

**RULEMAKING ISSUE
(Notation Vote)**

June 27, 2010

SECY-10-0085

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

SUBJECT: PROPOSED RULE: "ENHANCED WEAPONS, FIREARMS
BACKGROUND CHECKS AND SECURITY EVENT
NOTIFICATIONS" (RIN: 3150-A149)

PURPOSE:

To obtain Commission approval to include security event notifications as part of the proposed "Enhanced Weapons, Firearms Background Checks and Security Event Notifications" rule and allow the Executive Director for Operations to approve the proposed rule (enclosure).

SUMMARY:

The proposed rule would implement the Firearms Guidelines that were issued by the U.S. Nuclear Regulatory Commission (NRC), after obtaining the approval of the U.S. Attorney General (AG), to implement the authority of the new section 161A of the Atomic Energy Act (AEA), "Use of Firearms by Security Personnel." The NRC published the Firearms Guidelines in the *Federal Register* on September 11, 2009 (74 FR 46800).

AEA section 161A confers upon the Commission the authority to authorize a licensee's or certificate holder's security personnel to possess and use enhanced weapons (e.g., machine guns) and to allow this statutory provision to preempt State, local, and certain Federal firearms laws. In addition, security personnel with access to any weapon must undergo a firearms background check that would include fingerprinting and a check against the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS) database.

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The proposed rule also contains new and revised security notification requirements in Appendix G, "Reportable Safeguards Events," to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, "Physical Protection of Plants and Materials" and 10 CFR 73.71, "Reporting of Safeguards Events" for attacks and imminent threats to power reactors and Category I strategic special nuclear material facilities.

BACKGROUND:

As part of the Energy Policy Act of 2005, the AEA was amended by the addition of section 161A. Subsection d of section 161A required the Commission to issue the Firearms Guidelines, with the approval of the U. S. Attorney General. The Firearms Guidelines provide direction to the NRC, FBI, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) on the implementation of this statute.

In parallel with the development of the Firearms Guidelines, the NRC staff developed proposed implementing regulations. On October 26, 2006 (71 FR 62663), the NRC published a proposed rule that would implement the Firearms Guidelines then under development as part of a larger proposed rule, "Power Reactor Security Requirements." However, as a result of changes made to the draft Firearms Guidelines between publication of the proposed rule and issuance of the Guidelines, the NRC concluded that it would need to make significant changes to the content of the proposed rule. These changes required additional notice and opportunity for public comment. The time required to publish a revised proposed rule on the Firearms Guidelines, receive comments, and incorporate them could not be accommodated within the schedule to issue the final Power Reactor Security Requirements rule. Therefore, the NRC staff recommended in SECY-08-0050, "Firearms Guidelines Implementing Section 161A of the Atomic Energy Act of 1954 and Associated Policy Issues," dated April 17, 2008, (Agencywide Documents Access and Management System (ADAMS) Accession Number ML072920440) to bifurcate the Power Reactor Security Requirements rule and the Firearms rule into two separate rules. In SECY-08-0050 the NRC staff also provided the Commission with the latest Firearms Guidelines for its review and approval and recommended the Commission delegate to the NRC Executive Director for Operations (EDO) the authority to sign the proposed Firearms rule to expedite its publication in the *Federal Register*.

On July 8, 2008, in SECY-08-0050A, "Firearms Guidelines Implementing Section 161A of the Atomic Energy Act of 1954 and Associated Policy Issues – Supplemental Information," (ADAMS Accession Number ML081910207), the NRC staff supplemented SECY-08-0050 by sending the Commission a new version of the Firearms Guidelines for review and approval because of additional comments from the Department of Justice (DOJ) staff. The NRC staff also recommended that the proposed Firearms rule have a 45-day (rather than the agency's typical 75-day) comment period to expedite the issuance of the final rule and repeated the recommendation that the Commission delegate to the EDO the authority to sign the proposed Firearms rule with the final rule being reviewed and approved by the Commission.

In Staff Requirements Memorandum (SRM) SRM-SECY-08-0050/0050A, entitled, "Firearms Guidelines Implementing Section 161A of the Atomic Energy Act of 1954 and Associated Policy Issues," dated August 15, 2008 (ADAMS Accession Number ML082280364), the Commission approved the Firearms Guidelines and delegated authority to the EDO to publish the proposed Firearms rule with a 45-day comment period.

On July 9, 2008, in SECY-08-0099, "Final Rulemaking – Power Reactor Security Requirements," (ADAMS Accession Number ML081650474), the staff recommended the Commission approve the final rule for the Power Reactor Security Requirements. The NRC staff also recommended removing the sections in the Power Reactor Security Requirements rule on the new and revised security notification requirements in § 73.71 and Appendix G to Part 73, "Reportable and Recordable Safeguards Events," and placing them in the proposed Firearms Guidelines rule.

In SRM-SECY-08-0099, dated December 17, 2008 (ADAMS Accession Number ML083520252), the Commission approved the Final Power Reactor Security Requirements rule and the movement of the security notification requirements in § 73.71 and Appendix G to Part 73 to the proposed Firearms Guidelines rule.

Once the Commission approved the Firearms Guidelines in SRM-SECY-08-0050/0050A, the Firearms Guidelines were sent to DOJ in August 2008 for approval. The Attorney General did not approve the Firearms Guidelines before the change in administration. Thus, Attorney General approval of the Firearms Guidelines was left to the new Attorney General, who directed a new review of the Firearms Guidelines. As a result of this additional review, DOJ made additional, non-substantive editorial changes to the Firearms Guidelines.

The Attorney General approved the Firearms Guidelines on July 7, 2009, and returned them to the NRC. Because the DOJ made changes subsequent to the Commission's August 15, 2008, SRM approving the Firearms Guidelines, the staff returned the revised Firearms Guidelines to the Commission for approval in COMSECY-09-0020, "Firearms Guidelines," dated August 12, 2009 (ADAMS Accession Number ML092250127). In SRM-COMSECY-09-0020, "Staff Requirements – COMSECY-09-0020 – Firearms Guidelines," dated August 31, 2009 (ADAMS Accession Number ML092430125), the Commission approved the final Firearms Guidelines and retained the earlier delegation and instructions of SRM-SECY-08-0050/0050A.

With the approval of the Firearms Guidelines by the Attorney General on July 7, 2009, and by the Commission (SRM-COMSECY-09-0020) on August 31, 2009, section 161A of the AEA took effect on September 11, 2009 (74 FR 46800), when the NRC published the Firearms Guidelines in the *Federal Register*.

DISCUSSION:

On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (EPAAct), Pub. L. 109-58. Section 653 of the EPAAct amended the AEA by adding new section 161A (42 U.S.C. § 2201a). Section 161A provides new statutory authority to the Commission to enhance security at designated facilities of NRC licensees and certificate holders, and to enhance security with respect to designated radioactive material or other property owned or possessed by an NRC licensee or certificate holder, or being transported to or from a facility owned or operated by a licensee or certificate holder. This authority is divided into two components. The first section permits the Commission to authorize security personnel of certain NRC licensees or certificate holders to transfer, receive, possess, transport, import, and use firearms, ammunition, or devices listed in the section (*i.e.*, enhanced weapons), if the NRC makes certain determinations so they may obtain enhanced weapons that they were not previously permitted to own or possess under previous Commission authority.

The second section permits the Commission to authorize security personnel of licensees and certificate holders to possess weapons, devices, ammunition, or other firearms, notwithstanding State, local, and certain Federal firearms laws (including regulations) that prohibit the transfer, receipt, possession, transport, import, or use of certain weapons, devices, and ammunition. This is referred to hereinafter as “preemption authority.” Before the enactment of section 161A, with limited exceptions, only Federal, State, or local law-enforcement agencies could lawfully possess “machine guns.” Under section 161A authority, however, security personnel of Commission licensees and certificate holders who obtain the necessary authorization from the NRC may lawfully possess enhanced weapons that they previously were not authorized to possess, as long as they also comply with applicable ATF requirements.

The benefit for licensees or certificate holders of obtaining enhanced weapons would be an increase in their defensive capabilities (e.g., firepower). The benefits that would accrue to a licensee or certificate holder obtaining preemption authority are primarily related to protection from prosecution from violation of State, local, and certain Federal firearms laws. Because obtaining enhanced weapons and preemption authority is voluntary, each licensee or certificate holder will independently determine if this greater defensive capability or regulatory flexibility is to their advantage.

Section 161A also requires that security officers of a licensee or certificate holder who have access to any weapons that are used as part of their protective strategy shall complete a “firearms background check” by the AG. As described in the proposed Firearms Guidelines rule, a firearms background check requires a security officer to submit their fingerprint impressions and other personal identify information on NRC Form 754, “Armed Security Personnel Firearms Background Check” (ADAMS Accession Number ML092650459), to the NRC. The NRC will forward the information to the FBI who will check the individual against the National Instant Background Check System (NICS) database to determine whether the individual is prohibited from possessing firearms or ammunition under Federal or State law. The FBI established the NICS system following the enactment of the Brady Bill in 1994. The NICS database provides a process for background checks of individuals before they obtain firearms from an ATF Federal firearms license holder.

The results of the NICS check is then returned to the NRC who will forward it to the submitting licensee or certificate holder. Compliance with the requirements for fingerprinting and firearms background check is mandatory for the security officers of licensees and certificate holders independent of their decision to obtain enhanced weapons and preemption authority.

In addition to implementing the Firearms Guidelines, the staff is recommending changes to 10 CFR 73.71, “Reporting of Safeguards Events,” and Appendix G to Part 73, “Reportable Safeguards Events”. The recommended changes would require licensees and certificate holders to report certain safeguards events to the NRC Headquarters Operations Center and to record certain security events in a safeguards event log that captures additional details on the specific security events reported or recorded. The timing of these reports range from within 15 minutes to 24 hours of discovery, depending on the significance and impact of the event being reported or recorded.

Significant security events, such as actual or imminent hostile actions, warrant immediate NRC action, so licensees and certificate holders must report these events within 15 minutes of

discovery. Upon notification of an actual or imminent hostile act, the NRC will rapidly communicate this information to other NRC licensees and certificate holders and to other Federal agencies to enable them to immediately increase the response level of their security defenses. Other less serious but still significant events require reports within 1 hour of discovery. Events involving suspicious activities and potential tampering or unauthorized operation of components require reports within 4 hours and 8 hours of discovery, respectively.

Licensees and certificate holders that possess enhanced weapons would be required to report to the NRC within 1 hour or 4 hours from the discovery of a stolen or lost enhanced weapon. The NRC requires licensees or certificate holders to report within 24 hours of the receipt of an adverse inspection or enforcement finding or other adverse notice from ATF regarding the licensee's or certificate holder's possession, receipt, transfer, or storage of enhanced weapons.

The enclosed proposed rule also contains the staff's responses to stakeholder comments concerning the Firearms Guidelines provisions and security event reports and records received on the October 2006 proposed Power Reactor Security Requirements rule.

In SECY-08-0050A, the staff proposed that upon issuance of the proposed firearms guidelines rule the public be given a 45-day comment period. The public had provided comments on the rule when it was published as part of the proposed Power Reactor Security Requirements rule in October 2006 so a shorter review period was justified by the staff. In addition, the shorter comment period would expedite the issuance of the final Firearms rule. However, because a number of years have past since the last public review of the proposed rule the staff is now recommending the Commission increase the public comment period to 90 days. The longer review time is recommended to allow the public and stakeholders sufficient time to review and comment on the proposed rule and the two supporting draft regulatory guides (DG-5019, "Reporting and Recording Safeguards Events" (ADAMS Accession Number ML100830413) and DG-5020, "Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks Under 10 CFR Part 73" (ADAMS Accession Number ML100321956)). The supporting draft regulatory guides will be noticed and made available to the public concurrent with the publication of the proposed Firearms rule.

The above changes to 10 CFR Part 73 for enhanced weapons, preemption authority, firearms background check, and security event notifications were reviewed by the Commission as part of the October 2006 proposed Power Reactor Security Requirements rule. In addition, the Commission delegated to the EDO the authority to publish the proposed Firearms rule in SRM-SECY-08-0050/0050A. In October 2009 a change was made to the proposed Firearms rule for licensees and certificate holders that are subject to the requirements of 10 CFR 73.54, "Protection of Digital Computer and Communication Systems and Networks", that was not part of the original proposed rule delegated to the EDO. This new regulation in 10 CFR 73.54 requires power reactor licensees to establish and maintain a cyber security program at their facilities which provides a high assurance that digital computer and communication systems and networks are adequately protected against cyber attacks, up to and including the design-basis threat and to report and record cyber security events under 10 CFR 73.71 and Appendix G of Part 73. An example of a cyber security event to be reported to the NRC would be the discovery that a cyber attack has occurred or has been attempted against systems, networks, or equipment that would compromise or has compromised the facility's safety, security, or emergency preparedness functions. The licensees and certificate holders report the cyber security event to the NRC Headquarters Operations Center within 1 hour to 24 hours of

discovery, depending on the significance and impact of the event being reported or recorded. Since the Commission had not previously reviewed this change to the proposed Firearms rule, the staff recommends that the Commission delegate this additional authority to the EDO to publish the cyber security event notifications as part of the proposed rule. The staff would provide the final Firearms rule to the Commission for its review and approval after the staff evaluates and addresses all the public comments.

The staff is recommending these changes to ensure prompt reporting of actual or imminent hostile actions. Timely reporting permits the NRC to communicate hostile action against the facilities and activities it regulates to senior Federal officials and other licensees and certificate holders, and facilitates NRC's execution of its strategic missions; protecting public health and safety, the common defense and security, and the environment.

It should be noted that if the Commission desires to make changes to the language in the proposed Firearms Guidelines rule pertaining to the enhanced weapons, preemption authority, or the firearms background check that impacts the Firearms Guidelines, the NRC will need to resubmit the Firearms Guidelines to the Commission and the Attorney General for re-approval and then republish the Firearms Guidelines in the *Federal Register*.

RECOMMENDATIONS:

1. That the Commission:

- Delegate to the EDO the authority to issue the new cyber security notification changes in the proposed firearms guidelines rule for publication in the *Federal Register*. The Commission has previously delegated to the EDO the authority to issue the enhanced weapons provisions of the proposed rule.
- Issue simultaneously with the proposed rule the two draft implementing guidance documents.
- Extend the public comment period on the proposed firearms guideline rule from 45 days to 90 days.

2. Note:

- That the proposed Firearms Guidelines rule will be published in the *Federal Register*, allowing 90 days for public comment.
- That appropriate Congressional committees will be informed of this action.
- That the proposed rule contains new or amended information collection requirements that must be submitted to the Office of Management and Budget for approval on or immediately after the date of publication.

RESOURCES:

The resources required to develop and publish the proposed firearms guidelines rule, evaluate and address stakeholder comments received, and develop a final rule are included in the fiscal

year (FY) 2011 and FY 2012 rulemaking budgets request as follows:

FY 2011: 0.6 full-time equivalents (FTE) for the Office of Office of Nuclear Reactor Regulation (NRR), 0.5 FTE for the Office of Nuclear Security Resource and Incident Response, 0.1 FTE for the Office of New Reactors. 0.1 FTE for the Office of Administration (ADM), 0.3 FTE for the Office of Nuclear Material Safety and Safeguards, 0.1 FTE for the Office of Information Services, and 0.1 FTE for the Office of the General Counsel (OGC). Resources needed for FY 2011 total is 1.8 FTE.

FY 2012: 0.2 FTE for NRR

The Office of Nuclear Material Safety and Safeguards resources needed to support this rulemaking are less than 0.1 FTE and therefore, are not specifically budgeted.

The additional resources required by ADM to administer and implement the firearms background check program in FY 2012 are 0.5 FTE (the first year of implementation) and in FY 2013 and each subsequent year are 0.2 FTE. However, since this is a cost-reimbursable program there is no impact on budgeted FTE for ADM.

COORDINATION:

The Office of the General Counsel has reviewed the proposed rule and has no legal objection. The Office of the Chief Financial Officer has reviewed the resources required and has no objection.

The Advisory Committee on Reactor Safeguards (ACRS) did not review the proposed rule because the Commission determined in SRM-M031002, dated October 31, 2003 (ADAMS Accession Number ML033040278), that issues associated with threat assessment, physical security, or force-on-force assessments are outside the ACRS's area of expertise, and involve intelligence information not available to the ACRS.

/RA by Martin J. Vrigilio for/

R. W. Borchardt
Executive Director
for Operations

Enclosure: *Federal Register* Notice

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC-2008-0465]

RIN: 3150-AI49

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

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing regulations that would implement its authority under the new section 161A of the Atomic Energy Act of 1954 (AEA), as amended, and revise existing regulations governing security event notifications. These proposed regulations are consistent with the provisions of the Firearms Guidelines the NRC published under section 161A with the approval of the U.S. Attorney General on September 11, 2009 (74 FR 46800).

The NRC previously proposed new regulations on October 26, 2006 (71 FR 62663), that would have implemented this new authority as part of a larger proposed rule entitled "Power Reactor Security Requirements." However, based upon changes to the final Firearms Guidelines the NRC is now proposing further revisions in these implementing regulations. The implementing regulations address the voluntary application for enhanced weapons and the mandatory firearms background checks under section 161A and would only apply to nuclear power reactor facilities and Category I strategic special nuclear material (SSNM) facilities.

In addition, the NRC is also proposing revisions that would treat security event notifications from different classes of facilities and the transportation of radioactive material consistently and would add new event notification requirements on the theft or loss of enhanced weapons.

DATES: Submit comments on this proposed rule by **(insert 90 days after publication in the *Federal Register*)**. Submit comments specific to the information collection burden aspects of this proposed rule by **(insert 30 days after publication in the *Federal Register*)**. Comments received after these dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after these dates.

ADDRESSES: Please include Docket ID **NRC-2008-0465** in the subject line of your comments. See Section I for instructions on how to submit comments.

Federal Rulemaking Website: Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2008-0465. Address questions about NRC dockets to Carol Gallagher 301-492-3668; email Carol.Gallagher@nrc.gov.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays (telephone 301-415-1677).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101. You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

See Section IX, Availability of Documents, for instructions on how to access NRC's Agencywide Documents Access and Management System (ADAMS) and other methods for obtaining publicly availability documents related to this action.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Beall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone 301-415-3874; e-mail: Robert.Beall@nrc.gov. or Mr. Philip Brochman, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone 301-415-6557; e-mail: Phil.Brochman@nrc.gov.

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I. Submitting Comments

Comments on rulemakings submitted in writing or in electronic form will be posted on the NRC website and on the Federal rulemaking website Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

II. Background

A. Implementation of Section 161A of the AEA

On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (EPAAct), Pub. L. 109-58, 119 Stat. 594 (2005). Section 653 of the EPAAct amended the AEA by adding section 161A, "Use of Firearms by Security Personnel" (42 U.S.C. 2201a). Section 161A of the AEA provides the NRC with new authority that will enhance security at designated facilities of NRC licensees and certificate holders.

Section 161A also provides the NRC with new authority that will enhance security with respect to the possession or use of certain radioactive material or other property owned or possessed by an NRC licensee or certificate holder, or the transportation of such material or other property that has been determined by the Commission to be of significance to the common defense and security or public health and safety.

Section 161A also mandates that all security personnel with duties requiring access to covered weapons¹ who are engaged in the protection of Commission-designated facilities, radioactive material, or other property owned or operated by an NRC licensee or certificate holder be subject to a fingerprint-based background check by the U.S. Attorney General and a firearms background check against the Federal National Instant Background Check System (NICS). These firearms background checks will provide assurance that these security personnel are not barred under Federal or applicable state law from receiving, possessing, transporting, or using any weapons.

Section 161A also provides two potential advantages to NRC licensees and certificate holders to enhance security. The first advantage is that certain licensees and certificate holders, after approval by the NRC, will be permitted to obtain and employ in their protective strategies weapons that they were not previously permitted to own or possess under Commission authority. These include short-barreled shotguns, short-barreled rifles, and machine guns (hereinafter referred to as “enhanced weapons authority”). The second advantage is that security personnel of certain licensees or certificate holders will be permitted to transfer, receive, possess, transport, import, and use handguns, rifles, shotguns, short-

¹ Covered weapons, standard weapons, and enhanced weapons are new terms the NRC is defining in § 73.2 of this proposed rule. Enhanced weapons are weapons registered under the *National Firearms Act* (e.g., machine guns, short-barreled shotguns, and short-barreled rifles). Standard weapons are all other weapons. Covered weapons are enhanced plus standard weapons.

barreled shotguns, short-barreled rifles, machine guns, semiautomatic assault weapons, ammunition for these weapons, and large capacity ammunition feeding devices, notwithstanding State, local, and certain Federal firearms laws, including regulations, that otherwise prohibited these actions (hereinafter referred to as “preemption authority”). Before the enactment of section 161A, with limited exceptions, only Federal, State, or local law enforcement authorities could lawfully possess machine guns. Exercise of section 161A authority, however, will allow certain licensees and certificate holders, certain licensees and certificate holders, certain licensees and certificate holders, after obtaining the necessary authorization from the NRC, to lawfully possess machine guns that they previously were not authorized to possess. Licensee and certificate holder applications for enhanced weapons authority and preemption authority are both voluntary.

Subsequent to the enactment of the EAct, NRC staff and U.S. Department of Justice (DOJ) staff, including the Federal Bureau of Investigation (FBI) and the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), began development of the Firearms Guidelines required under subsection d of section 161A. As required by subsection 161A.d., the provisions of section 161A took effect when the Commission, with the approval of the U.S. Attorney General, published the approved Firearms Guidelines in the *Federal Register* on September 11, 2009 (74 FR 46800). The issued Firearms Guidelines may also be found in the Federal e-Rulemaking Website at <http://www.regulations.gov> under Docket ID NRC-2008-0465.

B. October 2006 Proposed Rule – Implementation of Section 161A of the AEA

In parallel with the development of the Firearms Guidelines, the NRC developed proposed implementing regulations. On October 26, 2006 (71 FR 62663), the NRC published proposed regulations to implement the provisions of section 161A as part of a larger proposed amendment to its regulations under Title 10 of the *Code of Federal Regulations* (CFR) Parts 50,

72, and 73, "Power Reactor Security Requirements." These proposed implementing regulations were based upon the draft version of the Firearms Guidelines that existed in September 2006. The NRC had proposed that the provisions of section 161A would apply only to power reactor facilities and Category I Strategic Special Nuclear Material (SSNM) facilities (*i.e.*, facilities possessing or using formula quantities or greater of strategic special nuclear material). This would permit these two highest risk classes of licensed facilities to apply to the NRC for section 161A authority (either combined enhanced weapons authority and preemption authority or stand-alone preemption authority).

The NRC had also indicated that it would consider making section 161A authority available to additional classes of facilities, radioactive material, or other property, but this would be accomplished in a separate future rulemaking.

The NRC had recognized that the language of the issued Firearms Guidelines might differ significantly from the September 2006 version of the draft Firearms Guidelines (which was used to develop the October 2006 proposed rule), and therefore changes to the proposed rule might be required to ensure that the final rule text was consistent with the final version of the Firearms Guidelines. The NRC had noted this possibility in the October 2006 proposed rule (see 71 FR 62666) and had indicated that appropriate rulemaking actions might be necessary to reconcile the issued Firearms Guidelines and the proposed rule. Subsequent to the publication of the October 2006 proposed rule, the DOJ required several significant changes to the Firearms Guidelines. Consequently, the NRC is taking appropriate action in this proposed rule by proposing further revisions to the agency's regulations that would implement the Firearms Guidelines.

C. October 2006 Proposed Rule – Security Event Notifications

The NRC had also proposed several changes to the security event notification requirements in Part 73 in the October 2006 proposed rule to address imminent attacks or threats against power reactors as well as suspicious events that could be indicative of potential reconnaissance, surveillance, or challenges to security systems. These proposed changes would have made generically applicable provisions similar to those that had been contained in security advisories and other guidance issued by the NRC following the events of September 11, 2001.

For example, these advisories had requested that power reactor licensees voluntarily report suspicious activities that could be indicative of surveillance or reconnaissance efforts. The October 2006 proposed rule changes were principally focused on power reactor facilities.

Thus, they did not address identical types of events at Category I SSNM facilities, at other waste and special nuclear material (SNM) facilities, or during the transportation of spent nuclear fuel (SNF), high-level radioactive waste (HLW), or SSNM. Additionally, for licensees who obtained enhanced weapons, a new notification provision was also proposed when the licensee made a separate notification to ATF (e.g., regarding a stolen or lost enhanced weapon). However, as discussed previously, the final Firearms Guidelines contained new provisions regarding notifications to the NRC and local law enforcement officials involving stolen or lost enhanced weapons.

Based upon the changes now reflected in the final Firearms Guidelines, comments received on the October 2006 proposed rule, and a reassessment by NRC staff on security event notification needs for equivalent facilities and activities, the NRC is proposing further revisions to the security event notification requirements in Part 73. In several cases, the NRC has retained the proposed new or modified notification requirements from the October 2006

proposed rule, but has expanded their applicability to include additional classes of facilities and activities (e.g., Category I SSNM facilities and the transportation of SNF, HLW, and Category I SSNM). The NRC is also proposing clarifying and editorial changes to these regulations to improve regulatory clarity and licensee implementation of these requirements. The security event notification requirements have not been updated for several years, and the NRC is taking this opportunity to address additional significant classes of facilities and activities beyond power reactors, as well as incorporating changes required by the final Firearms Guidelines.

III. Discussion

A. Implementation of Section 161A of the AEA

Section 161A allows the NRC to authorize licensees and certificate holders to use, as part of their protective strategies, an expanded arsenal of weapons, including machine guns and semi-automatic, large-capacity, assault weapons. As indicated in the October 2006 proposed rule, an NRC licensee or certificate holder interested in obtaining section 161A authority (either enhanced weapons authority and preemption authority or preemption authority alone) will be required to apply to the NRC to take advantage of this new authority. Application for this authority would remain voluntary. However, the firearms background check requirements of section 161A would become mandatory for certain licensees and certificate holders.

The fingerprint-based background check by the U.S. Attorney General and a firearms background check against the FBI's NICS databases (hereinafter the "firearms background checks") would apply to all licensees and certificate holders that fall within the classes of facilities, radioactive material, or other property designated by the Commission under section 161A. The proposed § 73.18(c) would identify the specific classes of facilities, radioactive material, and other property designated by the Commission under section 161A that would be eligible to apply for stand-alone preemption authority or for combined enhanced weapons

authority and preemption authority. The proposed § 73.19(c) would identify the specific classes of facilities, radioactive material, and other property designated by the Commission under section 161A that would be subject to the firearms background check requirements. In this rulemaking, the NRC would designate two classes of facilities as subject to the requirements of proposed §§ 73.18 and 73.19: power reactor facilities and Category I SSNM facilities. The Commission may consider whether to designate additional classes of facilities, radioactive material, and other property in a separate future rulemaking. Although the October 2006 proposed rule was primarily focused on power reactor security requirements, to efficiently implement the provisions of section 161A for these classes of highest risk facilities, the NRC expanded the scope of this proposed rule to also include facilities authorized to possess Category I SSNM. The NRC is continuing to follow this approach in this revised proposed rule to expedite the issuance of these regulations for these highest risk classes of facilities.

Before granting an application to permit security personnel of an NRC licensee or certificate holder to transfer, receive, possess, transport, import, or use a weapon, ammunition, or device not previously authorized, the NRC must determine that the requested permission is necessary in the discharge of the official duties of the security personnel and the security personnel are engaged in protecting: (1) a facility owned or operated by an NRC licensee or certificate holder and designated by the Commission; or (2) radioactive material or other property that has been designated by the Commission to be of significance to the common defense and security or public health and safety and that is owned or possessed by an NRC licensee or certificate holder or that is being transported to or from an NRC-regulated facility. Furthermore, an NRC licensee or certificate holder that applies to the NRC for enhanced weapons authority under section 161A must also comply with applicable ATF firearms requirements before any enhanced weapons are transferred to the licensee or certificate holder.

In the October 2006 proposed rule implementing the Firearms Guidelines, the NRC proposed amendments to Part 73 adding new definitions, processes for obtaining enhanced weapons, requirements for firearms background checks, and event notification requirements for stolen or lost enhanced weapons. This proposed rule continues those proposed changes and further impacts Part 73 in four areas, as summarized below:

First, the NRC is proposing substantive revisions to the following existing regulations in Part 73:

- Section 73.2, Definitions.
- Section 73.8, Information collection requirements: OMB approval.
- Section 73.71, Reporting of safeguards events.
- Appendix A to Part 73, U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses.
- Appendix G to Part 73, Reportable Safeguards Events.

Second, the NRC is proposing adding the following new regulations to Part 73:

- Section 73.18, Authorization for use of enhanced weapons and preemption of firearms laws.
- Section 73.19, Firearms background checks for armed security personnel.

Third, the NRC is proposing conforming changes to the following existing regulations in Part 73:

- Section 73.46, Fixed site physical protection systems, subsystems, components, and procedures.
- Section 73.55, Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.
- Appendix B to Part 73, General Criteria for Security Personnel.

Fourth, the NRC is proposing new NRC Form 754, “Armed Security Personnel Firearms Background Check” to submit the information for the firearms background checks required under § 73.19.

The NRC did not receive any comments on the technical content of this new form in response to the October 2006 proposed rule. However, because the ATF revised similar ATF Form 4473, “Firearms Transaction Record Part I – Over-the-counter” in August 2008, the NRC staff has reviewed the new proposed NRC Form 754 to ensure similar language and provisions are appropriately consistent. Based upon this review and ongoing discussions with the FBI, the NRC staff has identified that several minor changes to NRC Form 754 are necessary.

Accordingly, the NRC would revise proposed NRC Form 754 as follows:

- Revise Question 4 to only require identification of the State or Territory of the security individual’s current duty station, rather than the complete address of the duty station.
- Revise Question 4 to permit the entry of multiple States or Territories by security personnel with multiple duty stations.
- Delete Question 13, since it is now redundant with the revised proposed Question 4.
- Add appropriate clarifying, assisting, and explanatory note text that would be consistent with the current ATF Form 4473.
- Revise paragraph 4 in the Privacy Act Information summary to indicate that the submission of NRC Form 754 would be mandatory for certain security personnel.

Finally, this proposed rule is not proposing changes to any of the other provisions of Parts 50, 72, or 73 that were contained in the October 2006 proposed rule.

B. Differences between the Firearms Guidelines and the October 2006 Proposed Rule

The NRC has identified 14 substantive technical differences between the issued Firearms Guidelines and the proposed implementing text in the October 2006 proposed rule.

Additionally, the NRC has identified two editorial/administrative issues that will improve the clarity of these implementing regulations. The NRC is not proposing any additional regulations to resolve technical difference number 7 but would reserve these actions for a future rulemaking, as necessary. A summary of these technical differences and the NRC's proposed solution for each issue follows.

1. In Sections 1, 2, and 5 of the Firearms Guidelines, a new requirement was added that would require firearms background checks for all security personnel of licensees and certificate holders who fall within the Commission-designated classes of facilities, radioactive material, and other property and who employ covered weapons as part of their protective strategy. The October 2006 proposed rule would only have required firearms background checks for the security personnel of licenses or certificate holders who voluntarily applied for enhanced weapons authority or preemption authority.

Solution: The NRC is proposing a requirement in § 73.19 on existing licensees and certificate holders that fall within Commission-designated classes of facilities, radioactive material, and other property, and who employ covered weapons as part of their protective strategy, that imposes firearms background checks for security personnel who have, or are proposed to have, duties that require access to covered weapons. The NRC would designate two classes of facilities in this proposed rule – power reactor facilities and Category I SSNM facilities.

2. In Section 5 of the Firearms Guidelines, new requirements were added to indicate that licensees and certificate holders in such designated classes who use covered weapons as part of their protective strategy shall begin firearms background checks for their security personnel within 30 days after the NRC issues a final rule designating these classes of facilities, radioactive material, and other property. Additionally, these

licensees and certificate holders would be required to remove security personnel who have not received a satisfactory firearms background check from duties requiring access to covered weapons within 180 days of an effective final rule making these designations. These provisions were not addressed in the October 2006 proposed rule.

Solution: The NRC is proposing a requirement in § 73.19 on existing licensees and certificate holders who fall within designated classes of facilities, radioactive material, and other property and employ covered weapons as part of their protective strategy to subject all of their security personnel, whose duties currently require, or will require, access to covered weapons, to a firearms background check. Affected licensees and certificate holders would have to begin these firearms background checks within 30 days after the effective date of a final rule (*i.e.*, within 60 days after publication of a final rule in the *Federal Register*). Affected licensees and certificate holders would have to remove from duties requiring access to covered weapons any security personnel who have not completed a satisfactory firearms background check within 180 days after the effective date of a final rule (*i.e.*, within 210 days after publication of a final rule). The rule would permit individuals who have been removed from duties requiring access to covered weapons and who subsequently receive a satisfactory firearms background check to be returned to duties requiring access to covered weapons.

Additionally, the NRC would require applicants for licenses and certificates of compliance (CoC) who fall within designated classes of facilities, radioactive material, or other property to do the following: (1) begin firearms background checks for security personnel whose duties will require access to covered weapons after the NRC has issued their respective license or CoC; and (2) complete a satisfactory firearms background check before these individuals have access to covered weapons. Future

licensees and certificate holders may only begin firearms background checks after the NRC issues their license or CoC, because section 161A of the AEA does not apply to “applicants” for a license or CoC. The NRC would require completion of satisfactory firearms background checks before the licensee’s or certificate holder’s initial receipt of source material, special nuclear material, or radioactive material (*i.e.*, the point of implementation of the licensee’s or certificate holder’s security program).

3. In Section 5 of the Firearms Guidelines, new requirements were added to indicate that licensees and certificate holders in designated classes who use covered weapons as part of their protective strategy must remove from duties requiring access to covered weapons any security personnel who receive a “denied” NICS check response. During the 180-day implementation period, individuals who receive a “delayed” NICS check response may continue their access to standard weapons. These provisions were not addressed in the October 2006 proposed rule.

Solution: The NRC is proposing a requirement in § 73.19 that would require licensees and certificate holders who fall within designated classes of facilities, radioactive material, and other property, and employ covered weapons as part of their protective strategy to remove from duties requiring access to covered weapons any individuals who receive a “denied” NICS check response. During the 180-day implementation period for existing licensees and certificate holders, individuals who receive a “delayed” NICS check response would be permitted to continue duties requiring access to standard weapons pending resolution of their “delayed” NICS check response. However, during the 180-day implementation period for existing licensees and certificate holders, individuals who receive a “delayed” NICS check response would be required to be removed from duties requiring access to enhanced weapons. Individuals whose

“delayed” NICS check response is converted into a “denied” NICS check response (during this 180-day period) would be required to be removed from duties requiring access to covered weapons. Individuals who have been removed from duties requiring access to covered weapons and who subsequently complete a satisfactory firearms background check would be permitted to be returned to duties requiring access to covered weapons. As discussed in Issue 2, the 180-day implementation period would not apply to future licensees or certificate holders; rather, these applicants would be required to complete satisfactory firearms background checks on their security personnel before the initial receipt of any source material, special nuclear material, or radioactive material.

4. In Section 5 of the Firearms Guidelines, a new requirement was added to indicate that satisfactory completion of a firearms background check must be conducted before security personnel are permitted access to enhanced weapons. Therefore, individuals who received a “delayed” NICS check response during the 180-day transition period would not be permitted to continue their access to enhanced weapons during resolution of the “delayed” NICS response. However, as discussed in Issue 3, these individuals would be permitted continued access to standard weapons during this 180-day period. For licensees and certificate holders who already have deployed enhanced weapons under an authority other than section 161A,² this requirement could impact their current ability to deploy enhanced weapons to defend their facility. The NRC’s flexibility

² A small number of NRC licensees have previously obtained enhanced weapons since they are also Federal agencies or they are under contract to Federal agencies.

in this area is constrained by the following: (1) the language of the statute (which does not provide for a transition period); (2) DOJ's assertion that completion of a satisfactory firearms background check is a necessary prerequisite for both future and current access to enhanced weapons; and (3) the language of the Firearms Guidelines.

Solution: On May 13, 2008, the NRC issued a generic communication, Regulatory Issue Summary RIS-2008-10, "Notice Regarding Forthcoming Federal Firearms Background Checks," (ADAMS Accession No. ML073480158), to all licensees and certificate holders that might be subject to these firearms background check requirements. On December 22, 2008, the NRC issued Supplement 1 to RIS-2008-10 (ADAMS Accession No. ML082340897), to the same groups of licensees and certificate holders. Supplement 1 clarified the new mandatory nature of the forthcoming firearms background checks. In both communications, the NRC discusses the FBI's Voluntary Appeal File (VAF) program wherein individuals can apply to the FBI to check their status under the NICS databases. This program permits security personnel to resolve any "false-positive" adverse records (that can create an incorrect "delayed" or "denied" NICS response), before the firearms background checks required by this proposed regulation are implemented. The FBI issues a unique personal identification number (UPIN) to individuals who complete the VAF program and receive a "proceed" NICS response. This UPIN can be included on the NRC Form 754 submitted for subsequent firearms background checks by security personnel and would greatly reduce the likelihood that the FBI's NICS databases would generate an incorrect "delayed" or "denied" NICS response - requiring removal of the individual from access to enhanced weapons.

NRC staff has discussed this issue with licensees and certificate holders who currently possess enhanced weapons (under an authority other than section 161A) so that these licensees and certificate holders can prepare for implementation of this new statutory requirement. Accordingly, the NRC proposes to include a provision in § 73.19 that would require the removal of individuals from access to enhanced weapons (for licensees and certificate holders that currently possess enhanced weapons under an authority other than section 161A) if the individual receives a “delayed” or “denied” NICS response.

5. In Section 5 of the Firearms Guidelines, a new requirement was added for periodic firearms background checks at least once every five years. This requirement is in conflict with the language in § 73.18(b)(2) of the October 2006 proposed rule. The proposed rule had indicated that no further (or recurring) firearms background checks would be required subsequent to the completion of an initial firearms background check. Additionally, no Office of Management and Budget (OMB) information collection burdens were identified for these recurring firearms background checks.

Solution: The NRC is proposing a requirement in § 73.19 for all licensees and certificate holders subject to firearms background checks to periodically complete a satisfactory firearms background check on security personnel whose official duties require access to covered weapons, after completing an initial satisfactory firearms background check. These periodic checks would be completed at least once every three years, following the initial check. Licensees and certificate holders would be able to perform these periodic checks more frequently than every three years, at the licensee’s or certificate holder’s discretion. The NRC would use a 3-year period for recurring firearms background checks to be consistent with the NRC’s access

authorization program background check requirements for power reactors under the recently revised § 73.56(i)(1)(v)(B). Under that regulation, security personnel fall within a group of personnel that are subject to a criminal history records check every three years (rather than once every five years) to maintain their unescorted access to the reactor facility. Synchronizing the firearms background check with criminal history records checks for unescorted access could reduce licensee and certificate holder administrative costs. See also the “Specific Questions for the Public and Stakeholder Input” discussion on using a 3-year or 5-year periodicity for these recurring firearms background checks (Section III.I of this document).

6. In Section 5 of the Firearms Guidelines, a new restriction was added on the untimely submission to the FBI by an individual of his (her) rebuttal information to appeal an adverse firearms background check. An untimely submission would lead to the barring of the individual or abandonment of the individual’s appeal of an adverse firearms background check. Additionally, the Firearms Guidelines require a licensee or certificate holder to resubmit a new NRC Form 754 for any further consideration following an untimely submission. This provision is in conflict with § 73.18(p) of the October 2006 proposed rule.

Solution: The NRC is proposing requirements that clearly present the consequences of an untimely submission of information concerning an individual’s appeal of an adverse firearms background check. The rule also would provide for the ability of a licensee or certificate holder to resubmit an individual for a background check, thereby addressing the unintended, permanent debarment of an individual.

7. In Section 6 of the Firearms Guidelines, a provision was added permitting the Commission to specify additional permissible reasons to remove enhanced weapons

from a facility authorized to possess these weapons (*i.e.*, movement of the weapons outside of the site for reasons other than for training on these weapons or to use the weapons in escorting shipments of radioactive material or other property). This provision was not addressed in the October 2006 proposed rule.

Solution: The NRC is not recommending adding any additional authorized purposes for removing enhanced weapons from a facility possessing enhanced weapons at the present time. However, this additional flexibility is available to the Commission if it is necessary in the future.

8. In Section 6 of the Firearms Guidelines, a new requirement was added to conduct periodic accountability (*i.e.*, inventory) requirements for enhanced weapons possessed by a licensee or certificate holder. These inventories must be completed by the licensee or certificate holder at least annually. These provisions were not addressed in the October 2006 proposed rule.

Solution: The NRC is proposing requirements for licensees and certificate holders to conduct two types of periodic inventories for any enhanced weapons possessed by the licensee or certificate holder. The first type of inventory would be conducted monthly and would verify the number of enhanced weapons present at the licensee's or certificate holder's facilities (*i.e.*, a "piece-count" inventory). The licensee or certificate holder may use electronic technology (*e.g.*, bar codes on weapons) to conduct this inventory. The monthly inventories would not include weapons that are stored in locked containers which are sealed with a high-integrity, tamper-indicating device (TID) (*e.g.*, "ready-service" in-plant storage containers). The second type of inventory would be conducted every six months and would verify the serial number of all enhanced weapons possessed by the licensee or certificate holder. The six-month inventory would include a

verification of any weapons that are stored in a locked and TID-sealed storage container. Both types of inventories would be conducted by teams of two individuals who have completed a satisfactory firearms background check to prevent a single individual from manipulating the inventory results and thus obscuring the potential theft or loss of such weapons. The NRC is proposing that these inventories be conducted more frequently than the minimum requirement of the Firearms Guidelines to ensure that stolen or lost weapons do not create an unacceptable security risk for the facility or hazard for local law enforcement in the communities surrounding the licensee's or certificate holder's facility.

9. In Section 6 of the Firearms Guidelines, a new requirement was added to specify that a licensee or certificate holder possessing enhanced weapons must notify the NRC and local law enforcement authorities of the theft or loss of any enhanced weapon (*i.e.*, weapons registered under the National Firearms Act (NFA) (see 26 U.S.C. 5841)). This requirement was added due to DOJ's view that NRC licensees and certificate holders possessing enhanced weapons under section 161A are not required to obtain a Federal firearms license (FFL) under ATF's regulations. Federal firearms licensees are required to notify local law enforcement officials of stolen or lost weapons. Independent of the NRC's proposed requirements, licensees and certificate holders who possess enhanced weapons are required under ATF's regulations in 27 CFR 479.141 to immediately notify ATF of any stolen or lost weapons that are registered under the NFA.

Solution: The NRC is proposing a requirement that licensees and certificate holders must notify local law enforcement authorities within four hours of notifying ATF of the theft or loss of an enhanced weapon. The NRC is also proposing that licensees or certificate holders must notify the NRC as follows; (1) within four hours of notifying ATF,

(for an enhanced weapon that is discovered to be stolen or lost outside the licensee's or certificate holder's protected area); and (2) within one hour of discovery (for an enhanced weapon that is discovered to be stolen or lost inside the licensee's or certificate holder's protected area). The shorter notification time to the NRC would be required when a theft or loss of an enhanced weapon occurs inside the facility's protected area, vital area, material access area, or controlled access area, because those weapons could potentially affect the security of the facility. The NRC views enhanced weapons stolen or lost outside of a facility as primarily a law-enforcement issue, rather than a facility security issue.

The NRC proposes to consolidate these new event notification requirements for licensees and certificate holders into § 73.71. Additionally, in the October 2006 proposed rule the NRC added a new provision under Appendix G to Part 73, paragraph III(a)(3) regarding security notifications to be made to the NRC subsequent to a licensee's or certificate holder's notifications made to other State or Federal agencies for law-enforcement or regulatory purposes. The provision for notification of the NRC following notifications to Federal law enforcement agencies would now be located in Part 73, Appendix G, paragraph II(c)(1).

10. In Section 6 of the Firearms Guidelines, a new requirement was added on the transport of enhanced weapons. Specifically, when these weapons are not being used to escort shipments of radioactive material or other property, they must be unloaded and locked in a secure container during their transport. Weapons and ammunition may be transported in the same container. This provision was not addressed in the October 2006 proposed rule.

Solution: The NRC is proposing to add requirements that enhanced weapons being transported to or from the licensee's or certificate holder's facility must be unloaded and locked in a secure container. The rule would permit weapons and their ammunition to be transported in the same secure container. This requirement would not apply to enhanced weapons being used in the course of escorting shipments of radioactive material or other property. Under those circumstances, the enhanced weapons would be required to be maintained in a state of loaded readiness and to be immediately accessible to security personnel (*i.e.*, ready for immediate use in defending the shipment), except when prohibited by 18 U.S.C. 922q.

11. In Section 6 of the Firearms Guidelines, a new requirement was added requiring licensees and certificate holders possessing enhanced weapons to keep records on the receipt, transfer, and transportation of these enhanced weapons. This provision was not addressed in the October 2006 proposed rule, based on the presumption that licensees and certificate holders would be required to comply with the recordkeeping requirements for the holder of an ATF FFL. However, as discussed in issue 9 of this section, DOJ does not view an ATF FFL to be required for those possessing weapons under section 161A.

Solution: The NRC is proposing to add requirements that records be kept on the receipt and transfer of enhanced weapons that would include the following information: date of receipt or date of shipment of the weapon; the name and address of the transferor or the name and address of the transferee; name of the manufacturer or importer; and the model, serial number, type, and caliber or gauge of the weapon. Records requirements also would be added regarding the transportation of enhanced weapons (away from the licensee's or certificate holder's facility), including: date of

departure and date of return; the purpose of the enhanced weapon's transportation; the name of the person transporting the enhanced weapon and the name of the person/facility to whom the enhanced weapon is being transported; and the model, serial number, type, and caliber or gauge of the enhanced weapon.

12. In Section 7 of the Firearms Guidelines, a new requirement was added providing for the termination, modification, suspension, or revocation of a licensee's or certificate holder's authority under section 161A of the AEA. A requirement for the NRC to notify ATF of these types of actions was also added. Furthermore, a process for re-application for section 161A authority was also added. These provisions were not addressed in the October 2006 proposed rule.

Solution: The NRC is proposing a requirement that the NRC provide timely notification to ATF regarding the termination, modification, suspension, or revocation of a licensee's or certificate holder's section 161A authority. A process would be specified for terminating, modifying, suspending, or revoking a licensee's or certificate holder's section 161A authority as well as their re-application for such authority following a termination, suspension, or revocation.

13. In Section 8 of the Firearms Guidelines, new definitions were added. These definitions are not consistent with the October 2006 proposed rule's new definition in § 73.2 for the term: *enhanced weapons*. Additionally, new definitions were not included in § 73.2 for the terms: *Firearms background check*, *NICS check*, *NICS response*, and *Satisfactory firearms background check*.

Solution: The NRC is proposing to revise the definitions in § 73.2 to match the definitions contained in the issued Firearms Guidelines.

14. In Section 8 of the Firearms Guidelines, cross references were added to ATF and FBI current regulations for certain weapons terms and NICS terms, rather than replicating these terms directly in the Firearms Guidelines. These provisions were not addressed in the October 2006 proposed rule.

Solution: The NRC is proposing to add cross references in § 73.2 that would point to the relevant definitions under ATF and FBI regulations, rather than fully replicating these ATF and FBI terms in § 73.2.

In addition to these 14 technical issues, the NRC would address 2 administrative issues raised in the October 2006 proposed rule as follows:

15. As originally developed by the NRC staff, the order of presentation of the new regulations implementing the Firearms Guidelines first presented the requirements on firearms background checks and then identified the classes of licensee or certificate holders to whom these provisions and the provisions for obtaining enhanced weapons and preemption authority or preemption authority alone would apply. Based on input from stakeholders and discussions within the NRC staff, the NRC recognizes that this order of presentation is not logical and does not support agency regulatory clarity objectives.

Solution: The NRC is proposing to switch the order of presentation in these regulations implementing the Firearms Guidelines. Accordingly, the NRC would switch the contents of the two sections implementing this new authority. First, revised § 73.18 would identify the classes of facilities designated by the Commission under section 161A authority that are appropriate for the voluntary stand-alone preemption authority or combined

enhanced weapons authority and preemption authority and present the requirements for licensees and certificate holders obtaining enhanced weapons or preemption authority.

Second, revised § 73.19 would identify the classes of facilities designated by the Commission under section 161A authority that are appropriate for the mandatory firearms background checks and present the requirements for these firearms background checks.

16. In the information collection requirements of § 73.8 of the October 2006 proposed rule, a place holder was added for the OMB control number (for Paperwork Reduction Act purposes) regarding the FBI's current fingerprint Form (FBI Form FD-258). OMB has subsequently issued a new control number (0110-0046) to the FBI for FBI Form FD-258.

Solution: The NRC is proposing to add the approved OMB control number for FBI Form FD-258 to § 73.8 and to reference § 73.19 as one of the sections in Part 73 where this burden is required (see also issue 15 of this section).

The NRC is also proposing to specify the proposed OMB control number (i.e., 3150-0204) for NRC Form 754 in § 73.8.

C. Application of Section 161A Authority to Additional Classes of NRC-Regulated Facilities and Radioactive Material

In the October 2006 proposed rule, the NRC had proposed designating only two classes of NRC-regulated facilities as appropriate for the authority of section 161A of the AEA at that time – power reactor facilities and Category I SSNM facilities. The NRC had taken this approach to focus on the highest risk facilities and had indicated that additional classes of facilities and radioactive material would be considered in future rulemakings. The NRC intends to continue this approach; and therefore the scope implementing section 161A authority in this rulemaking will be limited to these two classes of facilities. However, the NRC may also

propose designating additional classes of facilities and radioactive material in a separate future rulemaking.

D. Transfer of Enhanced Weapons

During development of the Firearms Guidelines, NRC, DOJ, and ATF staffs discussed the circumstances under which a licensee's or certificate holder's issuance of an enhanced weapon to a security individual would not be considered a "transfer" of an enhanced weapon under ATF's current regulations (*e.g.*, the issuance of an enhanced weapon to an authorized security individual for their duty shift, for escort of a shipment of radioactive material, or for training purposes). Defining a transaction involving a weapon as a "transfer" under ATF's regulations incurs a number of additional obligations, and the NRC was concerned that an unnecessarily broad classification of "transfers" would result in serious impacts on routine, day-to-day security activities involving enhanced weapons.

For example, by definition, ATF regulations require that any "transfer" of enhanced weapons (*i.e.*, weapons registered with ATF under the NFA (26 U.S.C. Chapter 53) (see 26 U.S.C. 5841, "Registration of Firearms")), be reviewed and approved by ATF staff in advance of any such transfers (see 26 U.S.C. 5812). The NRC has been informed that the ATF's typical review process to transfer a weapon registered under the NFA can take a month or more in normal circumstances. If daily issuances of enhanced weapons to security personnel at nuclear power plants were considered "transfers" under ATF's regulations, these activities would then require prior ATF approval. Further, each weapons transfer under the NFA would also trigger tax implications under ATF regulations. This issue was not addressed in the October 2006 proposed rule.

Following discussions between the NRC, DOJ, and ATF staffs regarding NRC's concerns with the transfer issue, the ATF provided a legal opinion to the NRC's Office of the

General Counsel on potential circumstances that would or would not constitute the transfer of an enhanced weapon and thus require prior ATF approval (see letter from ATF listed in Section IX, “Availability of Documents,” of this document). As described in the opinion, ATF concluded that ATF’s transfer requirements under 27 CFR Part 479, “Machine Guns, Destructive Devices, and Certain Other Firearms,” would not apply in certain circumstances. Based on this guidance from ATF, the NRC is proposing language in § 73.18(m) that would clarify when the issuance of an enhanced weapon to security personnel of licensee’s and certificate holder’s authorized to possess such weapons is, or is not, considered a weapons transfer under the NFA.

ATF’s letter indicates that the issuance of enhanced weapons by a licensee or certificate holder to security personnel for the performance of their official duties does not constitute a transfer in three instances:

- When the enhanced weapons are issued to security personnel who are employees of the licensee or certificate holder or who are employees of a security contractor providing security services to the licensee or certificate holder and their official duties are “at the site” of an NRC-approved facility;
- When the enhanced weapons are issued to security personnel who are employees of the licensee or certificate holder and their official duties are “beyond the site” of an NRC-approved facility; or
- When the enhanced weapons are issued to security personnel who are employees of a security contractor providing security services to the licensee or certificate holder and their official duties are “beyond the site” of an NRC-approved facility, if authorized licensee employees are present to oversee the activities.

The NRC is proposing that the limit of “at the site” would include all areas of an authorized facility located within the “site boundary,” where the “site boundary” is defined in the

facility's safety analysis report. Absent the presence of licensee personnel overseeing the contractor security personnel possessing enhanced weapons, when enhanced weapons are taken beyond the site boundary, ATF has indicated that unless licensee personnel are present to maintain "constructive possession" of the enhanced weapons, such actions are considered a transfer of an enhanced weapon. Without prior ATF approval of a transfer, such an action would be a violation of 26 U.S.C. 5812 and 5841. Licensee personnel overseeing the use of enhanced weapons beyond the site boundary would need to have completed a satisfactory firearms background check and would need to be trained on the accountability and notification requirements for enhanced weapons. However, such personnel would not have to be fully trained and qualified to use the enhanced weapons.

As discussed in Technical Difference 7 (Section III, "Discussion," of this document), the licensee's or certificate holder's issuance of an enhanced weapon to security personnel for their official duties beyond the site boundary would only be authorized for:

(1) training at facilities designated in the licensee's or certificate holder's training and qualification plan; and (2) escorting shipments of Commission-designated radioactive material and other property. ATF's transfer requirements would apply in all other circumstances where enhanced weapons are taken beyond the site boundary by employee or contractor personnel (e.g., the sale or relocation of an enhanced weapon to another NRC licensee or certificate holder, the repair of an enhanced weapon at an offsite armorer or the manufacturer, or the use of an enhanced weapon at a shooting competition that is located away from the licensee's or certificate holder's training facility specified in the NRC-approved training and qualification plan).

E. NRC Form 754

One comment on the information collection burden was received from the October 2006 proposed rule that bears on § 73.19 and the proposed NRC Form 754. The NRC has

addressed this issue in comment F.2 (see Section IV, “Resolution of Public Comments on the October 2006 Proposed Rule,” of this document). The NRC would make minor changes to the assisting and explanatory notes text of proposed NRC Form 754 to make the NRC’s form consistent with similar ATF Form 4473 that was recently revised in August 2008. Separately, the NRC would revise Question 4 on Form 754 to only require the identification of the State or Territory where the security individual’s duty station exists, rather than the complete address of the duty station, as this is unnecessary. Additionally, the NRC would require the security personnel to enter multiple States or Territories for instances where the security personnel routinely serves at multiple duty stations that are located in different States or Territories. The NRC would also delete Question 13 (State of Residence) on proposed NRC Form 754 since this information is redundant to the information provided under the proposed Question 3 (Current Residence Address). Furthermore, the NRC would revise paragraph 4 in the Privacy Act Information summary (page 3 of the form) to indicate that the submission of NRC Form 754 would be mandatory for certain security personnel.

The FBI staff has indicated to the NRC that a firearms background check is only valid for the States or Territories identified on the NRC Form 754. Consequently, the duty station’s State or Territory information is necessary for the FBI to conduct the firearms background check against a specific State’s or Territory’s firearms restrictions. Therefore, if security personnel are moved to a different duty station in a different State or Territory or if the security individual conducts firearms training at a facility in a different State or Territory, then the individual’s firearms background check must be recompleted against all applicable States and Territories to ensure the individual is not disqualified under a particular State’s or Territory’s laws. This would also permit licensees to move security personnel to a different facility to support an outage (for example, to a reactor that is located in a different State but is part of a larger fleet of reactors

within a single utility) or to use a central training facility and firing range that is capable of handling large-caliber automatic weapons.

F. Definitions

The NRC would add several new definitions to § 73.2 as conforming changes to the new enhanced weapons and firearms background check provisions in §§ 73.18 and 73.19 and to the revised event notification provisions in § 73.71 and Appendix G to Part 73. As a conforming change to the event notification provisions, the NRC would add new definitions to § 73.2 for SNF and HLW. The current definitions for SNF and HLW that are found in the NRC's regulations in Parts 63, 72, and in Section 2 of the Nuclear Waste Policy Act of 1982, as amended (NWPA), have slight differences. Accordingly, the NRC would add definitions for SNF and HLW to § 73.2 to support the proposed changes to the event notification requirements regarding shipments of SNF and HLW. These definitions will also support changes to transportation security and shipment advance notification requirements that will occur in a separate future rulemaking.

G. Changes to Safeguards Event Notifications

In the October 2006 proposed rule, the NRC had proposed several changes to the safeguards event notification requirements in Part 73. These requirements are located in § 73.71 and in Appendix G to Part 73. In this proposed rule, the NRC would retain notification requirements to address imminent attacks or threats against power reactors as well as suspicious events that could be indicative of potential reconnaissance, surveillance, or challenges to security systems. Additionally, based upon further review of the need for these requirements to accomplish the agency's strategic communication missions, the NRC would expand the applicability of these proposed regulations to include Category I SSNM facilities as well as the transportation of SNF, HLW, and Category I SSNM. The NRC believes these types

of facilities and activities pose a potential for a significant level of risk to the public and therefore require an equivalent level of security event notifications. Based upon the nature of the stakeholder comments received on the proposed 15-minute “imminent attack” notification requirement, the NRC recognizes that the basis for this requirement (*i.e.*, the accomplishment of the NRC’s strategic communications missions) requires further clarification.

Accordingly, while the NRC agrees it would not respond to a licensee’s 15-minute notification with NRC resources to defeat an imminent or actual threat, the NRC has two strategic communications missions to execute in response to reports of imminent or actual hostile acts that are independent of the affected licensee. First, the NRC has a strategic mission to immediately communicate such hostile act information to the Department of Homeland Security (DHS) operations center under the National Response Framework. DHS has responsibility for rapidly communicating (*i.e.*, retransmitting) this information to other parts of the government (*e.g.*, national leaders and key military, homeland security, and critical infrastructure communication centers). Second, the NRC also has a strategic mission to immediately communicate hostile act information to other appropriate NRC licensees and certificate holders so that they can increase their security posture at their facilities or for their shipments of SNF, HLW, or Category I SSNM. This prompt notification could be vital in increasing licensees’ ability to defend against a multiple-site attack and to protect the lives of security and plant personnel (at a second facility). This rationale extends to other government or critical infrastructure facilities for defense against multiple-sector attacks. During the terrorist attacks of September 11, 2001, the United States saw that its adversaries can simultaneously attack multiple sectors of our critical national infrastructure (*i.e.*, financial, military, and governmental sectors were attacked).

Consequently, prompt notification to the NRC may permit NRC licensees and certificate holders or other government facilities or components of the critical national infrastructure (who receive timely notification of an attack or threat elsewhere) to shift their security defensive posture, thereby increasing the likelihood that the defensive forces would defeat a terrorist attack. Accordingly, the NRC views the licensee's 15-minute "imminent attack" notifications as providing the NRC the necessary information to permit the NRC to accomplish its strategic communication missions.

The NRC would retain the proposed requirement for a licensee to establish a continuous communications channel with the NRC subsequent the licensee's initial transmission of an abbreviated set of information to the NRC, and thereby reduce the immediate impact on licensee personnel. The NRC proposes that licensees establish a continuous communications channel (if requested by the NRC following the initial 15-minute attack or threat notification) after the licensee has completed any required emergency plan notifications, required notifications or requests for assistance to local law enforcement officials, or 60 minutes have elapsed since event discovery. Licensees are required under the current § 73.71 to establish a continuous communications channel, if requested by the NRC, following both facility and transportation one-hour security event notifications.

For enhanced weapons that are stolen or lost, the NRC would add a notification requirement to § 73.71 to notify the NRC and local law enforcement officials. The NRC is also proposing to add a separate requirement to notify the NRC if a licensee possessing enhanced weapons receives an adverse inspection finding from ATF (regarding the enhanced weapons). The NRC is proposing this second notification requirement to enable the NRC to respond to any press or public inquires following ATF action.

The NRC also is proposing to make several editorial and organizational changes to § 73.71 and Appendix G to Part 73 to provide a prioritized, graded, and parallel structure that applies to both licensees and certificate holders. The new structure would accomplish the following: (1) provide increased regulatory clarity; and (2) avoid confusion regarding the applicability of individual provisions of § 73.71 and Appendix G to Part 73 to certificate holders, given the current language in §§ 76.113, 76.115, and 76.117. The NRC would also group notifications under common time limits, as is currently done in § 50.72. The NRC also would incorporate changes made in response to comments to provide increased differentiation between required event notifications versus the safeguards event log, to facilitate the retraction of non-valid notifications, and to provide additional clarity on tampering events. The NRC would also add clarifying language to § 73.71 and Appendix A to Part 73 to address non-reactor facilities that are required to make classified security event notifications.

The NRC views the long-term imposition of “voluntary notifications” for security events as inconsistent with the agency’s strategic goals of long-term regulatory stability and fostering transparency and public involvement in developing and imposing regulatory requirements. Accordingly, some event notifications that were originally issued to licensees and certificate holders following the events of September 11, 2001 (via NRC bulletins and advisories) would be incorporated into the regulations in § 73.71 and Appendix G rather than continuing as “voluntary notification.” This concept remains unchanged from the NRC’s approach taken in the October 2006 proposed rule.

Additionally, the NRC would continue with the proposed removal of the word “credible” from the term “credible threats” reported under proposed Appendix G, Paragraph 1(a). The NRC maintains that only the NRC, the intelligence community, and law enforcement agencies should determine whether a threat is credible. This function should not rest with the licensee or

certificate holder. Licensees and certificate holders would not have access to classified threat indicators or intelligence information; therefore, a licensee or certificate holder decision on the credibility of a specific event might be incorrect or incomplete.

Additionally, the NRC is proposing to add security event reporting and recording requirements related to certain cyber security issues at nuclear power reactor facilities. The NRC is proposing the additions because cyber security events reporting and recording requirements were not included in the NRC's recent final rule that added § 73.54 to the NRC's regulations (74 FR 13925; March 27, 2009). Section 73.54 requires power reactor licensees to establish and maintain a cyber security program at their facilities to provide high assurance that digital computer, communication systems, and networks are adequately protected against cyber attacks, up to and including the design basis threat as described in § 73.1. The proposed additions would be added to the security event notification provisions of § 73.71 and Appendix G to Part 73.

H. Conforming Changes to Category I SSNM Facility, Power Reactor Facility, and Training and Qualification Security Requirements

The NRC is proposing to make two conforming changes to the security requirements for Category I SSNM facilities and power reactor facilities to increase regulatory clarity. The NRC would add a new paragraph (b)(13) to § 73.46 and a new paragraph (b)(12) to § 73.55 that would provide a cross reference to the firearms background check requirements of § 73.19. Additionally, the NRC would add clarifying implementation language to these two new paragraphs to address the allowable time for future licensees to satisfactorily complete firearms background check requirements on armed security personnel (*i.e.*, licenses issued by the NRC after the implementation date specified in the proposed § 73.19(b)(4)). The NRC is proposing this implementation language because applicants for a license are not authorized under section

161A of the AEA to submit firearms background checks to the NRC until after the NRC issues a license and thus § 73.19(b)(4) would require immediate compliance upon issuance of a license, (as the implementation date will have already passed). Accordingly, the NRC is proposing a 6 month implementation period for any future licensees to satisfactorily complete these firearms background checks. This implementation period is the same as is proposed for current licensees under § 73.19.

The NRC is also proposing to make a conforming change to the requirements of Appendix B to Part 73, Section I.A, "Employment Suitability," to update the suitability language on felony convictions restrictions for unarmed security personnel and the 18 U.S.C. 922 restrictions on armed security personnel. This proposed language is the same as the language used in the final rule issued on March 27, 2009 (74 FR 13925), "Power Reactor Security Requirements," under VI.B.1 to Appendix B to Part 73-General Criteria for Security Personnel (see 74 FR 13988).

I. Specific Questions for Public and Stakeholder Input

The NRC is seeking specific input from the public and stakeholders on the proposed solution to Issue 5 discussed previously. Issue 5 involves the requirement for designated licensees and certificate holders to complete a periodic firearms background check on security personnel whose official duties require access to covered weapons. The Firearms Guidelines require that a satisfactory firearms background check be completed for security personnel at least once every five years. The NRC is proposing that these checks be conducted at least once every three years and that licensees and certificate holders can conduct these checks more frequently, if they desire. The NRC is proposing this approach to reduce licensee and certificate holder costs by permitting licensees and certificate holders to submit a single set of

fingerprints to accomplish the periodic firearms background checks and periodic criminal history records checks that support access authorization and personnel security clearance processes. For example, fingerprints for security personnel at power reactors are currently submitted to the NRC every three years as part of the licensee's access authorization program, as required by § 73.56(i)(1)(v)(B) for power reactors.

An alternative approach would be to require firearm background checks at least once every five years and let licensees and certificate holders choose how they will coordinate and/or control these checks with other required fingerprint checks (*e.g.*, the access authorization program under § 73.56 for power reactors). The Firearms Guidelines allow the NRC some flexibility in developing the requirements for the background checks. Therefore, the NRC is seeking stakeholder comments on the following three questions:

- A. Is it appropriate to require a 3-year periodicity for recurring firearms background checks appropriate? (Note: Consistent with the periodicity of access authorization program recurring fingerprint checks for armed security personnel.)
- B. Or, is it appropriate to require a 5-year periodicity for recurring firearms background checks appropriate, keeping in mind that the Firearms Guidelines require no less than 5 years?
- C. If not 3 years or 5 years, what is an appropriate periodicity for recurring firearms background checks, keeping in mind that the Firearms Guidelines require no less than 5 years?

The NRC is also seeking public and stakeholder input on questions related to the periodic inventory requirements for enhanced weapons that are set forth in the proposed § 73.18(o). Specifically, these proposed regulations would not require monthly accountability inventories of enhanced weapons that the licensee or certificate holder stores in a locked

secure weapons container that is: (1) physically located within the protected area, vital area, or material storage area of a facility; and (2) is sealed with a high-integrity TID.

In such cases, only the verification of the intact TID on the weapon containers would be required during the monthly inventory. However, for the semi-annual accountability inventories, licensees and certificate holders would be required to physically verify the serial number of each enhanced weapon they possess by removing the TID and verifying the weapon(s) serial number.

- D. Are semi-annual accountability inventories an appropriate periodicity for inventories that would physically verify the serial number of each enhanced weapon possessed by a licensee or certificate holder? If not, what is an appropriate periodicity for such inventories?

Finally, the NRC is seeking public and stakeholder input on the question of whether the proposed security event notification regulations (currently consisting of § 73.71 and Appendix G to Part 73) should be consolidated into a single section or into a series of three adjacent sections (*e.g.*, separate sections on telephonic notifications, written follow-up reports, and safeguards event logs) that would be similar in concept to the structure of §§ 50.72 and 50.73. The NRC is concerned that continuing to locate security event reporting and recording requirements in separate portions of Part 73 may reduce the regulatory clarity and ease of use of these regulations. Therefore, the NRC is seeking stakeholder comments on the following two questions and may implement these actions in a final rule, without further opportunity for comment:

- E. Should the requirements for reporting and recording security events be consolidated into a single section of Part 73?

- F. Should the requirements for reporting and recording security events be located in a series of three adjacent sections of Part 73 (e.g., telephonic notifications, written follow-up reports, and safeguards event log)?

IV. Resolution of Public Comments on the October 2006 Proposed Rule

On October 26, 2006 (71 FR 62663), the NRC published a proposed rule and requested public comments. Forty-eight comment letters were received on the October 2006 proposed rule, and 16 of these letters included comments on the proposed rule relating to the Firearms Guidelines and event notification provisions. Of these 16 comment letters, one was from a State, three were from the public, and the remaining 12 letters were from NRC licensees and the Nuclear Energy Institute. The comment letters provided various points of view and suggestions for clarifications, additions, and deletions. Copies of these letters are available for public inspection and copying for a fee at the NRC's PDR at 11555 Rockville Pike, Rockville, MD 20852. Copies of these letters may also be viewed and downloaded from the Federal eRulemaking Website <http://www.regulations.gov>, docket number NRC-2006-0016.

The NRC also requested comments on six specific questions, one of which involved the event notification provisions. No specific questions were asked on the Firearms Guidelines provisions. In the specific question the NRC asked, "For the types of events covered by the proposed four-hour notification requirements in § 73.71 and Appendix G to Part 73, should the notification time interval for some or all of these notifications be different (e.g., a 1-hour, 2-hour, 8-hour, 24-hour notification)? If so, which notification time interval is appropriate? "Notification time interval" is meant to be the time from when a licensee recognizes that an event has occurred, or is occurring, to the time that the licensee reports the event to the NRC. No commenters responded to this specific question.

The NRC also requested comments on the information collection burden associated with the October 2006 proposed rule and asked four specific questions. One commenter responded to each of these four questions.

There was a range of stakeholder views concerning the Firearms Guidelines and event notification provisions of the 2006 proposed rulemaking. However, most commenters supported the enhanced weapons and firearms background check provisions and only requested clarifying changes. There were some commenters who requested more rigorous provisions for the use of enhanced weapons, and some who objected strongly to provisions regarding event notification requirements. Some stakeholders viewed the 2006 proposed rulemaking as an effort to “codify” the “insufficient status quo” while others described the new requirements as going well beyond the post-September 11, 2001 security order requirements previously imposed by the Commission.

The Commission believes that commenters who suggested that the Commission had no basis to go beyond the requirements that were imposed by the security orders misunderstood the relationship of those security orders and the October 2006 proposed rulemaking. The security orders were issued based on the specific knowledge and threat environment information available to the Commission at the time the orders were issued. The Commission advised licensees who received those orders that the requirements were interim and that the Commission would eventually undertake a more comprehensive re-evaluation of current safeguards and security programs. The objectives of the October 2006 proposed rule went beyond simply making generically applicable security requirements similar to those that were imposed by Commission orders. The Commission intended to implement requirements informed by its review of site security plans, its experience with the implementation of the enhanced baseline inspection program, and its evaluation of force-on-force exercises.

Accordingly, the Commission will apply insight gained from these actions to any new requirements proposed for event notifications in this proposed rulemaking.

Responses to specific comments are presented as follows.

A. General issues

Comment A.1: One commenter indicated that concussive type devices (a.k.a., flash bangs) should be covered by this rule as a significant addition to the armed responders' available equipment (*i.e.*, the use of flash bangs would significantly increase security personnel's capabilities).

Response: The NRC disagrees. Section 161A of the AEA does not authorize NRC licensees and certificate holders to possess destructive devices as they are defined under section 5845 of the NFA (26 U.S.C. 5845). It is the NRC's understanding, however, that some flash bang devices are not prohibited because they are not considered destructive devices. Therefore, it is possible that some licensees and certificate holders currently may possess flash bang devices that are not classified as destructive devices under the NFA. However, if a flash bang device is classified as a destructive device under the NFA, NRC licensees and certificate holders in general would not be authorized to possess them. Information on whether or not a particular flash bang device is considered a destructive device should be obtained from its ATF-licensed manufacture or importer.

Under the proposed requirement, if a specific type of flash bang device is not classified as a destructive device, but its possession is restricted under applicable State or local law (applicable to the licensee's or certificate holder's locale), then licensees and certificate holders who apply for and are approved for preemption authority would be able to possess these devices notwithstanding any State or local restrictions.

Comment A.2: One commenter asked if stakeholders would have an opportunity to comment on the Firearms Guidelines before they are published in the *Federal Register*.

Response: Section 161A.d of the AEA required the NRC to develop the Firearms Guidelines and obtain the approval of the U.S. Attorney General before issuance. To meet this requirement, the NRC, DOJ, FBI and ATF staffs, worked jointly to develop guidelines that were acceptable to the U.S. Attorney General and which provide direction to these agencies on implementing section 161A of the AEA. An opportunity for public comment on the Firearms Guidelines was not provided before its publication in the *Federal Register* on September 11, 2009.

Comment A.3: One commenter asked if the enhanced weapons provisions of the proposed rule were mandatory or voluntary.

Response: A licensee and certificate holder application for section 161A authority (either combined enhanced weapons authority and preemption authority or stand-alone preemption authority) is voluntary. However, the firearms background check requirements will be mandatory for affected licensees and certificate holders (those that are within the Commission-designated classes of facilities listed in § 73.19(c)). Licensees and certificate holders who apply for section 161A authority and receive approval from the NRC must comply with the applicable requirements of §§ 73.18, 73.19, and 73.71.

Comment A.4: One commenter asked if the rule would permit licensees to use enhanced weapons as a substitute for uniformed guards or other weapons.

Response: The NRC recognizes that the increased defensive firepower from enhanced weapons may permit a licensee or certificate holder to adjust its protective strategy and thereby reduce the size of its protective force. However, to obtain enhanced weapons, the licensee or certificate holder must submit updated security plans and contingency response plans to the

NRC for review and approval. Consequently, the NRC will have the opportunity to evaluate and approve the level of defensive firepower and personnel appropriate for a specific site.

Comment A5: One commenter asked what, in the NRC's view, would be the incentive for licensees to obtain and use enhanced weapons, given the increased costs to obtain and deploy such weapons?

Response: The decision to employ enhanced weapons is essentially a business decision to be made on a site-specific basis by each licensee or certificate holder subject to this regulation. It is not the place of the NRC to advise such regulated entities on business decisions. However, from a purely tactical security viewpoint, the fundamental incentive for a licensee or certificate holder to obtain enhanced weapons is to increase their defensive capability to provide high assurance that the public health and safety and the common defense and security will be adequately protected from attempted radiological sabotage at reactor facilities or from the attempted theft or diversion of Category I SSNM at Category I SSNM facilities. Many of the weapons that would be accessible to licensees and certificate holders under this rule are considered to be "force multipliers." The increased firepower from these weapons would permit a single security individual to deliver more rounds on target in a shorter period of time, thereby increasing the likelihood that an adversary would be neutralized.

Because obtaining enhanced weapons is voluntary, licensees and certificate holders must evaluate for their specific site whether the costs and benefits of using enhanced weapons is appropriate in general, and if appropriate in general, which specific types of weapons are appropriate for their particular site and protective strategy. Likewise, as applications are submitted to the NRC for its review and approval, the NRC will also evaluate the site-by-site suitability of the use of enhanced weapons in making its own determination that the planned use is consistent with public health and safety and the common defense and security.

B. Definitions (§ 73.2).

Comment B.1: One commenter suggested that the definitions for enhanced weapons should include remotely operated weapon systems (ROWS). The commenter indicated that there is growing (State or local) pressure to regulate enhanced weapons, and these weapons allow increased defensive capabilities without expanding the number of armed responders.

Response: The NRC disagrees. The definition of “enhanced weapons” under this rule is consistent with that contained in the Firearms Guidelines. The critical distinction for an enhanced weapon (*e.g.*, a machine gun) is whether multiple rounds are fired with a single pull of the weapon’s trigger or a single round is fired with a single pull of the trigger. The issue is not whether the trigger is pulled directly by a human finger or pulled remotely by an electro-mechanical device. Generally speaking, a ROWS is not in itself a “weapon” but rather is a mechanical and electro-optical mechanism into which a normal or enhanced weapon could be incorporated and thus permit the weapon to be fired remotely. In the NRC’s view, licensees and certificate holders could currently employ a ROWS using the standard weapons to which they currently have access. However, licensees and certificate holders who apply for enhanced weapons and are approved for preemption authority would in theory be able to incorporate these weapons into a ROWS under the language of section 161A, notwithstanding any applicable State or local restrictions. Therefore, no change is needed to the definition. The NRC notes that a ROWS using machine guns would require NRC approval of this enhanced weapon. Although ROWS could also use short-barreled shotguns or short-barreled rifles, the NRC considers that approach unlikely because of the inherent inaccuracy of these weapons (*i.e.*, these are short-range weapons that are typically designed for concealment purposes).

C. Authorization for the Use of Enhanced Weapons and Preemption of Firearms Laws
(formerly proposed § 73.19, now revised proposed § 73.18)

Comment C.1: Several commenters stated that while the proposed rule allows enhanced weapons to be used for defense and requires the licensee to protect against an insider, it does not require the licensee to protect against an insider using enhanced weapons for the purposes of radiological sabotage.

Response: The NRC agrees that the proposed rule (§§ 73.18 and 73.19) did not include language requiring a “licensee to protect against an insider using enhanced weapons for the purposes of radiological sabotage.” However, subsequent to the close of the comment period on the October 2006 proposed rule, the NRC published a separate final rule revising the design basis threat contained in § 73.1 (see 72 FR 12705; dated March 19, 2007) which addresses this issue. Specifically, § 73.1(a) (1) (i) (B) and (C) for radiological sabotage and § 73.1(a) (2) (i) (B) and (C) for theft or diversion of formula quantities of strategic special nuclear material both require licensees to protect against threats that include “knowledgeable inside assistance” that can be both active or passive, or both, and also addresses the use of hand-held automatic weapons. Consequently, the NRC concludes that the issue raised by these commenters has been addressed by a separate rulemaking; no further changes are required in this proposed rule.

Comment C.2: Several commenters stated that the weapons safety assessment (required as part of license’s or certificate holder’s application for enhanced weapons under the proposed rule) should be expanded in scope to include the assessment of an insider malevolently using these weapons against the facility.

Response: The weapons safety assessment is a new concept that the NRC created in developing the Firearms Guidelines to aid the staff in evaluating applications to use enhanced

weapons. The NRC's intent was to require licensees and certificate holders to examine how they intended to deploy enhanced weapons and to assess if significant onsite or offsite collateral damage might occur from firing such weapons. If these types of concerns were identified, the licensee could take actions to use different caliber weapons (e.g., use a 5.56 x 45 mm round instead of a 7.62 x 51 mm round; the latter has a greater range and penetrating power) or to take preventive or mitigative efforts. Examples of preventive efforts could include limiting a fixed machine gun's field of fire through the use of elevation and traverse limits or not deploying a fixed machine gun along certain azimuths of a facility. Mitigative efforts could include the use of intervening, bullet-resistant protective barriers.

Thus, it is unclear to the NRC how licensees and certificate holders could gain useable mitigative or preventive information from a weapons safety assessment that included an evaluation of security personnel malevolently using their issued enhanced weapons against either safety-related or sensitive structures, systems, and components (SSCs) or critical personnel. The NRC has reached this conclusion given that a security individual's "inside knowledge" would likely allow them to circumvent these mitigative or preventive measures (established in response to the assessment) or that installation of uncircumventable measures would likely impose unacceptable operations, maintenance, radiation protection, or design impacts on the SSCs. With respect to non-security personnel obtaining access to enhanced weapons and acting as an active insider, the licensee's and certificate holder's security plans currently require that all weapons be controlled and secured, unless they are in the possession of authorized security personnel.

Consequently, the NRC would rely upon other personnel-monitoring programs required by NRC regulations to significantly reduce the likelihood of security personnel malevolently using their weapons against such SSCs or against critical personnel. These programs would

include the fitness-for-duty program, psychological-screening program, behavioral-observation program, and insider-mitigation program. Therefore, the NRC would not expand the scope of the proposed weapons safety assessment as requested by the commenters.

Comment C.3: One commenter stated that the NRC did not explicitly recognize the authority of FFL holders (who are licensed by ATF to manufacture, import, or possess machine guns) to transfer enhanced weapons to an NRC-licensee or certificate holder who has received the NRC's approval under this proposed rule and the October 2006 proposed rule to possess specific enhanced weapons and who has also received the ATF's approval under ATF regulations to receive these weapons. The commenter requested the NRC to explicitly clarify in a final rule that the holder of an FFL who has received approval from ATF to transfer specific types and quantities of enhanced weapons (machine guns) to a specific NRC licensee or certificate holder, is authorized to make this type of transfer.

The commenter indicated that the basis for this comment was that ATF was not intending to revise its regulations to add approved NRC licensees and certificate holders to the list of entities that are authorized to obtain machine guns. Therefore, the commenter was concerned that without explicit clarification, the holder of an ATF FFL would be reluctant to transfer machine guns to approved NRC licensees and certificate holders, notwithstanding the NRC's and the ATF's written authorizations.

Response: The Firearms Guidelines developed by the NRC, DOJ, FBI, and ATF and approved by the U.S. Attorney General define the overall process for NRC licensees and certificate holders obtaining enhanced weapons. The proposed rule would require the NRC to document in writing its approval of an application for enhanced weapons to the applying licensee or certificate holder. The licensee or certificate holder would then be required to provide a copy of the NRC's approval to the holder of an FFL who will supply the enhanced

weapons. The holder of the FFL would include a copy of the NRC's approval with the FFL's application to ATF to transfer the specific weapons to the NRC licensee or certificate holder. Prior ATF approval must be received to transfer the weapons.

ATF staff has indicated that ATF does not intend to revise any of its regulations to implement the provisions of section 161A. Therefore, the issued Firearms Guidelines and the specific NRC approval to obtain enhanced weapons should provide sufficient evidence to the holder of an FFL that they are submitting a lawful request to transfer such weapons. The holder of an FFL can contact ATF in advance regarding proposed transfers to NRC licensees or certificate holders. Finally, before ATF approves the transfer request and any weapons are actually transferred, ATF can consult with the NRC if any questions are identified regarding a specific proposed transfer.

D. Firearms Background Checks for Armed Security Personnel (formerly proposed § 73.18, now revised proposed § 73.19)

Comment D.1: One commenter asked if the proposed rule allows licensees to begin firearms background checks as soon as they have applied for preemption authority but before the NRC approves their application. If this is correct, under what authority would the licensee request the background check information? A second commenter requested clarification on whether some, or all, of the licensees' armed security personnel would be subject to a firearms background check if the licensee decides to implement §§ 73.18. A third commenter requested clarification on whether firearms background checks (NICS checks) are completely separate from any other background check performed on people who do not have access to enhanced weaponry. A fourth commenter requested clarification on whether there is any change to existing background check requirements for security personnel under 10 CFR Part 73, if they will not have access to enhanced weapons.

Response: The requirements for firearms background checks have changed substantially from the October 2006 proposed rule due to changes in the Firearms Guidelines. Under the revised proposed regulations, all licensees and certificate holders that fall within the classes of facilities, radioactive material, or other property designated under § 73.19(c) and who employ covered weapons as part of their protective strategy would be required to complete satisfactory firearms background checks for all security personnel whose official duties require, or will require, access to covered weapons. Affected licensees and certificate holders must begin these checks within 30 days of the effective date of a final rule designating such classes of facilities, radioactive material, or other property. Applicants for a new license or CoC may only begin submitting their security personnel for a firearms background check after the NRC has issued their respective license or CoC.

A firearms background check is a separate action from the background investigation required as part of an access authorization program required under 10 CFR Part 73 or for a personnel or material security clearance required under 10 CFR Chapter 1. The revised proposed firearms background check requirements would not alter these personnel security, material security, or access authorization program requirements.

Comment D.2: A commenter asked if the disqualifying criteria for the NICS background checks were available for licensee review.

Response: The disqualifying criteria are available for public review under ATF's regulations at 27 CFR 478.32. ATF's regulations may be found at the National Archives and Records Administration's Web site for the Code of Federal Regulations: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>. Additionally, the NRC issued a generic communication in 2008 titled: Regulatory Information Summary RIS-2008-10, "Notice Regarding Forthcoming Federal Firearms Background Checks," dated May 13, 2008.

Enclosure 1 to this RIS contained the disqualifying criteria and the RIS provided additional information resources to licensees, certificate holders, and their security personnel.

RIS-2008-10 can be found in the NRC's Electronic Reading Room under ADAMS Accession No. ML073480158.

The NRC also issued RIS-2008-10, Supplement 1, "Notice Regarding Forthcoming Federal Firearms Background Checks," dated December 22, 2008. Supplement 1 provided further information on the implementation of the firearms background checks. It can be found in the NRC's Electronic Reading Room under ADAMS Accession No. ML082340897.

E. Reporting of Safeguards Events (§ 73.71 and Appendix G to Part 73)

Comment E.1: One commenter stated that the October 2006 proposed rule would require licensees to report particular incidents within a certain time from discovery. The commenter indicated that additional time is often necessary to determine whether an event is reportable or not. The commenter suggested the reportability clock should start when the event is determined to be reportable, not when it is discovered. The commenter believes this position is implied in previous NRC guidance, such as NUREG-1304, "Reporting of Safeguards Events," dated February 1988. The commenter recommends the NRC clarify the rule language (or clarify in guidance documents) that additional time may be required to determine whether a security event is actually reportable or not. This approach would minimize the submission of unnecessary notifications and written reports. A second commenter indicated that no exception language (*i.e.*, back out clause) exists regarding the submission of follow-up written reports for situations in which the original telephonic report is retracted or for situations for which the reported event never advances beyond the threshold specified in the original proposed Appendix G to Part 73, paragraph II. A third commenter indicated that the proposed changes to Appendix G to Part 73 would result in unnecessary notifications.

Response: While the NRC agrees that the overall goal of reducing unnecessary notifications is worthy, the NRC continues to believe that the clock on making notifications to the NRC should begin from the time of discovery, as opposed to when the licensee concludes a reportable event has occurred. This approach is preferred for two reasons.

First, the NRC needs event notifications in a timely manner to integrate them into its ongoing assessment of the current threat environment. Security events occurring at multiple facilities may indicate a broader trend; a seemingly innocuous event occurring at a single site is quite different from similar events occurring at multiple sites. In a threat assessment, “connecting the dots” between multiple intelligence or threat threads can allow authorities to develop a larger mosaic, but this integration requires prompt notification from licensees. Second, the use of “time of concluding” when a reportable event occurs could allow a significant amount of time to lapse before a licensee makes the notification. This time lapse could also affect the accuracy of the ongoing assessment of the current threat environment. The current language in § 73.71 refers to “time of discovery,” and the commenters have not indicated that licensees are unable to comply with current requirements.

The NRC encourages licensees to report security notifications and then subsequently retract them if appropriate (*e.g.*, as invalid events). This is preferable to allowing licensees to delay or not make a notification that could potentially add a critical piece to the threat puzzle. In comparison, the NRC routinely receives safety-related notifications from power reactor licensees of actuation of an engineered safety feature that are subsequently retracted as an “invalid” actuation. Therefore, the NRC agrees with the commenter that written follow-up reports are not necessary for event notifications that are retracted by the licensee. Accordingly, the NRC would add a new requirement to revised proposed § 73.71(m) (13) to indicate that a written follow-up report is not required for events that are retracted before the 60-day written

report due date. However, for events that are retracted after the written follow up report is submitted to the NRC, the licensee would be required to submit a revised written report to the NRC in accordance with revised § 73.71(m). This revised report is necessary to ensure that the official agency record describing the event is correct.

Comment E.2: Several commenters indicated that the wording used to describe the types of events that reactor licensees must report under the 15-minute standard is confusing and is inconsistent with NRC Bulletin 2005-02 (see ADAMS Accession No. ML051740058). One commenter recommended deleting the term “safeguards threat” from § 73.71(a). One commenter suggested removing the word “threat” in order to be more consistent with original proposed Appendix G to Part 73, paragraph I. One commenter recommended replacing the language in original proposed Appendix G to Part 73, paragraph I (a) on “actual or imminent threat against a nuclear power plant” with “an attack by a hostile force against the facility.” One commenter indicated that the proposed notification did not address notification to local law enforcement agencies (LLEA) consistent with NRC Bulletin 2005-02, nor did it provide allowance for delaying the notification to the NRC to complete the LLEA notification.

Response: The NRC agrees that the clarity of the regulation should be improved and made consistent with NRC Bulletin 2005-02. The NRC would replace the term “safeguards threat” with “hostile action” to indicate the urgency of the situation. The NRC would add clarity by simplifying the wording in § 73.71(a) and incorporating the text from original proposed paragraph I(b) of Appendix G to Part 73. The NRC would also remove the 15-minute notification from Appendix G to Part 73 as it would be duplicative with § 73.71(a).

Additionally, the NRC would apply the 15-minute notification requirement to Category I SSNM facilities, and to significant shipments from these licensees involving SNF, HLW, and Category I SSNM in a new paragraph (b) to Appendix G to Part 73.

These changes are necessary to accomplish the agency's strategic communication mission responsibilities (see Section III, "Discussion," of this document).

The NRC agrees that notifications to LLEA to request immediate assistance should take precedence over lengthy event notifications to the NRC. However, because of the NRC's strategic communication missions, the NRC would not delay the initial notification to the NRC but would simplify the notification information to allow both notifications and requests for assistance to be made as rapidly as possible. Therefore, the NRC would add a sentence to proposed § 73.71(a) and (b) to indicate that a licensee's or certificate holder's request to LLEA for assistance in this event may take precedence over the notification to the NRC.

Comment E.3: Several commenters disagreed with the requirement to establish an open and continuous communications channel following a 15-minute notification. One commenter indicated that this new requirement for a continuous communication channel was not included in NRC Orders, the "EPAC," or NEI guidance document 03-12. The commenter recommended this provision be eliminated and follow-up notifications made in accordance with § 50.72. Another commenter indicated this provision was more stringent than NRC Bulletin 2005-02. The commenter recommended that the requirement be removed and not apply to 15-minute notifications. Another commenter disagreed with the requirement to establish an open and continuous communications channel following a one-hour notification for transportation security events.

The commenter argued that to mandate in all instances that a licensee establish a continuous communication channel detracts from a full integrated response to the security event. The commenter recommended that the NRC retain the discretion allowed by the current regulation so that priority can be given to maintaining safety.

Response: The NRC disagrees with these recommendations. Under the current regulations in § 73.71(a)(3) and (b)(2), licensees making a one-hour notification (e.g., for an attack against either a facility or against a transport) are currently required to maintain an open and continuous communication channel, upon request from the NRC. Consequently, given this current regulation, the commenters' arguments would only apply to the time from minute 15 (time of the event notification) to minute 60. After 60 minutes, establishing a continuous communications channel upon NRC request is required under existing regulations.

However, the NRC recognized that this time would be extremely busy for licensee personnel. Therefore, the NRC would provide additional flexibility in the proposed rule. After a 15-minute notification, the licensee would only be required to establish the continuous communication channel after the following occurred: (1) the licensee completed other required notifications (e.g., declaration of an emergency or requesting local law enforcement personnel assistance); (2) the licensee completed any immediate actions to place the plant in a safe condition or stabilize the plant; or (3) 60 minutes elapsed from event discovery. The NRC also would provide flexibility and clarity regarding the personnel appropriate to staff such a communication channel. The communication channel could be staffed by personnel from the licensee's security, operations, or emergency response organizations at a location of the licensee's discretion.

Comment E.4: Several commenters disagreed with the requirement to establish an open and continuous communications channel following a four-hour notification by a reactor licensee. One commenter raised the same arguments as with this requirement following 15-minute notifications. The commenter indicated this provision was unnecessary and recommended this provision be eliminated. Another commenter indicated that voluntary reporting had been working very well and there did not appear to be regulatory justification for the underlying notification requirement or the continuous communication channel requirement.

Response: The NRC did not propose a requirement in the October 2006 proposed rule to establish a continuous communication channel following a four-hour suspicious event notification (see proposed § 73.71(e)(5) at 71 FR 62867). The NRC is not changing its original approach in this proposed rule. Accordingly, § 73.71(h)(8) would not require a continuous communications channel for four-hour event notifications. As discussed previously, the NRC has concluded that incorporating suspicious event notifications in § 73.71 is necessary not only to understand patterns that are occurring at multiple sites, but also to achieve regulatory stability through the elimination of “voluntary reporting requirements.”

Comment E.5: One commenter indicated that making a one-hour report resulted in very “sketchy” information and suggested that two or four hours were a more appropriate time. The commenter indicated that if additional time were available, the licensee would be able to “discount” many of these notifications before they were made (i.e., conclude that they were unnecessary before the notification is made, rather than retracting a previous notification).

Response: The NRC disagrees and views the proposed one-hour notifications as appropriate. (See also response to Comment E.1 in this document on delaying notifications until complete information is available).

Comment E.6: Two commenters disagreed with the removal of the word “credible” from original proposed Appendix G to Part 73, paragraph II(a). The commenters indicated that this was inappropriate and that, without the qualifying language, all manner of threats and unnecessary reports would be made. The commenters recommended returning to the current wording of this regulation.

Response: The NRC disagrees. In the October 2006 proposed rule (see 71 FR 62840), the NRC had proposed removing the word “credible” before the word “threat”. As the October 2006 proposed rule stated, “The Commission’s view is that a determination of the ‘credibility’ of a threat is not a licensee responsibility, but rests with the Commission and the intelligence community.” The commenters are correct that removing the qualifying language “credible” may increase the number of notifications made by licensees. However, without the licensee’s consulting with local law enforcement or the NRC staff, the NRC’s view is that a licensee could not adequately assess the credibility of all potential events within the time limit of this one hour notification (*i.e.*, one hour from time of discovery). Therefore, the NRC would require licensees to make the required notification for all such events. Consequently, the NRC would continue the original approach of removing the qualifying term “credible” in revised proposed Appendix G to Part 73, paragraph I(a). The NRC will continue to monitor trends and patterns for security event notifications. Should the results of this monitoring, following implementation of this proposed approach, indicate that an inappropriate burden has been placed on licensees or NRC Headquarters Operations Center staff, then the NRC will evaluate the need for further changes to this requirement by rulemaking.

Comment E.7: Two commenters disagreed with the approach in the original proposed Appendix G to Part 73, paragraph II(b) and indicated that this notification was too broad.

One commenter indicated that the proposed language would require a one-hour report for any improper entry or attempted entry into a protected area (PA), a vital area (VA), or the owner controlled area (OCA). The commenter indicated that on a daily basis plant workers may inadvertently attempt to gain access to a VA to which they are not currently authorized access. These events are not security threats and therefore should not be reported as such. The commenters indicated that these events should be qualified by some intent to committing radiological sabotage or “an intentional act by an unauthorized individual.”

Response: The NRC agrees. The NRC would revise proposed Appendix G to Part 73, paragraph I(b)(1) to require one-hour notifications for actual entry of an unauthorized person into a PA, VA, material access area (MAA), controlled access area (CAA), or transport. This would be accompanied by revised paragraph I(b)(2) where the NRC would require one-hour notifications for the attempted entry of authorized persons with malevolent intent into a PA, VA, MAA, CAA, or transport vehicle or shipment. The NRC notes that the term “controlled access area” is defined in § 73.2 and does not refer to the term “owner controlled area” that is used at power reactor facilities. A CAA can be used to store special nuclear material (SNM) at a range of facilities possessing SNM that are subject to § 73.67. This includes power reactors as well as fuel cycle facilities.

Comment E.8: One commenter indicated that original proposed Appendix G to Part 73, paragraphs II(c) and II(d) both needed further clarification. The same commenter urged the NRC to focus event notifications on intentional acts or omissions that would have allowed unauthorized access to any area or transport for which the licensee is required to control access.

Response: The NRC agrees that additional clarification to Appendix G to Part 73 is warranted. Accordingly, the NRC would split revised proposed, paragraph II(e) into two

components for events involving failures, degradation, or the discovered vulnerabilities in safeguards systems, for which compensatory measures have not been employed, that could permit unauthorized or undetected access of explosives or incendiaries beyond a vehicle barrier, or personnel or contraband into a PA, VA, MAA, CAA, or transport. With regard to the commenter's suggestion that the language focus on intentional acts or omissions, the NRC disagrees with this suggestion. The current Appendix G to Part 73, paragraph I(c) does not limit these events to intentional acts or omissions. For example, the cause of the notification may arise from barrier degradation or natural events. Focusing or screening criteria on intentional acts or omissions would preclude notifications that the NRC deems necessary.

The NRC would revise proposed Appendix G to Part 73, paragraph I(c) to require notifications for actual introduction of contraband into a PA, VA, MAA, CAA, or transport and attempted introduction with malevolent intent of contraband into a PA, VA, MAA, CAA, or transport. Revised proposed Appendix G to Part 73, paragraph I(d) would address an actual or attempted introduction of explosives or incendiaries beyond the vehicle barrier. The language in paragraphs I(c) and I(d) differs because some items are considered contraband when they are located at a nuclear facility, but not when they are away from the facility (*e.g.*, a handgun and ammunition). Other items are always considered contraband—irrespective of their location (*e.g.*, explosives and incendiaries).

Comment E.9: One commenter indicated that the four-hour notification provision was unnecessary and recommended that this provision be eliminated. The commenter indicated that voluntary reporting had been working very well and there did not appear to be regulatory justification for the four-hour notification requirements. Several commenters objected to the original proposed Appendix G to Part 73, paragraph III(a)(3) to require four-hour notifications following licensee notification of local, State or national law enforcement officials, or a law

enforcement response to the facility not otherwise covered by original proposed paragraphs I or II. One commenter suggested that there was no basis for this requirement and indicated that many of the calls to law enforcement officials currently made by licensees have no nexus to the licensee's security activities. Another commenter indicated that this proposed requirement is problematic because its scope is not clearly defined.

Response: The NRC continues to view the reporting of suspicious activities to the NRC as an important component in evaluating the threat against licensed facilities and radioactive material. Individual reports are integrated into a mosaic of information that is reviewed with law enforcement and homeland security officials, as appropriate. The NRC views the long-term imposition of a "voluntary" notification for suspicious events as inconsistent with regulatory stability and the agency's strategic goals for fostering transparency and public involvement in developing and imposing regulatory requirements.

However, the NRC agrees that requirements must be clearly specified in regulations and have a nexus to NRC's mission. Consequently, the NRC agrees that a notification to local law enforcement that has no nexus to licensee security activities should not require a notification to the NRC. However, the NRC does continue to view notifications to law enforcement that are related to implementation of the physical security program as appropriate for NRC notification so that the NRC can be prepared to respond to public or press inquiries on the security event. This is similar to the current requirement for power reactor event notifications in § 50.72(b)(2)(xi). Therefore, the NRC would narrow the scope of the revised proposed paragraph II(c) to require the existence of one of the following: (1) a nexus to the physical protection program; or (2) a reasonable expectation for public or media inquiries following a law enforcement response to the facility. The NRC also would add language to eliminate duplicate notifications.

Comment E.10: Several commenters indicated that it would be hard for licensees to differentiate between the one-hour and four-hour notifications for tampering and manipulation. A second commenter indicated that the proposed language would result in unnecessary one-hour notifications and suggested that the phrase “unauthorized use of” is problematic.

Response: The NRC agrees that a clearer distinction between one-hour and four-hour tampering event notifications is appropriate. The NRC also agrees that the phrase “unauthorized use of” is unclear. Therefore, the NRC would propose one-hour tampering notifications in the revised proposed Appendix G to Part 73, paragraphs I(a)(3) and I(a)(4). The revised text would require that the potential tampering event leads to the interruption of normal operations of the facility. In revised proposed paragraphs II(b)(1) and II(b)(2), these four-hour notifications would not require the potential tampering event to lead to the interruption of facility operation. The NRC also would add clarity by indicating that the tampering refers to “unauthorized operation, manipulation, or tampering with reactor controls or with safety-related or non safety-related structures, systems, and components (SSCs).” A four-hour notification would be added in revised proposed II(b)(3) to address unauthorized operation, manipulation, or tampering with reactor controls or with security-related SSCs (*i.e.*, the NRC not would expect tampering with security-related SSCs to affect normal reactor or facility operations).

Comment E.11: One commenter indicated that the provision of original proposed Appendix G to Part 73, paragraph III(c) on follow-up verbal communications regarding suspicious events that would be reported under original revised paragraph III(a)(1) are unnecessary and should be removed and addressed in internal NRC procedures.

Response: The NRC disagrees. This proposed language ensures that the NRC Headquarters Operations Center is the single point of receipt for security notifications made to

the NRC. These notifications would then be forwarded to the appropriate NRC organization. This information handling protocol is similar to the process for classified notifications to the Headquarters Operations Center described in revised proposed paragraph III of Appendix A to Part 73.

Comment E.12: One commenter indicated that licensees should be required to train personnel on indications of tampering. The commenter also suggested that unless licensees are required to formally incorporate tampering assessments into all corrective actions taken for target set equipment malfunction and mispositioning events, this proposed regulation would not have much meaning.

Response: In § 73.55(i), the NRC has added requirements for power reactor licensees to ensure that their physical protection program includes surveillance, observation, and monitoring provisions to identify indications of tampering. The NRC may consider similar requirements for other classes of licensed facilities in future security rulemakings. The commenter suggests that tampering assessments be incorporated into certain corrective action reports. That suggestion would require changes to quality assurance program regulations which are beyond the scope of this rulemaking.

Comment E.13: One commenter asked if there were restrictions on which licensee personnel can make four-hour event notifications. The commenter also asked if these notifications also would be made through the NRC headquarters operations personnel.

Response: The licensee may use any trained and qualified individual to make a four-hour event notification to the NRC. All notifications required under § 73.71 would be made under revised proposed § 73.71(h) to the telephone numbers for the NRC Headquarters Operations Center, which are specified in revised proposed Table 1 in Appendix A to Part 73.

Comment E.14: One commenter noted that the exemption for the use of nonsecure communication systems to make exigent or emergency notifications containing Safeguards Information should be updated from the current § 73.71 to refer to the correct exemption paragraphs in §§ 73.22 and 73.23 under the final Safeguards Information rule the NRC is developing.

Response: The NRC agrees in part and has revised the proposed language in paragraph (h) to refer to the correct paragraph in § 73.22 to reflect the final Safeguards Information rule. The NRC issued the final Safeguards Information rule on October 24, 2008 (73 FR 63545), effective February 23, 2009. The NRC would not include a reference to § 73.23 at this time because this provision does not currently apply to licensees subject to § 73.71.

Comment E.15: One commenter stated that it was not clear what adding the term “current” to “safeguards event log” meant. The commenter asked if the NRC was intending to require a new or additional time restriction requirement for these records. The commenter recommended that the term “current” be removed. One commenter indicated that the proposed change from “that committed” to “that described” in original proposed Appendix A to Part 73, paragraph IV(b) will be problematic and result in unnecessary security log entries. The commenter recommends that the NRC revert to the current “that committed” language.

Response: The NRC agrees. The proposed regulations would specify the timeliness of adding these records and the retention period for these records. Therefore, the modifier “current” does not add value or clarity to the “safeguards event log” regulation and would be deleted. The NRC also would revise proposed paragraph III(b) to use “that committed” to in a licensee’s or certificate holder’s NRC-approved security plan.

Comment E.16: One commenter indicated that the logable events in the original proposed Appendix G to Part 73, paragraph IV(b) has always been difficult to implement under the current paragraph II(b) in Appendix G to Part 73.

The commenter recommends that this provision be removed.

Response: The NRC disagrees. The original revised paragraph has only a minor difference from the current regulation. This paragraph is intended to sweep security-related events not otherwise specifically identified in Appendix G to Part 73 into the licensee's or certificate holder's security log, where they can be subsequently reviewed by NRC staff. The NRC considers this capability important in the security inspection program, and it should be retained. However, the NRC will evaluate whether regulatory guidance can be improved in this area.

Comment E.17: Several commenters objected to the proposed requirement to submit a written report following a 15-minute notification under the original proposed § 73.71(a). Many used the same objections as to the 15-minute notification itself or duplication with the one-hour notification. One commenter viewed this requirement as redundant and recommended that it be removed. Another commenter recommended that written follow-up reports for 15-minute notifications be added to the exception for written reports in original proposed § 73.71(g)(2). One commenter indicated that the original proposed regulation indicating which telephonic notifications do not require a written follow-up report was unnecessary regulatory language and was not included in NRC Orders, the "EPAC," or NEI guidance document 03-12.

Response: The NRC agrees in part and disagrees in part. The NRC agrees that one-hour notifications following a 15-minute notification for the same event is redundant. Therefore, the NRC would add a paragraph to revised proposed § 73.71(c) and (d) (one-hour notifications) to eliminate redundant notifications from events reported under revised proposed

§ 73.71(a) and (b), respectively. However, the NRC continues to view written follow-up reports as an important component of the event notification process. The NRC also views language excluding follow-up written reports following certain events as providing regulatory clarity and reducing licensee burden. Therefore, the NRC would retain a requirement for written follow-up reports following 15-minute notifications to provide for NRC event analysis and review, as well as for evaluation of any necessary licensee corrective actions. However, the NRC would remove language in Appendix G to Part 73 referring to “followed by a written report within 60 days,” as this language is duplicative of the language in § 73.71, which addresses follow-up written reports after security event telephonic notifications.

Comment E.18: One commenter suggested adding a new requirement to original proposed § 73.71(g)(11) that is similar to the proposed language in paragraph (f)(2) to revise the records retention requirements for follow-up written reports to add “or until termination of the license.”

Response: The NRC agrees. The NRC would include “or until termination of the license” in the revised proposed § 73.71(m)(12).

Comment E.19: One commenter stated that updated guidance is needed on implementing this revised regulation for both event notifications and written reports. The commenter recommends that the NRC issue updated guidance before issuing a final rule. A second commenter asked if the final rule or regulatory guidance will give licensees detailed information on what reaches the threshold of tampering.

Response: The NRC published draft regulatory guide DG-5019 on event notifications for public comment on July 6, 2007 (72 FR 37058). The NRC also held a public meeting to discuss the draft regulatory guide on July 27, 2007. Because of the additional changes to the event notification regulations, the NRC intends to reissue DG-5019 for additional public comment.

The NRC will also hold an additional public meeting to discuss the reissued DG-5019. A final regulatory guide will be issued following the publication of a final rule.

F. Information Collection Requirements

Comment F.1: One commenter responded to the NRC's question on whether the proposed information collection requirements are necessary (regarding the proposed 15 minute notification requirement in § 73.71(a) for imminent or actual threats) and stated that this notification has no practical utility. The commenter indicated that the NRC is not a response organization and brings no resources to bear to resist an actual threat. The commenter indicated that the resources and time spent communicating with the NRC would be better spent communicating with local resources that could actually assist in defending the licensee's facility.

Response: The NRC disagrees. These licensee and certificate holder notifications are necessary for the NRC to accomplish its strategic communications missions (see Section III, "Discussion," of this document). Therefore, they would be retained.

Comment F.2: One commenter responded to the NRC's question on the estimate of the burden and indicated that the number of responses per site and the time per response estimated by the NRC for the fingerprinting provisions in proposed § 73.19(e)(1) were too low. The commenter suggested a better estimate of the burdens would be 975 annual responses per site per year and that the time to accomplish each response would be 1 hour.

Response: The NRC has revised the estimated information collection burden for this provision in this proposed rule to reflect the commenter's suggestions.

Comment F.3: One commenter responded to the NRC's question on whether a proposed information collection burden (regarding the proposed 15-minute notification requirement in § 73.71(a) for imminent or actual threats) could be minimized, including the use of automated collection techniques. The commenter suggested that this burden should be

completely automated, if not removed. The commenter suggested that an automated feature should be a push button that notifies the NRC that a threat exists. Only after the threat is neutralized should the licensee be required to provide additional details to the NRC.

Response: While the concept of an automated imminent attack or threat notification system may be desirable, the NRC believes there are significant technological and policy challenges to be resolved to implement such a system. These challenges would include resolution of software issues such as: message content, licensee identification, authentication, and non-repudiation protocols. Hardware issues could include circuit redundancy, independence, and tamper indication. Policy issues such as the degree of authentication and non-repudiation necessary to support automatic command and control actions, without human verification of the initial information, also would need to be addressed. Therefore, the NRC would not adopt this suggestion. However, the NRC may pursue evaluation of this or a similar communications and command and control capabilities in the future to reduce industry burden.

V. Section-by-Section Analysis

A. Overview

This proposed rulemaking would implement the new voluntary enhanced weapons and preemption authority and the mandatory firearms background check requirements that are authorized under section 161A of the AEA. The Commission is required by this statute to designate by rule or order the classes of facilities, radioactive material, or property appropriate for the application of this authority. The proposed regulations in this rule are consistent with Firearms Guidelines issued by the Commission with the approval of the U.S. Attorney General (see discussion in Section II, “Background,” of this document).

This proposed rulemaking to Part 73 would revise three existing sections (§§ 73.2, 73.8, and 73.71); add two new sections to (§§ 73.18 and 73.19); revise Appendix A and Appendix G; and make conforming changes to §§ 73.46, 73.55, and Appendix B to Part 73.

The NRC is also proposing a new NRC Form 754,

“Armed Security Personnel Background Check” to implement the provisions of the firearms background check under proposed § 73.19. The NRC would make minor editorial changes to the instructions and the assisting text. Additionally, the NRC would revise Question 4 to simplify the question and also provide the option for multiple duty station locations.

B. Definitions (§ 73.2)

New definitions for the terms: *adverse firearms background check*, *covered weapon*, *combined enhanced weapons authority and preemption authority*, *enhanced weapon*, *firearms background check*, *NICS*, *NICS response*, *satisfactory firearms background check*, *stand-alone preemption authority*, and *standard weapon* would be added in alphabetical order to the definitions in § 73.2(a). These new definitions are consistent with the definitions for the same terms found in the Firearms Guidelines issued by the Commission, with the approval of the U.S. Attorney General. New definitions for the terms: *high-level radioactive waste (HLW)* and *spent nuclear fuel*, *spent fuel (SNF)* would be added as conforming changes to the changes made to § 73.71 and Appendix G to Part 73. The definitions for safety-related SSCs and security related SSCs are consistent with the definitions for the same terms the NRC added to 10 CFR 26.5 in a recent Fitness for Duty final rule published on March 31, 2008 (73 FR 17179). The definitions for HLW and SNF are consistent with the definitions for these terms found in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101(12) and (23), respectively).

New paragraphs (b) and (c) would be added to § 73.2 to provide cross references to ATF’s regulations and to FBI’s regulations for selected terms within these new definitions, rather

than explicitly defining these same terms in the NRC's regulations. These cross-referenced terms would include *handgun, rifle, shotgun, short-barreled shotgun, short-barreled rifle, semi-automatic assault weapon, machine gun, ammunition, and large capacity ammunition feeding device* (under ATF's regulations) and the terms *proceed NICS response, delayed NICS response, and denied NICS response* (under FBI's regulations).

C. Information collection requirements: OMB approval (§ 73.8)

Paragraph (b) would be revised to add §§ 73.18 and 73.19 to the list of sections in Part 73 that contain information collection requirements and that have been approved by OMB under control number 3150-0002.

Paragraph (c) would be added to specify the OMB control numbers for three forms referenced under specific sections of Part 73, because these forms have a separate OMB control number than their initiating or referencing regulation. Two forms currently exist, and their inclusion would be added to this paragraph as a corrective change (NRC Form 366 and FBI Form FD-258) under OMB control numbers 3150-0104 and 1110-0046, respectively. The third form would be added to this paragraph as a new form (NRC Form 754) under OMB control number 3150-0204.

D. Authorization for use of enhanced weapons and preemption of firearms laws (§ 73.18)

New § 73.18 would contain requirements for a licensee or certificate holder to apply for stand-alone preemption authority or to apply for combined enhanced-weapons authority and preemption authority under section 161A of the AEA. Due to the structure of section 161A, licensees and certificate holders who apply for enhanced-weapons authority, must also apply for

and receive NRC approval of preemption authority as a necessary prerequisite to receiving enhanced-weapons authority. Proposed paragraph (a) would describe the purpose of the section and paragraph (b) would contain general requirements applicable to both types of authority.

Paragraph (c) would list the designated classes for either stand-alone preemption authority or combined enhanced weapons authority and preemption authority. Section 161A requires the Commission to designate classes of facilities, radioactive material, and other property for which the use of such authority is appropriate. The NRC would apply these requirements to two classes of facilities: (1) power reactor facilities; and (2) Category I SSNM facilities authorized to possess or use a formula quantity or greater of SSNM, where the SSNM has a radiation level of less than or equal to 1 Gray (Gy) (100 Rad) per hour at a distance of 1 meter (m) (3.28 feet [ft]), without regard to any intervening shielding. The NRC intends to specify any additional classes of authorized facilities, radioactive material, and other property in a separate future rulemaking. Similarly, the proposed rule would refer to both licensees and certificate holders to be consistent with the scope of the statute, although the NRC would designate only power reactor facilities and Category I SSNM facilities as appropriate for section 161A authority (*i.e.*, these facilities are owned and operated by licensees).

In paragraph (d), the NRC would require authorized licensees and certificate holders (*i.e.*, those that fall within designated classes of facilities, radioactive material, and other property) who are interested in obtaining this authority to apply for stand-alone preemption authority. The benefits that would accrue to a specific licensee or certificate holder under this authority would likely vary depending on the locale of the affected facility (*i.e.*, State and local firearms restrictions can vary widely). Separately, the benefit that would accrue to licensees and certificate holders transporting designated classes of radioactive material would be a

consistent Federal standard, rather than varying State standards, and the ability to maintain weapons in a loaded and ready for use condition when escorting a shipment across State lines (federal law requires that weapons be transported across state lines in an unloaded condition). Before submitting their application to the NRC, licensees and certificate holders must have completed satisfactory firearms background checks for their security personnel. Alternatively, licensees and certificate holders can indicate that they have commenced the firearms background checks in their application and then supplement their application with information that they have completed satisfactory firearms background checks. The NRC would document its approval of the application in writing.

In paragraph (e), the NRC would require authorized licensees and certificate holders (i.e., those that fall within designated classes of facilities, radioactive material, and other property) to apply to the NRC for combined enhanced-weapons authority and preemption authority. The benefit that would accrue to a specific licensee or certificate holder under this authority would be obtaining enhanced weapons to defend their facility or shipment of radioactive material or other property. Additionally, due to the structure of section 161A, licensees and certificate holders applying for enhanced weapons authority must also apply for and obtain preemption authority. Therefore, the NRC would use the term “combined enhanced-weapons authority and preemption authority” to refer to this authority. Licensees and certificate holders who previously applied for preemption authority under paragraph (d) would not be required to reapply for that authority, but would indicate the date the NRC had approved their previous application. Before submitting their application to the NRC, licensees and certificate holders must have completed satisfactory firearms background checks for their security personnel.

Alternatively, licensees and certificate holders can indicate that they have commenced the firearms background checks in their application and then supplement their application with information that they have completed satisfactory firearms background checks. The NRC would document its approval of the application in writing.

In paragraph (f), the NRC would specify the technical information that must be included with a licensee's or certificate holder's application to obtain enhanced weapons.

The NRC would describe the requirements of the security plans, training and qualifications plans, and contingency response plans supporting the use of enhanced weapons.

The NRC would require licensees and certificate holders to develop their training and qualification plans for enhanced weapons based upon standards set by nationally-recognized firearms organizations or Federal agencies. The NRC intends to include information on firing range construction for enhanced weapons in the regulatory guidance being developed. The NRC would require that applying licensees and certificate holders submit for prior review and approval, a new or revised security plan, training and qualification plan, and safeguards contingency plan to reflect the use of these specific enhanced weapons the licensee or certificate holder intends to employ; and to provide a weapons safety assessment of the onsite and offsite impact of the specific types and caliber of enhanced weapons it intends to employ. The NRC would take this approach because the NRC is responsible for making a determination on the technical adequacy of the specific weapons the licensee or certificate holder proposes to use. Consequently, the NRC would require licensees and certificate holders to submit these plans and analyses to the NRC as a license or certificate amendment, in accordance with the applicable provisions of Parts 50, 70, and 76.

Additionally, licensees and certificate holders who have been approved for enhanced weapons and who subsequently desire to obtain different types, calibers, or quantities of enhanced weapons must repeat this process to obtain the weapons.

In paragraph (g), the NRC would require licensees and certificate holders to provide a copy of the NRC's approval letter to the holder of an ATF FFL that will be providing the enhanced weapons to the licensee or certificate holder. The holder of an ATF FFL would include the NRC's approval in the application to ATF to transfer enhanced weapons to the licensee or certificate holder. ATF must approve in advance all transfers of enhanced weapons.

Licensees and certificate holders obtaining enhanced weapons also would be required to comply with applicable ATF regulations, registration, and tax-stamp requirements. Enhanced weapons obtained by the licensee or certificate holder must be registered under the name of the licensee or certificate holder (*i.e.*, they may not be registered under the name of a security contractor to the licensee or certificate holder). Following the NRC's approval of a licensee's or certificate holder's application, if the licensee or certificate holder wants to obtain different or additional enhanced weapons, they would reapply under this section. The NRC also would indicate that licensees and certificate holders obtaining enhanced weapons may, at their discretion, also apply to ATF to obtain an FFL or a special occupational tax (SOT) stamp (associated with the transfer of a machine gun). Obtaining an FFL and/or a SOT stamp would provide NRC licensees and certificate holders with greater flexibility in transferring and receiving machine guns. However, it also would subject them to greater regulation, inspection, and oversight by ATF.

In paragraph (h), the NRC would require licensees and certificate holders to complete training and qualification of security personnel on any enhanced weapons, before these personnel employ those weapons to protect the facility. Recurring training and requalification

on any enhanced weapons also would be required in accordance with the licensee's or certificate holder's approved training and qualification plan. The NRC would reserve paragraph (i) to avoid confusion.

In paragraph (j), the NRC would treat the use of enhanced weapons the same as existing weapons (e.g., standards on deadly force). Accordingly, the NRC would cross-reference to the applicable security regulations for other classes of facilities or radioactive material.

In paragraph (k), the NRC also would require Commission licensees and certificate holders to notify the NRC of any adverse ATF inspection or enforcement findings received by the licensee or certificate holder regarding the receipt, possession, or transfer of enhanced weapons. The NRC would reserve paragraph (l) to avoid confusion.

In paragraph (m), the NRC would define permissible reasons to remove an enhanced weapon from an authorized licensee's or certificate holder's facility that would not constitute the transfer of an enhanced weapon under ATF's regulations (training and escorting shipments of radioactive material that fall within a class designated under paragraph (c)). The NRC would reserve any additional reasons, if necessary, for a future rulemaking. The NRC would require that records be maintained to track not only the removal of enhanced weapons from licensee's or certificate holder's facility but also the return of such weapons to the facility. The NRC would also describe actions that would constitute a transfer of enhanced weapons. Such a transfer would require application to and prior approval from ATF. The NRC would indicate that weapons that are not returned to the facility are to be considered stolen or lost or an approved transfer. Finally, the NRC would indicate that the issuance of an enhanced weapon to a security individual with the subsequent return of the weapon upon the completion of official duties would not constitute a transfer under ATF's regulations. The NRC would require NRC

licensee's and certificate holder's to assist an ATF FFL in submitting the required paperwork to ATF to transfer the weapons to the licensee or certificate holder.

In paragraph (n), the NRC would describe requirements to transport enhanced weapons for activities that are not considered a transfer of the enhanced weapons. Enhanced weapons being transported would be unloaded and placed in a locked secure container. Ammunition for the weapon may be placed in the same container for transport. The exception to this requirement would be for purposes of escorting shipments of radioactive material or other property designated under paragraph (c). While escorting these shipments, the enhanced weapons would remain loaded and available for immediate use.

In paragraph (o), the NRC would describe requirements for conducting periodic inventories of enhanced weapons to verify that these weapons are not stolen or lost. The NRC would propose two types of inventories. A monthly inventory that would require counting the number of enhanced weapons that are present at the licensee's or certificate holder's facility. Licensees and certificate holders would be able to use electronic technology (e.g., bar codes) to conduct this inventory. Second, a semi-annual inventory that would verify the serial number of each weapon that is present at the licensee's or certificate holder's facility. The monthly inventory would not require accounting for weapons that are located in in-plant ready-service containers that are locked and sealed with a TID. Instead, the inventory would verify the presence of the intact TID (indicating the container had not been opened). However, the semi-annual inventory would require a verification of all weapons at the licensee's or certificate holder's facility. The NRC would specify limits on the intervals between inventories. Records would be maintained on inventory results. Inventories would be conducted by two-person teams to prevent manipulation of inventory results.

Minimum requirements on TIDs used for securing enhanced weapons would be specified. Finally, inventory discrepancies would require resolution within 24 hours of identification. Otherwise, the discrepancy would be treated as if an enhanced weapon had been stolen or lost.

In paragraph (p), the NRC would describe requirements for notification of the NRC and local law enforcement officials of this event. Requirements on the timing of these notifications would be located in § 73.71. The NRC also would note that licensees and certificate holders possessing enhanced weapons are subject to a separate ATF requirement to notify ATF of any stolen or lost weapons registered at 49 CFR Part 479 (*i.e.*, enhanced weapons).

In paragraph (q), the NRC would describe the records requirements for licensees and certificate holders relating to the receipt, transfer, and transportation of enhanced weapons. Retention requirements for records required under this section would be specified as up to one year after the licensee's or certificate holder's authority is terminated, suspended, or revoked.

Records also would be retained on completed inventories of enhanced weapons and on any stolen or lost enhanced weapons. Licensees and certificate holders would be permitted to integrate any records required under this paragraph with records required by ATF relating to the possession of enhanced weapons. Licensees and certificate holders would be required to make these records available to NRC inspectors and/or ATF inspectors upon request.

In paragraph (r), the NRC would describe requirements regarding the termination, modification, suspension, and revocation of a licensee's or certificate holder's section 161A authority. Licensees and certificate holders seeking termination or modification of their authority to possess enhanced weapons, or different types of enhanced weapons would be required to apply to the NRC in accordance with this section. Licensees and certificate holders would be required to transfer any enhanced weapons they will no longer be authorized to possess to an appropriate party in accordance with ATF's requirements; or the weapons can be surrendered

to ATF for destruction. Licensees and certificate holders may reapply for this authority if it has been terminated, suspended, or revoked. The NRC would also establish criteria revocation of the authority to possess enhanced weapons. Additionally, the NRC would promptly notify ATF of these actions.

E. Firearms background checks for armed security personnel (§ 73.19)

New § 73.19 would contain requirements for a licensee or certificate holder to conduct a firearms background checks mandated under section 161A of the AEA. The firearms background checks required by § 73.19 would be intended to verify that armed security personnel are not prohibited from receiving, possessing, transporting, or using firearms under Federal or State law. Proposed paragraph (a) would describe the purpose of the section.

In paragraph (b), the NRC would describe general requirements regarding firearms background checks. These checks would apply to all licensees and certificate holders that fall within the classes of facilities, radioactive material, and other property designated under paragraph (c), if the licensee or certificate holder uses covered weapons as part of its protective strategy. These checks would apply to all security personnel of such licensees and certificate holders, whose official duties require access to covered (*i.e.*, both standard and enhanced) weapons, irrespective of whether the security personnel are directly employed by the licensee or certificate holder or they are employed by a security contractor who provides security services to the licensee or certificate holder (see also new definitions for *Covered weapons*, *Enhanced weapons*, and *Standard weapons* in § 73.2).

The Firearms Guidelines required by section 161A refer to “security personnel whose official duties require access to covered weapons.” The NRC would apply this criterion to individuals in the licensee’s or certificate holder’s security organization who handle, use, maintain, and repair covered weapons and inventory enhanced weapons. Specifically,

individuals performing official duties involving access to covered weapons, including: carrying weapons (security personnel, supervisors, and response personnel); firearms instructors; armorers (repair and maintenance of weapons), weapons' issuance and receipt; and individuals inventorying enhanced weapons. This would not include warehouse or supply personnel who receive shipments of covered weapons, provided the weapons remain secured in their shipping containers, are promptly turned over to security personnel, and are promptly placed in secure weapons storage areas (e.g., armories).

These checks would not apply to applicants for a license or a CoC until after the NRC issues the license or the CoC. These new licensees and certificate holders would not be able to commence firearms background checks until after the NRC issues their license or CoC. Additionally, these new licensees and certificate holders would be required to complete satisfactory firearms background checks for their affected security personnel before to the initial receipt of source, byproduct, or special nuclear material authorized by the license or CoC.

Within 30 days after the effective date of a final NRC rule designating classes of facilities, radioactive material and other property, affected licensees and certificate holders would be required to commence firearms background checks (*i.e.*, within 60 days after publication of the final rule in the *Federal Register*). Within 180 days after the effective date of a final NRC rule, affected licensees and certificate holders would be required to remove from duties requiring access to covered weapons any individual who has not completed a satisfactory firearms background check (*i.e.*, within 210 days after publication of the final rule in the *Federal Register*). During this 180-day transition period, affected licensees and certificate holders that currently possess enhanced weapons under an authority other than section 161a would be required to remove from any duties requiring access to enhanced weapons any security personnel who receive a "delayed" NICS response to their firearms background check.

Subsequent to the 180-day transition period, affected licensees and certificate holders must complete a satisfactory firearms background check for (new) personnel whose duties would require access to covered weapons. During this 180-day period, affected licensees and certificate holders would be required to remove from duties requiring access to covered weapons any individual who receives a “denied” NICS response. However, individuals who receive a “delayed” NICS response would be permitted to continue their access to standard weapons until the 180-day period expires or the “delayed” NICS response is resolved into a “denied” NICS response. Individuals who have been removed from duties requiring access to covered weapons due to a “denied” or “delayed” NICS response would be permitted to return to such duties if they subsequently receive a “proceed” NICS response (*i.e.*, they have completed a satisfactory firearms background check).

Security personnel who have a break in service or who transfer to another licensee or certificate holder would be required to complete a new firearms background check. However, a change in the licensee, certificate holder, security contractor, or ownership of the license or CoC would not trigger a new firearms background check. Firearms background checks would not replace other background checks required for access authorization, personal security clearances, or SSNM access clearances.

In paragraph (c), the NRC would designate the classes of facilities, radioactive material, and other property that are appropriate for firearms background checks. In general, the NRC intends that this list would be consistent with the list contained in § 73.18(c). However, the Commission would not be constrained to make these lists identical. The NRC would apply these requirements to two classes of facilities in this rulemaking:

(1) power reactor facilities, and (2) Category I SSNM facilities authorized to possess or use a formula quantity or greater of SSNM, where the SSNM has a radiation level of less than or equal to 1 Gy (100 Rad) per hour at a distance of 1 m (3.28 ft), without regard to any intervening shielding.

In paragraph (d), the NRC would describe the components of a firearms background check. A firearms background check would consist of two parts: (1) a check of an individual's fingerprints against the FBI's fingerprint system; and (2) a check of the individual's identity against the FBI's NICS. The NRC would propose a new NRC Form 754 for licensee or certificate holder security personnel to submit the necessary information to the NRC for forwarding to the FBI to perform the NICS portion of the firearms background check.

In paragraph (e), the NRC would describe the information that is to be submitted for each individual to conduct a firearms background check and would specify a retention period for this information.

In paragraph (f), the NRC would describe the requirements for periodic (*i.e.*, recurring) firearms background checks. Periodic firearms background checks would be required every 3 years. The NRC would use this interval to be consistent with the interval for recurring access authorization program criminal history records checks for power reactor security personnel under the recently added § 73.56(i)(1)(v)(B). The 3-year interval would permit licensees and certificate holders to reduce administrative costs. Licensees and certificate holders would also be able to conduct periodic firearms background checks at intervals of less than three years, if they so desire. The NRC would specify a timely submission period of three years and security personnel would be permitted to continue their access to covered weapons pending the licensee's or certificate holder's receipt of the NICS response. Similar to the requirements in paragraph (b), individuals who receive an adverse firearms background check

(during this periodic check) also would be removed from duties requiring access to covered weapons. These individuals would be eligible for reinstatement if they subsequently complete a satisfactory firearms background check.

In paragraph (g), the NRC would describe the requirements for affected licensees and certificate holders to notify the NRC that an individual with access to covered weapons has been removed from these duties because of the discovery of a disqualification or the occurrence of a disqualification under applicable Federal or State law. An exception to this requirement would be created to encourage the prompt identification of such information by the security personnel to their licensee or certificate holder (*i.e.*, the NRC would encourage security personnel to timely self disclose the occurrence of a disqualifying event).

In paragraph (h), the NRC would describe the requirements for affected security personnel to make timely disclosure of the occurrence of a disqualifying event at 18 U.S.C. 922 that would prevent them from receiving or possessing firearms.

Timely notification would be within 3 working days of occurrence of the event.

The NRC would reserve paragraph (i) to avoid confusion.

In paragraph (j), the NRC would describe the requirements for training security personnel on the following: (1) disqualifying events of 18 U.S.C. 922; (2) ATF's implementing regulations; and (3) security personnel's responsibility to notify their licensee or certificate holder under the requirements of paragraph (h).

In paragraph (k), the NRC would describe the requirements for processing fingerprint checks as part of firearms background checks. This would include the submission of fingerprint cards to the NRC or the submission of electronic fingerprint records to the NRC. The proposed language would be similar to the existing regulations in § 73.57(d). Additionally, licensees and certificate holders would be required to include specific codes on the FBI Form FD-258

fingerprint cards or electronic fingerprint records to indicate whether the fingerprint check is solely for the purposes of a firearms background check or whether the firearms background check is being combined with a access authorization criminal history records check or a personnel security clearance records check. The use of these codes is necessary for the FBI to appropriately control dissemination of criminal history information. The NRC would reserve paragraph (l) to avoid confusion.

In paragraph (m), the NRC would describe the requirements for fees associated with processing firearms background checks. The NRC would charge the same fee for fingerprints submitted for a firearms background check that is 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 would charge an administrative fee for processing the NICS check information, however, no FBI fee would be charged for the NICS check. The proposed language would be similar to the existing regulations in § 73.57(d). The cost of the fee will be specified on the NRC's public Web site with the existing fingerprint fee (see NRC Web page <http://www.nrc.gov/site-help/e-submittals.html> under the "Electronic Submittals System Notices" box). The NRC is proposing a fee of \$26 to process both the NICS check information and the fingerprint checks per individual. This fingerprint processing fee is separate from the fingerprint processing fee for fingerprints submitted to complete a criminal history records check under the NRC's access authorization programs (*e.g.*, § 73.56 for power reactors). Further information on proposed costs is contained in Section XIV, "Regulatory Analysis," of this document.

In paragraphs (n) and (o), the NRC would describe obligations of the NRC regarding the processing of firearms background checks and reporting potential or suspected violations of law to the appropriate law enforcement agency.

Under paragraph (o), the NRC would forward licensee and certificate holder notifications to the applicable Federal or State law enforcement officials.

In paragraph (p), the NRC would describe how individuals who have received an adverse firearms background check (*i.e.*, a “denied” or “delayed” NICS response) may do the following: (1) obtain further information from the FBI on the reason for the adverse response; (2) appeal a “denied” response; or (3) provide additional information to resolve a “delayed” response. Security personnel would be required to apply directly to the FBI for these actions (*i.e.*, the licensee or certificate holder may not appeal to the FBI on behalf of the security personnel). Individuals appealing an adverse firearms background check would not be permitted access to covered weapons during the pendency of the appeal. Security personnel who receive a “denied” NICS response are presumed by ATF to be prohibited from possessing or receiving a firearm under federal law (see 18 U.S.C. 922) and may not have access to covered weapons unless they have successfully appealed the “denied” NICS response and received a “proceed” NICS response. The exception to this limitation would occur during the 180-day transition period described in paragraph (b) for individuals who receive a “delayed” NICS response. To support effective use of FBI resources, timeliness requirements would be specified for individuals wishing to appeal an adverse firearms background check they believe is incorrect. An individual who fails to initiate a timely appeal or resolution request or provide information in response to an FBI request would result in the barring or abandonment of the appeal or request. Subsequent to a barring or abandonment action, a license or certificate holder would be permitted to resubmit the individual for a new firearms background check for

any further consideration by the FBI. This resubmission would be at the discretion of the licensee or certificate holder. Finally, individuals who have successfully appealed a “denied” NICS response would be able to request that the FBI retain those records under the FBI’s VAF program. Except for VAF records, the FBI purges the results of all NICS checks after 30 days (as required by the statute establishing the NICS program).

In paragraph (q), the NRC would describe how licensees and certificate holders must protect personal identification information associated with firearms background checks and NRC Forms 754, as well as the results of firearms background checks, from unauthorized disclosure. This proposed language is similar to the current regulations in § 73.57(f) regarding the protection of criminal history record check information.

F. Fixed site physical protection systems, subsystems, components, and procedures
(§ 73.46)

In paragraph (b)(13), the NRC would add a conforming change to provide a cross reference to the new firearms background check requirements in § 73.19 for armed security personnel. Additionally, the NRC would provide implementation schedule information for future licensees.

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

In paragraph (b)(12), the NRC would add a conforming change to provide a cross reference to the new firearms background check requirements in § 73.19 for armed security personnel. Additionally, the NRC would provide implementation schedule information for future licensees.

H. Reporting and recording of safeguards events (§ 73.71)

Overall, the NRC would revise § 73.71 to apply imminent or actual hostile action notifications to additional significant facilities (*i.e.*, Category I SSNM facilities), to significant transportation events (*i.e.*, the shipment of SNF, HLW, and Category I SSNM), and to significant cyber attacks on power reactors. Additionally, the NRC would revise § 73.71 to accomplish the following:

(1) add regulatory clarity; (2) improve the structure through increased parallelism between facility and transportation notifications; and (3) add notifications for stolen or lost enhanced weapons and adverse ATF inspection findings.

In paragraph (a), the NRC would require licensees and certificate holders for power reactor facilities and Category I SSNM facilities to notify the NRC within 15-minutes of discovery of an imminent or actual hostile action or the initiation of a security response in accordance with the licensee's or certificate holder's safeguards contingency plan due to an imminent or actual hostile action. The NRC would describe the abbreviated set of information to be initially provided to the NRC. The NRC recognizes that licensees and certificate holders would be very busy in these circumstances and requires a minimal set of information to execute the NRC's strategic communication responsibilities. Additionally, the NRC would recognize that the licensee or certificate holder should make requests for immediate assistance from a local law enforcement agency (LLEA) before notifying the NRC. Finally, the NRC would relocate the language to not require licensee notifications to the NRC regarding an increase in their security posture which was made in response to an NRC communication from original proposed Appendix G to Part 73, paragraph I(b) to this revised paragraph. This relocation would reduce duplication of requirements and continue the proposed elimination of unnecessary notifications.

In paragraph (b), the NRC would require similar 15-minute notifications for certain transportation events. This would apply to an imminent or actual hostile action or the initiation of a security response in accordance with the licensee's or certificate holder's safeguards contingency plan, due to an imminent or actual hostile action against shipments of SNF, HLW, and Category I SSNM.

A similar abbreviated set of information would be initially provided to the NRC for these transportation events and similar redundancy language would be included.

The NRC would recognize that the licensee or certificate holder should request immediate assistance from LLEA before notifying the NRC.

In paragraph (c), the NRC would require one-hour notifications from licensees or certificate holders for facility-based events listed in revised proposed paragraph I to Appendix G to Part 73. Notifications made under revised proposed paragraph (a) for imminent or actual hostile acts against facilities would not be required to be repeated under this paragraph.

In paragraph (d), the NRC would require one-hour notifications from licensees or certificate holders for transportation-based events listed in revised proposed paragraph I to Appendix G to Part 73. Notifications made under proposed paragraph (b) for imminent or actual hostile acts against shipments would not be required to be repeated under this paragraph.

In paragraph (e), the NRC would require four-hour notifications from licensees or certificate holders for facility-based events listed in revised proposed paragraph II to Appendix G to Part 73.

In paragraph (f), the NRC would require eight-hour notifications from licensees or certificate holders for facilities-based events listed in revised proposed paragraph III to Appendix G to Part 73.

In paragraph (g), the NRC would require one-hour or four-hour notifications by licensees or certificate holders who possess enhanced weapons under section 161A of the AEA, and discover that these weapons are stolen or lost. The one-hour notification would result from weapons that are discovered to be stolen or lost from inside of a PA, VA, MAA, or CAA. The four-hour notification would result from weapons that are discovered to be stolen or lost from outside of a PA, VA, MAA, or CAA. The shorter notification is based upon the potential for weapons lost or stolen inside a PA, VA, MAA, or CAA to affect the security of the facility (*i.e.*, an insider threat issue). The timing of a four-hour notification would start from the licensee's notification to ATF. The NRC notes that licensees and certificate holders possessing enhanced weapons have an independent responsibility under ATF's regulations to immediately upon discovery report such stolen or lost enhanced weapons to ATF (see 27 CFR 479.141). Additionally, the NRC would require such licensees and certificate holders to notify local law enforcement as soon as possible, but no later than 48 hours after discovery of stolen or lost enhanced weapons. The 48 hour requirement is consistent with current ATF requirements for notifying local law enforcement of stolen or lost weapons.

In paragraph (h), the NRC would require a 24-hour notification from licensees or certificate holders who meet the following criteria: (1) they possess enhanced weapons per section 161A of the AEA; (2) they receive an adverse inspection or enforcement finding from ATF regarding any enhanced weapons possessed, received, stored, or transferred by the licensee or the certificate holder; or (3) they receive an adverse inspection or enforcement finding regarding a federal firearms license held by the NRC-licensee or certificate holder. Paragraph (i) would be reserved to avoid confusion.

In paragraph (j), the NRC would describe the notification process for telephonic notifications required under paragraphs (a) through (h). The applicability of the exception for

exigent or emergency safeguards communications would be continued using the cross reference to the Protection of Safeguards Information final rule (October 24, 2008; 73 FR 63545). A provision would be added to address classified notifications under this section from licensees or certificate holders with classified security plans. Clarification would be provided as to when licensees or certificate holders need to be able to respond to NRC requests to establish a continuous communication channel following a 15-minute notification that provides for the following: (1) the completion of other critical tasks (*e.g.*, declaration of an emergency or contacting local law enforcement); and (2) communicator staff requirements (*i.e.*, the use of knowledgeable security, operations, or emergency response personnel from a location of the licensee's or certificate holder's discretion).

In paragraph (k), the NRC would require that a safeguards event log be maintained for the events described in paragraph IV of Appendix G to Part 73. Events recorded in the safeguards log must be entered within 24 hours of discovery and retained until 3 years after the last entry in each log or termination of the license or certificate of compliance.

Paragraph (l) would be reserved to avoid confusion.

In paragraph (m), the NRC would describe the form and content of written follow-up reports following certain telephonic notifications. The NRC also would provide new language to obviate the requirement for a written follow-up report if the licensee or certificate holder retracts the initial telephonic notification. However, if a written follow-up report has already been submitted, then licensees and certificate holders would be required to submit a revised written report to ensure that the NRC's official records are correct.

In paragraph (n), the NRC would clarify that notifications made under the declaration of an emergency are covered under other regulations in 10 CFR Chapter 1 applicable to the license or certificate of compliance.

In paragraph (o), the NRC would provide for the elimination of duplicate notifications or records under this section relative to other event notifications required under 10 CFR Chapter 1 (i.e., a single report or record may be made that lists all of the applicable reporting or recording requirements).

I. Criminal penalties (§ 73.81)

The NRC would not make any conforming changes to § 73.81(b), “Criminal Penalties,” due to the addition of new §§ 73.18 and 73.19 to Part 73. Consequently, willful violations of §§ 73.18 and 73.19 may be subject to criminal penalties. Therefore, proposed §§ 73.18 and 73.19 would not be included in the list of sections from Part 73 contained in § 73.81(b). See Section VII, “Criminal Penalties,” of this document for further information.

J. U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses (Appendix A to Part 73)

The NRC would make administrative, conforming, and editorial changes to Appendix A to Part 73. The NRC is proposing to make administrative changes in Table 1, including: updating the main (nonsecure) e-mail address, adding a secure e-mail address, and removing previously used telephone number for the NRC Headquarters Operations Center. Editorial changes would be made to the titles of Tables 1 and 2 to refer to the table number to improve clarity. Finally, new paragraphs III and IV would be added to Appendix A to Part 73 as conforming changes to provide direction to licensees and certificate holders regarding classified telephone calls and sending classified e-mails to the NRC for classified event notifications under § 73.71.

K. General Criteria for Security Personnel (Appendix B to Part 73)

In section I.A, the NRC would make a conforming change to update the employment suitability language to reflect the statutory requirements for possession of firearms under 18 U.S.C. 922. This would be consistent with the recently added language in Section VII.B, “Criminal Penalties,” of this document.

L. Reportable and Recordable Safeguard Events (Appendix G to Part 73)

The NRC is proposing additional conforming and corrective changes to Appendix G to Part 73, from the language presented in the October 2006 proposed rule. The introductory text and paragraph I would be revised to include Category I SSNM facilities. The requirements for 15-minute notifications (in the October 2006 proposed Appendix G to Part 73) in paragraph I would be relocated to § 73.71 and paragraphs II and III would be redesignated as paragraphs I and II, respectively. New paragraph III would be added to address unauthorized operation or tampering events that do not impact the operation of the facility. Paragraph IV would remain to address recordable events.

In paragraph I, the NRC would describe the types of facility-based and transportation-based security events that would require a one-hour notification per § 73.71. These events would include the following: (1) committed acts and attempted acts; (2) threats to commit certain acts involving theft or diversion of SNM; (3) significant physical damage to a facility or shipment; (4) unauthorized operation, mispositioning, or tampering with controls or SSCs that results in the interruption in the normal operation of a facility; (5) unauthorized entry of personnel into a PA, VA, MAA, or CAA, or transport; (6) malevolent attempted entry of personnel into a PA, VA, MAA, CAA, or transport vehicle or transported material; (7) actual or attempted entry of contraband into a PA, VA, MAA, CAA, or transport vehicle or transported material; (8) actual or attempted introduction of explosives or incendiaries beyond a vehicle

barrier system; (9) an uncompensated vulnerability, failure, or degradation of security systems that could allow unauthorized access of personnel or contraband; (10) a lost shipment of Category I SSNM, Category II or III SNM, SNF, or HLW; or (11) the recovery or accounting for a lost shipment. Modifying language referring to “credible” threats would be removed. (The NRC views the determination of whether a threat is credible or not appropriately rests with government officials, such as the NRC, the intelligence community, or an LLEA; rather than with the licensee or certificate holder.) Additionally, the NRC would require one-hour notifications from nuclear power facilities of the determination of an actual cyber attack or if there is reason to be believed that a cyber attack has occurred or has been attempted on systems, networks, or equipment within the scope of §73.54 or against security measures that protect those networks or equipment.

In paragraph II, the NRC would describe types of facility-based events that would require a four-hour notification per § 73.71. These events would include suspicious activities involving the following: (1) potential attempted surveillance, reconnaissance, intelligence-gathering acts against the facility; (2) challenges to security control systems and processes; (3) unauthorized operation, mispositioning, or tampering with controls or SSCs that does not result in the interruption of the normal operation of the facility; (4) notification of law enforcement officials in accordance with the licensee’s or certificate holder’s security program (that does not otherwise require a notification under the other provisions of Appendix G to Part 73); or (5) a law enforcement response to the facility which could reasonably be expected to result in public or media inquires (that does not otherwise require a notification under the other provisions of Appendix G to Part 73).

However, this would not include commercial or military aircraft activity over or close to the facility that is considered routine or non-threatening by the licensee or certificate holder.

Additional information on follow-up communications with the NRC's Information Assessment Team regarding suspicious event notifications also would be provided.

Additionally, the NRC would require four-hour notifications from nuclear power facilities if licensee obtains or gathers information that indicates tampering, unauthorized access, use or modifications, or unauthorized gathering of information or data of systems has occurred or is occurring on networks, or equipment within the scope of § 73.54 or to the security measures that protect these safety, security, or emergency preparedness functions of nuclear power facilities are degraded.

In paragraph III, the NRC would describe types of facility-based events that would require an eight-hour notification per § 73.71. These events would include unauthorized operation, mispositioning, or tampering with controls or SSCs that that could prevent the implementation of the licensee's or certificate holder's protective strategy for protecting any target set. Additionally, the NRC would require eight-hour notifications from nuclear power reactor facilities if a licensee detects an unauthorized operation or manipulation of, or tampering with networks, or equipment within the scope of § 73.54 or the security measures that protect such networks and equipment, but such actions did not interrupt or degrade the nuclear power reactor facility's safety, security, or emergency preparedness functions.

In paragraph IV, the NRC would describe types of facility-based and transportation-based events that would require an entry in the safeguards event log per § 73.71. These events would include a compensated vulnerability, failure, or degradation of security systems that except for the compensatory actions could have allowed unauthorized access of personnel or

contraband beyond a vehicle barrier or into a PA, VA, MAA, CAA, or transport; of a threatened, committed, or attempted act that would degrade the licensee's or certificate holder's committed physical protection program. Additionally, these events include (1) any other threatened, attempted, or committed act not previously defined in Appendix G that has resulted in or has the potential for decreasing the effectiveness of the security program including cyber security program or (2) any failure, degradation, or the discovered vulnerability in a security measure, system, component had compensatory measures not been established or employed, that could degrade the effectiveness of protecting any systems, networks, or equipment described in § 73.54. The NRC also would indicate that events that are reported as telephonic notifications do not require an entry in the safeguards event log.

M. Armed Security Personnel Background Check (NRC Form 754)

The NRC is proposing editorial changes to NRC Form 754 to increase clarity in the assisting notes and explanatory text. These changes would be consistent with the August 2008 version of similar ATF Form 4473. The NRC is also proposing a change to Question 4 to NRC Form 754 to (1) eliminate the address of a security individual's duty station and only specify the applicable State or Territory; and (2) permit the inclusion of multiple States or Territories where the individual routinely conducts official duties requiring access to covered weapons at multiple duty station locations or escorts shipments of radioactive material or other property across multiple states. The NRC is also proposing to delete Question 13 (State of Residence), since this question is now redundant with the information requested in Question 3 (Current Residence Address). Accordingly, Questions 14 through 18 would be redesignated as Questions 13 through 17, respectively. The NRC is also proposing to revise paragraph 4 of the Privacy Act Information summary (on page 3 of the form) to indicate that the submission of information on NRC Form 754 would be mandatory for certain security personnel at NRC-regulated facilities.

VI. Guidance

The NRC is preparing a new draft regulatory guide (DG-5020) that will contain detailed guidance on the implementation of the proposed requirements on applying for enhanced weapons and conducting firearms background checks. The draft regulatory guide will be made available for public comment. The NRC will issue a final regulatory guide subsequent to the publication of a final rule. The NRC also has developed a guidance document to assist licensees and certificate holders in completing the weapons safety assessment required as part of an application for enhanced weapons under § 73.18.

The NRC developed a draft regulatory guide (DG-5019) on event notifications that contained detailed guidance on the implementation of the changes in the October 2006 proposed rule to § 73.71 and Appendix G to Part 73. The NRC published draft regulatory guide DG-5019 for public comment on July 6, 2007 (72 FR 37058). The NRC also held a public meeting to discuss the draft regulatory guide on July 27, 2007. However, the NRC has made substantive changes to DG-5019 to reflect the new notification requirements for stolen or lost enhanced weapons and the further changes to § 73.71 and Appendix G to Part 73 discussed in this proposed rule. Because of the scope of these proposed changes to the event notification regulations, the NRC intends to issue a Revision 1 to DG-5019 for further public comment and will hold an additional public meeting to discuss Revision 1 to DG-5019. The NRC will issue a final regulatory guide (Revision 2 to RG 5.62) subsequent to the publication of a final rule.

The NRC has determined that public and stakeholder access to these draft guidance documents is not necessary to provide informed comments on this proposed rule.

VII. Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act, as amended, the Commission is proposing to amend 10 CFR Part 73 under Sections 161b, 161i, or 161o of the

AEA. Criminal penalties, as they apply to regulations in Part 73, are discussed in § 73.81. The new §§ 73.18 and 73.19 are issued under Sections 161b, 161i, or 161o of the AEA. Violations of these new sections are subject to possible criminal penalties; and therefore they are not included in § 73.81(b).

VIII. Compatibility of Agreement State Regulations

Under the “Policy Statement on Adequacy and Compatibility of Agreement States Programs,” approved by the Commission on June 20, 1997, and published in the *Federal Register* (62 FR 46517; September 3, 1997), this rule is classified as compatibility Category “NRC”; and new §§ 73.18 and 73.19 are designated as Category “NRC” regulations. Compatibility is not required for Category “NRC” regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the 10 CFR, and although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State’s administrative procedure laws, but does not confer regulatory authority on the State.

IX. Availability of Documents

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC’s PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agency Wide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public

documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

Federal Rulemaking Website: Public comments and supporting materials related to this proposed rule can be found at <http://www.regulations.gov> by searching on Docket ID:

NRC-2008-0465.

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated

Document	PDR	Web	ERR (ADAMS)
Firearms Guidelines	x	x	ML082560848
Environmental Assessment (October 2006 proposed rule)	x	x	ML061920093
Regulatory Analysis Regulatory Analysis--appendices (October 2006 proposed rule)	x	x	ML061380803 ML061380796 ML061440013
Information Collection Analysis	x	x	ML092640277
NRC Form 754 (revision dated 09/2009)	x	x	ML092650459
Commission: SECY-08-0050 (April 17, 2008)	x	x	ML072920478
Commission: SECY-08-0050A (July 8, 2008)	x	x	ML081910195
Commission: SRM-SECY-08-0050/0050A (August 15, 2008)	x	x	ML082280364
Letter opinion from ATF's Office of Enforcement on the transfer of enhanced weapons (January 5, 2009)	x	x	ML090080191

X. Plain Language

The Presidential memorandum dated June 1, 1998, entitled “Plain Language in Government Writing” directed that the Government’s writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883), in the *Federal Register*. In complying with this directive, the NRC made editorial changes to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC has used the phrase “may not” throughout this proposed rule to indicate that a person or entity is prohibited from taking a specific action. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the ADDRESSES caption.

XI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC proposes to use standards from applicable firearms standards developed by nationally-recognized firearms organizations or standard setting bodies or from standards developed by Federal agencies, such as the U.S. Department of Homeland Security’s Federal Law Enforcement Training Center, the U.S. Department of Energy’s National Training Center, and the U.S. Department of Defense. The NRC invites comment on the applicability and use of these and other standards.

As discussed in Section VI, "Guidance," of this document, the NRC also intends to issue for public comment draft Regulatory Guides DG-5019 and DG-5020 that would provide implementing information to licensees and certificate holders. DG-5020 would include references to U.S. government manuals that have been developed for the training and deployment of machine guns.

The NRC has determined that public and stakeholder access to these draft guidance documents is not necessary to provide informed comments on this proposed rule.

XII. Finding of No Significant Environmental Impact

In the proposed rule published on October 26, 2006, the Commission determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that the proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

The determination of the environmental assessment in this proposed rule is that there will be no significant offsite impact to the public from this action. Availability of the environmental assessment is provided in Section IX, "Availability of Documents," of this document. Accordingly, because of the nature of the changes to the firearms background checks and enhanced weapons provisions presented in this proposed rule, the assumptions in the October 2006 proposed rule are not changed so the Commission is not seeking additional comments on the environmental assessment.

The NRC sent a copy of the environmental assessment and the October 26, 2006, proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

XIII. Paperwork Reduction Act Statement

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

1. *Type of submission, new or revision:* Revision and new.
2. *The title of the information collection:* 10 CFR Part 73, “Enhanced Weapons, Firearms Background Checks, and Security Event Notifications” proposed rule, and NRC Form 754, “Armed Security Personnel Background Check.”
3. *The form number, if applicable:* NRC Form 754.
4. *How often the collection is required:* One time for power reactor licensees and Category I SSNM licensees applying for combined enhanced weapons authority. Initial submissions of NRC Form 754 will be required for all of their security personnel whose duties require access to covered weapons; thereafter, recurring firearms background checks and completion of NRC Form 754 will be required once every three years. New records requirements are imposed to document enhanced weapon inventory requirements, monthly and semiannually. As needed, licensees will report removals of security personnel, discovery of a stolen or lost enhanced weapon, and security events. For certain security events, follow-up reports are required within 60 days.
5. *Who will be required or asked to report:* The proposed NRC Form 754 and event notification changes affect operating nuclear power reactors located at 65 sites, 15 decommissioning power reactor sites, and 2 fuel cycle facilities authorized to possess Category I SSNM. Security event notifications under different sections

of § 73.71 could also affect 42 research and test reactor (RTR) sites, 6 Category II and II SNM sites, 60 Independent Spent Fuel Storage Installation (ISFSI) sites, 2 hot cell sites, and 3 other reactor sites. Security personnel must report to their management any event disqualifying them from possessing enhanced weapons.

6. *An estimate of the number of annual responses:* 16,685 responses
[10 CFR Part 73: 7,966 (7,771 response plus 195 recordkeepers);
NRC Form 754: 8,719 (8,637 responses plus 82 recordkeepers)]
7. *The estimated number of annual respondents:* 206 (65 sites power reactor sites, 15 decommissioning power reactor sites, 2 fuel cycle facilities, 42 research and test reactors sites, 6 Category II and II SNM sites, 60 Independent Spent Fuel Storage Installation sites, 2 hot cell sites, 3 other reactor sites, plus 11 third party security personnel respondents).
8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 161,884 hours [10 CFR Part 73: 150,459 (130,113 reporting hours plus 20,299 recordkeeping hours plus 47 third party notifications);
NRC Form 754: 11,425 hours (8,637 reporting hours plus 2,788 recordkeeping hours)].

Abstract: The NRC is proposing to amend the current security regulations and add new security requirements pertaining to nuclear power reactors and Category I SSNM facilities for access to enhanced weapons and firearms background checks. The proposed rulemaking would fulfill certain provisions of the Energy Policy Act of 2005 and add several new requirements to event notification requirements that resulted from insights from implementation of the security orders, review of site security plans, and

implementation of the enhanced baseline inspection program and force-on-force exercises.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Estimate of burden?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC PDR, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html> for 30 days after the signature date of this document.

These documents are also available at the *Federal e-Rulemaking Portal*:

<http://www.regulations.gov> under Docket ID (NRC-2008-0465). Documents may be viewed and downloaded electronically.

Send comments on any aspect of these proposed regulations related to information collections, including suggestions for reducing the burden and on the above issues, by **(INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*)** to the Information Services Branch (T-5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to Infocollects.Resource@NRC.GOV and to the Desk

Officer, Ms. Christine Kymm, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0002 and 3150-0204), Office of Management and Budget, Washington, DC 20503. Comments on the proposed information collections may also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>, Docket ID NRC-2008-0465. Comments received after this date will be considered if it is practical to do so, but assurance cannot be given to comments received after this date. You may also e-mail comments to [Christine J. Kymm@omb.eop.gov](mailto:Christine.J.Kymm@omb.eop.gov) or comment by telephone at 202-395-4638.

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.

XIV. Regulatory Analysis

The NRC had prepared a draft regulatory analysis for the original proposed rule published on October 26, 2006 (see Section IX, "Availability of Documents," of this document). The analysis examined the costs and benefits of the Implementation of section 161A of the AEA, proposed by the NRC at that time. Given that the NRC is required to comply with this statute, the regulatory analysis is provided in this case more for informational purposes rather than as a tool for decision-makers, which is its customary role.

The NRC is now taking action to conform implementing regulations to the firearms guidelines issued by the Commission, with the approval of the U.S. Attorney General. Many of the requirements identified in this revised proposed rule were identified in the original proposed rule. However, for the sake of completeness in this regulatory analysis, the staff is providing cost and benefit estimates for the proposed changes to §§ 73.18, 73.19, and 73.71 and Appendices A and G to Part 73. The NRC considers the costs and benefits associated with

applying for enhanced weapons to be unchanged from that described in the draft regulatory analysis, as the plans and analysis that are required to accompany an application have not changed. However, additional requirements have been added to the proposed § 73.18 that involve recordkeeping or reporting burdens. These include: periodic inventories of enhanced weapons under paragraph (n), notifications to the NRC and local law enforcement of stolen or lost enhanced weapons under paragraph (o), and record keepings under paragraph (p). These proposed regulations are required to be consistent with the issued firearms guidelines.

Additionally, the proposed regulation would require a licensee or certificate holder to notify the NRC of a licensee's or certificate holder's receipt of adverse ATF findings under paragraph (j). This notification would permit the NRC to effectively respond to any public or press inquiries related to the adverse ATF findings at NRC licensees possessing enhanced weapons.

Additional recordkeeping and reporting burdens have also been added to § 73.19 that include periodic firearms background checks under paragraph (f). Finally, additional recordkeeping and reporting burdens have been added to the proposed changes to § 73.71 and Appendix G.

These include imminent or actual hostile acts under paragraphs (a) and (b), suspicious activities under paragraph II, and cyber events under paragraphs I, II, and III. This regulatory analysis was developed following the guidance contained in NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Revision 4, issued September 2004.

1. Statement of the Problem and Objective

The information generally contained in this portion of the regulatory analysis may be found earlier in this document in Sections II, "Background," and III, "Discussion."

2. Identification and Analysis of Alternative Approaches to the Problem

Because this rulemaking is in response to the statutorily mandated provisions of the new section 161A of the AEA and the direction provided by the firearms guidelines issued by the Commission, with the approval of the U.S. Attorney General (see 74 FR 46800; September 11, 2009), there are no acceptable alternatives to the proposed rulemaking. Licensee application for enhanced weapons authority and preemption authority under section 161A is voluntary; however, licensee compliance with the firearms background checks under section 161A is mandatory for certain designated classes of licensees. Consequently, the no-action option is used only as a basis against which to measure the costs and benefits of the proposed rule.

3. Estimation and Evaluation of Values and Impacts

In general the parties which would be affected by this proposed rule are the licensees (there is no impact on applicants since they are not subject to the firearms background check requirements), the NRC, the public surrounding the plants, the on-site employees of the licensees, the FBI, and the ATF.

The following attributes are expected to be affected by this rulemaking. Their impacts are quantified where possible. Impacts to accident-related attributes are qualified because estimates of occurrences of possible attacks and their successful repulsions are unknown. Further, even if reliable estimates were available, they would be considered Safeguards Information and not to be released for public dissemination.

- Safeguards and Security Considerations – The proposed actions regarding access to enhanced weapons and mandatory firearms background checks will provide high assurance that the common defense and security will be enhanced because of licensees' increased ability to repulse an attack and to comply with statutory requirements.

The proposed actions regarding security event notifications will increase the NRC's ability to respond to security events and to effectively monitor ongoing licensee actions and inform other licensees in a timely manner of security-significant events and thus protect public health and safety and the common defense and security.

- Industry Implementation – The proposed rule would require licensees and certificate holders to subject their security personnel to a finger-print based background check and a firearms background check against the NICS. Requirements on security event notifications were also updated. Also, the rule would give licensees in Commission-designated classes of facilities the option to apply for combined enhanced weapons authority and preemption authority or standalone preemption authority. If a licensee is so inclined, it must submit plans and analysis to the NRC on their proposed deployment of enhanced weapons. The NRC must then act on approving the request or not. Following NRC approval, such a licensee would apply to ATF to transfer the authorized enhanced weapons to its facility. Industry would, of course, need to develop procedures to comply with these requirements.

For purposes of analysis, the NRC staff assumes that all licensees who fall within the proposed designated classes would take advantage of making use of enhanced weapons protection (*i.e.*, 65 operating power reactor sites, 15 decommissioning power reactor sites, and 2 Category I SSNM facilities for a total of 82 facilities). The staff also assumes that it would take an individual site one-half staff year to develop the changes to the security, training and qualification, contingency response plans and security event notification reports and to develop the weapons safety assessment and submit these documents to the NRC for its review and approval. Next, the staff assumes that it would take an individual site one-quarter staff year to complete ATF paperwork, acquire the enhanced weapons, develop new training standards and then train security personnel, and deploy the weapons. The staff further assumes a weapons

acquisition cost of \$1000 per weapon for 50 weapons equaling \$50,000 per individual site. The staff uses a value of \$160,000 per staff year. Therefore, the staff estimates that an individual site's implementation cost for the voluntary enhanced weapons regulations would be sum of the values of: the half staff-year, the quarter staff-year, and the cost of the weapons or \$170,000 (\$80,000 + \$40,000 + \$50,000); and a total enhanced-weapons' implementation cost of \$13,940,000 for the industry.³ Note: this cost analysis does not include any transfer tax payments required from a licensee to register an enhanced weapon with ATF under the National Firearms Act (26 U.S.C. Chapter 53), since those costs fall under ATF's sole regulatory purview.

NRC staff estimates that the costs to establish the program for accomplishing the mandatory firearms background checks would require two staff months per individual licensed facility. Therefore, the staff estimates that an individual site's costs (excluding fees) for this task would be \$26,700; and a total cost of \$2,190,000 for the industry.

NRC staff estimates that the total fees for the mandatory firearms background checks including the NICS check and the fingerprint check would be \$26. The NRC staff also assumes that the completion of, and recordkeeping for each NRC form 754 for mandatory background checks would be equivalent to one staff-hour. The NRC staff assumes 150 security officers per operating reactor and Category I SSNM facility and 75 officers for each decommissioning reactor and an hourly rate for industry security personnel of \$50.

This results in costs of \$11,400 for each operating reactor and Category I SSNM facility and \$5,700 for a decommissioning reactor site. This sums to total industry costs of \$741,000

³ Please note that throughout this paper sums may not equal shown total values because of rounding.

for all operating reactors and \$22,800 for the two Category I SSNM facilities, and a decommissioning reactor industry cost of \$85,500. Therefore, the overall total industry cost estimate for performing the first-time background checks is \$849,000.

When summed, the total implementation costs for obtaining enhanced weapons, establishing the program for accomplishing the mandatory firearms background checks, and completing the firearms background checks for an individual site range from \$202,000 for the decommissioning sites to \$208,000 for the operating reactor and Category I SSNM sites. The total industry implementation costs for operating reactors is \$13,526,000; for Category I SSNM sites \$416,000; and for decommissioning sites \$3,036,000. The sum of the total industry implementation cost is \$16,979,000.

- Industry Operation – Enhanced weapon Inventories’ requirements of the proposed rule, both monthly and semi-annually would result in operating expenses for industry. The NRC staff estimates that the automatic weapons inventories would take a total of 1 staff day for the monthly inventories and a total of 2 staff days for the semi-annual inventories, for the two person inventory team. A licensee does not have to do the monthly inventory (these are inventories not inspections) if they are doing the semi-annual check that month. Assuming an hourly rate for industry security personnel of \$50, the NRC staff estimates that this requirement would result in an annual cost per site of \$5,600 (i.e., $\$50/\text{hr} \times [(8\text{hrs}/\text{monthly-inventory} \times 10 \text{ monthly-inventories}/\text{yr}) + (16\text{hrs}/\text{semi-ann-inventory} \times 2 \text{ semi-ann-inventory}/\text{yr})]$). Assuming all 65 operating power reactor sites, 15 decommissioning reactor sites, and two Category I SSNM facilities decide to obtain enhanced weapons, this results in an industry annual cost of approximately \$460,000. Based on the extended license expiration dates, the NRC staff assumes the average remaining life of operating reactors is 34 years. We also assume another 20 years in “SAFSTOR” for a total of 54 years additional years. For the 15 decommissioning

reactors we assume an additional 20 years of life. Lastly, we assume an additional 50 years of life for the 2 Category I SSNM licensees. By type of licensee, the net present value (presented as individual cost/industry cost) using a 7 percent real discount rate are \$72,000/\$5,100,000 for operating reactors; \$59,000/\$890,000 for decommissioning reactors; and \$77,000/\$154,000 for Category I SSNM facilities. The corresponding values using a 3 percent real discount rate is calculated to be \$149,000 per operating reactor or \$9,674,000 for all 65 reactors; \$83,000 for each decommissioning reactor or \$1,250,000 for all 15 sites; and \$144,100 for each of the two Category I SSNM facilities or \$288,174 for their total. Therefore, the total industry operating costs for the inventory requirements is the sum of the discounted flow of funds costs which is approximately \$6.1 million using a 7 percent rate and \$11.2 million using a 3 percent real rate.

Also, the licensees need to comply with the mandatory recurring background checks. As mentioned in the Industry Implementation section above, the NRC staff estimates a one-time background-check cost of \$11,400 per operating reactor. Recurring firearms background checks every 3 years would approximate an annualized cost of \$3,800. Discounted over the assumed 34 remaining years of life of an operating reactor results in discounted flow values of \$48,800 (7 percent) and \$80,300 (3 percent). The NRC staff then assumed the operating reactors would have 20 years of life remaining as decommissioning reactors. As decommissioning reactors the calculated cost would be \$5,700 per site, or \$1,900 per year. This value discounted over the future years 35 through 54 as a decommissioning site would be \$1,840 (7 percent) and \$9,670 (3 percent). Therefore, the total cost of background checks for a presently operating reactor is \$50,680 (7 percent) and \$90,000 (3 percent). This corresponds to values for all operating reactors of \$3,294,000 (7 percent) and \$5,848,000 (3 percent).

The discounted flow of funds value for background checks (assuming the \$3,800 annualized cost) for the individual Category I SSNM licensees is \$52,400 using the 7 percent

rate and \$97,800 using the 3 percent discount rate. This corresponds to the Category I SSNM industry total of \$104,900 (7 percent) and \$195,500 (3 percent).

Lastly, the discounted cost estimates for background checks for a decommissioning reactor are \$20,100 (7 percent) and \$28,300 (3 percent). Total costs for all present decommissioning reactors are \$301,900 (7 percent) and \$424,000 (3 percent).

The total discounted flow of funds for the industry to have the background checks performed is \$3,401,000 (\$3,294,000+\$104,900+\$301,900) using a 7 percent real discount rate. Using a 3 percent real discount rate provides a total industry cost of \$6,468,000 (\$5,848,000+\$196,000+\$424,000).

With respect to the security event notification reporting requirements, this analysis presents combined cost estimates for both physical and cyber events for: imminent or actual hostile action notifications, cyber and physical intrusions, suspicious activity notifications, unauthorized operation or tampering events (including cyber systems) , and security logable events.

The NRC staff estimates that for 65 operating reactor sites, 15 decommissioning sites, and 2 Category I SSNM sites, each facility would make one imminent or actual hostile act notification every 10 years. This equates to a site-risk value of 0.1 per year. Further, the staff estimates that the proposed required initial communication with the NRC would take approximately 6 minutes, or 0.1 hours. The 2 hour open-line continuous communication channel requirement is, of course, assumed to take 2 staff-hours of time. Therefore, the annual cost per site may be expressed as $0.1/\text{yr} \times [0.1\text{hrs} + 2\text{hrs}] = 0.21\text{hrs}/\text{year}$. At the assumed professional level wage rate of \$100/hr, this results in an annual cost of \$21 per site.

For the operating reactors, the annual industry cost is \$1,365, for decommissioning reactors it is \$315, and only \$42 for the Category I SSNM facilities. When the annual costs are

discounted over the average remaining lives of the various sites, the totals for operating reactors range from \$19,000 (7 percent real discount rate) to \$36,000 (3 percent). For decommissioning reactors, the values range from \$3,300 (7 percent) to \$4,700 (3 percent). For the two Category I facilities, the discounted flows of funds for the annual operating costs range from \$600 (7 percent) to \$1,000 (3 percent). Therefore, the total operating expenses for the imminent attack notification component of the rule range from \$22,900 (7 percent) to \$ 41,700 (3 percent).

For cyber and physical intrusions, the NRC staff assumes the following sites will be affected; (1) 82 operating, decommissioning, and Category I SSNM sites, (2) 42 operating and decommissioning research and test reactor (RTR) sites, (3) 3 other reactor sites, (4) 6 Category II and Category III Special Nuclear Material Sites (SNM), (5) 60 Independent Spent Fuel Storage Installations (ISFSI), and (6) 2 hot cell sites. This results in 195 affected licenses. The intrusions, which require a one hour notification time, are assumed by the NRC staff to occur on average once every 2 years, or at a rate of 0.5 per year. Further, the staff assumes that each event would require one hour of licensee staff time per event. Given the assumed professional level wage rate of \$100/hr, this results in an annual cost of \$50 per site. The discounted cost over the assumed life of an operating reactor and its additional time in SAFESTOR ranges from \$700 (7 percent real discount rate) to \$1300 (3 percent).

The total industry costs are composed of the following. Operating reactors total cost estimates range from \$45,000 (7 percent) to \$86,000 (3 percent). The Decommission Reactors range from \$7,900 to \$11,100. Category I's range from approximately \$1,400 to \$2,600. RTRs range from \$28,000 to \$48,000. Other sites estimates are \$2,000 to \$3,500. The Category II and III sites range from \$4,000 to \$6,900.

The 2 Hot Cell sites estimated costs are from \$1,300 to \$2,300. The ISFSI's costs are estimated to range from \$43,000 to \$91,000. This results in an estimate for the total industry operating costs of from \$132,000 (7 percent) to \$252,000 (3 percent).

For suspicious activity reports, the NRC staff assumes five reports per-year, for each of the 195 licenses, which we assume would result in a 1 hour total response per report. This results in annual costs per site of \$500. For operating reactors (including their time in SAFESTOR), the total costs range from \$452,000 (7 percent) to \$864,000 (3 percent). Decommissioned reactors corresponding estimates run from \$79,400 to \$112,000. The 2 Category I SSNMs cost estimates range from \$13,800 to \$25,700, again showing the 7 percent value first, followed by the 3 percent estimate. The 42 Research and Test Reactors had industry total cost estimates of \$280,000 to \$485,000. The 3 other sites values were \$20,000 to \$34,700. The 6 Category II and III SNMs had approximately double those values at \$40,000 to \$69,300. The 2 hot cell sites incurred costs of \$13,300 to \$23,100. Lastly, the ISFSIs estimates ran from \$427,000 to \$906,000. The summed estimate for suspicious activity reports runs from \$1,325,000 (7 percent) to \$2,520,000 (3 percent).

With respect to unauthorized operation or tampering events, the NRC staff assumes one event per year, per site, (for both physical and cyber events) and a 1 hour total response per event resulting in annual costs of \$100 per site. Operating Reactors total cost estimates range from \$90,400 (7 percent) to \$173,000 (3 percent). Similar estimates for the decommissioning reactors range from \$15,900 to \$ 23,300. The Category I SSNMs were \$2,800 to \$5,100. Research and Test Reactors had estimates from \$56,000 to \$97,000. The 3 other sites' values ranged from \$4,000 to \$6,900. Category II and III SNM sites incurred estimates of \$8,000 to \$13,900. The hot cell sites ranged from \$2,700 to \$4,600. ISFSIs ranged from \$85,300 to

\$181,200. Therefore the total industry operating expenses for unauthorized operation or tampering ranges from \$265,000 (7 percent) to \$504,000 (3 percent).

For both requirements relating to enhanced weapons being lost or stolen and to adverse ATF findings, the NRC staff assumes an occurrence of once every 2 years or at a rate of 0.5 per year at the 82 sites. While these requirements differ as to time required to submit the report, all are assumed to require an hour of licensee staff time per event. Again, \$100 per staff-hour is assumed as the wage rate that results in an annual cost of \$50 per site. The resulting discounted cost over the assumed life of an operating reactor ranges from \$700 (7 percent real discount rate) to \$1,300 (3 percent). For all 65 reactors that becomes \$45,200 to \$86,400. The corresponding values for the 15 decommissioning reactors range from \$8,000 to \$11,100. Lastly, the 2 Category I sites related values are \$1,400 and \$2,600. Therefore, these sum to ranges of \$54,600 (7 percent) to \$100,000 (3 percent).

Finally, the NRC staff estimates the impact of the events requiring entry in the safeguards event log at 195 sites. The NRC staff assumes 150 events requiring entry in the log per site, per year and that each entry requires 20 minutes of licensee staff time. Therefore, the annual cost per site is \$5,000 and \$975,000 for the industry. Total costs resulting from this requirement are estimated to be from \$13,250,000 (7 percent real discount rate) to \$25,200,000 (3 percent rate). This is based on the sum of the following components. Operating reactors have estimated costs that range from \$4,520,000 to \$8,640,000. Decommissioning Reactors have estimates going from \$794,000 to \$1,120,000. The 2 Category I sites' costs for this paragraph go from \$138,000 to \$257,000. RTRs have estimates of from \$2,800,000 to \$4,800,000. Other reactor sites run from \$200,000 to \$347,000. The Category II and III sites have estimates of \$400,000 to \$693,000. The Hot Cell Sites account for \$133,000 to \$231,000, while the ISFSI sites have estimates of \$4,270,000 to \$9,060,000.

The NRC notes that Appendix G to Part 73 imposes no additional (or separate) requirements on licensees. It only contains a detailed listing of the security event notifications that are required to be reported under § 73.71. As a result, no separate costs would be incurred by licensees because of the requirements of Appendix G (*i.e.*, the costs for event notifications specified under Appendix G are accounted for under the costs associated with § 73.71).

The notification requirements' discounted flow of funds costs for the industry sum to from \$15,056,000 (7 percent) to \$28,613,000 (3 percent).

The total industry operating costs are the sum of the recurring inventory requirements (\$6.1 million given the 7 percent real discount rate and \$11.2 million with the 3 percent rate), the background checks (\$3.7 million at 7 percent and \$6.5 million at 3 percent), and the security event notification reports (\$15.1 million using the 7 percent rate and \$28.6 million with the 3 percent rate). This total is estimated to range from \$24.9 million (7 percent) to \$46.3 million (3 percent rate).

- NRC Implementation – NRC implementation costs include the labor cost for the development of the final rule and the regulatory guidance (two regulatory guides). The NRC would also need to develop appropriate inspection procedures to confirm compliance with this rule.

NRC staff estimates that it would take approximately 1 staff year or 1,600 hours to develop the final rule and about a half year (800 staff hours) to develop the final regulatory guidance. Lastly, the development of NRC inspection procedures will take about a quarter staff year (400 staff hours). Using the NRC's partially loaded hourly rate of \$100 results in the NRC implementation cost of \$280,000 (1,600 hrs + 800 hrs + 400 hrs). The NRC estimates that it would take about a quarter staff year to review and comment on each licensee's security plan, training and qualification plan, contingency response plan, and weapons safety assessment,

including a round of Requests for Additional Information. This is estimated to cost the NRC \$40,000 per site or \$3,280,000 for the industry. Adding this amount to the initial part of the NRC implementation cost estimate of \$280,000 results in a total NRC implementation cost of almost \$3.6 million.

- NRC Operation – The NRC would need to inspect the licensees' periodic inventories, recordkeeping, and training and qualification of enhanced weapons as a result of this rule. These inspections of the licensee's enhanced weapons would take one staff day per year per individual licensee site, with the exception of the first year, which would take 2 staff days per site. This results in a first-year NRC cost of about \$1,600 for one site and about \$131,200 (82 sites x \$1,600/site) industry-wide for the first year. Subsequent years would result in costs of \$800 per site and \$65,600 (82 sites x \$800/site) for industry-wide impacts on the NRC. This results in a discounted flow of funds equal to total operating costs for the inspection of the periodic weapons inventory ranging from an estimated high of about \$1,665,000 (using a 3 percent real discount rate) to \$934,000 (using a 7 percent rate).

The NRC staff estimates that inspecting the licensee's records program for the mandatory firearms background checks would take one staff day per year per individual licensee site, with the exception of the first year, which would take 2 staff days per site. This results in an NRC cost of about \$1,600 for one site the first year and about \$131,200 (82 sites x \$1600/site) industry-wide for the first year. Subsequent years would result in NRC costs of \$800 per site and \$65,600 (82 sites x \$800/site) for industry-wide impacts on the NRC.

NRC's total operating cost for the records check of the mandatory firearms background checks ranges from an estimated high of \$1,665,000 (using a 3 percent real discount rate) to \$934,000 (using a 7 percent rate). No separate estimate for NRC costs associated with recordkeeping and processing firearms background checks are provided, because these costs are already included in the NRC's fee for processing a firearms background check.

The NRC's total operating costs are the sum of the above values, which range from slightly under \$1.9 million (7 percent rate) to \$3.3 million (3 percent rate).

- Regulatory Efficiency – The proposed action would result in enhanced regulatory efficiency through regulatory and compliance improvements based upon statutory mandates involving the voluntary possession of enhanced weapons and mandatory firearms background checks at power reactor facilities and 2 Category I SSNM facilities. The proposed action would also result in enhanced regulatory efficiency involving the NRC's ability to monitor ongoing security events at a range of licensed facilities, and the ability to rapidly communicate information on security events at such facilities to other NRC-regulated facilities and other government agencies, as necessary.
- Public Health (Accident) – The proposed action would reduce the risk that public health will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.
- Occupational Health (Accident) – The proposed action would reduce the risk that occupational health will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.
- Off-Site Property – The proposed action would reduce the risk that off-site property will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.

- On-Site Property – The proposed action would reduce the risk that on-site property will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.
- Other Government Agencies – The FBI would be affected by this rule because of its role in processing the mandatory fingerprint checks and firearms background checks the statute requires. The ATF would be affected by this rule because of its involvement with the approval to transfer of enhanced weapons to and from an authorized NRC licensee. Note: The FBI's fees for fingerprinting checks are incorporated within the NRC's fee discussed above. The FBI does not charge a fee for firearms background checks. Also, as previously noted, the ATF taxes to transfer enhanced weapons are not included in this analysis.

Attributes that are *not* expected to be affected under any of the rulemaking options include the following: occupational health (routine); public health (routine); environmental considerations; general public; improvements in knowledge; and antitrust considerations.

4. Presentation of Results

Section 161A of the AEA requires several modifications to 10 CFR Part 73. The pertinent sections and appendices which are being revised are §§ 73.2, "Definitions," 73.71, "Reporting of safeguards events" 73.18, "Authorization for use of enhanced weapons and preemption of firearms laws," and 73.19, "Firearms background checks for armed security personnel."

The fundamental incentive for a licensee to choose to obtain enhanced weapons is to increase their defensive capabilities to provide high assurance that public health and safety and the common defense and security will be adequately protected from any attempts of radiological sabotage. Since a licensee's obtaining enhanced weapons is voluntary, licensees must evaluate for their specific site whether the costs and benefits of using enhanced weapons is appropriate in general; and if appropriate in general, which specific types of weapons are

appropriate for their particular site and protective strategy. Also, the firearms background checks will provide assurance that security personnel possessing enhanced weapons are not barred under Federal and State law from receiving, possessing, transporting, or using any covered weapons and ammunition. The NRC staff notes that while licensees would be required to pay an excise tax when transferring enhanced weapons, the tax is not considered a cost of this proposed rule because it is a result of ATF regulations.

The total industry implementation costs for operating reactors is \$13,526,000; for Category I SSNM sites \$416,000; and for decommissioning sites \$3,036,000. The sum of the total industry implementation cost is \$17.0 million. The industry operating costs when discounted as flows of funds and based on the assumed lengths of lives of the various facilities ranged from \$24.9 million to \$46.3 million given the 7 percent and 3 percent real discount rates respectively.

The total costs to industry, including both implementation and operating expenses are estimated to range from \$41.9 million to \$63.3 million, again given the 7 percent and 3 percent real discount rates respectively.

The NRC implementation costs are almost \$3.6 million. The recurring or annual costs are calculated to have a present value of from \$1.9 million (7 percent rate) to \$3.3 million (3 percent rate). Therefore, the total estimated NRC costs range from about \$5.5 million (7 percent rate) to \$6.9 million (3 percent rate).

The total quantitative costs estimates for this proposed rulemaking are estimated to be from \$47.4million (7 percent) to \$70.2 million (3 percent).

- Disaggregation

In order to comply with the guidance provided in Section 4.3.2 (Criteria for the Treatment of Individual Requirements) of the NRC's Regulatory Analysis Guidelines, the NRC conducted a

screening review to ensure that the aggregate analysis does not mask the inclusion of individual rule provisions that are not cost-beneficial when considered individually and not necessary to meet the goals of the rulemaking. Consistent with the Regulatory Analysis Guidelines, the NRC evaluated, on a disaggregated basis, each new regulatory provision expected to result in incremental costs. Given that the NRC is required to comply with section 161A of the AEA this statute, the NRC believes that each of these provisions is necessary and cost-justified based on its resulting qualitative benefits, as discussed above.

5. Decision Rationale

Relative to the “no-action” alternative, the proposed rule would cost industry from around \$42 million to \$63 million over the average lifetime of the plants. The total NRC costs would range from \$5.5 million to slightly under \$7 million. Total costs of the rule are estimated to range from around \$47 million to \$70 million. The large majority of requirements in this rule are the result of the new section 161A of the AEA. However, there are some items which the NRC has required that were not specifically in the statute. The NRC included them because it needs to be able to respond to public and press inquiries on enhanced weapons issues and the items provided the most opportune method for the NRC to comply with the statute. Furthermore, the NRC concluded that for all of these requirements, and their corresponding costs, the proposed approach is appropriate.

Although the NRC did not quantify the benefits of this rule, the staff did qualitatively examine benefits and concluded that the rule would provide safety and security-related benefits. Offsetting this net cost, the NRC believes that the rule would result in substantial non-quantified benefits related to safety and security, as well as enhanced regulatory efficiency and effectiveness. Therefore, the NRC believes that the rule is cost-justified for several qualitative reasons. First, the proposed rule would provide increased defensive capability of licensees and

thus would increase the assurance that a licensee can adequately protect a power reactor facility, decommissioning site, or Category I SSNM facility against an external assault. Second, the proposed rule would provide a mechanism to accomplish a statutory mandate to verify that security officers protecting such facilities are not disqualified under Federal or State law from possessing or using firearms and ammunition. Lastly, as indicated above, licensee application for enhanced weapons authority and preemption authority under section 161A is voluntary.

The NRC also modified the event notification requirements for the following qualitative reasons. This change would result in increasing the NRC's ability to respond to security-related plant events, evaluate ongoing suspicious activities for threat implications, and accomplish the Agency's strategic communication mission.

Based on the NRC's assessment of the costs and benefits of the propose rule on licensee facilities, the agency has concluded that the proposed rule provisions would be justified.

6. Implementation

The final rule is to take effect 30 days after publication in the *Federal Register*. A compliance date of 180 days after publication of the final rule will also be established for some provisions of this rule. The NRC staff does not expect this rule to have any impact on other requirements.

XV. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants, production facilities, spent fuel reprocessing or recycling facilities, fuel fabrication facilities, and uranium enrichment facilities. The companies that own these plants do not fall

within the scope of the definition of "small entities" presented in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XVI. Backfit Analysis

The NRC evaluated the aggregated set of requirements in this proposed rule that constitute backfitting in accordance with sections 10 CFR 50.109 and 70.76. The NRC prepared a draft regulatory analysis on the original proposed rule published on October 26, 2006. The backfit analysis is contained within Section 4.2 of that regulatory analysis. Availability information for the draft regulatory (and backfit) analysis is provided in Section IX, "Availability of Documents," of this document. This analysis examined the costs and benefits of the alternatives considered by the NRC.

Many of the provisions of this proposed rule do not constitute backfitting because they are voluntary in nature, and would therefore not impose modifications or additions to existing structures, components, or designs, or existing procedures or organizations. These provisions include those related to application for the use of enhanced weapons and/or preemption authority. Other provisions of the rule implementing section 161A, such as the mandatory firearms background checks, are not backfits because they implement mandatory provisions required by statute.

To the extent that some of the specific implementing details of the firearms background checks described in this proposed rule are not specifically mandated by statute, or the Firearms Guidelines issued by the Commission with the approval of the U.S. Attorney General, the Commission believes that such measures are essential for the effective implementation of the rule's requirements, and thus necessary for the adequate protection to the health and safety of the public and are in accord with the common defense and security.

Regarding the provisions of the October 2006 proposed rule and this proposed rule that relate to information collection and reporting requirements, revisions that amend existing information collection and reporting requirements or impose new information and collection and reporting requirements are not considered to be backfits, as presented in the charter for the NRC's Committee to Review Generic Requirements (CRGR).

Therefore, for the reasons stated above, a backfit analysis has not been completed for any of the provisions of this proposed rule.

List of Subjects

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the AEA, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 73.

PART 73 - PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: Secs. 53, 161, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

2. In § 73.2, paragraph (a), definitions for “Adverse firearms background check”, “Combined enhanced weapons authority and preemption authority”, “Covered weapon”, “Enhanced weapon”, “Firearms background check”, “High-level radioactive waste”, “NICS”, “NICS response”, “Satisfactory firearms background check”, “Spent nuclear fuel or spent fuel (SNF)”, “Stand-alone preemption authority”, and “Standard weapon” are added in alphabetical order; and paragraphs (b) and (c) are added to read as follows:

§ 73.2 Definitions.

* * * * *

(a) * * *

Adverse firearms background check means a firearms background check that has resulted in a “denied” or “delayed” NICS response.

* * * * *

Combined enhanced weapons authority and preemption authority means the authority granted the Commission, at 42 U.S.C. 2201a, to authorize licensees or certificate holders, or the designated security personnel of the licensee or certificate holder, to transfer, receive, possess, transport, import, and use one or more category of enhanced weapons, notwithstanding any local, State, or certain federal firearms laws (including regulations).

* * * * *

Covered weapon means any handgun, rifle, shotgun, short-barreled shotgun, short-barreled rifle, semi-automatic assault weapon, machine gun, ammunition for any of these weapons, or a large capacity ammunition feeding device as specified under 42 U.S.C. 2201a. Covered weapons include both enhanced weapons and standard weapons.

* * * * *

Enhanced weapon means any short-barreled shotgun, short-barreled rifle, or machine gun. Enhanced weapons do not include destructive devices as defined at 18 U.S.C. 921(a)(4) (e.g., explosives or weapons with a bore diameter greater than 12.7 mm (0.5-in or 50-caliber)). Enhanced weapons do not include standard weapons.

Firearms background check means a background check by the U.S. Attorney General as defined at 42 U.S.C. 2201a and that includes a check against the Federal Bureau of Investigation's (FBI's) fingerprint system and the National Instant Criminal Background Check System (NICS).

* * * * *

High-level radioactive waste means –

(1) The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

(2) Other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

* * * * *

NICS means the National Instant Criminal Background Check System established by Section 103(b) of the Brady Handgun Violence Prevention Act, Pub. L. 103-159 (107 Stat. 1536), that is operated by the FBI.

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

* * * * *

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

* * * * *

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

Stand-alone preemption authority means the authority granted by the Commission, under 42 U.S.C. 2201a, to authorize licensees or certificate holders, or the designated security personnel of a licensee or certificate holder, to transfer, receive, possess, transport, import, or use one or more categories of standard weapons or enhanced weapons notwithstanding any local, State, or certain Federal firearms laws (including regulations).

Standard weapon means any handgun, rifle, shotgun, semi-automatic assault weapon, or a large capacity ammunition feeding device. Standard weapons do not include enhanced weapons.

* * * * *

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

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

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

§ 73.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 73.5, 73.18, 73.19, 73.20, 73.21, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.54, 73.55, 73.56, 73.57, 73.58, 73.60, 73.67, 73.70, 73.71, 73.72, 73.73, 73.74, and Appendices B, C, and G to this part.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and control numbers under which they are approved are as follows:

(1) In § 73.19, NRC Form 754 is approved under control number 3150-0204;

(2) In §§ 73.19 and 73.57, FBI Form FD-258 is approved under control number 1110-0046; and

(3) In § 73.71, NRC Form 366 is approved under control number 3150-0104.

4. Section 73.18 is added to read as follows:

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

(a) *Purpose.* This section presents the requirements for licensees and certificate holders to obtain NRC approval to use the authorities provided under 42 U.S.C. 2201a, in protecting Commission-designated classes of facilities, radioactive material, or other property. These authorities include “preemption authority” and “enhanced-weapons authority.”

(b) *General Requirements.* (1) Licensees and certificate holders listed in paragraph (c) of this section may apply to the NRC, in accordance with the provisions of this section, to receive stand-alone preemption authority or combined enhanced weapons authority and preemption authority.

(2) With respect to the possession and use of firearms by all other NRC licensees or certificate holders, the Commission’s requirements in effect before **(insert effective date of final rule)** remain applicable, except to the extent those requirements are modified by Commission order or regulations applicable to these licensees and certificate holders.

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

(i) Power reactor facilities; and

(ii) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level less than or equal to 1 Gray (Gy) (100 Rad) per hour at a distance of 1 meter (m) (3.28 feet [ft]), without regard to any intervening shielding.

(2) Combined enhanced-weapons authority and preemption authority. The following classes of facilities, radioactive material, or other property are designated by the Commission under 42 U.S.C. 2201a –

(i) Power reactor facilities; and

(ii) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level less than or equal to 1 Gy (100 Rad) per hour at a distance of 1 m (3.28 ft), without regard to any intervening shielding.

(d) *Application for stand-alone preemption authority.* (1) Licensees and certificate holders listed in paragraph (c)(1) of this section may apply to the NRC for stand-alone preemption authority using the procedures outlined in this section.

(2) Licensees and certificate holders shall submit an application to the NRC in writing, in accordance with § 73.4, and indicate that the licensee or certificate holder is applying for stand-alone preemption authority at 42 U.S.C 2201a.

(3)(i) Licensees and certificate holders shall indicate that they have completed satisfactory firearms background checks for their security personnel whose official duties require access to covered weapons, in accordance with § 73.19.

(ii) Alternatively, licensees and certificate holders shall indicate they have commenced firearms background checks for their security personnel whose official duties require access to covered weapons; and they shall subsequently supplement their application to indicate that a sufficient number of security personnel have completed satisfactory firearms background checks to meet the licensee's or certificate holder's security personnel minimum staffing and fatigue requirements, in accordance with § 73.19.

(4) The NRC will document in writing to the licensee or certificate holder that the Commission has approved or disapproved the licensee's or certificate holder's application for stand-alone preemption authority.

(e) Application for combined enhanced-weapons authority and preemption authority. (1) Licensees and certificate holders listed in paragraph (c)(2) of this section may apply to the NRC for combined enhanced-weapons authority and preemption authority.

(2) Licensees and certificate holders shall submit an application to the NRC indicating that the licensee or certificate holder is applying for combined enhanced-weapons authority and preemption authority at 42 U.S.C 2201a, in accordance with § 73.4, and the license or certificate amendment provisions of §§ 50.90, 70.34, or 76.45 of this chapter, as applicable. Licensees and certificate holders who have previously been approved for stand-alone preemption authority under paragraph (d) of this section are not required to reapply for preemption authority.

(3) Licensees and certificate holders shall include with their application -

- (i) The specific information required by paragraph (f) of this section; and
- (ii) If applicable, the date they applied to the NRC for stand-alone preemption authority and the date the NRC approved their application.

(4)(i) Licensees and certificate holders shall indicate that they have completed satisfactory firearms background checks for their security personnel whose official duties require access to covered weapons, in accordance with § 73.19.

(ii) Alternatively, licensees and certificate holders shall indicate that they have commenced firearms background checks for their security personnel whose official duties require access to covered weapons.

Licenses and certificate holders shall subsequently supplement their application to indicate that a sufficient number of security personnel have completed satisfactory firearms background checks to meet the licensee's or certificate holder's security personnel minimum staffing and fatigue requirements, in accordance with § 73.19.

(5) The NRC will make a final determination on the license application in accordance with § 50.92, 70.35, or 76.45 of this chapter, as applicable, and will document in writing to the licensee or certificate holder that the Commission has approved or disapproved the licensee's or certificate holder's application for combined enhanced-weapons authority and preemption authority.

(6) Subsequent to the NRC's approval of a licensee's or certificate holder's application combined enhanced weapons authority and preemption authority, if the licensee or certificate holder wishes to use a different type, caliber, or quantity of enhanced weapons from that previously approved by the NRC, then the licensee or certificate holder must submit revised plans and assessments specified by this section to the NRC for prior review and written approval in accordance with the license or certificate amendment provisions of §§ 50.90, 70.34, or 76.45 of this chapter, as applicable.

(f) *Application for enhanced-weapons authority additional information.* (1) Licenses and certificate holders shall also submit to the NRC for prior review and written approval a new, or revised, physical security plan, security personnel training and qualification plan, safeguards contingency plan, and a weapons safety assessment incorporating the use of the specific enhanced weapons the licensee or certificate holder intends to use. These plans and assessments must be specific to the facilities, radioactive material, or other property being protected.

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

(i) For the physical security plan, identify the specific types or models, calibers, and numbers of enhanced weapons to be used;

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

(iii) For the safeguards contingency plan, address how these enhanced and any standard weapons will be employed by the licensee's or certificate holder's security personnel in meeting the NRC-required protective strategy, including tactical approaches and maneuvers; and

(iv) For the weapons safety assessment –

(A) Assess any potential safety impact on the facility, radioactive material, or other property from the use of these enhanced weapons;

(B) Assess any potential safety impact on public or private facilities, public or private property, or on members of the public in areas outside of the site boundary from the use of these enhanced weapons; and

(C) Assess any potential safety impact on public or private facilities, public or private property, or on members of the public from the use of these enhanced weapons at training facilities intended for proficiency demonstration and qualification purposes.

(D) In assessing potential safety impacts, licensees and certificate holders shall consider both accidental and deliberate discharges of these enhanced weapons. However, licensees and certificate holders are not required to assess malevolent discharges of these enhanced weapons by trained and qualified security personnel who have been screened and evaluated by the licensee's or certificate holder's insider mitigation or personnel reliability programs.

(3) The licensee's or certificate holder'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 Federal agencies, such as the U.S. Department of Homeland Security's Federal Law Enforcement Training Center, the U.S. Department of Energy's National Training Center, and the U.S. Department of Defense.

(g) *Conditions of approval.* (1) Licensees and certificate holders who have applied to the NRC for and received combined enhanced-weapons authority and preemption authority shall provide a copy of the NRC's authorization to the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF's) federal firearms license (FFL) holder (e.g., manufacturer or importer) for forwarding to ATF to request the transfer of the enhanced weapons to the licensee or certificate holder.

(2) Licensees and certificate holders receiving enhanced weapons must also obtain any required ATF tax stamps and register these weapons under ATF's regulations under 27 CFR part 479.

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

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

(h) *Completion of training and qualification before use of enhanced weapons.* (1) Licensees and certificate holders who have applied for and received combined enhanced-weapons authority and preemption authority under this section shall ensure their security personnel complete the required firearms training and qualification in accordance with the licensee's or certificate holder's NRC-approved training and qualification plan.

(2) Initial training and qualification on enhanced weapons must be completed before the security personnel's use of enhanced weapons and must be documented in accordance with the requirements of the licensee's or certificate holder's training and qualification plan.

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

(i) (Reserved).

(j) *Use of enhanced weapons.* Requirements regarding the use of enhanced weapons by licensee or certificate holder security personnel, in the performance of their official duties, are contained in §§ 73.46 and 73.55 and in appendices B, C, and H of this part, as applicable.

(k) *Notification of adverse ATF findings.* (1) NRC licensees and certificate holders with enhanced weapons shall notify the NRC, in accordance with § 73.71, of the receipt of adverse ATF inspection or enforcement findings related to their receipt, possession, or transfer of enhanced weapons.

(2) NRC licensees and certificate holders that also possess an ATF FFL shall notify the NRC, in accordance with § 73.71, of the receipt of adverse ATF inspection or enforcement findings related to their FFL.

(l) (Reserved).

(m) *Transfer of enhanced weapons.* (1) A licensee's or certificate holder's issuance of enhanced weapons to security personnel is not considered a transfer of those weapons under 26 U.S.C. Chapter 53, as specified under ATF's regulations in 27 CFR part 479, if the weapons remain within the site of a facility. Remaining within the site of a facility means within the site boundary, as defined by the licensee's or certificate holder's safety analysis report submitted to the NRC.

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

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

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

(3) Permissible reasons for removal of enhanced weapons from the licensee's or certificate holder's facility include –

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

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

(4) Removal of enhanced weapons from and/or return of these weapons to the licensee's or certificate holder's facility shall be documented in accordance with the records requirements of paragraph (p) of this section.

(5) Removal of enhanced weapons from a licensee's or certificate holder's facility for other than the permissible reasons set forth in paragraph (m)(3) of this section shall be considered a transfer of those weapons under 26 U.S.C. Chapter 53, as specified under ATF's regulations in 27 CFR part 479. The licensee or certificate holder may only transfer enhanced weapons pursuant to an application approved by ATF in accordance with ATF's regulations. Examples of transfers include, but are not limited to:

(i) Removal of an enhanced weapon from a licensee's or certificate holder's facility to a gunsmith or manufacturer for the purposes of repair or maintenance and subsequent return of the weapon to the licensee or certificate holder;

(ii) Sale or disposal of an enhanced weapon to another authorized NRC licensee or certificate holder;

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

(iv) Abandonment of an enhanced weapon to ATF.

(6) Security personnel shall return enhanced weapons issued from armories to the custody of the licensee or certificate holder following the completion of their official duties.

(7) A licensee or certificate holder obtaining enhanced weapons shall assist the transferor in completing an application to transfer these weapons in accordance with 26 U.S.C. 5812, and shall provide the transferor with a copy of the NRC's written approval of their application for combined enhanced weapons authority and preemption authority.

(8) Enhanced weapons may only be transferred to a licensee or certificate holder, not to a contractor providing security services to the licensee or certificate holder.

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

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

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

(2) Security personnel transporting covered weapons to or from a licensee's or certificate holder's facility following the completion of, or in preparation for, the duty of escorting shipments

of radioactive material or other property, designated under paragraph (c) of this section that is being transported to or from the licensee's or certificate holder's facility shall ensure that these weapons are unloaded and locked in a secure container during transport. Unloaded weapons and ammunition may be transported in the same locked secure container.

(3) Security personnel using covered weapons to protect shipments of radioactive material or other property designated under paragraph (c) of this section that are being transported to or from the licensee's or certificate holder's facility (whether intrastate or interstate) shall ensure that these weapons are maintained in a state of loaded readiness and available for immediate use except when prohibited by 18 U.S.C. 922q.

(4) Security personnel transporting covered weapons to or from the licensee's or certificate holder's facility shall also comply with the requirements of § 73.19.

(5) Situations where security personnel transport enhanced weapons to or from the licensee's or certificate holder's facility are not considered transfers of these weapons at 26 U.S.C. Chapter 53, as specified under ATF's regulations in 27 CFR part 479, if –

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

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

(o) *Periodic inventories of enhanced weapons.* (1) Licensees and certificate holders possessing enhanced weapons under this section shall conduct periodic accountability inventories of the enhanced weapons in their possession to verify their continued presence of each enhanced weapon the licensee or certificate holder is authorized to possess.

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

(3) Licensees and certificate holders possessing enhanced weapons under this section shall perform inventories of its enhanced weapons monthly, as follows –

(i) Licensees and certificate holders shall conduct an inventory to verify that the authorized quantity of enhanced weapons are present at the licensee's or certificate holder's facility.

(ii) Licensees and certificate holders shall verify the presence of each individual enhanced weapon.

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

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

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

(vi) The time interval from the previous monthly inventory shall not exceed 30 ± 3 days.

(4) Licensees and certificate holders possessing enhanced weapons under this section shall perform inventories of its enhanced weapons semi-annually, as follows –

(i) Licensees and certificate holders shall conduct an inventory to verify that each authorized enhanced weapon is present at the licensee's or certificate holder's facility through the verification of the serial number of each enhanced weapon.

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

(iii) The time interval from the previous semi-annual inventory shall not exceed 180 ± 7 days.

(iv) Licensees and certificate holders conducting a semi-annual inventory may substitute this semi-annual inventory in lieu of conducting the normal monthly inventory required under paragraph (n) of this section.

(5) Licensees and certificate holders shall conduct monthly and semi-annual inventories of enhanced weapons using a two-person team.

(6) Licensees and certificate holders shall inventory using a two-person team any locked secure weapons container that was sealed with a TID and has subsequently been opened and shall verify the serial number of enhanced weapons stored in the weapons container. The team shall reseal the locked secure weapons container with a new TID and record the TID's serial number in the monthly inventory records.

(7) Licensees and certificate holders shall use TIDs with unique serial numbers on locked secure weapons containers containing enhanced weapons.

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

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

(p) *Stolen or lost enhanced weapons.* (1) Licensees and certificate holders that discover any enhanced weapons they are authorized to possess under this section are stolen or lost shall notify the NRC and local law enforcement officials in accordance with § 73.71.

(2) Licensees and certificate holders that discover any enhanced weapons they are authorized to possess under this section are stolen or lost are required to notify ATF in accordance with ATF's regulations.

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

(2) Licensees and certificate holders shall maintain the following minimum records regarding the receipt of each enhanced weapon, including –

(i) Date of receipt of the weapon;

(ii) Name and address of the transferor who transferred the weapon to the licensee or certificate holder;

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

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

(3) Licensees and certificate holders shall maintain the following minimum records regarding the transfer of each enhanced weapon, including –

(i) Date of shipment of the weapon;

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

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

(4) Licensees and certificate holders shall maintain the following minimum records regarding the transportation of each enhanced weapon away from the licensee's or certificate holder's facility, including –

(i) Date of departure of the weapon;

(ii) Date of return of the weapon;

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

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

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

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

(vii) The model, serial number, type, and caliber or gauge of the weapon.

(5) Licensees and certificate holders shall document in these records the discovery that any enhanced weapons they are authorized to possess pursuant to this section are stolen or lost.

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

(7) Licensees and certificate holders may integrate any records required by this section with records maintained by the licensee or certificate holder under ATF's regulations.

(8) Licensees and certificate holders shall make any records required by this section available to NRC and ATF inspectors or investigators upon the request of such staff.

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

(1) Licensees and certificate holders who desire to terminate their stand-alone preemption authority or combined enhanced weapons authority and preemption authority, issued under this section, shall apply to the NRC, in accordance with § 73.4, and the license amendment provisions of §§ 50.90, 70.34, or 76.45 of this chapter, as applicable, to terminate their authority. These licensees and certificate holders must have transferred or disposed of any enhanced weapons obtained under the provisions of this section prior to the NRC approval of a request for termination.

(2) Licensees and certificate holders who desire to modify their combined enhanced weapons authority and preemption authority, issued under this section, shall apply to the NRC, in accordance with § 73.4 and the license amendment provisions of §§ 50.90, 70.34, or 76.45 of this chapter, as applicable, to modify their authority. Licensee and certificate holder applications to modify their enhanced weapons authority shall provide the information required under paragraphs (e) and (f) of this section.

(i) Licensees and certificate holders replacing their enhanced weapons with different types or models of enhanced weapons must include a plan to transfer or dispose of their existing enhanced weapons once the new weapons are deployed.

(ii) Licensees and certificate holders adding additional numbers, models, or types of enhanced weapons do not require a transfer or disposal plan.

(3) Licensees and certificate holders must transfer any enhanced weapons that they are no longer authorized to lawfully possess under this section in accordance with the provisions of paragraph (m) of this section. Licensees and certificate holders must dispose of any enhanced weapons to –

(i) A Federal, State, or local government entity authorized to possess enhanced weapons under applicable law and ATF regulations;

(ii) A federal firearms licensee authorized to receive the enhanced weapons under applicable law and ATF regulations; or

(iii) Another NRC licensee or certificate holder subject to this section that is authorized to receive and possess these specific types of enhanced weapons.

(iv) Alternatively, licensees and certificate holders may also abandon any enhanced weapons to ATF for destruction.

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

(5) The NRC will notify ATF within three business days of issuing a decision to the licensee or certificate holder that the NRC has taken action to terminate, modify, suspend, or revoke a licensee's or certificate holder's stand-alone preemption authority or combined enhanced weapons authority and preemption authority issued under this section of the NRC's action. The NRC shall make such notifications to the position or point of contact designated by ATF.

(6) The Commission may revoke, suspend, or modify, in whole or in part, any approval issued under this section for any material false statement in the application or in the supplemental or other statement of fact required of the applicant; or because of conditions revealed by the application or statement of fact of any report, record, inspection, or other means which would warrant the Commission to refuse to grant approval of an original application; or for violation of, or for failure to observe, any of the terms and provisions of the act, regulations, license, permit, approval, or order of the Commission.

5. Section 73.19 is added to read as follows:

§ 73.19 Firearms background checks for armed security personnel.

(a) *Purpose.* This section presents the requirements for completion of firearms background checks at 42 U.S.C. 2201a for security personnel whose official duties require access to covered weapons at Commission-designated classes of facilities, radioactive material, or other property. Firearms background checks are intended to verify that such armed security personnel are not prohibited from receiving, possessing, transporting, importing, or using firearms under applicable Federal or State law, including 18 U.S.C. 922(g) and (n).

(b) *General Requirements.* (1) Licensees and certificate holders who fall within the classes of facilities, radioactive material, or other property listed in paragraph (c) of this section and who use covered weapons as part of their protective strategy shall ensure that a satisfactory firearms background check has been completed for all security personnel requiring, access to covered weapons as part of their official duties in protecting such facilities, radioactive material, or other property and for all security personnel who inventory enhanced weapons.

(2) The provisions of this section apply to all security personnel of the licensees or certificate holders whose duties require access to covered weapons, whether employed by the licensee or certificate holder, or a security contractor who provides security services to the licensee or certificate holder.

(3) By **[insert 30 days after the effective date of the final rule]** licensees and certificate holders specified in paragraph (c) of this section shall commence firearms background checks of all security personnel whose duties require, or will require, access to covered weapons.

(4) By **[insert 180 days after effective date of the final rule]** licensees and certificate holders specified in paragraph (c) of this section shall –

(i) Remove from duty any existing security personnel whose duties require access to covered weapons, unless the individual has completed a satisfactory firearms background check per this section; and

(ii) Not assign any security personnel to duties that require access to covered weapons, unless the individual has completed a satisfactory firearms background check per this section; and

(iii) Not permit any security personnel access to covered weapons, unless the individual has completed a satisfactory firearms background check per this section.

(5) After **[insert 30 days after the effective date of the final rule]** licensees and certificate holders specified in paragraph (c) of this section must remove any security personnel who receive a “denied” NICS response from duties requiring access to covered weapons.

(6) Within the 180-day transition period specified in paragraph (b)(4) of this section, affected licensees and certificate holders that currently possess enhanced weapons under an authority other than 42 U.S.C. 2201a must remove any security personnel who receive a “delayed” NICS response from duties requiring access to enhanced weapons.

(7) After the **[insert effective date of the final rule]**, any applicants for a license or a certificate of compliance within the classes of facilities, radioactive material, or other property specified in paragraph (c) of this section and who plan to use covered weapons as part of their protective strategy shall complete satisfactory firearms background checks of their security personnel who will require access to covered weapons as follows –

(i) Licensees and certificate holders may not commence these firearms background checks until after the NRC has issued their license or certificate of compliance.

(ii) Licensees and certificate holders shall complete satisfactory firearms background checks for applicable security personnel before those personnel are permitted access to covered weapons.

(iii) Licensees and certificate holders shall complete satisfactory firearms background checks for applicable security personnel before the licensee's or certificate holder's initial receipt of any source material, special nuclear material, or radioactive material specified under the license or certificate of compliance.

(8) Licensees and certificate holders may return to duties requiring access to covered weapons any individual who has received an adverse firearms background check after the individual completes a satisfactory firearms background check.

(9) Security personnel who have completed a satisfactory firearms background check, but who have had a break in service with the licensee, certificate holder, or their security contractor of greater than one week subsequent to their most recent firearms background check, or who have transferred from a different licensee or certificate holder (even though the other licensee or certificate holder completed a satisfactory firearms background check on these individuals within the last three years), are required to complete a new satisfactory firearms background check.

(10) A change in the licensee, certificate holder, or ownership of a facility, radioactive material, or other property designated under paragraph (c) of this section, 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 who require access to covered weapons.

(11) Firearms background checks are not a substitute for any other background checks or investigations required for the licensee's or certificate holder's personnel under this chapter

(12) Security personnel who have completed a satisfactory firearms background check under Commission orders issued before the NRC issues a final rule designating classes of facilities, radioactive material, or other property under paragraph (c) of this section are not subject to a new initial firearms background check under this section. However, security personnel are subject to the periodic firearms background check requirement of paragraph (f) of this section.

(c) *Applicability.* For the purposes of firearms background checks, the following classes of facilities, radioactive material, or other property are designated by the Commission at 42 U.S.C. 2201a –

(1) Power reactor facilities; and

(2) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level less than or equal to 1 Gray (Gy) (100 Rad) per hour at a distance of 1 meter (3.28 ft), without regard to any intervening shielding.

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

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

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

(e) *Firearms background check submittals.* (1) Licensees and certificate holders shall submit to the NRC, in accordance with § 73.4, for all security personnel requiring a firearms background check under this section -

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

(ii) A completed NRC Form 754.

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

(3) Licensees and certificate holders submitting via an electronic method an individual NRC Form 754 or consolidated data from multiple NRC Forms 754 to the NRC shall ensure that any personal identity information contained within these documents is protected in accordance with § 73.4.

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

(f) *Periodic firearms background checks.* (1) Licensees and certificate holders shall also complete a satisfactory firearms background check at least once every three calendar years to continue the security personnel's access to covered weapons.

(2) Licensees and certificate holders may conduct these periodic firearms background checks at an interval of less than once every three calendar years, at their discretion.

(3)(i) Licensees and certificate holders must submit the information specified in paragraph (f) of this section within three calendar years of the individual's most recent satisfactory firearms background check.

(ii) Licensees and certificate holders may continue the security personnel's access to covered weapons pending completion of the firearms background check.

(4) Licensees and certificate holders shall remove from duties requiring access to covered weapons any individual who receives an adverse firearms background check.

(5) Licensees and certificate holders may return individuals who have received an adverse firearms background check to duties requiring access to covered weapons, if the individual subsequently completes a satisfactory firearms background check.

(g) *Notification of removal.* Licensees and certificate holders shall telephonically notify the NRC Headquarters Operations Center at the phone numbers specified in Table 1 of Appendix A of this part within 72 hours after removing a security officer from duties requiring access to covered weapons due to the discovery of any disqualifying status or the occurrence of any disqualifying event. However, this requirement does not apply if the removal was due to the prompt notification of the licensee or certificate holder by the security individual under paragraph (h) of this section.

(h) *Security personnel responsibilities.* Security personnel assigned duties requiring access to covered weapons shall notify their employing licensee's or certificate holder's security management within three working days (whether directly employed by the licensee or certificate holder or employed by a security contractor providing security services to the licensee or certificate holder) of the existence of any disqualifying status or upon the occurrence of any disqualifying events listed at 18 U.S.C. 922(g) or (n), and the ATF's implementing regulations in 27 CFR part 478 that would prohibit them from possessing or receiving firearms or ammunition.

(i) (Reserved).

(j) *Training on disqualifying events.* Licensees and certificate holders shall include within their NRC-approved security training and qualification plans instructions on –

(1) Disqualifying status or events specified in 18 U.S.C. 922(g) and (n), and the ATF's implementing regulations in 27 CFR part 478 (including any applicable definitions) identifying categories of persons who are prohibited from possessing or receiving any firearms or ammunition; and

(2) The continuing responsibility of security personnel assigned duties that require access to covered weapons to promptly notify their employing licensee or certificate holder of the occurrence of any disqualifying event.

(k) *Procedures for processing fingerprint checks.* (1) Licensees and certificate holders, using an appropriate method listed in § 73.4, shall submit one completed, legible standard fingerprint card (FBI Form FD-258, ORIMDNRCOOOZ) or, where practicable, other electronic fingerprint record for each individual requiring a firearms background check, to the NRC's Director, Division of Facilities and Security, Mail Stop T6-E46, ATTN: Criminal History Check. Copies of this form may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling (301) 415-7232, or by e-mail to Forms.Resource@nrc.gov.

(2) Licensees and certificate holders shall indicate on the fingerprint card or other electronic fingerprint record that the purpose for this fingerprint check is the accomplishment of a firearms background check for personnel whose duties require, or will require, access to covered weapons. Licensees and certificate holders shall add the following information to the FBI Form FD-258 fingerprint card or electronic fingerprint records submitted to the NRC:

(i) For fingerprints submitted to the NRC for the completion of a firearms background check only, the licensee or certificate holder will enter the terms "MDNRCNICZ" in the "ORI" field and "Firearms" in the "Reasons Fingerprinted" field of the FBI Form FD-258.

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

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

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

(5) The Commission will forward to the submitting licensee or certificate holder all data received from the FBI as a result of the licensee's or certificate holder's application(s) for fingerprint background checks, including the FBI's fingerprint record. For a firearms background check by itself, the FBI will only provide the "proceed," "delayed," or "denied" responses and will not provide the FBI's fingerprint record.

(l) (Reserved).

(m) *Fees.* (1) Fees for the processing of firearms background checks are due upon application. The fee for the processing of a firearms background check consists of a fingerprint fee and a NICS check fee. Licensees and certificate holders shall submit payment with the application for the processing of fingerprints, and payment must be made by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. Nuclear Regulatory Commission" Combined payment for multiple applications is acceptable.

The Commission publishes the amount of the firearms background check application fee on the NRC's public Web site.⁴ The Commission will directly notify licensees and certificate holders who are subject to this regulation of any fee changes.

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

(3) The application fee for the processing of NICS checks is an administrative processing fee assessed by the NRC. The FBI does not charge a fee for processing NICS checks.

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

(2) The submitting licensee or certificate holder shall provide these results to the individual who completed the NRC Form 754.

(o) *Reporting violations of law.* The NRC will promptly report suspected violations of Federal law to the appropriate Federal agency or suspected violations of State law to the appropriate State agenc

² For information on the current fee amount, go to the Electronic Submittals page at <http://www.nrc.gov/site-help/e-submittals.html>, and see the link for Firearms Background Checks under Electronic Submission Systems.

(p) Appeals and resolution of erroneous system information.

(1) Individuals who require a firearms background check under this section and who receive a "denied" or a "delayed" NICS response may not be assigned duties requiring access to covered weapons, except as provided under paragraph (b) of this section, during the pendency of an appeal of the results of the check or during the pendency of providing and evaluating any necessary additional information to the FBI to resolve the "delayed" response, respectively.

(2) Licensees and certificate holders shall provide information on the FBI's procedures for appealing a "denied" response to the denied individual or on providing additional information to the FBI to resolve a "delayed" response.

(3) An individual who receives a "denied" or "delayed" NICS response to a firearms background check under this section may request the reason for the response from the FBI. The licensee or certificate holder shall provide to the individual who has received the "denied" or "delayed" response the unique NICS transaction number associated with their specific firearms background check.

(4)(i) These requests for the reason for a "denied" or "delayed" NICS response must be made in writing, and must include the NICS transaction number. The request must be sent to the Federal Bureau of Investigation, NICS Section, Appeals Service Team, Module A-1; PO Box 4278, Clarksburg, WV 26302-9922.

(ii) The FBI will provide the individual with the reasons for the "denied" response or "delayed" response. The FBI will also indicate whether additional information or documents are required to support an appeal or resolution, for example, where there is a claim that the record in question does not pertain to the individual who received the "denied" response.

(5) If the individual wishes to challenge the accuracy of the record upon which the "denied" or "delayed" response is based, or if the individual wishes to assert that his or her rights to possess or receive a firearm have been restored by lawful process, he or she may first contact the FBI at the address stated in paragraph (p)(4)(i) of this section.

(i) The individual shall file any appeal of a "denied" response or file a request to resolve a "delayed" response within 45 calendar days of the date the NRC forwards the results of the firearms background check to the licensee or certificate holder.

(ii) Individuals appealing a "denied" response or resolving a "delayed" response are responsible for providing the FBI any additional information the FBI requires to resolve the adverse response. These individuals must supply this information to the FBI within 45 calendar days after the FBI's request is issued.

(iii) Individuals may request extensions of the time to supply the additional information requested by the FBI in support of a timely appeal or resolution request. These extension requests shall be made directly to the FBI. The FBI may grant an extension request for good cause, as determined by the FBI.

(iv) The appeal or request must include appropriate documentation or record(s) establishing the legal and/or factual basis for the challenge. Any record or document of a court or other government entity or official furnished in support of an appeal must be certified by the court or other government entity or official as a true copy.

(v) The individual may supplement their initial appeal or request – subsequent to the 45-day filing deadline – with additional information as it becomes available, for example, where obtaining a true copy of a court transcript may take longer than 45 days. The individual should note in their appeal or request any information or records that are being obtained, but are not yet available.

(6) If the individual is notified that the FBI is unable to resolve the appeal, the individual may then apply for correction of the record directly to the agency from which the information forming the basis of the denial was originated. If the individual is notified by the originating agency that additional information or documents are required, the individual may provide them to the originating agency. If the record is corrected as a result of the appeal to the originating agency, the individual may so notify the FBI and submit written proof of the correction.

(7) The failure of an individual to timely initiate an appeal or resolution request or timely provide additional information requested by the FBI will result in the barring of the individual or abandonment of the individual's appeal or resolution request.

(8) Appeals or resolution requests that are abandoned or result in debarment because of an individual's failure to comply with submission deadlines may only be pursued, at the sole discretion of a licensee or certificate holder, after the resubmission of a firearms background check request on the individual..

(9) An individual who has satisfactorily appealed a "denied" response or resolved a "delayed" response may provide written consent to the FBI to maintain information about himself or herself in a Voluntary Appeal File (VAF) to be established by the FBI and checked by the NICS for the purpose of preventing the erroneous denial or extended delay by the NICS of any future or periodic firearms background checks.

(q) *Protection of information.* (1) Each licensee or certificate holder who obtains a firearms background check and NRC Form 754 information on individuals under this section shall establish and maintain a system of files and procedures to protect the records and personal information from unauthorized disclosure.

(2) The licensee or certificate holder may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or

to those who have a need to have access to the information in performing assigned duties in the process of granting access to covered weapons. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need to know.

(3) The personal information obtained on an individual from a firearms background check may be transferred to another licensee or certificate holder—

(i) Upon the individual's written request to the licensee or certificate holder holding the data to re-disseminate the information contained in his/her file; and

(ii) Upon verification from the gaining licensee or certificate holder of information such as name, date of birth, social security number, sex, and other applicable physical characteristics for identification.

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

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

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

* * * * *

(b) * * *

(13)(i) The licensee shall ensure that the firearms background check requirements of § 73.19 of this part are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons.

(ii) For licensees who are issued a license after **[insert effective date of final rule]**, the licensee shall ensure that the firearms background check requirements of § 73.19 of this part

are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons. Additionally and notwithstanding the implementation schedule provisions of § 73.19(b), such licensees shall ensure that the firearms background check requirements of § 73.19 are satisfactorily completed within 6 months of the issuance of the license, or within 6 months of the implementation of a protective strategy that uses covered weapons, whichever is later.

* * * * *

7. In § 73.55, paragraph (b)(12) is added to read as follows:

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

* * * * *

(b) * * *

(12)(i) The licensee shall ensure that the firearms background check requirements of § 73.19 of this part are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons.

(ii) For licensees who are issued a license after **[insert effective date of final rule]**, the licensee shall ensure that the firearms background check requirements of § 73.19 of this part are met for all members of the security organization whose official duties require access to covered weapons or to inventory enhanced weapons. Additionally and notwithstanding the implementation schedule provisions of § 73.19(b), such licensees shall ensure that the firearms background check requirements of § 73.19 are satisfactorily completed within 6 months of the issuance of the license, or within 6 months of the implementation of a protective strategy that uses covered weapons, whichever is later.

* * * * *

8. Section 73.71 is revised to read as follows:

§ 73.71 Reporting and recording of safeguards events.

(a) *15-minute notifications – facilities.* Each licensee or certificate holder subject to the provisions of §§ 73.20, 73.45, 73.46, or 73.55 shall notify the NRC Headquarters Operations Center, as soon as possible but not later than 15 minutes after —

(1) The discovery of an imminent or actual hostile action against a nuclear power or production reactors or Category I SSNM facility; or

(2) The initiation of a security response in accordance with a licensee's or certificate holder's safeguards contingency plan or protective strategy, based on an imminent or actual hostile action against a nuclear power reactor or Category I SSNM facility;

(3) These notifications shall:

(i) Identify the facility name;

(ii) Include the authentication code; and

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

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

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

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

(5) The licensee or certificate holder is not required to report security responses initiated as a result of threat or warning information communicated to the licensee or certificate holder by the NRC.

(6) A licensee's or certificate holder's request for immediate local law enforcement agency (LLEA) assistance can take precedence over the notification to the NRC.

(b) *15-minute notifications – shipments.* Each licensee or certificate holder subject to the provisions of §§ 73.20, 73.25, 73.26, or 73.37 shall notify the NRC Headquarters Operations Center or make provisions to notify the NRC Headquarters Operations Center, as soon as possible but not later than 15 minutes after —

(1) The discovery of actual or attempted acts of sabotage against shipments of spent nuclear fuel or high-level radioactive waste;

(2) The discovery of an actual or attempted act of sabotage or of theft against shipments of strategic special nuclear material; or

(3) The initiation of a security response in accordance with a licensee's or certificate holder's safeguards contingency plan or protective strategy, based on an imminent or actual hostile action against a shipment of spent nuclear fuel, high-level radioactive waste, or strategic special nuclear material.

(4) These notifications shall:

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

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

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

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

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

(6) The licensee or certificate holder is not required to report security responses initiated as a result of threat or warning information communicated to the licensee or certificate holder by the NRC.

(7) A licensee's or certificate holder's request for immediate LLEA assistance can take precedence over the notification to the NRC.

(c) *One-hour notifications – facilities.* (1) Each licensee or certificate holder subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.60, or 73.67 shall notify the NRC Headquarters Operations Center within one hour after discovery of the facility safeguards events described in paragraph I of Appendix G to this part.

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

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

(d) *One-hour notifications - shipments.* (1) Each licensee or certificate holder subject to the provisions of §§ 73.25, 73.26, 73.27, 73.37, and 73.67 shall notify the NRC Headquarters Operations Center within one hour after discovery of the transportation safeguards events described in paragraph I of Appendix G to this part.

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

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

(e) *Four-hour notifications – facilities.* (1) Each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.60, or 73.67 shall notify the NRC Headquarters Operations Center, as soon as possible but not later than four hours after discovery of the safeguards events described in paragraph II of Appendix G to this part.

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

(f) *Eight-hour notifications – facilities.* (1) Each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.60, or 73.67 shall notify the NRC Headquarters Operations Center, as soon as possible but not later than eight hours after discovery of the safeguards events described in paragraph III of Appendix G to this part.

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

(g) *Enhanced weapons – stolen or lost.* (1) Each licensee or certificate holder possessing enhanced weapons in accordance with the provisions of § 73.18 shall —

(i) Notify the NRC Headquarters Operations Center, as soon as possible but not later than one hour after the discovery of any stolen or lost enhanced weapons possessed by the licensee or certificate holder. This notification applies to enhanced weapons that were stolen or lost from within a licensee's or certificate holder's protected area, vital area, or material access area.

(ii) Notify the NRC Headquarters Operations Center, as soon as possible but not later than four hours subsequent to the notification of the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) of the discovery of any stolen or lost enhanced weapons possessed by the licensee or certificate holder. This notification applies to enhanced weapons that were stolen or lost from outside of the licensee's or certificate holder's protected area, vital area, or material access area.

(iii) Notify the appropriate local law enforcement officials, as soon as possible but not later than 48 hours of the discovery of stolen or lost enhanced weapons. These notifications must be made by telephone to the appropriate local law enforcement officials. Licensees and certificate holders shall identify the appropriate local law enforcement officials for these

notifications and include their contact phone number(s) in written procedures

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

(3) Independent of the requirements of this section, licensees and certificate holders possessing enhanced weapons in accordance with § 73.18 also have an obligation under ATF's regulations to immediately upon discovery notify ATF of any stolen or lost enhanced weapons (see 27 CFR 479.141).

(h) *Enhanced weapons – adverse ATF findings.* (1) Each licensee or certificate holder possessing enhanced weapons in accordance with § 73.18 shall —

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

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

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

(i) (Reserved).

(j) *Notification process.* (1) Each licensee and certificate holder shall make the telephonic notifications required by paragraphs (a), (b), (c), (d), (e), (f), (g), and (h) of this section to the NRC Headquarters Operations Center via any available telephone system. Commercial telephone numbers for the NRC Headquarters Operations Center are specified in Table 1 of Appendix A of this part.

(2) Licensees and certificate holders shall make required telephonic notifications via any

method that will ensure that a report is received by the NRC Headquarters Operations Center or other specified government officials within the timeliness requirements of paragraphs (a), (b), (c), (d), (e), (f), (g), and (h) of this section, as applicable.

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

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

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

(iii) Licensees and certificate holders using a non-secure communications capability may be directed by the NRC Emergency Response management to provide classified information to the NRC over the non-secure system, due to the significance of the ongoing security event. In such circumstances, the licensee or certificate holder shall document this direction and any

information provided to the NRC over a non-secure communications capability in the follow-up written report required in accordance with paragraph (m) of this section.

(5)(i) For events reported under paragraph (a) of this section, the NRC may request that the licensee or certificate holder maintain an open and continuous communication channel with the NRC Headquarters Operations Center as soon as possible. Licensees and certificate holders shall establish the requested continuous communication channel once the licensee or certificate holder has completed other required notifications under this section, § 50.72 of this chapter, Appendix E of part 50 of this chapter, or § 70.50 of this chapter; or completed any immediate actions required to stabilize the plant, to place the plant in a safe condition, to implement defensive measures, or to request assistance from the LLEA:

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

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

(6)(i) For events reported under paragraph (b) of this section, the NRC may request that the licensee or certificate holder maintain an open and continuous communication channel with the NRC Headquarters Operations Center as soon as possible. Licensees and certificate holders shall establish the requested continuous communication channel once the licensee or certificate holder has completed other required notifications under this section, § 50.72 of this chapter, Appendix E of part 50 of this chapter, or § 70.50 of this chapter; or requested assistance from the LLEA:

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

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

(7) For events reported under paragraphs (c), (d), (e), (f), (g), and (h) of this section, the NRC may request that the licensee or certificate holder maintain an open and continuous communication channel with the NRC Headquarters Operations Center.

(8) Licensees and certificate holders desiring to retract a previous security event report that has been determined to be invalid shall telephonically notify the NRC Headquarters Operations Center in accordance with paragraph (j) of this section and shall indicate the report being retracted and basis for the retraction.

(k) *Safeguards event log.* Each licensee or certificate holder subject to the provisions of §§ 73.20, 73.25, 73.26, 73.37, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.60, or 73.67 shall maintain a safeguards event log.

(1) The licensee or certificate holder shall record the facility-based or transportation-based events described in paragraph IV of Appendix G of this part within 24 hours of discovery in the safeguards event log.

(2) The licensee or certificate holder shall retain the safeguards event log as a record for three years after the last entry is made in each log or until the termination of the license or certificate of compliance.

(l) (Reserved).

(m) *Written reports.* (1) Each licensee or certificate holder making an initial telephonic notification under paragraphs (a), (b), (c), (d), (e), (f), and (g) of this section shall also submit a written follow-up report to the NRC within 60 days of the telephonic notification, in accordance with § 73.4.

(2) Licenses and certificate holders are not required to submit a written report following a telephonic notification made under paragraphs (g) and (h) of this section.

(3) Licenses and certificate holders are not required to submit a written report following a telephonic notification made under paragraph (j) of this section involving suspicious event or law enforcement interaction specified in paragraphs II(a), II(c), or II(d) of Appendix G.

(4) Each licensee and certificate holder shall submit to the Commission written reports that are of a quality that will permit legible reproduction and processing.

(5) Licensees subject to § 50.73 of this chapter shall prepare the written report on NRC Form 366.

(6) Licensees and certificate holders not subject to § 50.73 of this chapter shall prepare the written report in letter format.

(7) In addition to the addressees specified in § 73.4, the licensee or certificate holder shall also provide one copy of the written report addressed to the Director, Office of Nuclear Security and Incident Response (NSIR). The copy of a classified written report to the Director, NSIR, shall be provided to the NRC headquarters' classified mailing address specified in Table 2 of Appendix A to this part or in accordance with paragraph IV of Appendix A to this part.

(8) The report must include sufficient information for NRC analysis and evaluation.

(9) Significant supplemental information which becomes available after the initial telephonic notification to the NRC Headquarters Operations Center or after the submission of

the written report must be telephonically reported to the NRC Headquarters Operations Center under paragraph (j) of this section and also submitted in a revised written report (with the revisions indicated) as required under paragraph (m) of this section.

(10) Errors discovered in a written report must be corrected in a revised written report with the revisions indicated.

(11) The revised written report must replace the previous written report; the update must be complete and not be limited to only supplementary or revised information.

(12) Each licensee and certificate holder shall maintain a copy of the written report of an event submitted under this section as a record for a period of three years from the date of the report or until termination of the license or the certificate of compliance.

(13)(i) If the licensee or certificate holder subsequently retracts a telephonic notification made under this section as invalid and has not yet submitted a written report required by paragraph (m) of this section, then submission of a written report is not required.

(ii) If the licensee or certificate holder subsequently retracts a telephonic notification made under this section as invalid, after it has submitted a written report required by paragraph (m) of this section, then the licensee or certificate holder shall submit a revised written report in accordance with paragraph (m) of this section.

(14) Each written report containing Safeguards Information or classified information must be created, stored, marked, labeled, handled and transmitted to the NRC in accordance with the requirements of §§ 73.21 and 73.22 of this part or with Part 95 of this chapter, as applicable.

(n) *Declaration of emergencies.* Notifications made to the NRC for the declaration of an emergency class shall be performed in accordance with §§ 50.72, 70.50, 72.75, and 76.120 of this chapter, as applicable.

(o) *Elimination of duplication.* Separate notifications and reports are not required for events that are also reportable in accordance with §§ 50.72, 50.73, 70.50, 72.75, and 76.120 of this chapter. However, these notifications should also indicate the applicable § 73.71 reporting criteria.

9. In appendix A to Part 73, a heading is added for Table 1, the first row in Table 1 is revised, the heading for Table 2 is revised, and paragraphs III and IV are added to read as follows:

APPENDIX A TO PART 73—U.S. NUCLEAR REGULATORY COMMISSION OFFICES AND CLASSIFIED MAILING ADDRESSES.

Table 1 — Mailing Addresses, Telephone Numbers, and E-mail Addresses

	Address	Telephone (24 hour)	E-Mail
NRC Headquarters Operations Center	USNRC, Division of Preparedness and Response, Washington, DC 20555-0001	(301) 816-5100, and (301) 816-5151 (fax)	Hoo.Hoc@nrc.gov Hoo.Hoc@usnrc.sgov.gov (secure)

* * * * *

Table 2 — Classified Mailing Addresses

* * * * *

III. Classified telephone calls must be made to the telephone numbers for the NRC Headquarters Operations Center in Table 1 of this appendix and the caller shall request transfer to a secure telephone to convey the classified information.

IV. Classified e-mails must be sent to the secure e-mail address specified in Table 1 of this appendix.

10. In appendix B to Part 73, the heading for section I.A in the Table of Contents and section I.A are revised to read as follows:

Appendix B to Part 73 — General Criteria for Security Personnel.

* * * * *

I. * *

A. Employment suitability.

* * * * *

I. Employment suitability and qualification.

A. Employment suitability.

1. Suitability.

(a) Before employment, or assignment to the security organization, an individual shall:

(1) Possess a high school diploma or pass an equivalent performance examination designed to measure basic mathematical, language, and reasoning skills, abilities, and knowledge required to perform security duties and responsibilities;

(2) Have attained the age of 21 for an armed capacity or the age of 18 for an unarmed capacity; and

(3) Not have any felony convictions that reflect on the individual's reliability.

(4) Individuals in an armed capacity would not be disqualified from possessing or using firearms or ammunition in accordance with applicable state or Federal law, to include 18 U.S.C. 922. Licensees shall use information that has been obtained during the completion of the individual's background investigation for unescorted access to determine suitability.

Satisfactory completion of a firearms background check for the individual under § 73.19 of this part will also fulfill this requirement.

(b) The qualification of each individual to perform assigned duties and responsibilities must be documented by a qualified training instructor and attested to by a security supervisor.

* * * * *

11. Appendix G to Part 73 is revised to read as follows:

APPENDIX G TO PART 73 — REPORTABLE AND RECORDABLE SAFEGUARDS EVENTS.

Under the provisions of § 73.71(c), (e), and (j), licensees and certificate holders subject to the provisions of §§ 73.20, 73.45, 73.46, 73.54, and 73.55 of this part shall telephonically report the safeguards events specified under paragraphs I, II, and III of this appendix. Under the provisions of § 73.71(c), (d), and (j), licensees and certificate holders subject to the provisions of §§ 73.25, 73.26, 73.27, 73.37, 73.50, 73.51, 73.60, and 73.67 of this part shall telephonically report the safeguards events specified under paragraphs I and III of this appendix. Licensees and certificate holders shall make such telephonic reports to the Commission in accordance with the provisions of § 73.71 and appendix A to this part.

Under the provisions of § 73.71(k), licensees and certificate holders subject to the provisions of §§ 73.20, 73.25, 73.26, 73.37, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.60, and 73.67 of this part shall record in a safeguards event log the safeguards events specified under paragraph IV of this appendix. Licensees and certificate holders shall record these events in accordance with the provisions of § 73.71.

I. Events to be reported within one hour of discovery.

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

- (1) A theft or diversion of special nuclear material;
- (2) Significant physical damage to any nuclear reactor or facility possessing or using Category I strategic special nuclear material;
- (3) Significant physical damage to any vehicle transporting special nuclear material, spent nuclear fuel, or high-level radioactive waste; or to the special nuclear material, spent nuclear fuel, or high-level radioactive waste itself;

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

(5) The unauthorized operation, manipulation, or tampering with any Category I strategic special nuclear material (SSNM) facility's controls or SSCs that results in the interruption of normal operation of the facility.

(b) *Unauthorized entry events.*

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

(2) An actual entry of an unauthorized person into a transport vehicle.

(3) An attempted entry of an unauthorized person with malevolent intent into a PA, VA, MAA, or CAA.

(4) An attempted entry of an unauthorized person with malevolent intent into a vehicle transporting special nuclear material, spent nuclear fuel, or high-level radioactive waste; or to the fresh nuclear fuel, spent nuclear fuel, or high-level radioactive waste itself.

(c) *Contraband events.*

(1) The actual introduction of contraband into a PA, VA, MAA, or CAA.

(2) The actual introduction of contraband into a transport.

(3) An attempted introduction of contraband by a person with malevolent intent into a PA, VA, MAA, or CAA.

(4) An attempted introduction of contraband by a person with malevolent intent into a vehicle transporting special nuclear material, spent nuclear fuel, or high-level radioactive waste; or to the fresh nuclear fuel, spent nuclear fuel, or high-level radioactive waste itself.

(d) *Authorized weapon events.*

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

(2) Uncontrolled authorized weapons means weapons that are authorized by the licensee's or certificate holder's security plan and are not in the possession of authorized personnel or are not in an authorized weapons storage location.

(e) *Vehicle barrier system events.* For licensees and certificate holders with a vehicle barrier system protecting their facility, the actual or attempted introduction of explosives or incendiaries beyond the vehicle barrier.

(f) *Uncompensated security events.* Any failure, degradation, or the discovered vulnerability in a safeguard system, for which compensatory measures have not been employed, that could allow unauthorized or undetected access of—

- (1) Explosives or incendiaries beyond a vehicle barrier;
- (2) Personnel or contraband into a PA, VA, MAA, or CAA; or
- (3) Personnel or contraband into a vehicle transporting special nuclear material, spent nuclear fuel, or high-level radioactive waste; or to the fresh nuclear fuel, spent nuclear fuel, or high-level radioactive waste itself.

(g) *Lost shipments of nuclear or radioactive material.*

(1) The discovery of the loss of a shipment of Category I SSNM, Category II and III special nuclear material, spent nuclear fuel, or high-level radioactive waste.

(2) The recovery of or accounting for a lost shipment.

(h) *Cyber security events.*

(1) Any event in which there is reason to believe that a person has committed or caused, or attempted to cause, or has made a threat to commit or cause, an act to modify, destroy, or compromise any systems, networks, or equipment that falls within the scope of § 73.54 of this part.

(2) Uncompensated cyber security events. Any failure, degradation, or the discovered vulnerability in systems, networks, and equipment that falls within the scope of § 73.54 of this part, for which compensatory measures have not been employed and that could allow unauthorized or undetected access into such systems, networks, or equipment.

(i) [Reserved]

(j) *Loss or theft of classified information.* The discovery of the loss or theft of classified material (e.g., documents, drawings, analyses, or data) that contains either National Security Information or Restricted Data.

(k) *Loss or theft of Safeguards Information.* The discovery of the loss or theft of material (e.g., documents, drawings, analyses, or data) that contains Safeguards Information –

(1) Provided that such material could substantially assist an adversary in the circumvention of the facility or transport security or protective systems or strategies; or

(2) Provided that such material is lost or stolen in a manner that could allow a significant opportunity for the compromise of the Safeguards Information.

II. *Events to be reported within four hours of discovery.*

(a) *Suspicious events.* Any information received by the licensee of suspicious or surveillance activities or attempts at access, including:

(1) Any event or incident involving suspicious activity that may be indicative of potential pre-operational surveillance, reconnaissance, or intelligence-gathering activities directed against the facility. This type of activity may include, but is not limited to—

(A) Attempted surveillance or reconnaissance activity. Commercial or military aircraft activity considered routine or non-threatening by the licensee or certificate holder is not required to be reported;

(B) Elicitation of information from facility personnel relating to the security or safe operation of the facility; or

(C) Challenges to security systems (e.g., willful failure to stop for security checkpoints, possible tests of security response and security screening equipment, or suspicious entry of watercraft into posted off-limits areas).

(2) Any event or incident involving suspicious aircraft activity over or in close proximity to the facility. Commercial or military aircraft activity considered routine or non-threatening by the licensee or certificate holder is not required to be reported.

(b) *Unauthorized operation or tampering events.* An event involving—

The unauthorized operation, manipulation, or tampering of any nuclear reactor's or Category I SSNM facility's SSCs that could prevent the implementation of the licensee's or certificate holder's protective strategy for protecting any target set.

(c) *Suspicious cyber security events.*

(1) Any information received or collected by the licensee or certificate holder of suspicious activity that may be indicative of tampering, malicious or unauthorized access, use, operation, manipulation, modification, potential destruction, or compromise of the systems, networks, and equipment that falls within the scope of § 73.54 of this part, or the security measures that could weaken or disable the protection for such systems, networks, or equipment.

(2) An attempted but unsuccessful cyber attack or event that could have caused significant degradation to any systems, networks, or equipment that falls within the scope of § 73.54 of this part.

(d) *Law enforcement interactions.* (1) An event related to the licensee's or certificate holder's implementation of their security program for which a notification was made to local, State, or Federal law enforcement officials and that does not otherwise require a notification under paragraph I or the other provisions of paragraph II of this appendix.

(2) An event involving a law enforcement response to the facility which could reasonably be expected to result in public or media inquiries and that does not otherwise require a notification under paragraphs I or the other provisions of paragraph II of this appendix.

III. *Events to be reported within eight hours of discovery.*

Unauthorized operation or tampering events. An event involving—

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

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

(3) The tampering, malicious or unauthorized access, use, operation, manipulation, or modification of any security measures associated with systems, networks, and equipment that falls within the scope of § 73.54 of this part, that does not result in the interruption of the normal operation of such systems, networks, or equipment.

IV. *Events to be recorded in the safeguards event log within 24 hours of discovery.*

(a) *Compensated security events.* Any failure, degradation, or discovered vulnerability in a safeguards system, had compensatory measures not been established, that could have—

(1) Allowed unauthorized or undetected access of—

- (i) Explosives or incendiaries beyond a vehicle barrier;
- (ii) Personnel or contraband into a PA, VA, MAA, or CAA; or
- (iii) Personnel or contraband into a vehicle transporting special nuclear material, spent nuclear fuel, or high-level radioactive waste; or to the special nuclear material, spent nuclear fuel, or high-level radioactive waste itself.

(2) Degrade the effectiveness of the licensee's or certificate holder's cyber security program or allow unauthorized or undetected access to any systems, networks, or equipment that fall within the scope of § 73.54 of this part. Decreases in the effectiveness of the cyber security program include any other threatened, attempted, or committed act not previously defined in this appendix that has resulted in or has the potential for decreasing the effectiveness of the cyber security program in a licensee's or certificate holder's NRC-approved cyber security plan.

(b) Ammunition events.

(1) A discovery that ammunition that is authorized by the licensee's security plan has been lost or uncontrolled inside a PA, VA, MAA, or CAA.

(2) A discovery that unauthorized ammunition is inside a PA, VA, MAA, or CAA.

(3)(i) Uncontrolled authorized ammunition means ammunition authorized by the licensee's or certificate holder's security plan or contingency response plan that is not in the possession of authorized personnel or is not in an authorized ammunition storage location.

(ii) Uncontrolled unauthorized ammunition means ammunition that is not authorized by the licensee's or certificate holder's security plan or contingency response plan.

(iii) Ammunition in the possession of law-enforcement personnel performing official duties inside a PA, VA, MAA, or CAA is considered controlled and authorized.

(4) The discovery of lost or uncontrolled authorized or unauthorized ammunition under circumstances that indicate the potential for malevolent intent shall be reported under paragraph I(f) of this appendix.

(c) *Loss of control or protection of classified information.* A discovery that a loss of control over, or protection of, classified material containing National Security Information or Restricted Data has occurred, provided –

(1) there does not appear to be evidence of theft or compromise of the material, and

(2) the material is recovered or secured within one hour of the loss of control or protection.

(d) *Loss of control or protection of Safeguards Information.* A discovery that a loss of control over, or protection of, classified material containing Safeguards Information has occurred, provided –

(1) there does not appear to be evidence of theft or compromise of the material, and

(2) the material is recovered or secured within one hour of the loss of control or protection; or

(3) the material would not have allowed unauthorized or undetected access to facility or transport contingency response procedures or strategies.

(e) *Decreases in the effectiveness of the physical security program or the cyber security program.* Any other threatened, attempted, or committed act not previously defined in this appendix that has resulted in or has the potential for decreasing the effectiveness of the licensee's or certificate holder's physical security program or cyber security program below that

committed to in a licensee's or certificate holder's NRC-approved physical security plan or cyber security plan.

(f) *Non duplication.* Events reported under paragraphs I, II, or III of this appendix are not required to be recorded under the safeguards event log.

Dated at Rockville, Maryland, this _____ day of _____ 2010.

For the Nuclear Regulatory Commission.

R. W. Borchardt,
Executive Director for Operations.

