



Nuclear Energy

September 2009

NRC Issues Guidelines on Use of Firearms by Security Personnel at Licensed Facilities

Some four years after the passage of the Energy Policy Act of 2005 (“EP Act”), the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) has issued, with the approval of the United States Attorney General, guidelines on the use of firearms by security personnel whose duties include the protection of NRC-regulated facilities. These guidelines are a prerequisite to the implementation of Section 653 of the EP Act which added a new Section 161A. to the Atomic Energy Act of 1954 (“AEA”) regarding the use of firearms by security personnel. The issuance of these guidelines represents merely an intermediate step in permitting certain licensees to obtain weapons not previously permitted to be owned or possessed under Commission authority, *i.e.*, short-barreled shotguns, short-barreled rifles and machine guns (collectively “enhanced weapons”). In addition, Section 161A. authorizes the Commission to permit security personnel of a license or certificate holder to transfer, receive, possess, transport, import and use handguns, rifles, shotguns, semi-automatic assault weapons, ammunition for such weapons, large capacity ammunition feeding devices, and enhanced weapons, notwithstanding state, local, and certain federal firearm laws and regulations that is referred to as the preemption authority.

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The NRC had previously anticipated certain of the requirements relating to fingerprinting and background checks by the issuance of RIS-2008-10 (May 13, 2008) and Supplement 1 thereto (Dec. 22, 2008), entitled “Notice Regarding Forthcoming Federal Firearms Background Checks.” A proposed regulation implementing Section 161A. of the AEA was to be part of the larger proposed Commission security rule. However, because of changes in procedures spelled out in the guidelines, the NRC feels constrained to issue a supplemental proposed notice of rulemaking. Thus, it does not appear probable that final rules implementing Section 161A. will be promulgated before the latter part of 2010. The NRC is unlikely to utilize orders to designate types of facilities to which Section 161A. will apply or to issue the enhanced weapon or preemption authority. The NRC expects to focus on licensed commercial nuclear power plants and Category 1 facilities prior to possibly expanding the authority to other licensees.

In accordance with the guidelines, to utilize enhanced weaponry, a licensee will likely need a specific application to the Commission, together with an amendment to the security plan. The NRC Staff would review the necessity for the required permission in terms of the enhancement to the security of the facility, probably balanced against any collateral impacts. In addition, such applicants would have to comply with other federal firearms laws and regulations (*e.g.*, ATF requirements), including a fingerprint-based background check and a firearms background check and provide training and qualification in the enhanced weapons to anyone handling the weaponry, *e.g.*, security officers, trainers, and armorers.

We understand that a small number of nuclear power plant licensees have expressed an initial interest in the utilization of enhanced weapons. While no criteria for review have been issued, we would expect that the NRC would review such applications closely and seek to balance potential increases in facility security and detriments, *e.g.*, the increased rate of fire and ability to stop vehicles vs. possible collateral impacts. It is not clear whether, for policy reasons, the Commissioners will exclude any types of weapons (*e.g.*, large caliber machine guns or crew-served weapons) from those potentially available to licensees to prevent a private arms race, where licensees who obtain the weapons place subtle pressure on other licensees to follow suit.

The use of the preemption authority under Section 161A., *e.g.*, use of magazines with capacities presently prohibited by state law or the purchase of weapons greater than that permitted by a state at the same time, would appear to be significantly easier to obtain and potentially carried out through an exchange of correspondence with the NRC Staff.

We will continue to follow the rulemaking and the implementation of this rule. If you have any questions, please call the undersigned.

If you have any questions about the matters discussed in this client briefing, please contact:

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