



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

October 19, 2010

OFFICE OF THE  
SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-10-0085

TITLE: PROPOSED RULE: ENHANCED WEAPONS, FIREARMS  
BACKGROUND CHECKS AND SECURITY EVENT  
NOTIFICATIONS (RIN: 3150-AI49)

The Commission (with Chairman Jaczko and Commissioner Apostolakis approving and Commissioners Svinicki, Magwood, and Ostendorff approving in part and disapproving in part) acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of October 19, 2010.

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

A handwritten signature in black ink, reading "Annette Vietti-Cook".

Annette L. Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Jaczko  
Commissioner Svinicki  
Commissioner Apostolakis  
Commissioner Magwood  
Commissioner Ostendorff  
OGC  
EDO  
PDR

VOTING SUMMARY - SECY-10-0085

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X					8/24/10
COMR. SVINICKI	X	X			X	9/28/10
COMR. APOSTOLAKIS	X				X	8/27/10
COMR. MAGWOOD	X	X			X	9/23/10
COMR. OSTENDORFF	X	X			X	9/24/10

COMMENT RESOLUTION

In their vote sheets, Chairman Jaczko and Commissioner Apostolakis approved and Commissioners Svinicki, Magwood, and Ostendorff approved in part and disapproved in part the staff's recommendation and some provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on October 19, 2010.

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: Chairman Gregory B. Jaczko  
SUBJECT: SECY-10-0085 – PROPOSED RULE: “ENHANCED WEAPONS, FIREARMS BACKGROUND CHECKS AND SECURITY EVENT NOTIFICATIONS” (RIN: 3150-AI49)

Approved  X  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_ Attached \_\_\_ None  X

  
\_\_\_\_\_  
SIGNATURE

8/24/10  
\_\_\_\_\_  
DATE

Entered on “STARS” Yes  X  No \_\_\_\_\_

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER SVINICKI  
SUBJECT: SECY-10-0085 – PROPOSED RULE: “ENHANCED WEAPONS, FIREARMS BACKGROUND CHECKS AND SECURITY EVENT NOTIFICATIONS” (RIN: 3150-AI49)

Approved XX Disapproved XX Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_ Attached XX None \_\_\_

  
\_\_\_\_\_  
SIGNATURE

9/28/10  
\_\_\_\_\_  
DATE

Entered on “STARS” Yes X No \_\_\_

**Commissioner Svinicki's Comments on SECY-10-0085**  
**Proposed Rule: "Enhanced Weapons, Firearms Background Checks,**  
**and Security Event Notifications" (RIN: 3150-A149)**

I disapprove Staff's request to delegate to the EDO the authority to issue the new cyber security notification changes in the proposed firearms guidelines. However, I approve the *Federal Register* notice (FRN) for the proposed rule (included as the Enclosure to SECY-10-0085), subject to the comments below and the attached edits. I also approve issuing the two draft implementing guidance documents simultaneously with the proposed rule, and extension of the public comment period to 90 days.

I recognize that the Commission in SRM-SECY-08-0099 approved moving the security event notification requirements to the proposed Firearms Guidelines rule, and that there is a nexus between the subjects of enhanced weapons and security event notifications. The proposed security event notification requirements, however, are not entirely related to enhanced weapons; many of the event notification provisions could affect licensees who are not affected by the enhanced weapons authority. Therefore, it is very important that the proposed rule clearly articulate which provisions apply to which classes of licensees. For example, the summary paragraphs of the FRN explicitly state that the enhanced weapons and firearms background check provisions only apply to nuclear power reactor facilities and Category I strategic special nuclear material facilities. But when describing the security event notification provisions, it is not clear that these requirements would impact a broader class of licensees, such as research and test reactors and independent spent fuel storage installations.

Overall, I am concerned that if an informed reader such as myself found confusing the FRN's transition between enhanced weapons/background checks and security event notifications, the agency's stakeholders will not be in a position to easily understand or comment on the proposed requirements. To mitigate this possibility, Staff should ensure that the associated guidance documents articulate plainly the agency's expectations, particularly with respect to identifying the classes of licensees to which particular requirements apply.

  
\_\_\_\_\_  
Kristine L. Svinicki      09/28/10

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

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

**SUPPLEMENTARY INFORMATION:**

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

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

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

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

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

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

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



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

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

**Solution:** The NRC is proposing to add requirements that records be kept on the receipt and transfer of enhanced weapons that would include the following information: date of receipt or date of shipment of the weapon; the name and address of the transferor or the name and address of the transferee; name of the manufacturer or importer; and the model, serial number, type, and caliber or gauge of the weapon. X

Records requirements also would be added regarding the transportation of enhanced weapons (away from the licensee's or certificate holder's facility), including: date of

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

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

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

F. Definitions

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

G. Changes to Safeguards Event Notifications

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

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

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

I. Specific Questions for Public and Stakeholder Input

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

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

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

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

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

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

Responses to specific comments are presented as follows.

A. General issues

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

*Response:* The NRC agrees. The proposed regulations would specify the timeliness of adding these records and the retention period for these records. Therefore, the modifier "current" does not add value or clarity to the "safeguards event log" regulation and would be deleted. The NRC also would revise proposed paragraph <sup>IV(c) in Appendix G</sup> ~~III(b)~~ to use "that committed" <sup>ok</sup> in a licensee's or certificate holder's NRC-approved security plan.

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

The commenter recommends that this provision be removed.

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

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

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

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

The NRC is also proposing a new NRC Form 754, “Armed Security Personnel Background Check” to implement the provisions of the firearms background check under proposed § 73.19. The NRC would make minor editorial changes to the instructions and the assisting text. Additionally, the NRC would revise Question 4 to simplify the question and also provide the option for multiple duty station locations.

**B. Definitions (§ 73.2)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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





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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Estimation and Evaluation of Values and Impacts

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

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

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

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

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

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

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

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

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

X

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

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

#### 4. Presentation of Results

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

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

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

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

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

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

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

- Disaggregation

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



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

#### 5. Decision Rationale

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

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

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

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

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

#### 6. Implementation

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

### XV. Regulatory Flexibility Certification

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

X  
What about security event notifications? They have broader applicability.

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

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

#### **List of Subjects**

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, <sup>A</sup>  
Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

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

#### **PART 73 - PHYSICAL PROTECTION OF PLANTS AND MATERIALS**

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

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

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

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

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

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

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

(3) The licensee's or certificate holder's training and qualification plan for enhanced weapons must include information from applicable firearms standards developed by nationally-recognized firearms organizations or standard setting bodies or from standards developed by Federal agencies, such as the U.S. Department of Homeland Security's Federal Law Enforcement Training Center, the U.S. Department of Energy's National Training Center, and the U.S. Department of Defense.

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

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

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

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

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

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

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

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

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

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

(iv) Abandonment of an enhanced weapon to ATF.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

X



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

X (3) Licensees and certificate holders possessing enhanced weapons under this section shall perform inventories of ~~the~~<sup>their</sup> enhanced weapons monthly, as follows –

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

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

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

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

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

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

X (4) Licensees and certificate holders possessing enhanced weapons under this section shall perform inventories of ~~its~~<sup>their</sup> enhanced weapons semi-annually, as follows –

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

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

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

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

X <sup>indent</sup> → (5) Licensees and certificate holders shall conduct monthly and semi-annual inventories of enhanced weapons using a two-person team. X

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

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

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

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

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

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

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

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

(i) Date of receipt of the weapon;

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

X (iii) Name of the manufacture<sup>r</sup> of the weapon, or the name of the importer (for weapons manufactured outside the U.S.); and

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

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

(i) Date of shipment of the weapon;

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

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

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

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

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

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

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

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

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

5. Section 73.19 is added to read as follows:

**§ 73.19 Firearms background checks for armed security personnel.**

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

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

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

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

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

(ii) A completed NRC Form 754.

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

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

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

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

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

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

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

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

(use a  
consistent  
term for  
§11)  
X

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

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

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

(l) (Reserved).

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

^

X

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

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

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

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

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

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

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



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

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

(ii) Individuals appealing a "denied" response or resolving a "delayed" response are responsible for providing the FBI any additional information the FBI requires to resolve the adverse response. These individuals must supply this information to the FBI within 45 calendar days after the FBI's <sup>response?</sup> request is issued. (if not "response", what FBI request is being referred to?)



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

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

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

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

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

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

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

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

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

8. Section 73.71 is revised to read as follows:

**§ 73.71 Reporting and recording of safeguards events.**

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

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

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

(3) These notifications shall:

(i) Identify the facility name;

(ii) Include the authentication code; and

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

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

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

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

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

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

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

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

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

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

(4) These notifications shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) (Reserved).

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

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

(l) (Reserved).

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

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

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

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

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

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

(7) In addition to the addressees specified in § 73.4, the licensee or certificate holder shall also provide one copy of the written report addressed to the Director, Office of Nuclear Security and Incident Response (NSIR). The copy of a classified written report to the Director, NSIR, shall be provided to the NRC headquarters' classified mailing address specified in Table 2 of Appendix A to this part or in accordance with paragraph IV of Appendix A to this part.

(8) The report must include sufficient information for NRC analysis and evaluation.

X (9) Significant supplemental information <sup>that</sup> ~~which~~ becomes available after the initial telephonic notification to the NRC Headquarters Operations Center or after the submission of

the written report must be telephonically reported to the NRC Headquarters Operations Center under paragraph (j) of this section and also submitted in a revised written report (with the revisions indicated) as required under paragraph (m) of this section.

(10) Errors discovered in a written report must be corrected in a revised written report with the revisions indicated.

(11) The revised written report must replace the previous written report; the update must be complete and not be limited to only supplementary or revised information.

(12) Each licensee and certificate holder shall maintain a copy of the written report of an event submitted under this section as a record for a period of three years from the date of the report or until termination of the license or the certificate of compliance.

(13)(i) If the licensee or certificate holder subsequently retracts a telephonic notification made under this section as invalid and has not yet submitted a written report required by paragraph (m) of this section, then submission of a written report is not required.

(ii) If the licensee or certificate holder subsequently retracts a telephonic notification made under this section as invalid, after it has submitted a written report required by paragraph (m) of this section, then the licensee or certificate holder shall submit a revised written report in accordance with paragraph (m) of this section.

(14) Each written report containing Safeguards Information or classified information must be created, stored, marked, labeled, handled <sup>(b)(1)(n)</sup> and transmitted to the NRC in accordance with the requirements of §§ 73.21 and 73.22 of this part or with Part 95 of this chapter, as applicable. X

(n) *Declaration of emergencies.* Notifications made to the NRC for the declaration of an emergency class shall be performed in accordance with §§ 50.72, 70.50, 72.75, and 76.120 of this chapter, as applicable.

(4) The unauthorized operation, manipulation, or tampering with any nuclear reactor's controls or with structures, systems, and components (SSCs) that results in the interruption of normal operation of the reactor; or

(5) The unauthorized operation, manipulation, or tampering with any Category I strategic special nuclear material (SSNM) facility's controls or SSCs that results in the interruption of normal operation of the facility.

(b) *Unauthorized entry events.*

(1) An actual entry of an unauthorized person into a facility's protected area (PA), vital area (VA), material access area (MAA), or controlled access area (CAA).

(2) An actual entry of an unauthorized person into a transport vehicle.

(3) An attempted entry of an unauthorized person with malevolent intent into a PA, VA, MAA, or CAA.

(4) An attempted entry of an unauthorized person with malevolent intent into a vehicle transporting special nuclear material, spent nuclear fuel, or high-level radioactive waste; or to the ~~fresh~~ <sup>special</sup> nuclear ~~fuel~~ <sup>material</sup>, spent nuclear fuel, or high-level radioactive waste itself.

(c) *Contraband events.*

(1) The actual introduction of contraband into a PA, VA, MAA, or CAA.

(2) The actual introduction of contraband into a transport.

(3) An attempted introduction of contraband by a person with malevolent intent into a PA, VA, MAA, or CAA.

(4) An attempted introduction of contraband by a person with malevolent intent into a vehicle transporting special nuclear material, spent nuclear fuel, or high-level radioactive waste; or to the ~~fresh~~ <sup>special</sup> nuclear ~~fuel~~ <sup>material</sup>, spent nuclear fuel, or high-level radioactive waste itself.



(2) An attempted but unsuccessful cyber attack or event that could have caused significant degradation to any systems, networks, or equipment that falls within the scope of § 73.54 of this part. X

(d) *Law enforcement interactions.* (1) An event related to the licensee's or certificate holder's implementation of their security program for which a notification was made to local, State, or Federal law enforcement officials and that does not otherwise require a notification under paragraph I or the other provisions of paragraph II of this appendix.

(2) An event involving a law enforcement response to the facility <sup>that</sup> ~~which~~ could reasonably be expected to result in public or media inquiries and that does not otherwise require a notification under paragraphs I or the other provisions of paragraph II of this appendix. X

III. *Events to be reported within eight hours of discovery.*

*Unauthorized operation or tampering events.* An event involving—

(1) The unauthorized operation, manipulation, or tampering with any nuclear reactor's controls or SSCs that does not result in the interruption of the normal operations of the reactor;

(2) The unauthorized operation, manipulation, or tampering with any Category I SSNM facility's controls or SSCs that does not result in the interruption the normal operations of the facility; or

(3) The tampering, malicious or unauthorized access, use, operation, manipulation, or modification of any security measures associated with systems, networks, and equipment that falls within the scope of § 73.54 of this part, that does not result in the interruption of the normal operation of such systems, networks, or equipment.

IV. *Events to be recorded in the safeguards event log within 24 hours of discovery.*

(a) *Compensated security events.* Any failure, degradation, or discovered vulnerability in a safeguards system, had compensatory measures not been established, that could have—

committed to in a licensee's or certificate holder's NRC-approved physical security plan or cyber security plan.

(f) *Non duplication.* Events reported under paragraphs I, II, or III of this appendix are not required to be recorded under the safeguards event log.

Dated at Rockville, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

For the Nuclear Regulatory Commission.

~~R. W. Borchardt,~~ Annette J. Cook  
Executive Director for Operations.

2010 JUL - 1 PM 2:53

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: Commissioner George Apostolakis  
SUBJECT: SECY-10-0085 – PROPOSED RULE: “ENHANCED WEAPONS, FIREARMS BACKGROUND CHECKS AND SECURITY EVENT NOTIFICATIONS” (RIN: 3150-AI49)

Approved   x   Disapproved        Abstain       

Not Participating       

COMMENTS: Below     Attached     None   x  



\_\_\_\_\_  
SIGNATURE

8/27/10

\_\_\_\_\_  
DATE

Entered on “STARS” Yes   x   No

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER MAGWOOD  
SUBJECT: SECY-10-0085 – PROPOSED RULE: “ENHANCED WEAPONS, FIREARMS BACKGROUND CHECKS AND SECURITY EVENT NOTIFICATIONS” (RIN: 3150-AI49)

Approved X Disapproved X Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached X None \_\_\_\_\_

Witt McD  
SIGNATURE

8/23/10  
DATE

Entered on “STARS” Yes X No \_\_\_\_\_

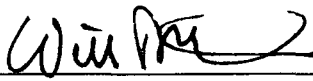
## Commissioner Magwood's Comments

On

SECY-10-0085: PROPOSED RULE: "ENHANCED WEAPONS, FIREARMS  
BACKGROUND CHECKS AND SECURITY EVENT NOTIFICATIONS"

The staff recommends that the Commission delegate to the EDO authority to publish the subject proposed rule in the *Federal Register*. In my view, it is more appropriate to apply such delegations to subsequent actions, such as the development and issuance of firearms guidelines. In this case the guidelines are complete and have come to the Commission for approval. Therefore, there seems to be little purpose in delegating authority to publish the proposed rule. I therefore disapprove the staff's recommendation to delegate such authority to the EDO in this instance.

Regarding the substance of the matter before us, I congratulate the staff's successful effort to negotiate the long and difficult process that led to the proposed firearms guideline rule. I approve publication of the proposed rule in the *Federal Register* under SECY's signature. I also approve staff's proposals to issue two draft implementing guidance documents simultaneously with the proposed rule and extending the public comment period on the proposed firearms guideline rule from 45 days to 90 days.

 9/23/10  
\_\_\_\_\_  
William D. Magwood IV      date

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER OSTENDORFF  
SUBJECT: SECY-10-0085 – PROPOSED RULE: “ENHANCED WEAPONS, FIREARMS BACKGROUND CHECKS AND SECURITY EVENT NOTIFICATIONS” (RIN: 3150-AI49)

Approved  X, in part  Disapproved  X, in part  Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached  X  None \_\_\_\_\_

  
\_\_\_\_\_  
SIGNATURE

9/24/10   
\_\_\_\_\_  
DATE

Entered on “STARS” Yes  X  No \_\_\_\_\_

**Commissioner Ostendorff's Comments on SECY-10-0085  
Enhanced Weapons, Firearms Background Checks, and Security Events Notifications  
Proposed Rulemaking**

I am pleased to have the opportunity to provide my views on this long-standing, but important rulemaking matter. This rulemaking has a long, complicated history that is not quite complete. I am therefore anxious that we press forward to bring closure.

I disapprove the staff's recommendation to delegate authority to the EDO to issue the new cyber security notification changes in the proposed firearms guidelines rule for publication. However, I do approve publication of the revised proposed rule in the Federal Register under the Secretary's signature. Though I recognize that the Commission had previously delegated authority to the staff to issue a revised proposed enhanced weapons rule in 2008, the primary basis for that delegation (to expedite the rulemaking) no longer seems to be present. Therefore, I do not see the logic in approving an additional delegation here. It is not clear what objective delegating authority under these circumstances would accomplish since the staff commits in this paper to returning the final rule to the Commission for approval and does not propose to make any additional changes to the proposed rule prior to publication. However, because the entire proposed rule has now been presented to the Commission as part of this package, and because I have reviewed the proposed rule and find it satisfactory, I believe that it is prudent for the Commission to simply approve publication of the revised proposed rule.

With respect to the revised proposed rule, I find it to be well-organized and comprehensive. The statements of consideration provide a clear explanation of the history of the rulemaking and the changes that have been made since it was last published for comment by the Commission in 2006. I support the increased flexibility that this rule will provide to our licensees in development and implementation of their security strategies. In addition to the positive effects that this rule can create by permitting access to a wider array of weapons, this rulemaking also has the potential to provide increased regulatory stability since it could result in the use of weapons by our licensees being primarily governed by federal law, rather than widely-divergent state firearms laws.

I strongly believe that it is important to complete this rulemaking as soon as possible. Recognizing that the NRC was limited to some extent by its statutory obligation to obtain the Attorney General's approval before we could proceed, I observe that it has been over 5 years now since the Energy Policy Act of 2005, and the continued persistence of security rulemakings that affect reactor licensees is detrimental to regulatory stability. We owe it to our stakeholders to complete this rulemaking expeditiously and bring some degree of closure to our security rulemaking efforts.

The staff should also work with SECY to ensure that issuance of the revised proposed rule is timed as close as possible to issuance of the draft regulatory guides being developed by the staff. In addition, I also approve the staff's recommendation to allow for a 90 day comment period on the revised proposed rule.

I would note in particular my agreement with the staff's concerns with the clarity of the security events notifications provisions. It is not clear to me why it requires two regulations (i.e. section 73.71 and Appendix G) to accomplish one regulatory purpose: provide a framework for the reporting of security events. The structure of the current regulations would have licensees looking to one regulation (section 73.71) for the applicable timeline and then another (Appendix G) to determine what events they are required to report within that timeline. I do not believe that a regulation structured as such meets our objective of regulatory clarity. I support the staff's effort to obtain specific stakeholder comment on the possibility of merging these regulations.

I appreciate the opportunity to review this package, and look forward to seeing the draft final rule and stakeholder comments.