



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

August 15, 2008

SECRETARY

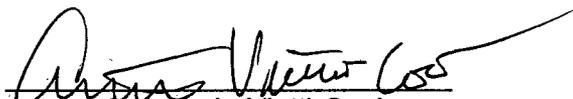
COMMISSION VOTING RECORD

DECISION ITEM: SECY-08-0050/0050A

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

The Commission (with Chairman Klein and Commissioner Jaczko and Lyons agreeing and Commissioner Svinicki agreeing in part and disagreeing in part) acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of August 15, 2008.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.


Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
Commissioner Svinicki
OGC
EDO
PDR

SECY NOTE: THIS VOTING RECORD TO BE RELEASED TO THE PUBLIC WHEN
THE SECY PAPERS ARE RELEASED AFTER PUBLICATION OF THE
FIREARMS GUIDELINES IN THE FEDERAL REGISTER.

VOTING SUMMARY - SECY-08-0050/0050A

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X				X	7/30/08
COMR. JACZKO	X				X	5/9/08
	X				X	8/4/08
COMR. LYONS	X				X	5/14/08
	X				X	7/31/08
COMR. SVINICKI	X	X			X	5/19/08
	X				X	8/4/08

COMMENT RESOLUTION

In their vote sheets, Chairman Klein and Commissioner Jaczko and Lyons approved and Commissioner Svinicki approved in part and disapproved in part the staff's recommendations and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on August 15, 2008.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN KLEIN
SUBJECT: SECY-08-0050A – FIREARMS GUIDELINES
IMPLEMENTING SECTION 161A. OF THE ATOMIC
ENERGY ACT OF 1954 AND ASSOCIATED
POLICY ISSUES—SUPPLEMENTAL
INFORMATION

Approved xx Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached xx None ___



SIGNATURE

7/30/08

DATE

Entered on "STARS" Yes No ___

**Chairman Klein's Comments on SECY-08-0050A
Firearms Guidelines Implementing Section 161A of the Atomic Energy Act of 1954
and Associated Policy Issues – Supplemental Information**

I approve the staff's five recommendations in SECY-08-0050A with only a minor comment. Staff should revise the letters to Governors to reflect that the NRC will publish a proposed rule rather than a direct final rule and companion proposed rule. I recognize the staff has been diligent in their efforts to move forward on the issuance of the Guidelines on the Use of Firearms by Security Personnel and I appreciate the hard work put forth by the staff.

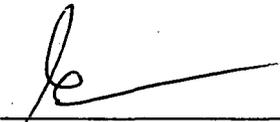
D. Klein
7/30/08

**Commissioner Jaczko's Comments on SECY-08-0050
Firearms Guidelines Implementing Section 161A. of the
Atomic Energy Act of 1954 and Associated Policy Issues**

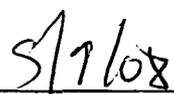
I, in large part, approve of the staff's recommendations on the implementation issues associated with new section 161A. of the Atomic Energy Act. I appreciate the staff's efforts negotiating these guidelines and recognize that the staff has waded through complex policy and legal issues in reaching this point.

The additional authority outlined in these guidelines is voluntary; a licensee must request the authority in order for us to determine if they can be granted this authority. The information provided thus far does not appear to indicate that a significant number of licensee's are, in fact, anticipating requesting this additional authority on any expedited basis. If and when utilities do request this authority, however, the staff should have a low threshold for bringing any issues that may surface to the Commission as quickly as possible.

Additionally, I do not believe the Guidance negotiated with the Department of Justice should emphasize the Commission's option of authorizing this additional authority by Order. Removing the emphasis on the issuance of Orders would not compromise the Commission's ability to be able to issue Orders on a case-by-case basis if the Commission were confronted with a request for the authority that it felt warranted a faster response than the final rulemaking schedule would provide. But because of the additional resource issues and consistency concerns that could be generated by granting this authority by Order to some licensees before settling on the specific language that would be included in the final regulations, I do not see the need to encourage premature requests for this authority. I believe the better approach is to make it clear that the Commission's preference is to proceed with the development of regulations. If the staff feels it necessary to include the Commission's ability to issue Orders in these negotiated guidelines, I would recommend it mention the Commission's authority do so in a footnote appropriately located in the guidelines.



Gregory B. Jaczko



Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Jaczko

SUBJECT: SECY-08-0050A – FIREARMS GUIDELINES IMPLEMENTING SECTION 161A. OF THE ATOMIC ENERGY ACT OF 1954 AND ASSOCIATED POLICY ISSUES—SUPPLEMENTAL INFORMATION

Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None



SIGNATURE

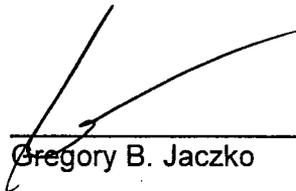
8/4/08

DATE

Entered on "STARS" Yes No

**Commissioner Jaczko's Comments on SECY-08-0050A
Firearms Guidelines Implementing Section 161A. of the Atomic Energy Act of 1954
and Associated Policy Issues – Supplemental Information**

I approve the staff process for moving forward with issuing the new firearms guidelines as a proposed rule rather than as a direct final rule, because of the need to explain the new Department of Justice interpretation regarding the use of existing (non-enhanced) weapons (subject to my comments on the previous version of this paper, SECY-08-0050.) As I indicated in my vote on the previous version of the paper, the staff should not encourage the use of orders for enhanced weapons. I am not convinced, however, that the staff should avoid using orders to implement the federal firearms check newly determined to be a requirement for the use of any weapons. In this case, I would support orders to quickly address this new interpretation while the staff continues to develop the complete rule on both existing and enhanced weaponry.



Gregory B. Jaczko

8/4/08

gwb



Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: SECY-08-0050 – FIREARMS GUIDELINES
IMPLEMENTING SECTION 161A. OF THE ATOMIC
ENERGY ACT OF 1954 AND ASSOCIATED
POLICY ISSUES

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___


Peter B. Lyons

SIGNATURE

5/14 /08
DATE

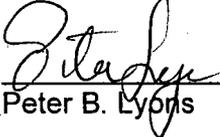
Entered on "STARS" Yes X No _____

Commissioner Lyons' Comments on SECY-08-0050
Firearms Guidelines Implementing Section 161A. of the
Atomic Energy Act of 1954 and Associated Policy Issues

I approve of the Guidelines on the Use of Firearms by Security Personnel to implement section 161A. of the Atomic Energy Act of 1954, as amended (AEA). I would like to commend the staff on its hard work developing these guidelines in consultation with the Department of Justice (DOJ). I am very interested in ensuring that the defensive capabilities of the guard forces at NRC-licensed facilities are enhanced to the maximum extent allowed by law. I believe these guidelines will make that goal more achievable. Additionally, in the interest of time, I approve the bifurcation of this final rule and the final rule containing provisions for power reactor security which the Commission can act on later. In the instant case, I approve publishing a direct final rule and a companion proposed rule consistent with these guidelines.

I agree with Commissioner Jaczko's comment that it is important that the staff is aware of the Commission's preference to implement the guidelines through the development of regulations; however, I believe it adds clarity for the staff to point out in the *Federal Register* notice that, should the need arise, the Commission may also issue orders on a case-by-case basis were a licensee to request this authorization before the regulations can be enacted. Finally, because DOJ requested that we not share the guidelines with external stakeholders during their development, I support the staff's proposal for the NRC to send a letter to the Governors of States, Commonwealths, and Territories and the Mayor of the District of Columbia to inform them of the expected publication of these guidelines prior to publishing them in the *Federal Register*, subject to the following edit of the first sentence of the draft letter:

On behalf of the U.S. Nuclear Regulatory Commission (Commission or NRC), I am writing to let you know 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), as amended.


Peter B. Lyons 5/14/08
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: SECY-08-0050A – FIREARMS GUIDELINES
IMPLEMENTING SECTION 161A. OF THE ATOMIC
ENERGY ACT OF 1954 AND ASSOCIATED
POLICY ISSUES—SUPPLEMENTAL
INFORMATION

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below Attached X None

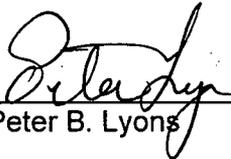

Peter B. Lyons
SIGNATURE

71 31 108
DATE

Entered on "STARS" Yes X No

**Commissioner Lyons' Comments on SECY-08-0050A – Firearms Guidelines
Implementing Section 161A. of the Atomic Energy Act of 1954
and Associated Policy Issues – Supplemental Information**

I approve the staff's five recommendations in SECY-08-0050A. I appreciate the staff's efforts to work with DOJ to revise the firearms guidelines as a result of DOJ's revised interpretation of subsection c. of section 161A., as expeditiously as possible. Because of the expanded number of individuals who will be subject to the revised guidelines, I support the staff's decisions to publish a proposed rule seeking public comment rather than using a direct final rule and companion proposed rule, and to not use orders to require licensees to immediately commence security checks for security personnel prior to publication of a final rule. I also agree with Chairman Klein's comment about revising the letters to the Governors.


Peter B. Lyons


Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-08-0050 – FIREARMS GUIDELINES
IMPLEMENTING SECTION 161A. OF THE ATOMIC
ENERGY ACT OF 1954 AND ASSOCIATED
POLICY ISSUES

Approved X^{in part} Disapproved X^{in part} Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___



SIGNATURE

05/19/08

DATE

Entered on "STARS" Yes No ___

**Commissioner Svinicki's Comments on SECY-08-0050
Firearms Guidelines Implementing Section 161A. of the Atomic Energy Act of 1954
and Associated Policy Issues**

I approve in part and disapprove in part of the staff's six recommendations contained in SECY-08-0050 regarding matters associated with the implementation of section 161A. of the Atomic Energy Act, as explained in greater detail below. I compliment the staff on a very thorough, and consequently highly actionable, evaluation of these issues and a proposed path forward on each.

I approve issuing the firearms guidelines and notice in Enclosure 1, after obtaining the approval of the Attorney General, and publishing them in the Federal Register. I also approve staff's recommendation to separate the firearms guidelines and power reactor security regulations into two separate rulemakings.

I approve issuing a letter to the Governors of States, Commonwealths, and Territories and the Mayor of the District of Columbia as modeled in Enclosure 5. However, the letter as drafted does not make clear that, as noted by Commissioner Jaczko, seeking the additional authorities available in Section 161A. is voluntary on the part of licensees and certificate holders. I support adding language to this letter which would make clear that the letter is not a notification of specific licensees' or certificate holders' intentions to apply to the NRC for this additional authority.

I approve authorizing the staff to develop a separate rulemaking expanding section 161A. authority to additional classes of facilities and radioactive material. The specifics laid out in Enclosure 3 appear to form a reasonable basis for proceeding (both the screening criteria and their application as laid out in Table 3-1); however, the rulemaking will provide a more fulsome context to consider these specifics.

I do not support the delegation by the Commission to the Executive Director of Operations (EDO) of the authority to sign the direct final rule and companion proposed rule "to expedite their issuance." I would note that the proposed timeline laid out in Enclosure 4 provides 42 weeks for the issuance of the direct final rule and companion proposed rule, including 4 weeks for the EDO's own review of the rulemaking package. Staff has noted of its own accord that "[d]evelopment of the firearms guidelines . . . raised many complex and novel policy, technical, and legal issues for NRC and DOJ staffs." In light of this, I do not believe that Commission review and deliberation should be the primary element sacrificed in the interest of agency timeliness.

I also approve the public release of SECY-08-0050 and its enclosures following the publication of the approved firearms guidelines in the Federal Register, as recommended by staff.

Finally, I agree with Commissioner Lyons that orders are a valid – although not preferred – alternative for authorizing this additional authority. As such, it is legitimate for the *Federal Register* notice to state that orders may be issued on a case-by-case basis should that be necessary.



Kristine L. Svinicki

5/19/08

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: SECY-08-0050A – FIREARMS GUIDELINES
IMPLEMENTING SECTION 161A. OF THE ATOMIC
ENERGY ACT OF 1954 AND ASSOCIATED
POLICY ISSUES—SUPPLEMENTAL
INFORMATION

Approved xx Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below xx Attached ___ None ___

I approve issuance of the revised firearms guidelines and notice (enclosure 1 to SECY-08-0050A) and publishing them in the Federal Register. My prior vote on other elements of SECY-08-0050 stands.



SIGNATURE

08/04/09

DATE

Entered on "STARS" Yes No _____