

POLICY ISSUE  
(NOTATION VOTE)

April 17, 2008

SECY-08-0050

FOR: The Commissioners

FROM: Karen D. Cyr  
General Counsel

Luis A. Reyes  
Executive Director for Operations

SUBJECT: FIREARMS GUIDELINES IMPLEMENTING SECTION 161A. OF THE ATOMIC ENERGY ACT OF 1954 AND ASSOCIATED POLICY ISSUES

PURPOSE:

The purpose of this paper is to obtain Commission approval of the firearms guidelines implementing Section 161A. of the Atomic Energy Act of 1954, as amended (AEA), and to receive Commission direction on rulemaking and policy issues regarding the implementation of the firearms guidelines.

SUMMARY:

The staff is providing the enclosed firearms guidelines (Enclosure 1) to the Commission for its review and approval. The firearms guidelines were developed by the U.S. Nuclear Regulatory Commission (NRC) staff and the U.S. Department of Justice (DOJ) staff and will implement the authority of new section 161A. of the AEA, "Use of Firearms by Security Personnel." That statutory provision confers upon the Commission the authority to authorize a licensee's or certificate holder's security personnel to possess and use enhanced weapons (e.g., machine guns) and to allow this statutory provision to preempt State law after the firearms guidelines are published. Following Commission approval to issue the firearms guidelines, the General Counsel will forward the guidelines to the U.S. Attorney General (AG) for his approval and the staff will publish them in the *Federal Register*.

CONTACTS: Philip Brochman, NSIR/DSP  
(301) 415-6557

Nina Bafundo, OGC  
(301) 415-1621

SECY NOTE: THIS SECY PAPER TO BE MADE PUBLICLY AVAILABLE AFTER PUBLICATION OF THE FIREARMS GUIDELINES IN THE FEDERAL REGISTER.

In addition to issuance of the firearms guidelines, the NRC needs to promulgate implementing regulations that will make the provisions of the guidelines legal requirements, and specify in greater detail what licensees and certificate holders must do to obtain the necessary authorizations from the NRC. The staff is recommending that the Commission approve publishing a direct final rule and companion proposed rule to be signed by the Executive Director for Operations (EDO) which is consistent with the final version of the approved firearms guidelines. A summary of the changes required for consistency with the final version of the firearms guidelines is enclosed (Enclosure 2).

The rulemaking pertaining to the firearms guidelines would be placed on a separate track from the power reactor security rulemaking and would consist of a direct final rule and companion proposed rule. The remainder of the power reactor security rule will be contained in a final rule that the staff will provide to the Commission in early July of this year. Additionally, the staff is also recommending that a separate rulemaking (from the direct final rule) be developed to designate additional appropriate classes of facilities and radioactive material for section 161A. authority (Enclosure 3).

The staff has developed a summary of projected timelines and tasks to implement section 161A. authority (Enclosure 4). The staff has also developed a draft letter to the Governors of States, Commonwealths, and Territories, and the Mayor of the District of Columbia informing them of the issuance of the firearms guidelines (Enclosure 5).

#### BACKGROUND:

##### *Firearms Guidelines*

On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (EPAct), Pub. L. 109-58, (119 Stat 811). Section 653 of the EPAct amended the AEA by adding new section 161A. (42 U.S.C. § 2201a). Pursuant to the provisions of subsection d, section 161A. takes effect when the Commission issues firearms guidelines, with the approval of the AG. The DOJ has advised the NRC that the AG's responsibility cannot be delegated to a lower-level official.

##### *Direct Final Rule and Companion Proposed Rule*

While the firearms guidelines were under development, the NRC staff also developed proposed implementing regulations. These implementing regulations were based upon the September 2006 version of the firearms guidelines and were included as a small part of the much larger proposed power reactor security rule that was provided to the Commission in SECY-06-0126.<sup>1+</sup><sup>2</sup> However, the final version of the firearms guidelines contain a number of changes which are significant enough to warrant additional notice and opportunity for public comment in a proposed

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<sup>1</sup> SECY-06-0126, "Proposed Rulemaking - Power Reactor Security Requirements (RIN 3150-AG63)," Agencywide Document Administration and Management System (ADAMS) No. ML00830634, dated May 31, 2006. Approved by SRM-SECY-06-0126, ADAMS No. ML061840301, dated June 30, 2006. Proposed rule published for comment in the *Federal Register* on October 26, 2006, (71 FR 62663).

<sup>2</sup> To implement the firearms guidelines the proposed rule would have added new sections 10 CFR 73.18 and 73.19 to Part 73 and made conforming changes to existing sections 10 CFR 73.2, 73.8, 73.71, and Appendix G to Part 73.

rule. The differences between the original proposed rule and the final version of the firearms guidelines are described in Enclosure 2.

*Application of the Firearms Guidelines and Enhanced Weapons Authority to Additional Classes of Facilities, Radioactive Material, and Other Property*

Section 161A. authorizes the Commission to designate classes of facilities, radioactive material, or other property for which it considers the exercise of the authority provided by this section to be appropriate. The Commission may accomplish this through the promulgation of regulations or through the issuance of orders. The October 2006 proposed power reactor security rule would have applied section 161A. authority to only two classes of NRC-licensed facilities (i.e., power reactor facilities and Category I facilities possessing formula quantities of strategic special nuclear material (SSNM)). The NRC had indicated that additional classes of facilities and radioactive material would be considered in a future rulemaking.

**DISCUSSION:**

*Firearms Guidelines*

Section 161A. provides new statutory authority to the Commission to enhance security at designated facilities of NRC licensees and certificate holders, and to enhance security with respect to designated radioactive material or other property owned or possessed by an NRC licensee or certificate holder, or being transported to or from a facility owned or operated by a licensee or certificate holder. This authority is divided into two components. First, the section permits the Commission to authorize licensees and certificate holders to obtain enhanced weapons that they were not previously permitted to own or possess under previous Commission authority, e.g., machineguns. This is referred to hereinafter as “enhanced weapons authority.”

Second, the section permits the Commission to authorize security personnel of licensees and certificate holders to possess such weapons, devices, ammunition, or other firearms, notwithstanding State, local, and certain Federal firearms laws (including regulations) that prohibit the transfer, receipt, possession, transport, import, or use of certain weapons, devices, and ammunition. This is referred to hereinafter as “preemption authority.” The staff notes that while the language of section 161A. could be construed to mean that Congress already has preempted State, local, and certain Federal firearms laws, the DOJ has taken the position that licensees and certificate holders must apply to the NRC and receive approval for this authority before State, local, or Federal law is preempted. DOJ’s interpretation is incorporated into the firearms guidelines.

Prior to the enactment of section 161A., with limited exceptions, only Federal, State, or local law-enforcement agencies could lawfully possess “machineguns.” Section 161A. authority, however, allows security personnel of Commission licensees and certificate holders, who obtain the necessary authorization from the NRC, to lawfully possess machineguns that they previously were not authorized to possess. Commission licensees and certificate holders who receive such authorization from the NRC are also required to comply with applicable Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) requirements. However, section 161A. does not authorize licensees and certificate holders to obtain or possess destructive devices (e.g., explosive devices such as grenades or weapons with a bore diameter greater than 12.7 mm (0.5 inches or 50-caliber)).

Following enactment of the EPAct, NRC staff (Office of the General Counsel, Office of Nuclear Security and Incident Response, Office of Administration, and Office of Information Services) began discussions with DOJ staff (Office of Legal Counsel, Office of Legal Policy, Criminal Division, Federal Bureau of Investigation (FBI), and ATF) to develop the firearms guidelines in Enclosure 1. Development of the firearms guidelines (and the implementing regulations in 10 CFR Part 73) raised many complex and novel policy, technical, and legal issues for NRC and DOJ staffs. In addition to policy discussions, NRC staff also met with operational staff from the FBI and ATF to discuss implementation issues (e.g., the processes for accomplishing the firearms background checks and for transferring enhanced weapons from ATF federal firearms license (FFL) holders to NRC licensees and certificate holders).

NRC, DOJ, FBI, and ATF staffs developed the enclosed firearms guidelines with several specific features, including:

- Providing for authority under section 161A. for both enhanced weapons authority and preemption authority, or for preemption authority alone.
- Requiring licensees and certificate holders who apply to the NRC for enhanced weapons authority to also apply to the NRC for preemption authority. Such applications may be concurrent.
- Requiring licensees and certificate holders to apply for section 161A. authority in order to obtain the section 161A. benefits. However, applying for such authority is voluntary. Absent such an application, the proposed regulations would not apply to a licensee or certificate holder (including those licensees who may have obtained enhanced weapons under some other authority).
- Requiring licensees and certificate holders who apply to the NRC for enhanced weapons authority to receive NRC prior review and approval of revised security plans and safety assessment describing the specific enhanced weapons the licensee or certificate holder intends to deploy. Such prior review and approval must occur before the new authority is effective and any enhanced weapons are transferred to the licensee or certificate holder.
- Requiring security personnel of licensees and certificate holders who apply for this authority to complete a satisfactory firearms background check for such personnel, before they have access to any weapons. Periodic firearms background checks would also be required.
- Providing current licensees and certificate holders who apply for this authority with a transition period to complete the firearms background checks for existing security personnel. The transition period would provide for a case-by-case approach to avoid staffing and fatigue impacts on security forces while the firearms background checks are being completed.
- Requiring licensees and certificate holders to keep records relating to the receipt, transfer, and transportation of enhanced weapons.
- Requiring licensees and certificate holders to complete periodic inventories of enhanced weapons and to report any stolen or lost enhanced weapons to the NRC and to local law enforcement authorities. Licensees and certificate holders possessing enhanced weapons have an independent obligation under ATF's regulations to immediately report any stolen or lost enhanced weapons to ATF.

The benefits that would accrue to a licensee's or certificate holder's obtaining enhanced weapons are largely self evident. They would increase their defensive capabilities (firepower). The benefits that would accrue to a licensee or certificate holder obtaining preemption authority are primarily related to protection from prosecution from violation of State, local, and certain Federal firearms laws (e.g., obviating a State's restrictions on semi-automatic assault weapons or large capacity ammunition magazines). Consequently, these benefits may depend more on the physical location of the licensee or certificate holder, rather than on their specific security program. Since licensees and certificate holders obtaining section 161A. authority is voluntary, each licensee or certificate holder will independently determine if this greater defensive capability or regulatory flexibility is to their advantage.

The staff recommends that the Commission approve the firearms guidelines and *Federal Register* notice contained in Enclosure 1. After the Commission approves the firearms guidelines and *Federal Register* notice, the General Counsel will forward the firearms guidelines and the notice to the AG for his approval. After the AG has approved the firearms guidelines and *Federal Register* notice, the staff will publish the firearms guidelines in the *Federal Register*. Section 161A. of the AEA will then take effect. At the request of the DOJ, the firearms guidelines have not been shared with any external stakeholders.

Because of the implications of the statute's preemption language, the staff has developed the enclosed letter (Enclosure 5) to the Governors of States, Commonwealths, and Territories and the Mayor of the District of Columbia to inform them of the expected publication of the firearms guidelines. The staff recommends that the Chairman sign these letters on behalf of the Commission. These letters would be signed and issued subsequent to the AG's approval of the firearms guidelines, but before the guidelines are published in the *Federal Register*. A copy of the *Federal Register* notice would be enclosed with each letter.

#### *Direct Final Rule and Companion Proposed Rule*

With respect to implementing the firearms guidelines, the proposed power reactor security rule addressed a number of issues, including (1) identifying two specific classes of licensed facilities who are eligible to apply for the new authority, (2) proposing a process for these licensees to apply to the NRC for both enhanced weapons authority and preemption authority or for preemption authority alone, (3) proposing a process for firearms background checks for licensee's security personnel who have access to covered weapons (i.e., any firearms), (4) proposing controls on the removal and transfer of enhanced weapons from a licensee's facility, and (5) proposing requirements to notify the NRC upon the theft or loss of enhanced weapons. The staff notes that while the firearms guidelines apply to both licensees and certificate holders, the scope of the October 2006 proposed rule and this direct final rule and companion proposed rule will only apply to power reactor and Category I SSNM facilities. Application of this authority to facilities owned or operated by certificate holders is addressed below.

Subsequent to the publication of the October 2006 proposed power reactor security rule, the DOJ required multiple changes to the firearms guidelines. NRC staff agreed to these changes and developed language to provide the Commission with flexibility in effectively implementing the firearms guidelines. The staff has identified 11 substantive technical differences between the draft and the final versions of the firearms guidelines that would impact the final rule's implementing text. During development of the proposed regulations to implement the firearms guidelines, the staff recognized that the language of the final version of the firearms guidelines

might differ significantly from the September 2006 version of the firearms guidelines used to develop the proposed rule. Therefore, changes might be required in the final rulemaking to ensure that the final rule text is consistent with the final version of the firearms guidelines. The NRC had noted this possibility in the proposed rule *Federal Register* notice (at 71 FR 62666) and had indicated that any changes necessary to reconcile the final version of the firearms guidelines and the final rule might be significant enough to warrant the issuance of a supplemental proposed rule to resolve these differences, rather than addressing these changes in a final rule. The final rule must be consistent with the approved firearms guidelines. The staff has also identified two administrative changes that would improve regulatory clarity in the final rule's implementing text. A discussion of the technical differences, the administrative issues, and the staff's proposed solutions are provided in Enclosure 2.

In light of the number and nature of the changes in the final version of the firearms guidelines, the staff's view is that additional opportunity for public comment on the implementing regulations is appropriate. Some of these changes might not have been reasonably foreseen by the public. Therefore, the public might not have been reasonably expected to comment on some of the issues raised by the revised approaches now recommended by the staff in Enclosure 2. Accordingly, the staff recommends that a direct final rule and companion proposed rule be published to provide stakeholders with public notice and opportunity to comment on these new and revised proposed requirements. The use of a direct final rule and companion proposed rule, rather than issuing a supplemental proposed rule, would both expeditiously implement the firearms guidelines and allow further opportunity for stakeholder comment on these changed provisions. The direct final rule and companion proposed rule would be consistent with staff's proposed solutions resolving the technical differences and administrative issues listed in Enclosure 2. Additionally, the staff would also address the relevant comments received on the firearms guidelines and event notification provisions in the October 2006 proposed rule.

Consistent with the general practice for direct final rules, the direct final rule would state that if the NRC did not receive significant adverse comments on the companion proposed rule, the rule would become effective after the NRC had received the necessary approval from the Office of Management and Budget (OMB) on the information collection requirements associated with the rule and proposed NRC Form 754,<sup>3</sup> but no earlier than 90 days after publication of the direct final rule. The companion proposed rule would provide for the standard 30-day public comment period.<sup>4</sup> The staff would subsequently publish a *Federal Register* notice confirming the effective date of the rule if no significant adverse comments were received and OMB approval has been obtained. If significant adverse comments are received on the companion proposed rule (which

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<sup>3</sup> NRC Form 754, "Armed Security Personnel Background Check."

<sup>4</sup> The NRC uses the "direct final rule procedure" to issue rules that it does not expect to be controversial. At the same time the direct final rule is published in the *Federal Register* the NRC publishes an identical companion proposed rule. If the NRC receives no significant adverse comments on the companion proposed rule, the direct final rule goes into effect on the date specified in the *Federal Register* notice. If the NRC does receive a significant adverse comment, then the NRC must, before the effective date of the direct final rule, publish a *Federal Register* notice that withdraws the direct final rule. These significant adverse comments would then be considered and addressed as comments on the proposed rule and the agency then must issue a final rule before the provisions become effective. Here, the NRC did not receive any significant adverse comments on the firearms guidelines provisions in the original proposed rule. However, a number of adverse and clarification comments were received on the original proposed rule and they will be addressed in the direct final rule and companion proposed rule. Therefore, the staff does not expect to receive significant adverse comments on the direct final rule. Thus, the staff expects a clear benefit to proceeding with this approach, especially since it is likely the fastest means to issuing final regulations implementing the firearms guidelines.

is published at the same time), the staff would publish a notice withdrawing the direct final rule. The staff would then prepare a final rule for the Commission's review that would address the public comments on the companion proposed rule. The staff would submit such a final rule to the Commission within 150 days of the publication of the companion proposed rule.

The direct final rule and companion proposed rule would substantively revise the proposed 10 CFR 73.18 and 73.19 and would include conforming changes to the proposed 10 CFR 73.2, 73.8, and 73.71. No change would be required to the event notification requirements of Appendix G, "Reportable Safeguards Events," to Part 73. However, Appendix G would be included in the direct final rule and companion proposed rule, because the changes required for Appendix G and 10 CFR 73.71 are intertwined and must be made in the same final rule. The staff would also prepare a final regulatory analysis and environmental assessment of the direct final rule and companion proposed rule.

The staff is recommending that the Commission delegate to the EDO the authority to sign the direct final rule and companion proposed rule to expedite their issuance. The staff would also submit to OMB the necessary documentation to receive approval of the information collection burden for the rule and proposed NRC Form 754. The staff would publish the direct final rule and companion proposed rule as soon as possible following the publication of the firearms guidelines in the *Federal Register*. As recently directed by the Commission in SRM-SECY-07-0134,<sup>5</sup> the staff's normal goal would be to issue the draft regulatory guidance associated with the implementing regulations (DG-5020)<sup>6</sup> in conjunction with the publication of the direct final rule and companion proposed rule. However, because of the abbreviated comment period and prior opportunity to comment on the original proposed rule, the staff would not delay the publication of the direct final rule and companion proposed rule to simultaneously publish this draft regulatory guide, but would publish the draft guidance as soon as possible.

#### *Bifurcation of Power Reactor Security and Firearms Guidelines Final Rules*

The staff's current goal is to complete a final power reactor security rule and deliver it to the Commission in early July 2008. However, the amount of time that would be necessary to publish a revised proposed rule on the firearms guidelines, receive any comments, and incorporate them into the final power reactor security rule—all subsequent to the publication of the firearms guidelines—would not meet the staff's goal of early July 2008. Therefore, the staff recommends bifurcating the final rule containing provisions for power reactor security and firearms guidelines into two separate rules (i.e., one direct final rule addressing the implementation of the firearms guidelines and event notification requirements, and the other final rule addressing all of the remaining provisions of the October 2006 proposed power reactor security rule).

#### *Potential Issuance of Orders to Expedite Implementation of the Firearms Guidelines*

In crafting the firearms guidelines, the staff included flexibility for the agency to permit the application of section 161A. authority by designating approved classes of facilities or radioactive material through the promulgation of regulations or by designating individual licensees through

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<sup>5</sup> Staff Requirements Memorandum SRM-SECY-07-0134, "Evaluation of the Overall Effectiveness of the Rulemaking Process Improvement Implementation Plan," ADAMS No. ML072980427, dated October 25, 2007.

<sup>6</sup> DG-5020, "Applying for Enhanced Weapons Authority and Accomplishing Firearms Background Checks."

the issuance of orders. The staff is cognizant that by proceeding with issuance of a direct final rule and companion proposed rule, there is a possibility that before the direct final rule takes effect or before a final rule is published and takes effect (assuming a significant adverse comment has been received and the direct final rule is withdrawn), some licensees, on the basis of the publication of the firearms guidelines and the provisions of the companion proposed rule may have already applied to the NRC for section 161A. authority. In such cases, in the absence of a final rule and the staff required reviews being completed, the staff would be prepared to issue confirmatory orders, with the Commission's review and approval, which would permit licensees who have applied to proceed with procuring the enhanced weaponry and commencing security personnel training. The staff has developed a potential timeline for licensee implementation of the firearms guidelines via the direct final rulemaking process. Additionally, the staff has identified the steps that would be necessary for licensees to be issued confirmatory orders. This is discussed in Enclosure 4.

*Application of the Firearms Guidelines to Additional Classes of Facilities, Radioactive Material, and Other Property*

The October 2006 proposed power reactor security rule would only authorize power reactor and Category I SSNM classes of licensees to obtain section 161A. authority. However, the NRC had indicated in the October 2006 proposed rule that additional classes of licensed facilities and radioactive material would be appropriate candidates for section 161A. authority in a future rulemaking. The staff recommended this approach due to restrictions on the scope of the original proposed rule and the delivery schedule.

Enclosure 3 provides the Commission with screening criteria and recommendations for applying section 161A. authority to additional classes of NRC-regulated facilities and classes of radioactive material and other property being transported to or from such facilities. The staff has developed five screening criteria and applied these criteria against the spectrum of NRC-regulated facilities and radioactive material and identified whether enhanced weapons authority and preemption authority, preemption authority alone, or neither authority is appropriate. The staff has taken this approach to consolidate the Commission's consideration of the policy issues involved here into a single paper, because consideration for these various issues overlaps.

The staff is recommending that the Commission approve the screening criteria and the application of section 161A. authority to the additional classes of facilities and radioactive material described in Enclosure 3. The staff is not recommending applying section 161A. authority to any "other property." In developing Enclosure 3, the staff has analyzed the potential classes of licensed facilities that could potentially be regulated by the NRC under the AEA, irrespective of whether such facilities currently exist. Furthermore, the staff notes that because of the potential for changes in the perceived threat, the staff may recommend the Commission revisit the recommendations of Enclosure 3, as warranted.

Because stakeholders have not had an opportunity to view or comment on the staff's proposed criteria, a rulemaking implementing these criteria would have an increased potential for adverse comment. Therefore, the staff is recommending that the incorporation of these additional classes of facilities and radioactive material into 10 CFR 73.18 be accomplished in a rulemaking separate from the direct final rule and companion proposed rule discussed above. Given the level of information provided in Enclosure 3, the staff would not develop a rulemaking plan. Given the lower priority for implementing these provisions for the additional classes of facilities

and radioactive material and the currently constrained rulemaking resources, the staff would integrate this rulemaking into the staff's Fiscal Year (FY) 2008 rulemaking common prioritization list as a medium priority rulemaking with initiation of the rulemaking in FY 2010 or later.

#### *Memoranda of Understanding*

The staff's perspective is that implementation of the firearms guidelines, supporting regulations, and the NRC inspection program will require increased coordination with and support from both the FBI and ATF. Accordingly, the staff has begun initial discussions with FBI and ATF staffs exploring the development of a Memorandum of Understanding (MOU) with each of these agencies. The staff's goal is to develop and publish these two MOUs subsequent to the promulgation of a final rule. The staff would provide these two MOUs to the Commission for its information prior to their publication. These MOUs would focus on the following issues:

- The NRC/FBI MOU would address issues associated with implementation of the firearms background checks (e.g., timeliness goals for completing checks and appeals, status reports and performance metrics, and development of an information brochure on the appeal rights of security personnel to the FBI of an adverse firearms background check, etc.).
- The NRC/ATF MOU would address issues associated with ATF inspector access to NRC-regulated facilities that obtain enhanced weapons. Under the National Firearms Act (NFA), ATF inspectors have access to review the registration records for weapons registered under the NFA, e.g., machineguns (see 26 U.S.C. § 5841(e)).

The MOU with ATF will facilitate appropriate ATF inspector access to NRC-regulated facilities and will provide for the timely communication of inspection and enforcement information between the NRC and ATF.

#### *Technical Workshop*

To facilitate stakeholder understanding of the new regulations implementing the firearms guidelines, the staff intends to conduct a technical workshop subsequent to the close of the comment period on the companion proposed rule. The staff has discussed the concept of conducting such a workshop (on regulatory and licensing issues) with FBI and ATF staffs and the U.S. Army Corps of Engineers (USACE) staff (on the weapons safety assessment process and associated guidance documents). These agencies were supportive of the staff's concept. The workshop would be open to public attendance, except for discussions of Official-Use-Only information (e.g., the weapons safety assessment guidance documents).

#### *Delayed Release of this Commission Paper*

Subsequent to the publication of the approved firearms guidelines in the *Federal Register*, the staff is recommending that the Commission make this paper and its enclosures publicly available, since the firearms guidelines have not yet been approved by the AG.

COMMITMENTS:

As discussed in this paper, the staff is identifying the following commitments:

1. The General Counsel will forward the firearms guidelines to the AG upon the Commission's direction.
2. Publish the firearms guidelines in the *Federal Register* following the AG's approval.
3. Develop a direct final rule with a companion proposed rule for the EDO's signature addressing the solutions described in Enclosure 2. The companion proposed rule would provide for a 30-day comment period. The direct final rule would take effect no sooner than 90 days from the date of publication and would also be contingent upon receipt of OMB approval of the information collection requirements associated with the rulemaking and proposed NRC Form 754. The direct final rule and companion proposed rule would be published as soon as possible following the publication of the firearms guidelines in the *Federal Register*, consistent with the staff's timelines contained in Enclosure 4.
4. If significant adverse comments are received on the direct final rule and companion proposed rule, provide a draft final rule to the Commission for its approval within 150 days of the publication of the companion proposed rule.
5. Issue draft regulatory guidance on the firearms guidelines (DG 5020) and final regulatory guidance on event notifications (DG 5019) subsequent to the publication of the direct final rule and companion proposed rule.
6. Develop two MOUs (an MOU with the FBI and with ATF) to support implementation of the firearms guidelines.
7. Conduct a technical workshop with support from FBI, ATF, and USACE for stakeholders on the implementation of the firearms guidelines. The technical workshop would be held subsequent to the close of the comment period on the companion proposed rule.
8. Develop a separate rulemaking incorporating the additional classes of facilities and radioactive material specified in Enclosure 3. Provide the proposed rule to the Commission on a schedule developed in the staff's rulemaking common prioritization list. No rulemaking plan would be provided.

RESOURCES:

The staff completed development of the firearms guidelines in FY 2007; therefore, assuming Commission and AG approval, no additional resources are required to develop the firearms guidelines. The resources required to develop and publish a direct final rule and companion proposed rule, evaluate any comments received on the companion proposed rule, and develop a final rule (if significant adverse comments are received) in FY 2008 are 0.4 FTE (NRR - 0.1 FTE, NSIR - 0.2 FTE, and OGC - 0.1 FTE) and in FY 2009 are 0.4 FTE (NRR - 0.2 FTE, NSIR - 0.1 FTE, and OGC - 0.1 FTE). These resources are contained within existing rulemaking budgets. The NMSS resources supporting this rulemaking are less than 0.1 FTE and therefore are not specifically budgeted. Resources required to develop the proposed and final rules adding the additional classes of facilities and radioactive material described in Enclosure 3 in FY 2010 or later years will be specified in the staff's rulemaking common prioritization list for FY 2009 and 2010 which is under development.

The additional resources required by the Office of Administration (ADM) to administer and implement the firearms background check program in FY 2008 are 0.5 FTE (the first year of implementation) and in FY 2009 and each subsequent year are 0.2 FTE. However, since this is

a cost-reimbursable program there is no impact on budgeted FTE for ADM. The resources required to develop the two MOUs in FY 2008 are 0.2 FTE (NSIR – 0.1 FTE and OGC – 0.1 FTE). These resources are contained within existing regulatory improvement and legal support budgets, respectively.

### RECOMMENDATIONS:

That the Commission:

1. Approve issuing the firearms guidelines and notice in Enclosure 1, after obtaining the AG's approval, and publishing them in the *Federal Register*.
2. Approve separating the firearms guidelines and power reactor security regulations into two separate rulemakings.
3. Delegate to the EDO the authority to publish a direct final rule and companion proposed rule implementing the firearms guidelines and the solutions specified in Enclosure 2. The rules will be signed by the EDO and provide for a 30 day comment period. If no significant adverse comments are received, the direct final rule would take effect no sooner than 90 days from the date of publication, contingent upon receipt of OMB approval on the information collection burden. If significant adverse comments are received, a draft final rule will be provided to the Commission for its review and approval within 150 days of the publication of the companion proposed rule.
4. Approve issuing the letters in Enclosure 5 prior to the publication of the approved firearms guidelines in the *Federal Register*.
5. Authorize the staff to develop a separate rulemaking expanding section 161A. authority to the additional classes of facilities and radioactive material specified in Enclosure 3.
6. Approve SECY publicly releasing this paper and its enclosures following the publication of the approved firearms guidelines in the *Federal Register*.

Note:

- a. Office of Congressional Affairs will inform the appropriate Congressional committees of the issuance of the approved firearms guidelines and of the issuance of the direct final rule and companion proposed rule.
- b. Office of Management and Budget (OMB) review is required of the direct final rule and proposed NRC Form 754. OMB approval must be obtained before the direct final rule takes effect.
- c. Office of Public Affairs will issue a press release in conjunction with the publication of the approved firearms guidelines and with the publication of the direct final rule and companion proposed rule.
- d. It is staff's belief that the Commission has the option to provide staff direction on this topic in two or more partial SRMs. This would allow the staff to develop the direct final rule and companion proposed rule to occur as expeditiously as possible and to effectively use the parallel processing time required for the AG's review of the firearms guidelines on recommendations 1 through 4 and also allow the Commission's review of recommendations 5 and 6 and the issuance of a final SRM to occur in parallel with the AG's review of the firearms guidelines.

The Commissioners

-12-

COORDINATION:

The Office of the Chief Financial Officer has reviewed this Commission Paper for resource implications and has no objection.

*/RA/*

Karen D. Cyr  
General Counsel

*/RA Martin J. Virgilio for/*

Luis A. Reyes  
Executive Director  
for Operations

Enclosures:

1. *Federal Register* Notice and Firearms Guidelines
2. Analysis of Firearms Guideline Changes and Impacts on the Proposed Rule
3. Additional Classes of Facilities and Radioactive Material
4. Implementation Timelines and Tasks
5. Letter to Governors

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**ADAMS Accession No.: ML072920478**

OFFICE	MWISB	DDMS	DDRSR	PMDA	QTE	OIS/IRSD
NAME	PBrochman	MShaffer	SMorris	CSchum	CHsu	JLinehan (AH)
DATE	11/6/07	11/25/07	12/28/07	12/03/07	11/28/07	12/12/07
OFFICE	ADM	OE	FSME	NRR	NRO	NMSS
NAME	THagan	SMagruder	GPangburn	BBoger	JLyons	ELeeds
DATE	12/20/07	12/13/07	12/17/07	12/18/07	12/18/07	12/19/07
OFFICE	OGC	CFO	NSIR/DSP	NSIR	OGC	EDO
NAME	TRothschild	LBarnett	PHolahan	RZimmerman	KCyr	LReyes
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