

February 27, 2012

MEMORANDUM TO: Barry C. Westreich, Acting Director
Division of Security Policy
Office of Nuclear Security and Incident Response

FROM: Russell Felts, Chief **/RA/**
Reactor Security Licensing Branch
Division of Security Policy
Office of Nuclear Security and Incident Response

SUBJECT: PREEMPTION AUTHORITY, CONTENT OF APPLICATION

On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (EPAct). Section 653 of the EPAct amended the Atomic Energy Act (AEA) of 1954, as amended, by adding a new section 161A. The new section 161A. gives the Commission the authority to permit the security personnel of designated U.S. Nuclear Regulatory Commission (NRC) licensees or certificate holders to possess and use weapons that were not previously permitted to be owned or possessed by a licensee under Commission authority. The new section 161A. also gives the Commission the authority to permit designated NRC licensees to transfer, receive, possess, transport, import, and use weapons and ammunition feeding devices specified in section 161A., notwithstanding state laws or regulations that would prohibit such actions.

Pursuant to the provisions of section 161A.d. of the AEA, section 161A. became effective on the date that the Commission issued guidelines on the use of firearms by security personnel whose official duties include the protection of NRC-regulated facilities, radioactive material, or other property. The firearms guidelines titled, "Guidelines on the Use of Firearms by Security Personnel in Protecting U.S. NRC-Regulated Facilities, Radioactive Material, and Other Property," were published in the Federal Register on September 11, 2009, (74FR46800).

Consistent with the Firearms Guidelines, the Office of Nuclear Security and Incident Response (NSIR) staff has identified the minimum categories of information needed to process an application for preemption authority. The NSIR staff has concluded that this information is necessary to establish a minimum baseline of information that would be used by the NSIR staff to support consideration of a licensee or certificate holder's request for preemption authority. At a minimum, the NSIR staff believes that a licensee's or certificate holder's application for preemption authority should include the following categories of information:

CONTACT: Dennis Gordon, NSIR/DSP
(301) 415-6671

1. Name of the licensee or certificate holder including docket number and license number or Certificate of Compliance (CoC).
2. A statement clearly indicating that the licensee or certificate holder is applying for "preemption authority" under 42 U.S.C. 2201a.
3. The state, local, or federal law (or implementing regulation) for which preemption is being requested.
4. A description of the types and calibers of weapons and/or ammunition feeding devices for which preemption is being requested. This description must be sufficiently detailed for the NSIR staff to conclude that the identified weapons and/or ammunition feeding devices are listed under Section 161A. and meet the criteria for covered weapons as described in the Firearms Guidelines, final implementing regulations issued by the Commission, and final regulatory guidance issued by the staff in support of the final rulemaking.
5. Information supporting a determination that the requested permission is necessary in the discharge of the official duties of the security personnel who are engaged in protecting the facility, radioactive materials, or other property determined to be of significance to the public health and safety.
6. Any other information deemed necessary by the applicant or NRC staff to describe and support the need for preemption authority consistent with the criteria established in the AEA of 1954, as amended, the Firearms Guidelines, final implementing regulations issued by the Commission, and final regulatory guidance issued by the staff in support of the final rulemaking.

Although the specific categories of information listed are representative of the types of information the NSIR staff would need when considering a licensee's or certificate holder's request for preemption authority, it is the responsibility of the licensee to provide sufficient information to justify the request. The NSIR staff recognizes that the information requested may not, in all instances, be sufficient to allow the NSIR staff to make a determination when considering a request for preemption authority. In those instances where more information is needed to complete an evaluation, the NSIR staff will inform the appropriate NRC program office. The NRC program office Project Manager will contact the licensee or certificate holder and request supplementary or additional information to support the original request. Both NSIR staff and program office Project Managers will support any discussions with the requesting NRC licensee or certificate holder.

NSIR staff evaluation of each application for preemption authority will be documented and will contain an NSIR recommendation for granting or denying the application. The documented results will be provided to the appropriate NRC program office Project Manager responsible for the requesting NRC licensee or certificate holder.

7. Name of the licensee or certificate holder including docket number and license number or Certificate of Compliance (CoC).
8. A statement clearly indicating that the licensee or certificate holder is applying for "preemption authority" under 42 U.S.C. 2201a.
9. The state, local, or federal law (or implementing regulation) for which preemption is being requested.
10. A description of the types and calibers of weapons and/or ammunition feeding devices for which preemption is being requested. This description must be sufficiently detailed for the NSIR staff to conclude that the identified weapons and/or ammunition feeding devices are listed under Section 161A. and meet the criteria for covered weapons as described in the Firearms Guidelines, final implementing regulations issued by the Commission, and final regulatory guidance issued by the staff in support of the final rulemaking.
11. Information supporting a determination that the requested permission is necessary in the discharge of the official duties of the security personnel who are engaged in protecting the facility, radioactive materials, or other property determined to be of significance to the public health and safety.
12. Any other information deemed necessary by the applicant or NRC staff to describe and support the need for preemption authority consistent with the criteria established in the AEA of 1954, as amended, the Firearms Guidelines, final implementing regulations issued by the Commission, and final regulatory guidance issued by the staff in support of the final rulemaking.

Although the specific categories of information listed are representative of the types of information the NSIR staff would need when considering a licensee's or certificate holder's request for preemption authority, it is the responsibility of the licensee to provide sufficient information to justify the request. The NSIR staff recognizes that the information requested may not, in all instances, be sufficient to allow the NSIR staff to make a determination when considering a request for preemption authority. In those instances where more information is needed to complete an evaluation, the NSIR staff will inform the appropriate NRC program office. The NRC program office Project Manager will contact the licensee or certificate holder and request supplementary or additional information to support the original request. Both NSIR staff and program office Project Managers will support any discussions with the requesting NRC licensee or certificate holder.

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