[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 52, and 73

RIN 3150-AI65

NRC-2009-0195

Requirements for Access Authorization and Physical Protection During Nuclear Power Plant Construction

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to add new security requirements during construction of new nuclear power plants under a construction permit or a combined license. Specifically, the NRC is proposing new provisions that apply during nuclear power plant construction that would require physical protection measures; access authorization controls; physical inspections; performance of high-quality security sweeps; and lockdown measures and procedures for securing the security- and safety-related structures, systems, and components (SSCs) before entering the operational phase of the facility.

DATES: Submit comments on this proposed rule by [**INSERT DATE 75 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**]. Submit comments on the information collection aspects of this proposed rule by [**INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**]. Comments received after these dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after these dates.

ADDRESSES: Please include Docket ID **NRC-2009-0195** in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, see Section I, “Submitting comments and Accessing information” in the SUPPLEMENTARY

INFORMATION section of this document. You may submit comments by any one of the following methods.

Federal Rulemaking Web site: Go to http://www.regulations.gov and search for documents filed under Docket ID **NRC-2009-0195**. Address questions about NRC dockets to Carol Gallagher 301-492-3668; email Carol.Gallagher@nrc.gov.

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Mr. R. Frederick Schofer, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone 301-415-5682; e-mail: Fred.Schofer@nrc.gov or Mr. Brad Baxter, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-6742, e-mail at Brad.Baxter@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Submitting Comments and Accessing Information

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

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

You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

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

Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at http://www.nrc.gov/reading-rm/adams.html. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, or 301-415-4737, or by e-mail to PDR.Resource@nrc.gov.

Federal Rulemaking Web site: Public comments and supporting materials related to this proposed rule can be found at http://www.regulations.gov by searching on Docket ID: **NRC-2010-0195**.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

II. Background

Current NRC regulations do not include requirements for access authorization or physical protection measures at nuclear power plant construction sites before the receipt of nuclear fuel. Although construction permit holders and combined licensees provide security during construction to reduce their commercial risk, the lack of required security measures is inconsistent with the potential security risk stemming from malicious activities that could occur during the construction of new nuclear power plants. This omission could result in an inadequate level of assurance of a licensee's ability during construction to deter or detect

malicious acts that could adversely affect the safe construction and subsequent operation of security- and safety-related systems and components at commercial nuclear power plants licensed and regulated by the NRC.

The objective for this rulemaking is to establish minimum access and physical protection program requirements at nuclear power plant construction sites to deter and detect malicious acts during nuclear power plant construction that could later be used to cause or facilitate a radiological sabotage event during plant operation.

The primary concern relative to malicious activities during the new nuclear power reactor construction period is the ability for potential adversaries to introduce undetected defects into security- or safety-related systems or components or to pre-position construction site restricted items (e.g., unauthorized firearms, explosives, incendiary devices, and other materials) that could be used to commit or facilitate malicious acts after the plant is operational.

On September 7, 2006, the NRC staff provided the Commission with an information paper describing plans to work with the nuclear power reactor industry to develop appropriate access authorization and physical protection measures for nuclear power plants under construction. These plans included the development of measures designed to deter or detect potential adversaries from gaining site-specific information and to deter malicious acts that could compromise security- and safety-related equipment and components during operation.

As a result of the September 7, 2006, information paper, the NRC staff held public meetings with the industry's New Plants Security Task Force and discussed many issues associated with security at reactor construction sites. These meetings culminated in the development of Revision 2 of Appendix F, "Security Measures During New Reactor Construction," to Nuclear Energy Institute (NEI) 03-12 (generic power reactor security plan template), issued in September 2007. Appendix F presents security measures for the construction phase of a new nuclear power plant, independent of whether the plant is to be

constructed within an existing nuclear power plant's owner-controlled area or on an undeveloped or greenfield site, for applicants who voluntarily choose to incorporate these guidelines into their security plans.

On November 30, 2007, the NRC staff requested in an information paper that the Commission approve the establishment of construction site personnel access authorization and physical security requirements for holders of a combined license (COL), construction permit (CP), or limited work authorization (LWA).

On January 23, 2008, the Commission issued a staff requirements memorandum (SRM) to SECY-07-0211, approving the NRC staff proposal to establish physical security and access authorization requirements for new nuclear power reactor sites under construction, consistent with NEI 03-12, Appendix F. In addition, the Commission authorized the NRC staff to continue working with industry to develop alternative measures in lieu of fingerprint submission and to resolve open items related to physical protection. The Commission also stated that the NRC staff should leave the option of fingerprinting open, as a last resort if alternative measures could not be developed, and should request public comment on the issue of fingerprint submission. The Commission also authorized the NRC staff to pursue access authorization and physical protection rulemaking that would apply to nuclear power plant construction sites.

On March 16, 2010, the staff released draft proposed rule language for "Access Authorization and Physical Security for Nuclear Power Plant Construction" under ADAMS Accession No. ML100750461. This was followed up with a public meeting on March 31, 2010, with stakeholders to exchange views and information regarding the goals and objectives contained in the proposed rule text. Feedback received during the March 2010 public meeting included revising the proposed rule to include performance based versus specific requirements and simplifying the rule text with clear objectives and framework. A summary of the public meeting is available in ADAMS under Accession No. ML101090147. On August 27, 2010, the

staff held a second public workshop to discuss the status and schedule of the proposed rulemaking. The workshop objective was to facilitate improved stakeholder understanding of the proposed rule so that stakeholders could provide informed comments on the proposed rule during the public comment period. A summary of the public meeting is available in ADAMS under Accession No. ML102440075.

The NRC believes that this proposed rulemaking would substantially enhance security at nuclear power plant construction sites by providing measures to deter and detect malicious acts during construction that could have a latent or delayed effect and later cause a radiological sabotage event during plant operation.

III. Discussion

The NRC is proposing to amend its current security regulations to add new security requirements pertaining to new nuclear power reactors under construction. Section 73.52 establishes the requirements for development, implementation, and maintenance of an effective construction site access authorization and physical protection program through performance-based criteria that the licensee must achieve.

The proposed performance requirements contained in § 73.52 are the minimum requirements for an access authorization and physical protection program at new nuclear power plant under construction. The NRC believes that these requirements would provide an acceptable level of protection if effectively implemented.

The proposed requirements focus on the establishment of access authorization and physical protection measures to deter and detect the introduction of firearms, explosives, or incendiary devices that could be used to commit, or contribute to, a malicious act. These security measures shall include, at a minimum, the performance of visual and physical inspections of personnel, vehicles, and material which enter the controlled access construction area and the detection of malicious acts through security sweeps and lockdown procedures.

The following paragraphs describe the features and reasons for the proposed security features included in the proposed rule.

A. Construction Security Plan

Holders of construction permits (CPs) under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," and holders of combined licenses (COLs) under 10 CFR Part 52 will be required to develop and submit to the NRC for approval construction security plans. The construction security plan would describe how the program meets the construction security requirements proposed under the newly proposed 10 CFR 73.52 and describe the transition plan to the physical security plan required under 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors against Radiological Sabotage." These proposed requirements would be incorporated into 10 CFR 50.34 for CP holders and 10 CFR 52.79 for COL holders.

The NRC expects that the effectiveness of the construction security plan would be maintained, changes to the approved construction security plan would be properly evaluated, and any change that reduces the effectiveness of the plan would be reviewed by the NRC before implementation.

Each licensee under amended § 50.54(ii) must revise its site-specific construction security plan, whenever necessary, to ensure that site conditions and security measures adequately address and describe how to deter and detect malicious acts. In this context, the phrase, "malicious acts," refers to the destruction, tampering with, or causing physical damage to nuclear plant structures, systems, or components during construction, or attempted or successful introduction of restricted items (e.g., unauthorized firearms, explosives, and incendiary devices) onto the construction site.

A holder of a construction permit under Part 50 or a combined license under Part 52 would be required to follow and maintain the effectiveness of its construction security plan, as

originally approved, until the facility's transition to the requirements of the required physical security plan under § 73.55 before operation. While the construction security plan is in effect, the NRC would expect licensees to identify conditions and situations which could reduce the effectiveness of its plan, and to take corrective and/or compensatory actions to restore and maintain the requisite effectiveness. However, the construction security plan as submitted by the construction permit holder or combined licensee and approved by the Commission shall not be changed in a manner which would result in a decrease in the effectiveness of the approved construction security plan. The phrase "decrease in effectiveness" would be an evaluation that would differentiate between changes that the licensee would be allowed to make without prior NRC approval and those that would require prior NRC approval. A determination that a change results in a reduction in effectiveness does not imply that the licensee could no longer implement its plan and provide adequate measures for the protection of the public. The NRC may approve a proposed construction security plan change that the licensee determined to be a reduction in effectiveness, if the NRC determines that the construction security plan, as modified, would continue to meet the performance objectives of § 73.52(c) and would continue to provide assurance that malicious acts during construction cannot later reasonably result directly or indirectly in radiological sabotage as defined by § 73.2, "Definitions."

If the licensee desires to change the construction security plan in a manner that may result in a decrease in the effectiveness of the approved construction security plan, the licensee shall submit a license amendment request for NRC review in accordance with the requirements set forth in § 50.90. In addition to satisfying the filing requirements for a license amendment request in § 50.90, the proposed § 50.54(ii)(1) request would include all construction security plan pages affected by the change, a forwarding letter identifying the change, the reason for the change, and the basis for concluding that the licensee's construction security plan, as revised, will continue to meet the requirements of proposed § 73.52.

The NRC would review the amendment application to make a no significant hazards consideration determination and to determine if the construction security plan, as modified, is a reduction in effectiveness under § 50.54(ii)(1) and continues to meet the requirements in § 73.52.

An essential element of the construction security plan is the ability for the licensee to demonstrate that all construction site access authorization and physical protection program components and elements accomplish their intended functions, such as controlling access to the controlled access area. The Commission's expectation is that, upon request, each licensee will demonstrate the effectiveness of any individual or combination of components or elements of the construction site access authorization and physical protection program.

The NRC staff considered that construction permit holders and combined licensees, as part of a risk management program, may implement a construction-related, industrial security program predicated on such drivers as insurance, banking, safety, and common risk, asset protection and loss prevention policies common in the course of conducting business. The NRC staff considered that these programs may serve to complement, but not replace, the requirements proposed under this section.

The NRC staff also considered that the requirements under § 73.52 are not intended to replace, or undermine quality assurance/control programs that are currently required by regulation but are intended to be complementary to one another consistent with NRC safety and security interface requirements under § 73.58.

B. Reviewing Officials

The proposed regulation requires each licensee to designate one or more persons as a reviewing official. This official is responsible for reviewing and evaluating information gathered by the licensee about personnel who are applying for unescorted access authorization and for determining whether those individuals meet the licensee's implanting criteria for determining

trustworthiness and reliability, certify, grant, deny, unfavorably terminate, or maintain an individual's unescorted access based on an evaluation of all the relevant information required under 10 CFR 73.52(1)(ii)(A) and (B). This phrase, "trustworthy and reliable," means that an individual possesses those characteristics that enable the reviewing official to determine, after considering all relevant information, that the individual would be considered dependable in judgment, character, and performance.

The NRC expects that each licensee's construction security plan will specify personnel access measures for the reviewing official's pre-access screening checks, initial access, construction access maintenance, construction worker observation, and site badging. The reviewing official must make a positive finding of trustworthiness and reliability before granting an individual access to or maintaining an individual's access to the controlled access construction area. However, if a construction permit holder or combined licensee discloses Safeguards Information (including Safeguards Information designated as Safeguards Information – Modified Handling) to that individual, a determination of trustworthiness and reliability for that purpose must also include a background check as described in § 73.2 and meet the requirements of §§ 73.21, and 73.22.

C. Worker Access Screening

The reviewing official(s) would verify the identity of individuals before granting them access to controlled access construction areas. The proposed amendments would require the reviewing official to determine with high assurance that the individual is who he or she claims to be before granting construction site access, and semiannually thereafter. Information compiled to determine high assurance would include information presented by the individual as well as other data, such as the results of a demographic check performed by the licensee. The demographic check would require, at a minimum, validating an individual's identity by evaluating accumulated information developed from other background investigation sources (e.g., previous

employment records, and personal references). Each of these verification measures are discussed below.

Section 73.52(d)(1)(ii)(A)(*1)(i*) requires the licensee's reviewing official to verify an individual's identity before granting access to the controlled access construction area. At a minimum, this would require the validation of an individual's identity by evaluating an accumulation of information developed from other background investigation sources (e.g., previous employment records, personal references). The term, "verify" would be used to indicate that licensees are required to take steps to determine that the Personal Identifying Information the individual has provided is authentic and accurate.

This verification could be achieved through a variety of means, including, but not limited to, accessing information from databases through the NRC that are maintained by the Federal Government, or evaluating an accumulation of information, such as comparing a social security number the individual provided to the social security number(s) included in the person's employment history questionnaire or other sources that would allow the reviewing official to evaluate the information in total in order to verify that the person is in fact the individual he or she claims to be.

The NRC is considering whether to use fingerprinting as a method of determining true identity during the background investigation process. However, the staff has left this option open to request public comment on the technical and policy issues associated with the use of fingerprinting. This specific request for comments is discussed further in Section V, "Specific Request for Comments" of this document.

Section 73.52(d)(1)(ii)(A)(*1)(ii*) requires the licensee to conduct a demographic data check before a reviewing official can grant an individual access to the controlled access construction area. The demographic data (e.g., name, date of birth, address) would be submitted to the Terrorist Screening Center (TSC) via the NRC through currently established

electronic means to provide reasonable assurance that the individuals submitted are not known or suspected terrorists, or connected to terrorist activities. Further, the NRC would require construction permit holders and combined licensees to submit demographic data information on personnel who maintain access on a semiannual basis.

D. Construction Worker Observation Policy

Under this proposed rule, holders of CPs under 10 CFR Part 50 and holders of COLs under 10 CFR Part 52 would develop and implement a construction worker observation policy. This proposed requirement supplements the requirements of the observation program under 10 CFR Part 26, "Fitness for Duty Programs." The NRC believes that deterring, detecting, and evaluating behavior changes to determine whether they may lead to acts detrimental to public health and safety is important. The behavioral observation element of the fitness-for-duty program required under 10 CFR 26.33, "Behavioral Observation," addresses this objective from a focus on impairment due to drugs or alcohol. This proposed amendment would focus on detecting and communicating behavior changes that, if left unattended, could lead to detrimental acts that may have an adverse impact on the safety and security of the construction site or public health and safety or the common defense and security once the plant has transitioned into the operational phase. These proposed amendments would be incorporated into 10 CFR 73.52(d)(1)(ii)

The construction worker observation policy should be clearly written so that personnel subject to these requirements understand their duties and responsibilities to observe and report behavior out of the norm of normal business practices, or behaviors that left unattended could pose a threat to other personnel, self, or to a greater degree the safety operation at the construction site. The NRC believes that all covered individuals should acknowledge by their signature their responsibilities to implement these requirements. The NRC expects that reports documenting any concerns arising from behavioral observation will be evaluated by the

reviewing official(s). The reviewing official may seek additional information from the individual's supervisor, Human Resources Department and any other relevant sources prior to making a final evaluation and determination to maintain, administratively withdraw, or unfavorably terminate the reported individual's access status.

Records documenting the construction worker observation policy are required to be available at the plant site for NRC review. The records retention requirement is a standard administrative provision that is used in all other parts of 10 CFR that contain substantive requirements applicable to construction permit holders and combined licensees.

E. Barriers

Barriers are an important component of deterrence and are necessary to maintain a clear separation of the controlled access construction area occupied by security- and safety-related SSCs from the surrounding area and as a channeling barrier to facilitate the conduct of the access control and search components of this section. Each licensee should design, install, and maintain a barrier to demarcate its boundaries for the entire construction site or for security- or safety-related SSCs based on the licensee's need as determined through a site-specific analysis. This barrier should be located and designed to deter those seeking to carry out malicious acts or other activities that could compromise the safety of construction or the subsequent operation of security- and safety-related SSCs.

Construction permit holders and combined licensees under proposed § 73.52(d)(2)(i)(C) would erect appropriately constructed barriers that facilitate effective implementation of the access control requirements The NRC does not intend that this construction site security barrier be equal to the barriers defined in § 73.2 and stipulated under § 73.55. However, the NRC staff does expect the barrier will provide deterrence consistent with the licensee's site-specific analysis and construction security plan.

F. Construction Site Security Force

The Commission's expectation is that licensees will maintain a security organization to protect against malicious acts during construction and implement their construction security program. The security organization will include a management system to oversee the construction site access authorization and physical protection program as needed to establish, revise, and monitor the programs, plans, training, and procedures used to implement the construction site access authorization and physical protection program. The licensee's security organizational structure must be documented and written procedures established that describe the duties and responsibilities assigned to each position or member within the security organization, such as security managers, security officers, and support personnel, along with their roles in effectively implementing the NRC-approved construction security plan. In general, the roles, duties, and responsibilities of members of the security organization include, but are not limited to, the performance of security patrols; surveillance; access controls; searches; escorts; recordkeeping; and assessment of security incidents.

Section 73.52(d)(2)(i)(D) would establish criteria for the construction site security organization.

G. Construction Access Search Program

The NRC believes that periodic surveillance provides an appropriate level of deterrence and detection of malicious acts during construction activities. The NRC recognizes that licensees routinely engage in other activities that can deter and detect malicious acts. Therefore, the NRC encourages the development of construction security plans that use appropriate aspects of quality assurance (e.g., receipt inspections; quality assurance inspections; procurement) and design acceptance programs (e.g., inspection, tests, analyses, and acceptance criteria (ITAAC) program; pre-operational testing program) that the construction permit holder or combined licensee are required to perform in conjunction with the newly

proposed physical protection requirements (e.g., physical searches, security sweeps) to establish a comprehensive deterrent to malicious acts or the introduction of construction site restricted items during nuclear power plant construction. The term, “construction site restricted items,” refers to material which could be used to conduct site surveillance that could support future malicious acts, or firearms, explosives, or incendiary devices that may be carried or concealed by personnel, packages, materials or vehicles and could be used to commit radiological sabotage after the implementation of the operational security program.

Each of the programs identified below provides a layer of deterrence and/or detection of malicious acts contributing to the achievement of the performance objectives under 10 CFR 73.52.

Receipt inspection program – As stipulated in 10 CFR Part 50, Appendix B, licensees are required to implement a receipt inspection program which serves to control materials, parts, or components which do not conform to requirements to prevent their inadvertent use or installation. These measures provide a layer of deterrence and/or detection of malicious acts through the identification, documentation, segregation, disposition, and notification to affected organizations of nonconforming items.

Quality assurance program – As stipulated in 10 CFR Part 50, Appendix B, licensees are required to implement a quality assurance program comprising all those planned and systematic actions necessary to provide adequate confidence that safety-related SSCs will perform satisfactorily in service. These quality assurance measures provides a layer of deterrence and/or detection of malicious acts by assuring that the physical characteristics of a material, structure, component, or system meet predetermined quality requirements.

Procurement: Control of Purchased Material, Equipment, and Services – As stipulated in 10 CFR Part 50, Appendix B, licensees are required to implement measures to assure that purchased material, equipment, and services, whether purchased directly or through contractors,

vendors, and subcontractors, conform to the procurement documents. These measures provide a layer of deterrence and/or detection of malicious acts by establishing source evaluation and selection, objective evidence of quality furnished by the contractor, vendor, or subcontractor, inspection at the contractor, vendor, or subcontractor source, and examination of products upon delivery.

ITAAC program – The overall review approach ensures that the complete facility is verified and that the ITAAC are necessary and sufficient to verify conformance with the applicable regulations (§ 52.97(b)). These measures provide a layer of deterrence and/or detection of malicious acts by requiring that inspections, tests, and analyses are performed, which are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, the plant is built and should operate in accordance with the design certification.

Pre-operational testing program – As stipulated in 10 CFR Part 50, Appendix B, licensees are required to implement a test program to assure that all testing required to demonstrate that SSCs will perform satisfactorily in service is identified and performed in accordance with written test procedures which incorporate the requirements and acceptance limits contained in applicable design documents. The pre-operational testing program provides a layer of deterrence and/or detection of malicious acts by establishing appropriate, proof tests before installation, preoperational tests, and operational tests for assuring that the final as-built facility performs satisfactorily in service.

Assessment and reporting may require the licensee security personnel to notify and establish communications with security and/or management to keep them aware of potential malicious actions and emergency conditions related to the controlled access construction area. Security and/or management must be responsible for evaluating the information and determining courses of action related to the overall protection of safety and security related SSCs.

Section 73.52(d)(2)(iii) would establish the measures that must be met before personnel, vehicles, and material are granted access to the controlled access construction area. Licensee procedures, criteria, and methods must deter the introduction of construction site restricted items and/or validating the absence of construction site restricted items for the area in which the search is conducted through an inspection of a subset of the construction material passing through this access portal. The approved site-specific construction security plan should establish the criteria regarding randomness, frequency, and percent of personnel, vehicles, and construction material searched during the inspection process. Personnel who perform search functions should be trained to perform such duties.

H. Security Sweeps and Lockdowns

Section 73.52(e)(2) would establish the performance based requirement for lockdown that must be accounted for in the construction security plan. The NRC believes that an approved construction security plan, when properly implemented, will provide adequate assurance for detecting unauthorized access by persons, vehicles, or material into the controlled access construction area and locked down areas.

I. Notification Letters

Section 73.52(f)(i) would require construction permit holders and combined licensees to notify the NRC before the occurrence of identified construction security plan triggering events. The NRC is proposing that the notification be made at least 60 days before each of the following events:

- The scheduled onsite in-place setting, installing, or erecting of security- and safety-related systems or components where they will be operated; and
- The scheduled implementation of lockdown procedures including the commencement of security sweeps.

The information provided in the notification should be at a level of detail to allow NRC to plan for performing construction site security inspections.

J. Reporting of Detected Malicious Acts

The NRC believes the licensee should notify the NRC of any detected malicious acts. The licensee shall make this notification by e-mail to hoo.hoc@nrc.gov, which is the preferred method of notification, by facsimile to the NRC Operations Center at 301-816-5151, or by telephone at 301-816-5100 within 24 hours after the licensee assessment and determination that any person knowingly or willingly destroys, tampers with, or causes physical damage to a nuclear plant structures, systems, or components during construction; attempts or succeeds in bringing unauthorized firearms, explosives, incendiary devices or construction site restricted items onto the construction site or; trespasses, alters, or criminally damages barriers required under § 73.52(d)(2).

Notifications made to the NRC Operations Center under § 73.52(f)(4) should clearly indicate that they are being submitted under § 73.52(f)(4) and include:

- Name, address, telephone number, and title or position within licensee organization of individual or individuals informing the Commission.
- Identification of the facility reporting the confirmed malicious act.
- The SSCs affected, the nature of the malicious act, when the malicious act occurred, and the circumstances that led to its detection.
- The actions taken when the malicious act was discovered.
- What corrective actions are planned.

This proposed requirement assures that the Commission is informed regarding malicious acts and that the Commission can initiate the appropriate NRC response, notify other licensees, as appropriate, and respond to inquiries from the public, media outlets, and its federal partners. Additionally, the requirement allows the NRC staff to further evaluate, trend and share this

information with the Commission's Federal, State and local government partners, including, but not limited to, the Department of Homeland Security, the Federal Bureau of Investigations and local law enforcement.

The staff believes that the Commission must be kept informed with regard to malicious breaches to the barrier of a controlled access construction area. This reporting requirement allows the NRC staff to further evaluate, trend, share such information with the Commission's Federal, State, local government partners and other licensees, as appropriate, and maintain awareness of the overall effectiveness of a licensee ability to met the performance objective under § 73.52(c).

K. Safety/Security Interface Requirements for Nuclear Power Reactors

With the implementation of an access authorization and physical security plan during construction, there is the potential to adversely impact the operation of safety and security systems that are relied upon to perform their intended functions during the physical plant construction period. The intent of the proposed change in 10 CFR 73.58 is to establish and maintain communications and preplanning of evolutions between the personnel responsible for construction activities, the personnel responsible for operational and testing activities and the personnel responsible for security activities, such that the potential impact of construction activities within the physical plant are adequately encompassed within an established review process for assessing and managing the potential for adverse effects on safety and security.

This requirement would provide specific reference to the proposed conforming change to § 73.58 for Safety and Security Interface requirements. Current § 73.58 requires in part, "b) The licensee shall assess and manage the potential for adverse effects on safety and security, including the site emergency plan, before implementing changes to plant configurations, facility conditions, or security [and] (c) The scope of changes to be assessed and managed must include planned and emergent activities (such as, but not limited to, physical modifications,

procedural changes, changes to operator actions or security assignments, maintenance activities, system reconfiguration, access modification or restrictions, and changes to the security plan and its implementation)." For example, the interface requirements under § 73.58 would apply if the construction licensee would elect to monitor intrusion detection systems (if implemented) at the construction site under § 73.52 via the central alarm station required under § 73.55(i), "Detection and assessment systems."

L. Documentation

The licensee shall ensure that all records required under 10 CFR 73.52(f)(2) and (3) are available for inspection, copying, retention, and removal when directed by the Commission. The licensee shall maintain all records required by Commission regulations, orders, or license conditions until the Commission terminates the license for which the records were developed, and it shall maintain superseded portions of these records for at least 3 years after the record transition to 10 CFR 73.55, unless otherwise specified by the Commission. This process must account for all information collection requirements regardless of media, including electronic recordkeeping systems.

A critical aspect of any construction site access authorization and physical protection program is a method to evaluate its effectiveness and the continued applicability of specific program elements. The evaluation process required under § 73.52(f)(6) involves a proactive approach for assessing, evaluating, and improving the construction site access authorization and physical protection program, so that this process can be used as a basis for further development and improvement of the program. Program reviews must be designed to ensure that the construction site access authorization and physical protection program maintains effectiveness and meets Commission requirements.

Findings from onsite construction site access authorization and physical protection program reviews, audits, and assessments must be tracked, trended, and promptly resolved.

IV. Section-by-Section Analysis

Section 50.34 Contents of applications; technical information.

Section 50.34(j)(1) would require construction permit applicants and holders to submit a construction security plan, implementing schedule(s), and proposed milestones for NRC review.

Section 50.34(j)(2) would describe the process for requesting an extension if the construction permit applicant or holder is unable to submit the required documentation in the specified timeframe.

Section 50.34(j)(3) would describe how the construction permit holder will meet the requirements of 10 CFR 73.52, how the construction security plan will be implemented, and how the permit holder will transition from the construction security plan to the physical security plan required under 10 CFR 73.55.

Section 50.54 Conditions of licenses.

Section 50.54(ii)(1) would require a written construction security plan to be approved by the NRC and be in effect for each construction permit holder and combined licensee during nuclear power plant construction.

Section 50.54(ii)(2) would apply to nuclear power plant combined licensees and construction permit holders subject to § 50.54(ii) and would require that licensees and permit holders retain a record of all changes to the construction security plans made without prior NRC approval for three years from the date of change. This section would also require the licensee or permit holder to submit, as specified under § 50.4 or § 52.3, a report of each change, including its evaluation, within 60 calendar days of making those changes.

Section 50.54(ii)(2) would also require nuclear power plant combined licensees and construction permit holders to maintain records of changes to the approved construction security plan which were determined to not result in a decrease in the effectiveness of the construction security plan and submit a report to the NRC within 60 days of making those changes.

Section 50.54(ii)(3) would require construction permit holders and combined licensees to implement and maintain the construction security plan after the plan has been approved by the NRC. Once approved, the construction permit holder or combined licensee must conduct an annual review of the effectiveness of the construction security plan. This review must be conducted using independent personnel not regularly associated with the management and day-to-day implementation of the construction security plan.

Section 50.54(ii)(4) would require construction permit holders and combined licensees to compile a report of the results of the annual independent evaluation of the effectiveness of the construction security plan, inform the licensee corporate management of those results, and keep the annual effectiveness evaluation in a form that is available for subsequent inspection by the NRC.

Section 50.54(ii)(5) would require construction permit holders and combined licensees to track, trend, and promptly resolve findings identified during construction site access authorization and physical security program reviews, audits, and assessments. This provision provides for the continuous incremental improvement of the construction security plan without additional regulatory burden on the licensee.

Section 50.54(ii)(6) would allow construction permit holders and combined licensees to transition from the approved construction security plan to the approved physical security plan required by §§ 73.55, 50.34(c), or 50.34(d) without prior notification to the NRC. This transition would result in an increase in effectiveness in the security of the site. This section would also require construction permit holders and combined licensees to retain the construction security plan and each change for which prior NRC approval was obtained under proposed § 50.54(ii)(1)

as a record for no less than 3 years from the date of the transition to the requirement of the physical security plan.

§ 52.79 Contents of applications; technical information in final safety analysis report.

Section 52.79(a)(48) would be added to align the application requirements with the proposed § 73.52. These changes would require applicants for a Part 52 license to include the criteria under proposed § 73.52 in their final safety analysis report. The construction security plan would describe how construction permit holders and combined licensees would meet the requirements of 10 CFR 73.52, how the construction security plan would be implemented, and how the licensees would transition from the construction security plan to the physical security plan required under §§ 73.55, 50.34(c), and 50.34(d).

Section 73.1 Purpose and scope.

Section 73.1(b)(1)(i) would be amended to add the phrase, including protection during construction. This change would identify that nuclear power plant construction is within the scope of Part 73.

Section 73.52 Construction site access authorization and physical protection.

Section 73.52(a) Scope and implementation.

Section 73.52(a)(1) would require combined licensees to submit a construction security plan, implementing schedule(s), and proposed milestones for NRC review and approval. The construction security plan would describe how the combined licensee will meet the requirements of § 73.52, how the construction security plan will be implemented, and how the combined licensees will transition from the construction security plan to the physical security plan required under § 73.55. This proposed section would also describe the process for requesting an extension if the combined licensee is unable to submit the required documentation in the specified timeframe. Similar requirements for construction permit holders are specified in § 50.34(j).

This proposed paragraph would also describe the process for requesting an extension if the combined licensee is unable to submit the required documentation in the specified timeframe.

Section 73.52(a)(2) would clarify that assembly or modular fabrication facility(ies) located outside of the owner designated construction area are outside of the scope of the proposed rule. These facilities are excluded from the rule requirements because the work is performed in a controlled work environment and is subject to the same quality assurance and quality control program as remote fabrication facilities, which are also excluded. The staff believes that given the existing controls implemented at these types of facilities, combined with the proposed security checks at the construction site under this proposed rule, provides an adequate level of assurance. Therefore, additional access authorization and physical security measures on these facilities creates excessive burden for the marginal additional security provided to the nuclear power plant during construction.

Section 73.52(a)(3) would recognize that construction security activities performed in accordance with the security standards implemented under § 73.55, also meet the requirements of Section 73.52.

Section 73.52(a)(4) would delineate the performance-based requirements and provide a time frame for compliance with the requirements that follow.

Section 73.52(a)(4)(i) would require licensees to implement their site specific, written, and Commission approved, access authorization and physical security measures. The written security plan is subject to review, approval, and inspection by the Commission.

Section 73.52(a)(4)(ii) would require licensees to have written, site-specific procedures in place and available for inspection before implementing their security plan. This requirement reflects the Commission's view that licensees must focus attention on site-specific conditions in

the development and implementation of site plans, procedures, processes, and ultimately, the capability to achieve the performance objective of this proposed section.

Section 73.52(a)(4)(iii) would require licensees to have the necessary number of security personnel in place, trained, and performing the functions specified in the licensee's approved construction security plan and its implementing procedures before the licensee's plan is effective and in force.

Section 73.52(a)(4)(iv) would provide specific reference to § 73.58 for Safety and Security Interface requirements.

Paragraph 73.52(b) Construction security plan.

Paragraph 73.52(b)(1).

Section 73.52(b)(1) would reflect the Commission's view that licensees must focus attention on site-specific conditions in the development and implementation of site plans, procedures, processes, response strategies, and ultimately, the licensee's capability to achieve the performance objective of this section.

Section 73.52(b)(2) would describe the relationship between Commission regulations, the construction security plan, and implementing procedures and hold the licensee responsible for meeting Commission regulations. Section 73.52(b)(2) would ensure that licensees have procedures in place that will detect malicious acts and/or the storage of construction site restricted items through the performance of detailed searches and other methods. The NRC staff believes this requirement is needed to achieve a level of detection and access controls appropriate to the threat.

Section 73.52(b)(3) would hold licensees responsible for demonstrating the licensee's ability to implement all components of the licensee's construction security plan. This demonstration would not be limited to only the ability of security personnel to carry out their duties. This proposed requirement would clarify the Commission's view that the licensee must

also demonstrate the effectiveness of plans, procedures, and equipment to accomplish their intended function within the NRC approved construction security plan.

Paragraph 73.52(c) General performance objectives.

Section 73.52(c)(1) would establish the general performance objective of the licensee's security organization to ensure, through implementation of the site construction security plan, that malicious acts during construction cannot later reasonably result directly or indirectly in, or contribute to, radiological sabotage as defined by § 73.2.

Section 73.52(c)(2) would propose two performance objectives for the construction security plan. The written construction security plan must be designed to deter malicious acts to security- and safety-related SSCs during construction, and to detect malicious acts to security- and safety-related SSCs after the implementation of lockdown procedures.

Section 73.52(c)(3)(i) would ensure that security protective measures are implemented, as appropriate, for security- and safety-related SSCs before placement of this equipment in the controlled access construction area where they will be operated after the plant is operational. This section would ensure that necessary access authorization and physical protective measures are implemented before the installation of safety- and security-related construction/installation of SSCs (i.e. necessary for the safe shutdown of the reactor after the reactor becomes operational). A controlled access construction area is any temporarily or permanently established area containing security- or safety-related equipment or components in their final installed location that is clearly demarcated and deters unauthorized access.

Section 73.52(c)(3)(ii) would require a licensee to delineate the access authorization and physical security measures for the protection of security-or safety-related SSCs and physical security measures and access authorization measures while transitioning to the physical security program required under § 73.55. These transitional security measures must include a process

for maintaining the level of security required under § 73.52 until the implementation of the requirements under § 73.55.

Paragraph 73.52(d) Specific Security Requirements.

Section 73.52(d)(1) would require the construction permit holder or the combined licensee to develop and implement personnel access requirements before the placement of security- and safety-related SSCs in the controlled access construction area.

Section 73.52(d)(1)(i)(A) would require each construction permit holder or combined licensee to designate a reviewing official who shall certify, grant, deny, terminate, or maintain an individual's unescorted access to the controlled access construction area based on an evaluation of all relevant information required by this section. A reviewing official refers to an individual who is designated by a licensee to be responsible for reviewing and evaluating information about persons who are applying for unescorted access authorization and determining whether those individuals meet the licensee's or applicant's procedural criteria for determining trustworthiness and reliability.

Section 73.52(d)(1)(i)(B) would require the reviewing official(s) to be subject to the requirements of the construction permit holder's or combined licensee's access authorization program or comparable fitness-for-duty program because of the key role these individuals play in providing assurance that persons who are granted unescorted access to the controlled access construction area are trustworthy and reliable.

Section 73.52(d)(1)(i)(C) would require the reviewing official(s) to demonstrate their knowledge of the requirements of the construction permit holder's or combined licensee's personnel access policy to ensure that access determination have been consistent with NRC requirements and internal permit holder's or combined licensee's procedures. In addition, the reviewing official's actions affect the confidence that the public, licensee or applicant management, the Commission, and individuals who are subject to the access authorization

program, have in the integrity of the program and the accuracy and reliability of the access authorization decisions that are made under the program. Therefore, the Commission believes that reviewing officials must meet the highest standards for trustworthiness and reliability, including the requirements of an access authorization program that complies with the requirements of this section.

Section 73.52(d)(1)(i)(D) would require reviewing officials to evaluate the personnel access program data collected and make determinations to grant, deny, terminate, administratively withdraw, or permit an individual to maintain access to the controlled access construction area. Potentially disqualifying information is any derogatory information that calls into question an individual's trustworthiness and reliability. This may include, but is not limited to, derogatory information derived from reference checks, employment checks, evidence of alcohol or drug abuse or other sources of information that are reasonably determined to be reliable and accurate. Reviewing officials must evaluate derogatory information against established licensee adjudication criteria.

Section 73.52(d)(1)(ii) would delineate the access requirements established in the construction security plan. Access requirements must be implemented before the placement of security- and safety-related SSCs in the controlled access construction area. These requirements would clarify that the construction permit holder or combined licensee is responsible for meeting the Commission's regulations for implementing and maintaining an access program to provide assurance that persons who are granted access to the controlled access construction area are trustworthy and reliable.

Section 73.52(d)(1)(ii)(A) would require each construction permit holder or combined licensee to perform pre-access screening checks of personnel, and to ensure that a trustworthiness and reliability determination of these individuals is completed before granting access to areas with security- and safety-related SSCs.

Section 73.52(d)(1)(ii)(A)(*1*) would promote consistency within the access requirements, by requiring the use of a common access category to identify persons in the process of obtaining access to the controlled access construction area for the first time or after their last unescorted access is terminated favorably. Licensees would be required to verify that background screening elements contained in this section are completed before granting access.

Section 73.52(d)(1)(ii)(A)(*1)(i*) would require construction permit holders and combined licensees to verify an individual's identity before granting access to the controlled access construction area.

Section 73.52(d)(1)(ii)(A)*(1)(ii)* would require construction permit holders and combined licensees to implement an access authorization program during nuclear power plant construction that provides reasonable assurance that individuals are not known or suspected terrorists or associated with terrorist activities before being granted construction site access.

Section 73.52(d)(1)(ii)(A)(*1)(iii)* would allow construction permit holders and combined licensees to take credit for actions performed by another permit holder or licensee who has granted personnel access to their nuclear power plant site if a comparable pre-access screening or operational access authorization program was performed. The method of verifying personnel access status must be described in the construction security plan and procedures to assure communication between the nuclear power construction site and the nuclear power plant site where access is held in good standing.

Section 73.52(d)(1)(ii)(A)*(1)(iv)* would require construction permit holders and combined licensees to maintain a record of visitors that enter the construction site. The documentation would include, but not be limited to name, date, time, purpose of visit, employment affiliation, citizenship, and name of the individual to be visited.

Section 73.52(d)(1)(ii)(B) would require construction permit holders and combined licensees to maintain records of individuals granted access to the controlled access construction

area and to perform a demographic data check reinvestigation every 6 months for all personnel that had access to areas with security- and safety-related SSCs within the last 365 days. Demographic information on personnel must be submitted to the TSC via the NRC using established electronic means. This approach for collecting, updating, and evaluating demographic data for new nuclear power reactor construction is consistent with the approach currently implemented for operating nuclear power reactors.

Section 73.52(d)(1)(ii)(B)*(2)* would delineate the performance requirements for a construction worker observation policy that must be distributed to individuals before granting access to the controlled access construction area.

Section 73.52(d)(1)(ii)(B*)(2)(i)* would require that supervisors and management are responsible to report behavioral concerns to the reviewing official. This requirement also would require combined permit holders and combined licensees to ensure that individuals who implement the construction worker observation policy understand and comprehend the intent of the policy and the requirement to report concerns to the reviewing official. Because all individuals who are subject to the construction worker observation policy are required to conduct behavioral observation, the NRC requires all covered individuals provide written documentation acknowledging their responsibilities to implement effective observation requirements.

Section 73.52(d)(1)(ii)(B)*(2)(ii)* would require individuals to report any concerns arising from behavioral observation to the licensee's construction supervision and security for investigation as described in site procedures.

Section 73.52(d)(1)(ii)(C) would require construction permit holders and combined licensees to establish a construction site badge program. This program would require personnel to display badges while onsite at all times to provide the identification of personnel granted construction site access or visitor status.

Section 73.52(d)(1)(ii)(C)*(1)* would establish the requirement that construction permit holders, combined licensees, applicants, contractors, or vendors who are subject to this paragraph must retain the records required under this rule for the periods that are specified by the appropriate regulation or until three years after transitioning to the security requirements under § 73.55. This records retention requirement is a standard administrative provision that is used in all other parts of 10 CFR that contain substantive requirements applicable to construction permit holders, licensees, and applicants.

Section 73.52(d)(1)(ii)(C)*(2)* would delineate the performance objective that all visitors must be registered, a visitor badge issued, and visitor oversight provided before entry into the controlled access construction area.

Section 73.52(d)(2)(i)(A) would require periodic surveillance and observation of the construction site and construction activities.

Section 73.52(d)(2)(i)(B) would require that the construction permit holder or combined licensee develop and implement written assessment and reporting procedures to ensure that detected incidences of criminal damage, trespassing and/or willful alteration of the controlled access construction area barrier are assessed to determine impact upon construction activities. These incidences are then reported to security, management, and local law enforcement agencies, when appropriate, and implemented corrective action or compensatory measures are taken, when appropriate.

Section 73.52(d)(2)(i)(C) would require that construction permit holders and combined licensees would erect appropriately constructed barriers that facilitate effective implementation of the access control requirements. The barrier is necessary to clearly separate the controlled access construction area containing security- and safety-related SSCs from the surrounding area and to serve as a means of channeling onsite individuals through appropriate access portals to facilitate the conduct of the access control and search components of this section.

This barrier is a visual deterrent and must meet the objectives of this section. The licensee is responsible for performing a site specific, security analyses to determine the placement and design of the barrier at a given construction site.

Section 73.52(d)(2)(i)(D) would establish criteria for the construction site security organization. The composition of the construction site security organization must be based upon site-specific analysis and implemented to meet site-specific needs. This organization must be designed, staffed, trained, and equipped to implement the construction site access authorization and physical protection program in accordance with NRC requirements.

Section 73.52(d)(2)(ii) would outline the components necessary for controlled access to a nuclear power plant construction site. Construction permit holders and combined licensees must control access of personnel, vehicles, and materials through predetermined access portals. These access portals must be located outside of, or concurrent with, the barrier system of which they are a component.

Section 73.52(d)(2)(iii) would establish the measures that must be met before personnel, vehicles, and material are granted access to the controlled access construction area. The search program must cover material, equipment, and modules entering the controlled access construction area and be performed at a designated pedestrian or vehicle access portal, concurrent with or outside the construction barrier. Additionally, the licensee should, as part of a risk management program, include in search procedures the requirement for deterring the introduction of construction site restricted items.

Section 73.52(e) Transition

Section 73.52(e) would establish the criteria to transition from the construction security plan to the physical security plan required under § 73.55.

Section 73.52(e)(1) would require construction permit holders and combined licensees to meet physical security performance requirements for sweeping and securing security- and

security-related SSCs. High quality security sweeps and lockdown of completed plant areas would detect the introduction of construction site restricted items in safety and security-related SSCs and immediate areas, and transition a construction security program to an operational security program required under § 73.55. Construction permit holders and combined licensees using thorough implementation procedures would set forth training and qualification requirements for personnel assigned to conduct search and sweep activities.

Section 73.52(e)(2) would establish the performance based requirement for lockdown that must be accounted for in the construction security plan. The Commission's expectation is that once a location is locked down, that level of security achieved is maintained until the requirements under §§ 73.55(a)(4) and (e)(8) are implemented.

Paragraph § 73.52(f) Licensee notifications and documentation

Section 73.52(f)(i) would require construction permit holders and combined licensees to notify the NRC before the occurrence of identified construction security plan triggering events.

Section 73.52(f)(2) would require that the NRC and its agents be granted access to inspect, copy, or retain all reports, records, and documents required to be kept by Commission regulations, orders, or license conditions, whether the reports, records, and documents are kept by the construction permit holder, the combined licensee, or a contractor.

Section 73.52(f)(3) would require that construction permit holders and combined licensees maintain all records required to be kept by Commission regulations, orders, or license conditions, including superseded portions of these records. This would include all information collection requirements regardless of media, including electronic recordkeeping system files. Construction permit holders and combined licensees would be required to retain these records for three years after completion of the transition to the physical security plan under § 73.55 or until the Commission terminates the license for which the records were developed.

Section 73.52(f)(4) would require the construction permit holder or the combined licensee to notify the NRC of any detected malicious acts.

Section 73.52(f)(5) would require the licensee to verify that an e-mail or facsimile reporting a malicious act was properly received by the NRC. Licensees should verify reception of their e-mail or facsimile by calling the NRC Operations Center at (301) 816-5151.

Section 73.52(f)(6) would require construction permit holders and combined licensees to retain required reviews, audit reports, and information collection requirements, regardless of media, and make them available for NRC review and inspection upon request.

Section 73.58 Safety/security interface requirements for nuclear power reactors.

A conforming change would be made to remove the word, “operating,” from § 73.58(a).

Section 73.58(c)

Section 73.58(c) would add the word, “construction,” to this section. This change would identify the time of construction as an activity that requires an established reviewing process for assessing and managing the potential for adverse effects of construction activities on safety- and security-related SSCs and programs. This requirement accounts for the various conditions, events, emergencies, and activities that may exist at a construction site.

V. Guidance

In conjunction with the publication of this proposed rule, the NRC will issue proposed draft regulatory guidance in DG 5037, “Access Authorization and Physical Protection for Nuclear Power Plant Construction,” on implementation of the requirements in § 73.52. This draft regulatory guide is intended to provide an acceptable method by which licensees can implement the new requirements being proposed in this rulemaking. The staff will consider any comments received on the proposed rule in its final revisions to this regulatory guide.

VI. Specific Request for Comments

In addition to the general invitation to submit comments on the proposed rule, the NRC is interested in obtaining stakeholder views on the issues associated with requiring fingerprint-based criminal record checks for individuals granted access to nuclear power plant construction sites. The rulemaking would require construction permit holders and combined licensees to ensure that individuals granted access to nuclear power plant construction sites are subject to pre-access screening checks. The screening checks support the performance of a trustworthiness and reliability determination of such individuals which must be completed before granting access to construction areas containing security- and safety-related SSCs. The rulemaking process, which includes a proposed and final rule, will provide licensees and other interested stakeholders opportunities to comment on the proposed requirements to ensure transparency in the development of requirements designed to provide adequate protection of the public health and safety and the common defense and security.

For example, imposing an FBI fingerprint-based criminal history record check for all individuals with nuclear power plant construction site access could potentially create undue administrative burdens, and be a costly, but unnecessary, requirement for licensees. It may be preferable to design the requirement in such a way that FBI fingerprint-based criminal history record checks at a nuclear power plant construction site are limited to individuals with access to the ‘‘areas of significance’’ within the facility. The ‘‘areas of significance’’ would likely encompass the nuclear reactor as well as areas containing systems and the components designed specifically for reactor safety, facility security, and the protection of the public health and safety.

Keeping these options in mind, the NRC is seeking specific comment on the following questions and issues:

1. Is fingerprinting necessary to support the performance of a trustworthiness and reliability determination of individuals granted access to construction areas containing security and safety-related structures, systems, and components (SSCs)? If not, why not? Is the proposed demographic check sufficient to deter potential terrorists?

2. Should fingerprinting be required only for construction workers accessing construction areas containing security and safety-related SSCs? Are there other preferable ways to define the population for which fingerprinting is required? If so, what are they and what are their advantages and disadvantages?

3. What would be the approximate number of personnel that must be fingerprinted for access based on construction workers accessing construction areas containing security and safety-related SSCs as described in Question 1?

4. Are there any specific categories of persons whom the NRC should consider exempting from fingerprinting?

5. What is the estimated cost or impact of providing the necessary administrative controls and training to implement fingerprint requirements for individuals permitted unescorted access to construction areas containing security and safety-related SSCs such as those described in Question 2?

6. Should persons granted access to construction areas containing security and safety-related SSCs be permitted access to the facility at times when no supervision or oversight is present (e.g., evenings or weekends)? Should the NRC require administrative controls such as maintaining records of the time and duration of persons accessing construction areas containing security and safety-related SSCs without escorts during construction?

7. An FBI criminal history record check does not provide information on individuals who are under eighteen years of age, and will obtain information only on an individual's criminal history record within the United States. Thus, for foreign nationals who have never lived in the United States, persons who are younger than 18 years old, or U.S. citizens who have lived abroad for much or all of their adult lives, the criminal history record check is unlikely to provide any useful information regarding a person's trustworthiness and reliability. Do foreign nationals and/or minors require access to construction areas containing security and safety-related SSCs? Are there alternative methods to obtain information upon which a licensee could base a trustworthiness and reliability determination for these individuals?

8. Is there any additional information regarding fingerprinting or fingerprinting requirements that the NRC should consider in preparing the proposed rule?

9. Are there other licensee programs or controls that could be relied on to provide deterrence and detection mechanisms that were not captured by the proposed regulation?

10. When is the appropriate time to require construction security measures, and to transition from the construction security plan to the physical security plan required under 10 CFR Part 73? What are the bases for these proposed transition points?

11. The NRC realized that the costs to implement the proposed access authorization and physical protection measures may be dependent upon site-specific parameters. Consequently, the NRC attempted to estimate the typical resource burden to develop, implement, and maintain the proposed construction security program. As there may be wide variance in site implementation costs, the NRC requests comments on what the expected annual costs are to implement this proposed rule. When responding to this question, please identify the major cost drivers.

VII. Availability of Documents

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

Document	PDR	Web	ERR (ADAMS)
NUREG/BR-0184, "Regulatory Analysis Technical Evaluation Handbook" (January 1997)	X		ML050190193
NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Revision 4 (September 2004)	X	X	ML042820192
Environmental Assessment for Proposed Rule: Access Authorization and Physical Protection Requirements during Nuclear Power Plant Construction	X	X	ML101900455
Regulatory Analysis and Backfit Analysis for Proposed Rule: Access Authorization and Physical Protection Requirements during Nuclear Power Plant Construction	X	X	ML101900482

VIII. Plain Language

The Presidential memorandum "Plain Language in Government Writing" published June 10, 1998 (63 FR 31883) directed that the Government's documents be in clear and accessible language. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the NRC as explained in the ADDRESSES caption of this notice.

IX. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement States Programs," approved by the Commission on June 20, 1997, and published in the *Federal Register* (62 FR 46517; September 3, 1997), this rule is classified as compatibility "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act or the provisions of 10 CFR. Although an Agreement State may not adopt program

elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws. Category "NRC" regulations do not confer regulatory authority on the State.

X. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. The requirements in this rulemaking address procedural and information collection and reporting requirements necessary to support the NRC's regulatory activities on construction permits under 10 CFR Part 50 and combined licenses under 10 CFR Part 52, and to facilitate the NRC's conduct of hearings on construction security which may be held in accordance with Section 189 of the Atomic Energy Act of 1954, as amended. These requirements do not establish standards or substantive requirements with which construction permit or combined license holders must comply. Thus, this rulemaking does not constitute establishment of a standard containing generally applicable requirements falling within the purview of the National Technology Transfer and Advancement Act and the implementing guidance issued by the Office of Management and Budget.

XI. Finding of No Significant Environmental Impact: Environmental Assessment

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. However, the general public should note that the NRC is seeking public participation and the environmental assessment is available as indicated

in Section VI of this document. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under Section I, "Submitting comments and Accessing information" in the SUPPLEMENTARY INFORMATION section of this document.

The NRC has sent a copy of this proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

XII. Paperwork Reduction Act Statement

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

1. *Type of submission, new or revision:* Revision
2. *The title of the information collection*: 10 CFR Parts 50, 52, and 73; Requirements for Access Authorization and Physical Protection during Nuclear Power Plant Construction
3. *The form number if applicable:* N/A
4. *How often the collection is required:* One-time, on occasion, and annually during the period of nuclear power plant construction.
5. *Who will be required or asked to report:* Construction permit holders and combined license holders, during the period of nuclear power plant construction.
6. *An estimate of the number of annual responses:* 50 (40 annual responses plus 1.67 annualized one-time responses plus 8 recordkeepers.
7. *The estimated number of annual respondents:* 8
8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 44,789 hours (10 CFR Part 50 – 2,328 hours; 10 CFR Part 52 – 1,956 hours; and 10 CFR Part 73 – 40,505 hours)

   Abstract: The U. S. Nuclear Regulatory Commission (NRC) is proposing to amend its

regulations in §§50.34, 50.54, 52.79, 73.1, 73.52, and 73.58 to prescribe requirements for access authorization and physical protection in protecting nuclear power plants against consequences resulting from malicious acts that occur during plant construction. Specifically, the NRC is proposing new provisions that apply during nuclear power plant construction. The new provisions would require physical protection measures; access authorization controls; physical inspections; performance of high-quality security sweeps, and lockdown measures and procedures for securing the security-and-safety-related structures, systems, and components (SSCs) before entering the operational phase of the facility.

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

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

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC worldwide Web site: http://www.nrc.gov/public-involve/doc-comment/omb/index.html for 60 days after the signature date of this notice.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by (**INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**) to the Information Services Branch (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to INFOCOLLECTS.Resource@NRC.GOV and to the Desk Officer, Christine Kymn, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0011; 3150-0151; and 3150-0002), Office of Management and Budget, Washington, DC 20503. Comments on the proposed information collection may also be submitted via the Federal eRulemaking Portal http://www.regulations.gov, Docket ID **NRC-2009-0195**. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail comments to Christine_J._Kymn@omb.eop.gov or comment by telephone at (202) 395-4638.

Public Protection Notification

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

XIII. Regulatory Analysis

The NRC has prepared a regulatory analysis on this proposed rule and has included it in this Federal Register document. The analysis examines the costs and benefits of the alternatives considered by the NRC. The Commission requests public comments on the draft regulatory analysis. Availability of the regulatory analysis is indicated in Section VI of this document. Interested persons may submit comments on the draft analysis to the NRC as indicated under Section I, “Submitting comments and Accessing information” in the SUPPLEMENTARY INFORMATION section of this document.

XIV. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will 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. The companies that own these plants do not fall within the scope of the definition of "small entities" presented in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

XV. Backfit Analysis

As required by § 50.109, the Commission has completed a backfit analysis for the proposed rule. The Commission finds that the backfits contained in the proposed rule, when considered in the aggregate, would constitute a substantial increase in access authorization and physical protection, and would be justified in view of this increased protection of the public health and safety or the common defense and security. Availability of the backfit analysis is indicated in Section VII of this document.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification

10 CFR Part 73

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, 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 Parts 50, 52, and 73.

Part 50–DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

AUTHORITY: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 194 (2005). Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42

U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In §50.34 paragraph (j) is added to read as follows:

§ 50.34 Contents of applications; technical information.

* * * * *

(j) *Construction security plan*.

(1) The requirements of paragraphs (j)(1)(i) through (j)(1)(iii) of this section apply to applicants for construction permits for nuclear power plants and the requirements of paragraph (j)(1)(iv) of this section apply to applicants who request the reinstatement of a construction permit for nuclear power plants in a deferred or terminated plant status as follows:

(i) Applicants for a construction permit for a nuclear power plant under this part that do not have a docketed application after [EFFECTIVE DATE OF THE FINAL RULE] shall submit the written construction security plan required by § 73.52 of this chapter with the proposed implementation schedule and proposed milestones in their application.

(ii) Applicants for a construction permit for a nuclear power plant under this part that have a docketed application before [EFFECTIVE DATE OF THE FINAL RULE] shall amend their application to include a written construction security plan required by § 73.52 of this chapter with the proposed implementation schedule and proposed milestones no later than 6 months after [EFFECTIVE DATE OF THE FINAL RULE].

(iii) Holders of a construction permit for a nuclear power plant under this part that have not received an operating license under this part before [EFFECTIVE DATE OF THE FINAL RULE] and do not meet the security boundary requirements contained within § 73.52(a)(3) of this chapter shall submit the written construction security plan and the proposed implementation schedule with proposed milestones as a separate submittal in accordance with 10 CFR 50.90 no later than 6 months after [EFFECTIVE DATE OF THE FINAL RULE].

(iv) Holders of a construction permit for a nuclear power plant which is in deferred or terminated plant status before [EFFECTIVE DATE OF THE FINAL RULE] and does not meet the security boundary requirements contained within § 73.52(a)(3) of this chapter shall submit the written construction security plan required by § 73.52 of this chapter and the proposed implementation schedule with proposed milestones no later than 120 days before reactivating construction.

(2) Applicants who cannot meet the deadline identified in paragraph (j)(1) of this section must submit by the deadline date a request for an extension to the Director of the Office of Nuclear Reactor Regulation and demonstrate good cause for the request.

(3) The written construction security plan must describe:

(i) How the applicant will meet the requirements of 10 CFR 73.52;

(ii) A description of the implementation of the construction security plan; and

(iii) A description of the plan to transition from the construction security plan to the physical security plan required in 10 CFR 73.55.

3. In § 50.54 paragraph (ii) is added to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(ii)(1) The licensee shall implement and maintain its written construction security plan in accordance with § 73.52 of this chapter. The licensee may not make a change which would decrease the effectiveness of the construction security plan without prior approval of the Commission. A licensee desiring to make a change that would decrease the effectiveness of the plan shall submit an application for amendment to the license under § 50.90 of this part.

(2) The licensee may make changes to the plans referenced in paragraph (ii)(1) of this section without prior Commission approval if the changes do not decrease the effectiveness of the plan. The licensee shall maintain records of changes to the plans made without prior

Commission approval and shall submit, as specified in § 50.4 of this part or § 52.3 of this chapter, a report containing a description of each change within 60 calendar days after the change is made.

(3) The licensee shall provide for the development, revision, implementation, and maintenance of its written construction security plan. The licensee shall ensure that all plan elements are reviewed by individuals independent of both security plant management and personnel who have direct responsibility for implementation of the construction security plan at intervals not to exceed 12 months.

(4) The results and recommendations of construction security plan reviews, management's findings regarding plan effectiveness, and any actions taken as a result of recommendations from prior plan reviews, must be documented in a report to the licensee's construction manager and to corporate management at least one level higher than that having responsibility for plan implementation. These reports must be maintained in an auditable form, available for inspection.

(5) The licensee shall track, trend, correct, and prevent recurrence of failures and deficiencies in the construction access authorization and physical protection program.

(6) Upon implementation of the physical security plan required by §73.55 of this chapter, the licensee shall transition from the construction security plan required by §73.52 of this chapter, to the physical security plan required by §73.55 of this chapter without prior NRC approval. The licensee must maintain a copy of the written construction security plan enforced when the construction security plan is terminated for no less than 3 years from the date of termination.

PART 52 - LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

4. The authority citation for part 52 continues to read as follows:

AUTHORITY: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); 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), secs. 147 and 149 of the Atomic Energy Act.

5. In § 52.79, paragraph (a)(48) is added to read as follows:

§ 52.79 Contents of applications; technical information in final safety analysis report.

(a) * * *

(48)(i) A construction security plan describing how the applicant for a nuclear power plant will meet the requirements of 10 CFR 73.52.

(ii) A description of the implementation of the construction security plan.

(iii) A description of the plan to transition from the construction security plan to the physical security plan required in 10 CFR 73.55.

* * * * *

Part 73–PHYSICAL PROTECTION OF PLANTS AND MATERIALS

6. 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. 109–58, 119 Stat. 594 (2005).

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

7. In § 73.1, paragraph (b)(1)(i) is revised to read as follows:

§ 73.1 Purpose and Scope.

* * * * *

(b) * * *

(1) * * *

(i) The physical protection of production and utilization facilities licensed under parts 50 or 52 of this chapter including protection of nuclear power plants during construction,

* * * * *

8. Section 73.52 is added to read as follows:

§ 73.52 Construction site access authorization and physical protection.

(a) *Scope and implementation*. (1) Applicants for an operating license for a nuclear power plant under part 50 of this chapter shall comply with the requirements of this section. Applicants for a combined license under part 52 of this chapter, and holders of a combined license issued before [EFFECTIVE DATE OF FINAL RULE] until the date that the Commission makes the finding under § 52.103(g) of this chapter shall comply with the requirements of this section as described below:

(i) Applicants for a combined license under part 52 of this chapter who do not have a docketed application before [EFFECTIVE DATE OF THE FINAL RULE] shall submit the construction security plan and the proposed implementation schedule with proposed milestones in their application.

(ii) Applicants for a combined license under part 52 of this chapter who have a docketed application before [EFFECTIVE DATE OF THE FINAL RULE] shall amend their application to include a construction security plan and the proposed implementation schedule with proposed milestones no later than 6 months after [EFFECTIVE DATE OF THE FINAL RULE].

(iii) Holders of a combined license issued before [EFFECTIVE DATE OF THE FINAL RULE] until the date that the Commission makes the finding under § 52.103(g) of this chapter, that do not meet the security boundary requirements contained within § 73.52(a)(3) of this chapter, shall submit the construction security plan and the proposed implementation schedule with proposed milestones in accordance with 10 CFR 50.90 no later than 6 months after [EFFECTIVE DATE OF THE FINAL RULE].

(iv) Applicants who cannot meet the deadline must submit by the deadline date a request for an extension to the Director of the Office of New Reactors and demonstrate good cause for the request.

(2) Assembly, modular fabrication, or other manufacturing facilities located outside of the owner-designated construction area are excluded from the requirements of this section.

(3) Licensees constructing security- or safety-related SSCs within an existing protected area of a nuclear power facility subject to the requirements of 10 CFR 73.55, are considered to have met the requirements of this section.

(4) Before the written construction security plan becomes effective, the licensee shall have:

(i) Implemented the access authorization and physical security measures specified in the site specific procedures;

(ii) Detailed site specific security procedures developed and available at the licensee's construction site;

(iii) All appropriate security and badged personnel in place, trained, and performing the functions as outlined in the written construction security plan and specified in the detailed site specific security procedures; and

(iv) A process for assessing and managing the safety/security interface requirements under § 73.58 of this section between a construction site co-located or adjacent to an operating nuclear power facility.

(b) *Construction Security Plan*. (1) The licensee's written construction security plan shall identify, describe, and account for site specific conditions that affect the capability to satisfy the requirements of this section.

(2) The licensee is responsible for maintaining the written construction security plan through the implementation of written construction security procedures.

(3) Upon the request of an authorized representative of the NRC, the licensee shall demonstrate the ability to meet NRC requirements through the implementation of the construction security plan, including the ability of personnel to perform assigned duties and responsibilities required by the construction security plan and licensee procedures.

(c) *General performance objectives.* (1) The objective of this section is to provide reasonable assurance that malicious acts during nuclear power plant construction cannot later reasonably result directly or indirectly in radiological sabotage as defined by 10 CFR 73.2.

(2) To achieve this performance objective the written construction security plan must be designed to:

(i) Deter malicious acts to security- and safety-related SSCs during construction; and

(ii) Detect malicious acts to security- and safety-related SSCs after the implementation of lockdown procedures required under paragraph (e)(2) of this section.

(3) To achieve these objectives the written construction security plan must provide:

(i) Implementation of physical security and access authorization measures before the placement of security- and safety-related SSCs in their final installed location within the controlled access construction area; and

(ii) Implementation of physical security measures and access authorization measures for transitioning to the security requirements under § 73.55 of this part,

(d) *Specific Security Requirements*. The licensee's construction site access authorization and physical protection programs must provide measures as specified in this subsection.

(1) Personnel Access: The licensee shall implement the following access security requirements consistent with paragraph (c)(3)(i) of this section:

(i) Reviewing Official(s). (A) The licensee shall designate a reviewing official who shall certify, grant, deny, unfavorably terminate, or maintain an individual's unescorted access based on an evaluation of all relevant information required by this section.

(B) The licensee shall determine that the reviewing official is trustworthy and reliable as defined in § 26.5 of this chapter to perform duties related to granting unescorted access.

(C) The reviewing official shall demonstrate knowledge of all aspects of the Personnel Access Policy and applicable fitness-for-duty program requirements impacting an individual's access authorization.

(D) The reviewing official shall review and evaluate all relevant information collected about an individual to determine whether the individual is trustworthy and reliable.

(ii) Access Requirements

(A) Pre-Access Screening Checks. The licensee shall perform pre-access screening checks of personnel and shall ensure that a trustworthiness and reliability determination of such individuals have been completed before granting access to areas with security and safety-related SSCs.

(1) Initial access. Before granting access to the areas with security and safety-related SSCs, the Reviewing Official shall ensure that the following measures are completed for each individual:

(i) Verify the identity of an individual to ensure that the applicant is the person that he or she has claimed to be through the compilation of information presented by the individual and other developed data. At a minimum, verify the individual's identity by comparing official photo identification (e.g., State-issued driver's license; a United States issued passport; identification card issued by a State or outlying possession of the United States if it contains a photograph; or a comparable foreign government identification card) with the physical characteristics of the individual.

(ii) Complete the required demographic data check. Demographic data shall be electronically submitted to the NRC for review.

(iii) Personnel verified to have unescorted access for an operating plant may be granted access without completing the items listed in paragraphs (i) and (ii) of this section.

(iv) A visitor register shall be maintained. Visitors shall register their name, date, time, purpose of visit, employment affiliation, citizenship, and name of the individual to be visited. Visitors shall be escorted into all areas with security and safety-related SSCs.

(B) Maintaining construction site access.

(1) The licensee shall conduct a semiannual NRC demographic data check for all personnel that had access to areas with security and safety-related SSCs within the last 365 days. Demographic data shall be compiled by January 15 and July 15 of each calendar year and electronically submitted to the NRC within 10 calendar days of these dates.

(2) Construction Worker Observation Policy. The licensee shall establish, implement, and provide all construction personnel a copy of the construction worker observation policy.

(i) Management and oversight personnel that are responsible for observing individuals who are subject to the policy shall report any concerns or violations to the reviewing official.

(ii) Observed aberrant behavior and events shall be reported to construction supervision and security for investigation. Reports and investigations shall be maintained for three years after transitioning to the security requirements under § 73.55 of this part.

(C) Site Badge Program. The licensee shall establish, implement, and provide a badge program. Identification badges with photographs shall be required to gain access to the areas with security- and safety-related SSCs. Badges must be visibly displayed at all times.

(1) Records shall be maintained for three years after transitioning to the security requirements under § 73.55 of this part. Records shall include at a minimum the name, date, and areas allowed access and which contained security- and safety-related SSCs.

(2) Badges shall be issued to visitors who are allowed access to areas with security and safety related SSCs. Visitor badges must clearly identify that the person is a visitor. The licensee shall use only authorized personnel to escort visitors within the controlled access construction area to provide visitor oversight.

(2) Physical security.

(i) Consistent with the requirements presented under paragraph (c)(3)(i) of this section, the licensee shall implement the following physical security requirements for the deterrence of the malicious acts stipulated in the general performance objectives under paragraph (c) of this section:

(A) Onsite surveillance at the nuclear reactor construction site;

(B) Assessment and reporting procedures for incidences of malicious acts during construction;

(C) A barrier to implement the access control requirements in paragraph (d)(2)(ii) of this section; and

(D) A construction site security force composed of personnel to implement measures in accordance with the construction security plan.

(ii) Access control requirements. The licensee shall have physical security measures in place to control access and channel personnel, vehicles, and materials to planned access portals into the controlled access construction area.

(iii) Search program requirements. The licensee shall establish a personnel, vehicle, and material search and inspection process to deter the introduction of unauthorized firearms, explosives, and incendiary devices and will meet the general performance objectives of paragraph (c) of this section.

(e) Transition. Consistent with the requirements presented under paragraph (c)(3)(ii) of this section, Licensees shall discontinue implementation of the requirements under 10 CFR 73.52 after implementation of the security requirements under § 73.55(a)(4) of this part. Before transitioning to the requirements under 10 CFR 73.55, the licensee shall perform the following actions:

(1) Security sweeps of controlled access construction area. The licensee shall, before implementing the requirements under § 73.55 of this part and before lockdown in accordance with paragraph (2) of this section, conduct security sweeps of safety and security-related SSCs to detect, at a minimum, unauthorized firearms, explosives, and incendiary devices and will meet the general performance objectives of paragraph (c) of this section.

(2) Lockdown of the controlled access construction area. The licensee shall ensure that controlled access construction areas are locked down after completion of security sweeps required by paragraph (1) of this section and before the implementation of the requirements under § 73.55 of this part. The lockdown shall assure the level of security achieved after completion of the security sweeps is maintained until the implementation of security requirements under § 73.55 of this part.

(f) Licensee notifications and documentation.

(1) The licensee shall notify the NRC by letter at least 60 days before:

(i) The scheduled onsite in-place setting, installing, or erecting of security- and safety-related systems or components where they will be operated and

(ii) The scheduled implementation of lockdown procedures including the commencement of security sweeps.

(2) The Commission may inspect, copy, retain, and remove all reports, records, and documents required to be kept by Commission regulations, orders, or license conditions, whether the reports, records, and documents are kept by the licensee or a contractor.

(3) The licensee shall maintain all records required to be kept by Commission regulations, orders, or license conditions, until the Commission terminates the license for which the records were developed, and shall maintain superseded portions of these records for at least three years after the transition to § 73.55 of this section, unless otherwise specified by the Commission.

(4) The licensee shall notify NRC of any detected malicious acts. The notification shall be by e-mail to hoo.hoc@nrc.gov, which is the preferred method of notification, by facsimile to the NRC Operations Center at 301-816-5151, or by telephone at 301-816-5100 within 24 hours following the licensee assessment and determination that any person knowingly or willingly:

(i) Destroys, tampers with, or causes physical damage to nuclear plant structures, systems, or components during construction;

(ii) Attempts or succeeds in bringing unauthorized firearms, explosives, incendiary devices or construction site restricted items onto the construction site, or

(iii) Trespasses; alters or criminally damages barriers required under §73.52(d)(2).

(5) Verification that the e-mail or facsimile was received should be made by calling the NRC Operations Center.

(6) Review and audit reports must be maintained and available for inspection, for a period of three years.

9. In § 73.58, paragraphs (a) and (c) are revised to read as follows:

(a) Each nuclear power reactor licensee with a license issued under parts 50 or 52 of this chapter shall comply with the requirements of this section.

* * * * *

(c) The scope of changes to be assessed and managed must include planned and emergent activities (such as, but not limited to, physical modifications, procedural changes, changes to operator actions or security assignments, maintenance activities, construction, system reconfiguration, access modification or restrictions, and changes to the security plan and its implementation).

* * * * *

Dated at Rockville, Maryland, this day of 2010.

For the Nuclear Regulatory Commission.

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