

POLICY ISSUE NOTATION VOTE

September 20, 2012

SECY-12-0125

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

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

PURPOSE:

This paper responds to Commission direction provided in Staff Requirements Memorandum (SRM) - SECY-12-0027, "Preemption Authority Pursuant to Section 161A., 'Use of Firearms by Security Personnel,' of the Atomic Energy Act of 1954, as amended," dated May 3, 2012, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12124A377). The paper requests Commission approval of two draft orders and a staff proposed interim process to implement, prior to promulgation of the final enhanced weapons rule, the Commission's authority under Section 161A of the Atomic Energy Act (AEA) of 1954, as amended (42 U.S.C. 2201a), 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.

SUMMARY:

This paper outlines a process by which the Commission could execute its authority under Section 161A ("Section 161A preemption authority"). In the SRM to SECY-12-0027, the

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Commission directed the staff to: (1) provide a draft order that designates, before the promulgation of the final enhanced weapons rule, all nuclear power reactors and all Category-I special nuclear material (CAT-I SNM) facilities as the interim class of NRC-licensed facilities eligible to apply to the Commission for permission to use Section 161A preemption authority consistent with the proposed enhanced weapons rule; (2) provide an option to include specifically licensed co-located independent spent fuel storage installations (ISFSIs) in this designation; and (3) establish in the draft order, the application process to be used for covered entities to apply to the NRC for Section 161A preemption authority to include the requirements for conducting firearms background checks in accordance with Section 161A(c).

The Commission further directed the staff to provide, for Commission review and approval, draft confirmatory orders that designate individual licensees as receiving Commission authorization to use Section 161A preemption authority and establish all requirements necessary for the applicant to use and maintain this authorization. SRM-SECY-12-0027 also requires the staff to submit its recommendations on individual applications for Commission consideration as well as the staff's technical evaluation for those applications that it recommends the Commission approve. These draft confirmatory orders should include all requirements necessary to implement the Section 161A preemption authority granted to the applicant by the Commission.

Consistent with the direction provided in SRM-SECY-12-0027, the staff is submitting for Commission approval two draft orders that could implement the Commission's authority under Section 161A. The first draft order (Enclosure 1) designates the class of NRC-licensed facilities eligible to apply for and receive Commission authorization to use the preemption authority granted under Section 161A. Additionally, this draft designation order would: (1) require that all armed personnel at all facilities within the designated class of facilities be subject to a firearms background check; (2) establish requirements for the conduct of firearms background checks; and (3) provide licensees with the process for preparation and submittal of applications to the NRC for Commission authorization to use the preemption authority granted under Section 161A. The second draft order (Enclosure 2) serves as a template for the type of confirmatory order the Commission could issue when it determines that an applicant should be granted Section 161A preemption authority. This second draft order also sets forth the conditions and requirements that an applicant must meet when exercising the authorization granted to it by the Commission under Section 161A.

This paper also provides an additional option for Commission consideration. The staff is recommending that the Commission designate only a limited number of specific facilities as the class of facilities eligible to apply for Commission authorization to use the preemption authority granted under Section 161A. This option is presented as an alternative to the Commission direction in SRM-SECY-12-0027 that the staff develop a draft order designating all power reactor facilities and all CAT-I SNM facilities as the interim class of facilities for which licensees and certificate holders are eligible to apply for Commission authorization to use Section 161A preemption authority. The basis for offering this option is addressed in more detail in the Discussion section below.

This paper responds to the direction provided by SRM-SECY-12-0027 related to the Commission's execution of its authority under Section 161A through the issuance of orders. Remaining issues raised in SRM-SECY-12-0027 related to the enhanced weapons rulemaking effort are addressed separately by the responsible rulemaking staff. Resource and schedule issues associated with the rulemaking are currently before the Commission in SECY-12-0104.

BACKGROUND:

The provisions of Section 161A became effective on September 11, 2009, with the publication in the *Federal Register* (FR) of the guidelines approved by the NRC and the U.S. Attorney General entitled, "Guidelines on the Use of Firearms by Security Personnel in Protecting U.S. NRC-Regulated Facilities, Radioactive Material, and Other Property," (74 FR 46800) ("Firearms Guidelines"). The Firearms Guidelines state that the Commission will promulgate regulations or issue orders authorizing specific classes of NRC licensees and certificate holders to apply to the Commission to use the authority of Section 161A. However, the Firearms Guidelines do not contain any guidance on how the Commission should designate eligible classes of facilities. Additionally, the Firearms Guidelines state that the Commission will promulgate regulations or issue orders establishing a process for NRC licensees and certificate holders to apply for and obtain preemption and enhanced weapons authority under Section 161A.

On February 3, 2011, the Commission published in the *Federal Register* (76 FR 6199) a revised proposed enhanced weapons rule, entitled, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications." The proposed rule superseded a previously released proposed enhanced weapons rule published in the *Federal Register* (71 FR 62663) on October 26, 2006. The 2006 enhanced weapons rule was part of a larger proposed rule¹ entitled "Power Reactor Security Requirements."

Between April 2011 and January 2012, the NRC received four requests from NRC licensees for Commission authorization to use the preemption authority granted under Section 161A. Each of these requests described a need for Commission authorization under Section 161A to ensure, in the near term, the licensee's capability to maintain current equipment and protective strategies. As a result, in SECY-12-0027, "Preemption Authority Pursuant to Section 161A., 'Use of Firearms by Security Personnel,' of the Atomic Energy Act of 1954, as amended," dated February 17, 2012, (ADAMS Accession No. ML113130015) the staff recommended that interim actions be taken on these requests prior to the completion of the final enhanced weapons rule.

DISCUSSION:**Designation of Classes**

As required by SRM-SECY-12-0027, the staff is providing a draft designation order (Enclosure 1) that would designate, before promulgation of a final enhanced weapons rule, all nuclear power reactors and all CAT-I SNM facilities as the interim class of NRC-licensed facilities eligible to apply for Section 161A preemption authority. This order would also establish the process to be used by licensees or certificate holders of designated facilities to prepare and submit applications to the NRC for Commission authorization to use Section 161A preemption authority. This application process, including the application format and content, is delineated in Attachment 2 of Enclosure 1. The proposed application process in Attachment 2 to the designation order is consistent with the requirements in the Firearms Guidelines, the proposed enhanced weapons rule, and Draft Guide (DG)-5020, dated January 2011, entitled "Applying for Enhanced-Weapons Authority, Applying for Preemption Authority, and Performing Firearms

¹ The final Power Reactor Rulemaking entitled "Power Reactor Security Requirements Final Rule," was published separately in the *Federal Register* (74 FR 13925) on March 27, 2009.

Background Checks Under 10 CFR [Title 10 of the *Code of Federal Regulations*] Part 73” (ADAMS Accession No. ML100321956).

In accordance with Section 5 of the Firearms Guidelines, the designation order would require that all licensees or certificate holders falling within the designated class of facilities subject their armed security personnel to a firearms background check through the Federal Bureau of Investigation (FBI) fingerprint-based background check data-base and the name-based National Instant Criminal Background Check System (NICS). The firearms background check is required of all licensee and certificate holder armed security personnel within the designated class of facilities, even if a particular licensee or certificate holder within the designated class has no intention of applying for Section 161A preemption authority.²

To support the issuance of orders prior to promulgation of the enhanced weapons rule, the staff has developed an interim process for conducting firearms background checks. This interim process is consistent with the current proposed enhanced weapons rule, with one significant difference in the process for conducting firearms background checks. As required by Section 161A(c), the process for conducting a firearms background check includes both a fingerprint-based background check and a name-based check against applicable FBI databases. As part of the enhanced weapons rulemaking effort, the staff developed a proposed NRC Form 754, “Armed Security Personnel Firearms Background Check,” for use by armed security personnel to submit the required information to the NRC for the name-based, NICS check portion of the firearms background check or reinvestigation. Pursuant to its authority under the Paperwork Reduction Act, the Office of Management and Budget has declined to approve the proposed NRC Form 754 in advance of completion of the enhanced weapons rulemaking. Therefore, in the interim, the staff plans to use the FBI Form FD-258 “Fingerprint Card” to collect the information required to complete the NICS portion of the firearms background check. The FBI Form FD-258 is currently used by the NRC to collect background information for access authorization purposes under the provisions of 10 CFR 73.56, “Personnel Access Authorization Requirements for Nuclear Power Plants.” The same FBI Form FD-258 is also required to conduct the fingerprint-based portion of the firearms background check.³ The requirements for conducting the firearms background check are provided in Attachment 3 of

² In Regulatory Issue Summary 2008-10, Supplement 1, dated December 22, 2008, entitled “Notice Regarding Forthcoming Federal Firearms Background Checks” (ADAMS Accession No. ML082340897), the NRC notified the industry that the Department of Justice (DOJ) indicated that Section 161A mandates that all security personnel who have duties that require access to covered weapons and who are engaged in the protection of Commission-designated facilities, radioactive material, or other property owned or operated by an NRC licensee or certificate holder must be subject to a fingerprint-based background check by the U.S. Attorney General and a firearms background check against the FBI NICS.

³ Should the Commission designate all power reactors and CAT-I SNM facilities, this interim process will require that all individuals assigned official duties requiring the possession and use of any firearm at these designated facilities submit to the NRC’s Office of Administration (ADM) a completed hard-copy of the FD-258. The staff estimates that ADM will receive approximately 15,000 FD-258s from 67 sites beginning within 30 days after the first order is issued. Consistent with Section 161A(c), individuals not receiving a proceed response from the FBI within 180 days after issuance of the first order must be removed from armed duties, without exception or extension. After 180 days, all personnel who require access to firearms at designated facilities must successfully complete a firearms background check before being assigned armed duties.

Enclosure 1 and the requirements for maintaining the firearms background check are addressed in the Attachment of Enclosure 2.

Although the staff has concluded that all pertinent information can be obtained from a completed FD-258, staff in ADM has determined that the *electronic* FD-258 format does not provide all the information contained on the hard copy FD-258 required for processing the name-based portion of the firearms background check through the FBI NICS database. ADM is working with the FBI and knowledgeable contractor staff to update the current electronic fingerprint-card system (also known as Electronic Information Exchange system) to add the appropriate information fields as required. However, until this effort is complete, the staff has determined that the hard copy FD-258 is the most efficient, effective, and currently available method for collecting the information needed to complete the required firearms background checks in support of the issuance of orders.⁴ The staff has coordinated with the Office of the General Counsel (OGC) and the Office of Information Services to ensure that the collection of this information is consistent with the requirements of the Paperwork Reduction Act.

The proposed enhanced weapons rule would require licensees to submit a \$70.00 check for each Form-754 submitted. This administrative processing fee will be applied to all facilities designated by the Commission under the designation order (Enclosure 1), for the conduct of firearms background checks as described in this paper.

Staff-Generated Additional Option

The staff is proposing that the Commission, prior to promulgation of the enhanced weapons rule, designate a limited interim class of facilities eligible to apply for Commission authorization to use Section 161A preemption authority. The Firearms Guidelines specify that the Commission will designate the class of facilities eligible to apply to use the preemption authority granted to the Commission under Section 161A. However, the Firearms Guidelines do not define what constitutes a class. The determination of the eligible class is left to the discretion of the Commission. Furthermore, the Firearms Guidelines make clear that the Commission can designate classes of eligible facilities through promulgation of regulations or issuance of orders. While the Commission has stated its intent to designate eligible facilities and implement its authority under Section 161A through rulemaking, this does not preclude the Commission from taking interim action through the issuance of orders. The DOJ agrees that the designation of classes required by the Firearms Guidelines is left to the discretion of the Commission.

OGC is currently in discussions with the DOJ on the implementation of the firearms background check requirements in the Firearms Guidelines. OGC and the DOJ have reached agreement in principle that only the armed security personnel of licensees and certificate holders within a designated class that actually apply for Section 161A preemption authority are subject to the firearms background check requirement. OGC and the DOJ further agree that the current language in the Firearms Guidelines should be revised to reflect this understanding. The staff

⁴ The information fields required for the NICS portion of the firearms background check are provided in Attachment 3 of Enclosure 1 and the Attachment of Enclosure 2. To support the issuance of orders, personnel in ADM will physically transfer the required information from the hard copy FD-258 into the appropriate electronic formats and databases needed to transmit the information to the FBI for processing through both the fingerprint-based database and the name-based NICS database.

notes that revision of the Firearms Guidelines to reflect this understanding will require corresponding changes to the ongoing enhanced weapons rulemaking. However, the staff expects that limiting the firearms background check requirements to the armed security personnel of those licensees and certificate holders that actually apply to the Commission for Section 161A preemption authority would significantly reduce burdens on those designated licensees and certificate holders who do not intend to apply for such authority, as well as the burden on the NRC and the DOJ.

As discussed above, currently the armed security personnel of all licensees and certificate holders within the designated class of facilities are subject to a firearms background check. The staff recognizes that the firearms background check requirements may impose a burden on both the industry and NRC staff in that these background checks would be required of all in the designated class including licensees and certificate holders not requesting Section 161A preemption authority at this time. Accordingly, as an interim measure to address the specific needs of a limited number of facilities, the staff is proposing that the designation of the class of facilities eligible to apply for Section 161A preemption authority be limited to only those individual facilities that have a near-term need for interim action. Specifically, the staff is proposing for Commission consideration, that the interim class be limited to the following individual facilities: Babcock & Wilcox Nuclear Operation Group-Lynchburg; Diablo Canyon Nuclear Power Plant, Units 1 and 2; Indian Point Nuclear Generating, Units 1, 2, and 3; James A. Fitzpatrick Nuclear Power Plant; Nine Mile Point Nuclear Station, Units 1 and 2; R. E. Ginna Nuclear Power Plant; and San Onofre Nuclear Generating Station, Units 2 and 3. Subsequently, if additional licensees apply for Commission authorization to use Section 161A preemption authority, the staff will reengage the Commission to gain approval for designation of a new or revised class of designated facilities.

Interim Option for Specifically Licensed Co-Located ISFSIs

SRM-SECY-12-0027 directed that the staff not include all ISFSIs within the class of designated facilities eligible to apply for Section 161A preemption authority. However, the SRM directed the staff to propose, prior to the promulgation of the final enhanced weapons rule, an interim option addressing specifically licensed co-located ISFSIs. Accordingly, this paper recommends that only those specifically licensed co-located ISFSIs with a physical protection program conducted as a support activity by a power reactor facility also designated by the Commission be included within the designated class of NRC-licensed facilities that are eligible to apply for Commission authorization to use Section 161A preemption authority. This recommendation recognizes that the same security force protecting a designated power reactor would be responsible for protecting the specifically licensed co-located ISFSI.⁵ Approval of this recommendation would ensure that armed personnel at designated power reactors would be authorized to use the same firearms at both the power reactor facility and any specifically licensed, co-located ISFSI.

Interim Process for Implementing Section 161A Preemption Authority

The staff has developed an interim six-step process to implement the Commission's authority under Section 161A regardless of which designation option the Commission adopts. If

⁵ General license ISFSIs that are co-located with designated power reactors are inclusive to the facility through their 10 CFR Part 50 license.

approved by the Commission, this process will be used until promulgation of the final enhanced weapons rule.

Step 1: The Commission-approved draft designation order (Enclosure 1) would be modified by the issuing office as needed for format and type of licensee. The final designation order would be issued to each licensee within the designated class of facilities under the signature authority of each responsible office director. This first order will designate the interim class of NRC-licensed facilities that are eligible to apply for Commission authorization to use Section 161A preemption authority. Attachment 1 of this order will identify the list of addressees.

Step 2: Attachment 2 of the designation order will provide the process to be followed by eligible licensees to voluntarily apply for Commission authorization to use the preemption authority granted under Section 161A. This attachment would outline the required format and content of applications and would require that the applications be submitted to the NRC for review and approval in accordance with 10 CFR 50.90, "Application for amendment of license, construction permit, or early site permit," or 10 CFR 70.34, "Amendment of License," with a minimum 60 days for routine processing.⁶

Step 3: Attachment 3 of the designation order will require that all licensees within the designated classes of facilities begin submitting to the NRC within 30 days, a hard-copy FBI Form FD-258 "Fingerprint Card" for each armed member of the security organization who is or will be assigned official duties requiring the possession and use of any firearm. Licensees within the designated classes of facilities will complete each security officer's firearms background check within 180 days of this order being issued or remove the officer from duties requiring access to firearms. Additionally, each licensee shall notify the NRC in writing when a sufficient number of personnel have successfully completed the firearms background check to staff the security organization as required by NRC-approved security plans, to include meeting all applicable fatigue requirements.

Step 4: Upon receipt of an application for Commission authorization to use Section 161A preemption authority, the staff's approach for technical review is to use the six categories of information specified in the staff-developed internal review criteria entitled "Preemption Authority, Content of Application," (ADAMS Accession No. ML111650348), dated February 27, 2012. The staff believes that these categories of information are appropriate and necessary for it to make a determination on granting the applicant approval to use Section 161A preemption authority. These categories of information are derived from the Firearms Guidelines, the proposed enhanced weapons rule, and DG-5020.

Step 5: After the staff completes a technical review, and if the staff intends to recommend that the Commission approve an application, the staff would provide the draft confirmatory order template (Enclosure 2) to the applicant for its consent and for possible revision in accordance with the NRC's confirmatory order process. Upon receipt of the applicant's consent and proposed changes, the staff will then revise the confirmatory order, if necessary, to incorporate the applicant's site-specific information. The staff will submit a draft final confirmatory order to the Commission for review and approval, along with all associated staff technical reviews and

⁶ The current requests submitted for Section 161A preemption authority by licensees were not submitted in accordance with 10 CFR 50.90 or 10 CFR 73.34.

staff recommendations for Commission consideration. Where the staff's recommendation is to deny an application, the staff would submit only its own technical evaluation and recommendation for Commission consideration.

Step 6: If approved by the Commission, the final confirmatory order would be issued by the office director of the responsible licensing office after receipt of written notification from the licensee that a sufficient number of firearms background checks have been successfully completed. This licensee notification to the NRC is a Firearms Guidelines prerequisite to granting preemption authority. This final confirmatory order would grant the licensee Commission authorization to use Section 161A preemption authority and would specify all requirements that must be met to use and maintain Section 161A preemption authority. Specifically, the final confirmatory order will require that the licensee submit revised security plans to add language describing how Section 161A preemption authority will be implemented at its site. Security plan changes will be subject to 10 CFR 50.54(p), 10 CFR 50.90, 10 CFR 70.32(e), and 10 CFR 70.34 requirements as appropriate.

Delegation of Signature Authority

The staff recommends that the Commission delegate signature authority for the issuance of all Commission-approved final orders to the responsible office directors. The staff is providing in this SECY Paper, draft orders for Commission review and approval in accordance with SRM-SECY-12-0027. Additionally, the Commission will have the opportunity to review and approve all final orders before issuance. Therefore, the issuance of final orders will not raise policy issues that have not already been considered and approved by the Commission.

Furthermore, this recommendation is consistent with existing staff guidance contained in the Office of Enforcement, Enforcement Manual, Section 1.6.1 Delegation of Authority to the Director, Office of Federal and State Materials and Environmental Management Programs (FSME); Section 1.8.1 Delegation of Authority to the Director, Office of Nuclear Reactor Regulation (NRR); and Section 1.9.1 Delegation of Authority to the Director of Office of Nuclear Material Safety and Safeguards (NMSS) respectively:

1. The Director of FSME is authorized to sign and issue non-enforcement related orders and non-enforcement related Demands for Information (DFI) to licensees.
2. In accordance with Management Directive (MD) 9.27, "Organizations and Function, Office of Nuclear Reactor Regulation," the Director, NRR has been authorized to issue orders and DFIs. However, use of this authority is expected to be confined to actions not associated with violations.
3. In accordance with MD 9.26, "Organization and Functions, Office of Nuclear Materials Safety and Safeguards," the Director, NMSS, is authorized to issue orders and DFIs; however, use of this authority is expected to be confined to actions not associated with violations.

The above serves to illustrate that the responsible office directors are currently delegated authority to issue orders in accordance with agency policy. Delegation of signature authority will expedite the order process and consequently lessen possible schedule impacts. For these

reasons, the staff recommends that signature authority for issuing orders be delegated to the responsible office directors.

Finally, consistent with SRM-SECY-12-0027, the draft confirmatory order template (Enclosure 2) contains a statement that the confirmatory order may be modified or rescinded upon the effective date of a final enhanced weapons rule.

RECOMMENDATIONS:

The staff recommends that the Commission take the following actions.

1. Approve the staff-proposed process, to include issuing orders, to execute the Commission's authority under Section 161A.
2. Approve the staff-proposed additional option to designate only Babcock & Wilcox Nuclear Operation Group-Lynchburg; Diablo Canyon Nuclear Power Plant, Units 1 and 2; Indian Point Nuclear Generating, Units 1, 2, and 3; James A. Fitzpatrick Nuclear Power Plant; Nine Mile Point Nuclear Station, Units 1 and 2; R. E. Ginna Nuclear Power Plant; and San Onofre Nuclear Generating Station, Units 2 and 3, as the interim class of NRC-licensed facilities that are eligible to apply for Commission authorization to use Section 161A preemption authority before promulgation of a final enhanced weapons rule. If approved by the Commission, this option will require that editorial changes be made to the draft designation order (Enclosure 1) to account for this limited designation. If the Commission does not accept this staff recommendation, the staff will, upon receiving Commission direction, issue an order that designates all power reactors and CAT-I SNM facilities as the interim class of NRC-licensed facilities that are eligible to apply for Commission authorization to use Section 161A preemption authority before promulgation of a final enhanced weapons rule, consistent with direction in SRM-SECY-12-0027.
3. Approve the staff-proposed option to include, as an interim class of eligible facilities, specific license co-located ISFSIs with a physical protection program conducted as a support activity by a power reactor facility that is also designated by the Commission, as recommended in 2 above.
4. Authorize the staff to provide each applicant for Section 161A preemption authority with the enclosed confirmatory order template for their consent and staff revision, if the staff intends to recommend approval of the application.
5. Delegate signature authority to the directors of appropriate licensing offices to issue the Commission-approved designation order and all subsequent Commission-approved confirmatory orders granting Section 161A preemption authority.

RESOURCE:

To process the firearms background checks for each of the two designation options presented in recommendation 2, ADM will fund this workload with fiscal year 2013 budgeted reimbursable resources from the Corporate Support Business Line.

Resources required to process the two orders addressed in this paper, as well as applications for Section 161A preemption, are already included in the Operating Reactor Business Line, the Fuel Facility Business Line, and the Spent Fuel Storage and Transportation Business Line budgets for licensing activities in fiscal year 2013. Therefore, no additional budgetary resources are requested to complete the work discussed in this paper.

COORDINATION:

The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objection. OGC has reviewed this paper and has no legal objection.

/RA by Michael R. Johnson for/

R. W. Borchardt
Executive Director
for Operations

Enclosures:

1. [Draft Designation Order](#)
2. [Draft Confirmatory Order Template](#)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket Nos. (as shown in Attachment 1)
ALL POWER REACTOR LICENSEES;)	License Nos. (as shown in Attachment 1)
CATEGORY I SPECIAL NUCLEAR)	EA-12-xxx
MATERIAL FACILITY LICENSEES; AND		
SPECIFIC-LICENSE AT-REACTOR		
INDEPENDENT SPENT FUEL STORAGE		
INSTALLATION LICENSEES		

ORDER DESIGNATING INTERIM CLASSES OF
NRC LICENSEES AUTHORIZED TO APPLY FOR
COMMISSION AUTHORITY TO USE PREEMPTION
UNDER THE PROVISIONS OF SECTION 161A OF
THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

I

The licensees identified in Attachment 1 to this order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing operation of a nuclear power reactor facility licensed under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities;" a Category I special nuclear material (CAT-I SNM) facility licensed under 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material;" or a specific-license, at-reactor, independent spent fuel storage installation (ISFSI) licensed under 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste," whose physical security program is conducted as a support activity by a co-located power reactor facility in accordance with the Atomic Energy

Act (AEA) of 1954, as amended and 10 CFR Part 50, 10 CFR Part 70, or 10 CFR Part 72, respectively. Specific physical protection program requirements for nuclear power reactors are contained in 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage." Specific physical protection program requirements for CAT-I SNM facilities are contained in 10 CFR 73.45, "Performance Capabilities for Fixed Site Physical Protection Systems," and 10 CFR 73.46, "Fixed Site Physical Protection Systems, Subsystems, Components, and Procedures." Specific physical protection program requirements for specific-license, at-reactor ISFSIs are contained in 10 CFR 73.51, "Requirements for the Physical Protection of Stored Spent Nuclear Fuel and High-Level Radioactive Waste," and 10 CFR 73.55. These licenses authorize the operation of nuclear power reactors, CAT-I SNM facilities, and specific-license, at-reactor ISFSIs in accordance with the conditions specified therein.

II

Section 161A of the AEA of 1954 as amended (42 U.S.C. 2201a) confers upon the Commission the authority to permit the security personnel of designated 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.

The provisions of Section 161A took effect on September 11, 2009, with the publication in the *Federal Register* (FR) of the guidelines approved by the NRC and the U.S. Attorney General entitled, "Guidelines on the Use of Firearms by Security Personnel in Protecting U.S.

NRC-Regulated Facilities, Radioactive Material, and Other Property,” (74 FR 46800) (hereafter referred to as the “firearms guidelines”).

The NRC is issuing this order to implement the authority granted to the Commission under Section 161A before the Commission’s issuance of a final rule implementing this authority. The Commission is taking this interim action in response to several requests from NRC licensees for Commission authorization to use Section 161A preemption authority.

As authorized under Section 161A and as described in Section 2 of the firearms guidelines, the Commission is designating interim classes of NRC-licensed facilities that may voluntarily apply for Commission authorization to use Section 161A preemption authority. The following interim class¹ of facilities is designated by the Commission as eligible to apply for Commission authorization to use Section 161A preemption authority in advance of the Commission’s issuance of a final rule on this subject:

- (i) Power reactor facilities.
- (ii) Specific-license, at-reactor ISFSIs whose physical protection program is conducted as a support program by a co-located power reactor designated in (i) above.
- (iii) CAT- I SNM facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, in which the material has a radiation level less than or equal to 1 Gray (100 Rad) per hour at a distance of 1 meter (3.3 feet), without regard to any intervening shielding.

¹ Should the Commission accept Recommendation 2 of the associated SECY paper, this Order will be modified to reflect that recommendation.

Voluntary applications shall be submitted to the NRC in accordance with Attachment 2 to this order. In addition, submittals and documents produced as a result of this order that contain classified information, as defined in 10 CFR Part 95, "Facility Security Clearance and Safeguarding of National Security Information and Restricted Data," or safeguards information as defined by 10 CFR 73.22, "Protection of Safeguards Information: Specific Requirements," shall be properly marked and handled, in accordance with applicable requirements in 10 CFR Part 95 and 10 CFR 73.21, "Protection of Safeguards Information: Performance Requirements," and 10 CFR 73.22.

All measures implemented or actions taken in response to this order shall be maintained until after the effective date, to include the associated implementation period, of a final rule implementing the Commission's authority under Section 161A or as otherwise determined by the Commission.

III

As discussed above, the Commission has designated the facilities listed in Section II as the interim class of NRC-licensed facilities authorized to apply to the NRC for Commission authorization to use Section 161A preemption authority. A licensee's application for Commission authorization is voluntary and, therefore, the licensee is not required to submit an application in response to this order. Licensees or certificate holders choosing to apply for Section 161A preemption authority, must meet the following conditions: (1) the licensee or certificate holder must fall within the class of facilities, radioactive material, or other property designated by the Commission in this order; (2) the licensee or certificate holder must employ

covered weapons as part of their protective strategy; and (3) access to, or possession of, covered weapons must be necessary in the discharge of official duties by security personnel assigned to the individual site falling within the class of facilities designated by the Commission. At a minimum, applications must include all the information specified in Attachment 2 to this order. All applications will be reviewed on a case-by-case basis. If approved by the Commission, authorization to use Section 161A preemption authority will permit the security personnel at interim designated facilities to possess and use firearms and large-capacity ammunition feeding devices that were not previously permitted to be owned or possessed under Commission authority, notwithstanding local, State, and certain Federal firearms laws (and implementing regulations) that would otherwise prohibit such possession and use.

In accordance with Section 161A(c), all security personnel at all Commission-designated facilities who have duties that require access to any firearm, to include covered weapons as defined in Section 161A(b), and who are engaged in the protection of Commission-designated facilities, radioactive material, or other property owned or operated by an NRC licensee or certificate holder designated by this order, shall be subject to a firearms background check by the U.S. Attorney General consisting of a fingerprint-based background check against applicable Federal Bureau of Investigation (FBI) databases and a name-based background check against the FBI's National Instant Criminal Background Check System (NICS). Pursuant to Section 161A(c), firearms background checks are mandatory for all armed security personnel at facilities that fall within the class of facilities designated by the Commission. Accordingly, all licensees within the classes of facilities designated by the Commission shall submit a completed hard-copy FBI Form FD-258 "Fingerprint Card" to the NRC as specified in Attachment 3 for the conduct of firearms background checks for all members of the security organization who will

receive, possess, transport, import, or use any firearm, weapon, ammunition, or a device, to include those listed in section 161A(b) as required by section 161A(c). A \$70.00 administrative processing fee will be charged to the licensee for each FBI Form FD-258 submitted to the NRC for the conduct of the required firearms background checks. Payment must be made using the same processes that are applied for payments associated with the conduct of access authorization background checks required under 10 CFR 73.57(d).

This order does not provide or grant any authority or permission to transfer, receive, possess, transport, import, and use “enhanced weapons” as this term is defined in Section 8 of the firearms guidelines. An application for enhanced weapons must be submitted to the NRC separately or together with an application for Commission authorization to use Section 161A preemption authority. This order designates the NRC licensees and certificate holders that are eligible to apply for Commission authorization to use Section 161A preemption authority, provides a process for submitting such applications, and requires that all armed personnel at the designated facilities be subject to a firearms background check. Therefore, nothing in this order relieves a licensee from compliance with applicable U.S. Department of Alcohol, Tobacco, Firearms, and Explosives requirements and other Federal, State, and local firearms laws and regulations. Further, the Commission’s authority under Section 161A does not include any permission to transfer, receive, possess, transport, import, and use destructive devices as defined under 27 U.S.C. Chapter 53, including explosive devices such as grenades or weapons with a bore diameter greater than 12.7 mm (0.5 inches or 50 caliber).

IV

Accordingly, pursuant to Sections 53 (103 or 104b, depending on the license), Sections 161b, 161i, 161o, 161A, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, "Orders," 10 CFR Part 50, 10 CFR Part 52, 10 CFR Part 70, and 10 CFR Part 72, IT IS HEREBY ORDERED that all recipients of this order falling within the designated interim classes of facilities shall:

1. Subject all individuals who are assigned duties requiring the possession and use of firearms and devices at the designated facility, to include those firearms and devices identified under Section 161A(b), of the AEA of 1954, as amended, to a firearms background check through the FBI NICS in accordance with the requirements specified in Attachment 3 to this order.
2. Notify the NRC in writing when a sufficient number of personnel have successfully completed a firearms background check to staff each licensee's security organization as required by each licensee's current security plans. Licensees shall notify the NRC as soon practicable, of any situation where the licensee would not be able to fully staff the security organization within 180 days of the issuance of this order.
3. Submit a \$70.00 administrative processing fee for each FBI Form FD-258 submitted to the NRC for the conduct of each required firearms background check. Notwithstanding the applicability statement of 10 CFR 73.57, "Requirements for criminal history records checks of individuals granted unescorted access to a nuclear power facility or access to safeguards

information,” all designated facilities (i.e., power reactors and CAT-I SNM facilities) shall submit payment to the NRC using the processes outlined in 10 CFR 73.57(d).

Individual licensees within the classes of facilities designated by the Commission are authorized to use the voluntary application process outlined in Attachment 2 of this order to apply to the NRC for Commission authorization to use Section 161A preemption authority. Submittal of an application to the NRC is voluntary and, therefore, recipients are not required to apply. If the use of Section 161A preemption authority is desired, licensees shall submit the voluntary application to the Commission in accordance with the provisions of 10 CFR 50.90, “Application for amendment of license, construction permit, or early site permit,” or 10 CFR 70.34 “Amendment of Licenses,” as appropriate. Applications will be subject to a minimum of 60 days for routine processing. This order is effective 20 days after the date of issuance.

Publicly available documents created or received at the NRC are available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are also accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland this day of [month year].

FOR THE NUCLEAR REGULATORY COMMISSION

NAME, Director
Office of XXXXXXX

Attachments:

1. List of Affected Licensees
2. Application Process for Requesting Commission Authorization to Use Section 161A Preemption Authority
3. Process for Conducting Firearms Background Checks

DRAFT

LIST OF AFFECTED LICENSEES

DRAFT

**Application Process for
Requesting Commission Authorization to
Use Section 161A Preemption Authority**

Recipients of this order are within the interim classes of facilities designated by the U.S. Nuclear Regulatory Commission (Commission or NRC) and are authorized to voluntarily apply for Commission authorization to use Section 161A of the Atomic Energy Act (AEA) of 1954, as amended (42 U.S.C. 2201a), preemption authority. If approved by the Commission, Section 161A preemption authority will permit the security personnel at a designated facility to possess and use weapons, devices, ammunition, or other firearms, notwithstanding local, State, and certain Federal firearms laws that may prohibit such possession and use. Licensees must receive Commission authorization through a separate confirmatory order before they may use the authority authorized under Section 161A. Applications must be submitted to the NRC for review and approval under the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.90, "Application for amendment of license, construction permit, or early site permit," or 10 CFR 70.34 "Amendment of Licenses," as appropriate, and will be reviewed and approved individually on a case-by-case basis.

Licensees who choose to voluntarily apply for Commission authorization to use Section 161A preemption authority must submit the application under oath or affirmation and must meet the following conditions: (1) the licensee or certificate holder must fall within the class of facilities, radioactive material, or other property designated by the Commission through this order; (2) the licensee or certificate holder must employ covered weapons as part of their protective strategy; and (3) access to, or possession of, covered weapons must be necessary in the discharge of official duties by security personnel assigned to the individual site falling within the class of facilities designated by the Commission. The application should be in the form of a letter and at a minimum, must contain the following information:

- a. Name of the licensee.
- b. Site name.
- c. Docket number and the license number.
- d. A statement that the licensee is applying for "Commission authorization to use Section 161A preemption authority under 42 U.S.C. 2201a."
- e. A statement that the facility is within the interim class of facilities designated by the Commission through this order.
- f. A statement describing the reason for requesting Commission authorization to use Section 161A preemption authority. This description shall include the following: (1) the local, State, or Federal law (or implementing regulation) for which Commission authorization is being requested; and (2) a description of the types and calibers of weapons and ammunition feeding devices for which Commission authorization is necessary. This description must be sufficiently detailed for the NRC staff to conclude that: (a) the licensee employs firearms or devices defined as covered weapons in accordance with the "Guidelines on the Use of Firearms by Security Personnel in Protecting U.S. NRC-Regulated Facilities, Radioactive Material, and Other Property," (74 FR 46800) ("Firearms Guidelines") and are subject to Section 161A(b); (b) these covered weapons are used as part of the site protective strategy, and; (c) access to, or possession of, these covered weapons is necessary in the discharge of official duties by security personnel who are engaged in protecting the facility.

- g. Any other information deemed necessary by the applicant or NRC staff to describe and support the need for Commission authorization consistent with the criteria established in the Atomic Energy Act of 1954, as amended, and the Firearms Guidelines.

DRAFT

Process for Conducting Firearms Background Checks

As stated in Section 161A(c), of the Atomic Energy Act (AEA) of 1954, as amended (42 U.S.C. 2201a), a person who receives, possesses, transports, imports, or uses a weapon, ammunition, or a device under Section 161A(b), shall be subject to a background check by the Attorney General, based on fingerprints and including a background check under Section 103(b) of the Brady Handgun Violence Prevention Act (Public Law 103-159; 18 U.S.C. 922 note) to determine whether the person is prohibited from possessing or receiving a firearm under Federal or State law.

All licensees within the designated classes of facilities identified by this order, shall implement the following requirements and must notify the U.S. Nuclear Regulatory Commission (NRC) in writing upon the satisfactory completion of a sufficient number of firearms background checks to staff the site security organization and continue the effective implementation of its physical protection program, specifically, its NRC-approved security plans, site protective strategy, and implementing procedures, while meeting applicable fatigue requirements.

1. Within **[insert 30 days after the issuance of this order]** the licensee shall begin submitting for firearms background checks a hard copy Federal Bureau of Investigation (FBI) Form FD-258, "Fingerprint Card," for each member of the security organization whose official duties require, or will require, the possession and/or use of any firearm. The licensee shall submit a hard copy FD-258 as specified below, for each armed member of the security organization who receives, possesses, transports, imports, or uses a firearm in the discharge of official duties.
2. Procedures for Processing Form FD-258 for Firearms Background Checks.
 - a. For the purpose of complying with this order, licensees shall submit one completed, legible, standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) or, where practicable, other fingerprint record for the conduct of firearms background checks for each member of the security organization who will receive, possess, transport, import, or use any firearm, weapon, ammunition, or a device, to include those listed in Section 161A(b), as required by Section 161A(c).
 - b. Licensees shall submit each Form FD-258, using an appropriate method listed in Title 10 of the *Code of Federal Regulations* (10 CFR) 73.4, to the Director of the NRC's Division of Facilities and Security, Mail Stop T-6E46 marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling (301) 415-5877, or by e-mail to forms@nrc.gov. Guidance on what alternative formats might be practicable is referenced in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.
 - c. The firearms background check requires both a fingerprint-based check and a name-based check through the FBI National Instant Criminal Background Check System (NICS). Due to the nature of this interim process, a hard copy FD-258, must be

completed and submitted to the NRC. A hard-copy FD-258 is necessary because the format of Electronic Information Exchange (EIE) system does not support the transfer of all required information for processing through the FBI NICS database. If desired, licensees may submit fingerprint impressions electronically through the EIE in addition to the hard-copy FD-258.

- d. The following 10 information fields specified on the FBI Form FD-258 shall be completely and accurately filled-in with appropriate identifying information. Specifically, individuals must complete the following fields as follows:
1. First Name
 2. Last Name
 3. Place of Birth
 4. Gender
 5. Date of Birth
 6. Race: (choose one of the following codes)
 - American Indian or Alaska Native
 - Asian
 - Black or African American
 - Hispanic or Latino
 - Native Hawaiian or other Pacific Islander
 - White
 7. Residence of Person Fingerprinted:
 - Complete mailing addresses of current residence is required. (NICS check includes query of State records for disqualifying information in both State of residence and State of employment.)
 - Street Number (Post Office box numbers cannot be accepted)
 - Street Name
 - City
 - State (required)
 - Zip Code
 8. Citizenship
 9. Reason Fingerprinted:
 - Firearms Background Check (42 U.S.C. 2201a)
 10. Social Security Number
- e. Fees for the processing of firearms background checks are due upon application. Licensees shall submit payment with the Form FD-258 for the processing of firearms background checks through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the Security Branch, Division of Facilities and Security, at (301) 415-7404). Combined payment for multiple applications is acceptable. The application fee is the sum of the user fee charged by the FBI for each firearms background check or other fingerprint record submitted by the NRC on behalf of a licensee, and an administrative processing fee assessed by the NRC. The NRC processing fee covers administrative costs associated with NRC handling of licensee Form FD-258 submissions. The Commission publishes the amount of the firearms background check application fee on the NRC public Web site. (To find the current fee amount, go to the Electronic Submittals page at

<http://www.nrc.gov/site-help/e-submittals.html> and see the link for the Criminal History Program under Electronic Submission Systems.) The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for firearms background checks, to include the FBI fingerprint record.

- f. *Right to correct and complete information.* Prior to any final adverse determination, the licensee shall make available to the individual the contents of records obtained from the FBI for the purpose of assuring correct and complete information. Confirmation of receipt by the individual of this notification must be maintained by the licensee for a period of 1 year from the date of the notification. If after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes changes, corrections, or updating (of the alleged deficiency), or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537-9700 as set forth in 28 CFR 16.30 through 16.34. In the latter case, the FBI then forwards the challenge to the agency that submitted the data requesting that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. Licensees must provide at least 10 days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record being made available for his/her review. The licensee may make a final adverse determination based upon the criminal history record, if applicable, only upon receipt of the FBI's confirmation or correction of the record.
3. The NRC is working to update the EIE system that is currently used for submitting and processing electronic fingerprint cards for access authorization purposes under 10 CFR 73.56. Upon notification from the NRC, licensees may choose to submit all information required for a firearms background check through the EIE system. Until such time as the EIE is updated and in use, all designated facilities shall provide a hard-copy FBI Form FD-258 for the purpose of conducting required firearms background checks. The licensee shall retain a copy of all information submitted and received for firearms background checks for a minimum of 5 years after the information is superseded through periodic reinvestigation or the termination of an individual's access to firearms.
4. By **[insert 180 days after issuance of this order]** the licensee shall remove from any current armed duties any individual who has not completed a satisfactory firearms background check. Additionally, after **[insert 180 days after issuance of this order]**, the licensee may not assign an individual to any armed duties unless the individual has completed a satisfactory firearms background check. A satisfactory firearms background check means a "proceed" response has been received by the licensee, from the FBI, through the NRC.
5. During the 180-day transition period, individuals who receive a "delayed" response from the FBI to their firearms background check may continue to have access to firearms

(i.e., standard weapons) as part of their official duties not to exceed midnight of the 180th day.

6. Consistent with the NRC-approved security plans, the licensee shall remove from armed duties, without delay, any individual who has received a “denied” response from the FBI.
7. Licensees may return an individual to armed duties if the individual receives a “proceed” response from the FBI, subsequent to receiving a “delayed” or “denied” response.
8. The licensee shall provide instructions to all personnel subject to a firearms background check for appealing “delayed” or “denied” responses. An individual security officer is responsible for appealing a “denied” response or resolving a “delayed” response directly with the FBI.
9. The licensee shall revise its site training and qualification program, as needed, to provide each individual with instructions on identifying events or status that would disqualify the individual from possession or use of firearms and the continuing responsibility of each individual to promptly notify the licensee of the occurrence of any such event or status.
10. Individuals who require access to firearms shall notify the licensee’s security management within 3 working days of the occurrence or existence of any disqualifying event or status. Disqualifying events or status are discussed in 27 CFR 478.32, “Prohibited Shipment, Transportation, Possession, or Receipt of Firearms and Ammunition by Certain Persons,” the Gun Control Act of 1968 (18 U.S.C. 922(g) and (n)), and any applicable State laws.
11. The licensee shall remove from armed duties, without delay, any individual for whom disqualifying information has become known or where a satisfactory firearms background check re-investigation has not been completed. When the individual is on duty at the time disqualifying information is received, the term “without delay” means that the licensee shall, beginning at the time of notification, remove the individual from armed duties and reconstitute the minimum staffing level within the timeframe specified for reconstitution of the minimum staffing levels described in the NRC-approved security plans and applicable 10 CFR Part 73 requirements, or sooner if practicable.
12. The licensee shall subject all individuals who require access to firearms as part of their official duties to a periodic firearms background check re-investigation at least once every 5 years, following the initial or most recent satisfactory firearms background check. Licensees may conduct periodic firearms background checks at a period shorter than 5 years, at their discretion. Re-investigations shall be satisfactorily “completed” within the same calendar month as the initial or most recent firearms background check, with an allowance to midnight of the last day of the month of expiration. The licensee may continue the individual’s access to firearms pending completion of the re-investigation, not to exceed midnight of the last day of the month of expiration.
13. The licensee shall complete a “new” firearms background check or reinvestigation for individuals who have:

- a. Had a break in employment of greater than 7 consecutive calendar days (1 week) with the licensee or the licensee's security contractor. Temporary active duty in the military Reserves or National Guard is not considered to be a break in employment for the purpose of this order and the required firearms background check.
 - b. Transferred to the employment of the licensee or the licensee's security contractor. A satisfactorily completed firearms background check performed by a previous employer or completed for employment within a State other than the State in which the individual will be performing armed duties, is not transferable.
14. The licensee shall notify the NRC Headquarters Operations Center by telephone within 72 hours after removing an individual from armed duties as a result of the discovery of any disqualifying status or event. Applicable telephone numbers are specified in Appendix A, "Physical Protection of Plants and Materials," to 10 CFR Part 73. Notification timeliness shall commence from time of discovery by the licensee or the time of reporting by the individual security officer. The licensee is not required to notify the NRC if the individual security officer has disclosed the disqualifying event or status to the licensee as specified in Appendix B.4, "Weapons Qualification and Requalification Program," to 10 CFR Part 73.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
[LICENSEE])	
)	Docket Nos. 50-xxx and 50-yyy
)	
[Facility])	License Nos. XXX, YYY
)	
)	EA-12-xxx

CONFIRMATORY ORDER MODIFYING LICENSE

I

[Licensee] is the owner and operator of [facility] and holder of Facility Operating License Nos. XXX and YYY, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," Part 70, "Domestic Licensing of Special Nuclear Material;" or Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste." The licenses authorize the operation of [facility] in accordance with the conditions specified therein. The facility is located on the owner's site in [site location].

II

By application dated [date], and as supplemented by letter(s) dated [date], [Licensee] requested, pursuant to Commission Order (EA_xxxxx), that under the provisions of

Section 161A of the Atomic Energy Act of 1954, as amended, the Commission permit the transfer, receipt, possession, transport, import, and use of certain weapons and large capacity ammunition feeding devices, by security personnel who protect the [Site Name]. Section 161A confers upon the Commission the authority to permit a licensee's security personnel to possess and use weapons, devices, ammunition, or other firearms, notwithstanding local, State, and certain Federal firearms laws that may prohibit such possession and use.

Upon review of the (Site Name) application dated XXXXX, the NRC staff has found the following:

- (1) The [Licensee] application for Commission authorization to use Section 161A preemption authority complies with the standards and requirements of Section 161A and the Commission's rules and regulations set forth in 10 CFR Part 73, "Physical Protection of Plants and Materials."
- (2) The facilities will operate in conformity with the application, the provisions of the Atomic Energy Act of 1954, as amended, and the rules and regulations of the Commission.
- (3) There is reasonable assurance that the activities authorized by the proposed Commission authorization to use Section 161A preemption authority can be conducted without endangering the health and safety of the public, and that such activities will be conducted in compliance with the Commission's regulations and the requirements of this Confirmatory Order.

- (4) The issuance of Commission authorization to use Section 161A preemption authority will not be inimical to the common defense and security or to the health and safety of the public.

- (5) The issuance of this Commission authorization to use Section 161A preemption authority will be in accordance with 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," of the Commission's regulations.

The Commission authorization to use Section 161A preemption authority will be effective upon confirmation that all applicable requirements of Section IV and the Attachment to this Confirmatory Order have been satisfied. The findings set forth above are supported by an NRC staff technical evaluation dated [date].

III

To carry out the statutory authority discussed above, the Commission has determined that the licenses for [facility name] must be modified to include provisions with respect to the Commission authorization to use Section 161A preemption authority as identified in Section II of this Confirmatory Order. The requirements needed to exercise the foregoing are set forth in Section IV below. By letter dated [date], the licensee consented to the license modifications set forth in Section IV below. The licensee further agreed in its letter dated [date] that it has waived its right to a hearing on this Confirmatory Order.

The staff has found that the license modifications set forth in Section IV are acceptable and necessary, and it concluded that, with the effective implementation of these provisions, the licensee's physical protection program will be consistent with the specific physical protection program requirements set forth in (insert applicable regulations (10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage," (for nuclear power reactors); 10 CFR 73.45, "Performance Capabilities for Fixed Site Physical Protection Systems;" 10 CFR 73.46, "Fixed Site Physical Protection Systems, Subsystems, Components, and Procedures," (for Category-I special nuclear material facilities); 10 CFR 73.51, "Requirements for the Physical Protection of Stored Spent Nuclear Fuel and High-Level Radioactive Waste;" and portions of 10 CFR 73.55 (for specific-license, at-reactor co-located independent spent fuel storage installations)).

On [month, day, year] [licensee name] consented to the issuance of this Order. The [Licensee name] further agreed that this Order will be effective 20 days after the date of issuance and that it has waived its right to a hearing on this Order.

IV

Accordingly, pursuant to Sections 53, [103 or 104b depending on the license], 161b, 161i, 161o, 161A., 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 50, 10 CFR Part 52 "Licenses Certifications and Approvals for Nuclear Power Plants," 10 CFR Part 70, and 10 CFR Part 72, IT IS HEREBY ORDERED, that the [Licensee Name] application for Commission authorization to use Section 161A preemption authority is approved and permission for security personnel at [facility name] to possess and use weapons, devices, ammunition, or other firearms,

notwithstanding local, State, and certain Federal firearms laws that may prohibit such possession and use, is granted. [Facility Name] shall implement and maintain the requirements of the Attachment to this Confirmatory Order until such time that this Confirmatory Order is modified or rescinded by the Commission.

The Commission is engaged in an ongoing rulemaking to implement the Commission's authority under Section 161A. Upon the effective date of that final rulemaking, the Commission may take action to relax or rescind any or all of the requirements set forth in this Confirmatory Order.

The Commission may, in writing, modify, revise, or rescind this Confirmatory Order and the requirements of the Attachment to this Confirmatory Order, upon demonstration by the licensee of good cause.

Should the licensee fail to notify the NRC of the completion of the requirements in the Attachment to this Confirmatory Order within 1 year of the date of this Confirmatory Order, this Confirmatory Order shall become null and void; provided, however, upon written application and good cause shown, such date may be extended, in writing, by the Commission.

This Confirmatory Order is effective 20 days after the date of issuance.

For further details with respect to this confirmatory order, see the initial application dated [date] (Agencywide Documents Access and Management System (ADAMS) Accession No. MLxxxxxxx, as supplemented by letter(s) dated [date] and [date] (ADAMS Accession

No(s). MLyyyyyyyyy and MLzzzzzzzzz, respectively), and the application review summary dated [date], which are available for public inspection, with the exception of security-related information, at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the *Federal Register*. In addition, any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the *Federal Register*. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participants (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at

<http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through the Electronic Information Exchange, users will be required to install a web browser plug-in from the NRC web site. Further information on the web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (pdf) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not

serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption

request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland this day of [month year].

FOR THE NUCLEAR REGULATORY COMMISSION

[NAME], Director
Office of XXXXXXX

Attachments:
Requirements To Be Completed
Before Using Section 161A preemption authority

DRAFT

Requirements to be Completed Before Using Section 161A Preemption Authority

The following information sets forth U.S. Nuclear Regulatory Commission (NRC or Commission) requirements that shall be met by the licensee to maintain Commission authorization to use Section 161A preemption authority and permission for the transfer, receipt, possession, transport, import, and use of certain weapons and large capacity ammunition feeding devices, notwithstanding local, State, and certain Federal firearms laws (and implementing regulations) that would otherwise prohibit such actions.

This Confirmatory Order does not authorize the licensee to transfer, receive, possess, transport, import, and use “enhanced weapons” as this term is defined in Section 8 of the “Guidelines on the Use of Firearms by Security Personnel in Protecting U.S. NRC-Regulated Facilities, Radioactive Material, and Other Property” (“Firearms Guidelines”) (74 *Federal Register* 46800; September 11, 2009). Furthermore, this Confirmatory Order does not authorize the licensee to transfer, receive, possess, transport, import, and use destructive devices as defined under 27 United States Code Chapter 53, including explosive devices such as grenades or weapons with a bore diameter greater than 12.7 millimeter (0.5 inches or 50 caliber).

The licensee shall comply with all applicable U.S. Department of Alcohol, Tobacco, Firearms, and Explosives requirements and other Federal, State, and local firearms laws and regulations consistent with the Commission authorization for the use of Section 161A preemption permitted by this Confirmatory Order.

A. Program Requirements

1. The licensee shall review and revise its NRC-approved security plans, as necessary, to describe how the requirements of this Confirmatory Order and other affected Title 10 of the *Code of Federal Regulations* (CFR) Part 73, “Physical Protection of Plants and Materials,” requirements, to include appendices to 10 CFR Part 73, will be met.
2. The licensee shall subject all security personnel who require access to firearms in the discharge of their official duties to a firearms background check as described in Section B, below.
3. The licensee shall revise its site training and qualification program as needed to ensure armed personnel are properly trained and qualified on assigned weapons and to provide each individual with instructions on events or status that would disqualify the individual from possession or use of firearms and the continuing responsibility of each individual to promptly notify the licensee of the occurrence of any such event or status.
4. Individuals who require access to firearms shall notify the licensee’s security management within 3 working days of the occurrence or existence of any disqualifying event or status. Disqualifying events or status are discussed in 27 CFR 478.32, “Prohibited Shipment, Transportation, Possession, or Receipt of Firearms and Ammunition by Certain Persons,” the Gun Control Act of 1968 (18 U.S.C. 922(g) and (n)), and any applicable State laws.

5. The licensee shall notify the NRC in writing of its readiness to meet the requirements stated in this order. This notification shall be based upon:
 - a. The satisfactory completion of a sufficient number of firearms background checks to continue the effective implementation of its physical protection program, specifically, its NRC-approved security plans, site protective strategy, and implementation procedures, while meeting applicable fatigue requirements.
 - b. The satisfactory completion of training and qualification by armed security officers to include the requirements to notify the licensee of any disqualifying event or status.

B. Firearms Background Check Requirements

1. The licensee shall submit a hard copy FD-258 as specified below, for each armed member of the security organization who receives, possesses, transports, imports, or uses a firearm in the discharge of official duties. The firearms background check requires both a fingerprint-based check and a name-based check through the Federal Bureau of Investigation (FBI) National Instant Criminal Background Check System (NICS). Due to the nature of this interim process, a hard copy FD-258, must be completed as described in paragraph 2 below and submitted to the NRC. A hard-copy FD-258 is necessary because the format of Electronic Information Exchange (EIE) system does not support the transfer of all required information for processing through the FBI NICS database. If desired, licensees may submit fingerprint impressions electronically *in addition to* the hard-copy FD-258.
2. The following 10 information fields specified on the FBI Form FD-258 shall be completely and accurately filled-in with appropriate identifying information. Specifically, individuals must complete the following fields as follows:
 1. First Name
 2. Last Name
 3. Place of Birth
 4. Gender
 5. Date of Birth
 6. Race: (choose one of the following codes)
 - American Indian or Alaska Native
 - Asian
 - Black or African American
 - Hispanic or Latino
 - Native Hawaiian or other Pacific Islander
 - White
 7. Residence of Person Fingerprinted:

Complete mailing addresses of current residence is required. (NICS check includes query of State records for disqualifying information in both State of residence and State of employment.)

 - Street Number (Post Office box numbers cannot be accepted)
 - Street Name
 - City

- State (required)
 - Zip Code
 - 8. Citizenship
 - 9. Reason Fingerprinted:
 - Firearms Background Check (42 U.S.C. 2201a)
 - 10. Social Security Number
3. The NRC is working to update the EIE system that is currently used for submitting and processing electronic fingerprint cards for access authorization purposes under 10 CFR 73.56. Upon notification from the NRC, licensees may choose to submit all information required for a firearms background check through the EIE system. Until such time as the EIE is updated and in use, all designated facilities shall provide a hard-copy FBI Form FD-258 for the purpose of conducting required firearms background checks. The licensee shall retain a copy of all information submitted and received for firearms background checks for a minimum of 5 years after the information is superseded through periodic reinvestigation or the termination of an individual's access to firearms.
 4. In accordance with the NRC-approved security plans, the licensee shall remove from any current armed duties any individual who has not completed a satisfactory firearms background check. Additionally, the licensee may not assign an individual to any armed duties unless the individual has completed a satisfactory firearms background check. A satisfactory firearms background check means a "proceed" response has been received by the licensee, from the FBI, through the NRC.
 5. The licensee shall submit for firearms background checks the required information and fingerprints using the hard copy FD-258 for each member of the security organization whose official duties require, or will require, the possession and use of any firearm, to include covered weapons as defined in the firearms guidelines and as identified in Section 161A(b).
 6. During the 180-day transition period, individuals who receive a "delayed" response from the FBI to their firearms background check may continue to have access to firearms (i.e., standard weapons) as part of their official duties not to exceed midnight of the 180th day.
 7. The licensee shall remove from armed duties, without delay, any individual who has received a "denied" response from the FBI.
 8. Licensees may return an individual to armed duties if the individual receives a "proceed" response from the FBI, subsequent to receiving a "delayed" or "denied" response.
 9. The licensee shall provide instructions to all personnel subject to a firearms background check for appealing "delayed" or "denied" responses. An individual security officer is responsible for appealing a "denied" response or resolving a "delayed" response directly with the FBI.

10. The licensee shall revise its site training and qualification program as needed to provide each individual with instructions on identifying events or status that would disqualify the individual from possession or use of firearms and the continuing responsibility of each individual to promptly notify the licensee of the occurrence of any such event or status.
11. Individuals who require access to firearms shall notify the licensee's security management within 3 working days of the occurrence or existence of any disqualifying event or status. Disqualifying events or status are discussed in 27 CFR 478.32, "Prohibited Shipment, Transportation, Possession, or Receipt of Firearms and Ammunition by Certain Persons," the Gun Control Act of 1968 (18 U.S.C. 922(g) and (n)), and any applicable State laws.
12. The licensee shall remove from armed duties, without delay, any individual for whom disqualifying information has become known or where a satisfactory firearms background check re-investigation has not been completed. When the individual is on duty at the time disqualifying information is received, the term "without delay" means that the licensee shall complete this action within the timeframe specified for reconstitution of the minimum staffing levels, as described in the NRC-approved security plans and applicable 10 CFR Part 73 requirements, or sooner if practicable.
13. The licensee shall subject all individuals who require access to firearms as part of their official duties to a periodic firearms background check re-investigation at least once every 5 years, following the initial or most recent satisfactory firearms background check. Licensees may conduct periodic firearms background checks at a period shorter than 5 years, at their discretion. Re-investigations shall be satisfactorily "completed" within the same calendar month as the initial or most recent firearms background check, with an allowance to midnight of the last day of the month of expiration. The licensee may continue the individual's access to firearms pending completion of the re-investigation, not to exceed midnight of the last day of the month of expiration.
14. The licensee shall complete a "new" firearms background check or reinvestigation for individuals who have:
 - a. Had a break in employment of greater than 7 consecutive calendar days (1 week) with the licensee or the licensee's security contractor. Temporary active duty in the military Reserves or National Guard is not considered to be a break in employment for the purpose of this confirmatory order and the required firearms background check.
 - b. Transferred to the employment of the licensee or the licensee's security contractor. A satisfactorily completed firearms background check performed by a previous employer or completed for employment within a State other than the State in which the individual will be performing armed duties, is not transferable.
15. The licensee shall notify the NRC Headquarters Operations Center by telephone within 72 hours after removing an individual from armed duties as a result of the discovery of any disqualifying status or event. Applicable telephone numbers are specified in Appendix A, "Physical Protection of Plants and Materials," to 10 CFR Part 73.

Notification timeliness shall commence from time of discovery by the licensee or the time of reporting by the individual security officer. The licensee is not required to notify the NRC if the individual security officer has disclosed the disqualifying event or status to the licensee as specified in Appendix B.4, "Weapons Qualification and Requalification Program," to 10 CFR Part 73.