



SECRETARY

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

May 3, 2012

COMMISSION VOTING RECORD

DECISION ITEM: SECY-12-0027

TITLE:                   PREEMPTION AUTHORITY PURSUANT TO SECTION  
161A., "USE OF FIREARMS BY SECURITY PERSONNEL,"  
OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

The Commission (with all Commissioners agreeing) disapproved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of May 3, 2012.

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

A handwritten signature in black ink, appearing to read "Andrew L. Bates", written over a horizontal line.

Andrew L. Bates  
Acting Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc:     Chairman Jaczko  
       Commissioner Svinicki  
       Commissioner Apostolakis  
       Commissioner Magwood  
       Commissioner Ostendorff  
       OGC  
       EDO  
       PDR

VOTING SUMMARY - SECY-12-0027

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	PARTICIP	NOT COMMENTS	DATE
CHRM. JACZKO		X			X	3/30/12
COMR. SVINICKI		X			X	4/10/12
COMR. APOSTOLAKIS		X			X	4/5/12
COMR. MAGWOOD		X			X	4/10/12
COMR. OSTENDORFF		X			X	4/2/12

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** Chairman Gregory B. Jaczko  
**SUBJECT:** SECY-12-0027 – PREEMPTION AUTHORITY  
PURSUANT TO SECTION 161A., “USE OF FIREARMS  
BY SECURITY PERSONNEL,” OF THE ATOMIC  
ENERGY ACT OF 1954, AS AMENDED

Approved \_\_\_\_\_ Disapproved  X  Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

**COMMENTS:** Below  X  Attached \_\_\_\_\_ None \_\_\_\_\_

I want to thank the staff for proactively seeking a solution to a situation that potentially impacts a licensee’s ability to meet our security requirements. This is an issue that clearly deserves the Commission’s attention, and the applications for preemption authority should be provided to the Commission for consideration. Please provide applications if the licensee is seeking relief from changes in state law that make it difficult for the licensee to abide by NRC security requirements or security plans. The staff should continue to keep the Commission informed of new circumstances in which changes in state law create conflict with NRC security requirements.

  
\_\_\_\_\_  
SIGNATURE

3/3/12  
\_\_\_\_\_  
DATE

Entered on “STARS” Yes  x  No \_\_\_\_\_

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER SVINICKI  
SUBJECT: SECY-12-0027 – PREEMPTION AUTHORITY  
PURSUANT TO SECTION 161A., “USE OF FIREARMS  
BY SECURITY PERSONNEL,” OF THE ATOMIC  
ENERGY ACT OF 1954, AS AMENDED

Approved \_\_\_\_\_ Disapproved XX Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached XX None \_\_\_\_\_

  
\_\_\_\_\_  
SIGNATURE

4/10/12  
\_\_\_\_\_  
DATE

Entered on “STARS” Yes  No \_\_\_\_\_

**Commissioner Svinicki's Comments on SECY-12-0027**  
**"Preemption Authority Pursuant to Section 161A., 'Use of Firearms by Security Personnel,' of the Atomic Energy Act of 1954, as Amended"**

I disapprove the staff's recommendations on firearms preemption authority, contained in SECY-12-0027. Specifically, I disapprove designating the suggested classes of facilities as eligible for preemption authority, at this time. I also disapprove delegating to the staff the authority to make determinations on individual applications for preemption authority. The analysis provided in the paper does not provide sufficient basis for either action.

Because the staff's efforts on the enhanced weapons final rule have been ongoing for several years now, with the timing of issuance of a final rule yet uncertain, the NRC should proceed at this point to recognize certain facilities as eligible for preemption authority on a case-by-case basis. The staff should draft an order for Commission review and approval that would designate the four licensees who have submitted applications for preemption authority as eligible for that authority (Indian Point, Son Onofre, Diablo Canyon, and B&W NOG-L) and should continue with this application-by-application approach until the Commission determines otherwise. The staff should notify the Department of Justice of these determinations, making clear that this approach does not supplant completion of the enhanced weapons final rule – an outcome towards which the agency will proceed with dispatch.

Upon completion of the staff's review of the pending applications for preemption authority, the staff should seek Commission review and approval of its recommended determination via notation vote paper. The paper should include the draft communication the staff proposes to send to the licensee (e.g., an order, if the recommendation is to grant the application), as well as any draft communications to appropriate State officials.

It is my understanding that submission of the enhanced weapons final rule to the Commission may be delayed beyond the December 2012 date set forth in this SECY paper. The agency has received a large volume of comments on the proposed rule; however, the NRC requested this statutory authority and – having received it – should proceed expeditiously to finalize the rule and make appropriate use of it. The staff should seek additional resources, if necessary, to complete this rulemaking promptly. Lastly, given the protracted duration of the development of this rule, I am concerned about existing plans to wait to address co-located independent spent fuel storage installations until a future, follow-on rulemaking. Consequently, I support expanding the scope of the current rulemaking to consider co-located independent spent fuel storage installations, as part of the ongoing rulemaking.

  
\_\_\_\_\_  
Kristine L. Svinicki      4/10/12

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Apostolakis

SUBJECT: SECY-12-0027 – PREEMPTION AUTHORITY  
PURSUANT TO SECTION 161A., "USE OF FIREARMS  
BY SECURITY PERSONNEL," OF THE ATOMIC  
ENERGY ACT OF 1954, AS AMENDED

Approved \_\_\_\_\_ Disapproved  X  Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_ Attached  X  None \_\_\_

  
\_\_\_\_\_  
SIGNATURE

4/5/18   
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

**Commissioner Apostolakis' Comments on SECY-12-0027 – PREEMPTION  
AUTHORITY PURSUANT TO SECTION 161A., "USE OF FIREARMS BY SECURITY  
PERSONNEL," OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED**

I disapprove staff's recommendation regarding firearms preemption authority. Staff's paper has not provided adequate justification to make generic designations of classes of licensees. Moreover, I have specific concerns regarding a generic designation for independent spent fuel storage installations (ISFSI) and decommissioning nuclear power reactor licensees as a class of licensed facilities that can apply for such enhanced weapon authority and preemption, given the ongoing rulemaking and guidance development necessary to generically implement this provision, and the fact that some of these facilities have reduced security requirements. However, it may be prudent to include independent spent fuel storage installations that are co-located in the nuclear power plant protected area within the class of nuclear power reactor facilities to ensure effective and efficient use of a shared security force. In these cases, the existing security controls of a nuclear power reactor licensee would also provide protection for these facilities and a specific order to a 10 CFR Part 72 licensee should not be needed.

On an interim basis, the staff should make recommendations, on a case-by-case basis, for Commission approval before preemption and enhanced weapons authority under Section 161A is granted. Staff should also provide notice to the Department of Justice that these case-by-case actions are in response to unique situations and are not part of the formal process that is currently under development through rulemaking. Staff should seek Commission approval for additional resources, if they are needed to complete this rulemaking or interim actions promptly.

I also disapprove any further delegation of authority to staff to make determinations on an individual application for enhanced weapons and/or preemption authority. Until the final rulemaking and associated guidance documents are completed, staff should continue to seek Commission approval on individual applications. Staff could again solicit delegation of the approval authority to the Office Directors when it forwards the final rule to the Commission for decision. The staff should also include any plan to modify or rescind the confirmatory orders that were issued prior to the effective date of a final rule.



George Apostolakis

April 5 2012

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER MAGWOOD  
SUBJECT: SECY-12-0027 – PREEMPTION AUTHORITY  
PURSUANT TO SECTION 161A., "USE OF FIREARMS  
BY SECURITY PERSONNEL," OF THE ATOMIC  
ENERGY ACT OF 1954, AS AMENDED

Approved \_\_\_\_\_ Disapproved X Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached X None \_\_\_\_\_

  
\_\_\_\_\_  
SIGNATURE

10 April 2012  
\_\_\_\_\_  
DATE

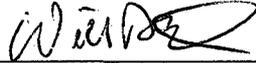
Entered on "STARS" Yes X No \_\_\_\_\_

**Commissioner Magwood's Comments on SECY-12-0027,  
"Preemption Authority Pursuant to Section 16A, "Use of Firearms by Security  
Personnel," of the Atomic Energy Act of 1954, as Amended"**

I disapprove the staff's current recommendations regarding firearm preemption authority. Although I join the Chairman in commending the staff for seeking a proactive solution to the issue, I agree with my colleagues that the staff paper does not provide adequate justification to make generic designations of classes of licensees at this time. I am, in particular, skeptical of any generic designation of decommissioning reactors or of ISFSIs that are not co-located with an operating power reactor. Moreover, in part because of these concerns, I am not at this time prepared to delegate to the staff the authority to make determinations on applications for preemption authority.

In order to address the interim requirements of affected licensees, the staff should make recommendations, on a case-by-case basis, for Commission approval of any individual application for preemption and enhanced weapons authority under Section 161A. The staff should also provide notice to the Department of Justice of these determinations.

Finally, I note that the proposed enhanced weapons rule was published in the *Federal Register* over one year ago. I encourage the staff to work expeditiously to bring the final rule to the Commission for approval. The staff should seek Commission approval for any additional resources that may be required for either the rulemaking or any interim actions.

 4/10/12  
\_\_\_\_\_  
William D. Magwood, IV      Date

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER OSTENDORFF  
SUBJECT: SECY-12-0027 – PREEMPTION AUTHORITY  
PURSUANT TO SECTION 161A., “USE OF FIREARMS  
BY SECURITY PERSONNEL,” OF THE ATOMIC  
ENERGY ACT OF 1954, AS AMENDED

Approved \_\_\_\_\_ Disapproved X Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_ Attached X None \_\_\_

W. Ostendorff  
SIGNATURE

9/2/12  
DATE

Entered on “STARS” Yes X No \_\_\_

**Commissioner Ostendorff's Comments on SECY-12-0027,  
"Preemption Authority Pursuant to Section 161A., 'Use of Firearms by Security  
Personnel,' of the Atomic Energy Act of 1954, as Amended"**

I disapprove, at this time, the staff's recommendations regarding firearms preemption authority under section 161A. of the Atomic Energy Act of 1954, as amended (AEA). Without seeing a draft order or knowing specifically what its content would be, I do not have an adequate basis on which to determine that the staff has satisfied the criteria agreed to by the NRC and the U.S. Attorney General in the 2009 Firearms Guidelines in advance of the completion of the final rule on enhanced weapons. Fundamentally, however, I do not disagree with taking such an interim action, as contemplated in the 2006 proposed rule on power reactor security requirements. I believe that the cases presented in SECY-12-0027 justify such an interim action.

In order to approve this type of action, the staff should come back to the Commission with a draft order that addresses the need for this interim step prior to the completion of the final rulemaking on enhanced weapons. This draft order should also designate, in accordance with the proposed rule on enhanced weapons, all power reactor facilities and all Category I special nuclear material facilities as the specific classes of facilities for which licensees and certificate holders are authorized to use the preemption authority of section 161A. of the AEA. I do not, however, believe that it is justified at this time to go beyond the boundaries of the proposed rule on enhanced weapons to designate all independent spent fuel storage installations (ISFSI) as within that class. I am open to a proposed solution that addresses co-located ISFSIs, but only as it relates to the designation of power reactor facilities. Finally, the draft order should establish the process for the covered entities to apply for preemption authority as well as the requirements for firearms background checks.

Prior to the issuance of this first order, staff should provide notice to the Department of Justice that the NRC is taking this interim step, and that this is not in lieu of the final rule but rather a situational necessity.

Should the staff determine that based upon a thorough review of the applications, and in accordance with the process outlined in the draft order, that preemption authority should be granted, separate confirmatory orders should be brought to the Commission for review and approval. When these draft orders are transmitted to the Commission, they should include the courtesy letters to the relevant State officials informing them that the NRC has granted preemption authority, as authorized under section 161A. of the AEA, to an eligible NRC-licensee within the state.

Lastly, I approved the staff's proposed rule on enhanced weapons a year and a half ago. Consistent with that vote, I continue to expect the staff to complete the final rulemaking as soon as possible. Although I am open to a future delegation of authority to the staff to make determinations on individual applications for preemption authority, I disapprove the staff's request to do so prior to the completion of the final rulemaking on enhanced weapons. Lastly, when the final rule is transmitted to the Commission, it should contain a plan to modify or rescind, as appropriate, the confirmatory orders that granted preemption authority prior to the effective date of the final rule.