licensees Who Are Also Federal Agencies

The NRC regulations in 10 CFR 73.17(n)(2) set forth the process for NRC licensees who are also Federal agencies and choose to submit fingerprints and NRC Form 754 information directly to the FBI for firearms background checks. In these cases, the FBI will inform these Federal agencies directly of the NICS response (“proceed,” “delayed,” or “denied”) and the associated NTN(s). Under 10 CFR 73.17(n)(3), these Federal licensees must provide the NICS response and associated NTN(s) to the submitting security officer.

#### 6.12. Appeals and Resolution of Adverse Firearms Background Checks.

The NRC regulations in 10 CFR 73.17(p) set forth the requirements for licensees regarding security personnel who are appealing a “denied” NICS response or providing additional information to resolve a “delayed” NICS response (i.e., adverse firearms background checks).

- (1) Licensees must not assign security personnel who have received an adverse firearms background check to official duties requiring access to covered weapons during the appeal of a “denied” NICS response or during the resolution of a “delayed” NICS response.
- (2) Licensees may assign security personnel during this period to other security duties that do not require access to covered weapons, to non-security duties, or any other personnel actions that the licensee deems appropriate.
- (3) If an individual is successful in their appeal of a “denied” NICS response or in resolution of a “delayed” NICS response, the licensee may return the individual to official duties requiring access to covered weapons.
- (4) Licensees may not file, on behalf of an individual, an appeal or provide additional information to resolve an adverse firearms background check. Instead, individuals must file an appeal or provide additional information directly with the FBI.

#### 6.13. Security Personnel Filing Appeals or Providing Additional Information

Security personnel who receive a “denied” NICS response may file an appeal with the FBI. Security personnel who receive a “delayed” NICS response may provide additional information to the FBI to resolve their “delayed” response. To assist security personnel in accomplishing such actions, the NRC staff has provided the following reference information.

- (1) Security personnel who receive a “denied” NICS response must file any appeals directly with the FBI. Security personnel who receive a “delayed” NICS response must provide additional information directly to the FBI to resolve their “delayed” response. The FBI’s electronic form to file appeals or submit additional information is found on the FBI’s NICS Appeal web site: <https://www.fbi.gov/services/cjis/nics/national-instant-criminal-background-check-system-nics-appeals>. Licensee security personnel should consult this web page or contact the FBI directly for information on the process for appealing a “denied” NICS response or providing additional information to resolve a “delayed” NICS response. The FBI has established a specific link on this web page under the heading “Appeal a Nuclear Regulatory Commission (NRC) Background Check” for use by licensee security personnel. Additional background and reference information can be found under the headings “Guide to Appeals,” “Frequently Asked Questions,” “Guide to Appealing a Firearm Background Check,” “What to Expect—The Appeal Process,” and “Documents Requested to Further the Appeal” on the NICS Appeal web site.
- (2) Under 28 CFR 25.9, “Retention and destruction of records in the system, the FBI has specified that records of a “denied” NICS response will be retained indefinitely. However, for a “delayed” NICS response the FBI purges the data associated with these NICS transaction 88 days of the transaction’s creation. FBI staff has indicated that the NICS transaction is created when the NRC uploads the security personnel’s identifying information into the NICS database for processing. Therefore, the NRC recommends that security personnel seeking to

resolve an FBI NICS “delayed” response should do so prior to the purging of records relating to the transaction.

- (3) If the FBI successfully resolves a “denied” or “delayed” NICS response, the FBI will update the status of the transaction to a “proceed” NICS response and will provide this information to the NRC for forwarding to licensee. Security personnel may wish to provide a copy of this letter to their licensee if there is any delay in updating the status of the firearms background check. In such cases, the licensee may query the status of the firearms background check transaction with the NRC.
- (4) The FBI’s Voluntary Appeal File (VAF) permits applicants to request that their information be retained in the VAF to prevent future denials or delays in accomplishing a firearms background check. Consequently, security personnel who have successfully appealed a “denied” NICS response or resolved a “delayed” NICS response may wish to consider using the FBI’s VAF.

#### 6.14. Protection of PII in Firearms Background Checks

The NRC regulations in 10 CFR 73.17(q) set forth the requirements for licensees to protect the PII of security personnel that has been obtained in support of the firearms background check requirements.

- (1) The licensee should not disclose the firearms background check record or the PII contained therein to persons other than the subject individual, his or her representative, or those who need to know the information to perform assigned duties in the process of granting access to covered weapons. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need to know.
- (2) These records or PII may also be disclosed to an appropriate representative of a Federal or State agency in the performance of his or her official duties, to authorized entities participating in an administrative or judicial proceeding, or in response to a Congressional inquiry.
- (3) Under 10 CFR 73.17(q)(5), the personal information obtained about an individual from a firearms background check may be transferred to another licensee under the following circumstances:
  - (a) The individual makes a written request to the licensee holding the data to disseminate the information contained in his or her file.
  - (b) The licensee with the data verifies with the licensee receiving the data such information as the individual’s name, date of birth, social security number, sex, and other applicable physical characteristics for identification.
- (4) Licensees may enter the results of completed firearms background checks (both satisfactory and adverse) for individual security personnel into an industrywide information-sharing database. This should include the name of the individual, the results of the NICS response, the date of the NICS response, and the State(s) under which the firearms background check was conducted.

- (5) Under 10 CFR 73.17(q)(4), the licensees must make firearms background check records and NRC Form 754 obtained under this regulatory position available for examination by an authorized representative of the NRC to determine compliance with applicable regulations and laws.

## **7. Other Applicable Federal Firearms Laws, Regulations, and Licensing Requirements**

NRC staff are providing the following information as an aid to licensees. However, this information is subject to change; and therefore, licensees should check ATF's regulations and website to ensure they are using the current regulations and forms.

- (1) Licensees who obtain enhanced weapons under Section 161A of the AEA are not required to obtain an FFL under the Gun Control Act (18 U.S.C. Chapter 44) or comply with ATF's FFL regulations under 27 CFR Part 478, unless otherwise noted. However, licensees may voluntarily obtain an FFL at their own discretion (e.g., to take advantage of ATF's special occupational tax provisions regarding the transfer of enhanced weapons that are required to be registered under the NFA). Consequently, if an NRC licensee obtains an FFL, it would also be subject to applicable ATF regulations. NRC licensees should contact the ATF for any questions regarding obtaining an FFL and applicable ATF regulations.
- (2) Licensees who are approved for combined preemption authority and enhanced weapons authority for use in escorting interstate shipments of radioactive material designated by the NRC under 10 CFR 73.15(c) (e.g., SNF or SSNM) are also required under ATF's regulation in 27 CFR 478.28 to obtain prior ATF approval to transport enhanced weapons interstate. Licensees must obtain prior ATF approval for interstate transportation (including use) of enhanced weapons via the submission of ATF Form 5320.20. See Staff Regulatory Guidance position 9.2 for further information on the submission of this form to ATF.

## **8. Transfer and Removal of Enhanced Weapons**

The NRC regulations in 10 CFR 73.15(m) set forth requirements for licensees regarding the transfer of enhanced weapons. The NRC regulations in 10 CFR 73.15(q) establish the requirements for licensees regarding recordkeeping for the receipt, transfer, and issuance of enhanced weapons. Separately, NRC licensees transferring enhanced weapons must also comply with applicable ATF regulations in 27 CFR Part 479 on ATF's prior approval of the transfer of enhanced weapons.

### **8.1. Receipt, Transfer, and Issuance of Enhanced Weapons**

Receipt and transfer mean transactions between a licensee possessing combined preemption and enhanced weapons authority with external entities (e.g., an FFL) regarding enhanced weapons where prior ATF approval is required. Receipt is an incoming transaction where enhanced weapons are provided to the licensee. Transfer is an outgoing transaction where the licensee is sending enhanced weapons to an entity authorized to possess them. See Staff Regulatory Guidance position 13 on examples of how an NRC licensee possessing enhanced weapons can dispose of or transfer these weapons to authorized entities. ATF written approval is required prior to a licensee receiving or transferring enhanced weapons.

Issuance means an action within the licensee's security organization. For example, issuance of an enhanced weapon for use at the licensee's offsite firing range, to a security officer (e.g., at the beginning of a duty shift) and the security officer's return of the enhanced weapon to the licensee, or turnover of the enhanced weapon to another security officer (e.g., fixed weapons in towers). Issuance actions do not

require prior ATF approval, because the weapon is returned to the licensee's facility at the end of the activity. Therefore, issuance is not considered a transfer as understood under the NFA.

#### 8.2. Control of Enhanced Weapons During Their Offsite Movement

Under 10 CFR 73.15(n)(5), the offsite transportation of enhanced weapons will not be considered a transfer of enhanced weapons if a licensee employee accompanies the offsite transportation. If the licensee's security personnel are contract guards, they cannot take enhanced weapons outside of the authorized facility's site boundary unless they are accompanied by a licensee employee. (See Staff Regulatory Guidance position 8.6 below for additional information on what is meant by the facility's "site" and "boundary.")

Authorized licensee employees accompanying contract security personnel possessing enhanced weapons are not required to be trained and qualified to use the enhanced weapons. However, these licensee employees are required to have completed a satisfactory firearms background check. Moreover, licensees should ensure these individuals are trained on the requirements for control and issuance of enhanced weapons and on requirements for notification of the NRC and ATF for lost or stolen enhanced weapons.

#### 8.3. ATF Prior Approval Required for Transfers of Enhanced Weapons

NRC approves applications for combined preemption authority and enhanced weapons authority for an individual licensee. Accordingly, ATF also approves the transfer of enhanced weapons to, or from, licensees on an individual basis. For example, two nearby licensees (A and B), who are part of the same nuclear fleet, each apply for combined preemption authority and enhanced weapons authority. Both are approved by the NRC and are authorized to possess the same type and quantity of M-4 automatic carbines. Subsequent to ATF's approval of the transfer of the M-4 carbines from an FFL holder to each licensee, Licensee A wants to move five M-4 carbines to Licensee B. Provided that Licensee B remains within the maximum enhanced-weapons possession limits specified in its approval, the NRC does not require prior review and approval of this movement of these enhanced weapons. However, ATF requires prior approval of this movement of enhanced weapons via ATF Form 4 and payment of fees (i.e., tax stamps). This movement is considered a transfer of enhanced weapons.

#### 8.4. Removal of Enhanced Weapons for Repair or Maintenance

Removal of enhanced weapons from a licensee's facility to a gunsmith or manufacturer for the purposes of repair or maintenance and the subsequent return of the enhanced weapon to the licensee is not considered a transfer under the NFA and ATF's regulations in 27 CFR Part 479. This position is based on an open letter from the ATF titled "Repair of NFA Firearms," dated February 18, 2000 (Ref. 36). The licensee's security personnel are not required to remain present at the repair facility while an enhanced weapon is being repaired off site. However, in accordance with the suggestion in the ATF February 18, 2000, letter the NRC staff recommends as a good practice that an NRC licensee submit an ATF Form 5 application to ATF for approval prior to conveying the enhanced weapon for offsite repair. As discussed in Staff Regulatory Guidance position 8.1 above, an authorized licensee employee must accompany enhanced weapons off the authorized facility's site to the repair facility, if the licensee's security personnel transporting the weapon for repair are employed by a security contractor.

#### 8.5. Permissible Reasons for Removing Enhanced Weapons from an Authorized Facility

Under 10 CFR 73.15(m)(3), the NRC describes permissible reasons for removing enhanced weapons from the licensee's facility that are not considered a transfer pursuant to ATF regulations. The

NRC may specify additional permissible reasons to remove enhanced weapons from an authorized NRC-regulated facility (i.e., for reasons other than for training on these weapons or to use the weapons in escorting shipments of radioactive material or other property). At this time, the NRC is not specifying any additional reasons for removing enhanced weapons from an authorized facility. Removal of enhanced weapons for other than permissible reasons should be considered a transfer of weapons, which requires submission of forms to ATF for its prior review and approval.

As discussed in Staff Regulatory Guidance position 11.4 below, the licensee should record instances of the offsite transportation of enhanced weapons.

#### 8.6. Facility Site Boundary

In considering whether the movement or transportation of enhanced weapons is beyond the facility's "site boundary," licensees should refer to the description of the facility's site boundary found in the licensee's updated final safety analysis report (UFSAR). Whether enhanced weapons remain within the facility site boundary or are taken off-site may determine how they must be moved. The following examples are provided for illustration and assume that the enhanced weapons are returned to the facility at the end of the authorized activity.

- (1) The firing range used by Licensee A for enhanced weapons training and qualification is located 15 kilometers (km) [9.3 miles] from its facility and is outside of the site boundary as described in the licensee's UFSAR. Therefore, the licensee should control and transport these enhanced weapons as described in Staff Regulatory Guidance positions 8.2 and 9.1 and record their off-site transportation as described in Staff Regulatory Guidance position 11.4.
- (2) The firing range used by Licensee B for enhanced weapons training and qualification is located 1 km [0.62 miles] from its facility and is within the site boundary as described in the licensee's UFSAR. Therefore, the guidance in Staff Regulatory Guidance positions 8.2, 9.1, and 11.4 does not apply to its enhanced weapons and the security personnel using these weapons for training and qualification at this firing range.

An authorized activity may last more than one day. An example of an authorized activity could include enhanced weapons requalification training that takes place over a period of a week at a firing range used by the licensee. During the overnight hours when training is not occurring, the enhanced weapons must be securely stored at the firing range or returned to the licensee's facility. When the training week has ended the authorized activity should be considered to have ended as well, whereupon the enhanced weapons should be returned to the facility.

### 9. Transportation of Enhanced Weapons

This staff regulatory guidance position addresses the transportation of enhanced weapons for activities that are not considered a transfer of these weapons. Transporting enhanced weapons potentially results in an increased risk of the loss or unauthorized access to these weapons. Licensees are responsible for ensuring the safe and secure transportation of enhanced weapons outside of their site consistent with NRC regulations and any applicable local, State, and Federal laws. Licensees transporting or shipping enhanced weapons and ammunition via common carriers should also comply with applicable U.S. Department of Transportation safety regulations on the shipment of firearms and ammunition.

## 9.1. NRC Requirements on the Transportation of Enhanced Weapons

The NRC regulations in 10 CFR 73.15(n) set forth requirements for licensees regarding the transportation of enhanced weapons. The provisions in 10 CFR 73.15(n)(1) apply to the transportation of enhanced weapons outside the site of the licensee's facility. The boundaries of the facility are defined in the licensee's updated final safety analysis report. Such provisions would not apply, for example, when a firing range or training facility is located on the licensee's site. Under 10 CFR 73.15(n)(1), armed security personnel transporting enhanced weapons to or from an offsite firing range or training facility used by the licensee must ensure that such weapons are unloaded and locked in a secure container during such transport. Unloaded weapons and ammunition may be transported in the same locked secure container.

The provisions in 10 CFR 73.15(n)(2) apply to activities involving the pre-positioning of armed security personnel and enhanced weapons to escort a shipment of radioactive material or the return of armed security personnel and enhanced weapons following the conclusion of such a shipment. The return journey may involve a transportation mode different than that escorting a shipment. For example, security personnel might return to their home facility via common carrier (an airline) rather than returning with an empty rail conveyance. The licensee must ensure that such weapons are unloaded and locked in a secure container during such transport. Unloaded weapons and ammunition may be transported in the same locked secure container.

The provisions in 10 CFR 73.15(n)(3) apply to security personnel using enhanced weapons to protect the actual shipment of radioactive material. Licensee security personnel engaged in such protective duties must ensure that their weapons are loaded and available for immediate use unless otherwise prohibited by Federal law. (See Staff Regulatory Guidance position 9.3).

Under 10 CFR 73.15(n)(5), the transportation of enhanced weapons outside of the licensee's facility site boundary must be accomplished by either licensee security personnel (i.e., employees) or contractor security personnel under the direction of, and accompanied by, an authorized licensee employee. The authorized licensee employee does not have to be trained and qualified on the enhanced weapons but has satisfactorily completed a firearms background check and is familiar with the licensee's procedures for recordkeeping associated with the transportation of enhanced weapons and the notifications to the NRC, LLEA, and ATF of lost or stolen enhanced weapons.

## 9.2. ATF Requirements on Interstate Transportation of Enhanced Weapons

Licensees must obtain prior approval from ATF before the interstate transportation of enhanced weapons. Such approval currently requires the submission of ATF Form 5320.20. Contact information for the ATF's NFA Branch may be found on the ATF web site: <https://www.atf.gov/contact/licensing-and-other-services>.

- (1) ATF staff have indicated to NRC staff that submittals of ATF Form 5320.20 should not contain any classified information or controlled unclassified information (CUI), including Safeguards Information. Therefore, licensees submitting this form to ATF (e.g., regarding the use of enhanced weapons to escort shipments of radioactive material) should remain mindful of the NRC's information security requirements associated with such shipments.
- (2) NRC staff discussed with ATF staff potential information security issues associated with an NRC licensee's submission of ATF Form 5320.20. ATF indicated that the "From" and "To" date fields and the "Transporting From" and "Transporting To" location fields may not be blank. Providing the information necessary to populate the From and To location fields and

precise From and To date fields would be considered classified information or CUI (SGI). However, ATF staff indicated that the “To” date may be as much as a 12-month shipment window from the “From” date. Accordingly, as a good information-security practice, the NRC staff recommends licensees use a range of transportation dates that is no more precise than a minimum 30- to 40-day shipment window. The minimum shipment window should include any time necessary for any armed escort personnel to accomplish preparatory activities (e.g., repositioning armed escort personnel to meet the shipment), escorting the shipment, and escort personnel returning to the point of origin or base of operations.

For example, a hypothetical shipment of spent fuel from the Anytown Nuclear Power Plant to the Green Deal ISFSI is scheduled to occur between May 15 to May 30, 2021, and is being escorted by licensee personnel using enhanced weapons (automatic weapons). Consequently, the licensee would be required to complete ATF Form 5320.20 for the interstate transportation of these weapons. In this example, the “Transporting From” and “Transporting To” location fields are the physical addresses of these facilities and can be entered as uncontrolled information. Similarly, the From and To date fields could be expressed as From: April 30, 2021, and To: July 15, 2021, as uncontrolled information.

### 9.3. Transportation of Covered Weapons Through School Zones

Under 10 CFR 73.15(n)(3), the NRC has required that: “Security personnel using enhanced weapons to protect shipments of radioactive material or other property that are being transported to or from the licensee's facility must ensure that these weapons are maintained in a state of loaded readiness and available for immediate use, except when otherwise prohibited by 18 U.S.C. 922(q).” Consequently, armed security personnel escorting designated shipments of radioactive material should be aware of the current firearms restrictions of 18 U.S.C. § 922(q)(2) and (q)(3). This statute imposes restrictions on the possession and use of a firearm while in a “school zone.” The terms “school” and “school zone” are defined in 18 U.S.C. § 921(a)(25) and (a)(26). In general, these provisions require firearms in a school zone to be unloaded and secured in a locked container or weapons’ rack.

Under 10 CFR 73.15(n)(2), armed security personnel transporting enhanced weapons to or from a licensee’s facility following the completion of, or in preparation for, escorting shipments of designated radioactive material or other property, but are not actually escorting such material or property, must ensure that such weapons are unloaded and locked in a secure container during transport. Unloaded weapons and ammunition may be transported in the same locked secure container.

## 10. Periodic Accountability Inventories of Enhanced Weapons

Under 10 CFR 73.15(o), the NRC specifies requirements for licensees regarding conducting periodic accountability inventories of its enhanced weapons. These inventory requirements only apply to enhanced weapons, not to any other covered weapons possessed by the licensee. These periodic accountability inventories must verify the continued presence of each enhanced weapon that the licensee is authorized to possess. The results of these periodic accountability inventories must document and retain the results of these inventories in accordance with the records requirements of 10 CFR 73.15(q). Additional details on recordkeeping can be found in Staff Regulatory Guidance position 11.

### 10.1. General Requirements for Inventories

In meeting the requirement for conducting periodic accountability inventories licensees should implement the following practices at a minimum unless otherwise required by the regulations:

- (1) Licensees should include their inventory requirement for enhanced weapons in their physical security plan. This inventory should verify that the licensee's internal movement of enhanced weapons does not adversely affect their accountability and control. The objective of the inventory should be to verify that the licensee's enhanced weapons are present in their specified locations.
- (2) The monthly and annual inventory requirements in 10 CFR 73.15(o)(2) and (3) require licensees to conduct both a simplified monthly inventory and a detailed annual inventory of their enhanced weapons. Licensees substitute the annual inventory for one of the simplified monthly inventories. For example, this would yield the following yearly inventory schedule: a simplified monthly inventory in months 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 and a detailed annual inventory in month 12.
- (3) Licensees may affix permanent barcode information or tags to enhanced weapons to facilitate the use of electronic scanning devices and techniques in conducting simplified monthly inventories.
- (4) Personnel conducting periodic inventories of enhanced weapons are subject to the firearms background check requirements of 10 CFR 73.17. However, these individuals are not required to be trained and qualified to use the enhanced weapons. For efficiency and increased accuracy and to minimize the potential for theft and diversion of the weapons, a team of two qualified persons should conduct each inventory. However, if the security personnel conducting these inventories are subject to the licensee's behavioral observation or human reliability programs, then only one individual is required to conduct these inventories.
- (5) When a locked secure weapons container (e.g., a ready-service firearms locker) located within a licensee's protected area (PA), vital area (VA), or material access area (MAA) has been opened, licensees should inventory and reseal the weapons container with a new high-integrity TID. A qualified individual or a two-person team should also conduct this inventory and resealing. Licensees should store unused TIDs in a manner similar to other security access control devices (e.g., keys, locks, cores) and should maintain a log of serial numbers of issued TIDs.
- (6) Under 10 CFR 73.15(o)(8), enhanced weapons that are off site for authorized purposes during a periodic inventory are required to be included within the scope of the inventory. Under 10 CFR 73.15(m)(4) and (m)(5), the licensee must verify the return of the enhanced weapons to the facility (following the completion of the authorized activity) and must document the removal and return of these enhanced weapons under the records requirements of 10 CFR 73.15(q)(4). The licensee is not required to verify the physical presence of these offsite weapons. Instead their absence should be documented in the inventory reports. Such documented offsite enhanced weapons are not considered lost or stolen solely because they are offsite. Under 10 CFR 73.15(o)(8), the licensee must document the absence of these weapons in the inventory reports required under 10 CFR 73.15(q)(6).

## 10.2. Simplified Monthly Inventories of Enhanced Weapons

- (1) Under 10 CFR 73.15(o)(2), licensees must conduct a simplified monthly inventory (e.g., a "piece-count" inventory) of the enhanced weapons possessed in the licensee's facility. The time interval between monthly inventories must not exceed 30 + 7 days. Licensees must verify the presence of each individual, accessible enhanced weapons. This does not include enhanced weapons that are stored in a locked, secure weapons container.

- (2) Under 10 CFR 73.15(o)(2)(iii), licensees may verify the presence of an intact TID on the secure weapons container within the licensee's PA, VA, or MAA holding enhanced weapons instead of verifying the presence of each individual weapon within the container. Licensees must record the serial number of the intact TID in the monthly inventory records, if that technique was used in lieu of verifying each individual weapon. Enhanced weapons located in permanent (i.e., fixed) firing positions (for example, in a tower) should be verified by their ID tag or serial number.

### 10.3. Detailed Annual Inventories of Enhanced Weapons

- (1) Under 10 CFR 73.15(o)(3), licensees must conduct a detailed annual inventory to verify that each authorized enhanced weapon is present at the licensee's facility and that these weapons are stored in their specified locations. During the annual inventory, licensees must verify the presence of each individual enhanced weapon through the verification of each enhanced weapon's individual serial number.
- (2) Under 10 CFR 73.15(o)(3), the time interval between annual inventories must not exceed 365 + 7 days. The annual inventory must include enhanced weapons that are checked during the monthly inventories, plus those enhanced weapons that are stored in a locked, secure weapons container (e.g., a ready-service arms locker) that is located within a PA, VA, or MAA and sealed with a TID. For weapons stored in a secure container, the TID should be removed from the storage container and the serial numbers of the individual weapons verified during the inventory. Following the inventory, the weapons container should then be relocked and secured with a new TID.

### 10.4. Opening a Locked Secure Enhanced Weapons Container

Under 10 CFR 73.15(o)(6), upon opening a locked secure weapons container sealed with a TID that contains enhanced weapons, the licensee must inventory the enhanced weapons contents before securing the container and applying a new TID. This requirement applies in instances other than the detailed annual inventory, for example, the secure container was opened for operational, training, or security exercise purposes. Licensees must verify the serial number of each enhanced weapon stored in the container. Licensees must treat unresolved discrepancies as a stolen or lost enhanced weapons.

### 10.5. Discrepancies in Inventories of Enhanced Weapons

Under 10 CFR 73.15(o)(7), licensees must resolve any inventory discrepancies within 24 hours of discovering the discrepancy. Licensees must treat unresolved discrepancies as a stolen or lost enhanced weapons.

### 10.6. Notifications for Stolen or Lost Enhanced Weapons

Under 10 CFR 73.15(p) and 10 CFR 73.1200(m) licensees must report any stolen or lost enhanced weapons they are authorized to possess. Upon the discovery of a stolen or lost enhanced weapon, licensees must notify ATF, the NRC, and applicable local law enforcement officials in accordance with 10 CFR 73.1200(m). Regulatory Guide 5.62 contains guidance for licensees on such physical security event notifications.

## **11. Recordkeeping for Enhanced Weapons**

Under 10 CFR 73.15(q), licensees must maintain records regarding the receipt, transfer, and transportation of enhanced weapons.

### **11.1. General Requirements for Enhanced Weapons Records**

- (1) Under 10 CFR 73.15(q)(7), licensees may integrate any records required by 10 CFR 73.15 with records required by ATF relating to the receipt, possession, transportation and transfer of enhanced weapons.
- (2) Under 10 CFR 73.15(q)(8), licensees must make these records available to NRC inspectors and ATF inspectors upon request.

### **11.2. Receipt of Enhanced Weapons**

Under 10 CFR 73.15(q)(2), licensees must maintain a record of each enhanced weapon received. The record of each receipt transaction should contain, at a minimum, the following information:

- (1) date of receipt of the enhanced weapon;
- (2) name and address of the transferor (i.e., the person, company, or corporation) who transferred the enhanced weapon to the licensee;
- (3) name of the manufacturer of the enhanced weapon and the name of the importer, if any (for enhanced weapons manufactured outside the United States);
- (4) model or type, serial number, and caliber or gauge of the enhanced weapon; and
- (5) any internal control number (e.g., a barcode) assigned to the enhanced weapon.

### **11.3. Transfer of Enhanced Weapons**

Under 10 CFR 73.15(q)(3), licensees must maintain a record of each enhanced weapon they transfer. The record of each transfer transaction should contain, at a minimum, the following information:

- (1) date of shipment of the enhanced weapon;
- (2) name and address of the transferee (i.e., person, company, or corporation) who received the enhanced weapon;
- (3) type, serial number, and caliber or gauge of the enhanced weapon including any internally assigned control number; and
- (4) the record of ATF's prior approval of the transfer.

### **11.4. Off-site Transportation of Enhanced Weapons**

Under 10 CFR 73.15(q)(4), licensees must maintain a record of each enhanced weapon they transport away from the authorized facility. The purpose of such records is to identify any lost or stolen enhanced weapons and to ensure that temporary transportation away from the facility does not

inadvertently become a permanent transfer. The record of each removal and return transaction must contain, at a minimum, the following information:

- (1) date of departure of the enhanced weapon;
- (2) date of return of the enhanced weapon;
- (3) purpose of removal of the enhanced weapon from the facility (e.g., training, escorting shipments, repair);
- (4) name of the security personnel transporting the enhanced weapon;
- (5) name of the licensee employee accompanying the transportation, if the security personnel transporting the enhanced weapons are employees of a security contractor providing security services to the licensee;
- (6) name of the person or facility to whom the enhanced weapon is being transported (this should be the intermediate destination, since the weapon is being ultimately returned to the facility); and
- (7) Type, serial number, and caliber or gauge of the enhanced weapon, including any internally assigned control number.

#### 11.5. Stolen or Lost Enhanced Weapons

Under 10 CFR 73.15(q), licensees must maintain a record of any enhanced weapon that is stolen or lost from its possession.

#### 11.6. Results of Inventories of Enhanced Weapons

Under 10 CFR 73.15(q)(5), licensees must maintain a record of the results of inventories of the enhanced weapons they possess. This should include both simplified monthly and detailed annual inventory results.

#### 11.7. Records Retention for Enhanced Weapons

Under 10 CFR 73.15(q)(6), licensees must maintain a record of enhanced weapons possessed by the licensee for a minimum period of at least 1 year after the licensee no longer possesses enhanced weapons. This 1-year period does not begin until (1) the licensee's authority to possess enhanced weapons is terminated, suspended, or revoked per 10 CFR 73.15(r), and (2) all enhanced weapons have been transferred from the licensee's facility to an authorized entity. (See also Staff Regulatory Guidance positions 8.1 and 8.3 above on transfers of enhanced weapons.)

### **12. Adverse ATF Findings**

Under 10 CFR 73.15(k), licensees possessing enhanced weapons must notify the NRC of an adverse inspection finding, enforcement finding, or other adverse notice from ATF that is related to the licensee's receipt, possession, or transfer of enhanced weapons under combined preemption authority and enhanced weapons authority.

Under 10 CFR 73.1200(n), licensees who also possess an ATF FFL must notify the NRC of the receipt of adverse inspection finding, enforcement finding, or other adverse notice from ATF related to their FFL. NRC licensees who are approved by the NRC for combined preemption authority and enhanced weapons authority are not required to obtain an ATF FFL to possess enhanced weapons; however, the licensee may choose to voluntarily obtain an FFL (i.e., due to certain financial and regulatory advantages).

Under 10 CFR 73.1200(n), licensees must notify the NRC within 24 hours of the time of occurrence an adverse ATF finding. (See also Regulatory Guide 5.62.)

### **13. Termination, Modification, Suspension, and Revocation Issues**

Licensees must receive NRC approval to terminate or modify either their stand-alone preemption authority or their combined preemption authority and enhanced weapons authority. Under 10 CFR 73.15(r)(1)(i), licensees seeking to modify or terminate their stand-alone preemption authority must apply to the NRC in writing, under oath and affirmation, in accordance with 10 CFR 73.4. Under 10 CFR 73.15(r)(1)(i) or 10 CFR 73.15(r)(2), licensees seeking to modify or terminate their combined preemption authority and enhanced weapons authority, must apply to the NRC in writing, under oath and affirmation, and the applicable license amendment provisions of 10 CFR 50.90, 70.34, and 72.56.

Under 10 CFR 73.15(r)(2)(i) a licensee seeking to modify the enhanced weapons it possesses must amend their original application for combined preemption authority and enhanced weapons authority to specify the different quantities, types, and calibers or gauges of the new enhanced weapons being requested. Additionally, the application must include a plan to transfer or dispose of any excess enhanced weapons the licensee possesses once the licensee obtains the new weapons.

Licensees seeking to dispose of excess enhanced weapons resulting from either a modification to or termination of their combined preemption authority and enhanced weapons authority, may only do so to recipients authorized to receive such enhanced weapons as approved by ATF. Such disposal is considered a transfer of the enhanced weapons subject to the requirements in 10 CFR 73.15(m)(7). The NRC will not approve a request to terminate a licensee's combined preemption authority and enhanced weapons authority until it has received notification that the enhanced weapons have been properly transferred or disposed of such that the licensee no longer has possession any enhanced weapons.

Examples of authorized recipients for the disposal or transfer of these enhanced weapons may include, but are not limited to, the following:

- (1) A Federal, State, or local government entity (e.g., a law enforcement agency) authorized to possess such weapons;
- (2) A federal firearms licensee authorized to receive the enhanced weapons under applicable law and regulations;
- (3) Another NRC licensee who is approved for combined preemption authority and enhanced weapons authority and is authorized to receive and possess these specific enhanced weapons (i.e., these enhanced weapons are authorized for the receiving licensee, and they are within the receiving licensee's authorized enhanced weapons maximum possession limits); or
- (4) The ATF for destruction.

## **D. IMPLEMENTATION**

The NRC staff may use this regulatory guide as a reference in its regulatory processes, such as licensing, inspection, or enforcement. However, the NRC staff does not intend to use the guidance in this regulatory guide to support NRC staff actions in a manner that would constitute backfitting as that term is defined in 10 CFR 50.109, “Backfitting,” 10 CFR 70.76, “Backfitting,” or 10 CFR 72.62, “Backfitting,” and as described in NRC Management Directive 8.4, “Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests” (Ref. 37), nor does the NRC staff intend to use the guidance to affect the issue finality of an approval under 10 CFR Part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants.” The staff also does not intend to use the guidance to support NRC staff actions in a manner that constitutes forward fitting as that term is defined and described in Management Directive 8.4. If a licensee believes that the NRC is using this regulatory guide in a manner inconsistent with the discussion in this Implementation section, then the licensee may file a backfitting or forward fitting appeal with the NRC in accordance with the process in Management Directive 8.4.

## GLOSSARY

The following terms are used in this regulatory guide. These terms are consistent with the applicable definitions of those terms found in 10 CFR 73.2 and the Firearms Guidelines.

**Adverse firearms background check**—means a firearms background check that has resulted in a “denied” or “delayed” NICS response from the FBI.

**ATF**—means the Bureau of Alcohol, Tobacco, Firearms and Explosives under the U.S. Department of Justice.

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

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

**Enhanced weapon**— means any short-barreled shotgun, short-barreled rifle, or machine gun. Enhanced weapons do not include destructive devices as defined in 18 U.S.C. 921(a).

**FBI**—means the Federal Bureau of Investigation under the U.S. Department of Justice.

**Federal firearms license (FFL)**—means a license issued by ATF under 27 CFR Part 478 to possess and transfer firearms and/or ammunition.

**Firearms background check**—means a background check by the U.S. Attorney General pursuant to 42 U.S.C. 2201a that includes a check against the FBI’s fingerprint system and the National Instant Criminal Background Check System.

**Firearms Guidelines**—means a document approved by the Commission and the U.S. Attorney General in accordance with Section 161A of the AEA that provides guidance and direction to the three Federal agencies (the NRC, FBI, and ATF) implementing the provisions of Section 161A. The Firearms Guidelines were published in the *Federal Register* on September 11, 2009. Revision 1 to the Firearms Guidelines was published in the *Federal Register* on June 25, 2014. Revision 2 to the Firearms Guidelines was published in the *Federal Register* on March 8, 2019. (See Ref. 26)

**Licensee**—has the same meaning for this term as is defined in 10 CFR 50.2, “Definitions.”

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

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

**Personally identifiable information (PII)**—means information that can be used to identify or contact a person uniquely and reliably or can be traced back to a specific individual. PII is also a person's name in combination with any other any information that would make the individual's personal identity easily traceable and could make it useable for authorized purposes.

**Satisfactory firearms background check**—means a firearms background check that has resulted in a “proceed” NICS response.

**SSNFPA**—means the *Social Security Number Fraud Prevention Act of 2017*.

**Stand-alone preemption authority**—means the authority granted to the Commission, pursuant to 42 U.S.C. 2201a, to authorize licensees or the designated security personnel of a licensee to transfer, receive, possess, transport, import, and use one or more categories of covered weapons, notwithstanding any State, local, or certain Federal firearms laws, including regulations, that prohibit or restrict such conduct. Such covered weapons do not include enhanced weapons as defined in 10 CFR 73.2.

## REFERENCES<sup>3</sup>

1. *U.S. Code of Federal Regulations* (CFR), “Physical Protection of Plants and Materials,” Part 73, Chapter I, Title 10, “Energy.”
2. CFR, “Domestic Licensing of Production and Utilization Facilities,” Part 50, Chapter I, Title 10, “Energy.”
3. CFR, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” Part 52, Chapter I, Title 10, “Energy.”
4. CFR, “Domestic Licensing of Special Nuclear Material,” Part 70, Chapter I, Title 10, “Energy.”
5. CFR, “Licensing Requirements for The Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, And Reactor-Related Greater Than Class C Waste,” Part 72, Chapter I, Title 10, “Energy.”
6. *United States Code* (U.S.C.), “Use of Firearms by Security Personnel,” Section 2201a, Chapter 23, “Development and Control of Atomic Energy,” Title 42, “The Public Health and Welfare,” also known as Section 161A of the *Atomic Energy Act of 1954*, as amended (AEA).<sup>4</sup>
7. CFR, “Facility Security Clearance and Safeguarding of National Security Information and Restricted Data,” Part 95, Chapter I, Title 10, “Energy.”
8. CFR, “Public Records,” Part 9, Chapter I, Title 10, “Energy.”
9. *Social Security Number Fraud Prevention Act of 2017* (SSNFPA), Public Law 115-59, 131 Stat. 1152. (See also 42 U.S.C. § 405 note.)
10. U.S.C., “Firearms,” Chapter 44, Part I, Title 18, “Crimes and Criminal Procedures.”
11. CFR, “Commerce in Firearms and Ammunition,” Part 478, Chapter II, Title 27, “Alcohol, Tobacco Products and Firearms.”
12. U.S.C., “Machine Guns, Destructive Devices, and Certain Other Firearms,” Chapter 53, Subtitle E, Title 26, “Internal Revenue Code.”
13. CFR, “Machine Guns, Destructive Devices, and Certain Other Firearms,” Part 479, Subchapter B, Chapter II, Title 27, “Alcohol, Tobacco Products and Firearms.”

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3 Publicly available NRC published documents are available electronically through the NRC Library on the NRC’s public Web site at <https://www.nrc.gov/reading-rm/doc-collections/index.html> and through the NRC’s Agencywide Documents Access and Management System (ADAMS) at <https://www.nrc.gov/reading-rm/adams.html>. The documents can also be viewed online or printed for a fee in the NRC’s Public Document Room (PDR) at 11555 Rockville Pike, Rockville, MD. For problems with ADAMS, contact the PDR staff at 301-415-4737 or (800) 397-4209; fax (301) 415-3548; or email [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

4 Publicly available U.S. Government-published documents are available electronically through the public Web site at: <https://www.gpo.gov/about/bookstore.htm> or U.S. Government Publishing Office Bookstore, 710 North Capitol Street, NW, Washington, DC (corner of North Capitol and H Streets).

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5 The “WSA Reference Information (U)” volume is not publicly available. This volume contains information on weapons design and capability information and firing range safety considerations. Licensees seeking to obtain combined preemption authority and enhanced weapons authority may request a copy of this volume from their licensing project manager (preferred). Alternatively, licensees or individuals with a need to know may request a copy of this volume from the NRC staff using email address [wsa\\_requests.resource@nrc.gov](mailto:wsa_requests.resource@nrc.gov).