

FINAL SUPPORTING STATEMENT FOR
NRC FORM 754
“ARMED SECURITY PERSONNEL FIREARMS BACKGROUND CHECK”

(3150-0204)

NEW

Description of the Information Collection

The U.S. Nuclear Regulatory Commission (NRC) regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) adds new Section 73.17, “Firearms background checks for armed security personnel,” which prescribes requirements for the conduct of firearms background checks pursuant to Section 161A of the *Atomic Energy Act of 1954*, as amended (AEA). These regulations apply to licensees of nuclear power reactor facilities, independent spent fuel storage installations (ISFSIs), shipments of spent nuclear fuel, and Category I strategic special nuclear material (SSNM) facilities.

The NRC is amending its regulations which adds information collections contained in 10 CFR Part 73 and new NRC Form 754, “Armed Security Personnel Firearms Background Check.” The rulemaking permits NRC licensees to voluntarily apply for either stand-alone preemption authority or combined preemption authority and enhanced weapons authority under Section 161A of the AEA. The amended regulations (in § 73.17) would implement the Commission’s authority under Section 161A of the AEA to conduct firearms background checks.

Section 161A requires background checks be conducted for security personnel of licensees who have applied for either stand-alone preemption authority or combined preemption authority and enhanced weapons authority. The firearms background check uses the person’s fingerprints, other personal identifying information (PII), and duty station location to determine if an individual is prohibited under Federal or State law from possessing or receiving firearms or ammunition. To meet this requirement, licensees who have applied to the NRC for Section 161A authority and whose security personnel have official duties requiring access to covered weapons would complete the new NRC Form 754. The licensee would then submit the completed forms to the NRC, and the NRC would forward this information to the Federal Bureau of Investigation’s (FBI’s), Criminal Justice Information Services Division (CJIS), for examination against the FBI’s National Instant Criminal Background Check Systems (NICS).

Changes to the final rule as a result of public comment

The NRC made changes to the proposed rule as a result of public comments. The changes impact the frequency at which NRC Form 754 would be used but do not modify the information collected by the form. The final rule reflects the following changes:

- 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 at least 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 checks required of security personnel. The NRC agreed and changed the recurring periods to at least once every 5 years. However, licensees are able to conduct recurring firearms background checks more frequently, if desired.

- The final rule modifies the break-in-service firearms background check to provide an exception for security personnel who are away (from service with their licensee) on active duty with the U.S. military reserves or National Guard.
- The final rule also modifies the 1-week break-in-service firearms background check requirement to provide an exception if the licensee verifies through an industry-wide, information-sharing database that security personnel has completed a satisfactory firearms background check within the preceding 12 months. Provided, the licensee's duty station location (for the facility or activity) is encompassed within the States or Territories that were included within the scope of the previous firearms background check.

A. JUSTIFICATION

Requirements related to enhanced weapons and firearms background checks

On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (EPAAct), Pub. L. 109-58, 119 Stat. 594 (2005). Section 653 of the EPAAct amended the AEA by adding Section 161A, "Use of Firearms by Security Personnel" (42 U.S.C. 2201a). Section 161A.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 to voluntarily apply for stand-alone preemption authority only or combined preemption authority and enhanced weapons authority. The Commission, with the approval of the AG, published revision 1 to the Firearms Guidelines in the *Federal Register* (79 FR 36100) on 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* on March 8, 2019 (84 FR 8546).

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 background check by the AG.

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), and was supplemented on January 10, 2013 (78 FR 2214) and on September 22, 2015 (80 FR 57106).

NRC Form 754, "Armed Security Personnel Firearms Background Check," was developed and submitted to OMB for initial review during the 2011 proposed rule to collect the information required to perform the necessary firearms background checks. The final rule does not change the information requested on Form 754 or how it is to be used in the final rule. Since the initial submission, the frequency of submission of NRC Form 754 has reduced from every 3 years to every 5 years.

Affected regulated entities

The final rule would require only those licensees who apply for Section 161A authority to submit information about their security personnel for firearms background checks using NRC Form 754.

The NRC expects only a fraction of licensees designated by the Commission as eligible to apply for Section 161A authority will do so. In this supporting statement, the estimate assumes that only 7 licensee sites (involving 8 total licensees) will submit NRC Forms 754 under Section 161A authority. This number of licensees is consistent with the number of licensee sites that previously applied for stand-alone preemption authority via confirmatory orders. Under the final rule these licensees will transition from their orders to the final rule regulations, including the use of NRC Form 754. No other licensees have formally notified the NRC of any intention, or of any potential interest, in applying for Section 161A authority. Consequently, this estimate only assumes these 7 licensee sites will use NRC Form 754.

This supporting statement includes burden associated with the new NRC Form 754 (3150-0204). A separate supporting statement has been submitted to describe information collections associated with 10 CFR Part 73 (3150-0002).

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

Information provided to the NRC on the identity of security personnel assigned to armed duties is needed to conduct checks against FBI databases and resolve discrepancies in order to determine that these individuals are not prohibited from receiving, possessing, transporting, importing, or using covered weapons. This information is needed to enable the NRC to implement the mandate of Section 161A of the AEA to verify that security personnel who will have access to covered weapons have been subject to a background check by the AG and to verify that an individual is not prohibited under Federal or State law from possessing or receiving firearms or ammunition.

***NRC Form 754, "Armed Security Personnel Firearms Background Check"
OMB Clearance 3150-0204***

The reports and records must be provided to the NRC, via NRC Form 754, the identifying information of security personnel assigned armed duties to determine that these individuals are not prohibited from receiving, possessing, transporting, importing, or using covered weapons. This information is needed to enable the NRC to implement the mandate of Section 161A of the AEA to verify that security personnel who will have access to these weapons have been subject to a NICS background check by the AG and to verify that an individual is not prohibited under Federal or State law from possessing or receiving firearms or ammunition.

The final rule adds § 73.17 to Part 73. Specific requirements for reports and records in the amendments to Part 73 that relate to information collections and associated use of NRC Form 754 are identified below.

Section 73.17(b)(5-7) allows regulated entities that submitted applications for Section 161A authority to conduct firearms background checks once the NRC has accepted their application for review.

Section 73.17(b)(9) requires licensees that have security personnel who have satisfactorily completed a firearms background check, but who have had a break-in-service with the licensee or their security contractor of greater than one (1) week subsequent to their most recent firearms background check, or who have transferred from a different licensee must complete a new satisfactory firearms background check. An exception is provided in the

final rule for personnel who are engaged in active duty service with the U.S. military reserves or National Guard.

Section 73.17(d) requires firearms background checks on security personnel to include a check of an individual's fingerprints against the FBI's fingerprint system and against the FBI's NICS system.

Section 73.17(e)(1) requires firearms background check submittals in accordance with § 73.4. These submittals include both a set of fingerprints and a completed NRC Form 754 for each individual.

Section 73.17(e)(2-3) permits licensees to consolidate into a single transmittal the information from multiple NRC Forms 754 for multiple individuals to reduce burden; and to transmit this information electronically. However, any PII must be protected during such electronic transmission in accordance with § 2.390.

Section 73.17(e)(4) requires licensees to retain copies of Form 754 submittals while the individual is authorized access to covered weapons.

Section 73.17(f) requires periodic firearms background checks for security personnel whose duties require access to covered weapons at least once every 5 years. This represents a change from the original proposed rule, which required background checks at least once every 3 years. This change would result in no additional burden since the 7 affected licensees are already accomplishing periodic firearms background checks in accordance with the terms of their confirmatory orders, which require periodic checks at least once every 5 years.

Section 73.17(k)(1) requires licensees to submit to the NRC one completed, legible standard fingerprint card for each individual requiring a firearms background check.

Section 73.17(k)(2) requires licensees to indicate on the fingerprint card or other fingerprint record that the purpose for this fingerprint check is the accomplishment of a firearms background check. Licensees may indicate that the fingerprints are being submitted to accomplish a firearms background check, by itself, or to accomplish both a firearms background check and an access authorization check.

Section 73.17(k)(4) states that the NRC will review the fingerprint cards for completeness. Licensees will re-submit fingerprint cards that are illegible or contain omissions or evident errors.

2. Agency Use of the Information

The information included in NRC Form 754 is forwarded to the FBI to determine if an individual is prohibited under Federal or State law from possessing or receiving covered weapons.

3. Reduction of Burden Through Information Technology

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. Unsecure 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, by e-mail, by special Web-based interface, or by other means. It is estimated that approximately 100% of the potential responses are filed electronically. However, because the NRC Form 754 contains PII, any such electronic submittals must be made by secure electronic transmission.

Section 73.17(e) permits licensees to consolidate information from multiple NRC Forms 754 into a single transmittal document and to use electronic transmission methods.

Additionally, the requirement § 73.17(b)(9) to conduct a break-in-service firearms background check, if the individual has a break in service of greater than 1 week, provides licensees an exception from conducting a new firearms background check provided the licensee can verify via an "industry-wide information sharing database" that the individual has completed a satisfactory firearms background check within the previous 12 months. However, the exception requires that the previous firearms background check must include a duty station location where the licensee (who would otherwise be performing the firearms background check) is located.

4. Effort to Identify Duplication and Use Similar Information

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

NRC Form 754 records maintained by licensees are not duplicated by other Federal information collection requirements, since they are applicable only to the provisions of Section 161A; and therefore, would not be available from any other source.

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 firearms background checks subsequent to the withdrawal of the order and the transition of the 7 licensee sites to the final rule requirements.

Section 73.17(k)(2)(ii) reduces duplication by stating that licensees may submit a single set of fingerprints to accomplish both a firearms background check and an access authorization check.

5. Effort to Reduce Small Business Burden

The NRC has determined that the companies that own the sites affected by the final rule do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

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

Without this information collection, firearms background checks of armed security personnel could not be conducted as required pursuant to Section 161A of the AEA. However, completion of firearms background checks is not required unless the licensees voluntarily applies for Section 161A authority.

7. Circumstances Which Justify Variation from OMB Guidelines

The provisions of Part 73 vary from the OMB Guidelines in 5 CFR 1320.5(d) by requiring licensees to retain a copy of all NRC Forms 754 submitted to the NRC for more than 3 years. Section 73.17(e)(4) requires licensees to retain completed NRC Forms 754 for a period of up to one year from the individual's termination from access to covered weapons or from receipt of a denied NICS response from the FBI.

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 NRC Form 754, as well as the development of the associated requirements in § 73.17, the NRC engaged with representatives from the U.S. Department of Justice, the FBI, and the ATF. The NRC also engaged with the Nuclear Energy Institute (NEI) regarding the potential use of NEI's Personnel Access Data System (PADS) as an "industry-wide information-sharing database" to reduce burden under the exception for break-in-service for firearms background checks.

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." This proposed rule also included the proposed NRC Form 754. The following comments were received on the information collections contained in the 2006 proposed rule, which are also included in the 2011 proposed rule:

- Comment: In the 2011 proposed rule's discussion of comments raised on the 2006 proposed rule (see page 76 FR 6217), one commenter responded to the NRC's question on the estimate of the burden and indicated that the number of responses per site and the time per response estimated by the NRC for the fingerprinting provisions in proposed § 73.17(e)(1) were too low. The commenter suggested a better estimate of the burdens would be 975 annual responses per site per year and that the time to accomplish each response would be 1 hour.

Response: The NRC initially revised the estimated information collection burden for this provision in the 2011 proposed rule to reflect the commenter's suggestion. However, in the final rule the NRC used the actual submission information from the Firearms Background checks experienced under confirmatory order EA-13-092 by the 7 licensee sites.

These 7 licensee sites constitute the estimated burden for accomplishing firearms background checks. Under their orders, these licensees submitted 2,148 individuals for firearms background checks. This equates to 430 firearms background checks per year (over a 5-year period) for the 7 affected licensee sites. In the final rule, the NRC assumes there will be 430 firearms background checks per year plus 120 additional firearms background checks for new employees and break-in-service submittals for a total of 550 checks per year.

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. The public was provided 180 days to review and comment on the 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 2013 supplemental proposed rule. On September 22, 2015, the NRC published a second supplemental proposed rule to incorporate changes from the revised 2014 Firearms Guidelines. The following is a summary of the major comments that impact the accomplishment of firearms background checks and thus the information collection burden associated with NRC Form 754.

- Comments were received on the break-in-service firearms background check provisions, which would decrease the information collection burden. The NRC incorporated the comment in the 2015 supplemental proposed rule on exceptions to conducting a break-in-service firearms background check.
- Comments were received on the time interval between periodic firearms background checks recommending a 5-year interval, which would decrease the information collection burden. The NRC incorporated this comment in the 2015 supplemental proposed rule and it is retained in the final rule.
- Comments were received on the retention period for firearms background check records. No change was made to the information collection burden.
- Comments were received regarding NRC licensees who are also Federal agencies submitting firearms background checks directly to the FBI; vice, the NRC. This would reduce this information collection burden.

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

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 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.

The information submitted on Form 754 is maintained in a Privacy Act system of records designated as NRC-39, described in the *Federal Register* (81 FR 81348; November 17, 2016). This information will be used to determine eligibility to receive, possess, transport,

or import covered weapons. The information may also be disclosed to an appropriate Federal or State agency in the event the information indicates a violation or potential violation of law and in the course of an administrative or judicial proceeding. In addition, this information may be transferred to an appropriate Federal or State agency to the extent relevant and necessary for it to carry out its responsibilities under Section 161A of the Atomic Energy Act of 1954, as amended, or 18 U.S.C. § 922. Information may also be disclosed, in the course of discovery under a protective order issued by a court of competent jurisdiction, and in presenting evidence, to a Congressional office to respond to their inquiry made at your request, or to NRC-paid experts, consultants, and others under contract with the NRC, on a need-to-know basis.

The NRC's regulations under 10 CFR 9.301 require that Social Security account numbers shall not be visible on the outside of any package sent to the NRC by mail. Licensees submitting NRC Form 754 must ensure that an SSN is not visible on the outside of any mailing package containing these forms. Consistent with the *Social Security Number Fraud Prevention Act of 2017*, Public Law 115-59, the Chairman of the NRC, as the head of the agency, has determined that the criteria specified in 10 CFR 9.301(c)(2) have been met because the inclusion of an individual's full SSN on NRC Form 754 is necessary to identify a specific individual, and no substitute is available.

11. Justification for Sensitive Questions

NRC Form 754 collects information that is used to verify that the individual is not prohibited under Federal or State law from receiving, possessing, transporting, importing, or using covered weapons pursuant to Section 161A of the AEA. Based upon the NRC's discussions with the FBI, this information collected on NRC Form 754 is required in order to properly determine the individual's identity and contains information on the individual's name, address, date and place of birth, social security number, gender, ethnicity, citizenship, and criminal history.

12. Estimated Burden and Burden Hour Cost

Eighty-four licensees are eligible to apply for Section 161A authority and in this analysis the NRC expects only 7 licensee sites who have obtained Section 161A authority via confirmatory orders to be subject to the new regulations and therefore incur the information collections burdens associated with NRC Form 754. This estimate is based on the fact that only 7 licensee sites applied for stand-alone preemption authority via confirmatory order and no other licensees have formally indicated to the NRC an intent or applied for Section 161A authority. The 7 licensee sites are the following types of licensees:

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 bd}	56	4
Decommissioning power reactor sites ^{b cd}	20	2
Away-from-reactor ISFSIs ^d	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

^d same entity can apply for a facility or transportation activity. Each entity is only counted once.

The NRC estimates that it will require two hours for a licensee to prepare and process the NRC Form 754. Initial background checks for security personnel have already been performed under orders for 7 licensee sites and are not included in this analysis. Burden estimates are based on ongoing annual burdens for submission of the NRC Form 754. The NRC Form 754 is used to conduct periodic firearms background checks every 5 years. Estimates assume that licensees will submit forms for one-fifth of their security personnel annually. Based on the estimated number of personnel at each type of site, the NRC has estimated that an average of 550 forms will be submitted annually: This includes 430 periodic firearms background checks plus 120 break-in-service and new employee background checks.

At 2 hours per form, the estimated annual reporting burden is 1,100 hours (550 forms x 2 hours per form = 1,100 hours). The estimated annual recordkeeping burden is 20 hours per site, for a total of 140 hours of recordkeeping burden (20 hours x 7 sites = 140 hours). The total estimated annual burden for NRC Form 754 is 1,240 hours (1,100 reporting hours + 140 recordkeeping hours).

	Responses	Burden hours	Cost at \$288/hr.
Reporting	550	1,100	\$316,800
Recordkeeping	7	140	\$40,320
TOTAL	557	1,240	\$357,120

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).

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 \$16 for NRC Form 754 (140 hours x .0004 x \$288/hour).

The NRC charges a fee of \$70 per firearms background check to process the NRC Form 754 and fingerprints. The cost to licensees for submission of 550 forms at \$70 per form is \$38,500.

The total estimated additional costs to respondents is \$38,516 (\$16 records storage + \$38,500 in background check fees.)

14. Estimated Annualized Cost to the Federal Government

The staff has developed estimates of annualized costs to the Federal Government related to the conduct of this collection of information. These estimates are based on staff experience and subject matter expertise and include the burden needed to review, analyze, and process the collected information and any relevant operational expenses.

The NRC staff estimates 15 minutes of staff time per form to process each submittal. Annual submissions of 550 forms would take approximately 138 hours of staff time (550 forms x 15 minutes per form = 138 hours) at cost of \$39,744 (138 hours x \$288/hr).

This cost is offset via a specific fee of \$70 per check for processing the NRC Form 754 and associated fingerprints.

15. Reasons for Change in Burden

The final rule adds new a section, § 73.17, to implement the Commission's authority under Section 161A of the AEA, to conduct firearms background checks to verify that an individual is not prohibited from receiving, possessing, transporting, importing, or using covered weapons as part of the performance of their official duties. The NRC Form 754 is a new form that will be used to perform these checks. The estimated burden for seven licensee sites to submit NRC Form 754 for periodic firearms background checks every five years and maintain associated records is 1,240 hours annually at a cost of \$357,120 (1,240 hours x \$288/hr).

16. Publication for Statistical Use

Not Applicable.

17. Reasons for Not Displaying the Expiration Date

The expiration date is displayed.

18. Exceptions to the Certification Statement

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not Applicable.