

January 9, 2007

DOCKETED  
USNRC

Attn: Rulemakings and Adjudications Staff  
Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

January 10, 2007 (11:41am)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

RE: RIN 3150-AG63 – Proposed Rules for Power Reactor Security Requirements (71  
F.R. 62663 *et seq.*)

Dear Sir/Madam:

Section 653 of the Energy Policy Act of 2005 (Public Law No: 109-58) amended the Atomic Energy Act of 1954 by inserting a new section 161A after section 161 (42 U.S.C. 2201). Section 161A relates to "Use of Firearms by Security Personnel." Subject to certain conditions, section 161A provides the Commission may authorize the security personnel of any licensee or certificate holder of the Commission (including an employee of a contractor of such a licensee or certificate holder) to transfer, receive, possess, transport, import, and use certain guns, weapons, ammunition, or devices "[n]otwithstanding subsections (a)(4), (a)(5), (b)(2), (b)(4), and (o) of section 922 of title 18, United States Code, section 925(d)(3) of title 18, United States Code, section 5844 of the Internal Revenue Code of 1986, and any law (including regulations) of a State or a political subdivision of a State that prohibits the transfer, receipt, possession, transportation, importation, or use of" such items.

Subsection (o) of section 922 of title 18, United States Code, provides as follows:

- (o) (1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.
- (2) This subsection does not apply with respect to -
  - (A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or
  - (B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

As the new section 161A of the Atomic Energy Act of 1954, as amended, provides for authorized security personnel of any licensee or certificate holder to receive enhanced weapons, unless the NRC licensee or certificate holder is to make or import such weapons for itself or to receive such weapons from another NRC licensee or certificate holder, it seems likely procurement of such weapons will involve receipt from a vendor of such weapons who is not a NRC licensee or certificate holder. Insofar as the NRC, in its proposed rulemaking published at 71 F.R. 62663 *et seq.*, does not explicitly recognize the apparent implicit authority of vendors who are not NRC licensees or certificate holders to transfer such weapons "[n]otwithstanding subsections... (o) of 922 of title 18, United States Code," pursuant to the Energy Policy Act of 2005, this commenter seeks

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explicit recognition of such authority and, further, clarification that any receipt, possession, transport, and/or transfer of a machinegun with the intent of making such weapon available to "any licensee or certificate holder of the Commission (including an employee of a contractor of such licensee or certificate holder)" is "a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof..." consonant with the exception set forth in 18 U.S.C. § 922(o)(2)(A).

Also, section 5844 of the Internal Revenue Code of 1986 provides as follows:

No firearm shall be imported or brought into the United States or any territory under its control or jurisdiction unless the importer establishes, under regulations as may be prescribed by the Secretary, that the firearm to be imported or brought in is -

- (1) being imported or brought in for the use of the United States or any department, independent establishment, or agency thereof or any State or possession or any political subdivision thereof; or
- (2) being imported or brought in for scientific or research purposes; or
- (3) being imported or brought in solely for testing or use as a model by a registered manufacturer or solely for use as a sample by a registered importer or registered dealer;

except that, the Secretary may permit the conditional importation or bringing in of a firearm for examination and testing in connection with classifying the firearm.

As the new section 161A of the Atomic Energy Act of 1954, as amended, states, "[n]otwithstanding...section 5844 of the Internal Revenue Code of 1986..." this commenter further requests clarification that any importation of an enhanced weapon with the intent of making such weapon available for transfer to an authorized NRC licensee or certificate holder occurs "[n]otwithstanding...section 5844 of the Internal Revenue Code of 1986..." under the Commission's authority, as provided at least in part by the Energy Policy Act of 2005, and, further, clarification that any importation of an enhanced weapon with the intent of making such weapon available for transfer to an authorized NRC licensee or certificate holder is "being imported or brought in for the use of the United States or any department, independent establishment, or agency thereof..." consonant with exception (1) set forth in 26 U.S.C. § 5844.

Respectfully Submitted,



Note: Remarks above concerning legislation, code provisions, and regulatory action are based on information obtained from federal government sources, which, upon information and belief, is presumed to be correct, but should not be relied upon without verification, as the accuracy of the federal government sources is beyond this commenter's control, and this commenter does not provide any guarantee or warranty as to information obtained therefrom.

**From:** Carol Gallagher  
**To:** Evangeline Ngbea  
**Date:** 01/10/2007 9:47:41 AM  
**Subject:** Comment letter on Power Reactor Security Requirements

Van,

Attached for docketing is a comment letter on the above noted proposed rule from R. Snyder that I received via the rulemaking website on 1/9/07. His address is:

PO Box 164075  
Austin, TX 78716-4075

Carol

**Mail Envelope Properties** (45A4FC8A.BE0 : 5 : 35764)

**Subject:** Comment letter on Power Reactor Security Requirements  
**Creation Date** 01/10/2007 9:47:38 AM  
**From:** Carol Gallagher  
  
**Created By:** CAG@nrc.gov

**Recipients**

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ESN (Evangeline Ngbea)

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TEXT.htm	563	
1785-0020.pdf	144477	01/10/2007 9:45:16 AM

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