



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Assistant Director

Washington, DC 20226

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Trip Rothschild, Esq.
Assistant General Counsel for
Legal Counsel, Legislation, & Special Projects
United States Nuclear Regulatory Commission
11555 Rockville Pike, Mail Stop O-15D21
Rockville, MD 20852

Dear Mr. Rothschild:

As you are aware, the Energy Policy Act of 2005 amended the Atomic Energy Act of 1954 to add section 161A., Use of Firearms by Security Personnel. This new section becomes effective on the date that the Nuclear Regulatory Commission ("NRC") issues implementing guidelines with the approval of the Attorney General. You recently inquired of the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") whether Federal requirements applicable to the transfer of enhanced weapons ("machineguns"), as defined in the forthcoming NRC firearms guidelines, apply to routine issuances and returns between NRC licensees or certificate holders ("licensees") and their employees or security contractors at NRC-licensed facilities.

You explained that licensees provide security for the site of their NRC-licensed facilities with personnel comprised of their own employees or employees of private contractors. Licensees develop a security plan with specific procedures for such facilities, and oversee the plan's implementation. Typically, security personnel serve on one of three daily shifts. Machineguns are checked into and out of a secured armory before and after each shift. Machineguns may also be fixed to a specific location within the facility. You also stated that security personnel could periodically take the machineguns off-site for training purposes or when transporting spent fuel or other radioactive materials. Currently, there is no NRC requirement that licensee personnel accompany contractor-supplied security personnel during these training activities and shipments. Regardless, pursuant to NRC firearms guidelines, each issuance and return of a machinegun would be entered in firearm inventory records. NRC regulations that will be promulgated after the NRC firearms guidelines are issued will require firearm inventory records to be maintained and subject to accountability inspections conducted by licensees. Accountability inspections require verification of each firearm's physical presence, and prompt notification to ATF, NRC, and local authorities is required in the event of missing firearms. At all times, licensees would be fully responsible for the administration and security of their machineguns.

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As you know, section 161A. expressly exempts licensees and their security contractors from certain Federal and all State prohibitions on the transfer, receipt, possession, transportation, importation, or use of machineguns. However, licensees and their security personnel remain subject to many of the requirements under the National Firearms Act ("NFA"). More specifically, prior to transferring a machinegun, the NFA requires all transferors to submit a transfer and registration application, pay the applicable tax, and receive approval from the Attorney General. 26 U.S.C. § 5812. Machineguns must be properly registered in the National Firearms Registration and Transfer Record ("NFRTR") unless they are under the possession or control of the United States Government. 26 U.S.C. § 5841. It is unlawful for any non-government person to receive or possess a machinegun that is not registered in the NFRTR. 26 U.S.C. § 5861. These requirements apply whenever a registrant transfers a machinegun to another person.

Security personnel, whether employees or private contractors, may receive, possess, transport, import, and use machineguns in compliance with section 161A. and the applicable provisions of the NRC firearms guidelines, the Gun Control Act, and the NFA. When employees of the licensee are issued machineguns registered to the licensee, in furtherance of their official duties, no NFA transfer occurs because the licensee retains actual possession of the machineguns. Likewise, no NFA transfer results when a licensee temporarily issues machineguns to its contractors, in furtherance of their official duties, so long as the licensee retains constructive (*i.e.*, dominion and control) possession of the machineguns. Based on the facts you provided, the licensee is fully responsible for its security personnel, firearms inventory, and movement of its machineguns. Thus, the licensee has dominion and control over its machineguns at the site of its NRC-licensed facility. Since the licensee maintains constructive possession of the machineguns, no NFA transfer results.

However, an NFA transfer may occur when employees of private security contractors take machineguns registered to licensees off premises for training activities or during the shipment of spent fuel or other radioactive material. Because the NFA requires approval prior to the transfer of machineguns, and prohibits unregistered persons from possessing machineguns, the licensee must maintain at least constructive possession over its registered machineguns. Based on the facts you provided, licensees' employees do not always accompany their security contractors during off-site training activities and shipments. In such instances, a licensee relinquishes dominion and control of the machinegun when it allows the contractor to leave its secure site without supervision. Under these circumstances, the licensee would violate the NFA by transferring its registered machinegun to the contractor without ATF's approval or payment of transfer tax. Likewise, the contractor would violate the NFA by receiving and possessing a machinegun without proper registration. Thus, licensees may not allow their security contractors to remove machineguns from a facility site unless accompanied by the licensee's security personnel who are authorized to direct the contractor in accordance with established training or transportation security guidelines.

Based on the above, licensees may temporarily assign machineguns to their employees or contractors, in furtherance of their official duties, at the site of NRC-licensed facilities for

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security purposes. However, private contractors may not take the machineguns off site without being accompanied by an authorized employee of the licensee.

Please be advised that this opinion is based on the information you provided regarding the specific facts and circumstances you disclosed above. It is also based on the applicable law in existence at the time this opinion is issued. If there are additional facts or circumstances, or subsequent changes in the law pertaining to any of the issues discussed above, the opinions expressed herein may be altered or withdrawn.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'C. Carroll', with a stylized flourish at the end.

Carson W. Carroll
Assistant Director
Enforcement Programs and Services