

May 3, 2012

MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations

FROM: Andrew L. Bates, Acting Secretary */RA/*

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

The Commission has disapproved the staff's recommendations on firearms preemption authority, contained in SECY-12-0027.

The staff should provide the Commission with a draft order that addresses the need to take interim action prior to the completion of the final rulemaking on enhanced weapons. This draft order should also designate, in accordance with the proposed rule on enhanced weapons, all power reactor facilities and all Category I special nuclear material facilities as the interim classes of facilities for which licensees and certificate holders are authorized to use the preemption authority of section 161A of the AEA. The designation should not go beyond the boundaries of the proposed rule on enhanced weapons to include all independent spent fuel storage installations (ISFSI) as within that class; however, the staff should propose an option to address, in the interim, specifically licensed co-located ISFSIs. Finally, the draft order should establish the process for the covered entities to apply for preemption authority as well as the requirements for firearms background checks.

Separately, the staff should submit its recommendations on individual applications for preemption authority under Section 161A to the Commission for review and approval. The paper should include the staff's technical evaluations, and draft orders designating the facilities as receiving preemption authority, if the staff's recommendation is to grant the application. The draft orders should include all requirements necessary to use preemption authority.

The staff should also provide notice to the Department of Justice that these case-by-case actions are in response to unique situations and are not part of the formal process that is currently under development through rulemaking.

The scope of the current enhanced weapons rulemaking should be expanded to consider co-located independent spent fuel storage installations.

The staff should seek Commission approval for additional resources necessary to complete the enhanced weapons rulemaking as promptly as possible.

Staff could again solicit delegation of the approval authority to the Office Directors when it forwards the final rule to the Commission for decision. The staff should also include any plan to modify or rescind the confirmatory orders that were issued prior to the effective date of a final rule.

The staff should continue to keep the Commission informed of new circumstances in which changes in state law create conflict with NRC security requirements.

cc: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
CFO
OCA
OPA
Office Directors, Regions, ACRS, ASLBP (via E-Mail)
PDR