

SUPPORTING STATEMENT FOR
INFORMATION COLLECTIONS CONTAINED IN
10 CFR PART 73
ENHANCED WEAPONS, FIREARMS BACKGROUND CHECKS, AND
SECURITY EVENT NOTIFICATIONS
FINAL RULE

(3150-XXXX)

NEW

Description of the Information Collection

The U.S. Nuclear Regulatory Commission (NRC) regulations in 10 CFR Part 73 prescribe requirements for the establishment and maintenance of a system for physical protection of special nuclear material (SNM) and spent nuclear fuel (SNF) at fixed sites, of SNM and SNF in transit, and of plants in which SNM is utilized. The regulations are issued pursuant to the *Atomic Energy Act of 1954*, as amended (AEA), and Title II of the *Energy Reorganization Act of 1974*, as amended. The regulations in 10 CFR Part 73 contain reporting and recordkeeping requirements which are necessary to help ensure that an adequate level of protection is provided for NRC licensed facilities and activities.

The NRC is amending its regulations in three ways which affect the information collections contained in 10 CFR Part 73.

The first part of the rulemaking implements the NRC's authority under Section 161A of the AEA. This permits NRC licensees to voluntarily apply for stand-alone preemption authority or combined preemption authority and enhanced weapons authority. These implementing regulations would apply to nuclear power reactor facilities, independent spent fuel storage installations (ISFSIs), shipments of SNF, and Category I strategic special nuclear material (SSNM) facilities. The information collections involved in this change include:

- One-time implementation burden to apply for Section 161A authorities;
- One-time implementation burdens to update physical security plans, training and qualification plans, safeguards contingency plans, and a weapon safety assessment for application for enhanced weapons authority;
- Periodic inventories of enhanced weapons and maintaining logs related to these inventories;
- Development of a firearms background check plan for accomplishment of firearms background checks under Section 161A authorities;
- Periodic submission of fingerprints and identifying information of security officers to accomplish firearms background checks and maintaining records of such submissions;
- Records or receipt, transfer, and transportation of enhanced weapons; and
- Employee training and notifications related to the use of enhanced weapons.

In the second part of the rulemaking, the NRC is revising its existing regulations to provide for consistency of mandatory physical security event notification requirements from different classes of facilities and from the transportation of radioactive material. Existing mandatory physical security event notification requirements are being modified to add requirements for two new types of events: stolen or lost enhanced weapons and actual or imminent hostile actions.

In the third part of the rulemaking, the NRC establishes new requirements for licensees to report suspicious activities to local law enforcement agencies (LLEA), the Federal Bureau of Investigation (FBI), the NRC, and the Federal Aviation Administration (FAA) (for suspicious activities involving aircraft). The information collections involved in this change include suspicious activity reporting such as those involving preoperational surveillance, reconnaissance, or intelligence gathering activities (i.e., espionage). The timely reporting of suspicious activities to law enforcement agencies permits these agencies to investigate such suspicious activities, in order to potentially disrupt or dissuade planned terrorist attacks. The reporting of suspicious activities was described in security advisories and threat advisories issued by the NRC following the events of September 11, 2001, and these types of activities have been voluntarily reported to the NRC.¹ The new requirements codify the NRC's voluntary guidance and reporting suspicious activities to these various agencies.

Changes to the final rule as a result of public comment

The staff made some changes to the information collections contained in the proposed rule as a result of public comments. The final rule reflects the following changes:

- The final rule provides additional time to report certain types of event from 1 hour for all events to 1 hour, 4 hours, or 8 hours depending on the security significance of the events. This allows regulated entities more time to evaluate a physical security event and determine its category and response. The final rule extends the compliance date of the physical security event notification requirements. Public comments indicated that 9 months would be an appropriate time to complete the training and procedure updates necessary as a result of the rule. The compliance date was increased from 210 days to 300 days (from the date of publication of the final rule).
- The final rule modifies the periodicity of recurring firearms background checks. The proposed rule originally stated that periodic firearms background checks for those licensees with Section 161A authority would be required every 3 years. Public comments stated that 5-year periods would be more appropriate as it would allow licensees to align the firearms background checks with the other background or security clearance checks required of security personnel. The NRC agreed and changed the period to 5 years.
- The final rule adds reporting of suspicious activities to local FBI field offices and LLEA; and to the local FAA control tower (for suspicious aircraft activities). Public comments stated that the NRC should consider requiring licensees to report suspicious activities to the local law enforcement and FBI field office in addition to the NRC Operations Center. This would provide timely information to LLEA and the FBI for investigating suspicious activities. The staff agreed and added the requirement to report suspicious activities to the local law enforcement and FBI field office but does not specify the mechanism of that report to allow flexibility to regulated entities.

In addition, the final rule restructures 10 CFR Part 73. Event notifications, written follow-up reports, and safeguards event recordable events previously included in § 73.71 and 10 CFR part 73, Appendix G, are now redesignated in §§ 73.1200, 73.1205, and 73.1210. The new suspicious

¹ Voluntary suspicious activity reporting was approved by OMB under clearance 3150-0219, "Suspicious Activity Reporting Using the Protected Web Server." Under the final rule, suspicious activity reporting will be mandatory for licensees subject to Part 73, except Category II and III fresh fuel fabrication facilities and 2 licensees listed in 73.1215(g) .

activity reporting requirements are contained in § 73.1215. The restructuring of 10 CFR Part 73 does not affect the information collection requirements of the Part.

A. JUSTIFICATION

Requirements related to Section 161A of the AEA activities

On August 8, 2005, President Bush signed into law the *Energy Policy Act of 2005* (EPAct), Pub. L. 109-58, 119 Stat. 594 (2005). Section 653 of the EPAct amended the AEA by adding Section 161A, "Use of Firearms by Security Personnel" (42 U.S.C. 2201a). Section 161A.d. of the AEA provides that the Commission shall, with the approval of the U.S. Attorney General (AG), develop and promulgate guidelines for the implementation of this statute. On September 11, 2009, the NRC, with the approval of the AG, published Firearms Guidelines in the *Federal Register* (74 FR 46800). These guidelines allow licensees falling within Commission-designated classes of facilities, activities, and other property to voluntarily apply for stand-alone preemption authority only or combined preemption authority and enhanced weapons authority. The statute also includes provisions for firearms background checks for the security personnel those licensees who apply for Section 161A authorities. The NRC, with the approval of the AG, published the revised Firearms Guidelines (Revision 1) in the *Federal Register* (79 FR 36100; June 25, 2014). Subsequently, the NRC, with the approval of the AG, revised the Firearms Guidelines again (Revision 2) and published them in the *Federal Register* (84 FR 8546; March 8, 2019).

Section 161A requires that security personnel receiving, possessing, transporting, importing, or using a covered weapon (i.e., a weapon, ammunition, or a device otherwise prohibited by State, local, or certain Federal laws, including regulations) or an enhanced weapon (i.e., machine guns, short-barreled rifles, and short-barreled shotguns) shall be subject to a firearms background check by the AG. The background check uses the person's fingerprints and other identifying information and is performed under the FBI's National Instant Criminal Background Check Systems (NICS) to determine if an individual is prohibited under Federal or State law from possessing or receiving firearms or ammunition. Security personnel protecting Commission-designated facilities, radioactive material, or other property whose duties require them to have access to these weapons would complete the NRC Form 754, "Armed Security Personnel Firearms Background Check" (3150-0204). Their licensee would then submit the completed form and fingerprints to the NRC, and the NRC would then forward this information to the FBI to perform the check against the NICS databases. The results of the FBI's check against the NICS databases are returned to the NRC and then forwarded to the submitting licensee.

On February 3, 2011, the NRC published a proposed rule, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications," in the *Federal Register* (76 FR 6200). The NRC supplemented the proposed rule on January 10, 2013 (78 FR 2214) and on September 22, 2015 (80 FR 57106). The final rule modifies the mandatory physical security event notification requirements, including adding new event notification requirements on the theft or loss of enhanced weapons, adverse enforcement actions by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and actual or imminent hostile actions; and separates the suspicious activity reporting into a new requirement. The information collection requirements previously issued have been updated as described in this supporting statement.

Withdrawal of Section 161A orders

Subsequent to the publication of the 2011 proposed rule, the NRC received requests from 10 licensees (located on 7 separate sites) to obtain stand-alone preemption authority under Section 161A of the AEA. In response to the requests, the NRC issued designation order EA 13-092 (78 FR 35984), on June 14, 2013. Order EA 13-092 designated the 10 licensees as an interim class of licensed facilities eligible to apply for stand-alone preemption authority under Section 161A, contained direction related to completing firearms background checks for security personnel whose official duties require access to covered weapons, and contained direction for the licensees on submitting applications for preemption authority and supporting information via a confirmatory order. Eight of these licensees (located on seven sites) received approval from the NRC for stand-alone preemption authority via confirmatory orders issued on September 4, 2015 (80 FR 53588) or January 15, 2016 (81 FR 2247).

The final rule includes provisions that would sunset the designation order and the preemption authority orders such that the requirements of these orders would be superseded by the requirements in the final rule. The eight licensees who received these confirmatory orders would be required to update their applicable procedures, instructions, and training to reflect the final rule's requirements within 300 days of the date of publication of the final rule. The final rule rescinds the confirmatory orders on that compliance date.

Requirements related to physical security event notifications

The final enhanced weapons rule also modifies mandatory physical security event notification requirements in 10 CFR Part 73. The applicability of the notifications has been expanded to include additional activities (i.e., the transportation of high-level radioactive waste (HLW)) and additional events (i.e., lost or stolen enhanced weapons, adverse ATF enforcement actions, and actual or imminent hostile actions). The physical security event notification requirements have not been updated for several decades and the NRC is taking this opportunity to address the impact of these notifications on licensee operations by allowing additional time to report lesser significant security events. Previously, all notifications had a 1-hour timeliness requirement. However, under the final rule a number of these notifications have been revised to 4-hour, 8-hour, or 24-hour. Therefore, while the burden remains unchanged, the operational impact of these requirements has been reduced.

The 2011 proposed rule included new provisions for cyber security event notifications. That part of the rule was separated from this rulemaking and on November 2, 2015, the NRC published a final rule in the Federal Register on "Cyber Security Event Notifications" (80 FR 67264). The burden related to cyber security event notifications has been removed from the burden estimates for this final rule.

Requirements related to suspicious activity reporting

The final rule codifies a previously voluntary program for licensees to report suspicious activities to local and Federal law enforcement agencies, the FAA for suspicious aircraft activities, and to the NRC.² Such activities may involve preoperational surveillance, reconnaissance, or intelligence gathering (i.e., espionage) activities). These information collections involved in this change include suspicious activity reporting such as those involving preoperational surveillance, reconnaissance, or intelligence gathering activities (i.e., espionage). The timely reporting of suspicious activities to

² Previously approved under "Suspicious Activity Reporting Using the Protected Web Server" (OMB control number 3150-0214)

law enforcement agencies permits these agencies to investigate such suspicious activities, in order to potentially disrupt or dissuade planned terrorist attacks.

Affected regulated entities

The first part of the final rule would require only those licensees who voluntarily apply for Section 161A authorities to submit reports and records. Approximately 91 licensees would fall in the Commission-designated classes of facilities, radioactive material transportation activities, and other property (specified in § 73.15(c)) considered appropriate for Section 161A authorities. These classes of facilities include: power reactors, ISFSIs, and Category I SSNM. Classes of activities include: spent nuclear fuel transportation.

However, only the licensees at 7 sites (who fall within these designated classes) have applied for Section 161A authority via confirmatory order; and thus, are impacted by this final rule. No other licensees have formally indicated (i.e., either by a letter of intent or by formal application) that they intend to obtain Section 161A authority. Therefore, in this supporting statement, the NRC has assumed that only these 7 sites (that were issued Section 161A stand-alone preemption authority via orders) will be required to submit reports or maintain records associated with the provisions of §§ 73.15 and 73.17. Moreover, under the final rule these licensees are not required to reapply for Section 161A authority. Security personnel subject to firearms background checks at these 7 sites must report to their licensee security management any event or condition disqualifying them from possessing covered weapons. Additionally, security personnel are subject to periodic firearms background checks every 5 years. The following classes of licensees are impacted by the reports and records requirements for Section 161A authorities under §§ 73.15 and 73.17:

Regulated Entities that May Apply for Section 161A Authority

Category	Number of Sites	Number of sites that received stand-alone preemption authority via confirmatory order
Power reactor sites (operating & under construction) ^{a,b}	56	4
Decommissioning power reactor sites ^{b,c}	20	2
Away-from-reactor ISFSIs	13	0
Category I SSNM facilities	2	1
Total	91	7

- ^a Power reactor sites include those sites with units under construction or in operating status. Licensees that have not begun construction are not included.
- ^b Onsite ISFSIs (at-reactor ISFSIs) are included in these categories.
- ^c All units on a decommissioning power reactor site are in decommissioning or have been decommissioned

The second part of final rule would affect all licensee that are subject to the security requirements of 10 CFR Part 73. These licensees are impacted by the physical security event notification part of the rule, so this supporting statement estimates the burden associated with reporting and recordkeeping applies to a total of 138 licensees. The following classes of licensees are impacted by the reports and records requirements for physical security event notifications under §§ 73.1200, 73.1205, and 73.1210:

Regulated Entities Affected by the Physical Security Event Notifications

Site Description	No. of sites
Power reactor sites (operating & under construction) ^{a,b}	56
Decommissioning power reactor sites ^{b,c}	20
Away-from-reactor ISFSIs	13
Non-power production or utilization facilities	31
Hot cell facilities	1
Category I SSNM facilities	2
Category II and III SNM facilities (NRC licensees)	5
Category III SSNM facilities (Agreement States licensees) ^d	10
Total	138

- ^a Power reactor sites include those sites with units under construction or in operating status. Licensees that have not begun construction are not included.
- ^b Onsite ISFSIs (at-reactor ISFSIs) are included in these categories.
- ^c All units on a decommissioning power reactor site are in decommissioning or have been decommissioned.
- ^d Not subject to the recordkeeping requirements in § 73.1210

The third part of the final rule would affect only a subset of these 138 licensees subject to the suspicious activity reporting part of the rule, so this supporting statement estimates the burden associated with reporting and recordkeeping related to suspicious activity reports apply to a total of 125 licensees. The following classes of licensees are impacted by the reports and records requirements for suspicious activity reporting under § 73.1215:

Regulated Entities Affected by the Suspicious Activity Reporting

Site Description	No. of sites
Power reactor sites (operating & under construction) ^{a,b}	56
Decommissioning power reactor sites ^{b,c}	20
Away-from-reactor ISFSIs	13
Non-power production or utilization facilities	31
Hot cell facilities	1
Category I SSNM facilities	2
Category II and III SNM facilities (NRC licensees)	2
Category III SSNM facilities (Agreement States licensees) ^d	0
Total	125

- ^a Power reactor sites include those sites with units under construction or in operating status. Licensees that have not begun construction are not included.
- ^b Onsite ISFSIs (at-reactor ISFSIs) are included in these categories.
- ^c All units on a decommissioning power reactor site are in decommissioning or have been decommissioned

The 13 ISFSIs licensees listed above are currently operating and are not co-located with a power reactor licensee at an individual site. However, the NRC has also issued 76 additional ISFSIs licenses that are co-located with a power reactor licensee. These ISFSI are considered separate licensees (i.e., a single site may contain two or more reactor and ISFSI licensees). This final rule contains provisions for licensees to eliminate duplication and increase efficiency and effectiveness through the consolidation of such reports and records into a single action. Accordingly, the NRC has assumed in this supporting statement that reporting or recording requirements, which are

attributable to one or more separate licensees at a single co-located site, will be consolidated into a single report or record.

Note that all licensees affected by the requirements contained in the final rule are already subject to other information collection requirements under 10 CFR Part 73, "Physical Protection of Plants and Materials" (3150-0002). The number of potential respondents to the Part 73 information collection is not increased by this final rule.

This supporting statement includes burden associated with information collection changes associated with 10 CFR Part 73 (3150-0002). Due to other submissions in ROCIS under the Part 73 clearance (3150-0002), the information collection changes to Part 73 that associated with this final rule are being submitted as a new clearance. The NRC staff intends to transfer the burden associated with these information collections to the Part 73 clearance via nonsubstantive change request. The NRC has also submitted separate supporting statements to describe the information collections associated with new NRC Form 754, "Armed Security Firearms Background Check" (3150-0204) and revised NRC Form 366, "Licensee Event Report" (3150-0104).

1. Need for and Practical Utility of the Collection of Information

In general, the reports and records are necessary for the following reasons:

For the first part of the final rule, the information collections related to implementation of the NRC's authority under Section 161A of the AEA are needed to evaluate the changes being proposed to a licensee's physical security program regarding covered weapons. Overall, the benefits of the final regulation include enhanced public safety and security resulting from increased defensive capability at regulated entities to interdict and neutralize an attack or potentially to deter an attack for those entities that opt to employ these voluntary authorities. Additionally, the information collections related to the accomplishment of firearms background checks verifies that security personnel possessing covered weapons (under the authority of Section 161A) are not prohibited from possessing these firearms or ammunition under Federal or State law.

For the second part of the final rule, the information collections related to notifying the NRC of the occurrence of and circumstances surrounding physical security events (e.g., reports of hostile actions, tampering, theft, sabotage, or a lost or overdue shipment) are needed to enable the NRC to fulfill its statutory responsibilities under the AEA to assess such events and, when appropriate, respond to, inspect, or investigate situations which may adversely affect public health and safety or the common defense and security.

The NRC also has a strategic mission to immediately communicate information on imminent or actual hostile actions to the Department of Homeland Security (DHS) National Operations Center under the National Response Framework. Furthermore, the NRC also has a strategic mission to immediately communicate hostile action information to other appropriate NRC licensees so that they can increase their security posture at their facilities or for their shipments of SNF, HLW, or Category I SSNM. The NRC views this prompt notification as vital to increasing another licensees' security posture in order to defeat poorly-synchronized multiple-site attacks and in protecting the lives of security and plant personnel (at a second facility). This prompt notification could also be vital in increasing the defensive posture of other government or critical infrastructure facilities to defeat poorly-synchronized multiple-sector attacks.

For the third part of the final rule, the information collections related to notifying local and Federal law enforcement agencies, the FAA (for suspicious aircraft activities), and the NRC are needed, respectively, by law enforcement agencies to conduct investigations of potential terrorist activities, by the FAA to full fill their statutory responsibilities to oversee aircraft activities, and by the NRC to fulfil its statutory responsibilities regarding conducting threat assessments of NRC-licensed facilities and activities. The timely reporting of suspicious activities to law enforcement agencies permits these agencies to effectively investigate such suspicious activities, with an objective to potentially disrupt or dissuade planned terrorist attacks.

10 CFR Part 73.15 and 73.17

The first part of the final rule adds §§ 73.15 and 73.17 to Part 73. Specific requirements for reports and records in the amendments to Part 73 are identified below.

Section 73.15(b) allows licensees to apply to the NRC to receive stand-alone preemption authority or combined preemption authority and enhanced weapons authority.

Section 73.15(d)(2) requires licensees seeking stand-alone preemption authority to submit an application to the NRC in writing.

Section 73.15(d)(3) describes the contents of the application for Section 161A authority, including the licensee's purposes and objectives in requesting stand-alone preemption authority.

Section 73.15(d)(4) requires licensees who have applied for stand-alone preemption authority to notify the NRC when their security personnel whose duties require access to covered weapons have satisfactorily completed the firearms background checks per § 73.17 and when training procedures have been developed and associated training completed.

Section 73.15(e)(2) requires licensees seeking a combined preemption authority and enhanced weapons authority to submit an application to the NRC.

Section 73.15(e)(3) describes the contents of the application for enhanced weapons authority including the purposes and objectives in requesting combined preemption authority and enhanced weapons authority.

Section 73.15(e)(5) requires licensees who have applied for combined preemption authority and enhanced weapons authority to notify the NRC when their security personal whose duties require access to covered weapons have satisfactorily completed the firearms background checks per § 73.17 and when training procedures have been developed and associated training completed.

Section 73.15(e)(6) requires licensees submitting applications to do so under oath or affirmation. (No additional burden)

Section 73.15(e)(7) allows licensees with enhanced weapons authority to submit a new application to use a different model, caliber or gauge, or quantity of enhanced weapons from that previously approved by the NRC.

Section 73.15(f)(1) requires licensees applying for enhanced weapons authority to submit to the NRC for prior review and written approval new or revised physical security plans, training and qualification plans, safeguards contingency plans, and weapons safety assessments incorporating the use of enhanced weapons.

Section 73.15(f)(2)(i) requires licensees to identify in the physical security plan the specific models, calibers or gauges, and numbers of enhanced weapons to be used.

Section 73.15(f)(2)(ii) requires licensees to address in the training and qualification plan the training and qualification requirements to use these specific enhanced weapons.

Section 73.15(f)(2)(iii) requires licensees to address in the safeguards contingency plan how enhanced weapons will be employed by the licensee's security personnel in meeting the NRC-required protective strategy, including tactical approaches and maneuvers.

Section 73.15(f)(2)(iv) requires licensees to assess in the safety assessment any potential safety impact on the facility, radioactive material, other property, public or private facilities, public or private property, or on members of the public in areas outside of the site boundary from the use of these enhanced weapons. In addition, licensees must assess in the safety assessment any potential safety impact on public or private facilities, public or private property, or on members of the public from the use of these enhanced weapons at training facilities intended for proficiency demonstration and qualification purposes.

Section 73.15(f)(3) requires licensees to include information in the training and qualification plan on the use of applicable firearms standards developed by nationally-recognized firearms organizations or standard setting bodies or standards developed by Federal or State agencies.

Section 73.15(g)(1) requires licensees to provide a copy of the NRC's authorization to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF's) federal firearms license (FFL) holder with the application to request ATF's pre-approval of the transfer and registration of the enhanced weapons to the NRC licensee.

Section 73.15(g)(3) requires all enhanced weapons possessed by the licensee to be registered under the name of the licensee.

Section 73.15(h) requires licensees to complete and document the completion of training and qualification before use of enhanced weapons.

Section 73.15(k) requires licensees with enhanced weapons to notify the NRC of instances involving adverse ATF findings or ATF notices related to their enhanced weapons.

Section 73.15(m)(9) requires that licensees treat any enhanced weapon that is not returned to the licensee's facility as a transferred weapon and documentation of that situation is required in accordance with § 73.15(q).

Section 73.15(o)(1) thru (5) requires licensees to perform monthly and annual inventories of any enhanced weapons in their possession, and to retain the records from any periodic inventories of enhanced weapons.

Section 73.15(o)(6) requires licensees to maintain a log of issued tamper-indicating devices (TID) placed on locked containers that store enhanced weapons.

Section 73.15(p) requires licensees to notify the NRC and local law enforcement officials if they discover that any of the enhanced weapons are lost or stolen.

Section 73.15(q) requires licensees to maintain records of receipt, transfer, transportation, and inventory of enhanced weapons.

Section 73.15(r)(1) requires licensees that desire to terminate their stand-alone preemption authority or combined preemption authority and enhanced weapons authority to request approval from the NRC.

Section 73.15(r)(2) requires licensees that desire to modify their combined preemption authority and enhanced weapons authority to request approval from the NRC.

Section 73.15(r)(4) requires licensees that have had their stand-alone preemption authority or combined preemption authority and enhanced weapons authority terminated, suspended, or revoked may reapply by sending a new application to the NRC.

Section 73.15(s)(3) requires licensees that had received confirmatory orders approving Section 161A authority must update within 300 days after the date of publication of the final rule any procedures, instructions, and training materials, developed in response to the orders, to reflect the transition from requirements under the order to the requirements of the final rule.

Section 73.17(b)(1) states that licenses who have applied for stand-alone preemption authority or for combined preemption authority and enhanced weapons authority must comply with the provisions of this section in conducting firearms background checks. These applicants for Section 161A authorities must develop a Firearms Background Check Plan which is to be part of the required Training and Qualification plan for security personnel requiring access to covered weapons as part of their official security duties.

Section 73.17(b)(3) describes the objectives of the Firearms Background Check Plan.

Section 73.17(g) requires licensees to notify the NRC Headquarters Operations Center by telephone within 72 hours after removing security personnel from duties requiring access to covered weapons due to the identification or occurrence of any Federal or State disqualifying status condition or disqualifying event that would prohibit them from possessing, receiving, or using firearms or ammunition.

Section 73.17(j) describes the contents of the training licensees are required to provide to security personnel about disqualifying events. The paragraph also requires that licensees include within their Firearms Background Check Plan the development and accomplishment of the training modules.

Section 73.17(k)(3) requires licensees to establish procedures to minimize the rejection rate of fingerprint cards due to poor quality and illegible or incomplete information.

Section 73.17(p) requires licensees to provide information to security personnel subject to firearms background checks on the FBI's procedures for appealing a "denied" response to

an individual or on providing additional information to the FBI to resolve a “delayed” response. The licensee must provide the individual who has received the “denied” or “delayed” response the unique NICS transaction number(s) associated with their specific firearms background check.

Section 73.17(q) requires licensees to establish and maintain a system to protect the records and personal information from unauthorized disclosure.

Physical Security Event Notification Requirements (10 CFR Part 73, Subpart T)

The second part of the final rule redesignates the existing physical security event notification requirements (currently in § 73.71 and 10 CFR Part 73, Appendix G) into new Subpart T under §§ 73.1200, 73.1205, and 73.1210 to improve regulatory clarity and reduce the impact of notifications upon licensees. New notification requirements have been added regarding: lost or stolen enhanced weapons, adverse ATF enforcement actions, and actual or imminent hostile actions. Additionally, the applicability of these notifications has been expanded to include additional facilities and activities involving HLW. However, no HLW storage or disposal facilities are currently licensed by the NRC, nor is any transportation of HLW ongoing to or from NRC-regulated facilities. Therefore, this addition of applicability to HLW facilities and activities causes no increase in burden. Each of the provisions applies to a specific set of licensees and not all provisions apply to all licensees.

Section 73.1200(a) requires a licensee to notify the NRC Headquarters Operations Center as soon as possible, but within approximately 15 minutes after the discovery of an imminent or actual hostile action or the notification by law enforcement or government officials of a potential hostile action or sabotage within the next 12 hours against the licensee’s facility. The report must identify the facility name, the type of threat or event, and the status of the threat or event (new requirement).

Section 73.1200(b) requires a licensee to notify the NRC Headquarters Operations Center as soon as possible, but within approximately 15 minutes after discovery of an imminent or actual threat or the notification by government officials of a potential hostile action or sabotage within the next 12 hours against a shipment of Category I SSNM, SNF, or HLW. The report must identify the facility making the shipment, type of material being shipped, the last know location of the shipment, the type of threat or event, and the threat or event status (new requirement).

Section 73.1200(c) requires that each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.55, 73.60, or 73.67 must notify the NRC Headquarters Operations Center no later than one hour after the time of discovery of a significant facility security event at a fixed site (existing requirement, no new burden as a result of the final rule).

Section 73.1200(d) requires that each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, 73.37, or 73.67 must notify the NRC Headquarters Operations Center no later than one hour after the time of discovery of significant transportation security event (existing requirement, no new burden as a result of the final rule).

Section 73.1200(e) requires that each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.55, 73.60, or 73.67 notify the NRC Headquarters Operations Center no later than four hours after time of discovery of a facility security challenge (existing requirement, no new burden as a result of the final rule).

Section 73.1200(f) requires that each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, 73.37, or 73.67 notify the NRC Headquarters Operations Center no later than four hours after time of discovery of a transportation security challenge (existing requirement, no new burden as a result of the final rule).

Section 73.1200(g) requires that each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.55, 73.60, or 73.67 notify the NRC Headquarters Operations Center no later than eight hours after time of discovery of facility security program failure (existing requirement, no new burden as a result of the final rule).

Section 73.1200(h) requires that each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, 73.37, or 73.67 notify the NRC Headquarters Operations Center no later than eight hours after the time of discovery of transportation security program failure (existing requirement, no new burden as a result of the final rule).

Section 73.1200(m)(1)(i) requires a licensee subject to § 73.15 with enhanced weapons authority to immediately notify the ATF upon discovery of any stolen or lost enhanced weapons (new requirement; however, no increase in burden is assumed).

Section 73.1200(m)(1)(ii) requires a licensee subject to § 73.15 with enhanced weapons authority to notify the NRC Headquarters Operations Center as soon as possible, but not later than four hours subsequent to the notification of the ATF after the discovery of any stolen or lost enhanced weapons (new requirement; however, no increase in burden is assumed).

Section 73.1200(m)(1)(iii) requires a licensee subject to § 73.15 with enhanced weapons to notify the appropriate LLEA within 48 hours after the discovery of any stolen or lost enhanced weapon (new requirement; however, no increase in burden is assumed).

Section 73.1200(n) requires a licensee subject to § 73.15 with enhanced weapons to notify the NRC Headquarters Operations Center as soon as possible, but not later than 24 hours after receipt of an adverse inspection finding, enforcement finding, or other adverse notice from the ATF regarding these enhanced weapons or an ATF federal firearms license (new requirement; however, no increase in burden is assumed).

Section 73.1200(q) requires a licensee desiring to retract a previous security event notification (i.e., invalid, not reportable after further evaluation, or recharacterized as recordable under § 73.1210) to notify the NRC Headquarters Operations Center (new requirement – codifies current voluntary practice).

Section 73.1205 requires each licensee making a telephonic notification under § 73.1200 to submit a written follow-up report to the NRC within 60 days of making such notifications (existing requirement, no new burden as a result of the final rule for existing notifications; however, new burden for new notifications, but no increase in burden assumed for written reports associated with § 73.1200(m) and (n) notifications).

Section 73.1210 requires each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, 73.37, 73.45, 73.46, 73.50, 73.51, 73.55, 73.60, or 73.67 to record within 24-hours of the time of discovery any less significant physical security events and conditions adverse to

security (for both facilities and transportation) that are specified in paragraphs (c) through (f) of this section (existing requirement, no new burden as a result of the final rule).

Weapons Safety Assessment - The NRC has published a four volume “Weapons Safety Assessment” (WSA) guidance document to assist licensees in completing the weapons safety assessment required under § 73.15(e) and (f) as part of an application for combined preemption authority and enhanced weapons authority. Volumes 1 and 3 contain introductory and evaluatory material. Volume 2 contains the weapons safety assessment template that licensees will complete and submit with their applications under § 73.15. Volume 4 contains a completed sample template for a hypothetical power reactor facility. A separate “WSA Reference Information” volume contains reference information on weapons capabilities and characteristics and is not publicly available for security reasons.

Suspicious Activity Reporting Requirements (10 CFR Part 73, Subpart T)

The third part of the final rule requires a licensee to report suspicious activity to local and Federal law enforcement agencies, to the NRC, and to the FAA (for suspicious aircraft activities).

Section 73.1215(d) requires each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.55, 73.60, or 73.67 to report as soon as practicable, but within 8 hours of the time of discovery suspicious facility-related activities. Category II and III SNM fuel fabrication facilities are excepted from the requirements of this section. Category II and III SNM enrichment facilities employing Restricted Data (RD) technology are excepted from the requirements of this paragraph, but are subject to the requirements of § 73.1215(f). Additionally, two sealed-source SNM licensees listed in § 73.1215(g) are exempted from the requirements of this section (new requirement).

Section 73.1215(e) requires each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, or 73.37 to report as soon as practicable, but within 8 hours of the time of discovery suspicious transportation-related activities (new requirement).

Section 73.1215(f) requires a licensee subject § 73.67 who is engaged in Category II or III SNM enrichment (using RD technology) to report suspicious activities related to their RD information, technology, or materials (new requirement).

2. Agency Use of the Information

In the first part of the final rule, the information included in the applications, reports, and records for Section 161A authorities is used by the NRC staff to assess the adequacy of the applicant's physical plant, equipment, organization, training, experience, procedures, and plans for the common defense and security, and to assess the adequacy of a licensee's application for § 161A authority, including possession of enhanced weapons. Additionally, information included in firearms background checks is used by the FBI to verify that a security personnel is not prohibited from possessing firearms or ammunition under Federal or State law.

In the second part of the final rule, the information received during a physical security event notification will be reviewed by the NRC staff for follow-up, inspection, or activation of the NRC's Headquarters Operations Center. Information regarding actual or imminent hostile actions will be disseminated to other NRC licensees and to the DHS National Operations

Center; so that these licensees, other government agencies, and other critical infrastructure can increase their defensive posture.

In the third part of the final rule, the information received from a suspicious activity report will be used by local and Federal law enforcement agencies investigating such activities, as part of the U.S. government's efforts to disrupt or dissuade planned terrorist acts against NRC-facilities and activities, against critical infrastructure, and against government facilities. The NRC also uses the information as part of one of the agency's primary mission essential functions of threat assessment for licensed facilities, materials, and shipping activities.

The intelligence community assesses that attack planning and preparation generally proceed through several predictable stages, including intelligence gathering and pre-attack surveillance or reconnaissance. These pre-attack stages offer law enforcement and security personnel the greatest opportunity to disrupt or dissuade acts of terrorism before they occur.

3. Reduction of Burden Through Information Technology

There are no legal obstacles to reducing the burden associated with this information collection. The NRC encourages respondents to use information technology when it would be beneficial to them. The NRC has issued [Guidance for Electronic Submissions to the NRC](#) which provides direction for the electronic transmission and submittal of documents to the NRC. Electronic transmission and submittal of documents can be accomplished via the following avenues: the Electronic Information Exchange (EIE) process, which is available from the NRC's "Electronic Submittals" Web page, by Optical Storage Media (OSM) (e.g. CD-ROM, DVD), by facsimile or by e-mail. It is estimated that 50 percent of the potential responses from §§ 73.15, 73.17, and 73.1205 will be filed electronically.

Some of the information submitted under §§ 73.15 and 73.1205 is expected to contain Safeguards Information or classified information. As such, it is not eligible to be submitted via the EIE process. This information would typically be submitted in hard copy format or secure electronic transmission.

The reports made under §§ 73.1200 and 73.1215 are required to be made telephonically. For § 73.1200, this is due to the need for the NRC Headquarters Operations Center operations officers to be capable of asking questions to the licensee or requesting that the licensee establish a continuous communications channel with the NRC Operations Center (for significant or ongoing security events). For § 73.1215, this is due to fact that the notifications are made first to law enforcement agencies; and then to the NRC with telephonic notifications viewed as a simplification to expedite the timeliness of the notification process to reduce the perishable nature of the information. For suspicious activity reports made under § 73.1215, no written follow-up reports are required (as a means of minimizing burden).

4. Effort to Identify Duplication and Use Similar Information

No sources of similar information are available. There is no duplication of requirements.

Section 73.15(q)(7) reduces duplication by allowing licensees to integrate records related to enhanced weapons and Section 161A authority with records maintained by the licensee under ATF's regulations.

Section 73.15(s) reduces duplication by stating that that licensees that applied for stand-alone preemption authority via confirmatory order, do not need to reapply for this authority in order to withdrawal the order and transition to the final rule requirements.

Section 73.17(b)(12) reduces duplication by stating that that licensees that conducted firearms background checks pursuant to a confirmatory order, do not need to repeat the initial checks to withdraw the order and transition to the final rule requirements.

Section 73.1200(s) specifically eliminates the need for licensees to submit duplicate reports for security events that are reportable under other CFR requirements. Separate notifications and reports are not required for events that are also reportable in accordance with §§ 50.72, 63.73, 70.50, and 72.75.

5. Effort to Reduce Small Business Burden

No small entities are expected to be impacted by the final rule.

6. Consequences to Federal Program or Policy Activities if the Collection is Not Conducted or is Conducted Less Frequently

It is necessary for the NRC to receive applications for stand-alone preemption authority or combined preemption authority and enhanced weapons authority in order to implement the statutory authority of Section 161A of the AEA. Without NRC review and approval of the application for combined preemption authority and enhanced weapons authority, licensees cannot possess enhanced weapons. Additionally, subjecting security personnel of licensees who have applied for Section 161A authority to firearms background checks is also required to implement the statutory authority of Section 161A of the AEA to verify these personnel are not prohibited from possessing firearms or ammunition under Federal or State law. Such firearms background checks include both initial checks and periodic recurring checks every 5 years.

The NRC needs to immediately communicate information on imminent or actual hostile acts to national command authorities and to other NRC licensees so that they can increase their security posture at their facilities or for their shipments. Without the revised security event notifications in § 73.1200, the NRC would not be notified as quickly about an attack or threat so the communication to other affected licensees and the National Response Framework would be delayed.

Without the new suspicious activity reporting requirements in § 73.1215, local and Federal law enforcement agencies would not be made aware of suspicious activities, which may hinder such agencies' investigative efforts to disrupt or dissuade malevolent acts against NRC licensed facilities, materials, and activities and other critical infrastructure.

7. Circumstances Which Justify Variation from OMB Guidelines

Certain sections of Part 73 vary from the OMB Guidelines in 5 CFR 1320.5(d) by requiring that licensees submit reports to the NRC in less than 30 days. Sections 73.1200, 73.1215, 73.15, and 73.17 require rapid notifications to the NRC. The notifications under § 73.1200 are needed to permit the NRC Headquarters Operations Center staff, other government agencies, and law enforcement authorities to react to an imminent or actual hostile action or to determine whether a suspicious activity is indicative of preoperational surveillance or

reconnaissance against NRC licensed facilities and activities. Section 73.15(p) requires licensees to notify LLEA and the NRC if an enhanced weapon is lost or stolen. The notification is necessary to allow law enforcement and NRC to take timely action in response to a lost or stolen enhanced weapon (including changes to protective posture of law enforcement personnel). In addition, § 73.17(g) requires licensees to notify the NRC within 72 hours of removing security personnel from duties requiring access to covered weapons. This notification requirement is needed to ensure that, following their removal, individuals do not perform duties requiring access to covered weapons at any other licensee site.

Certain other sections of Part 73 (§§ 73.15(q)(6), 73.17(e)(4), and 73.1210) vary from the OMB Guidelines in 5 CFR 1320.5(d) by requiring that licensees retain records for more than 3 years. Various sections require retention of records for extended periods such as duration of an individual's employment, or until the Commission terminates the facility's license or other regulatory approval. Other records are required for inspection, investigation, or for reconstruction of events associated with a physical security event.

8. Consultations Outside the NRC

This final rule contains new requirements that implement the Commission's authority under Section 161A of the AEA. During the development of the requirements in §§ 73.15 and 73.17, the NRC engaged with representatives from the U.S. Department of Justice, including the FBI and the ATF.

On October 26, 2006 (71 FR 62663), the NRC published the proposed rule that would implement this new authority as part of a larger proposed rule entitled "Power Reactor Security Requirements."

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

In addition, on January 10, 2013, the NRC published a supplemental proposed rule to add at-reactor ISFSIs as a class of designated facilities under § 73.15(c) that would be eligible to apply for Section 161A authority. The public was provided 45 days to review and comment on the January 2013 supplemental proposed rule. On September 22, 2015, the NRC published a second supplemental proposed rule that reflected changes from the 2014 revision to the Firearms Guidelines.

A full summary of the public and other stakeholder comments on the 2011 proposed rule, 2013 supplemental proposed rule, and 2015 supplemental proposed rule, and NRC responses (ADAMS Accession No. ML16264A004) has been submitted as a supplementary document ("Supplemental Document #1, NRC Response to Public Comments – Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Rule")

9. Payment or Gift to Respondents

Not Applicable.

10. Confidentiality of Information

Certain information submitted by licensees under Part 73 is designated as Safeguards Information, which is prohibited from public disclosure in accordance with Section 147 of the AEA. Other information submitted by licensees under Part 73 is classified National Security Information (NSI), which is prohibited from public disclosure in accordance with Executive Orders 12829, 12968, 13549, and 13587. This non-public information includes:

- The contents of applications for enhanced weapons authority under § 73.15(f), which includes submission of new or updated physical security plans, training and qualification plans, contingency response plans, and weapons safety assessments. These documents typically contain either Safeguards Information or classified NSI, depending on the security program for the applying facility or activity.
- The contents of physical security event notifications under § 73.1200; written follow-up reports under § 73.1205; and recordable security events under § 73.1210, which may include details on these events that contain Safeguards Information or classified NSI, depending on the security program for the applying facility or activity.

Sections 73.17(e) and 73.17(q) address confidentiality and protection of information regarding firearms background checks, including: electronic transmission and records.

Section 73.17(q) requires that:

The licensee may not disclose these records or PII [personally identifiable information] to persons other than the subject individual, his/her representative, or to those with a need to have access to the information in performing assigned duties in the process of granting access to covered weapons. No individual authorized to have access to this information may disseminate the information to any other individual who does not have a need to know.

In addition, confidential and proprietary information is protected in accordance with NRC regulations at 10 CFR 9.17(a) and 10 CFR 2.390(b).

11. Justification for Sensitive Questions

No sensitive information is collected.

12. Estimated Annualized Burden and Burden Hour Cost

As described in the “Affected Regulated Entities” section above, 138 licensees are subject to the change in Part 73 final rule. However, only 56 are expected to respond to the information collections in this rule. All respondents to this final rule are already subject to other requirements in Part 73.

The total estimated burden for reports and records for these licensees affected by the requirements of all three parts of the final rule are as follows:

	Burden hours	Responses	Burden cost at \$288/hr
Reporting	1,448	96	\$417,024
Recordkeeping	2,779	7	\$800,352
Third Party Disclosures	1,352	2,197	\$389,376
TOTAL	5,579	2,300	\$1,606,752

The estimated burden cost is \$1,606,752 (5,579 hours x \$288/hr). A detailed breakdown of burden estimates is provided in the supplemental document “Burden Spreadsheet for Enhanced Weapons Final Rule.” These costs have been calculated using the agency’s fee rate of \$288 per hour. The \$288 hourly rate used in the burden estimates is based on the Nuclear Regulatory Commission’s fee for hourly rates as noted in 10 CFR 170.20 “Average cost per professional staff-hour.” For more information on the basis of this rate, see the Revision Of Fee Schedules; Fee Recovery For Fiscal Year 2021 (86 FR 32146; June 16, 2021).

Burden hour changes associated with stand-alone preemption authority and combined preemption authority and enhanced weapons authority (§§ 73.15, 73.17, 73.1200(m) and 73.1200(n)) result from implementation of the new Section 161A authority, and have been reported as due to new statute. With the exception of 73.1200(m) and 73.1200(n), burden hour changes associated with physical security event notifications in §§ 73.1200, 73.1205, and 73.1210 and suspicious activity reporting in § 73.1215 are due to agency discretion.

13. Estimate of Other Additional Costs

The NRC has determined that the records storage cost is roughly proportional to the recordkeeping burden cost. Based on a typical clearance, the records storage cost has been determined to be equal to 0.04 percent of the recordkeeping burden cost. Therefore, the records storage cost for this clearance is estimated to be \$320 (2,779 hours x 0.0004 x \$288).

14. Estimated Annualized Cost to Federal Government

No licensees have formally informed the NRC of their intent to apply Section 161A authority over the next three years; therefore, no Federal government costs are anticipated as a result of this final rule. Annual costs associated with firearms background checks are included in the submission of NRC Form 754, “Armed Security Personnel Firearms Background Check” (OMB control number 3150-0204).

15. Reasons for Change in Burden

The first part of the final rule adds two new sections, §§ 73.15 and 73.17 to implement the Commission’s authority under Section 161A of the AEA. The second part of the final rule revises and restructures physical security event notification requirements under redesignated §§ 73.1200, 73.1205, and 73.1210; adds new requirements for reporting lost or stolen enhanced weapons, adverse ATF enforcement actions, actual or imminent hostile actions; and restructures physical security event notifications using a more risk-informed

structure of 1-hr, 4-hr, and 8-hr notifications, instead of only 1-hr notifications. The third part of the final rule adds new section, § 73.1215, to codify reporting suspicious activities. The total burden increase associated with the final rule is 2,300 responses and 5,579 hours.

The factors that account for the increased estimate are the following: The final rule (1) creates detailed reporting and recordkeeping requirements for licensees' applications for Section 161A authorities; (2) creates detailed reporting and recordkeeping requirements for accomplishing firearms background checks; (3) adds requirements for accomplishing a safety-security interface review (i.e., completing a weapons safety assessment) for applications for combined preemption authority and enhanced weapons authority; (4) creates additional recordkeeping and reporting requirements associated with new physical security event notifications; and (5) creates additional reporting requirements reporting of suspicious activities to local and Federal law enforcement agencies and to the NRC.

Note that of the 5,579 hours and 2,300 responses associated with the final rule, 3,772 hours and 2,146 responses are due to new statutory authority under Section 161A of the AEA. The remaining 1,807 hours and 154 responses are changes due to agency discretion.

16. Publication for Statistical Use

Not Applicable.

17. Reasons for Not Displaying the Expiration Date

The recordkeeping and reporting requirements for these information collections are associated with regulations and are not submitted on instruments such as forms or surveys. For this reason, there are no data instruments on which to display an OMB expiration date. Further, amending the regulatory text of the CFR to display information that, in an annual publication, could become obsolete would be unduly burdensome and too difficult to keep current.

18. Exceptions to the Certification Statement

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not Applicable.