

September 4, 2009

The Honorable Robert Riley
Governor of the State of Alabama
Montgomery, Alabama 36130

Dear Governor Riley:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am writing to inform you about actions the Commission is planning to take. The Commission is in the process of issuing firearms guidelines implementing the provisions of new section 161A. of the Atomic Energy Act of 1954 (AEA). Section 161A. takes effect with the issuance of the firearms guidelines in the *Federal Register*. I am enclosing a copy of the *Federal Register* notice for your information. On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (EPAAct). Section 653 of the EPAAct amended the AEA by adding new section 161A. (42 U.S.C. § 2201a). Over the last four years, the NRC staff and staff from the U.S. Department of Justice (DOJ), including the Federal Bureau of Investigation (FBI) and Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), have developed these 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 split 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, such as machine guns. Second, the section permits the Commission to authorize security personnel of licensees and certificate holders to possess such weapons, devices, ammunition, or other firearms while on duty, 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. In implementing this new authority, the Commission is required to designate appropriate classes of facilities, for example nuclear power reactors or facilities possessing strategic special nuclear material, or to designate appropriate classes of radioactive material being transported to or from an NRC-regulated facility, such as spent nuclear fuel.

Prior to the enactment of section 161A., with limited exceptions, only Federal, State or local law-enforcement agencies could lawfully possess machine guns and other weapons restricted under the National Firearms Act. Section 161A. authority, however, allows security personnel of Commission licensees and certificate holders, who obtain the necessary authorization from the NRC, to possess machine guns and certain other weapons lawfully. NRC licensees and certificate holders who receive such authorization from the NRC are also required to comply with applicable ATF requirements. However, section 161A. does not authorize licensees and certificate holders to obtain or possess destructive devices as defined under ATF's regulations, including explosive devices such as grenades or weapons with a bore

diameter greater than 12.7-mm (0.5-inches or 50-caliber). Furthermore, the security personnel of such licensees and certificate holders whose official duties require access to either standard or enhanced weapons will be subject to a fingerprint-based background check by the U.S. Attorney General and a firearms background check against the FBI's National Instant Background Check System (NICS). Affected NRC licensees and certificate holders will submit fingerprint impressions and personal identification information for their armed security personnel to the NRC. The NRC will forward this information to the FBI, where it will be checked against the fingerprint databases and the NICS databases.

The Commission is issuing the enclosed firearms guidelines, with the approval of the U.S. Attorney General. Separately, the NRC is developing implementing regulations for this new authority. The NRC published a proposed rule in the *Federal Register* on October 26, 2006, (71 FR 62663) (see new proposed regulations in Title 10 of the Code of Federal Regulations, sections 73.18, "Firearms background checks for armed security personnel," and 73.19, "Authorization for preemption of firearms laws and use of enhanced weapons," at pages 71 FR 62847 thru 62850). The Web site of the Government Printing Office allows access to the *Federal Register* at <http://www.gpoaccess.gov/fr/>. However, due to changes in the firearms guidelines that the DOJ requested, the NRC intends to publish a revised proposed rule in the *Federal Register* that is consistent with the issued firearms guidelines. The NRC expects to publish this revised proposed rule after the publication of the enclosed firearms guidelines.

This letter is not a notification that an NRC licensee or certificate holder in your state intends to apply for this new authority. Application for this authority by licensees and certificate holders is voluntary and would be made in accordance with these new regulations, after the NRC publishes a final rule.

If you have any questions on this matter, please contact Mr. Mark Shaffer, Director of the NRC's Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs at (301) 415-7278 or myself.

Sincerely,

/ RA /

Gregory B. Jaczko

Enclosure: *Federal Register* Notice

Identical letter sent to:

The Honorable Robert Riley
Governor of Alabama
Montgomery, Alabama 36130

The Honorable Sean Parnell
Governor of Alaska
Juneau, Alaska 99811

The Honorable Mike Beebe
Governor of Arkansas
Little Rock, Arkansas 72201

The Honorable Togiola Tulafono
Governor of American Samoa
Pago Pago, American Samoa 96799

The Honorable Jan Brewer
Governor of Arizona
Phoenix, Arizona 85007

The Honorable Arnold Schwarzenegger
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The Honorable M. Jodi Rell
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The Honorable Charlie Crist
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The Honorable Mark Parkinson
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The Honorable Steve Beshear
Governor of Kentucky
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The Honorable Bobby Jindal
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The Honorable Deval Patrick
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The Honorable Martin O'Malley
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The Honorable Jay Nixon
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