



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

November 21, 2012

SECRETARY

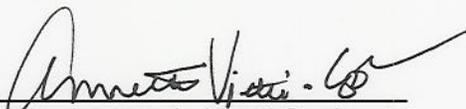
COMMISSION VOTING RECORD

DECISION ITEM: SECY-12-0125

TITLE: INTERIM ACTIONS TO EXECUTE COMMISSION
PREEMPTION AUTHORITY UNDER SECTION 161A OF
THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of November 21, 2012.

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 Macfarlane
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
EDO
PDR

VOTING SUMMARY - SECY-12-0125

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MACFARLANE	X					X 10/25/12
COMR. SVINICKI		X				X 11/13/12
COMR. APOSTOLAKIS	X					X 10/17/12
COMR. MAGWOOD		X				X 10/31/12
COMR. OSTENDORFF	X					X 10/23/12

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Chairman Allison M. Macfarlane
SUBJECT: SECY-12-0125 – INTERIM ACTIONS TO EXECUTE
COMMISSION PREEMPTION AUTHORITY UNDER
SECTION 161A OF THE ATOMIC ENERGY ACT OF
1954, AS AMENDED

Approved X Disapproved Abstain

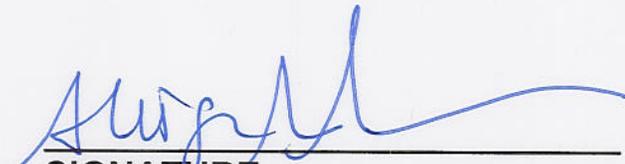
Not Participating

COMMENTS: Below X Attached None

I approve staff's five recommendations. Staff should revise the draft designation order, narrowing the scope to the agreed limited, interim class of NRC-licensed facilities. This order should be provided for Commission review prior to issuance.

Additionally, to address potential future concerns of a large volume of firearms background checks, the staff should revise the Firearms Guidelines now, consistent with designating the limited, interim class of licensees.

Finally, I agree with Commissioners Apostolakis and Ostendorff that staff should describe, in the final enhanced weapons rule, its plan for sunseting the interim designation order.



SIGNATURE

10 | 25 | 12

DATE

Entered on "STARS" Yes ✓ No

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-12-0125 – INTERIM ACTIONS TO EXECUTE
COMMISSION PREEMPTION AUTHORITY UNDER
SECTION 161A OF THE ATOMIC ENERGY ACT OF
1954, AS AMENDED

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached XX None _____



SIGNATURE

11/13/12

DATE

Entered on "STARS" Yes No _____

Commissioner Svinicki's Comments on SECY-12-0125
Interim Actions to Execute Commission Preemption Authority
under Section 161A of the Atomic Energy Act of 1954, as Amended

I approve the process proposed in SECY-12-0125, to execute the Commission's authority under Section 161A of the Atomic Energy Act of 1954, as amended, to include issuing orders to permit the security personnel of designated U.S. Nuclear Regulatory Commission (NRC) licensees 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. Based upon the NRC staff's continued discussions with the U.S. Department of Justice (DOJ), and considerations arising there from, I approve the staff's revised recommendation to designate a limited class of facilities eligible to apply for Commission authorization to use Section 161A preemption authority, as enumerated in SECY-12-0125. In light of its revised recommendation, in my view, the staff should have provided the draft designation order in two forms: 1) to conform with the Commission's prior direction (as was done in Enclosure 1 to SECY-12-0125) and 2) to conform to the staff's revised recommendation with designate only specific licensees.

It appears that the Commission will adopt the staff's revised recommendation and yet, the draft designation order has not been transmitted to the Commission for its review in a form implementing this recommendation. Some members of the Commission would cure this deficiency by directing the staff to provide the order to the Commission for its review, 5 days prior to its transmittal. I believe the draft designation order, with an attachment specifying the exact list of addressees to which it will be sent, should be submitted to the Commission for its review and approval, prior to being issued. However, if the staff would quickly transmit a version of the order reflecting its recommendation to the Commission, prior to the Commission completing and issuing its Staff Requirements Memorandum on this SECY, it may be possible to eliminate the need for SRM direction on this topic.

I further approve the option to include, as an interim class of eligible facilities, specific license, co-located, independent spent fuel storage installations with a physical protection program conducted as a support activity by a power reactor facility that is also designated by the Commission. I also authorize the staff to provide each applicant for Section 161A preemption authority with the confirmatory order template (Enclosure 2) for their consent and staff revision, if the staff intends to recommend approval of the application. I approve delegation of the authority to sign and issue the Commission-approved designation order and subsequent Commission-approved confirmatory orders granting Section 161A preemption authority to the directors of the appropriate licensing offices.

Finally, as I have often noted, regulation via order over prolonged durations is not optimal. The final rule should include the staff's plan for sunseting the interim Order for designation of classes of facilities authorized to apply for preemption authority and the confirmatory orders. The staff should also proceed in the near term, and with dispatch, on a revision to the Firearms Guidelines to reflect the agreement in principle with DOJ on the requirements for background checks, as we now understand them.



Kristine L. Svinicki

11/13/12

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Apostolakis
SUBJECT: SECY-12-0125 – INTERIM ACTIONS TO EXECUTE COMMISSION PREEMPTION AUTHORITY UNDER SECTION 161A OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below X Attached None

I approve staff's five recommendations. The designation Order should be provided to the Commission for review at least five days prior to issuance.

The Firearms Guidelines should be revised in accordance with the agreement in principle with the Department of Justice on the requirements for background checks, and published as soon as practicable. The staff has recently made clear that a broad application of the background-check requirement has the potential for adverse and unnecessary impacts on internal and external resources and the timely implementation of a final rule. To avoid further delay in the completion of this rulemaking, either in the supplemental proposed rule, or as soon thereafter as possible, the staff should seek public comment on resulting modifications of the associated text in the proposed rule.

The final rule should include staff's plan for sun-setting the interim Order for designation of classes of facilities that are authorized to apply for preemption and the confirmatory orders.



SIGNATURE

DATE 10/17/12

Entered on "STARS" Yes ✓ No

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MAGWOOD

SUBJECT: SECY-12-0125—INTERIM ACTIONS TO EXECUTE
COMMISSION PREEMPTION AUTHORITY UNDER
SECTION 161A OF THE ATOMIC ENERGY ACT OF
1954, AS AMENDED

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below Attached _____ None _____

I approve the staff's five recommendations contained in SECY-12-0125, including the staff-proposed options related to designation of the class of eligible facilities. The final designation order should be provided to the Commission for review at least five days prior to issuance.

The firearms guidelines should be revised in accordance with the agreement in principle with the Department of Justice on the requirements for background checks, and published as soon as practicable. Public comment on any resulting modifications in the associated text in the proposed Enhanced Weapons rule should be sought as soon as possible; for example, in association with the supplemental proposed rule contemplated in SECY-12-0118.

The final Enhanced Weapons rule should include staff's plan to sunset the interim designation order.



SIGNATURE

31 October 2012

DATE

Entered on "STARS" Yes No _____

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER OSTENDORFF

SUBJECT: SECY-12-0125 – INTERIM ACTIONS TO EXECUTE COMMISSION PREEMPTION AUTHORITY UNDER SECTION 161A OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below X Attached ___ None ___

I approve staff's five recommendations, including the staff-proposed additional option to designate only certain named facilities as the interim class of NRC-licensed facilities that are eligible to apply for preemption authority. Although I previously voted to designate all power reactor and Category I special nuclear material facilities as the specific classes, the new information provided by the staff related to their discussions with the Department of Justice (DOJ) have persuaded me that this new approach is preferable. The draft designation order should be revised to reflect this approach and should be provided to the Commission for review prior to issuance. The list of addressees contained in the draft designation order should be limited to those that the NRC has determined have a need prior to the final rulemaking.

While the staff-generated approach removes the immediate issues associated with conducting firearms background checks, it does not remove the long-term concerns. Therefore, the Firearms Guidelines should be revised now, consistent with the agreement in principle with DOJ on the requirements for background checks, and issued for public notice as soon as practicable.

Finally, I agree with Commissioner Apostolakis that the final rule should include staff's plan for sunseting the interim Order for designation of classes of facilities that are authorized to apply for preemption and the confirmatory orders.



SIGNATURE

10/23/12

DATE

Entered on "STARS" Yes X No _____