



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 9, 2015

SECRETARY

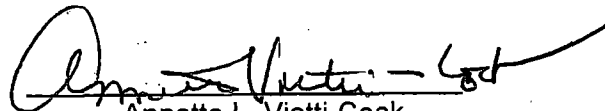
COMMISSION VOTING RECORD

DECISION ITEM: SECY-15-0036

TITLE: SUPPLEMENTAL PROPOSED RULE: ENHANCED
WEAPONS, FIREARMS BACKGROUND CHECKS, AND
SECURITY EVENT NOTIFICATIONS (10 CFR PART 73; RIN-
3150-A149)

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of July 9, 2015.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.


Annette L. Vietti-Cook
Secretary of the Commission

Enclosures:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Burns
Commissioner Svinicki
Commissioner Ostendorff
Commissioner Barán
OGC
EDO
PDR

VOTING SUMMARY - SECY-15-0036

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. BURNS	X				X	6/17/15
COMR. SVINICKI	X				X	6/18/15
COMR. OSTENDORFF	X				X	4/7/15
COMR. BARAN	X				X	6/16/15

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Burns

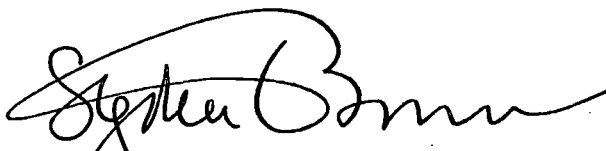
SUBJECT: SECY-15-0036: Supplemental Proposed Rule:
Enhanced Weapons, Firearms Background Checks,
and Security Event Notifications (10 CFR Part 73, RIN-
3150-A149)

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below X Attached X None

I approve publication of the supplemental proposed rule in the *Federal Register*, subject to the attached edits. I certify that this supplemental proposed rule, if issued in final form, would not have a significant economic impact on a substantial number of small entities.



SIGNATURE

17 June 2015

DATE

Entered on "STARS" Yes ✓ No

SGB edits - conforming changes should be made to the Regulatory Analysis and to associated guidance documents to reflect edits to the FRN. [7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC-2011-0015; NRC-2011-0018]

RIN 3150-AI49

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

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplemental proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations that would implement its authority under Section 161A of the Atomic Energy Act of 1954, as amended (AEA), to permit NRC licensees and certificate holders to apply for preemption authority and enhanced weapons authority, and conduct associated firearms background checks. The NRC proposed new regulations on February 3, 2011, that would implement its authority under Section 161A. On January 10, 2013, the NRC proposed to further revise the regulations to include at-reactor independent spent fuel storage installations (ISFSI) as a class of designated facilities. The NRC is now proposing to further revise the proposed rule language that addresses the voluntary application for enhanced weapons authority, preemption authority, and the mandatory firearms background checks under Section 161A.

II. Background.

A.J. Section 161A of the AEA.

On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (EPAct), Pub. L. 109-58, 119 Stat. 594 (2005). Section 653 of the EPAct 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 authority to permit a licensee's or certificate holder's security personnel to transfer, receive, possess, transport, import, and use weapons, devices, ammunition, or other firearms, notwithstanding State, local, and certain Federal firearms laws (and implementing regulations) that may prohibit or restrict these actions.

Section 161A requires the Commission to designate the classes of facilities, radioactive material, and other property eligible to apply for preemption authority or enhanced weapon authority. Section 161A also mandates that all security personnel that receive, possess, transport, import, or use a weapon, ammunition, or a device otherwise prohibited by State, local, or certain Federal laws, including regulations, as provided by Section 161A.b. (42 U.S.C. 2201a(b)), shall be subject to a fingerprint-based background check by the U.S. Attorney General and a firearms background check against the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS).

B.J. The Firearms Guidelines – Implementation of Section 161A of the AEA.

Section 161A.d. of the AEA provides that the Commission shall, with the approval of the Attorney General, develop and promulgate guidelines for the implementation of this statute. On September 11, 2009, the NRC, with the approval of the Attorney General, published Firearms Guidelines in the *Federal Register* (74 FR 46800). These guidelines allow NRC licensees and

certificate holders to apply for preemption authority only (hereafter referred to as stand-alone preemption authority) or combined preemption and enhanced weapons authority (hereafter referred to as enhanced weapons authority). The statute also includes provisions for firearms background checks for those who apply for Section 161A authorities (stand-alone preemption authority or enhanced weapons authority).

The Firearms Guidelines permit the NRC to designate applicable classes of facilities and to approve application for Section 161A authority via both orders and regulations. Following publication of the Firearms Guidelines, the NRC received requests from several licensees to obtain stand-alone preemption authority via order (i.e., prior to the NRC's issuance of the final enhanced weapons rule). During its review of these licensee requests, the NRC staff identified implementation issues related to the firearms background checks for these licensees. The NRC staff and the U.S. Department of Justice (DOJ) staff developed a revision to the Firearms Guidelines to address these issues. The principal change in the revised Firearms Guidelines was to limit the scope of the firearms background check requirement to only those licensees that apply to the NRC for Section 161A authority. The NRC, with the approval of the Attorney General, published the revised Firearms Guidelines in the *Federal Register* (79 FR 36100; June 25, 2014). Both the 2009 Firearms Guidelines and the 2014 Firearms Guidelines are available at <http://www.regulations.gov> under Docket ID NRC-2008-0465.

C. October 2006 Proposed Rule.

In parallel with the development of the 2009 Firearms Guidelines, the NRC initiated a rulemaking that would implement the new authorities and provisions in Section 161A of the AEA. On October 26, 2006, the NRC published proposed regulations in the *Federal Register* (71 FR 62664) to implement the provisions of Section 161A as one component of a larger

proposed amendment to its regulations under parts 50, 72, and 73 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Power Reactor Security Requirements." These proposed implementing regulations were consistent to the extent possible with discussions between the NRC and the Department of Justice on the implementation of the statute.

The NRC had proposed that the provisions of Section 161A would apply only to power reactor facilities (i.e., ~~this would include~~ both operating and decommissioning power reactors) and Category I Strategic Special Nuclear Material (Cat. I SSNM) facilities (i.e., facilities possessing or using formula quantities or greater of strategic special nuclear material). This structure was proposed to permit these two highest-risk classes of licensed facilities to apply to the NRC for Section 161A 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 (including ISFSIs) in a separate, future rulemaking.

D W. February 2011 Proposed Rule.

On February 3, 2011, the NRC published in the *Federal Register* a new proposed rule, "Enhanced Weapons, Firearms Background Checks and Security Event Notifications" (76 FR 6200;), referred to as the Enhanced Weapons rulemaking, that reflected the approved 2009 Firearms Guidelines. The 2011 proposed rule would implement the provisions of Section 161A and would make several changes to the security event notification requirements in 10 CFR part 73 to address imminent attacks or threats against power reactors as well as suspicious events that could be indicative of potential preoperational reconnaissance, surveillance, or challenges to security systems by adversaries. The public was provided 180 days to review and comment on the February 2011 proposed rule and associated guidance.

E.V. Preemption Designation Orders and Confirmatory Orders.

Subsequent to the publication of the 2011 proposed rule, the NRC received requests from 10 licensees (located on 8 separate sites) to obtain stand-alone preemption authority. In response to the requests, the NRC issued designation order EA-13-092 (78 FR 35984) on June 14, 2013. Order EA-13-092 designated the 10 licensees as part of an interim class of licensed facilities eligible to apply for stand-alone preemption authority under Section 161A of the AEA, contained direction related to completing firearms background checks for security personnel whose official duties require access to covered weapons, and contained direction for the licensees on submitting applications and supporting information to obtain preemption authority via a confirmatory order. Subsequent to the NRC's issuance of Order EA-13-092, two licensees (located at the same site) withdrew their applications for Section 161A preemption authority. The NRC staff is currently reviewing the remaining applications for preemption authority.

F.VI. January 2013 Supplemental Proposed Rule.

On January 10, 2013, the NRC published a supplemental proposed rule (78 FR 2214) to add at-reactor ISFSI facilities as a class of designated facilities under § 73.18(c) that would be eligible to apply for Section 161A authority. Including at-reactor ISFSIs in the proposed rulemaking would ensure a consistent transition from the orders to the final implementing regulations for reactor licensees and any ISFSIs co-located at the reactor site. When a reactor facility and an ISFSI share a common security guard force, as is the case for at-reactor ISFSIs, the NRC staff recognizes that it may be expedient for both facilities at the site to have stand-alone preemption authority if the licensee or certificate holder applies for it and is approved. In the supplemental proposed rule, the NRC indicated that other classes of facilities

that the scope of the Firearms Guidelines and the NRC's corresponding implementing regulations continue to be consistent.

Licensees and certificate holders falling within the Commission-designated classes of facilities, radioactive material, or other property would be eligible to apply for Section 161A authority and would be required to complete the firearms background check requirements mandated by Section 161A and the Firearms Guidelines. The background checks would be required for security personnel whose official duties require access to covered weapons.

The 2009 Firearms Guidelines provided that the security personnel for all licensees and certificate holders that fall within the designated eligible classes of facilities must undergo firearms background checks, whether or not a particular licensee or certificate holder intends to seek preemption authority. However, under the revised 2014 Firearms Guidelines, the requirement for background checks would apply to only those licensees and certificate holders who apply for Section 161A authority. Other changes to the Firearms Guidelines included the removal of the definition of "standard weapon," and the removal of references to standard weapons in the definitions of "covered weapons" and "enhanced weapons." There were also minor conforming and clarifying editorial changes throughout the revised 2014 Firearms Guidelines.

In the February 2011 proposed rule that would implement the NRC's authority under Section 161A of the AEA, the NRC proposed amendments to 10 CFR part 73 by adding new definitions, processes for obtaining enhanced weapons, requirements for firearms background checks, and security event notification requirements for stolen or lost enhanced weapons. This supplemental proposed rule continues the proposed changes from the February 2011 proposed rule and the January 2013 supplemental proposed rule, and supplements or modifies the following existing or proposed regulations in 10 CFR part 73:

- Section 73.2, Definitions.

- Proposed Section 73.18, Authorization for use of enhanced weapons and preemption of firearms laws.
- Proposed Section 73.19, Firearms background checks for armed security personnel.
- Section 73.51, Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

This supplemental proposed rule would make the following changes to the proposed requirements of 10 CFR part 73:

- Require firearms background checks only for those licensees and certificate holders who have applied for Section 161A authority and only for security personnel whose official duties require access to covered weapons.

- Require periodic firearms background checks at least once every 5 years.

Previously the maximum periodicity was proposed to be at least once every 3 years. However, licensees and certificate holders would continue to be able to conduct periodic firearms background checks at a periodicity of less than every 5 years, at their discretion.

- Conform the process for conducting firearms background checks and applying for preemption authority to the updated requirements ~~for completing firearms background checks~~ specified in the revised 2014 Firearms Guidelines (e.g., removal of the ^{proposed} ~~required~~ 30-day and 180-day milestones in conducting firearms background checks).

- Remove the definition of "standard weapon" and remove the references to standard weapon from the definitions of "covered weapon" and "enhanced weapon," per the revised 2014 Firearms Guidelines.

- Revise the definitions of "combined enhanced weapons authority and preemption authority," "covered weapons," and "stand-alone preemption authority" as conforming changes.

Separately, the NRC would make several clarifying and corrective changes to the process for obtaining stand-alone preemption authority and the requirements for firearms background checks, based upon language approved by the Commission in the designation orders and confirmatory orders issued by the NRC subsequent to the publication of the February 2011 proposed rule.

The NRC would also make several additional changes to clarify the agency's review and acceptance criteria for evaluating applications for stand-alone preemption authority, based upon lessons learned by the NRC staff in reviewing existing applications for preemption authority, including developing ~~these~~ confirmatory orders for to those licensees requesting Section 161A authority. Furthermore, to ensure consistency between processes, the NRC would also make equivalent corresponding changes to the proposed process for obtaining enhanced weapons authority.

Sunsetting of Orders

In the SRM-SECY-12-0125, "Staff Requirements – Interim Actions to Execute Commission Preemption Authority Under Section 161A of the Atomic Energy Act of 1954, as Amended" (ADAMS Accession No. ML12326A653), the Commission directed the NRC staff to include in the final rule a plan "to sunset the interim designation order and the confirmatory orders." Accordingly, the NRC has developed a plan to sunset these orders and is taking advantage of this supplemental proposed rule to include new language in §§ 73.18 and 73.19 to accomplish the Commission's direction. NRC is proposing new paragraphs in §§ 73.18 and 73.19 to indicate that NRC approvals of Section 161A authority via confirmatory order would remain valid after issuance of a final rule. However, the licensees who received orders granting preemption authority prior to issuance of a final rule would be subject to the implementing

regulations in §§ 73.18 and 73.19, in lieu of the requirements specified in the confirmatory orders (i.e., the requirements of the orders would be superseded in their entirety by the requirements in the final rule). The licensees who receive these confirmatory orders would be required, within 60 days of the effective date of the final rule, to update their applicable procedures, instructions, and training to reflect the final rule's requirements. These licensees would be required to notify the NRC, within 70 days of the effective date of the final rule, when they have completed these actions. Once the NRC receives this notification and inspects the licensee's transition actions, the NRC would rescind the orders.

The Commission's ^{of} ~~designations~~ ^{would rescind its} designation of licensed facilities as part of an interim class of facilities eligible to apply for preemption authority prior to issuance of a final rule ~~would end~~ once the Enhanced Weapons rule is implemented. The Commission would designate the permanent classes of facilities eligible to apply for Section 161A authority in § 73.18(c) of the rule. After the

final rule is implemented, the NRC would take appropriate action to rescind the designation orders. All of the facilities issued a designation order would be included in the final rule's list of

designated facilities (i.e., power reactor facilities, Category I special nuclear material facilities, and at-reactor ISFSIs). Accordingly, the firearms background check requirements contained in these designation orders would be replaced in their entirety by the requirements in § 73.19.

At this time, the NRC is only seeking comments on the revisions proposed by this separate supplemental proposed rule. The NRC will address public comments on the February 2011 proposed rule, the January 2013 supplemental proposed rule, and this separate supplemental proposed rule in the final rule.

Public Comments [INSERT NEW HEADING IN ITALICS]

IV. Section-by-Section Analysis.

The following paragraphs describe the specific changes proposed by this supplemental proposed rule.

Section 73.2, Definitions

The proposed new definitions for the terms *Combined enhanced weapons authority* and *preemption authority*, *Covered weapon*, and *Stand-alone preemption authority* would be revised to reflect the revised 2014 Firearms Guidelines. The proposed new definition for the term *Standard weapon* would be removed to reflect the revised 2014 Firearms Guidelines with conforming, editorial changes made to the proposed definition for the term *Enhanced weapon*.

Section 73.18, Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws

In paragraph (d), the NRC would set forth the requirements and process for licensees and certificate holders who are included within the classes of facilities, radioactive material, and other property specified in § 73.18(c)(1) and desire to voluntarily apply for stand-alone preemption authority under Section 161A of the AEA. The application would require initial information describing the licensee's or certificate holder's request for preemption authority, their purpose^{objectives} and reasons for requesting this authority, and a description of their Firearms Background Check Plan, including training for security personnel on the background check disqualifying conditions and notification requirements. Firearms background checks would only be required for security personnel of licensees or certificate holders who apply for Section 161A authority, and whose official duties require access to covered weapons. Licensees and

certificate holders would be required to submit their applications in writing, and under oath or affirmation.

The licensee or certificate holder would also be required to submit supplemental information to the NRC on the completion of satisfactory firearms background checks and required training for security personnel who require access to covered weapons. The timing of the submission of the supplemental information will be at the discretion of the licensee or certificate holder, although the licensee or certificate holder must have completed a sufficient number of satisfactory checks to permit the licensee or certificate holder to meet their applicable security-personnel minimum staffing and fatigue requirements.

Subsequent to the completion of the submission of all required information, the NRC will review the information and document the agency's decision to approve or disapprove the application.

Licensees or certificate holders ^{cannot} ~~must~~ commence firearms background checks ^{until} ~~only after~~ they have received notification from the NRC that the agency has accepted for review their application for stand-alone preemption authority. Once the NRC has reviewed and approved a licensee's or certificate holder's application for stand-alone preemption authority, the licensee or certificate holder must assign only security personnel who have completed a satisfactory firearms background check to duties requiring access to covered weapons.

In paragraph (e), the NRC would set forth the requirements and process for eligible licensees and certificate holders (as specified in § 73.18(c)(2)) who ~~so~~ choose to voluntarily apply for combined enhanced weapons authority and preemption authority under Section 161A of the AEA. Paragraph (e) would require in the application initial information describing the licensee's or certificate holder's request for enhanced weapons authority, their purpose and reasons for requesting this authority, and a description of their proposed Firearms Background objectives

Check Plan, including training of security personnel on the disqualifying status conditions and disqualifying events; the application would be required to address how security personnel notify the licensee or certificate holder security management of the occurrence of any disqualifying conditions or events. Also, under the 2011 proposed rule, applicants for combined enhanced weapons and preemption authority that already have preemption authority under paragraph § 73.18(d) would not be required to reapply for preemption authority in their § 73.18(e) application. That aspect of the 2011 proposed rule is unchanged by this supplemental proposed rule.

Firearms background checks would only be required of applicants for Section 161A authority. Those regulated entities required to conduct firearms background checks would need to conduct the checks on all security personnel whose official duties require access to ^{covered weapons, which includes} enhanced weapons. Licensee and certificate holders would be required to submit their applications in writing and under oath or affirmation. Licensees applying for combined enhanced-weapons authority and preemption authority would be required to submit their application under the applicable regulations for a license amendment in 10 CFR parts 50, 52, 70, or 72. Certificate holders to which the supplemental proposed rule would apply (i.e., 10 CFR part 76 certificate of compliance holders), would be required to submit their applications under the applicable regulations for a certificate of compliance amendment under 10 CFR part 76.

The application would include the additional technical information required by § 73.18(f) ^{that} addressing the specific enhanced weapons ~~requested by~~ the licensee or certificate holder ^{intends to use}. The licensee or certificate holder would also submit supplemental information to the NRC on the completion of both the firearms background checks and the required training (on disqualifying events and conditions) for security personnel whose official duties require access to covered

through (b)(10) would address requirements on conducting firearms background checks. Licensees or certificate holders must commence firearms background checks only after they have received notification from the NRC that the agency has accepted for review their application for either stand-alone preemption authority or for combined enhanced weapons authority and preemption authority. Furthermore, once the NRC has approved a licensee's or certificate holder's application for either stand-alone preemption authority or for combined enhanced weapons authority and preemption authority, the licensee or certificate holder must assign only security personnel who have completed a satisfactory firearms background check to duties requiring access to covered weapons. Also, applicants for an NRC license or certificate of compliance may not conduct firearms background checks until after the NRC has both issued their license or certificate of compliance and accepted their application for Section 161A authority for review. These two criteria may occur in any order. Finally, this section also includes a requirement to remove individuals from duties requiring access to covered weapons if they receive a "denied NICS response." This also includes removing individuals from duties requiring access to enhanced weapons if the individual receives a "delayed NICS response."

Paragraph (b)(11) would specify the requirements for a periodic firearms background check, which would be required at least once every 5 years from the most recent check. This periodicity would be consistent with the Commission's designation orders issued to several licensees. Licensees and certificate holders would be able to conduct periodic firearms background checks at a shorter periodicity than every 5 years, at their discretion.

Security personnel that cease to be employed by a licensee, certificate holder, or security contractor, are considered to have a break-in-service for the purposes of the enhanced weapons rulemaking. The licensee or certificate holder would need to complete a new satisfactory firearms background check for security personnel that experience a

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break-in-service as described in paragraph (b)(12). Paragraph (b)(12) also addresses exceptions to the break-in-service requirement. Paragraph (b)(13) would address changes in the licensee, certificate holder, or their security contractor that do not require a break-in-service firearms background check. Paragraph (b)(14) would prohibit licensees and certificate holders from using a satisfactory firearms background check in lieu of completing other required criminal history records checks or background investigations specified in the NRC's access authorization or personnel security clearance programs under other provisions of 10 CFR chapter I.

Paragraph (b)(15) would not require a new initial firearms background check for security personnel who have completed a satisfactory firearms background check pursuant to a Commission designation order issued before the effective date of the final rule. However, these security personnel would remain subject to the periodic firearms background check and the break-in-service firearms background check requirements of § 73.19. Paragraph (b)(16) would require a licensee or certificate holder to discontinue conducting firearms background checks if they withdraw their application for Section 161A authority. Paragraph (b)(17) would require a licensee or certificate holder to discontinue conducting firearms background checks if the NRC rescinds or revokes their Section 161A authority, in accordance with § 73.18.

Paragraph (c) would be removed and reserved. Because § 73.18(c) contains the list of classes of facilities and activities eligible to apply for Section 161A authority and only licensees and certificate holders who have applied to the NRC under § 73.18 for Section 161A authority are eligible under § 73.19 to conduct firearms background checks of their security personnel, the list of classes of facilities and activities previously proposed in § 73.19(c) for conducting firearms background checks is now redundant and unnecessary.

Paragraph (f) would be revised to require periodic firearms background checks be completed at least once every 5 calendar years. This is consistent with the 2014 Firearms

Paragraph (h) would be revised to change the notification timeliness requirement for security personnel who have had a disqualifying status condition or disqualifying event from "3 working days" to "72 hours" to improve regulatory clarity and consistency with the licensee's and certificate holder's current proposed notification timeliness requirement in paragraph (g).

Paragraph (j) would be revised to clarify the scope of the training modules required for security personnel who are subject to firearms background checks under the licensee's or certificate holder's Firearms Background Check Plan, as required under paragraph (b)(3)(iii). Modules would be required on Federal disqualifying status conditions or disqualifying events, applicable State disqualifying status conditions or disqualifying events to provide personnel familiarity with these disqualifying status conditions or events, the process for appealing adverse firearms background check results, and the ongoing obligation of security personnel who are subject to a firearms background check to notify their licensee's or certificate holder's security management of the occurrence of such a disqualifying status condition or disqualifying event. The modules would also include the requirement on the timeliness of such notifications (i.e., within 72 hours of the occurrence of the disqualifying condition or event). Finally, periodic refresher training on these modules would be required at an annual frequency.

Paragraph (p)(1) would be revised to clarify its applicability to security personnel subject to a firearms background check and to remove the current exception cross-reference to paragraph (b). Limitations on security personnel's access to covered weapons during the pendency of an appeal to the FBI would now be found solely in paragraph (p).

Paragraph (p)(5)(iv) would be revised to indicate that individuals (who are appealing a firearms background check) should submit a request for extension of time (i.e., regarding the 45-day timeliness requirement on submitting an appeal) to their licensee or certificate holder, rather than to the FBI. The licensee or certificate holder may grant an extension request for

good cause, as determined by the licensee or certificate holder. This change is consistent with the 2014 Firearms Guidelines. No other changes would be made to the other subparagraphs of paragraph (p)(5).

In paragraph (r), the NRC would add new provisions to provide for the transition from preemption authority and enhanced weapons authority approved by the NRC via designation orders and confirmatory orders to approvals via the proposed regulations in § 73.19. While the NRC's authorizations for Section 161A authority would remain valid after issuance of a final rule and licensees would not need to reapply for Section 161A authority, these licensees would be subject to the implementing requirements of § 73.19, in lieu of the requirements contained in these orders. However, licensees would not be required to repeat their initial firearms background checks. Licensees would be required to update procedures, instructions, and training to reflect any revised requirements in the final rule and notify the NRC of the completion of this action. The licensee's actions and notification would be required to be completed within 60 days and 70 days, respectively, of the effective date of the final rule. Following receipt of the licensee's notification and inspection of the licensee's actions, the NRC would ~~take action to~~ rescind these orders.

Section 73.51, Requirements for the Physical Protection of Stored Spent Nuclear Fuel and High-Level Radioactive Waste

Paragraph (f) would be added as a conforming change to the proposed change to § 73.18(j) to reflect the potential for a specific licensed, at-reactor ISFSI to possess enhanced weapons at both the reactor and the co-located ISFSI. This provision would require ISFSI licensees employing enhanced weapons to train their security personnel on the use of sufficient force, including deadly force. The NRC anticipates that the security organization for a reactor

and a co-located specific licensed ISFSI employing enhanced weapons would use an integrated security organization (i.e., the security personnel are considered fungible between these two facilities). Accordingly, the NRC considers it appropriate to require both the reactor and ISFSI security personnel carrying enhanced weapons to be trained on the same standards on the use of force, including deadly force. This proposed language is consistent with the current regulations on training of security personnel on the use of force under § 73.55(k)(3) for reactor licensees and § 73.46(h)(5) for Category I special nuclear material licensees and certificate holders.

V. Cumulative Effects of Regulation.

Cumulative Effects of Regulation (CER) consists of the challenges licensees face in addressing the implementation of new regulatory positions, programs, and requirements (e.g., rulemaking, guidance, generic letters, backfits, inspections). The CER may manifest in several ways, including the total burden imposed on licensees by the NRC from simultaneous or consecutive regulatory actions that can adversely affect the licensee's capability to implement those requirements while continuing to operate or construct its facility in a safe and secure manner.

The goals of the NRC's CER effort were met throughout the development of this supplemental proposed rule. During the development of the 2011 proposed rule, the NRC staff engaged external stakeholders at a public meeting and by soliciting public comments on the proposed rule and draft guidance documents. The public meeting was held at NRC Headquarters on June 1, 2011, to discuss the proposed implementation plan. A summary of the public meeting is in ADAMS under Accession No. ML111720007. Additionally, the NRC staff

VI. Regulatory Flexibility Certification.

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This supplemental proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

VII. Regulatory Analysis.

The NRC has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The draft regulatory analysis can be found in ADAMS under ML15007A248. The NRC requests public comment on the draft regulatory analysis. Comments on the draft regulatory analysis may be submitted to the NRC as indicated under the ADDRESSES caption of this document.

VIII. Backfitting and Issue Finality.

This supplemental proposed rule contains: (i) proposed provisions which reduce the regulatory burden associated with the original 2011 proposed rule and the 2013 supplemental proposed rule, and (ii) additional provisions – not contained in either the original 2011 proposed rule ^{or} and the 2013 supplemental proposed rule – which facilitate licensees' capability to obtain burden reduction (i.e., proposed sunseting of the interim designation order and the confirmatory

regulated entities and consistent with the 2011 proposed rule, modified security event notifications under different ^{paragraphs} sections of 73.71 would also affect 42 research and test reactor (RTR) sites, 6 Category II and III Special Nuclear Material sites, 7 Independent Spent Fuel Storage Installation (ISFSI) sites not co-located with a reactor, and 2 hot cell sites.

An estimate of the number of annual responses: 4,085 (2,992 responses for 10 CFR part 73 requirements and 1,093 responses for NRC Form 754)

The estimated number of annual respondents: 133

An estimate of the total number of hours needed annually to comply with the information collection requirement or request: 47,906.4 hours (45,399.8 hours for 10 CFR part 73 requirements and 2,506.7 hours for NRC Form 754)

Abstract: The NRC is proposing to amend 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 supplemental proposed rule would modify the information collections contained in the Enhanced Weapons, Firearms Background Checks, and Security Event Notifications rulemaking. First, firearms background checks for security personnel for only those licensees and certificate holders who have applied for Section 161A authority (i.e., either stand-alone preemption authority or combined enhanced weapons authority and preemption authority). As a result, the number of respondents to new sections 73.18 and 73.19 would be reduced compared to the proposed rule published in the Federal Register on February 3, 2011 (76 FR 6199). Second, periodic firearms background

checks would be required at least once every 5 years rather than every 3 years. Third, applications for Section 161A authority ~~must~~ ^{would be required to} describe the applicant's purposes and objectives in requesting the authority. Finally, the supplemental proposed rule would add requirements for licensees and certificate holders that had received confirmatory orders approving Section 161A authority ~~would be required~~ ^g to update within 60 days after the final rule effective date any procedures, instructions, and training material on a one-time basis. These information collections are needed to enable the NRC to implement the mandate of Section 161A of the Atomic Energy Act (AEA) to verify that security personnel who will have access to enhanced weapons have been subject to a background check by the Attorney General to verify that an individual is not prohibited under Federal or State law from possessing or receiving firearms.

The 2011 proposed rule also included requirements that would modify the security event notification requirements under different ~~sections~~ ^{paragraphs} of 73.71. This supplemental proposed rule ~~section~~ would not change those proposed modified requirements, but they are repeated in the supporting statement for completeness. The proposed security event notification requirements would be used to meet the NRC's strategic mission to immediately communicate threats or attack information to the Department of Homeland Security (DHS) operations center under the National Response Framework. The NRC also has a strategic mission to immediately communicate threat or attack 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 another licensees' ability to defeat poorly-synchronized multiple-site attacks and in protecting the lives of security and plant personnel (at a second facility) in such un-coordinated attacks. This prompt notification could also be vital in increasing the defensive posture of other government or critical infrastructure facilities to defeat poorly-synchronized multiple-sector attacks.

DG-5020, Revision 0, "Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73" (February 3, 2011)	ML100321956
DG-5020, Revision 1, "Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73"	ML14322A847
Commission: SECY-12-0027, "Preemption Authority Pursuant to Section 161A, 'Use of Firearms by Security Personnel,' of the Atomic Energy Act of 1954, as Amended" (February 17, 2012)	ML113130015
Commission: SRM-SECY-12-0027, "Preemption Authority Pursuant to Section 161A, 'Use of Firearms by Security Personnel,' of the Atomic Energy Act of 1954, as Amended" (May 3, 2012)	ML12124A377
Commission: SECY-12-0125, "Interim Actions to Execute Commission Preemption Authority Under Section 161A of the Atomic Energy Act of 1954, as Amended" (September 20, 2012)	ML12164A839
Commission: SRM-SECY-12-0125, "Interim Actions to Execute Commission Preemption Authority Under Section 161A of the Atomic Energy Act of 1954, as Amended" (November 21, 2012)	ML12326A653
NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Revision 4 (September 30, 2004)	ML042820192

Add Designation Order to table

Throughout the development of this rule, the NRC staff may post documents related to this rule, including public comments, on the Federal rulemaking Web site at <http://www.regulations.gov> under Docket ID NRC-2011-0018 and NRC-2011-0015. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: 1) Navigate to the docket folder (NRC-2011-0018 and NRC-2011-0015); 2) click the "Sign up for E-mail Alerts" link; and 3) enter your e-mail address and select how frequently you would like to receive e-mails (daily, weekly, or monthly).

"Covered weapon," "Enhanced weapon," and "Stand-alone preemption authority," in alphabetical order; and remove the definition for "Standard weapon" to read as follows:

§ 73.2 Definitions.

* * * *

(a) * * *

Combined enhanced weapons authority and preemption authority means the authority granted to 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 categories of ~~enhanced~~ ^{covered} weapons, notwithstanding any State, local, or certain Federal firearms laws, including regulations, that prohibit or restrict such conduct.

* * * *

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

* * * *

Enhanced weapon means any short-barreled shotgun, short-barreled rifle, or machine gun. Enhanced weapons do not include destructive devices as specified under 18 U.S.C. 921(a)(4).

* * * *

Stand-alone preemption authority means the authority granted to the Commission, at 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, and use one or more categories of covered weapons ^{other than enhanced weapons} notwithstanding any State, local, or certain Federal firearms laws, including regulations, that prohibit or restrict such conduct.

* * * * *

3. In § 73.18, as proposed to be added February 3, 2011 (76 FR 6233), revise paragraphs (d), (e), (f)(2)(iii), (j), (n)(2), (n)(3), and (n)(4); and add paragraph (s) to read as follows:

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

* * * * *

(d) *Application process for stand-alone preemption authority.* (1) Only licensees and certificate holders included within the classes of facilities, radioactive material, and other property listed in paragraph (c)(1) of this section may apply to the NRC for stand-alone preemption authority.

(2) Licensees and certificate holders ^{applying} ~~who desire to apply~~ for stand-alone preemption authority must submit an application to the NRC using the procedures specified in this section.

(3) The contents of the application must include the following information:

(i) A statement indicating that the licensee or certificate holder is applying for stand-alone preemption authority under 42 U.S.C. 2201a;

(ii) The Commission-designated facility, radioactive material, or other property to be protected by the licensee's or certificate holder's security personnel using the covered weapons;

(iii) A description of the licensee's or certificate holder's purposes and objectives in requesting stand-alone preemption authority. This description must include whether these covered weapons are currently employed as part of the licensee's or certificate holder's existing protective strategy or whether these covered weapons will be used in a revised protective strategy; and

(iv) A description of the licensee's or certificate holder's Firearms Background Check Plan required by § 73.19 of this part.

(4) Licensees and certificate holders must supplement their application for stand-alone preemption authority with the following additional information:

(i) A confirmation that a sufficient number of security personnel have completed a satisfactory firearms background check to meet the licensee's or certificate holder's applicable security-personnel minimum staffing and fatigue requirements;

(ii) A confirmation that the necessary training modules and notification procedures have been developed under their Firearms Background Check Plan; and

(iii) A confirmation that all security personnel whose official duties require access to covered weapons have been trained on these modules and notification procedures.

(5) The licensee or certificate holder must submit both the application and the supplementary information to the NRC in writing, under oath or affirmation, and in accordance with § 73.4 of this part.

(6) Upon the effective date of the NRC's approval of its application for stand-alone preemption authority, the licensee or certificate holder must only assign security personnel who have completed a satisfactory firearms background check to duties requiring access to any covered weapons.

(e) *Application process for combined enhanced weapons authority and preemption authority.* (1) Only licensees and certificate holders included within the classes of facilities, radioactive material, and other property 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 ^{applying} ~~who desire to apply~~ for combined enhanced weapons authority and preemption authority must submit an application to the NRC using the procedures specified in this section.

(3) The contents of the application must include the following information:

(i) A statement indicating that the licensee or certificate holder is applying for combined enhanced weapons authority and preemption authority under 42 U.S.C. 2201a.

(ii) The Commission-designated facility, radioactive material, or other property to be protected by the licensee's or certificate holder's security personnel using the enhanced weapons.

(iii) A description of the licensee's or certificate holder's purposes and objectives in requesting combined enhanced weapons authority and preemption authority. This must include whether these ^{covered} ~~enhanced~~ weapons are currently employed as part of the licensee's or certificate holder's existing protective strategy; or whether these ^{covered} ~~enhanced~~ weapons will be used in a revised protective strategy.

(iv) A description of the licensee's or certificate holder's Firearms Background Check Plan required by § 73.19 of this part.

(v) If the NRC has previously approved the licensee's or certificate holder's application for stand-alone preemption authority, under either paragraph (d) of this section or under a Commission Order issued before **[EFFECTIVE DATE OF FINAL RULE]**, then the licensee or

certificate holder must include the effective date of the NRC's approval of preemption authority in their application for combined enhanced weapons authority and preemption authority.

(4) The licensee or certificate holder must include with their application the additional technical information required by paragraph (f) of this section.

(5) Licensees and certificate holders must supplement their application with the following additional information:

(i) A confirmation that a sufficient number of security personnel have completed a satisfactory firearms background check to meet the licensee's or certificate holder's applicable security-personnel minimum staffing and fatigue requirements;

(ii) A confirmation that the necessary training modules and notification procedures have been developed under their Firearms Background Check Plan; and

(iii) A confirmation that all security personnel whose official duties require access to covered weapons have been trained on these modules and notification procedures.

(iv) Exceptions:

(A) Licensees and certificate holders who were previously approved by the NRC for preemption authority under paragraph (d) of this section are not required to submit the supplemental information of this paragraph (as a component of their application for combined enhanced weapons authority and preemption authority).

(B) Licensees and certificate holders who were previously approved by the NRC for preemption authority pursuant to a Commission Order issued before **[EFFECTIVE DATE OF FINAL RULE]**, are not required to submit the supplemental information of this paragraph (as a component of their application for combined enhanced weapons authority and preemption authority).

(i) Applicants for a license or a certificate of compliance who have also submitted an application for Section 161A authority must only commence firearms background checks after:

(A) The NRC has issued their license or certificate of compliance; and

(B) The NRC has accepted their application for stand-alone preemption authority or for combined enhanced weapons authority and preemption authority for review.

(ii) Subsequent to [EFFECTIVE DATE OF FINAL RULE], applicants for a license or a certificate of compliance who have also applied for Section 161A authority and been issued their license or certificate of compliance must ensure a satisfactory firearms background check (as defined in § 73.2 of this part) has been completed for all security personnel who require access to covered weapons, 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 ~~(as requiring protection under a security program)~~.

8 (9) Licensee and certificate holder actions in response to an adverse firearms background check (as defined in § 73.2 of this part):

(i) The licensee or certificate holder must remove, without delay, from duties requiring ^{covered} access to ~~enhanced~~ weapons, any security personnel who receive a "denied NICS response;"

(ii) The licensee or certificate holder must remove, without delay, from duties requiring access to enhanced weapons, any security personnel who receive a "delayed NICS response;" and

(iii) If the security personnel to be removed is on duty at the time of removal, then the licensee and certificate holder must reconstitute the vacated position within the timeframe specified in their NRC-approved physical security plan.

(10) Subsequent to the licensee's or certificate holder's receipt of notification that the NRC has approved their application for either stand-alone preemption authority or for combined enhanced weapons authority and preemption authority:

(i) The licensee or certificate holder must complete a satisfactory firearms background check on security personnel, before assigning that individual to any duties that require access to covered weapons;

(ii) The licensee or certificate holder may return to duties that require access to covered weapons any security personnel who has previously received an adverse firearms background check, if the individual subsequently completes a satisfactory firearms background check or successfully appeals an adverse firearms background check; and

(iii) During the pendency of an individual's appeal to the Federal Bureau of Investigation (FBI) of an adverse firearms background check, the licensee or certificate holder must not assign such security personnel to duties that require access to covered weapons.

¹⁰
(11) Accomplishment of periodic firearms background checks.

(i) The licensee or certificate holder must complete a periodic firearms background check for security personnel whose duties require access to covered weapons. A satisfactory periodic firearms background check must be completed within 5 calendar years of the month of an initial, or the most recent, firearms background check, whichever is later.

(ii) Licensees and certificate holders who had conducted firearms background checks pursuant to a confirmatory order issued by the NRC before **[EFFECTIVE DATE OF FINAL RULE]**, must complete a periodic firearms background check for security personnel whose duties continue to require access to covered weapons. A satisfactory periodic firearms background check must be completed within 5 calendar years of the month of an initial, or the

most recent⁹ firearms background check accomplished under a confirmatory order, ~~whichever is~~
later.

(iii) The licensee or certificate holder must complete the periodic firearms background check within the allowance period specified in paragraph ^f(~~e~~) of this section.

¹¹
(12) Accomplishment of break-in-service firearms background checks.

(i) The licensee or certificate holder must complete a new satisfactory firearms background check⁹ if the security personnel has had a break-in-service⁹⁹ with their employing licensee, certificate holder, or their security contractor which is for a duration of greater than one week; or

(ii) The licensee or certificate holder must complete a new satisfactory firearms background check⁹ if the security personnel has transferred from a different licensee or certificate holder.

⁹⁹
(iii) A break-in-service means the security personnel's cessation of employment with the licensee, certificate holder, or their security contractor⁹ and notwithstanding that the previous licensee or certificate holder completed a satisfactory firearms background check on the individual within the last 5 years.

(iv) Exceptions:

⁹⁹
(A) For the purposes of this section, a break-in-service does not include a security personnel's temporary active duty with the U.S. military reserves or National Guard.

(B) The licensees or certificate holders, in lieu of completing a new satisfactory firearms background check, may instead verify via an industry-wide information-sharing database that the security personnel has completed a satisfactory firearms background check within the previous 12 months⁹, [✓] Provided that this previous firearms background check included a duty station location in the State or Territory where the licensee or certificate holder (who would

otherwise be accomplishing the firearms background check) is located or the activity is solely occurring.

¹²
(13) If subsequent to the NRC's approval of an application for Section 161A authority under § 73.18 of this part, a change occurs in the licensee, certificate holder, ownership of a facility, radioactive material, or other property, or a security contractor that provides security services to the licensee or certificate holder, then the licensee or certificate holder is not required to conduct a break-in-service firearms background check ~~required by this section~~ for the security personnel whose duties require access to covered weapons.

¹³
(14) With regard to accomplishing the requirements for other background (e.g., criminal history records) checks or personnel security investigations under the NRC's access authorization or personal security clearance program requirements of this chapter, the licensee or certificate holder may not substitute a satisfactory firearms background check in lieu of completing these other required background checks or security investigations.

¹⁴
(15) If a licensee or certificate holder has completed initial satisfactory firearms background checks pursuant to a Commission order issued before **[EFFECTIVE DATE OF FINAL RULE]**, then the licensee or certificate holder is not required to conduct a new initial firearms background check for its current security personnel. However, the licensee or certificate holder must conduct initial firearms background checks on new security personnel and periodic and break-in-service firearms background checks on current security personnel in accordance with the provisions of this section.

¹⁵
(16) A licensee or certificate holder who withdraws their application for Section 161A authority, or whose application was disapproved by the NRC, must discontinue conducting firearms background checks.

16
(17) A licensee or certificate holder whose authority under Section 161A has been rescinded or was revoked by the NRC must discontinue conducting firearms background checks.

* * * * *

(c) [RESERVED]

* * * * *

(f) *Periodic firearms background checks.* (1) Licensees and certificate holders must complete a satisfactory periodic firearms background check at least once every 5 calendar years for security personnel whose continuing duties require access to covered weapons.

(2) Licensees and certificate holders must complete a periodic firearms background check within the same calendar month as the initial, or most recent, firearms background check; with an allowance period to midnight (i.e., 23:59 local time) of the last day of the calendar month of expiration.

(3) Licensees and certificate holders may continue the security personnel's duties requiring access to covered weapons pending the satisfactory completion of a periodic firearms background check. However, licensees and certificate holders must remove security personnel from duties requiring access to covered weapons if the satisfactory completion of a periodic firearms background check does not occur before the expiration of the allowance period.

(g) *Notification of removal.* (1) Licensees and certificate holders must notify the NRC Headquarters Operations Center by telephone within 72 hours after removing security personnel from duties requiring access to covered weapons, due to the discovery of any disqualifying status condition or the occurrence of any disqualifying event. Licensees and certificate holders must contact the NRC Headquarters Operations Center at the phone numbers specified in table 1 of appendix A of this part.

(2) Exception. The requirement to notify the NRC by telephone is not applicable, if the licensee's or certificate holder's security management was notified by the affected security personnel within 72 hours of the occurrence of any disqualifying status condition or disqualifying event.

(h) *Security personnel responsibilities.*

(1) Security personnel assigned to duties requiring access to covered weapons must notify their employing licensee's or certificate holder's security management within 72 hours of ~~identification~~ ^{identification} or occurrence of the ~~existence~~ ^{existence} of any Federal or State disqualifying status condition or ~~upon the~~ ^{upon the} occurrence of any disqualifying events that would prohibit them from possessing, receiving, or using firearms or ammunition.

(2) This notification requirement is applicable to all security personnel assigned duties requiring access to covered weapons, irrespective of whether they are directly employed by the licensee or certificate holder or employed by a contractor providing security services to the licensee or certificate holder.

(i) *Training for security personnel subject to firearms background checks.*

(1) Licensees and certificate holders must include within their Firearms Background Check Plan the development and accomplishment of training modules for security personnel assigned official duties requiring access to covered weapons.

(2) The training modules must include information on the following topics:

(i) Federal disqualifying status conditions or disqualifying 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, receiving, or using any firearms or ammunition;

(ii) Any applicable State disqualifying status conditions or disqualifying events;

(iii) The continuing responsibility of security personnel subject to a firearms background check to promptly and voluntarily notify their employing licensee or certificate holder of the occurrence of any disqualifying status condition or disqualifying event; and

(iv) The process for appealing to the FBI a "denied" or "delayed" NICS response.

(3) Licensees and certificate holders must conduct periodic refresher training on these modules at an annual frequency for security personnel assigned official duties requiring access to covered weapons.

(p) *Appeals and resolution of erroneous system information.*

(1) The licensee or certificate holder may not assign security personnel who have receive a "denied" or a "delayed" NICS response to duties requiring access to covered weapons:

(i) During the pendency of an appeal of a "denied" NICS response; or

(ii) During the pendency of providing ^{to the FBI} and evaluating any necessary additional information ^{to the FBI} to resolve a "delayed" NICS response.

* * * * *

(5) Challenges of the accuracy and correctness of records. (i) 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 must first contact the FBI at the address stated in paragraph (p)(4)(i) of this section.

(ii) The individual must file any appeal of a "denied" response or file a request to resolve a "delayed" response within 45 calendar days of the date ^{the licensee or certificate holder} the NRC forwards the results of the ^{notifies the individual of the adverse response.} ~~firearms background check to the licensee or certificate holder.~~

(1) Licensees issued such orders are no longer considered part of an interim class of facilities eligible to apply for Section 161A authority, but instead are encompassed within the Commission-designated classes of facilities, activities, and other property specified in § 73.18(c) of this part.

(2) Licensees issued such orders must comply with the requirements of this section, in lieu of complying with the firearms background check requirements of those orders. Accordingly, the requirements of those orders are superseded in their entirety by the requirements of this section.

(3) Licensees issued such orders must update any procedures, instructions, and training material they have developed in response to the orders to reflect the transition from requirements under the order to the requirements of this section. Licensees must complete these transition actions by **[DATE 60 DAYS AFTER THE EFFECTIVE DATE OF FINAL RULE]**.

(4) Licensees issued such orders must notify the NRC in writing, in accordance with § 73.4 of this part, of the completion of these transition actions. Licensees must complete this notification by **[DATE 70 DAYS AFTER THE EFFECTIVE DATE OF FINAL RULE]**.

5. In § 73.51, add paragraph (f) to read as follows:

§ 73.51 Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

* * * * *

(f) *Response requirements.* For licensees employing ^{covered}~~enhanced~~ weapons as part of their protective strategy, the licensee must train each armed member of the security organization using ^{covered}~~enhanced~~ weapons to prevent or impede attempted acts of radiological sabotage by using force sufficient to counter the force directed at that armed member, including the use of deadly force as authorized by applicable State or Federal law.

Dated at Rockville, Maryland, this day of

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: SECY-15-0036: Supplemental Proposed Rule:
Enhanced Weapons, Firearms Background Checks,
and Security Event Notifications (10 CFR Part 73, RIN-
3150-A149)

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below XX Attached XX None _____

I approve publication of the supplemental proposed rule in the *Federal Register*, subject to the attached edits. I certify that this supplemental proposed rule, if issued in final form, would not have a significant economic impact on a substantial number of small entities.



SIGNATURE



DATE

Entered on "STARS" Yes ☒ No _____

KLS Edits

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC-2011-0015; NRC-2011-0018]

RIN 3150-AI49

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

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplemental proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations that would implement its authority under Section 161A of the Atomic Energy Act of 1954, as amended (AEA), to permit NRC licensees and certificate holders to apply for preemption authority and enhanced-weapons authority, and conduct associated firearms background checks. The NRC proposed new regulations on February 3, 2011, that would implement its authority under Section 161A. On January 10, 2013, the NRC proposed to further revise the regulations to include at-reactor independent spent fuel storage installations (ISFSI) as a class of designated facilities. The NRC is now proposing to further revise the proposed rule language that addresses the voluntary application for enhanced-weapons authority, preemption authority, and the mandatory firearms background checks under Section 161A.

DATES: Submit comments by **[INSERT DATE 75 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Also submit comments specific to the information collection aspects of this rule by **[INSERT DATE 75 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments on the supplemental proposed rule by any of the following methods:

- **Federal rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0018. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: Carol.Gallagher@nrc.gov. For technical questions contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **E-mail comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic e-mail reply confirming receipt, then contact us at 301-415-1677.

- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

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

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

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the SUPPLEMENTARY INFORMATION

section of this document. For additional direction on submitting comments on the draft regulatory guide, see "Availability of Guidance" in the SUPPLEMENTARY INFORMATION section of this document. You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

FOR FURTHER INFORMATION CONTACT: Margaret S. Ellenson, Office of Nuclear Reactor Regulation, telephone: 301-415-0894; e-mail: Margaret.Ellenson@nrc.gov; Philip G. Brochman, Office of Nuclear Security and Incident Response, telephone: 301-287-3691; e-mail: Phil.Brochman@nrc.gov; U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

- I. Obtaining Information and Submitting Comments.
 - A. Obtaining Information.
 - B. Submitting Comments.
- II. Background.
- III. Discussion.
- IV. Section-by-Section Analysis.
- V. Cumulative Effects of Regulation.
- VI. Regulatory Flexibility Certification.
- VII. Regulatory Analysis.
- VIII. Backfitting and Issue Finality.
- IX. Plain Writing.
- X. Environmental Assessment and Proposed Finding of No Significant Environmental Impact.

- XI. Paperwork Reduction Act.
- XII. Criminal Penalties.
- XIII. Voluntary Consensus Standards.
- XIV. Availability of Guidance.
- XV. Availability of Documents.

I. Obtaining Information and Submitting Comments.

A. Obtaining Information.

Please refer to Docket ID NRC-2011-0018 or Docket ID NRC-2011-0015 when contacting the NRC about the availability of information for this supplemental proposed rule or the revised draft regulatory guide, respectively. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0018 for the supplemental proposed rule and Docket ID NRC-2011-0015 for the revised draft regulatory guide.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is mentioned in the SUPPLEMENTARY INFORMATION

section. In addition, for the convenience of the reader, instructions about obtaining materials related to this rulemaking are provided in the "Availability of Documents," section.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments.

Please include the appropriate NRC Docket ID NRC-2011-0018 (supplemental proposed rule) or NRC-2011-0015 (draft regulatory guide)) in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background.

- I. Section 161A of the AEA. [headings should be changed from I, II, III . . . to A, B, C . . . , in keeping with the rest of the document]

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 authority to permit a licensee's or certificate holder's security personnel to transfer, receive, possess, transport, import, and use weapons, devices, ammunition, or other firearms, notwithstanding State, local, and certain Federal firearms laws (and implementing regulations) that may prohibit or restrict these actions (preemption authority). Additionally, Section 161A authorized the Commission to permit the security personnel of licensees and certificate holders to obtain enhanced weapons, such as machine guns, short-barreled shot-guns, and short-barreled rifles (enhanced weapons).

Section 161A requires the Commission to designate the classes of facilities, radioactive material, and other property eligible to apply for preemption authority or enhanced weapon authority. Section 161A also mandates that all security personnel that receive, possess, transport, import, or use a weapon, ammunition, or a device otherwise prohibited by State, local, or certain Federal laws, including regulations, as provided by Section 161A.b. (42 U.S.C. 2201a(b)), shall be subject to a fingerprint-based background check by the U.S. Attorney General and a firearms background check against the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS).

- II. The Firearms Guidelines – Implementation of Section 161A of the AEA.

Section 161A.d. of the AEA provides that the Commission shall, with the approval of the Attorney General, develop and promulgate guidelines for the implementation of this statute. On September 11, 2009, the NRC, with the approval of the Attorney General, published Firearms Guidelines in the *Federal Register* (74 FR 46800). These guidelines allow NRC licensees and certificate holders to apply for preemption authority only (hereafter referred to as stand-alone preemption authority) or combined preemption and enhanced-weapons authority (hereafter referred to as enhanced-weapons authority). The statute also includes provisions for firearms background checks for those who apply for Section 161A authorities (stand-alone preemption authority or enhanced-weapons authority).

The Firearms Guidelines permit the NRC to designate applicable classes of facilities and to approve application for Section 161A authority via both orders and regulations. Following publication of the Firearms Guidelines, the NRC received requests from several licensees to obtain stand-alone preemption authority via order (i.e., prior to the NRC's issuance of the final enhanced weapons rule). During its review of these licensee requests, the NRC staff identified implementation issues related to the firearms background checks for these licensees. The NRC staff and the U.S. Department of Justice (DOJ) staff developed a revision to the Firearms Guidelines to address these issues. The principal change in the revised Firearms Guidelines was to limit the scope of the firearms background check requirement to only those licensees that apply to the NRC for Section 161A authority. The NRC, with the approval of the Attorney General, published the revised Firearms Guidelines in the *Federal Register* (79 FR 36100; June 25, 2014). Both the 2009 Firearms Guidelines and the 2014 Firearms Guidelines are available at <http://www.regulations.gov> under Docket ID NRC-2008-0465.

III. October 2006 Proposed Rule.

In parallel with the development of the 2009 Firearms Guidelines, the NRC initiated a rulemaking that would implement the new authorities and provisions in Section 161A of the AEA. On October 26, 2006, the NRC published proposed regulations in the *Federal Register* (71 FR 62664) to implement the provisions of Section 161A as one component of a larger proposed amendment to its regulations under parts 50, 72, and 73 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Power Reactor Security Requirements." These proposed implementing regulations were consistent to the extent possible with discussions between the NRC and the Department of Justice on the implementation of the statute.

The NRC had proposed that the provisions of Section 161A would apply only to power reactor facilities (i.e., this would include both operating and decommissioning power reactors) and Category I Strategic Special Nuclear Material (Cat. I SSNM) facilities (i.e., facilities possessing or using formula quantities or greater of strategic special nuclear material). This structure was proposed to permit these two highest-risk classes of licensed facilities to apply to the NRC for Section 161A 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 (including ISFSIs) in a separate, future rulemaking.

IV. February 2011 Proposed Rule.

On February 3, 2011, the NRC published in the *Federal Register* a new proposed rule, "Enhanced Weapons, Firearms Background Checks and Security Event Notifications" (76 FR 6200;), referred to as the Enhanced Weapons rulemaking, that reflected the approved 2009 Firearms Guidelines. The 2011 proposed rule would implement the provisions of Section 161A, and would make several changes to the security event notification requirements in 10 CFR part 73 to address imminent attacks or threats against power reactors as well as

suspicious events that could be indicative of potential preoperational reconnaissance, surveillance, or challenges to security systems by adversaries. The public was provided 180 days to review and comment on the February 2011 proposed rule and associated guidance.

V. Preemption Designation Orders and Confirmatory Orders.

Subsequent to the publication of the 2011 proposed rule, the NRC received requests from 10 licensees (located on 8 separate sites) to obtain stand-alone preemption authority. In response to the requests, the NRC issued designation order EA-13-092 (78 FR 35984) on June 14, 2013. Order EA-13-092 designated the 10 licensees as part of an interim class of licensed facilities eligible to apply for stand-alone preemption authority under Section 161A of the AEA, contained direction related to completing firearms background checks for security personnel whose official duties require access to covered weapons, and contained direction for the licensees on submitting applications and supporting information to obtain preemption authority via a confirmatory order. Subsequent to the NRC's issuance of Order EA-13-092, two licensees (located at the same site) withdrew their applications for Section 161A preemption authority. The NRC staff is currently reviewing the remaining applications for preemption authority.

VI. January 2013 Supplemental Proposed Rule.

On January 10, 2013, the NRC published a supplemental proposed rule (78 FR 2214) to add at-reactor ISFSI facilities as a class of designated facilities under § 73.18(c) that would be eligible to apply for Section 161A authority. Including at-reactor ISFSIs in the proposed rulemaking would ensure a consistent transition from the orders to the final implementing regulations for reactor licensees and any ISFSIs co-located at the reactor site. When a reactor

facility and an ISFSI share a common security guard force, as is the case for at-reactor ISFSIs, the NRC staff recognizes that it may be expedient for both facilities at the site to have stand-alone preemption authority if the licensee or certificate holder applies for it and is approved. In the supplemental proposed rule, the NRC indicated that other classes of facilities and activities (e.g., away-from-reactor ISFSIs and transportation of spent nuclear fuel) would be addressed in a separate, future rulemaking (as originally discussed in the October 2006 proposed rule). The public was provided 45 days to review and comment on the January 2013 supplemental proposed rule.

III. Discussion.

Section 161A of the AEA provides the NRC with the authority to permit a licensee or certificate holder's security personnel to transfer, receive, possess, transport, import, and use, weapons, devices, ammunition or other firearms notwithstanding State, local, and certain Federal firearms laws (and any implementing regulations) that may prohibit or restrict these actions. The arsenal of weapons includes, for example, machine guns, semi-automatic assault weapons, and large-capacity ammunition feeding devices (i.e., magazines). As indicated in the February 2011 proposed rule, an NRC licensee or certificate holder interested in obtaining Section 161A authority (either combined enhanced-weapons authority and preemption authority or stand-alone preemption authority) may voluntarily apply to the NRC to take advantage of this new authority. For the purposes of the proposed Enhanced Weapons rulemaking, the term "certificate holder" refers only to entities holding a 10 CFR part 76 certificate of compliance, not to entities holding a 10 CFR part 72 certificate of compliance. However, the NRC notes that there are currently no existing 10 CFR part 76 certificate holders because on February 2, 2015,

the NRC terminated the 10 CFR part 76 certificate of compliance for the United States Enrichment Corporation's Paducah Gaseous Diffusion Plant (Agencywide Document Access and Management System (ADAMS) Accession No. ML14318A331). While there are no existing 10 CFR part 76 certificate holders, the NRC is proposing to include such holders in this rule so that the scope of the Firearms Guidelines and the NRC's corresponding implementing regulations continue to be consistent.

Licensees and certificate holders falling within the Commission-designated classes of facilities, radioactive material, or other property would be eligible to apply for Section 161A authority and would be required to complete the firearms background check requirements mandated by Section 161A and the Firearms Guidelines. The background checks would be required for security personnel whose official duties require access to covered weapons.

The 2009 Firearms Guidelines provided that the security personnel for all licensees and certificate holders that fall within the designated eligible classes of facilities must undergo firearms background checks, whether or not a particular licensee or certificate holder intends to seek preemption authority. However, under the revised 2014 Firearms Guidelines, the requirement for background checks would apply to only those licensees and certificate holders who apply for Section 161A authority. Other changes to the Firearms Guidelines included the removal of the definition of "standard weapon," and the removal of references to standard weapons in the definitions of "covered weapons" and "enhanced weapons." There were also minor conforming and clarifying editorial changes throughout the revised 2014 Firearms Guidelines.

In the February 2011 proposed rule that would implement the NRC's authority under Section 161A of the AEA, the NRC proposed amendments to 10 CFR part 73 by adding new definitions, processes for obtaining enhanced weapons, requirements for firearms background

checks, and security event notification requirements for stolen or lost enhanced weapons. This supplemental proposed rule continues the proposed changes from the February 2011 proposed rule and the January 2013 supplemental proposed rule, and supplements or modifies the following existing or proposed regulations in 10 CFR part 73:

- Section 73.2, Definitions.
- Proposed Section 73.18, Authorization for use of enhanced weapons and preemption of firearms laws.
- Proposed Section 73.19, Firearms background checks for armed security personnel.
- Section 73.51, Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

This supplemental proposed rule would make the following changes to the proposed requirements of 10 CFR part 73:

- Require firearms background checks only for those licensees and certificate holders who have applied for Section 161A authority and only for security personnel whose official duties require access to covered weapons.

- Require periodic firearms background checks at least once every 5 years.

Previously the maximum periodicity was proposed to be at least once every 3 years. However, licensees and certificate holders would continue to be able to conduct periodic firearms background checks at a periodicity of less than every 5 years, at their discretion.

- Conform the process for conducting firearms background checks and applying for preemption authority to the updated requirements for completing firearms background checks specified in the revised 2014 Firearms Guidelines (e.g., removal of the proposed~~required~~ 30-day and 180-day milestones in conducting firearms background checks).

- Remove the definition of “standard weapon” and remove the references to standard weapon from the definitions of “covered weapon” and “enhanced weapon,” per the revised 2014 Firearms Guidelines.

- Revise the definitions of “combined enhanced-weapons authority and preemption authority,” “covered weapons,” and “stand-alone preemption authority” as conforming changes.

Separately, the NRC would make several clarifying and corrective changes to the process for obtaining stand-alone preemption authority and the requirements for firearms background checks, based upon language approved by the Commission in the designation orders and confirmatory orders issued by the NRC subsequent to the publication of the February 2011 proposed rule.

The NRC would also make several additional changes to clarify the agency’s review and acceptance criteria for evaluating applications for stand-alone preemption authority, based upon lessons learned by the NRC staff in reviewing existing applications for preemption authority, including developing ~~these~~ confirmatory orders ~~for~~ to those licensees requesting Section 161A authority, and comments received in response to prior versions of this proposed rule.

Furthermore, to ensure consistency between processes, the NRC would also make ~~equivalent~~ corresponding changes to the proposed process for obtaining enhanced-weapons authority.

Sunsetting of Orders

In the SRM-SECY-12-0125, “Staff Requirements – Interim Actions to Execute Commission Preemption Authority Under Section 161A of the Atomic Energy Act of 1954, as Amended” (ADAMS Accession No. ML12326A653), the Commission directed the NRC staff to include in the final rule a plan “to sunset the interim designation order and the confirmatory orders.” Accordingly, the NRC has developed a plan to sunset these orders and is taking

advantage of this supplemental proposed rule to include new language in §§ 73.18 and 73.19 to accomplish the Commission's direction. NRC is proposing new paragraphs in §§ 73.18 and 73.19 to indicate that NRC approvals of Section 161A authority via confirmatory order would remain valid after issuance of a final rule. However, the licensees who received orders granting preemption authority prior to issuance of a final rule would be subject to the implementing regulations in §§ 73.18 and 73.19, in lieu of the requirements specified in the confirmatory orders (i.e., the requirements of the orders would be superseded in their entirety by the requirements in the final rule). The licensees who receive these confirmatory orders would be required, within 60 days of the effective date of the final rule, to update their applicable procedures, instructions, and training to reflect the final rule's requirements. These licensees would be required to notify the NRC, within 70 days of the effective date of the final rule, when they have completed these actions. Once the NRC receives this notification and inspects the licensee's transition actions, the NRC would rescind the orders.

The Commission's designation of licensed facilities as part of an interim class of facilities eligible to apply for preemption authority prior to issuance of a final rule would end once the Enhanced Weapons rule is implemented. The Commission would designate the permanent classes of facilities eligible to apply for Section 161A authority in § 73.18(c) of the rule. After the final rule is implemented, the NRC would take appropriate action to rescind the designation orders. All of the facilities issued a designation order would be included in the final rule's list of designated facilities (i.e., power reactor facilities, Category I special nuclear material facilities, and at-reactor ISFSIs). Accordingly, the firearms background check requirements contained in these designation orders would be replaced in their entirety by the requirements in § 73.19.

At this time, the NRC is only seeking comments on the revisions proposed by this separate supplemental proposed rule. The NRC will address public comments on the February

2011 proposed rule, the January 2013 supplemental proposed rule, and this separate supplemental proposed rule in the final rule.

IV. Section-by-Section Analysis.

The following paragraphs describe the specific changes proposed by this supplemental proposed rule.

Section 73.2, Definitions

The proposed new definitions for the terms *Combined enhanced-weapons authority and preemption authority*, *Covered weapon*, and *Stand-alone preemption authority* would be revised to reflect the revised 2014 Firearms Guidelines. The proposed new definition for the term *Standard weapon* would be removed to reflect the revised 2014 Firearms Guidelines with conforming, editorial changes made to the proposed definition for the term *Enhanced weapon*.

Section 73.18, Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws

In paragraph (d), the NRC would set forth the requirements and process for licensees and certificate holders who are included within the classes of facilities, radioactive material, and other property specified in § 73.18(c)(1) and desire to voluntarily apply for stand-alone preemption authority under Section 161A of the AEA. The application would require initial information describing the licensee's or certificate holder's request for preemption authority, ~~their~~its purpose and reasons for requesting this authority, and a description of ~~their~~its Firearms Background Check Plan, including training for security personnel on the background check disqualifying conditions and notification requirements. Firearms background checks would only

be required for security personnel, whose official duties require access to covered weapons, of licensees or certificate holders who apply for Section 161A authority, ~~and whose official duties require access to covered weapons~~. Licensees and certificate holders would be required to submit their applications in writing, and under oath or affirmation.

The licensee or certificate holder would also be required to submit supplemental information to the NRC on the completion of satisfactory firearms background checks and required training for security personnel who require access to covered weapons. The timing of the submission of the supplemental information will be at the discretion of the licensee or certificate holder, although the licensee or certificate holder must have completed a sufficient number of satisfactory checks to permit the licensee or certificate holder to meet ~~their~~ its applicable security-personnel minimum staffing and fatigue requirements.

Subsequent to the completion of the submission of all required information, the NRC will review the information and document the agency's decision to approve or disapprove the application.

Licensees or certificate holders ~~must cannot~~ commence firearms background checks ~~only after~~ until they have received notification from the NRC that the agency has accepted for review their application for stand-alone preemption authority. Once the NRC has reviewed and approved a licensee's or certificate holder's application for stand-alone preemption authority, the licensee or certificate holder must assign only security personnel who have completed a satisfactory firearms background check to duties requiring access to covered weapons.

In paragraph (e), the NRC would set forth the requirements and process for eligible licensees and certificate holders (as specified in § 73.18(c)(2)) who ~~se~~ choose to voluntarily apply for combined enhanced ~~_~~ weapons authority and preemption authority under Section 161A of the AEA. Paragraph (e) would require in the application initial information describing the

licensee's or certificate holder's request for enhanced-~~weapons~~ authority, ~~their~~its purpose and reasons for requesting this authority, and a description of ~~their~~its proposed Firearms Background Check Plan, including training of security personnel on the disqualifying status conditions and disqualifying events; the application would be required to address how security personnel notify the licensee or certificate holder security management of the occurrence of any disqualifying conditions or events. Also, under the 2011 proposed rule, applicants for combined enhanced weapons and preemption authority that already have preemption authority under paragraph § 73.18(d) would not be required to reapply for preemption authority in their § 73.18(e) application. That aspect of the 2011 proposed rule is unchanged by this supplemental proposed rule.

Firearms background checks would only be required of applicants for Section 161A authority. Those regulated entities required to conduct firearms background checks would need to conduct the checks on all security personnel whose official duties require access to ~~enhanced~~ covered weapons, which includes enhanced weapons. Licensee and certificate holders would be required to submit their applications in writing and under oath or affirmation. Licensees applying for combined enhanced-~~weapons~~ authority and preemption authority would be required to submit their application under the applicable regulations for a license amendment in 10 CFR parts 50, 52, 70, or 72. Certificate holders to which the supplemental proposed rule would apply (i.e. 10 CFR part 76 certificate of compliance holders), would be required to submit their applications under the applicable regulations for a certificate of compliance amendment under 10 CFR part 76.

The application would include the additional technical information required by § 73.18(f) addressing the specific enhanced weapons ~~requested by that~~ intends to use the licensee or certificate holder. The licensee or certificate holder would also submit supplemental information to

the NRC on the completion of both the firearms background checks and the required training (on disqualifying events and conditions) for security personnel whose official duties require access to covered weapons. For this purpose, the term completion means that a sufficient number of satisfactory checks are complete to meet a regulated entity's minimum staffing and fatigue requirements.

The timing of the submission of the supplemental information would be at the discretion of the licensee or certificate holder when a sufficient number of satisfactory checks are complete. A licensee or certificate holder who has previously been approved for stand-alone preemption authority would not be required to repeat the initial firearms background checks on security personnel conducted to support ~~their~~its original application; rather ~~they~~the licensee or certificate holder would only need to state in ~~their~~its application for enhanced-weapons authority that ~~they~~it ~~werewas~~ previously granted preemption authority by the NRC and provide the effective date of that authority.

The NRC would review the application and supplemental submittals and would document the agency's decision to approve or disapprove the application.

Licensees or certificate holders must commence firearms background checks only after they have received notification from the NRC that the agency has accepted for review their application for combined enhanced-weapons authority and preemption authority. Furthermore, once the NRC has approved a licensee's or certificate holder's application for combined enhanced-weapons authority and preemption authority, the licensee or certificate holder must assign only security personnel who have completed a satisfactory firearms background check to duties requiring access to any covered weapons (including enhanced weapons).

Licensees and certificate holders who have been previously approved for enhanced-weapons authority and wish to use a different type, caliber, or quantity of enhanced weapons

from that previously approved by the NRC would be required to submit a new application under paragraph (e).

In paragraph (f)(2)(iii), a conforming change would be made to remove the reference to employment of "standard weapons" in the safeguards contingency plan.

In paragraph (j), a corrective change would be made to add § 73.51 to the list of regulations specifying training requirements on the use of enhanced weapons at specific license ISFSIs. This change would address the potential for an at-reactor, specific license ISFSI to possess enhanced weapons at both the reactor and the co-located ISFSI. This provision would require the ISFSI licensee employing enhanced weapons to train ~~their~~its security personnel on the use of sufficient force, including deadly force, consistent with the co-located power reactor facility. Such training is already required for the reactor licensee's security personnel under the reactor security requirements in § 73.55(k)(3). The NRC anticipates that such co-located licensees would use a single integrated guard force for both facilities (i.e., the security personnel are considered fungible between these two facilities). Consequently, the application of the same training requirements for the use of the enhanced weapons is appropriate.

In paragraphs (n)(2), (n)(3), and (n)(4), conforming changes would replace the term "covered weapons" with "enhanced weapons" to be consistent with the revised 2014 Firearms Guidelines.

In paragraph (s), the NRC would add new provisions to provide for the transition from stand-alone preemption authority and enhanced-weapons authority approved by the NRC via orders to a licensee or certificate holder, to approval via the proposed regulations in § 73.18. While the NRC's previous authorizations for Section 161A authority under those orders would remain valid, these licensees would be subject to the implementing requirements of § 73.18, in lieu of the requirements contained in these orders. However these licensees would not be

required to reapply for Section 161A authority under the provisions of § 73.18. Licensees would be required to update procedures, instructions, and training to reflect any revised requirements in the final rule and notify the NRC of the completion of this action. The licensee's actions and notification would be required to be completed within 60 days and 70 days, respectively, of the effective date of the final rule. Following receipt of the licensee's notification and inspection of the licensee's actions, the NRC would take action to rescind these orders.

Section 73.19, Firearms Background Checks for Armed Security Personnel

Paragraph (b) would be revised in its entirety to define new general requirements regarding the completion of firearm background checks. This would include a requirement to establish a Firearms Background Check Plan and to specify the elements of this plan. A Firearms Background Check Plan would be a component of the licensee's or certificate holder's 10 CFR part 73, Appendix B, required Training and Qualification plan for security personnel whose official duties require access to covered weapons. Only those licensees and certificate holders who have voluntarily applied for Section 161A authority (i.e., stand-alone preemption authority or for combined enhanced-weapons authority and preemption authority) would be required to conduct firearms background checks on their security personnel. Accordingly, such licensees and certificate holders would be required to establish and implement a Firearms Background Check Plan.

Paragraph (b)(2) would describe the groups of individuals included within the term *security personnel whose official duties require access to covered weapons*. In addition to the security officers themselves (who directly protect the facility or radioactive material), this term would include other groups of individuals who have access to covered weapons; and in some cases only enhanced weapons. Examples would include, but are not limited to, firearms

instructors, armorers, individuals issuing and checking in weapons, individuals with access to armories and weapons storage lockers, and individuals conducting inventories of enhanced weapons or removing enhanced weapons from the site for authorized purposes. Paragraph (b)(3) would specify the elements of the Firearms Background Check Plan. Paragraphs (b)(4) through (b)(10) would address requirements on conducting firearms background checks. Licensees or certificate holders must commence firearms background checks only after they have received notification from the NRC that the agency has accepted for review their application for either stand-alone preemption authority or for combined enhanced-weapons authority and preemption authority. Furthermore, once the NRC has approved a licensee's or certificate holder's application for either stand-alone preemption authority or for combined enhanced-weapons authority and preemption authority, the licensee or certificate holder must assign only security personnel who have completed a satisfactory firearms background check to duties requiring access to covered weapons. Also, applicants for an NRC license or certificate of compliance may not conduct firearms background checks until after the NRC has both issued their license or certificate of compliance and accepted their application for Section 161A authority for review. These two ~~criteria~~ steps may occur in any order. Finally, this section also includes a requirement to remove individuals from duties requiring access to covered weapons if they receive a "denied NICS response." This also includes removing individuals from duties requiring access to enhanced weapons if the individual receives a "delayed NICS response."

Paragraph (b)(11) would specify the requirements for a periodic firearms background check, which would be required at least once every 5 years from the most recent check. This periodicity would be consistent with the Commission's designation orders issued to several licensees. Licensees and certificate holders would be able to conduct periodic firearms background checks at a shorter periodicity than every 5 years, at their discretion.

Security personnel that cease to be employed by a licensee, certificate holder, or security contractor, are considered to have a break-in-service for the purposes of the enhanced weapons rulemaking. The licensee or certificate holder would need to complete a new satisfactory firearms background check, for security personnel ~~that~~ who experience a break-in-service as described in paragraph (b)(12). Paragraph (b)(12) also addresses exceptions to the break-in-service requirement. Paragraph (b)(13) would address changes in the licensee, certificate holder, or their security contractor that do not require a break-in-service firearms background check. Paragraph (b)(14) would prohibit licensees and certificate holders from using a satisfactory firearms background check in lieu of completing other required criminal history records checks or background investigations specified in the NRC's access authorization or personnel security clearance programs under other provisions of 10 CFR chapter I.

Paragraph (b)(15) would not require a new initial firearms background check for security personnel who have completed a satisfactory firearms background check pursuant to a Commission designation order issued before the effective date of the final rule. However, these security personnel would remain subject to the periodic firearms background check and the break-in-service firearms background check requirements of § 73.19. Paragraph (b)(16) would require a licensee or certificate holder to discontinue conducting firearms background checks if ~~they~~ it ~~withdraws~~ their ~~its~~ application for Section 161A authority. Paragraph (b)(17) would require a licensee or certificate holder to discontinue conducting firearms background checks if the NRC rescinds or revokes ~~their~~ its Section 161A authority, in accordance with § 73.18.

Paragraph (c) would be removed and reserved. Because § 73.18(c) contains the list of classes of facilities and activities eligible to apply for Section 161A authority and only licensees and certificate holders who have applied to the NRC under § 73.18 for Section 161A authority are eligible under § 73.19 to conduct firearms background checks of their security personnel,

the list of classes of facilities and activities previously proposed in § 73.19(c) for conducting firearms background checks is now redundant and unnecessary.

Paragraph (f) would be revised to require periodic firearms background checks be completed at least once every 5 calendar years. This is consistent with the 2014 Firearms Guidelines and the Commission's designation order EA-13-092, which required periodic firearms background checks at least once every 5 years on security personnel who require access to covered weapons. Second, a requirement would be added to specify an allowance period for completion of a satisfactory periodic firearms background check of 5 years from the date of the most recent firearms background check. This allowance period would be consistent with the Commission's designation order. Third, the revised language would clarify that security personnel may remain assigned to duties requiring access to covered weapons while pending completion of a periodic firearms background check. However, if a satisfactory firearms background check is not completed by the end of the allowance period, then the security personnel must be removed from duties requiring access to covered weapons. Independent of the direction in paragraph (f), an individual who receives a "denied NICS response" during a periodic firearms background check must be removed without delay from duties requiring access to covered weapons. Finally, the NRC would continue to permit licensees and certificate holders to accomplish periodic firearms background checks at a shorter periodicity than the maximum requirement (i.e., less more frequently than once every 5 years), at the licensee's or certificate holder's discretion.

Paragraph (g) would be revised to clarify the exception for when a licensee or certificate holder is required to notify the NRC that it has removed security personnel from duties requiring access to covered weapons. This exception ~~would occur following~~ is intended to encourage the prompt notification by the security personnel to notify the licensee's or certificate holder's

security management of the occurrence of a disqualifying status condition or disqualifying event within 72 hours. If the security personnel make the notification, then the licensee or certificate holder is not required to notify the NRC within 72 hours of the security personnel's removal.

However, in all circumstances, the licensee or certificate holder would be required to maintain records of such removals under the Firearms Background Check Plan, as required under revised paragraph (b)(3)(vi).

Paragraph (h) would be revised to change the notification timeliness requirement for security personnel who have had a disqualifying status condition or disqualifying event from "3 working days" to "72 hours" to improve regulatory clarity and consistency with the licensee's and certificate holder's current proposed notification timeliness requirement in paragraph (g).

Paragraph (j) would be revised to clarify the scope of the training modules required for security personnel who are subject to firearms background checks under the licensee's or certificate holder's Firearms Background Check Plan, as required under paragraph (b)(3)(iii). Modules would be required on Federal disqualifying status conditions or disqualifying events, applicable State disqualifying status conditions or disqualifying events ~~to provide personnel familiarity with these disqualifying status conditions or events~~, the process for appealing adverse firearms background check results, and the ongoing obligation of security personnel who are subject to a firearms background check to notify their licensee's or certificate holder's security management of the occurrence of such a disqualifying status condition or disqualifying event. The modules would also include the requirement on the timeliness of such notifications (i.e., within 72 hours of the occurrence of the disqualifying condition or event). Finally, periodic refresher training on these modules would be required ~~at an annual frequency~~ annually.

Paragraph (p)(1) would be revised to clarify its applicability to security personnel subject to a firearms background check and to remove the current exception cross-reference to

paragraph (b). Limitations on security personnel's access to covered weapons during the pendency of an appeal to the FBI would now be found solely in paragraph (p).

Paragraph (p)(5)(iv) would be revised to indicate that individuals (who are appealing a firearms background check) should submit a request for extension of time (i.e., regarding the 45-day timeliness requirement on submitting an appeal) to their licensee or certificate holder, rather than to the FBI. The licensee or certificate holder may grant an extension request for good cause, as determined by the licensee or certificate holder. This change is consistent with the 2014 Firearms Guidelines. No other changes would be made to the other subparagraphs of paragraph (p)(5).

In paragraph (r), the NRC would add new provisions to provide for the transition from preemption authority and enhanced-weapons authority approved by the NRC via designation orders and confirmatory orders to approvals via the proposed regulations in § 73.19. While the NRC's authorizations for Section 161A authority would remain valid after issuance of a final rule and licensees would not need to reapply for Section 161A authority, these licensees would be subject to the implementing requirements of § 73.19, in lieu of the requirements contained in these orders. However, licensees would not be required to repeat their initial firearms background checks. Licensees would be required to update procedures, instructions, and training to reflect any revised requirements in the final rule and notify the NRC of the completion of this action. The licensee's actions and notification would be required to be completed within 60 days and 70 days, respectively, of the effective date of the final rule. Following receipt of the licensee's notification and inspection of the licensee's actions, the NRC would ~~take action to~~ rescind these orders.

Section 73.51, Requirements for the Physical Protection of Stored Spent Nuclear Fuel and High-Level Radioactive Waste

Paragraph (f) would be added as a conforming change to the proposed change to § 73.18(j) to reflect the potential for a specific licensed, at-reactor ISFSI to possess ~~enhanced~~ covered weapons at both the reactor and the co-located ISFSI. This provision would require ISFSI licensees employing ~~enhanced~~ covered weapons to train their security personnel on the use of sufficient force, including deadly force. The NRC anticipates that the security organization for a reactor and a co-located specific licensed ISFSI employing ~~enhanced~~ covered weapons would use an integrated security organization (i.e., the security personnel are considered fungible between these two facilities). Accordingly, the NRC considers it appropriate to require both the reactor and ISFSI security personnel carrying ~~enhanced~~ covered weapons to be trained on the same standards on the use of force, including deadly force. This proposed language is consistent with the current regulations on training of security personnel on the use of force under § 73.55(k)(3) for reactor licensees and § 73.46(h)(5) for Category I special nuclear material licensees and certificate holders.

V. Cumulative Effects of Regulation:

Cumulative Effects of Regulation (CER) consists of the challenges licensees face in addressing the implementation of new regulatory positions, programs, and requirements (e.g., rulemaking, guidance, generic letters, backfits, inspections). The CER may manifest in several ways, including the total burden imposed on licensees by the NRC from simultaneous or consecutive regulatory actions that can adversely affect the licensee's capability to implement

those requirements while continuing to operate or construct its facility in a safe and secure manner.

The goals of the NRC's CER effort were met throughout the development of this supplemental proposed rule. During the development of the 2011 proposed rule, the NRC staff engaged external stakeholders at a public meeting and by soliciting public comments on the proposed rule and draft guidance documents. The public meeting was held at NRC Headquarters on June 1, 2011, to discuss the proposed implementation plan. A summary of the public meeting is in ADAMS under Accession No. ML111720007. Additionally, the NRC staff issued several draft guidance documents for comment in conjunction with the publication of the 2011 proposed rule. The feedback from this meeting and the public comments on the 2011 proposed rule informed the NRC staff's recommended schedule for the implementation of the new enhanced weapons requirements in this supplemental proposed rule.

Consistent with SECY-11-0032, "Consideration of the Cumulative Effects of Regulation in the Rulemaking Process," dated March 2, 2011 (ADAMS Accession No. ML110190027), the NRC requests specific comment on the supplemental proposed rule's implementation schedule in light of any existing CER challenges, specifically:

a. Do the supplemental proposed rule's compliance date and submittal dates provide sufficient time to implement the new supplemental proposed requirements, including changes to programs, procedures, and the facility, in light of any ongoing CER challenges?

b. If there are ongoing CER challenges, what do you suggest as a means to address this situation (e.g., if more time is required to implement the new requirements, what time period is sufficient)?

c. Are there unintended consequences (e.g., does the supplemental proposed rule create conditions that would be contrary to the supplemental proposed rule's purpose and objectives)? If so, what are the unintended consequences?

d. Please comment on the NRC's cost and benefit estimates in the supplemental proposed rule regulatory analysis (ADAMS Accession No. ML15007A248).

The NRC staff identified one draft guidance document that is affected by the revised proposed regulations described in this document and is issuing this revised guidance document for public comment concurrent with this supplemental proposed rule (see Section XIV, "Availability of Guidance").

VI. Regulatory Flexibility Certification.

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This supplemental proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

VII. Regulatory Analysis.

The NRC has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The draft regulatory analysis can be found in ADAMS under ML15007A248. The NRC requests public

comment on the draft regulatory analysis. Comments on the draft regulatory analysis may be submitted to the NRC as indicated under the ADDRESSES caption of this document.

VIII. Backfitting and Issue Finality.

This supplemental proposed rule contains the following: (i) proposed provisions which reduce the regulatory burden associated with the original 2011 proposed rule and the 2013 supplemental proposed rule, and (ii) additional provisions – not contained in either the original 2011 proposed rule and/or the 2013 supplemental proposed rule – which facilitate licensees' capability to obtain burden reduction (i.e., proposed sunseting of the interim designation order and the confirmatory orders). The provisions of this supplemental proposed rule are effectively voluntary in nature, and would not impose modifications or additions to existing structures, components, designs, or existing procedures or organizations if adopted in final form. Accordingly, the provisions of this supplemental proposed rule, if adopted as a final rule, would not constitute backfitting or otherwise be inconsistent with any issue finality provision in Part 52, ~~and~~ the consideration of backfitting for the original 2011 proposed rule and the 2013 supplemental proposed rule, considered together, bounds the backfitting and issue finality consideration for this supplemental proposed rule. Therefore, a backfit analysis is not required and has not been completed for any of the provisions of this supplemental proposed rule.

IX. Plain Writing.

The Plain Writing Act of 2010 (Pub. L. 111-274), requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document

to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883). The NRC requests comment on the document with respect to the clarity and effectiveness of the language used.

X. Environmental Assessment and Proposed 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. Instead, the agency prepared a draft environmental assessment on the proposed rule for public comment.

In the proposed rule published on February 3, 2011, the determination was that there will be no significant offsite impact to the public from this action. Therefore, the Commission concluded that because of the nature of the proposed changes to the firearms background checks and the enhanced weapons provisions presented in the 2011 proposed rule, the assumptions in the October 2006 proposed rule were not changed so the Commission was not seeking additional comment on the 2006 environmental assessment. Similarly here, the nature of the changes to the firearms background check and the enhanced provisions in this supplemental proposed rule do not change the assumptions in the 2011 proposed rule and the October 2006 environmental assessment. Accordingly, the Commission is not seeking additional comment on the environmental assessment. Availability of the environmental assessment is provided in Section XIII, "Availability of Documents," of this document.

XI. Paperwork Reduction Act.

This supplemental proposed rule contains new or amended collections of information 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 collections.

Type of submission, new or revision: Revision.

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."

The form number if applicable: NRC Form 754

How often the collection is required or requested: One time for power reactor licensees and Category I SSNM licensees and certificate holders applying for combined enhanced weapons authority. Initial submissions of NRC Form 754 will be required for all of a licensee's or certificate holder's 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 five years. One time for licensees and certificate holders who received confirmatory orders and must update their procedures, instructions, and training materials.

Who will be required or asked to respond: The supplemental proposed rule would require only those licensees and certificate holders who apply for Section 161A authorities to submit information about their security personnel for firearms background checks. Licensees and certificate holders that had received confirmatory orders approving Section 161A authority would be required to update within 60 days after the final rule effective date any procedures, instructions, and training material on a one-time basis. The regulated entities that would be eligible to apply for Section 161A authorities are operating nuclear power reactors located at 61 sites and their co-located at-reactor Independent Spent Fuel Storage Installations (ISFSI), 10 decommissioning power reactor sites, 3 other reactor sites, and 2 fuel cycle facilities authorized to possess Category I Strategic Special Nuclear Material (SSNM). In addition to those regulated entities and consistent with the 2011 proposed rule, modified security event notifications under different ~~sections~~paragraphs of section 73.71 would also affect 42 research and test reactor (RTR) sites, 6 Category II and III Special Nuclear Material sites, 7 Independent Spent Fuel Storage Installation (ISFSI) sites not co-located with a reactor, and 2 hot cell sites.

An estimate of the number of annual responses: 4,085 (2,992 responses for 10 CFR part 73 requirements and 1,093 responses for NRC Form 754)

The estimated number of annual respondents: 133

An estimate of the total number of hours needed annually to comply with the information collection requirement or request: 47,906.4 hours (45,399.8 hours for 10 CFR part 73 requirements and 2,506.7 hours for NRC Form 754)

Abstract: The NRC is proposing to amend 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 supplemental proposed rule would modify the information collections contained in the Enhanced Weapons, Firearms Background Checks, and Security Event Notifications rulemaking. First, firearms background checks would be required for security personnel for only those licensees and certificate holders who have applied for Section 161A authority (i.e., either stand-alone preemption authority or combined enhanced-weapons authority and preemption authority). As a result, the number of respondents to new sections 73.18 and 73.19 would be reduced compared to the proposed rule published in the Federal Register on February 3, 2011 (76 FR 6199). Second, periodic firearms background checks would be required at least once every 5 years rather than every 3 years. Third, applications for Section 161A authority ~~must~~ would be required to describe the applicant's purposes and objectives in requesting the authority. Finally, the supplemental proposed rule would add requirements for licensees and certificate holders that had received confirmatory orders approving Section 161A authority ~~would be required~~ to update within 60 days after the final rule effective date any procedures, instructions, and training material on a one-time basis. These information collections are needed to enable the NRC to implement the mandate of Section 161A of the Atomic Energy Act (AEA) to verify that security personnel who will have access to enhanced weapons have been subject to a background check by the Attorney General to verify that an individual is not prohibited under Federal or State law from possessing or receiving firearms.

The 2011 proposed rule also included requirements that would modify the security event notification requirements under different paragraphs ~~sections~~ of section 73.71. This supplemental proposed rule would not change those proposed modified requirements, but they

are repeated in the supporting statement for completeness. The proposed security event notification requirements would be used to meet the NRC's strategic mission to immediately communicate threats or attack information to the Department of Homeland Security (DHS) operations center under the National Response Framework. The NRC also has a strategic mission to immediately communicate threat or attack 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 spent nuclear fuel, HLW high level waste, or Category I SSNM.

This prompt notification could be vital in increasing another licensees' ability to defeat poorly-synchronized multiple-site attacks and in protecting the lives of security and plant personnel (at a second facility) in such un-coordinated attacks. This prompt notification could also be vital in increasing the defensive posture of other government or critical infrastructure facilities to defeat poorly-synchronized multiple-sector attacks.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collection(s) 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. Is the estimate of the burden of the proposed information collection accurate?
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 proposed information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package and proposed rule is available in ADAMS under Accession No. ML15035A635 or may be viewed free of charge at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. You may obtain information and comment submissions related to the OMB clearance package by searching on <http://www.regulations.gov> under Docket ID NRC-2011-0018.

You may submit comments on any aspect of these proposed information collection(s), including suggestions for reducing the burden and on the above issues, by the following methods:

- **Federal rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0018.
- **Mail comments to:** FOIA, Privacy, and Information Collections Branch, Office of Information Services, Mail Stop: T-5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 or to Vlad Dorjets Desk Officer, Office of Information and Regulatory Affairs (3150-0002 and 3150-0204), NEOB-10202, Office of Management and Budget, Washington, DC 20503; telephone: 202-395-7315, e-mail: Vladik_Dorjets@omb.eop.gov.

Submit comments by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

Public Protection Notification

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

XII. Criminal Penalties.

For the purposes of Section 223 of the AEA, the NRC is issuing this supplemental proposed rule that would amend 10 CFR part 73 under Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement. Criminal penalties as they apply to regulations in 10 CFR part 73 are already discussed in § 73.81. Accordingly, §§ 73.18 and 73.19 will not be included in § 73.81(b).

XIII. 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 supplemental proposed rule, the NRC is using standards from applicable firearms standards developed by nationally recognized firearms organizations or standard setting bodies or from standards developed by 1) 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; 2) State law-enforcement training centers; or 3) State Division (or Department) of

Criminal Justice Services (DCJS) Training Academies. The NRC invites comment on the applicability and use of other standards.

XIV. Availability of Guidance.

The NRC is issuing revised draft regulatory guide (DG), DG-5020, Revision 1, "Applying for Enhanced-Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73," for the implementation of the proposed requirements set forth in this supplemental proposed rulemaking. The guidance is available in ADAMS under Accession No. ML14322A847. In conjunction with the supplemental proposed rule, the NRC seeks public comment on DG-5020, Revision 1, which may be accessed by searching on <http://www.regulations.gov> under Docket ID NRC-2011-0015.

In conjunction with the February 2011 proposed rule, the NRC issued for comment a new draft guide, DG 5020, Revision 0, "Applying for Enhanced-Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73" (76 FR 6086, February 3, 2011). You may also access DG-5020, Revision 0, supporting material, and the public comments the NRC received on DG-5020, Revision 0, by searching on <http://www.regulations.gov> under Docket ID NRC-2011-0015.

DG-5020, Revision 0, contained detailed guidance on the implementation of the proposed requirements for applying for enhanced-weapons authority, for applying for preemption authority, and conducting firearms background checks. However, DG-5020, Revision 0 did not include at-reactor ISFSIs under the applicability section; rather, the DG reserved a section for additional facilities to be added by future rulemakings or Commission orders. The addition of at-reactor ISFSIs to the DG as an eligible class of licensees to apply for

Section 161A authority would not appreciably change the guidance contained in DG-5020, Revision 0. Accordingly, the NRC did not issue a revision to DG-5020, Revision 0, for comment in conjunction with the January 2013 supplemental proposed rule.

However, the changes contained in this supplemental proposed rule are substantive enough to warrant a revision to DG-5020, Revision 0. Accordingly, the NRC staff developed Revision 1 to DG-5020 to reflect the changes in this supplemental proposed rule and the previous supplemental proposed rule which added at-reactor ISFSIs.

You may submit comments on DG 50-20, Revision 1, by the following methods:

- **Federal rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0015. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: Carol.Gallagher@nrc.gov.

- **Mail comments to:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN-06-44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

XV. Availability of Documents.

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No. / Web link / <i>Federal Register</i> Citation
Firearms Guidelines	74 FR 46800; September 11, 2009
Firearms Guidelines, Revision 1	79 FR 36100; June 25, 2014
Environmental Assessment (October 2006 proposed rule)	ML061920093
Regulatory Analysis Regulatory Analysis--appendices (October 2006 proposed rule)	ML061380803 ML061380796 ML061440013

Information Collection Analysis	ML092640277
NRC Form 754, "Armed Security Personnel Firearms Background Check"	ML092650459
Commission: SECY-08-0050, "Firearms Guidelines Implementing Section 161A of the Atomic Energy Act of 1954 and Associated Policy Issues" (April 17, 2008)	ML072920478
Commission: SECY-08-0050A, "Firearms Guidelines Implementing Section 161A of the Atomic Energy Act of 1954 and Associated Policy Issues - Supplemental Information" (July 8, 2008)	ML081910207
Commission: SRM-SECY-08-0050/0050A, "Firearms Guidelines Implementing Section 161A of the Atomic Energy Act of 1954 and Associated Policy Issues" (August 15, 2008)	ML082280364
Letter Opinion from Bureau of Alcohol, Tobacco, Firearms, and Explosives' Office of Enforcement on the Transfer of Enhanced Weapons (January 5, 2009)	ML090080191
Proposed Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Rule (February 3, 2011)	ML103410132
DG-5020, Revision 0, "Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73" (February 3, 2011)	ML100321956
DG-5020, Revision 1, "Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73"	ML14322A847
Commission: SECY-12-0027, "Preemption Authority Pursuant to Section 161A, 'Use of Firearms by Security Personnel,' of the Atomic Energy Act of 1954, as Amended" (February 17, 2012)	ML113130015
Commission: SRM-SECY-12-0027, "Preemption Authority Pursuant to Section 161A, 'Use of Firearms by Security Personnel,' of the Atomic Energy Act of 1954, as Amended" (May 3, 2012)	ML12124A377
Commission: SECY-12-0125, "Interim Actions to Execute Commission Preemption Authority Under Section 161A of the Atomic Energy Act of 1954, as Amended" (September 20, 2012)	ML12164A839
Commission: SRM-SECY-12-0125, "Interim Actions to Execute Commission Preemption Authority Under Section 161A of the Atomic	ML12326A653

Energy Act of 1954, as Amended" (November 21, 2012)	
NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Revision 4 (September 30, 2004)	ML042820192

[Staff should add the Designation Order to the above table]

Throughout the development of this rule, the NRC staff may post documents related to this rule, including public comments, on the Federal rulemaking Web site at <http://www.regulations.gov> under Docket ID NRC-2011-0018 and NRC-2011-0015. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: 1) Navigate to the docket folder (NRC-2011-0018 and NRC-2011-0015); 2) click the "Sign up for E-mail Alerts" link; and 3) enter your e-mail address and select how frequently you would like to receive e-mails (daily, weekly, or monthly).

List of Subjects in 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. 552 and 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: Atomic Energy Act secs. 53, 147, 161, 223, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2282, 2297f, 2210(e)); Energy Reorganization Act sec. 201, 204 (42 U.S.C. 5841, 5844); Government Paperwork Elimination Act sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594 (2005).

Section 73.1 also issued under Nuclear Waste Policy Act secs. 135, 141 (42 U.S.C. 10155, 10161).

Section 73.37(b)(2) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note).

2. In § 73.2, paragraph (a), as proposed to be added February 3, 2011 (76 FR 6232), revise the definitions for “Combined enhanced~~_~~weapons authority and preemption authority,” “Covered weapon,” “Enhanced weapon,” and “Stand-alone preemption authority,” in alphabetical order; and remove the definition for “Standard weapon” to read as follows:

§ 73.2 Definitions.

* * * *

(a) * * *

Combined enhanced~~_~~weapons authority and preemption authority means the authority granted to 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 categories of ~~enhanced~~covered weapons, notwithstanding any State, local, or certain Federal firearms laws, including regulations, that prohibit or restrict such conduct.

* * * *

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

* * * *

Enhanced weapon means any short-barreled shotgun, short-barreled rifle, or machine gun. Enhanced weapons do not include destructive devices as specified under 18 U.S.C. 921(a)(4).

* * * *

Stand-alone preemption authority means the authority granted to the Commission, at 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, and use one or more categories of covered weapons other than enhanced weapons, notwithstanding any State, local, or certain Federal firearms laws, including regulations, that prohibit or restrict such conduct.

* * * *

3. In § 73.18, as proposed to be added February 3, 2011 (76 FR 6233), revise paragraphs (d), (e), (f)(2)(iii), (j), (n)(2), (n)(3), and (n)(4); and add paragraph (s) to read as follows:

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

* * * *

(d) *Application process for stand-alone preemption authority.* (1) Only licensees and certificate holders included within the classes of facilities, radioactive material, and other property listed in paragraph (c)(1) of this section may apply to the NRC for stand-alone preemption authority.

(2) Licensees and certificate holders ~~who desire to apply~~for stand-alone preemption authority must submit an application to the NRC using the procedures specified in this section.

(3) The contents of the application must include the following information:

(i) A statement indicating that the licensee or certificate holder is applying for stand-alone preemption authority under 42 U.S.C. 2201a;

(ii) The Commission-designated facility, radioactive material, or other property to be protected by the licensee's or certificate holder's security personnel using the covered weapons;

(iii) A description of the licensee's or certificate holder's purposes and objectives in requesting stand-alone preemption authority. This description must include whether these covered weapons are currently employed as part of the licensee's or certificate holder's existing protective strategy; or whether these covered weapons will be used in a revised protective strategy; and

(iv) A description of the licensee's or certificate holder's Firearms Background Check Plan required by § 73.19 of this part.

(4) Licensees and certificate holders must supplement their application for stand-alone preemption authority with the following additional information:

(i) A confirmation that a sufficient number of security personnel have completed a satisfactory firearms background check to meet the licensee's or certificate holder's applicable security-personnel minimum staffing and fatigue requirements;

(ii) A confirmation that the necessary training modules and notification procedures have been developed under their Firearms Background Check Plan; and

(iii) A confirmation that all security personnel whose official duties require access to covered weapons have been trained on these modules and notification procedures.

(5) The licensee or certificate holder must submit both the application and the supplementary information to the NRC in writing, under oath or affirmation, and in accordance with § 73.4 of this part.

(6) Upon the effective date of the NRC's approval of its application for stand-alone preemption authority, the licensee or certificate holder must only assign security personnel who have completed a satisfactory firearms background check to duties requiring access to any covered weapons.

(e) *Application process for combined enhanced-weapons authority and preemption authority:* (1) Only licensees and certificate holders included within the classes of facilities, radioactive material, and other property 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 ~~who desire to applying~~ for combined enhanced-weapons authority and preemption authority must submit an application to the NRC using the procedures specified in this section.

(3) The contents of the application must include the following information:

(i) A statement indicating that the licensee or certificate holder is applying for combined enhanced-weapons authority and preemption authority under 42 U.S.C. 2201a.

(ii) The Commission-designated facility, radioactive material, or other property to be protected by the licensee's or certificate holder's security personnel using the enhanced weapons.

(iii) A description of the licensee's or certificate holder's purposes and objectives in requesting combined enhanced-~~weapons~~ authority and preemption authority. This must include whether these ~~enhanced-covered~~ weapons are currently employed as part of the licensee's or certificate holder's existing protective strategy; or whether these ~~enhanced-covered~~ [staff should consider whether additional clarifications are needed in guidance on this point] weapons will be used in a revised protective strategy.

(iv) A description of the licensee's or certificate holder's Firearms Background Check Plan required by § 73.19 of this part.

(v) If the NRC has previously approved the licensee's or certificate holder's application for stand-alone preemption authority, under either paragraph (d) of this section or under a Commission Order issued before **[EFFECTIVE DATE OF FINAL RULE]**, then the licensee or certificate holder must include the effective date of the NRC's approval of preemption authority in their application for combined enhanced-~~weapons~~ authority and preemption authority.

(4) The licensee or certificate holder must include with their application the additional technical information required by paragraph (f) of this section.

(5) Licensees and certificate holders must supplement their application with the following additional information:

(i) A confirmation that a sufficient number of security personnel have completed a satisfactory firearms background check to meet the licensee's or certificate holder's applicable security-personnel minimum staffing ~~and~~consistent with fatigue requirements;

(ii) A confirmation that the necessary training modules and notification procedures have been developed under their Firearms Background Check Plan; and

(iii) A confirmation that all security personnel whose official duties require access to covered weapons have been trained on these modules and notification procedures.

(iv) Exceptions:

(A) Licensees and certificate holders who were previously approved by the NRC for preemption authority under paragraph (d) of this section are not required to submit the supplemental information of this paragraph (as a component of their application for combined enhanced-weapons authority and preemption authority).

(B) Licensees and certificate holders who were previously approved by the NRC for preemption authority pursuant to a Commission Order issued before **[EFFECTIVE DATE OF FINAL RULE]**, are not required to submit the supplemental information of this paragraph (as a component of their application for combined enhanced-weapons authority and preemption authority).

(6) The licensee or certificate holder must submit ~~their~~its application in accordance with the applicable license amendment or certificate of compliance amendment provisions specified in §§ 50.90, 70.34, 72.56, or 76.45 of this chapter. The licensee or certificate holder must submit both the application and the supplementary information to the NRC in writing and under oath or affirmation.

(7) If a licensee or certificate holder wishes to use a different type or caliber of enhanced weapons or obtain a different quantity of enhanced weapons from that previously approved by the Commission under this section, then the licensee or certificate holder must submit a new application to the NRC in accordance with paragraph (e) of this section (to address these different weapons or different quantities of weapons).

(8) Upon the effective date of the NRC's approval of its application for combined enhanced-weapons authority and preemption authority, the licensee or certificate holder must only assign security personnel who have completed a satisfactory firearms background check to perform duties requiring access to any covered weapons.

(f) * * *

(2) * * *

(iii) The licensee or certificate holder must address in the safeguards contingency plan how the enhanced weapons will be employed by the security personnel in implementing the protective strategy, including tactical approaches and maneuvers; and

* * * * *

(j) *Use of enhanced weapons.* Requirements regarding the general use of enhanced weapons by licensee or certificate holder security personnel, in the performance of their official duties, are contained in §§ 73.46, 73.51, and 73.55 and in appendices B, C, and H of this part, as applicable.

* * * * *

(n) * * *

(2) Security personnel transporting enhanced 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 that is being transported to or from the licensee's or certificate holder's facility must ensure that these weapons are rendered safe and locked in a secure container during transport. Security personnel may transport unloaded weapons and ammunition in the same locked secure container.

(3) Security personnel using enhanced weapons to protect shipments of radioactive material or other property that are being transported to or from the licensee's or certificate holder's facility must ensure that these weapons are maintained in a state of loaded readiness and available for immediate use, except when otherwise prohibited by 18 U.S.C. 922(q).

(4) Security personnel transporting enhanced weapons to or from the licensee's or certificate holder's facility must comply with the requirements of § 73.19 of this part.

* * * * *

(s) *Sunsetting of orders.* For licensees who received an NRC order approving an application for stand-alone preemption authority or combined preemption authority and enhanced-weapons authority prior to **[EFFECTIVE DATE OF FINAL RULE]**, the following provisions apply.

(1) The NRC's approval via a confirmatory order of preemption authority or enhanced-weapons authority under Section 161A for a licensee remains valid and licensees or certificate holders would not need to reapply for this authority.

(2) Licensees issued such orders must comply with the requirements of this section. Accordingly, the requirements of such orders are superseded in their entirety by the requirements of this section.

(3) Licensees issued such orders must update any procedures, instructions, and training material, developed in response to the orders, to reflect the transition from requirements under the order to the requirements of this section. Licensees must complete these transition actions by **[DATE 60 DAYS AFTER THE EFFECTIVE DATE OF FINAL RULE]**.

(4) Licensees issued such orders must notify the NRC in writing, in accordance with § 73.4 of this part, of the completion of these transition actions. Licensees must complete this notification by **[DATE 70 DAYS AFTER THE EFFECTIVE DATE OF FINAL RULE]**.

4. In § 73.19, as proposed to be added February 3, 2011 (76 FR 6237), revise paragraph (b); remove and reserve paragraph (c); revise paragraphs (f), (g), (h), (j), (p)(1), and (p)(5); and add paragraph (r) to read as follows:

§ 73.19 Firearms background checks for armed security personnel.

* * * * *

(b) *General Requirements.* (1) Licensees and certificate holders who have applied to the NRC under § 73.18 of this part for stand-alone preemption authority or for combined enhanced-weapons authority and preemption authority must comply with the provisions of this section. Such licensees and certificate holders must establish a Firearms Background Check Plan. Licensees and certificate holders must establish this plan as part of their overall NRC-approved Training and Qualification plan for security personnel whose official duties require access to covered weapons.

(2) For the purposes of § 73.18 of this part and this section only, the term *security personnel whose official duties require access to covered weapons* includes, but is not limited to, the following groups of individuals:

(i) Security officers using covered weapons to protect a Commission-designated facility, radioactive material, or other property;

(ii) Security officers undergoing firearms training on covered weapons;

(iii) Firearms-training instructors conducting training on covered weapons;

(iv) Armorers conducting maintenance, repair, and testing of covered weapons;

(v) Individuals with access to armories and weapons storage lockers containing covered weapons;

(vi) Individuals issuing covered weapons from armories to security personnel and checking in such weapons;

(vii) Individuals conducting inventories of enhanced weapons;

(viii) Individuals removing enhanced weapons from the site for repair, training, and escort-duty purposes; and

(ix) Individuals whose duties require access to covered weapons, whether the individuals are employed directly by the licensee or certificate holder or they are employed by a security contractor who provides security services to the licensee or certificate holder.

(3) The objectives of a Firearms Background Check Plan must include:

(i) Completing firearms background checks for all security personnel whose official duties require access to covered weapons;

(ii) Defining the process for completing initial, periodic, and break-in-service firearms background checks;

(iii) Defining the training objectives and modules for security personnel who are subject to firearms background checks;

(iv) Completing the initial and periodic training for security personnel whose official duties require access to covered weapons;

(v) Maintaining records of completed firearms background checks, required training, and any supporting documents;

(vi) Maintaining records of a decision to remove security personnel from duties requiring access to covered weapons, due to the discovery or occurrence of a disqualifying status condition or disqualifying event; and

(vii) Developing and implementing procedures for notifying the NRC of the removal of security personnel from access to covered weapons, due to the discovery or occurrence of a disqualifying status condition or disqualifying event.

(4) Licensees and certificate holders who have applied to the NRC for stand-alone preemption authority or for combined enhanced-weapons authority and preemption authority under § 73.18 of this part must ensure that a satisfactory firearms background check has been completed for all security personnel whose official duties require access to covered weapons.

(5) Only licensees and certificate holders who have applied for Section 161A authority under § 73.18 of this part may conduct firearms background checks.

(6) The licensee or certificate holder must commence firearms background checks only after receiving notification from the NRC that the agency has accepted for review their application for stand-alone preemption authority or for combined enhanced-weapons authority and preemption authority.

(7) Applicability of firearms background checks to applicants for a license or certificate of compliance:

(i) Applicants for a license or a certificate of compliance who have also submitted an application for Section 161A authority must only commence firearms background checks after:

(A) The NRC has issued their license or certificate of compliance; and

(B) The NRC has accepted their application for stand-alone preemption authority or for combined enhanced-weapons authority and preemption authority for review.

(ii) Subsequent to **[EFFECTIVE DATE OF FINAL RULE]**, applicants for a license or a certificate of compliance who have also applied for Section 161A authority and been issued their license or certificate of compliance must ensure a satisfactory firearms background check (as defined in § 73.2 of this part) has been completed for all security personnel who require access to covered weapons, 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 ~~(as requiring protection under a security program)~~.

(9) renumber to subsection (8) and make conforming changes to the following subsections and the Statements of Consideration and draft guide] Licensee and certificate holder actions in response to an adverse firearms background check (as defined in § 73.2 of this part):

(i) The licensee or certificate holder must remove, without delay, from duties requiring access to ~~enhanced~~ covered weapons, any security personnel who receive a "denied NICS response;"

(ii) The licensee or certificate holder must remove, without delay, from duties requiring access to enhanced weapons, any security personnel who receive a "delayed NICS response;" and

(iii) If the security personnel to be removed is on duty at the time of removal, then the licensee and certificate holder must reconstitute the vacated position within the timeframe specified in their NRC-approved physical security plan.

(10) Subsequent to the licensee's or certificate holder's receipt of notification that the NRC has approved ~~its~~ their application for either stand-alone preemption authority or for combined enhanced-~~weapons~~ authority and preemption authority:

(i) The licensee or certificate holder must complete a satisfactory firearms background check on security personnel, before assigning that individual to any duties that require access to covered weapons;

(ii) The licensee or certificate holder may return to duties that require access to covered weapons any security personnel who has previously received an adverse firearms background check, if the individual subsequently completes a satisfactory firearms background check or successfully appeals an adverse firearms background check; and

(iii) During the pendency of an individual's appeal to the Federal Bureau of Investigation (FBI) of an adverse firearms background check, the licensee or certificate holder must not assign such security personnel to duties that require access to covered weapons.

(11) Accomplishment of periodic firearms background checks.

(i) The licensee or certificate holder must complete a periodic firearms background check for security personnel whose duties require access to covered weapons. A satisfactory periodic firearms background check must be completed within 5 calendar years of ~~the month of an initial, or the most recent,~~ satisfactory firearms background check, ~~whichever is later.~~

(ii) Licensees and certificate holders who had conducted firearms background checks pursuant to a confirmatory order issued by the NRC before **[EFFECTIVE DATE OF FINAL RULE]**, must complete a periodic firearms background check for security personnel whose duties continue to require access to covered weapons. A satisfactory periodic firearms background check must be completed within 5 calendar years of ~~the month of an initial, or the most recent,~~ satisfactory firearms background check ~~accomplished under a confirmatory order, whichever is later.~~

(iii) The licensee or certificate holder must complete the periodic firearms background check within the allowance period specified in paragraph (f) of this section.

(12) Accomplishment of break-in-service firearms background checks.

(i) The licensee or certificate holder must complete a new satisfactory firearms background check, if the security personnel has had a break-in-service with their employing licensee, certificate holder, or their security contractor which is for a duration of greater than one week, ~~or~~

(ii) The licensee or certificate holder must complete a new satisfactory firearms background check, if the security personnel has transferred from a different licensee or certificate holder.

(iii) A break-in-service means the security personnel's cessation of employment with the licensee, certificate holder, or their security contractor, ~~and~~ notwithstanding that the

previous licensee or certificate holder completed a satisfactory firearms background check on the individual within the last 5 years.

(iv) Exceptions:

(A) For the purposes of this section, a break-in-service does not include a security personnel's temporary active duty with the U.S. military reserves or National Guard.

(B) The licensees or certificate holders, in lieu of completing a new satisfactory firearms background check, may instead verify via an industry-wide information-sharing database that the security personnel has completed a satisfactory firearms background check within the previous 12 months. ~~Provided~~ that this previous firearms background check included a duty station location in the State or Territory where the licensee or certificate holder (who would otherwise be accomplishing the firearms background check) is located or the activity is solely occurring.

(13) If subsequent to the NRC's approval of an application for Section 161A authority under § 73.18 of this part, a change occurs in the licensee, or certificate holder's ownership of a facility, radioactive material, or other property, or a security contractor that provides security services to the licensee or certificate holder, then the licensee or certificate holder is not required to conduct a break-in-service firearms background check required by this section for the security personnel whose duties require access to covered weapons.

(14) With regard to accomplishing the requirements for other background (e.g., criminal history records) checks or personnel security investigations under the NRC's access authorization or personal security clearance program requirements of this chapter, the licensee or certificate holder may not substitute a satisfactory firearms background check in lieu of completing these other required background checks or security investigations.

(15) If a licensee or certificate holder has completed initial satisfactory firearms background checks pursuant to a Commission order issued before **[EFFECTIVE DATE OF FINAL RULE]**, then the licensee or certificate holder is not required to conduct a new initial firearms background check for its current security personnel. However, the licensee or certificate holder must conduct initial firearms background checks on new security personnel and periodic and break-in-service firearms background checks on current security personnel in accordance with the provisions of this section.

(16) A licensee or certificate holder who withdraws their application for Section 161A authority, or whose application was disapproved by the NRC, must discontinue conducting firearms background checks.

(17) A licensee or certificate holder whose authority under Section 161A has been rescinded or was revoked by the NRC must discontinue conducting firearms background checks.

* * * * *

(c) [RESERVED]

* * * * *

(f) *Periodic firearms background checks.* (1) Licensees and certificate holders must complete a satisfactory periodic firearms background check at least once every 5 calendar years for security personnel whose continuing duties require access to covered weapons.

(2) Licensees and certificate holders must complete a periodic firearms background check within the same calendar month as the initial, or most recent, firearms background check; with an allowance period to midnight (i.e., 23:59 local time) of the last day of the calendar month of expiration.

(3) Licensees and certificate holders may continue the security personnel's duties requiring access to covered weapons pending the satisfactory completion of a periodic firearms background check. However, licensees and certificate holders must remove security personnel from duties requiring access to covered weapons, if the satisfactory completion of a periodic firearms background check does not occur before the expiration of the allowance period.

(g) *Notification of removal.* (1) Licensees and certificate holders must notify the NRC Headquarters Operations Center by telephone within 72 hours after removing security personnel from duties requiring access to covered weapons, due to the discovery of any disqualifying status condition or the occurrence of any disqualifying event. Licensees and certificate holders must contact the NRC Headquarters Operations Center at the phone numbers specified in table 1 of appendix A of this part.

(2) Exception. The requirement to notify the NRC by telephone is not applicable, if the licensee's or certificate holder's security management was notified by the affected security personnel within 72 hours of the occurrence of any disqualifying status condition or disqualifying event.

(h) *Security personnel responsibilities.*

(1) Security personnel assigned to duties requiring access to covered weapons must notify their employing licensee's or certificate holder's security management within 72 hours of identification or occurrence of the existence of any Federal or State disqualifying status condition or upon the occurrence of any disqualifying events that would prohibit them from possessing, receiving, or using firearms or ammunition.

(2) This notification requirement is applicable to all security personnel assigned duties requiring access to covered weapons, irrespective of whether they are directly employed by the

licensee or certificate holder or employed by a contractor providing security services to the licensee or certificate holder.

(j) *Training for security personnel subject to firearms background checks.*

(1) Licensees and certificate holders must include within their Firearms Background Check Plan the development and accomplishment of training modules for security personnel assigned official duties requiring access to covered weapons.

(2) The training modules must include information on the following topics:

(i) Federal disqualifying status conditions or disqualifying 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, receiving, or using any firearms or ammunition;

(ii) Any applicable State disqualifying status conditions or disqualifying events;

(iii) The continuing responsibility of security personnel subject to a firearms background check to promptly and voluntarily notify their employing licensee or certificate holder of the occurrence of any disqualifying status condition or disqualifying event; and

(iv) The process for appealing to the FBI a "denied" or "delayed" NICS response.

(3) Licensees and certificate holders must conduct periodic refresher training on these modules at an annual frequency for security personnel assigned official duties requiring access to covered weapons.

(p) *Appeals and resolution of erroneous system information.*

(1) The licensee or certificate holder may not assign security personnel, who have receive a "denied" or a "delayed" NICS response, to duties requiring access to covered weapons:

(i) During the pendency of an appeal of a "denied" NICS response; or

(ii) During the pendency of providing to the FBI and evaluating any necessary additional information ~~to the FBI~~ to resolve a "delayed" NICS response.

* * * * *

(5) Challenges of the accuracy and correctness of records. (i) 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 must first contact the FBI at the address stated in paragraph (p)(4)(i) of this section.

(ii) The individual must 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~~ after the date the licensee or certificate holder notifies the individual of the adverse response.

(iii) The individual appealing a "denied" response or resolving a "delayed" response is 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 response is issued.

(iv) The individual 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 must be made to the licensee or certificate holder. The licensee or certificate holder may grant an extension request for good cause, as determined by the licensee or certificate holder.

(v) The individual's appeal or request submitted to the FBI 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.

(vi) 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.

* * * * *

(r) *Sunsetting of orders.* For licensees who received an NRC order designating them as part of an interim class of facilities eligible to apply for Section 161A authority prior to **[EFFECTIVE DATE OF FINAL RULE]**, the following provisions apply regarding the sunseting of these designation orders.

(1) Licensees issued such orders are no longer considered part of an interim class of facilities eligible to apply for Section 161A authority, but instead are encompassed within the Commission-designated classes of facilities, activities, and other property specified in § 73.18(c) of this part.

(2) Licensees issued such orders must comply with the requirements of this section, in lieu of complying with the firearms background check requirements of those orders. Accordingly, the requirements of those orders are superseded in their entirety by the requirements of this section.

(3) Licensees issued such orders must update any procedures, instructions, and training material, they have developed in response to the orders, to reflect the transition from requirements under the order to the requirements of this section. Licensees must complete these transition actions by **[DATE 60 DAYS AFTER THE EFFECTIVE DATE OF FINAL RULE]**.

(4) Licensees issued such orders must notify the NRC in writing, in accordance with § 73.4 of this part, of the completion of these transition actions. Licensees must complete this notification by **[DATE 70 DAYS AFTER THE EFFECTIVE DATE OF FINAL RULE]**.

5. In § 73.51, add paragraph (f) to read as follows:

§ 73.51 Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

* * * * *

(f) *Response requirements.* For licensees employing ~~enhanced~~covered weapons as part of their protective strategy, the licensee must train each armed member of the security organization using covered~~enhanced~~ weapons to prevent or impede attempted acts of radiological sabotage by using force sufficient to counter the force directed at that armed member, including the use of deadly force as authorized by applicable State or Federal law.

Dated at Rockville, Maryland, this day of

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

5. In § 73.51, add paragraph (f) to read as follows:

§ 73.51 Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

* * * * *

(f) *Response requirements.* For licensees employing enhanced weapons as part of their protective strategy, the licensee must train each armed member of the security organization using enhanced weapons to prevent or impede attempted acts of radiological sabotage by using force sufficient to counter the force directed at that armed member, including the use of deadly force as authorized by applicable State or Federal law.

Dated at Rockville, Maryland, this day of

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

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***Via E-Mail**

OFFICE	NRR/DPR/PRMB/PM*	NRR/DPR/PRMB/RS	NRR/DPR/PRMB/BC	NRR/DPR/DD
NAME	MEllenson	GLappert	TInverso	AMohseni
DATE	12/17/2014	12/15/2014	12/22/2014	12/29/2014
OFFICE	NRR/DPR/D	RES/D*	OIS/IRSD/D*	ADM/DAS/BC/Tech Edit*
NAME	LKokajko	BSheron (KBrock for)	FMajeed (TDonnell for)	CBladey (LTerry for)
DATE	1/9/2015	1/30/2015	1/27/2015	1/28/2015
OFFICE	NRO/D*	NSIR/D	NMSS/D*	OGC/D*
NAME	Gtracy (ABradford for)	JWiggins (BMcDermott for)	CHaney (SMoore for)	NStAmour
DATE	1/30/2015	1/26/2015	1/27/2015	2/19/2015
OFFICE	NRR/D	EDO		
NAME	WDean	MSatorius		
DATE				

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NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER OSTENDORFF

SUBJECT: SECY-15-0036: Supplemental Proposed Rule:
Enhanced Weapons, Firearms Background Checks,
and Security Event Notifications (10 CFR Part 73, RIN-
3150-A149)

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below X Attached None

I appreciate the staff's efforts in developing this supplemental proposed rule, including its effective coordination with the Attorney General, the Federal Bureau of Investigation, and the nuclear industry. We have traveled a long and tortuous path in implementing the Energy Policy Act of 2005 provisions regarding the use of firearms by nuclear facility security personnel and I consider the issuance of this supplemental proposed rule an important milestone in fulfilling our responsibilities under that act.



SIGNATURE

 4/17/15

DATE

Entered on "STARS" Yes X No

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Baran

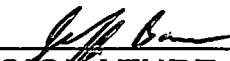
SUBJECT: SECY-15-0036: Supplemental Proposed Rule:
Enhanced Weapons, Firearms Background Checks,
and Security Event Notifications (10 CFR Part 73, RIN-
3150-AI49)

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below XX Attached XX None _____

I certify that this supplemental proposed rule, if issued in final form, would not have a significant impact on a substantial number of small entities, and I approve its publication in the *Federal Register* subject to the attached edits.



SIGNATURE

6/16/15

DATE

Entered on "STARS" Yes XX No _____

JMB Edits

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC-2011-0015; NRC-2011-0018]

RIN 3150-AI49

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

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplemental proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations that would implement its authority under Section 161A of the Atomic Energy Act of 1954, as amended (AEA), to permit NRC licensees and certificate holders to apply for preemption authority and enhanced weapons authority, and conduct associated firearms background checks. The NRC proposed new regulations on February 3, 2011, that would implement its authority under Section 161A. On January 10, 2013, the NRC proposed to further revise the regulations to include at-reactor independent spent fuel storage installations (ISFSI) as a class of designated facilities. The NRC is now proposing to further revise the proposed rule language that addresses the voluntary application for enhanced weapons authority, preemption authority, and the mandatory firearms background checks under Section 161A.

DATES: Submit comments by **[INSERT DATE 75 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Also submit comments specific to the information collection aspects of this rule by **[INSERT DATE 75 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments on the supplemental proposed rule by any of the following methods:

- **Federal rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0018. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: Carol.Gallagher@nrc.gov. For technical questions contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **E-mail comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic e-mail reply confirming receipt, then contact us at 301-415-1677.

- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

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

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

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the SUPPLEMENTARY INFORMATION

section of this document. For additional direction on submitting comments on the draft regulatory guide, see "Availability of Guidance" in the SUPPLEMENTARY INFORMATION section of this document. You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

FOR FURTHER INFORMATION CONTACT: Margaret S. Ellenson, Office of Nuclear Reactor Regulation, telephone: 301-415-0894; e-mail: Margaret.Ellenson@nrc.gov; Philip G. Brochman, Office of Nuclear Security and Incident Response, telephone: 301-287-3691; e-mail: Phil.Brochman@nrc.gov; U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

- I. Obtaining Information and Submitting Comments.
 - A. Obtaining Information.
 - B. Submitting Comments.
- II. Background.
- III. Discussion.
- IV. Section-by-Section Analysis.
- V. Cumulative Effects of Regulation.
- VI. Regulatory Flexibility Certification.
- VII. Regulatory Analysis.
- VIII. Backfitting and Issue Finality.
- IX. Plain Writing.
- X. Environmental Assessment and Proposed Finding of No Significant Environmental Impact.

- XI. Paperwork Reduction Act.
- XII. Criminal Penalties.
- XIII. Voluntary Consensus Standards.
- XIV. Availability of Guidance.
- XV. Availability of Documents.

I. Obtaining Information and Submitting Comments.

A. Obtaining Information.

Please refer to Docket ID NRC-2011-0018 or Docket ID NRC-2011-0015 when contacting the NRC about the availability of information for this supplemental proposed rule or the revised draft regulatory guide, respectively. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0018 for the supplemental proposed rule and Docket ID NRC-2011-0015 for the revised draft regulatory guide.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**
You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is mentioned in the SUPPLEMENTARY INFORMATION

section. In addition, for the convenience of the reader, instructions about obtaining materials related to this rulemaking are provided in the "Availability of Documents," section.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments.

Please include the appropriate NRC Docket ID NRC-2011-0018 (supplemental proposed rule) or NRC-2011-0015 (draft regulatory guide)) in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background.

I. Section 161A of the AEA.

On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (EPAct), Pub. L. 109-58, 119 Stat. 594 (2005). Section 653 of the EPAct 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 authority to permit a licensee's or certificate holder's security personnel to transfer, receive, possess, transport, import, and use weapons, devices, ammunition, or other firearms, notwithstanding State, local, and certain Federal firearms laws (and implementing regulations) that may prohibit or restrict these actions.

Section 161A requires the Commission to designate the classes of facilities, radioactive material, and other property eligible to apply for preemption authority or enhanced weapon authority. Section 161A also mandates that all security personnel that receive, possess, transport, import, or use a weapon, ammunition, or a device otherwise prohibited by State, local, or certain Federal laws, including regulations, as provided by Section 161A.b. (42 U.S.C. 2201a(b)), shall be subject to a fingerprint-based background check by the U.S. Attorney General and a firearms background check against the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS).

II. The Firearms Guidelines – Implementation of Section 161A of the AEA.

Section 161A.d. of the AEA provides that the Commission shall, with the approval of the Attorney General, develop and promulgate guidelines for the implementation of this statute. On September 11, 2009, the NRC, with the approval of the Attorney General, published Firearms Guidelines in the *Federal Register* (74 FR 46800). These guidelines allow NRC licensees and

certificate holders to apply for preemption authority only (hereafter referred to as stand-alone preemption authority) or combined preemption and enhanced weapons authority (hereafter referred to as enhanced weapons authority). The statute also includes provisions for firearms background checks for those who apply for Section 161A authorities (stand-alone preemption authority or enhanced weapons authority).

The Firearms Guidelines permit the NRC to designate applicable classes of facilities and to approve application for Section 161A authority via both orders and regulations. Following publication of the Firearms Guidelines, the NRC received requests from several licensees to obtain stand-alone preemption authority via order (i.e., prior to the NRC's issuance of the final enhanced weapons rule). During its review of these licensee requests, the NRC staff identified implementation issues related to the firearms background checks for these licensees. The NRC staff and the U.S. Department of Justice (DOJ) staff developed a revision to the Firearms Guidelines to address these issues. The principal change in the revised Firearms Guidelines was to limit the scope of the firearms background check requirement to only those licensees that apply to the NRC for Section 161A authority. The NRC, with the approval of the Attorney General, published the revised Firearms Guidelines in the *Federal Register* (79 FR 36100; June 25, 2014). Both the 2009 Firearms Guidelines and the 2014 Firearms Guidelines are available at <http://www.regulations.gov> under Docket ID NRC-2008-0465.

III. October 2006 Proposed Rule.

In parallel with the development of the 2009 Firearms Guidelines, the NRC initiated a rulemaking that would implement the new authorities and provisions in Section 161A of the AEA. On October 26, 2006, the NRC published proposed regulations in the *Federal Register* (71 FR 62664) to implement the provisions of Section 161A as one component of a larger

proposed amendment to its regulations under parts 50, 72, and 73 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Power Reactor Security Requirements." These proposed implementing regulations were consistent to the extent possible with discussions between the NRC and the DOJ on the implementation of the statute.

The NRC had proposed that the provisions of Section 161A would apply only to power reactor facilities (i.e., this would include both operating and decommissioning power reactors) and Category I Strategic Special Nuclear Material (Cat. I SSNM) facilities (i.e., facilities possessing or using formula quantities or greater of strategic special nuclear material). This structure was proposed to permit these two highest-risk classes of licensed facilities to apply to the NRC for Section 161A 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 (including ISFSIs) in a separate, future rulemaking.

IV. February 2011 Proposed Rule.

On February 3, 2011, the NRC published in the *Federal Register* a new proposed rule, "Enhanced Weapons, Firearms Background Checks and Security Event Notifications" (76 FR 6200;), referred to as the Enhanced Weapons rulemaking, that reflected the approved 2009 Firearms Guidelines. The 2011 proposed rule would implement the provisions of Section 161A, and would make several changes to the security event notification requirements in 10 CFR part 73 to address imminent attacks or threats against power reactors as well as suspicious events that could be indicative of potential preoperational reconnaissance, surveillance, or challenges to security systems by adversaries. The public was provided 180 days to review and comment on the February 2011 proposed rule and associated guidance.

V. Preemption Designation Orders and Confirmatory Orders.

Subsequent to the publication of the 2011 proposed rule, the NRC received requests from 10 licensees (located on 8 separate sites) to obtain stand-alone preemption authority. In response to the requests, the NRC issued designation order EA-13-092 (78 FR 35984) on June 14, 2013. Order EA-13-092 designated the 10 licensees as part of an interim class of licensed facilities eligible to apply for stand-alone preemption authority under Section 161A of the AEA, contained direction related to completing firearms background checks for security personnel whose official duties require access to covered weapons, and contained direction for the licensees on submitting applications and supporting information to obtain preemption authority via a confirmatory order. Subsequent to the NRC's issuance of Order EA-13-092, two licensees (located at the same site) withdrew their applications for Section 161A preemption authority. The NRC staff is currently reviewing the remaining applications for preemption authority.

VI. January 2013 Supplemental Proposed Rule.

On January 10, 2013, the NRC published a supplemental proposed rule (78 FR 2214) to add at-reactor ISFSI facilities as a class of designated facilities under § 73.18(c) that would be eligible to apply for Section 161A authority. Including at-reactor ISFSIs in the proposed rulemaking would ensure a consistent transition from the orders to the final implementing regulations for reactor licensees and any ISFSIs co-located at the reactor site. When a reactor facility and an ISFSI share a common security guard force, as is the case for at-reactor ISFSIs, the NRC staff recognizes that it may be expedient for both facilities at the site to have stand-alone preemption authority if the licensee or certificate holder applies for it and is approved. In the supplemental proposed rule, the NRC indicated that other classes of facilities

and activities (e.g., away-from-reactor ISFSIs and transportation of spent nuclear fuel) would be addressed in a separate, future rulemaking (as originally discussed in the October 2006 proposed rule). The public was provided 45 days to review and comment on the January 2013 supplemental proposed rule.

III. Discussion.

Section 161A of the AEA provides the NRC with the authority to permit a licensee or certificate holder's security personnel to transfer, receive, possess, transport, import, and use, weapons, devices, ammunition or other firearms notwithstanding State, local, and certain Federal firearms laws (and any implementing regulations) that may prohibit or restrict these actions. The arsenal of weapons includes, for example, machine guns, semi-automatic assault weapons, and large-capacity ammunition feeding devices (i.e., magazines). As indicated in the February 2011 proposed rule, an NRC licensee or certificate holder interested in obtaining Section 161A authority (either combined enhanced weapons authority and preemption authority or stand-alone preemption authority) may voluntarily apply to the NRC to take advantage of this new authority. For the purposes of the proposed Enhanced Weapons rulemaking, the term "certificate holder" refers only to entities holding a 10 CFR part 76 certificate of compliance, not to entities holding a 10 CFR part 72 certificate of compliance. However, the NRC notes that there are currently no existing 10 CFR part 76 certificate holders because on February 2, 2015, the NRC terminated the 10 CFR part 76 certificate of compliance for the United States Enrichment Corporation's Paducah Gaseous Diffusion Plant (ADAMS Accession No. ML14318A331). While there are no existing 10 CFR part 76 certificate holders, the NRC is

proposing to include such holders in this rule so that the scope of the Firearms Guidelines and the NRC's corresponding implementing regulations continue to be consistent.

Licenses and certificate holders falling within the Commission-designated classes of facilities, radioactive material, or other property would be eligible to apply for Section 161A authority and would be required to complete the firearms background check requirements mandated by Section 161A and the Firearms Guidelines. The background checks would be required for security personnel whose official duties require access to covered weapons.

The 2009 Firearms Guidelines provided that the security personnel for all licensees and certificate holders that fall within the designated eligible classes of facilities must undergo firearms background checks, whether or not a particular licensee or certificate holder intends to seek preemption authority. However, under the revised 2014 Firearms Guidelines, the requirement for background checks would apply to only those licensees and certificate holders who apply for Section 161A authority. Other changes to the Firearms Guidelines included the removal of the definition of "standard weapon," and the removal of references to standard weapons in the definitions of covered weapons and enhanced weapons. There were also minor conforming and clarifying editorial changes throughout the revised 2014 Firearms Guidelines.

In the February 2011 proposed rule that would implement the NRC's authority under Section 161A of the AEA, the NRC proposed amendments to 10 CFR part 73 by adding new definitions, processes for obtaining enhanced weapons, requirements for firearms background checks, and security event notification requirements for stolen or lost enhanced weapons. This supplemental proposed rule continues the proposed changes from the February 2011 proposed rule and the January 2013 supplemental proposed rule, and supplements or modifies the following existing or proposed regulations in 10 CFR part 73:

- Section 73.2, Definitions.

- Proposed Section 73.18, Authorization for use of enhanced weapons and preemption of firearms laws.
- Proposed Section 73.19, Firearms background checks for armed security personnel.
- Section 73.51, Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

This supplemental proposed rule would make the following changes to the proposed requirements of 10 CFR part 73:

- Require firearms background checks only for those licensees and certificate holders who have applied for Section 161A authority and only for security personnel whose official duties require access to covered weapons.

- Require periodic firearms background checks at least once every 5 years.

Previously the maximum periodicity was proposed to be at least once every 3 years. However, licensees and certificate holders would continue to be able to conduct periodic firearms background checks at a periodicity of less than every 5 years, at their discretion.

- Conform the process for conducting firearms background checks and applying for preemption authority to the updated requirements for completing firearms background checks specified in the revised 2014 Firearms Guidelines (e.g., removal of the required 30-day and 180-day milestones in conducting firearms background checks).

- Remove the definition of "standard weapon" and remove the references to standard weapon from the definitions of covered weapon and enhanced weapon, per the revised 2014 Firearms Guidelines.

- Revise the definitions of combined enhanced weapons authority and preemption authority, covered weapons, and stand-alone preemption authority as conforming changes.

Separately, the NRC would make several clarifying and corrective changes to the process for obtaining stand-alone preemption authority and the requirements for firearms background checks, based upon language approved by the Commission in the designation orders and confirmatory orders issued by the NRC subsequent to the publication of the February 2011 proposed rule.

The NRC would also make several additional changes to clarify the agency's review and acceptance criteria for evaluating applications for stand-alone preemption authority, based upon lessons learned by the NRC staff in reviewing existing applications for preemption authority, including developing these confirmatory orders for to those licensees requesting Section 161A authority. Furthermore, to ensure consistency between processes, the NRC would also make equivalent corresponding changes to the proposed process for obtaining enhanced weapons authority.

Sunsetting of Orders

In the SRM-SECY-12-0125, "Staff Requirements – Interim Actions to Execute Commission Preemption Authority Under Section 161A of the Atomic Energy Act of 1954, as Amended" (ADAMS Accession No. ML12326A653), the Commission directed the NRC staff to include in the final rule a plan "to sunset the interim designation order and the confirmatory orders." Accordingly, the NRC has developed a plan to sunset these orders and is taking advantage of this supplemental proposed rule to include new language in §§ 73.18 and 73.19 to accomplish the Commission's direction. NRC is proposing new paragraphs in §§ 73.18 and 73.19 to indicate that NRC approvals of Section 161A authority via confirmatory order would remain valid after issuance of a final rule. However, the licensees who received orders granting preemption authority prior to issuance of a final rule would be subject to the implementing

regulations in §§ 73.18 and 73.19, in lieu of the requirements specified in the confirmatory orders (i.e., the requirements of the orders would be superseded in their entirety by the requirements in the final rule). The licensees who receive these confirmatory orders would be required, within 60 days of the effective date of the final rule, to update their applicable procedures, instructions, and training to reflect the final rule's requirements. These licensees would be required to notify the NRC, within 70 days of the effective date of the final rule, when they have completed these actions. Once the NRC receives this notification and inspects the licensee's transition actions, the NRC would rescind the orders.

The Commission's designation of licensed facilities as part of an interim class of facilities eligible to apply for preemption authority prior to issuance of a final rule would end once the Enhanced Weapons rule is implemented. The Commission would designate the permanent classes of facilities eligible to apply for Section 161A authority in § 73.18(c) of the rule. After the final rule is implemented, the NRC would take appropriate action to rescind the designation orders. All of the facilities issued a designation order would be included in the final rule's list of designated facilities (i.e., power reactor facilities, Category I special nuclear material facilities, and at-reactor ISFSIs). Accordingly, the firearms background check requirements contained in these designation orders would be replaced in their entirety by the requirements in § 73.19.

At this time, the NRC is only seeking comments on the revisions proposed by this separate supplemental proposed rule. The NRC will address public comments on the February 2011 proposed rule, the January 2013 supplemental proposed rule, and this separate supplemental proposed rule in the final rule.

IV. Section-by-Section Analysis.

The following paragraphs describe the specific changes proposed by this supplemental proposed rule.

Section 73.2, Definitions

The proposed new definitions for the terms *Combined enhanced weapons authority and preemption authority*, *Covered weapon*, and *Stand-alone preemption authority* would be revised to reflect the revised 2014 Firearms Guidelines. The proposed new definition for the term *Standard weapon* would be removed to reflect the revised 2014 Firearms Guidelines with conforming, editorial changes made to the proposed definition for the term *Enhanced weapon*.

Section 73.18, Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws

In paragraph (d), the NRC would set forth the requirements and process for licensees and certificate holders who are included within the classes of facilities, radioactive material, and other property specified in § 73.18(c)(1) and desire to voluntarily apply for stand-alone preemption authority under Section 161A of the AEA. The application would require initial information describing the licensee's or certificate holder's request for preemption authority, ~~their~~its purpose and reasons for requesting this authority, and a description of ~~their~~its Firearms Background Check Plan, including training for security personnel on the background check disqualifying conditions and notification requirements. Firearms background checks would only be required for security personnel of licensees or certificate holders who apply for Section 161A authority, and whose official duties require access to covered weapons. Licensees and

certificate holders would be required to submit their applications in writing, and under oath or affirmation.

The licensee or certificate holder would also be required to submit supplemental information to the NRC on the completion of satisfactory firearms background checks and required training for security personnel who require access to covered weapons. The timing of the submission of the supplemental information will be at the discretion of the licensee or certificate holder, although the licensee or certificate holder must have completed a sufficient number of satisfactory checks to permit the licensee or certificate holder to meet ~~their~~its applicable security-personnel minimum staffing and fatigue requirements.

Subsequent to the completion of the submission of all required information, the NRC will review the information and document the agency's decision to approve or disapprove the application.

Licensees or certificate holders must commence firearms background checks only after they have received notification from the NRC that the agency has accepted for review their application for stand-alone preemption authority. Once the NRC has reviewed and approved a licensee's or certificate holder's application for stand-alone preemption authority, the licensee or certificate holder must assign only security personnel who have completed a satisfactory firearms background check to duties requiring access to covered weapons.

In paragraph (e), the NRC would set forth the requirements and process for eligible licensees and certificate holders (as specified in § 73.18(c)(2)) who so choose to voluntarily apply for combined enhanced-weapons authority and preemption authority under Section 161A of the AEA. Paragraph (e) would require in the application initial information describing the licensee's or certificate holder's request for enhanced weapons authority, ~~their~~its purpose and reasons for requesting this authority, and a description of ~~their~~its proposed Firearms

Background Check Plan, including training of security personnel on the disqualifying status conditions and disqualifying events. The application would be required to address how security personnel notify the licensee or certificate holder security management of the occurrence of any disqualifying conditions or events. Also, under the 2011 proposed rule, applicants for combined enhanced weapons and preemption authority that already have preemption authority under paragraph § 73.18(d) would not be required to reapply for preemption authority in their § 73.18(e) application. That aspect of the 2011 proposed rule is unchanged by this supplemental proposed rule.

Firearms background checks would only be required of applicants for Section 161A authority. Those regulated entities required to conduct firearms background checks would need to conduct the checks on all security personnel whose official duties require access to enhanced covered weapons, which includes enhanced weapons. Licensee and certificate holders would be required to submit their applications in writing and under oath or affirmation. Licensees applying for combined enhanced-weapons authority and preemption authority would be required to submit their application under the applicable regulations for a license amendment in 10 CFR parts 50, 52, 70, or 72. Certificate holders to which the supplemental proposed rule would apply (i.e. 10 CFR part 76 certificate of compliance holders), would be required to submit their applications under the applicable regulations for a certificate of compliance amendment under 10 CFR part 76.

The application would include the additional technical information required by § 73.18(f) addressing the specific enhanced weapons requested by the licensee or certificate holder. The licensee or certificate holder would also submit supplemental information to the NRC on the completion of both the firearms background checks and the required training (on disqualifying events and conditions) for security personnel whose official duties require access to covered

weapons. For this purpose, the term "completion" means that a sufficient number of satisfactory checks are complete to meet a regulated entity's minimum staffing and fatigue requirements.

The timing of the submission of the supplemental information would be at the discretion of the licensee or certificate holder when a sufficient number of satisfactory checks are complete. A licensee or certificate holder who has previously been approved for stand-alone preemption authority would not be required to repeat the initial firearms background checks on security personnel conducted to support ~~their~~its original application; rather ~~they~~the licensee or certificate holder would only need to state in ~~their~~its application for enhanced weapons authority that ~~they~~it ~~were~~was previously granted preemption authority by the NRC and provide the effective date of that authority.

The NRC would review the application and supplemental submittals and would document the agency's decision to approve or disapprove the application.

Licensees or certificate holders must commence firearms background checks only after they have received notification from the NRC that the agency has accepted for review their application for combined enhanced weapons authority and preemption authority. Furthermore, once the NRC has approved a licensee's or certificate holder's application for combined enhanced weapons authority and preemption authority, the licensee or certificate holder must assign only security personnel who have completed a satisfactory firearms background check to duties requiring access to any covered weapons (including enhanced weapons).

Licensees and certificate holders who have been previously approved for enhanced weapons authority and wish to use a different type, caliber, or quantity of enhanced weapons from that previously approved by the NRC would be required to submit a new application under paragraph (e).

In paragraph (f)(2)(iii), a conforming change would be made to remove the reference to employment of "standard weapons" in the safeguards contingency plan.

In paragraph (j), a corrective change would be made to add § 73.51 to the list of regulations specifying training requirements on the use of enhanced weapons at specific license ISFSIs. This change would address the potential for an at-reactor, specific license ISFSI to possess enhanced weapons at both the reactor and the co-located ISFSI. This provision would require the ISFSI licensee employing enhanced weapons to train ~~their~~its security personnel on the use of sufficient force, including deadly force, consistent with the co-located power reactor facility. Such training is already required for the reactor licensee's security personnel under the reactor security requirements in § 73.55(k)(3). The NRC anticipates that such co-located licensees would use a single integrated guard force for both facilities (~~i.e., such that~~ the security personnel are considered fungible between these two facilities). Consequently, the application of the same training requirements for the use of the enhanced weapons is appropriate.

In paragraphs (n)(2), (n)(3), and (n)(4), conforming changes would replace the term "covered weapons" with "enhanced weapons" to be consistent with the revised 2014 Firearms Guidelines.

In paragraph (s), the NRC would add new provisions to provide for the transition from stand-alone preemption authority and enhanced weapons authority approved by the NRC via orders to a licensee or certificate holder, to approval via the proposed regulations in § 73.18. While the NRC's previous authorizations for Section 161A authority under those orders would remain valid, these licensees would be subject to the implementing requirements of § 73.18, in lieu of the requirements contained in these orders. However these licensees would not be required to reapply for Section 161A authority under the provisions of § 73.18. Licensees would be required to update procedures, instructions, and training to reflect any revised requirements

in the final rule and notify the NRC of the completion of this action. The licensee's actions and notification would be required to be completed within 60 days and 70 days, respectively, of the effective date of the final rule. Following receipt of the licensee's notification and inspection of the licensee's actions, the NRC would ~~take action to rescind~~ these orders.

Section 73.19, Firearms Background Checks for Armed Security Personnel

Paragraph (b) would be revised in its entirety to define new general requirements regarding the completion of firearm background checks. This would include a requirement to establish a Firearms Background Check Plan and to specify the elements of this plan. A Firearms Background Check Plan would be a component of the licensee's or certificate holder's 10 CFR part 73, Appendix B, required Training and Qualification plan for security personnel whose official duties require access to covered weapons. Only those licensees and certificate holders who have voluntarily applied for Section 161A authority (i.e., stand-alone preemption authority or for combined enhanced-weapons authority and preemption authority) would be required to conduct firearms background checks on their security personnel. Accordingly, such licensees and certificate holders would be required to establish and implement a Firearms Background Check Plan.

Paragraph (b)(2) would describe the groups of individuals included within the term *security personnel whose official duties require access to covered weapons*. In addition to the security officers themselves (who directly protect the facility or radioactive material), this term would include other groups of individuals who have access to covered weapons; and in some cases only enhanced weapons. Examples would include, but are not limited to, firearms instructors, armorers, individuals issuing and checking in weapons, individuals with access to armories and weapons storage lockers, and individuals conducting inventories of enhanced

weapons or removing enhanced weapons from the site for authorized purposes. Paragraph (b)(3) would specify the elements of the Firearms Background Check Plan. Paragraphs (b)(4) through (b)(10) would address requirements on conducting firearms background checks. Licensees or certificate holders must commence firearms background checks only after they have received notification from the NRC that the agency has accepted for review their application for either stand-alone preemption authority or for combined enhanced weapons authority and preemption authority. Furthermore, once the NRC has approved a licensee's or certificate holder's application for either stand-alone preemption authority or for combined enhanced weapons authority and preemption authority, the licensee or certificate holder must assign only security personnel who have completed a satisfactory firearms background check to duties requiring access to covered weapons. Also, applicants for an NRC license or certificate of compliance may not conduct firearms background checks until after the NRC has both issued their license or certificate of compliance and accepted their application for Section 161A authority for review. These two ~~criteria~~ steps may occur in any order. Finally, this section also includes a requirement to remove individuals from duties requiring access to covered weapons if they receive a "denied NICS response." This also includes removing individuals from duties requiring access to enhanced weapons if the individual receives a "delayed NICS response."

Paragraph (b)(11) would specify the requirements for a periodic firearms background check, which would be required at least once every 5 years from the most recent check. This periodicity would be consistent with the Commission's designation orders issued to several licensees. Licensees and certificate holders would be able to conduct periodic firearms background checks at a shorter periodicity than every 5 years, at their discretion.

Security personnel that cease to be employed by a licensee, certificate holder, or security contractor, are considered to have a break-in-service for the purposes of the enhanced

weapons rulemaking. The licensee or certificate holder would need to complete a new satisfactory firearms background check; for security personnel that experience a break-in-service as described in paragraph (b)(12). Paragraph (b)(12) also addresses exceptions to the break-in-service requirement. Paragraph (b)(13) would address changes in the licensee, certificate holder, or their security contractor that do not require a break-in-service firearms background check. Paragraph (b)(14) would prohibit licensees and certificate holders from using a satisfactory firearms background check in lieu of completing other required criminal history records checks or background investigations specified in the NRC's access authorization or personnel security clearance programs under other provisions of 10 CFR chapter I.

Paragraph (b)(15) would not require a new initial firearms background check for security personnel who have completed a satisfactory firearms background check pursuant to a Commission designation order issued before the effective date of the final rule. However, these security personnel would remain subject to the periodic firearms background check and the break-in-service firearms background check requirements of § 73.19. Paragraph (b)(16) would require a licensee or certificate holder to discontinue conducting firearms background checks if ~~they~~it ~~withdraws~~withdraws ~~their~~its application for Section 161A authority. Paragraph (b)(17) would require a licensee or certificate holder to discontinue conducting firearms background checks if the NRC rescinds or revokes ~~their~~its Section 161A authority, in accordance with § 73.18.

Paragraph (c) would be removed and reserved. Because § 73.18(c) contains the list of classes of facilities and activities eligible to apply for Section 161A authority and only licensees and certificate holders who have applied to the NRC under § 73.18 for Section 161A authority are eligible under § 73.19 to conduct firearms background checks of their security personnel, the list of classes of facilities and activities previously proposed in § 73.19(c) for conducting firearms background checks is now redundant and unnecessary.

Paragraph (f) would be revised to require periodic firearms background checks to be completed at least once every 5 calendar years. This change would make the proposed rule is consistent with the 2014 Firearms Guidelines and the Commission's designation order EA-13-092, which required periodic firearms background checks at least once every 5 years on security personnel who require access to covered weapons. Second, a requirement would be added to specify an allowance period for completion of a satisfactory periodic firearms background check of 5 years from the date of the most recent firearms background check. This allowance period would be consistent with the Commission's designation order. Third, the revised language would clarify that security personnel may remain assigned to duties requiring access to covered weapons while pending completion of a periodic firearms background check. However, if a satisfactory firearms background check is not completed by the end of the allowance period, then the security personnel must be removed from duties requiring access to covered weapons. Independent of the direction in paragraph (f), an individual who receives a "denied NICS response" during a periodic firearms background check must be removed without delay from duties requiring access to covered weapons. Finally, the NRC would continue to permit licensees and certificate holders to accomplish periodic firearms background checks at a shorter periodicity than the maximum requirement (i.e., less more frequently than once every 5 years), at the licensee's or certificate holder's discretion.

Paragraph (g) would be revised to clarify the exception for when a licensee or certificate holder is required to notify the NRC that it has removed security personnel from duties requiring access to covered weapons. This exception ~~would occur following~~ is intended to encourage the prompt notification by the security personnel to notify the licensee's or certificate holder's security management of the occurrence of a disqualifying status condition or disqualifying event within 72 hours. If security personnel make the notification, then the licensee or certificate

holder is not required to notify the NRC within 72 hours of the security personnel's removal.

However, in all circumstances, the licensee or certificate holder would be required to maintain records of such removals under the Firearms Background Check Plan, as required under revised paragraph (b)(3)(vi).

Paragraph (h) would be revised to change the notification timeliness requirement for security personnel who have had a disqualifying status condition or disqualifying event from "3 working days" to "72 hours" to improve regulatory clarity and consistency with the licensee's and certificate holder's current proposed notification timeliness requirement in paragraph (g).

Paragraph (j) would be revised to clarify the scope of the training modules required for security personnel who are subject to firearms background checks under the licensee's or certificate holder's Firearms Background Check Plan, as required under paragraph (b)(3)(iii). Modules would be required on Federal disqualifying status conditions or disqualifying events, applicable State disqualifying status conditions or disqualifying events to provide personnel familiarity with these disqualifying status conditions or events, the process for appealing adverse firearms background check results, and the ongoing obligation of security personnel who are subject to a firearms background check to notify their licensee's or certificate holder's security management of the occurrence of such a disqualifying status condition or disqualifying event. The modules would also include the requirement on the timeliness of such notifications (i.e., within 72 hours of the occurrence of the disqualifying condition or event). Finally, periodic refresher training on these modules would be required ~~at an annual frequency~~ annually.

Paragraph (p)(1) would be revised to clarify its applicability to security personnel subject to a firearms background check and to remove the current exception cross-reference to paragraph (b). Limitations on security personnel's access to covered weapons during the pendency of an appeal to the FBI would now be found solely in paragraph (p).

Paragraph (p)(5)(iv) would be revised to indicate that individuals ~~(who are appealing a firearms background check)~~ should submit a request for extension of time ~~(i.e., regarding with respect to the 45-day timeliness requirement on submitting an appeal)~~ to their licensee or certificate holder, rather than to the FBI. The licensee or certificate holder may grant an extension request for good cause, as determined by the licensee or certificate holder. This change is consistent with the 2014 Firearms Guidelines. No other changes would be made to the other subparagraphs of paragraph (p)(5).

In paragraph (r), the NRC would add new provisions to provide for the transition from preemption authority and enhanced weapons authority approved by the NRC via designation orders and confirmatory orders to approvals via the proposed regulations in § 73.19. While the NRC's authorizations for Section 161A authority would remain valid after issuance of a final rule and licensees would not need to reapply for Section 161A authority, these licensees would be subject to the implementing requirements of § 73.19, in lieu of the requirements contained in these orders. However, licensees would not be required to repeat their initial firearms background checks. Licensees would be required to update procedures, instructions, and training to reflect any revised requirements in the final rule and notify the NRC of the completion of this action. The licensee's actions and notification would be required to be completed within 60 days and 70 days, respectively, of the effective date of the final rule. Following receipt of the licensee's notification and inspection of the licensee's actions, the NRC would ~~take action to~~ rescind these orders.

Section 73.51, Requirements for the Physical Protection of Stored Spent Nuclear Fuel and High-Level Radioactive Waste

Paragraph (f) would be added as a conforming change to the proposed change to § 73.18(j) to reflect the potential for a specific licensed, at-reactor ISFSI to possess enhanced weapons at both the reactor and the co-located ISFSI. This provision would require ISFSI licensees employing enhanced weapons to train their security personnel on the use of sufficient force, including deadly force. The NRC anticipates that the security organization for a reactor and a co-located specific licensed ISFSI employing enhanced weapons would use an integrated security organization (~~i.e., such that~~ the security personnel are considered fungible between these two facilities). Accordingly, the NRC considers it appropriate to require both the reactor and ISFSI security personnel carrying enhanced weapons to be trained on the same standards on the use of force, including deadly force. This proposed language is consistent with the current regulations on training of security personnel on the use of force under § 73.55(k)(3) for reactor licensees and § 73.46(h)(5) for Category I special nuclear material licensees and certificate holders.

V. Cumulative Effects of Regulation.

Cumulative Effects of Regulation (CER) consists of the challenges licensees may face in addressing the implementation of new regulatory positions, programs, and requirements, ~~(e.g., rulemaking, guidance, generic letters, backfits, inspections).~~ The CER may manifest in several ways, including the total burden imposed on licensees by the NRC from simultaneous or consecutive regulatory actions that can adversely affect the licensee's capability to implement those requirements while continuing to operate or construct its facility in a safe and secure manner.

The goals of the NRC's CER effort were met throughout the development of this supplemental proposed rule. During the development of the 2011 proposed rule, the NRC staff engaged external stakeholders at a public meeting and by soliciting public comments on the proposed rule and draft guidance documents. The public meeting was held at NRC Headquarters on June 1, 2011, to discuss the proposed implementation plan. A summary of the public meeting is in ADAMS under Accession No. ML111720007. Additionally, the NRC staff issued several draft guidance documents for comment in conjunction with the publication of the 2011 proposed rule. The feedback from this meeting and the public comments on the 2011 proposed rule informed the NRC staff's recommended schedule for the implementation of the new enhanced weapons requirements in this supplemental proposed rule.

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Consistent with SECY-11-0032, "Consideration of the Cumulative Effects of Regulation in the Rulemaking Process," dated March 2, 2011 (ADAMS Accession No. ML110190027), the NRC requests specific comment on the supplemental proposed rule's implementation schedule in light of any existing CER challenges, specifically:

- a. Do the supplemental proposed rule's compliance date and submittal dates provide sufficient time to implement the new supplemental proposed requirements, including changes to programs, procedures, and the facility, in light of any ongoing CER challenges?
- b. If there are ongoing CER challenges, what do you suggest as a means to address this situation (e.g., if more time is required to implement the new requirements, what time period is sufficient)?
- c. Are there unintended consequences (e.g., does the supplemental proposed rule create conditions that would be contrary to the supplemental proposed rule's purpose and objectives)? If so, what are the unintended consequences?

d. Please comment on the NRC's cost and benefit estimates in the supplemental proposed rule regulatory analysis (ADAMS Accession No. ML15007A248).

The NRC staff identified one draft guidance document that is affected by the revised proposed regulations described in this document and is issuing this revised guidance document for public comment concurrent with this supplemental proposed rule (see Section XIV, "Availability of Guidance").

VI. Regulatory Flexibility Certification.

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This supplemental proposed rule affects only the licensing and operation of nuclear power plants and Category 1 facilities. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

VII. Regulatory Analysis.

The NRC has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The draft regulatory analysis can be found in ADAMS under ML15007A248. The NRC requests public comment on the draft regulatory analysis. Comments on the draft regulatory analysis may be submitted to the NRC as indicated under the ADDRESSES caption of this document.

VIII. Backfitting and Issue Finality.

This supplemental proposed rule contains: (i) proposed provisions which reduce the regulatory burden associated with the original 2011 proposed rule and the 2013 supplemental proposed rule, and (ii) additional provisions – not contained in either the original 2011 proposed rule and the 2013 supplemental proposed rule – which facilitate licensees' capability to obtain burden reduction (i.e., proposed sunset of the interim designation order and the confirmatory orders). The provisions of this supplemental proposed rule are effectively voluntary in nature, and would not impose modifications or additions to existing structures, components, designs, or existing procedures or organizations if adopted in final form. Accordingly, the provisions of this supplemental proposed rule, if adopted as a final rule, would not constitute backfitting or otherwise be inconsistent with any issue finality provision in Part 52, and the consideration of backfitting for the original 2011 proposed rule and the 2013 supplemental proposed rule, considered together, bounds the backfitting and issue finality consideration for this supplemental proposed rule. Therefore, a backfit analysis is not required and has not been completed for any of the provisions of this supplemental proposed rule.

IX. Plain Writing.

The Plain Writing Act of 2010 (Pub. L. 111-274), requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883). The NRC requests comment on the document with respect to the clarity and effectiveness of the language used.

X. Environmental Assessment and Proposed Finding of No Significant Environmental Impact.

In the proposed rule published on October 26, 2006, the Commission included an Environmental Assessment that 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 was not required.

In the proposed rule published on February 3, 2011, the determination was that there will be no significant offsite impact to the public from this action. ~~Therefore, the Commission concluded that because of the nature of the proposed changes to the firearms background checks and the enhanced weapons provisions presented in the 2011 proposed rule, the assumptions in the October 2006 proposed rule were not changed so the Commission was not seeking additional comment on the 2006 environmental assessment. Similarly here, t~~The nature of the changes to the firearms background check and the enhanced provisions in this supplemental proposed rule do not change the assumptions in the 2011 proposed rule and the October 2006 environmental assessment. Accordingly, the Commission is not seeking additional comment on the environmental assessment. Availability of the environmental assessment is provided in Section XIII, "Availability of Documents," of this document.

XI. Paperwork Reduction Act.

This supplemental proposed rule contains new or amended collections of information 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 collections.

Type of submission, new or revision: Revision

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."

The form number if applicable: NRC Form 754

How often the collection is required or requested: One time for power reactor licensees and Category I SSNM licensees and certificate holders applying for combined enhanced weapons authority. Initial submissions of NRC Form 754 will be required for all of a licensee's or certificate holder's 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 five years. One time for licensees and certificate holders who received confirmatory orders and must update their procedures, instructions, and training materials.

Who will be required or asked to respond: The supplemental proposed rule would require only those licensees and certificate holders who apply for Section 161A authorities to submit information about their security personnel for firearms background checks. Licensees

and certificate holders that had received confirmatory orders approving Section 161A authority would be required to update within 60 days after the final rule effective date any procedures, instructions, and training material on a one-time basis. The regulated entities that would be eligible to apply for Section 161A authorities are operating nuclear power reactors located at 61 sites and their co-located at-reactor Independent Spent Fuel Storage Installations (ISFSI), 10 decommissioning power reactor sites, 3 other reactor sites, and 2 fuel cycle facilities authorized to possess Category I Strategic Special Nuclear Material (SSNM). In addition to those regulated entities and consistent with the 2011 proposed rule, modified security event notifications under different sections of 73.71 would also affect 42 research and test reactor (RTR) sites, 6 Category II and III Special Nuclear Material sites, 7 Independent Spent Fuel Storage Installation (ISFSI) sites not co-located with a reactor, and 2 hot cell sites.

An estimate of the number of annual responses: 4,085 (2,992 responses for 10 CFR part 73 requirements and 1,093 responses for NRC Form 754)

The estimated number of annual respondents: 133

An estimate of the total number of hours needed annually to comply with the information collection requirement or request: 47,906.4 hours (45,399.8 hours for 10 CFR part 73 requirements and 2,506.7 hours for NRC Form 754)

Abstract: The NRC is proposing to amend 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 supplemental proposed

rule would modify the information collections contained in the Enhanced Weapons, Firearms Background Checks, and Security Event Notifications rulemaking. First, firearms background checks would be required for security personnel for only those licensees and certificate holders who have applied for Section 161A authority (i.e., either stand-alone preemption authority or combined enhanced-weapons authority and preemption authority). As a result, the number of respondents to new sections 73.18 and 73.19 would be reduced compared to the proposed rule published in the Federal Register on February 3, 2011 (76 FR 6199). Second, periodic firearms background checks would be required at least once every 5 years rather than every 3 years. Third, applications for Section 161A authority must describe the applicant's purposes and objectives in requesting the authority. Finally, the supplemental proposed rule would add requirements for licensees and certificate holders that had received confirmatory orders approving Section 161A authority would be required to update within 60 days after the final rule effective date any procedures, instructions, and training material on a one-time basis. These information collections are needed to enable the NRC to implement the mandate of Section 161A of the Atomic Energy Act (AEA) to verify that security personnel who will have access to enhanced weapons have been subject to a background check by the Attorney General to verify that an individual is not prohibited under Federal or State law from possessing or receiving firearms.

The 2011 proposed rule also ~~included requirements that~~ would modify the security event notification requirements under different sections of 73.71. This supplemental proposed rule would not change those proposed modified requirements, but they are repeated in the supporting statement for completeness. The proposed security event notification requirements would be used to meet the NRC's strategic mission to immediately communicate threats or attack information to the Department of Homeland Security (DHS) operations center under the

National Response Framework. The NRC also has a strategic mission to immediately communicate threat or attack 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 spent nuclear fuel, HLW high level waste, or Category I SSNM. This prompt notification could be vital in increasing another licensees' ability to defeat poorly-synchronized multiple-site attacks and in protecting the lives of security and plant personnel (at a second facility) in such un-coordinated attacks. This prompt notification could also be vital in increasing the defensive posture of other government or critical infrastructure facilities to defeat poorly-synchronized multiple-sector attacks.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collection(s) 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. Is the estimate of the burden of the proposed information collection accurate?
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 proposed information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package and proposed rule is available in ADAMS under Accession No. ML15035A635 or may be viewed free of charge at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. You may obtain

information and comment submissions related to the OMB clearance package by searching on <http://www.regulations.gov> under Docket ID NRC-2011-0018.

You may submit comments on any aspect of these proposed information collection(s), including suggestions for reducing the burden and on the above issues, by the following methods:

- **Federal rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0018.
- **Mail comments to:** FOIA, Privacy, and Information Collections Branch, Office of Information Services, Mail Stop: T-5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 or to Vlad Dorjets Desk Officer, Office of Information and Regulatory Affairs (3150-0002 and 3150-0204), NEOB-10202, Office of Management and Budget, Washington, DC 20503; telephone: 202-395-7315, e-mail: Vladik_Dorjets@omb.eop.gov.

Submit comments by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

Public Protection Notification

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

XII. Criminal Penalties.

For the purposes of Section 223 of the AEA, the NRC is issuing this supplemental proposed rule that would amend 10 CFR part 73 under Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement. Criminal penalties as they apply to regulations in 10 CFR part 73 are discussed in § 73.81. Accordingly, §§ 73.18 and 73.19 will not be included in § 73.81(b).

XIII. 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 supplemental proposed rule, the NRC is using standards from applicable firearms standards developed by nationally recognized firearms organizations or standard setting bodies or from standards developed by 1) 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; 2) State law-enforcement training centers; or 3) State Division (or Department) of Criminal Justice Services (DCJS) Training Academies. The NRC invites comment on the applicability and use of other standards.

XIV. Availability of Guidance.

The NRC is issuing revised draft regulatory guide (DG), DG-5020, Revision 1, "Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73," for the implementation of the proposed requirements set forth in this supplemental proposed rulemaking. The guidance is available in ADAMS under Accession No. ML14322A847. In conjunction with the supplemental proposed rule, the NRC seeks public comment on DG-5020, Revision 1, which may be accessed by searching on <http://www.regulations.gov> under Docket ID NRC-2011-0015.

In conjunction with the February 2011 proposed rule, the NRC issued for comment a new draft guide, DG 5020, Revision 0, "Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73" (76 FR 6086, February 3, 2011). You may also access DG-5020, Revision 0, supporting material, and the public comments the NRC received on DG-5020, Revision 0, by searching on <http://www.regulations.gov> under Docket ID NRC-2011-0015.

DG-5020, Revision 0, contained detailed guidance on the implementation of the proposed requirements for applying for enhanced weapons authority, for applying for preemption authority, and conducting firearms background checks. However, DG-5020, Revision 0 did not include at-reactor ISFSIs under the applicability section; rather, the DG reserved a section for additional facilities to be added by future rulemakings or Commission orders. The addition of at-reactor ISFSIs to the DG as an eligible class of licensees to apply for Section 161A authority would not appreciably change the guidance contained in DG-5020, Revision 0. Accordingly, the NRC did not issue a revision to DG-5020, Revision 0, for comment in conjunction with the January 2013 supplemental proposed rule.

However, the changes contained in this supplemental proposed rule are substantive enough to warrant a revision to DG-5020, Revision 0. Accordingly, the NRC staff developed Revision 1 to DG-5020 to reflect the changes in this supplemental proposed rule and the previous supplemental proposed rule which added at-reactor ISFSIs.

You may submit comments on DG 50-20, Revision 1, by the following methods:

- **Federal rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0015. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: Carol.Gallagher@nrc.gov.
- **Mail comments to:** Cindy Bladley, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN-06-44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

XV. Availability of Documents.

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No. / Web link / Federal Register Citation
Firearms Guidelines	74 FR 46800; September 11, 2009
Firearms Guidelines, Revision 1	79 FR 36100; June 25, 2014
Environmental Assessment (October 2006 proposed rule)	ML061920093
Regulatory Analysis	ML061380803
Regulatory Analysis--appendices (October 2006 proposed rule)	ML061380796 ML061440013
Information Collection Analysis	ML092640277
NRC Form 754, "Armed Security Personnel Firearms Background Check"	ML092650459
Commission: SECY-08-0050, "Firearms Guidelines Implementing Section 161A of the Atomic Energy Act of 1954 and Associated Policy	ML072920478

Issues" (April 17, 2008)	
Commission: SECY-08-0050A, "Firearms Guidelines Implementing Section 161A of the Atomic Energy Act of 1954 and Associated Policy Issues - Supplemental Information" (July 8, 2008)	ML081910207
Commission: SRM-SECY-08-0050/0050A, "Firearms Guidelines Implementing Section 161A of the Atomic Energy Act of 1954 and Associated Policy Issues" (August 15, 2008)	ML082280364
Letter Opinion from Bureau of Alcohol, Tobacco, Firearms, and Explosives' Office of Enforcement on the Transfer of Enhanced Weapons (January 5, 2009)	ML090080191
Proposed Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Rule (February 3, 2011)	ML103410132
DG-5020, Revision 0, "Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73" (February 3, 2011)	ML100321956
DG-5020, Revision 1, "Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73" (February 17, 2012)	ML14322A847
Commission: SECY-12-0027, "Preemption Authority Pursuant to Section 161A, 'Use of Firearms by Security Personnel,' of the Atomic Energy Act of 1954, as Amended" (February 17, 2012)	ML113130015
Commission: SRM-SECY-12-0027, "Preemption Authority Pursuant to Section 161A, 'Use of Firearms by Security Personnel,' of the Atomic Energy Act of 1954, as Amended" (May 3, 2012)	ML12124A377
Commission: SECY-12-0125, "Interim Actions to Execute Commission Preemption Authority Under Section 161A of the Atomic Energy Act of 1954, as Amended" (September 20, 2012)	ML12164A839
Commission: SRM-SECY-12-0125, "Interim Actions to Execute Commission Preemption Authority Under Section 161A of the Atomic Energy Act of 1954, as Amended" (November 21, 2012)	ML12326A653
NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Revision 4 (September 30, 2004)	ML042820192

Throughout the development of this rule, the NRC staff may post documents related to this rule, including public comments, on the Federal rulemaking Web site at <http://www.regulations.gov> under Docket ID NRC-2011-0018 and NRC-2011-0015. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: 1) Navigate to the docket folder (NRC-2011-0018 and NRC-2011-0015); 2) click the "Sign up for E-mail Alerts" link; and 3) enter your e-mail address and select how frequently you would like to receive e-mails (daily, weekly, or monthly).

List of Subjects in 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. 552 and 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: Atomic Energy Act secs. 53, 147, 161, 223, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2282, 2297f, 2210(e)); Energy Reorganization Act sec. 201, 204 (42 U.S.C. 5841, 5844); Government Paperwork Elimination Act sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594 (2005).

Section 73.1 also issued under Nuclear Waste Policy Act secs. 135, 141 (42 U.S.C. 10155, 10161).

Section 73.37(b)(2) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note).

2. In § 73.2, paragraph (a), as proposed to be added February 3, 2011 (76 FR 6232), revise the definitions for "Combined enhanced weapons authority and preemption authority," "Covered weapon," "Enhanced weapon," and "Stand-alone preemption authority," in alphabetical order; and remove the definition for "Standard weapon" to read as follows:

§ 73.2 Definitions.

* * * *

(a) * * *

Combined enhanced weapons authority and preemption authority means the authority granted to 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 categories of enhanced ~~covered~~ weapons, notwithstanding any State, local, or certain Federal firearms laws, including regulations, that prohibit or restrict such conduct.

* * * *

Covered weapon means any handgun, rifle, shotgun, short-barreled shotgun, short-barreled rifle, semi-automatic assault weapon, machine gun, ammunition for any of such weapons, or large capacity ammunition feeding device, as specified under 42 U.S.C. 2201a(b).

that are otherwise prohibited or restricted by State, local, or certain Federal firearms laws, including regulations.

* * * * *

Enhanced weapon means any short-barreled shotgun, short-barreled rifle, or machine gun. Enhanced weapons do not include destructive devices as specified under 18 U.S.C. 921(a)(4).

* * * * *

Stand-alone preemption authority means the authority granted to the Commission, at 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, and use one or more categories of covered weapons other than enhanced weapons, notwithstanding any State, local, or certain Federal firearms laws, including regulations, that prohibit or restrict such conduct.

* * * * *

3. In § 73.18, as proposed to be added February 3, 2011 (76 FR 6233), revise paragraphs (d), (e), (f)(2)(iii), (j), (n)(2), (n)(3), and (n)(4); and add paragraph (s) to read as follows:

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

* * * * *

(d) *Application process for stand-alone preemption authority.* (1) Only licensees and certificate holders included within the classes of facilities, radioactive material, and other

property listed in paragraph (c)(1) of this section may apply to the NRC for stand-alone preemption authority.

(2) Licensees and certificate holders who desire to apply for stand-alone preemption authority must submit an application to the NRC using the procedures specified in this section.

(3) The contents of the application must include the following information:

(i) A statement indicating that the licensee or certificate holder is applying for stand-alone preemption authority under 42 U.S.C. 2201a;

(ii) The Commission-designated facility, radioactive material, or other property to be protected by the licensee's or certificate holder's security personnel using the covered weapons;

(iii) A description of the licensee's or certificate holder's purposes and objectives in requesting stand-alone preemption authority. This description must include whether these covered weapons are currently employed as part of the licensee's or certificate holder's existing protective strategy; or whether these covered weapons will be used in a revised protective strategy; and

(iv) A description of the licensee's or certificate holder's Firearms Background Check Plan required by § 73.19 of this part.

(4) Licensees and certificate holders must supplement their application for stand-alone preemption authority with the following additional information:

(i) A confirmation that a sufficient number of security personnel have completed a satisfactory firearms background check to meet the licensee's or certificate holder's applicable security-personnel minimum staffing and fatigue requirements;

(ii) A confirmation that the necessary training modules and notification procedures have been developed under their Firearms Background Check Plan; and

(iii) A confirmation that all security personnel whose official duties require access to covered weapons have been trained on these modules and notification procedures.

(5) The licensee or certificate holder must submit both the application and the supplementary information to the NRC in writing, under oath or affirmation, and in accordance with § 73.4 of this part.

(6) Upon the effective date of the NRC's approval of its application for stand-alone preemption authority, the licensee or certificate holder must only assign security personnel who have completed a satisfactory firearms background check to duties requiring access to any covered weapons.

(e) *Application process for combined enhanced-weapons authority and preemption authority.* (1) Only licensees and certificate holders included within the classes of facilities, radioactive material, and other property 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 who desire to apply for combined enhanced-weapons authority and preemption authority must submit an application to the NRC using the procedures specified in this section.

(3) The contents of the application must include the following information:

(i) A statement indicating that the licensee or certificate holder is applying for combined enhanced-weapons authority and preemption authority under 42 U.S.C. 2201a.

(ii) The Commission-designated facility, radioactive material, or other property to be protected by the licensee's or certificate holder's security personnel using the enhanced weapons.

(iii) A description of the licensee's or certificate holder's purposes and objectives in requesting combined enhanced-weapons authority and preemption authority. This must include

whether these enhanced covered weapons are currently employed as part of the licensee's or certificate holder's existing protective strategy; or whether these enhanced covered weapons will be used in a revised protective strategy.

(iv) A description of the licensee's or certificate holder's Firearms Background Check Plan required by § 73.19 of this part.

(v) If the NRC has previously approved the licensee's or certificate holder's application for stand-alone preemption authority, under either paragraph (d) of this section or under a Commission Order issued before **[EFFECTIVE DATE OF FINAL RULE]**, then the licensee or certificate holder must include the effective date of the NRC's approval of preemption authority in their application for combined enhanced-weapons authority and preemption authority.

(4) The licensee or certificate holder must include with their application the additional technical information required by paragraph (f) of this section.

(5) Licensees and certificate holders must supplement their application with the following additional information:

(i) A confirmation that a sufficient number of security personnel have completed a satisfactory firearms background check to meet the licensee's or certificate holder's applicable security-personnel minimum staffing and fatigue requirements;

(ii) A confirmation that the necessary training modules and notification procedures have been developed under their Firearms Background Check Plan; and

(iii) A confirmation that all security personnel whose official duties require access to covered weapons have been trained on these modules and notification procedures.

(iv) Exceptions:

(A) Licensees and certificate holders who were previously approved by the NRC for preemption authority under paragraph (d) of this section are not required to submit the

supplemental information of this paragraph (as a component of their application for combined enhanced weapons authority and preemption authority).

(B) Licensees and certificate holders who were previously approved by the NRC for preemption authority pursuant to a Commission Order issued before **[IEFFECTIVE DATE OF FINAL RULE]**, are not required to submit the supplemental information of this paragraph (as a component of their application for combined enhanced weapons authority and preemption authority).

(6) The licensee or certificate holder must submit their application in accordance with the applicable license amendment or certificate of compliance amendment provisions specified in §§ 50.90, 70.34, 72.56, or 76.45 of this chapter. The licensee or certificate holder must submit both the application and the supplementary information to the NRC in writing and under oath or affirmation.

(7) If a licensee or certificate holder wishes to use a different type or caliber of enhanced weapons or obtain a different quantity of enhanced weapons from that previously approved by the Commission under this section, then the licensee or certificate holder must submit a new application to the NRC in accordance with paragraph (e) of this section (to address these different weapons or different quantities of weapons).

(8) Upon the effective date of the NRC's approval of its application for combined enhanced weapons authority and preemption authority, the licensee or certificate holder must only assign security personnel who have completed a satisfactory firearms background check to perform duties requiring access to any covered weapons.

(f) * * *

(2) * * *

(iii) The licensee or certificate holder must address in the safeguards contingency plan how the enhanced weapons will be employed by the security personnel in implementing the protective strategy, including tactical approaches and maneuvers; and

* * * * *

(j) *Use of enhanced weapons.* Requirements regarding the general use of enhanced weapons by licensee or certificate holder security personnel, in the performance of their official duties, are contained in §§ 73.46, 73.51, and 73.55 and in appendices B, C, and H of this part, as applicable.

* * * * *

(n) * * *

(2) Security personnel transporting enhanced 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 that is being transported to or from the licensee's or certificate holder's facility must ensure that these weapons are rendered safe and locked in a secure container during transport. Security personnel may transport unloaded weapons and ammunition in the same locked secure container.

(3) Security personnel using enhanced weapons to protect shipments of radioactive material or other property that are being transported to or from the licensee's or certificate holder's facility must ensure that these weapons are maintained in a state of loaded readiness and available for immediate use, except when otherwise prohibited by 18 U.S.C. 922(q).

(4) Security personnel transporting enhanced weapons to or from the licensee's or certificate holder's facility must comply with the requirements of § 73.19 of this part.

* * * * *

(s) *Sunsetting of orders.* For licensees who received an NRC order approving an application for stand-alone preemption authority or combined preemption authority and enhanced weapons authority prior to **[EFFECTIVE DATE OF FINAL RULE]**, the following provisions apply.

(1) The NRC's approval via a confirmatory order of preemption authority or enhanced weapons authority under Section 161A for a licensee remains valid and licensees or certificate holders would not need to reapply for this authority.

(2) Licensees issued such orders must comply with the requirements of this section. Accordingly, the requirements of such orders are superseded in their entirety by the requirements of this section.

(3) Licensees issued such orders must update any procedures, instructions, and training material, developed in response to the orders, to reflect the transition from requirements under the order to the requirements of this section. Licensees must complete these transition actions by **[DATE 60 DAYS AFTER THE EFFECTIVE DATE OF FINAL RULE]**.

(4) Licensees issued such orders must notify the NRC in writing, in accordance with § 73.4 of this part, of the completion of these transition actions. Licensees must complete this notification by **[DATE 70 DAYS AFTER THE EFFECTIVE DATE OF FINAL RULE]**.

4. In § 73.19, as proposed to be added February 3, 2011 (76 FR 6237), revise paragraph (b); remove and reserve paragraph (c); revise paragraphs (f), (g), (h), (j), (p)(1), and (p)(5); and add paragraph (r) to read as follows:

§ 73.19 Firearms background checks for armed security personnel.

* * * * *

(b) *General Requirements.* (1) Licensees and certificate holders who have applied to the NRC under § 73.18 of this part for stand-alone preemption authority or for combined enhanced weapons authority and preemption authority must comply with the provisions of this section. Such licensees and certificate holders must establish a Firearms Background Check Plan. Licensees and certificate holders must establish this plan as part of their overall NRC-approved Training and Qualification plan for security personnel whose official duties require access to covered weapons.

(2) For the purposes of § 73.18 of this part and this section only, the term *security personnel whose official duties require access to covered weapons* includes, but is not limited to, the following groups of individuals:

(i) Security officers using covered weapons to protect a Commission-designated facility, radioactive material, or other property;

(ii) Security officers undergoing firearms training on covered weapons;

(iii) Firearms-training instructors conducting training on covered weapons;

(iv) Armorers conducting maintenance, repair, and testing of covered weapons;

(v) Individuals with access to armories and weapons storage lockers containing covered weapons;

(vi) Individuals issuing covered weapons from armories to security personnel and checking in such weapons;

(vii) Individuals conducting inventories of enhanced weapons;

(viii) Individuals removing enhanced weapons from the site for repair, training, and escort-duty purposes; and

(ix) Individuals whose duties require access to covered weapons, whether the individuals are employed directly by the licensee or certificate holder or they are employed by a security contractor who provides security services to the licensee or certificate holder.

(3) The objectives of a Firearms Background Check Plan must include:

(i) Completing firearms background checks for all security personnel whose official duties require access to covered weapons;

(ii) Defining the process for completing initial, periodic, and break-in-service firearms background checks;

(iii) Defining the training objectives and modules for security personnel who are subject to firearms background checks;

(iv) Completing the initial and periodic training for security personnel whose official duties require access to covered weapons;

(v) Maintaining records of completed firearms background checks, required training, and any supporting documents;

(vi) Maintaining records of a decision to remove security personnel from duties requiring access to covered weapons, due to the discovery or occurrence of a disqualifying status condition or disqualifying event; and

(vii) Developing and implementing procedures for notifying the NRC of the removal of security personnel from access to covered weapons, due to the discovery or occurrence of a disqualifying status condition or disqualifying event.

(4) Licensees and certificate holders who have applied to the NRC for stand-alone preemption authority or for combined enhanced weapons authority and preemption authority under § 73.18 of this part must ensure that a satisfactory firearms background check has been completed for all security personnel whose official duties require access to covered weapons.

(5) Only licensees and certificate holders who have applied for Section 161A authority under § 73.18 of this part may conduct firearms background checks.

(6) The licensee or certificate holder must commence firearms background checks only after receiving notification from the NRC that the agency has accepted for review their application for stand-alone preemption authority or for combined enhanced weapons authority and preemption authority.

(7) Applicability of firearms background checks to applicants for a license or certificate of compliance:

(i) Applicants for a license or a certificate of compliance who have also submitted an application for Section 161A authority must only commence firearms background checks after:

(A) The NRC has issued their license or certificate of compliance; and

(B) The NRC has accepted their application for stand-alone preemption authority or for combined enhanced weapons authority and preemption authority for review.

(ii) Subsequent to **[EFFECTIVE DATE OF FINAL RULE]**, applicants for a license or a certificate of compliance who have also applied for Section 161A authority and been issued their license or certificate of compliance must ensure a satisfactory firearms background check (as defined in § 73.2 of this part) has been completed for all security personnel who require access to covered weapons, 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 ~~(as requiring protection under a security program).~~

~~(9) Licensee and certificate holder actions in response to an adverse firearms background check (as defined in § 73.2 of this part):~~

Commented [JCM1]: JMB: There was no number 8. Please renumber this section accordingly and make any necessary changes to other portions of the FRN.

(i) The licensee or certificate holder must remove, without delay, from duties requiring access to ~~enhanced~~-covered weapons, any security personnel who receive a "denied NICS response;"

(ii) The licensee or certificate holder must remove, without delay, from duties requiring access to enhanced weapons, any security personnel who receive a "delayed NICS response;" and

(iii) If the security personnel to be removed is on duty at the time of removal, then the licensee and certificate holder must reconstitute the vacated position within the timeframe specified in their NRC-approved physical security plan.

(10) Subsequent to the licensee's or certificate holder's receipt of notification that the NRC has approved their application for either stand-alone preemption authority or for combined enhanced weapons authority and preemption authority:

(i) The licensee or certificate holder must complete a satisfactory firearms background check on security personnel, before assigning that individual to any duties that require access to covered weapons;

(ii) The licensee or certificate holder may return to duties that require access to covered weapons any security personnel who has previously received an adverse firearms background check, if the individual subsequently completes a satisfactory firearms background check or successfully appeals an adverse firearms background check; and

(iii) During the pendency of an individual's appeal to the Federal Bureau of Investigation (FBI) of an adverse firearms background check, the licensee or certificate holder must not assign such security personnel to duties that require access to covered weapons.

(11) Accomplishment of periodic firearms background checks.

(i) The licensee or certificate holder must complete a periodic firearms background check for security personnel whose duties require access to covered weapons. A satisfactory periodic firearms background check must be completed within 5 calendar years of the month of an initial, or the most recent, firearms background check, whichever is later most recent satisfactory firearms background check.

(ii) Licensees and certificate holders who had conducted firearms background checks pursuant to a confirmatory order issued by the NRC before **[EFFECTIVE DATE OF FINAL RULE]**, must complete a periodic firearms background check for security personnel whose duties continue to require access to covered weapons. A satisfactory periodic firearms background check must be completed within 5 calendar years of the most recent satisfactory firearms background check, month of an initial, or the most recent, firearms background check accomplished under a confirmatory order, whichever is later.

(iii) The licensee or certificate holder must complete the periodic firearms background check within the allowance period specified in paragraph (fe) of this section.

(12) Accomplishment of break-in-service firearms background checks.

(i) The licensee or certificate holder must complete a new satisfactory firearms background check, if the security personnel has had a break-in-service with their employing licensee, certificate holder, or their security contractor which is for a duration of greater than one week; or

(ii) The licensee or certificate holder must complete a new satisfactory firearms background check, if the security personnel has transferred from a different licensee or certificate holder.

(iii) A break-in-service means the security personnel's cessation of employment with the licensee, certificate holder, or their security contractor, and notwithstanding that the previous

licensee or certificate holder completed a satisfactory firearms background check on the individual within the last 5 years.

(iv) Exceptions:

(A) For the purposes of this section, a break-in-service does not include a security personnel's temporary active duty with the U.S. military reserves or National Guard.

(B) The licensees or certificate holders, in lieu of completing a new satisfactory firearms background check, may instead verify via an industry-wide information-sharing database that the security personnel has completed a satisfactory firearms background check within the previous 12 months. Provided that this previous firearms background check included a duty station location in the State or Territory where the licensee or certificate holder (who would otherwise be accomplishing the firearms background check) is located or the activity is solely occurring.

(13) If subsequent to the NRC's approval of an application for Section 161A authority under § 73.18 of this part, a change occurs in the licensee, certificate holder, ownership of a facility, radioactive material, or other property, or a security contractor that provides security services to the licensee or certificate holder, then the licensee or certificate holder is not required to conduct a break-in-service firearms background check required by this section for the security personnel whose duties require access to covered weapons.

(14) With regard to accomplishing the requirements for other background (e.g., criminal history records) checks or personnel security investigations under the NRC's access authorization or personal security clearance program requirements of this chapter, the licensee or certificate holder may not substitute a satisfactory firearms background check in lieu of completing these other required background checks or security investigations.

(15) If a licensee or certificate holder has completed initial satisfactory firearms background checks pursuant to a Commission order issued before **[EFFECTIVE DATE OF FINAL RULE]**, then the licensee or certificate holder is not required to conduct a new initial firearms background check for its current security personnel. However, the licensee or certificate holder must conduct initial firearms background checks on new security personnel and periodic and break-in-service firearms background checks on current security personnel in accordance with the provisions of this section.

(16) A licensee or certificate holder who withdraws their application for Section 161A authority, or whose application was disapproved by the NRC, must discontinue conducting firearms background checks.

(17) A licensee or certificate holder whose authority under Section 161A has been rescinded or was revoked by the NRC must discontinue conducting firearms background checks.

* * * *

(c) [RESERVED]

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(f) *Periodic firearms background checks.* (1) Licensees and certificate holders must complete a satisfactory periodic firearms background check at least once every 5 calendar years for security personnel whose continuing duties require access to covered weapons.

(2) Licensees and certificate holders must complete a periodic firearms background check within the same calendar month as the initial, or most recent, firearms background check; with an allowance period to midnight (i.e., 23:59 local time) of the last day of the calendar month of expiration.

(3) Licensees and certificate holders may continue the security personnel's duties requiring access to covered weapons pending the satisfactory completion of a periodic firearms background check. However, licensees and certificate holders must remove security personnel from duties requiring access to covered weapons, if the satisfactory completion of a periodic firearms background check does not occur before the expiration of the allowance period.

(g) *Notification of removal.* (1) Licensees and certificate holders must notify the NRC Headquarters Operations Center by telephone within 72 hours after removing security personnel from duties requiring access to covered weapons, due to the discovery of any disqualifying status condition or the occurrence of any disqualifying event. Licensees and certificate holders must contact the NRC Headquarters Operations Center at the phone numbers specified in table 1 of appendix A of this part.

(2) Exception. ~~The requirement to notify the NRC by telephone is not applicable~~licensee or certificate holder is not required to notify the NRC by telephone, if the licensee's or certificate holder's security management was notified by the affected security personnel within 72 hours of the occurrence of any disqualifying status condition or disqualifying event.

(h) *Security personnel responsibilities.*

(1) Security personnel assigned to duties requiring access to covered weapons must notify their employing licensee's or certificate holder's security management within 72 hours of ~~occurrence of the existence of the identification or occurrence of any Federal or State~~ disqualifying status condition or ~~upon the occurrence of any disqualifying events~~event that would prohibit them from possessing, receiving, or using firearms or ammunition.

Commented [JCM2]: JMB: Please make corresponding changes to each area in the FRN that this language occurs.

(2) This notification requirement is applicable to all security personnel assigned duties requiring access to covered weapons, irrespective of whether they are directly employed by the

licensee or certificate holder or employed by a contractor providing security services to the licensee or certificate holder.

(j) Training for security personnel subject to firearms background checks.

(1) Licensees and certificate holders must include within their Firearms Background Check Plan the development and accomplishment of training modules for security personnel assigned official duties requiring access to covered weapons.

(2) The training modules must include information on the following topics:

(i) Federal disqualifying status conditions or disqualifying 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, receiving, or using any firearms or ammunition;

(ii) Any applicable State disqualifying status conditions or disqualifying events;

(iii) The continuing responsibility of security personnel subject to a firearms background check to promptly and voluntarily notify their employing licensee or certificate holder of the occurrence of any disqualifying status condition or disqualifying event; and

(iv) The process for appealing to the FBI a "denied" or "delayed" NICS response.

(3) Licensees and certificate holders must conduct periodic refresher training on these modules at an annual frequency for security personnel assigned official duties requiring access to covered weapons.

(p) Appeals and resolution of erroneous system information.

(1) The licensee or certificate holder may not assign security personnel, who have receive a "denied" or a "delayed" NICS response, to duties requiring access to covered weapons:

(i) During the pendency of an appeal of a "denied" NICS response; or

(ii) During the pendency of providing and evaluating any necessary additional information to the FBI to resolve a "delayed" NICS response.

* * * * *

(5) Challenges of the accuracy and correctness of records. (i) 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 must first contact the FBI at the address stated in paragraph (p)(4)(i) of this section.

(ii) The individual must 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 after the date the licensee or certificate holder notifies the individual of the adverse response.

(iii) The individual appealing a "denied" response or resolving a "delayed" response is 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 response is issued.

(iv) The individual 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 must be made to the licensee or certificate holder. The licensee or certificate holder may grant an extension request for good cause, as determined by the licensee or certificate holder.

(v) The individual's appeal or request submitted to the FBI 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.

(vi) 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.

* * * * *

(r) *Sunsetting of orders.* For licensees who received an NRC order designating them as part of an interim class of facilities eligible to apply for Section 161A authority prior to **[EFFECTIVE DATE OF FINAL RULE]**, the following provisions apply regarding the sunsetting of these designation orders.

(1) Licensees issued such orders are no longer considered part of an interim class of facilities eligible to apply for Section 161A authority, but instead are encompassed within the Commission-designated classes of facilities, activities, and other property specified in § 73.18(c) of this part.

(2) Licensees issued such orders must comply with the requirements of this section, in lieu of complying with the firearms background check requirements of those orders. Accordingly, the requirements of those orders are superseded in their entirety by the requirements of this section.

(3) Licensees issued such orders must update any procedures, instructions, and training material; they have developed in response to the orders, to reflect the transition from requirements under the order to the requirements of this section. Licensees must complete these transition actions by **[DATE 60 DAYS AFTER THE EFFECTIVE DATE OF FINAL RULE]**.

(4) Licensees issued such orders must notify the NRC in writing, in accordance with § 73.4 of this part, of the completion of these transition actions. Licensees must complete this notification by **[DATE 70 DAYS AFTER THE EFFECTIVE DATE OF FINAL RULE]**.

5. In § 73.51, add paragraph (f) to read as follows:

§ 73.51 Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

* * * * *

(f) *Response requirements.* For licensees employing ~~enhanced covered~~ weapons as part of their protective strategy, the licensee must train each armed member of the security organization using ~~enhanced covered~~ weapons to prevent or impede attempted acts of radiological sabotage by using force sufficient to counter the force directed at that armed member, including the use of deadly force as authorized by applicable State or Federal law.

Dated at Rockville, Maryland, this day of

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

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§ 73.51 Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

* * * * *

(f) *Response requirements.* For licensees employing enhanced weapons as part of their protective strategy, the licensee must train each armed member of the security organization using enhanced weapons to prevent or impede attempted acts of radiological sabotage by using force sufficient to counter the force directed at that armed member, including the use of deadly force as authorized by applicable State or Federal law.

Dated at Rockville, Maryland, this day of

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

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