

**Regulatory Guide Number:** 5.61, Revision 0

**Title:** “Intent and Scope of the Physical Protection Upgrade Rule Requirements for Fixed Sites”

**Office/Division/Branch:** NSIR/DPCP/MSB

**Technical Lead:** Timothy Harris

**SUBJECT:** Basis for Withdrawal

**(1) What regulation(s) did the Regulatory Guide support?**

Regulatory Guide (RG) 5.61 supported the changes to 10 CFR 73.1, 73.20, 73.45, and 73.46 in the 1979 Upgrade Rule. The RG provides an overview of the major sections of the Upgrade Rule and discusses (1) how the Physical Protection Upgrade Rule is structured, (2) what the purposes of its major provisions are, and (3) what interrelationships exist among the three major portions of the rule that contain requirements for the physical protection of fixed sites. The RG also provides insights to explain why certain fixed site requirements are included in the Upgrade Rule and to clarify the intent of these new requirements.

**(2) What was the purpose of the Regulatory Guide?**

This RG was issued in July 1980 to assist affected licensees in revising their physical protection plans in response to the new requirements of 10 CFR Part 73 published in the Federal Register on November 28, 1979 (44 FR 68184). The RG explains the link between the performance capabilities provided in 10 CFR 73.45 and the fixed site physical protection system requirements in 10 CFR 73.46.

**(3) How was the Regulatory Guide used in regulatory activities, particularly licensing reviews and inspections?**

RG 5.61 may have historically been used by licensees and applicants in developing or revising security plans for their facilities, because it provided insights regarding the intent of the Upgrade Rule. Given that the RG only explains the intent of the Upgrade Rule rather than providing specific guidance for meeting regulatory requirements in 10 CFR 73.46, this RG has not been committed to in site specific procedures or security plans as a means to demonstrate compliance with NRC regulations. There were no records identified where the RG was used during inspections.

**(4) Is the Regulatory Guide referenced in other documents? What are the “ripple effects” on these documents if it is withdrawn?**

RG 5.61 is not referenced in other guidance documents and therefore, there are no “ripple effects” resulting from its withdrawal.

**(5) Why is the Regulatory Guide no longer needed? What is the rationale for withdrawing this Regulatory Guide instead of revising it? What is the basis for believing that no guidance similar to that in the Regulatory Guide will be needed in the future?**

RG 5.61 provides insights to the changes that were made as part of the 1979 Upgrade Rule. The staff believes this RG is no longer needed for several reasons. First, the regulatory requirements in 10 CFR 73.45 and 73.46 have not changed since 1979 and are well understood by existing licensees. Second, there are no new licensees, and none expected in the foreseeable future, that would possess and use formula quantities of strategic special nuclear material. Third, the RG is predominately explanatory of the rulemaking rather than guidance on how to comply with requirements. Lastly, other guidance on developing security plans to meet the physical protection requirements in 10 CFR 73.46 are available.

Revising this RG does not seem appropriate because the intent of the Upgrade Rule has not changed. In staff's view, a RG that explains why changes were made to the regulations dating back over 40 years is no longer useful and should be withdrawn.

**(6) What guidance is available once the Regulatory Guide is withdrawn?**

Other guidance documents, such as RG 5.52, provide guidance on developing a security plan that meets the applicable regulatory requirements.

**(7) Do other agencies rely upon the Regulatory Guide, e.g., the Agreement States, National Aeronautical and Space Administration, Department of Energy?**

The staff is unaware of any other agency that uses or relies on RG 5.61.