

May 31, 2013

The Honorable Jerry Brown  
Governor of California  
Sacramento, California 95814

Dear Governor Brown:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am informing you of an interim action that will be taken to designate a limited class of NRC-licensed facilities as eligible to apply to the NRC for the authority granted to the Commission under the provisions of Section 161A of the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2201a), before completion of a related final rulemaking.

Section 653 of the Energy Policy Act of 2005 amended the Atomic Energy Act by adding the new Section 161A. Section 161A confers upon the Commission the authority to permit the security personnel at designated NRC-licensed facilities to possess and use firearms, ammunition, and other devices, such as large-capacity ammunition feeding devices, notwithstanding local, State and certain Federal firearms laws that may prohibit such possession and use. This authority is commonly referred to as "preemption authority." Section 161A took effect on September 11, 2009, upon publication in the *Federal Register* (74 FR 46800) of Commission-issued guidelines for the use of firearms by security personnel at designated NRC-licensed facilities.

The Commission may implement preemption authority through rulemaking or by issuing orders. The Commission will be issuing an Order entitled "Order Designating an Interim Class of NRC-Licensed Facilities that are Eligible to Apply to the Commission for Authorization to use the Authority Granted Under the Provisions of Section 161A of the Atomic Energy Act of 1954, as Amended." It is important to note that this Order does not grant preemption authority to any NRC-licensed facility; it simply designates the class of facilities eligible to apply to the Commission for such authority. A copy of this Order will be available in the NRC's Agencywide Documents Access and Management System under Accession No. ML13121A459, once it is issued and made public.

The Order designates the Diablo Canyon Nuclear Power Plant, the Diablo Canyon Independent Spent Fuel Storage Installation, and the San Onofre Nuclear Generating Station, as eligible to apply to the Commission for authorization to use Section 161A preemption authority prior to the completion of a final rulemaking on this matter. The Order also requires that all personnel who will have access to firearms in the performance of their official duties at these designated facilities be subject to initial and recurring firearms background checks through the National Instant Criminal Background Check System to ensure that these personnel are not prohibited from the possession and use of firearms in the State of California.

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Any licensee requesting preemption authority at a designated facility would have to apply to the Commission for authorization. If an application is approved, the authorization to use Section 161A will be granted individually to each facility through a confirmatory order and the Commission will again notify the affected State Governor on a case-by-case basis.

If you have any questions on this matter, please contact me or Christiana Lui, Director of the NRC's Division of Security Policy, Office of Nuclear Security and Incident Response at (301) 415-7674.

Sincerely,

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Allison M. Macfarlane

cc: Robert Weisenmiller