



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

May 1, 2013

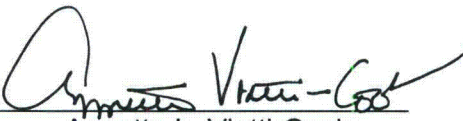
COMMISSION VOTING RECORD

DECISION ITEM: SECY-13-0006

TITLE: COMMISSION ORDER TO DESIGNATE AN INTERIM  
CLASS OF U.S NUCLEAR REGULATORY  
COMMISSION-LICENSED FACILITIES THAT ARE ELIGIBLE  
TO APPLY TO THE COMMISSION FOR PREEMPTION  
AUTHORITY UNDER SECTION 161A OF THE ATOMIC  
ENERGY ACT OF 1954, AS AMENDED

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of May 1, 2013.

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

  
Annette L. Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

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

VOTING SUMMARY - SECY-13-0006

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MACFARLANE	X				X	3/28/13
COMR. SVINICKI	X				X	4/17/13
COMR. APOSTOLAKIS	X				X	4/3/13
COMR. MAGWOOD	X				X	4/18/13
COMR. OSTENDORFF	X				X	2/11/13

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Allison M. Macfarlane

SUBJECT: SECY-13-0006 – COMMISSION ORDER TO  
DESIGNATE AN INTERIM CLASS OF U.S. NUCLEAR  
REGULATORY COMMISSION-LICENSED FACILITIES  
THAT ARE ELIGIBLE TO APPLY TO THE  
COMMISSION FOR PREEMPTION AUTHORITY  
UNDER SECTION 161A OF THE ATOMIC ENERGY  
ACT OF 1954, AS AMENDED

Approved ☒ Disapproved ☐ Abstain ☐

Not Participating ☐

COMMENTS: Below ☐ Attached ☒ None ☐

  
\_\_\_\_\_  
SIGNATURE

3/28/13  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes ☒ No ☐

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

INTERIM ELIGIBLE CLASS OF  
 NRC-LICENSED FACILITIES

Docket Nos. (as shown in Attachment 1)  
 License Nos. (as shown in Attachment 1)  
 EA-12-244

**Comment [SHV1]:** Shouldn't this number begin EA-13? Check this throughout the document and attachments.

ORDER DESIGNATING AN INTERIM CLASS OF  
 NRC-LICENSED FACILITIES THAT ARE ELIGIBLE TO  
 APPLY TO THE COMMISSION FOR AUTHORIZATION TO USE  
 THE AUTHORITY GRANTED UNDER THE PROVISIONS OF  
 SECTION 161A OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

I

In accordance with the Atomic Energy Act (AEA) of 1954, as amended, the licensees identified in Attachment 1 to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC) authorizing the operation of nuclear power reactor facilities ~~and general license at reactor Independent Spent Fuel Storage Installations (ISFSIs)~~ 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," and a specific-license, co-located 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 of the co-located power reactor facility respectively. ~~These licenses~~



~~authorize the operation of nuclear power reactors and at reactor ISFSIs, a CAT-I SNM facility, and a specific license, co-located ISFSI in accordance with the conditions specified.~~

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 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.

## II

Section 161A, "Use of Firearms by Security Personnel," of the AEA (42 United States Code (U.S.C.) 2201a) confers upon the Commission the authority to permit the security personnel at designated NRC-licensed facilities 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 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; September 11, 2009) (referred to as "Firearms Guidelines").

The NRC is issuing EA-12-244 to implement the authority granted to the Commission under Section 161A before the completion and 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.

Specifically, this Order accomplishes the following:

1. Designates an interim class of NRC-licensed facilities, as listed in Attachment 1, that are eligible to apply to the Commission for authorization to use Section 161A preemption authority;
2. Provides a process for submitting an application to the Commission for authorization to use Section 161A preemption authority, in accordance with Attachment 2; and,
3. Requires that the licensees, listed in Attachment 1 of this Order, subject all personnel who require access to firearms in the performance of their official duties to a firearms background check in accordance with Section 161A.c as described in Attachment 3.

Nothing in this Order relieves a licensee from compliance with applicable U.S. Department of Alcohol, Tobacco, Firearms, and Explosives requirements, or any other Federal, State, and local firearms laws and regulations. This Order does not provide or grant any authority or permission to transfer, receive, possess, transport, import, ~~or~~ 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 together with an application for Commission authorization to use Section 161A preemption authority or separately after an application to use Section 161A preemption authority has been submitted to the NRC.~~ The Commission’s authority under Section 161A does not include any permission to transfer, receive, possess, transport, import, ~~or~~ use destructive devices as defined under 27 U.S.C. Chapter 53, “The National Firearms Act,” including explosive devices such as grenades or weapons with a bore diameter greater than 12.7 mm (0.5 inches or 50 caliber).

As authorized under Section 161A, and as described in Section 2 of the Firearms Guidelines, the Commission is issuing this Order to designate the licensees listed in Attachment 1 as an interim class of NRC-licensed facilities that may voluntarily apply to the Commission for authorization to use Section 161A preemption authority in advance of the Commission’s issuance of a final rule on this subject.

A licensee’s application for permission to use Section 161A preemption authority is voluntary and, therefore, the designated facilities listed in Attachment 1 are not required to submit an application in response to this Order. However, the designated facilities are required to conduct firearms background checks in accordance with Attachment 3 to this Order. If a licensee at a designated facility chooses to take advantage of the provisions of Section 161A, an application must be submitted to the NRC, in accordance with Attachment 2. In addition, applications and other documents produced in response to 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.

### III

As discussed above, the Commission has designated the facilities listed in Attachment I as an interim class of NRC-licensed facilities that are eligible to apply to the NRC for Commission authorization to use Section 161A preemption authority. Licensees choosing to apply to the Commission for Section 161A preemption authority must meet the following conditions:

1. The NRC-licensed facility must be ~~fall within~~ the class of facilities ~~radioactive material, or other property~~ designated by the Commission in Attachment I as eligible to apply for preemption authority ~~in Attachment I~~.
2. The licensee must employ covered weapons (as defined in the Firearms Guidelines) as part of their protective strategy.
3. Possession, use, or access to covered weapons must be necessary in the discharge of official duties by personnel at a facility ~~falling within~~ the class of facilities designated by the Commission in Attachment I as eligible to apply for preemption authority ~~in Attachment I~~.

Licensees of the facilities listed in Attachment 1 that choose to apply for permission to use Section 161A preemption authority must use the application process outlined in Attachment 2 and must submit the application 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," and 10 CFR 72.56, "Application for Amendment of License," as appropriate. Applications will be subject to a minimum of 60 days for routine processing. Submittal of an application to the NRC is voluntary and, therefore, recipients of this Order are not required to apply. ~~However, the designated facilities are required to conduct firearms background checks in accordance with Attachment 3 to this Order.~~

~~At a minimum, a~~Applications must include, at a minimum, all the information specified in Attachment 2. All applications will be reviewed on a case-by-case basis. If an application is approved by the Commission, authorization to use Section 161A preemption authority will be granted by the Commission through a confirmatory order that will permit the security personnel at the affected facility 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.

Licensees of the facilities listed in Attachment 1 are required to conduct firearms background checks of all personnel who require access to firearms in the performance of their official duties, as provided in Attachment 3 to this Order, whether the licensee applies for pre-  
emption authority ~~is applied for~~ or not. ~~In accordance with the Firearms Guidelines, a~~All

personnel at the designated facilities listed in Attachment 1 who are assigned official duties that require access to any firearm listed in Section 161A.b 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. Accordingly, all licensees at the designated facilities listed in Attachment 1 shall submit a completed hard-copy FBI Form FD-258, "Fingerprint Card," to the NRC as specified in Attachment 3, for all security personnel who will receive, possess, transport, import, or use any firearm, weapon, ammunition, or a device listed in Section 161A.b. Each licensee must also remit to the NRC a \$70 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 shall be made to the NRC using the processes described in Attachment 3.

#### IV

Accordingly, under Sections 53, 103 or 104b (depending on the license), Sections 161b, 161i, 161o, 161A, and 182 of the AEA of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 50, 10 CFR Part 70, and 10 CFR Part 72, IT IS HEREBY ORDERED that all recipients of this Order as listed in Attachment 1 shall:

1. Subject all individuals who are assigned duties that require the possession, use, or access to firearms and devices listed in Section 161A.b to a firearms background

check in accordance with Section 161A.c "Background Checks," and the process specified in Attachment 3.

2. Begin submitting requests for firearms background checks within 30 days of the effective date of this Order, and complete all firearms background checks within 180 days of the effective date~~issuance~~ of this Order.
3. Notify the NRC after a sufficient number of personnel have successfully completed the requisite firearms background check such that~~to staff~~ the licensee's security organization can be staffed as specified in each licensee's NRC-approved security plans, and ~~effectively implement~~ the licensee's site protective strategy and procedures can be effectively implemented, while meeting applicable fatigue requirements in 10 CFR Part 26, "Fitness for Duty Programs." This notification shall be submitted by the licensee or duly authorized officer thereof in writing and under oath and affirmation.
4. Notify the NRC as soon as practicable and in accordance with the applicable reporting requirements in 10 CFR 73.71, "Reporting of Safeguards Events," of any situation in which ~~the licensee would not be able to sufficiently staff the~~ security organization within 180 days of the issuance of this Order.
5. Submit to the NRC a \$70 administrative processing fee for each firearms background check requested using the processes outlined in Attachment 3.

Notifications shall be submitted to the Director of the NRC licensing office responsible for licensing actions at the affected facility and shall be marked and protected as required for the sensitivity of the information presented. The Director of the

responsible NRC licensing office may, in writing, upon a demonstration of good cause,  
relax or rescind any of the above conditions ~~upon demonstration of good cause by the~~  
any licensee designated by the Commission in Attachment 1.

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](mailto:pdr.resource@nrc.gov).



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

FOR THE NUCLEAR REGULATORY COMMISSION

\_\_\_\_\_  
Cathy Haney, Director  
Office of Nuclear Material Safety  
and Safeguards

\_\_\_\_\_  
Mark Satorius, Director  
Office of Federal and State Materials  
and Environmental Management  
Programs

\_\_\_\_\_  
Eric Leeds, Director  
Office of Nuclear Reactor Regulation

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

#### LIST OF AFFECTED LICENSEES

Babcock & Wilcox Nuclear Operation Group—Lynchburg  
Docket No. 70-027, License No. SNM-42  
Mr. Sandy Baker, President  
Babcock & Wilcox  
Nuclear Operations Group—Lynchburg  
2016 Mount Athos Road  
Lynchburg, VA 24504

Diablo Canyon Nuclear Power Plant, Units 1 and 2  
Docket Nos. 50-275 and 50-323, License Nos. DPR-80 and DPR-82  
Diablo Canyon-Independent Spent Fuel Storage Installation  
Docket No. 72-26, Specific-License No. SNM-2511  
Mr. John T. Conway  
Senior Vice President - Energy Supply and Chief Nuclear Officer  
Pacific Gas and Electric Company  
Diablo Canyon Power Plant  
77 Beale Street, Mail Code B32  
San Francisco, CA 94105

Indian Point Nuclear Generating, Unit 1  
Docket No. 50-003, License No. DPR-5  
Indian Point Nuclear Generating, Units 2, and 3  
Docket Nos. 50-247, 50-286, and 72-51, License Nos. DPR-26 and DPR-64  
Mr. John Ventosa  
Vice President, Operations  
Entergy Nuclear Operations, Inc.  
Indian Point Energy Center  
450 Broadway, GSB  
P.O. Box 249  
Buchanan, NY 10511-0249

James A. Fitzpatrick Nuclear Power Plant  
Docket Nos. 50-333 and 72-12, License No. DPR-59  
Mr. Mike Colomb  
Vice President, Operations  
Entergy Nuclear Operations, Inc.  
James A. FitzPatrick Nuclear Power Plant  
P.O. Box 110  
Lycoming, NY 13093

Nine Mile Point Nuclear Station, Units 1 and 2  
Docket Nos. 50-220, 50-410, and 72-1036, License Nos. DPR-63 and NPF-69  
Mr. Ken Langdon  
Vice President Nine Mile Point  
Nine Mile Point Nuclear Station, LLC  
P. O. Box 63  
Lycoming, NY 13093

R.E. Ginna Nuclear Power Plant  
Docket Nos. 50-244 and 72-67, License No. DPR-18  
Mr. Joseph E. Pacher  
Vice President  
R.E. Ginna Nuclear Power Plant, LLC  
R.E. Ginna Nuclear Power Plant  
1503 Lake Road  
Ontario, NY 14519

San Onofre Nuclear Generating Station, Units 2 and 3  
Docket Nos. 50-361, 50-362, and 72-41, License Nos. NPF-10 and NPF-15  
Mr. Peter T. Dietrich  
Senior Vice President and Chief Nuclear Officer  
Southern California Edison Company  
San Onofre Nuclear Generating Station  
P. O. Box 128  
San Clemente, CA 92674-0128

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

Recipients of EA-12-244 are within the interim class of facilities designated by the U.S. Nuclear Regulatory Commission (NRC) as eligible to voluntarily apply for Commission authorization to use preemption authority under Section 161A of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201a). 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," and 10 CFR 72.56 "Application for Amendment of License" as appropriate, and will be reviewed and approved individually on a case-by-case basis.

If an application is approved by the Commission, permission to use Section 161A preemption authority will be granted under a confirmatory order and will permit the security personnel of the licensee granted such permission 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 permission from the NRC through a confirmatory order before they are authorized to use Section 161A preemption authority.

Licensees that choose to apply for Section 161A preemption authority must meet the following criteria: 1) the licensee must ~~fall be~~ within the class of facilities, ~~radioactive material, or other property~~ designated by the Commission in Attachment 1; 2) the licensee must employ covered weapons (as defined in 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: September 11, 2009) ("Firearms Guidelines")) as part of its protective strategy; and 3) access to, or possession of, covered weapons must be necessary in the discharge of official duties by personnel assigned to the individual facility falling within the class of facilities designated by the Commission.

A single application should be submitted to the NRC in the form of a letter and, at a minimum, must contain the following:

- name of the licensee
- facility name
- docket number and license number (to include ~~general license co-located~~ Independent Spent Fuel Storage Installation docket number, if applicable)
- a statement that the licensee is applying for "Commission authorization to use Section 161A preemption authority under 42 U.S.C. 2201a"

- |
- a statement that the facility is within the interim class of facilities designated by the Commission as listed in Attachment 1 of this order
  - a statement describing the reason for requesting Section 161A preemption authority. This description shall include: 1) the local, State, or Federal law (or implementing regulation) for which Section 161A preemption authority is being requested, and 2) a description of the types and calibers of weapons and ammunition feeding devices for which Section 161A preemption authority is necessary. This description must be sufficiently detailed for the NRC staff to conclude the following:
    1. the licensee employs firearms or devices defined as covered weapons in accordance with the Firearms Guidelines, and are listed in Section 161A.b;
    2. the identified covered weapons are used as part of the site protective strategy at a Commission-designated facility listed in Attachment 1;
    3. possession, use, or access to the identified covered weapons is necessary in the discharge of official duties by security personnel who are engaged in protecting a Commission-designated facility listed in Attachment 1; and
    4. other information provided by the licensee supports the need for Commission authorization consistent with the criteria in the AEA and Firearms Guidelines.

### Process for Conducting Firearms Background Checks

As required by Section 161A.c. of the Atomic Energy Act (AEA) of 1954, as amended (42 U.S.C. 2201a), any 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 class of facilities identified in Attachment 1 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 of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26, "Fitness for Duty Programs."

1. Within 30 days ~~of the effective date~~~~after the issuance~~ of EA-12-244, the licensee of each facility listed in Attachment 1 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, use, or access to any firearm.
2. Procedures for processing Form FD-258 for firearms background checks.
  - a. Affected licensees shall submit one completed, legible, standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) for each member of the security organization who will receive, possess, transport, import, or use any firearm, weapon, ammunition, or a device.
  - b. Affected licensees shall submit each Form FD-258, using an appropriate method listed in 10 CFR 73.4, to the Director of the NRC's Division of Facilities and Security, Mail Stop: TWB-05B32M, marked for the attention of the Division's Criminal History Program. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Attention: Forms Manager, Washington, DC 20555-0001; by calling 630-829-9565; or by e-mail to forms@nrc.gov. 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). Because of 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 the electronic information exchange system does not support the transfer of all required information for processing through the FBI NICS database.

- d. The following 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:
- I. first name
  - II. last name
  - III. place of birth
  - IV. gender
  - V. date of birth
  - VI. height
  - VII. weight
  - VIII. race: (choose one of the following codes)
    - o American Indian or Alaska Native
    - o Asian
    - o Black or African-American
    - o Hispanic or Latino
    - o Native Hawaiian or other Pacific Islander
    - o White
  - IX. residence and employer addresses of person fingerprinted:  
Complete mailing addresses of current residence and duty station are required. (NICS check includes query of State records for disqualifying information in both State of residence and State of duty station.)
    - o street number (Post Office box numbers cannot be accepted)
    - o street name
    - o city
    - o State (required)
    - o ZIP Code
  - X. citizenship
  - XI. reason fingerprinted  
"Firearms Background Check (42 U.S.C. 2201a)"
  - XII. social security number
  - XIII. ORI Number: MDNRCNICZ
- 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 Facility and Security Branch, Division of Facilities and Security, at 301-492-3531.) 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 NRC 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 NRC 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.

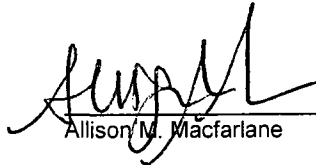
- f. *Right to correct and complete information.* Before making any final adverse determination, the licensee shall make available to the individual the contents of records obtained from the FBI for the purpose of assuring correct and complete information. Confirmation of receipt by the individual of this notification must be maintained by the licensee for a period of 5 years 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, "Purpose and Scope," through 16.34, "Procedure to Obtain Change, Correction or Updating of Identification Records." 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 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 180 days after the effective dateissuance of EA-12-244, the licensee shall remove from any current armed duties, any individual who has not completed a satisfactory firearms background check. Additionally, no later than 180 days after the effective dateissuance of EA-12-244, licensees at the designated facilities listed in Attachment 1 shall not assign any 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 after the effective dateissuance of EA-12-244, individuals who receive a "delayed" response from the FBI to their firearms background check may continue to have access to standard weapons as defined in 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) dated September 11, 2009 (“Firearms Guidelines”) as part of their official duties not to exceed midnight of the 180<sup>th</sup> 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, “Physical Protection of Plants and Materials,” 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, "U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses," 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.

 3/28/13  
Allison M. Macfarlane Date

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary

**FROM:** COMMISSIONER SVINICKI

**SUBJECT:** SECY-13-0006 – COMMISSION ORDER TO  
DESIGNATE AN INTERIM CLASS OF U.S. NUCLEAR  
REGULATORY COMMISSION-LICENSED FACILITIES  
THAT ARE ELIGIBLE TO APPLY TO THE  
COMMISSION FOR PREEMPTION AUTHORITY  
UNDER SECTION 161A OF THE ATOMIC ENERGY  
ACT OF 1954, AS AMENDED

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

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

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

I approve the draft designation order, including attachments, subject to the attached edits. The staff should provide for Commission review and approval any future draft designation order(s) it may develop for licensees that the staff subsequently determines have a need for interim action prior to the issuance of the final rule. I also approve informing the governors of New York, California, Virginia, and Maryland about the Commission's interim actions to execute preemption authority under section 161A via order. Consistent with the September 4, 2009 notification, this notification should be signed by the Chairman.

  
\_\_\_\_\_  
SIGNATURE

04/17/13  
\_\_\_\_\_  
DATE

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

KLS Edits

7590-01-P

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

INTERIM ELIGIBLE CLASS OF  
NRC-LICENSED FACILITIES

Docket Nos. (as shown in Attachment 1)  
License Nos. (as shown in Attachment 1)  
EA-12-244

Comment [j1]: Update order number  
throughout, as appropriate.

ORDER DESIGNATING AN INTERIM CLASS OF  
NRC-LICENSED FACILITIES THAT ARE ELIGIBLE TO  
APPLY TO THE COMMISSION FOR AUTHORIZATION TO USE  
THE AUTHORITY GRANTED UNDER THE PROVISIONS OF  
SECTION 161A OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

I

In accordance with the Atomic Energy Act (AEA) of 1954, as amended, the licensees identified in Attachment 1 to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC) authorizing the operation of nuclear power reactor facilities ~~and general license at reactor Independent Spent Fuel Storage Installations (ISFSIs)~~ 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," and ~~an Independent Spent Fuel Storage Installation (ISFSI) -specific license, co-located 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 of the co-located power reactor facility respectively. ~~These licenses~~

Enclosure

~~authorize the operation of nuclear power reactors and at reactor ISFSIs, a CAT-I SNM facility, and a specific license, co-located ISFSI in accordance with the conditions specified.~~

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 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.

## II

Section 161A, "Use of Firearms by Security Personnel," of the AEA (42 United States Code (U.S.C.) 2201a) confers upon the Commission the authority to permit the security personnel at designated NRC-licensed facilities 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 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; September 11, 2009) (referred to as "Firearms Guidelines").

The NRC is issuing EA-12-244 to implement the authority granted to the Commission under Section 161A before the completion and 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.

Specifically, this Order accomplishes the following:

1. Designates an interim class of NRC-licensed facilities, as listed in Attachment 1, that are eligible to apply to the Commission for authorization to use Section 161A preemption authority;
2. Provides a process for submitting an application to the Commission for authorization to use Section 161A preemption authority, in accordance with Attachment 2; and,
3. Requires that the licensees, listed in Attachment 1 of this Order, subject all personnel who require access to firearms in the performance of their official duties to a firearms background check in accordance with Section 161A.c as described in Attachment 3.

Nothing in this Order relieves a licensee from compliance with applicable U.S. Department of Alcohol, Tobacco, Firearms, and Explosives requirements, or any other Federal, State, and local firearms laws and regulations. This Order does not provide or grant any authority or permission to transfer, receive, possess, transport, import, ~~and or~~ 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 together with an application for Commission authorization to use Section 161A preemption authority or separately after an~~

~~application to use Section 161A preemption authority has been submitted to the NRC.~~ The Commission's authority under Section 161A does not include any permission to transfer, receive, possess, transport, import, ~~and or~~ use destructive devices as defined under 27 U.S.C. Chapter 53, "The National Firearms Act," including explosive devices such as grenades or weapons with a bore diameter greater than 12.7 mm (0.5 inches or 50 caliber).

As authorized under Section 161A, and as described in Section 2 of the Firearms Guidelines, the Commission is issuing this Order to designate the licensees listed in Attachment 1 as an interim class of NRC-licensed facilities that may voluntarily apply to the Commission for authorization to use Section 161A preemption authority in advance of the Commission's issuance of a final rule on this subject.

A licensee's application for permission to use Section 161A preemption authority is voluntary and, therefore, the designated facilities listed in Attachment 1 are not required to submit an application in response to this Order. However, the designated facilities are required to conduct firearms background checks in accordance with Attachment 3 to this Order. If a licensee at a designated facility chooses to take advantage of the provisions of Section 161A, an application must be submitted to the NRC, in accordance with Attachment 2. In addition, applications and other documents produced in response to 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.

### III

As discussed above, the Commission has designated the facilities listed in Attachment 1 as an interim class of NRC-licensed facilities that are eligible to apply to the NRC for Commission authorization to use Section 161A preemption authority. Licensees choosing to apply to the Commission for Section 161A preemption authority must meet the following conditions:

1. The NRC-licensed facility must fall within the class of facilities, ~~radioactive material, or other property~~ designated by the Commission in Attachment 1.
2. The licensee must employ covered weapons (as defined in the Firearms Guidelines) as part of their protective strategy.
3. Possession, use, or access to covered weapons must be necessary in the discharge of official duties by personnel at a facility falling within the class of facilities designated by the Commission in Attachment 1.

Licensees of the facilities listed in Attachment 1 that choose to apply for permission to use Section 161A preemption authority must use the application process outlined in Attachment 2 and must submit the application 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," and 10 CFR 72.56, "Application for Amendment of License," as appropriate. Applications will be subject to a minimum of 60 days for routine processing. Submittal of an application to the NRC is voluntary and, therefore, recipients of this Order are not required to apply. However, the designated facilities are required to conduct firearms background checks in accordance with Attachment 3 to this Order.



At a minimum, applications must include all the information specified in Attachment 2. All applications will be reviewed on a case-by-case basis. If an application is approved by the Commission, authorization to use Section 161A preemption authority will be granted by the Commission through a confirmatory order that will permit the security personnel at the affected facility 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 the Firearms Guidelines, a~~All personnel at the designated facilities listed in Attachment 1 who are assigned official duties that require access to any firearm listed in Section 161A.b 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. Accordingly, all licensees at the designated facilities listed in Attachment 1 shall submit a completed hard-copy FBI Form FD-258, "Fingerprint Card," to the NRC as specified in Attachment 3, for all security personnel who will receive, possess, transport, import, or use any firearm, weapon, ammunition, or a device listed in Section 161A.b. A \$70 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 shall be made to the NRC using the processes described in Attachment 3.

IV

Accordingly, under Sections 53, 103 or 104b (depending on the license), Sections 161b, 161i, 161o, 161A, and 182 of the AEA of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 50, 10 CFR Part 70, and 10 CFR Part 72, IT IS HEREBY ORDERED that all recipients of this Order as listed in Attachment 1 shall:

1. Subject all individuals who are assigned duties that require the possession, use, or access to firearms and devices listed in Section 161A.b to a firearms background check in accordance with Section 161A.c "Background Checks," and the process specified in Attachment 3.
2. Begin submitting requests for firearms background checks within 30 days of the effective date of this Order, and complete all firearms background checks within 180 days of the effective date ~~issuance~~ of this Order.
3. Notify the NRC after a sufficient number of personnel have successfully completed the requisite firearms background check ~~to staff~~ such that the licensee's security organization can be staffed as specified in each licensee's NRC-approved security plans, and ~~effectively implement~~ the licensee's site protective strategy and procedures can be effectively implemented, while meeting applicable fatigue requirements in 10 CFR Part 26, "Fitness for Duty Programs." This notification shall be submitted by the licensee or duly authorized officer thereof in writing and under oath and affirmation.
4. Notify the NRC as soon as practicable and in accordance with the applicable reporting requirements in 10 CFR 73.71, "Reporting of Safeguards Events," of any situation in which ~~the licensee would not be able to sufficiently staff the security organization within 180 days of the~~ issuance ~~effective date~~ of this Order.

5. Submit to the NRC a \$70 administrative processing fee for each firearms background check requested using the processes outlined in Attachment 3.

Notifications shall be submitted to the Director of the NRC licensing office responsible for licensing actions at the affected facility and shall be marked and protected as required for the sensitivity of the information presented. The Director of the responsible NRC licensing office may, in writing, upon demonstration of good cause, relax or rescind any of the above conditions ~~upon demonstration of good cause by for any the licensee~~ designated by the Commission in Attachment 1.

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](mailto:pdr.resource@nrc.gov).

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

FOR THE NUCLEAR REGULATORY COMMISSION

\_\_\_\_\_  
Cathy Haney, Director  
Office of Nuclear Material Safety  
and Safeguards

\_\_\_\_\_  
Mark Satorius, Director  
Office of Federal and State Materials  
and Environmental Management  
Programs

\_\_\_\_\_  
Eric Leeds, Director  
Office of Nuclear Reactor Regulation

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

#### LIST OF AFFECTED LICENSEES

Babcock & Wilcox Nuclear Operation Group—Lynchburg  
Docket No. 70-027, License No. SNM-42  
Mr. Sandy Baker, President  
Babcock & Wilcox  
Nuclear Operations Group—Lynchburg  
2016 Mount Athos Road  
Lynchburg, VA 24504

Calvert Cliffs Nuclear Power Plant, Units 1 and 2  
Docket Nos. 50-317 and 50-318, License Nos. [NRC staff to insert License Nos.]  
Calvert Cliffs co-located Independent Spent Fuel Storage Installation  
Docket No. 72-26, Specific License No. [NRC staff to insert License No.]  
NRC staff to insert Address Information

Diablo Canyon Nuclear Power Plant, Units 1 and 2  
Docket Nos. 50-275 and 50-323, License Nos. DPR-80 and DPR-82  
Diablo Canyon-Independent Spent Fuel Storage Installation  
Docket No. 72-26, Specific-License No. SNM-2511  
Mr. John T. Conway  
Senior Vice President - Energy Supply and Chief Nuclear Officer  
Pacific Gas and Electric Company  
Diablo Canyon Power Plant  
77 Beale Street, Mail Code B32  
San Francisco, CA 94105

Indian Point Nuclear Generating, Unit 1  
Docket No. 50-003, License No. DPR-5  
Indian Point Nuclear Generating, Units 2, and 3  
Docket Nos. 50-247, 50-286, and 72-51, License Nos. DPR-26 and DPR-64  
Mr. John Ventosa  
Vice President, Operations  
Entergy Nuclear Operations, Inc.  
Indian Point Energy Center  
450 Broadway, GSB  
P.O. Box 249  
Buchanan, NY 10511-0249

James A. FitzPatrick Nuclear Power Plant  
Docket Nos. 50-333 and 72-12, License No. DPR-59  
Mr. Mike Colomb  
Vice President, Operations  
Entergy Nuclear Operations, Inc.  
James A. FitzPatrick Nuclear Power Plant  
P.O. Box 110  
Lycoming, NY 13093

Nine Mile Point Nuclear Station, Units 1 and 2  
Docket Nos. 50-220, 50-410, and 72-1036, License Nos. DPR-63 and NPF-69  
Mr. Ken Langdon  
Vice President Nine Mile Point  
Nine Mile Point Nuclear Station, LLC  
P. O. Box 63  
Lycoming, NY 13093

R.E. Ginna Nuclear Power Plant  
Docket Nos. 50-244 and 72-67, License No. DPR-18  
Mr. Joseph E. Pacher  
Vice President  
R.E. Ginna Nuclear Power Plant, LLC  
R.E. Ginna Nuclear Power Plant  
1503 Lake Road  
Ontario, NY 14519

San Onofre Nuclear Generating Station, Units 2 and 3  
Docket Nos. 50-361, 50-362, and 72-41, License Nos. NPF-10 and NPF-15  
Mr. Peter T. Dietrich  
Senior Vice President and Chief Nuclear Officer  
Southern California Edison Company  
San Onofre Nuclear Generating Station  
P. O. Box 128  
San Clemente, CA 92674-0128

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

Recipients of EA-12-244 are within the interim class of facilities designated by the U.S. Nuclear Regulatory Commission (NRC) as eligible to voluntarily apply for Commission authorization to use preemption authority under Section 161A of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201a). 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," and 10 CFR 72.56 "Application for Amendment of License" as appropriate, and will be reviewed and approved individually on a case-by-case basis.

If an application is approved by the Commission, permission to use Section 161A preemption authority will be granted under a confirmatory order and will permit the security personnel of the licensee granted such permission 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 permission from the NRC through a confirmatory order before they are authorized to use Section 161A preemption authority.

Licensees that choose to apply for Section 161A preemption authority must meet the following criteria: 1) the licensee must fall within the class of facilities, ~~radioactive material, or other property~~ designated by the Commission in Attachment 1; 2) the licensee must employ covered weapons (as defined in 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; September 11, 2009) ("Firearms Guidelines")) as part of its protective strategy; and 3) access to, or possession of, covered weapons must be necessary in the discharge of official duties by personnel assigned to the individual facility falling within the class of facilities designated by the Commission.

A single application should be submitted to the NRC in the form of a letter and, at a minimum, must contain the following:

- name of the licensee
- facility name
- docket number and license number (to include ~~general license co-located~~ Independent Spent Fuel Storage Installation docket number, if applicable)
- a statement that the licensee is applying for "Commission authorization to use Section 161A preemption authority under 42 U.S.C. 2201a"
- a statement that the facility is within the interim class of facilities designated by the Commission as listed in Attachment 1 of this order
- a statement describing the reason for requesting Section 161A preemption authority. This description shall include: 1) the local, State, or Federal law (or implementing

Attachment 2



regulation) for which Section 161A preemption authority is being requested, and 2) a description of the types and calibers of weapons and ammunition feeding devices for which Section 161A preemption authority is necessary. This description must be sufficiently detailed for the NRC staff to conclude the following:

1. the licensee employs firearms or devices defined as covered weapons in accordance with the Firearms Guidelines, and are listed in Section 161A.b;
2. the identified covered weapons are used as part of the site protective strategy at a Commission-designated facility listed in Attachment 1;
3. possession, use, or access to the identified covered weapons is necessary in the discharge of official duties by security personnel who are engaged in protecting a Commission-designated facility listed in Attachment 1; and
4. other information provided by the licensee supports the need for Commission authorization consistent with the criteria in the AEA and Firearms Guidelines.



### Process for Conducting Firearms Background Checks

As required by Section 161A.c. of the Atomic Energy Act (AEA) of 1954, as amended (42 U.S.C. 2201a), any 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 class of facilities identified in Attachment 1 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 of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26, "Fitness for Duty Programs."

1. Within 30 days after the ~~issuance~~ effective date of EA-12-244, the licensee of each facility listed in Attachment 1 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, use, or access to any firearm.
2. Procedures for processing Form FD-258 for firearms background checks.
  - a. Affected licensees shall submit one completed, legible, standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) for each member of the security organization who will receive, possess, transport, import, or use any firearm, weapon, ammunition, or a device.
  - b. Affected licensees shall submit each Form FD-258, using an appropriate method listed in 10 CFR 73.4, to the Director of the NRC's Division of Facilities and Security, Mail Stop: TWB-05B32M, marked for the attention of the Division's Criminal History Program. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Attention: Forms Manager, Washington, DC 20555-0001; by calling 630-829-9565; or by e-mail to forms@nrc.gov. 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). Because of 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 the electronic information exchange system does not support the transfer of all required information for processing through the FBI NICS database.

- d. The following 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:
- I. first name
  - II. last name
  - III. place of birth
  - IV. gender
  - V. date of birth
  - VI. height
  - VII. weight
  - VIII. race: (choose one of the following codes)
    - o American Indian or Alaska Native
    - o Asian
    - o Black or African-American
    - o Hispanic or Latino
    - o Native Hawaiian or other Pacific Islander
    - o White
  - IX. residence and employer addresses of person fingerprinted:  
Complete mailing addresses of current residence and duty station are required. (NICS check includes query of State records for disqualifying information in both State of residence and State of duty station.)
    - o street number (Post Office box numbers cannot be accepted)
    - o street name
    - o city
    - o State (required)
    - o ZIP Code
  - X. citizenship
  - XI. reason fingerprinted  
"Firearms Background Check (42 U.S.C. 2201a)"
  - XII. social security number
  - XIII. ORI Number: MDNRCNICZ
- 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 Facility and Security Branch, Division of Facilities and Security, at 301-492-3531.) 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 NRC 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 NRC 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.* Before making 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 5 years 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, "Purpose and Scope," through 16.34, "Procedure to Obtain Change, Correction or Updating of Identification Records." 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 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 180 days after the issuance effective date of EA-12-244, the licensee shall remove from any current armed duties, any individual who has not completed a satisfactory firearms background check. Additionally, no later than 180 days after the issuance effective date of EA-12-244, licensees at the designated facilities listed in Attachment 1 shall not assign any 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 after the issuance effective date of EA-12-244, individuals who receive a "delayed" response from the FBI to their firearms background check may continue to have access to standard weapons as defined in 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) dated September 11, 2009 ("Firearms Guidelines") as part of their official duties not to exceed midnight of the 180<sup>th</sup> 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, "Physical Protection of Plants and Materials," 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, "U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses," 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.

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary

**FROM:** Commissioner Apostolakis

**SUBJECT:** SECY-13-0006 – COMMISSION ORDER TO  
DESIGNATE AN INTERIM CLASS OF U.S. NUCLEAR  
REGULATORY COMMISSION-LICENSED FACILITIES  
THAT ARE ELIGIBLE TO APPLY TO THE  
COMMISSION FOR PREEMPTION AUTHORITY  
UNDER SECTION 161A OF THE ATOMIC ENERGY  
ACT OF 1954, AS AMENDED

Approved   X   Disapproved        Abstain       

Not Participating       

**COMMENTS:** Below   X   Attached   X   None       

I approve the draft designation order, the attachments, and staff's notification recommendations subject to the enclosed edits. I agree with Commissioner Ostendorff that the staff should provide for Commission review and approval any subsequent draft designation order for licensees that the staff has determined have a near-term need for interim action prior to the final rulemaking.

  
\_\_\_\_\_  
SIGNATURE

  4/3/13    
\_\_\_\_\_  
DATE

Entered on "STARS" Yes   ✓   No

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

INTERIM ELIGIBLE CLASS OF  
NRC-LICENSED FACILITIES

Docket Nos. (as shown in Attachment 1)  
License Nos. (as shown in Attachment 1)  
EA-~~12-244XX-XXX~~

ORDER DESIGNATING AN INTERIM CLASS OF  
NRC-LICENSED FACILITIES THAT ARE ELIGIBLE TO  
APPLY TO THE COMMISSION FOR AUTHORIZATION TO USE  
THE AUTHORITY GRANTED UNDER THE PROVISIONS OF  
SECTION 161A OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

I

In accordance with the Atomic Energy Act (AEA) of 1954, as amended, the licensees identified in Attachment 1 to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC) authorizing the operation of nuclear power reactor facilities ~~and general-~~  
~~license at reactor Independent Spent Fuel Storage Installations (ISFSIs)~~ 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," and an ~~specific-license, co-located~~ 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 of the co-located power reactor facility respectively. ~~These licenses~~

Enclosure



~~authorize the operation of nuclear power reactors and at-reactor ISFSIs, a CAT-I SNM facility, and a specific license, co-located ISFSI in accordance with the conditions specified.~~

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 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.

## II

Section 161A, "Use of Firearms by Security Personnel," of the AEA (42 United States Code (U.S.C.) 2201a) confers upon the Commission the authority to permit the security personnel at designated NRC-licensed facilities 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 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; September 11, 2009) (referred to as “Firearms Guidelines”).

The NRC is issuing EA-~~12-244XX-XXX~~ to implement the authority granted to the Commission under Section 161A before the completion and 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.

Specifically, this Order accomplishes the following:

1. Designates an interim class of NRC-licensed facilities, as listed in Attachment 1, that are eligible to apply to the Commission for authorization to use Section 161A preemption authority;
2. Provides a process for submitting an application to the Commission for authorization to use Section 161A preemption authority, in accordance with Attachment 2; and,
3. Requires that the licensees, listed in Attachment 1 of this Order, subject all personnel who require access to firearms in the performance of their official duties to a firearms background check in accordance with Section 161A.c as described in Attachment 3.

Nothing in this Order relieves a licensee from compliance with applicable U.S. Department of Alcohol, Tobacco, Firearms, and Explosives requirements, or any other Federal, State, and local firearms laws and regulations. This Order does not provide or grant any authority or permission to transfer, receive, possess, transport, import, ~~and-or~~ 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 together with an application~~

~~for Commission authorization to use Section 161A preemption authority or separately after an application to use Section 161A preemption authority has been submitted to the NRC.~~ The Commission's authority under Section 161A does not include any permission to transfer, receive, possess, transport, import, ~~or and~~ use destructive devices as defined under 27 U.S.C. Chapter 53, "The National Firearms Act," including explosive devices such as grenades or weapons with a bore diameter greater than 12.7 mm (0.5 inches or 50 caliber).

As authorized under Section 161A, and as described in Section 2 of the Firearms Guidelines, the Commission is issuing this Order to designate the licensees listed in Attachment 1 as an interim class of NRC-licensed facilities that may voluntarily apply to the Commission for authorization to use Section 161A preemption authority in advance of the Commission's issuance of a final rule on this subject.

A licensee's application for permission to use Section 161A preemption authority is voluntary and, therefore, the designated facilities listed in Attachment 1 are not required to submit an application in response to this Order. However, the designated facilities are required to conduct firearms background checks in accordance with Attachment 3 to this Order. If a licensee at a designated facility chooses to take advantage of the provisions of Section 161A, an application must be submitted to the NRC, in accordance with Attachment 2. In addition, applications and other documents produced in response to 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.

### III

As discussed above, the Commission has designated the facilities listed in Attachment 1 as an interim class of NRC-licensed facilities that are eligible to apply to the NRC for Commission authorization to use Section 161A preemption authority. Licensees choosing to apply to the Commission for Section 161A preemption authority must meet the following conditions:

1. The NRC-licensed facility must ~~fall be~~ within the class of facilities, ~~radioactive material, or other property~~ designated by the Commission in Attachment 1 as eligible to apply for preemption authority.
2. The licensee must employ covered weapons (as defined in the Firearms Guidelines) as part of their protective strategy.
3. Possession, use, or access to covered weapons must be necessary in the discharge of official duties by personnel at a facility falling within the class of facilities designated by the Commission in Attachment 1 as eligible to apply for preemption authority.

Licensees of the facilities listed in Attachment 1 that choose to apply for permission to use Section 161A preemption authority must use the application process outlined in Attachment 2 and must submit the application 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," and 10 CFR 72.56, "Application for Amendment of License," as appropriate. Applications will be subject to a minimum of 60 days



for routine processing. Submittal of an application to the NRC is voluntary and, therefore, recipients of this Order are not required to apply. However, the designated facilities are required to conduct firearms background checks in accordance with Attachment 3 to this Order.

At a minimum, applications must include all the information specified in Attachment 2. All applications will be reviewed on a case-by-case basis. If an application is approved by the Commission, authorization to use Section 161A preemption authority will be granted by the Commission through a confirmatory order that will permit the security personnel at the affected facility 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 the Firearms Guidelines,~~ all All personnel at the designated facilities listed in Attachment 1 who are assigned official duties that require access to any firearm listed in Section 161A.b 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. Accordingly, all licensees at the designated facilities listed in Attachment 1 shall submit a completed hard-copy FBI Form FD-258, "Fingerprint Card," to the NRC as specified in Attachment 3, for all security personnel who will receive, possess, transport, import, or use any firearm, weapon, ammunition, or a device listed in Section 161A.b. A \$70 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 shall be made to the NRC using the processes described in Attachment 3.

#### IV

Accordingly, under Sections 53, 103 or 104b (depending on the license), Sections 161b, 161i, 161o, 161A, and 182 of the AEA of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 50, 10 CFR Part 70, and 10 CFR Part 72, IT IS HEREBY ORDERED that all recipients of this Order as listed in Attachment 1 shall:

1. Subject all individuals who are assigned duties that require the possession, use, or access to firearms and devices listed in Section 161A.b to a firearms background check in accordance with Section 161A.c "Background Checks," and the process specified in Attachment 3.
2. Begin submitting requests for firearms background checks within 30 days of the effective date of this Order, and complete all firearms background checks within 180 days of the issuance-effective date of this Order.
3. Notify the NRC after a sufficient number of personnel have successfully completed the requisite firearms background check ~~to staff~~ such that the licensee's security organization can be staffed as specified in each licensee's NRC-approved security plans, and effectively implement the licensee's site protective strategy and procedures, while meeting applicable fatigue requirements in 10 CFR Part 26, "Fitness for Duty Programs." This notification shall be submitted by the licensee or duly authorized officer thereof in writing and under oath and affirmation.

4. Notify the NRC as soon as practicable and in accordance with the applicable reporting requirements in 10 CFR 73.71, "Reporting of Safeguard Events," of any situation in which the licensee would not be able to sufficiently staff the security organization within 180 days of the issuance of this Order.
5. Submit to the NRC a \$70 administrative processing fee for each firearms background check requested using the processes outlined in Attachment 3.

Notifications shall be submitted to the Director of the NRC licensing office responsible for licensing actions at the affected facility and shall be marked and protected as required for the sensitivity of the information presented. ~~The Director of the responsible NRC licensing office may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the licensee.~~

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

~~As applicable, the Director, Office of Nuclear Reactor Regulation, the Director, Office of Nuclear Material Safety and Safeguards, or the Director, Office of Federal and State Materials and Environmental Management Programs may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.~~

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](mailto:pdr.resource@nrc.gov).



Dated at Rockville, Maryland this

day of [month, year].

FOR THE NUCLEAR REGULATORY COMMISSION

\_\_\_\_\_  
Cathy Haney, Director  
Office of Nuclear Material Safety  
and Safeguards

\_\_\_\_\_  
Mark Satorius, Director  
Office of Federal and State Materials  
and Environmental Management  
Programs

\_\_\_\_\_  
Eric Leeds, Director  
Office of Nuclear Reactor Regulation

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



## LIST OF AFFECTED LICENSEES

Babcock & Wilcox Nuclear Operation Group—Lynchburg  
Docket No. 70-027, License No. SNM-42  
Mr. Sandy Baker, President  
Babcock & Wilcox  
Nuclear Operations Group—Lynchburg  
2016 Mount Athos Road  
Lynchburg, VA 24504

Calvert Cliffs Nuclear Power Plant, Units 1 and 2  
Docket Nos. 50-317 and 50-318, License Nos. NRC staff to insert License Nos.  
Calvert Cliffs' co-located Independent Spent Fuel Storage Installation  
Docket No. 72-8, Specific-License No. NRC staff to insert License No.  
NRC staff to insert Address information.

Diablo Canyon Nuclear Power Plant, Units 1 and 2  
Docket Nos. 50-275 and 50-323, License Nos. DPR-80 and DPR-82  
Diablo Canyon-Independent Spent Fuel Storage Installation  
Docket No. 72-26, Specific-License No. SNM-2511  
Mr. John T. Conway  
Senior Vice President - Energy Supply and Chief Nuclear Officer  
Pacific Gas and Electric Company  
Diablo Canyon Power Plant  
77 Beale Street, Mail Code B32  
San Francisco, CA 94105

Indian Point Nuclear Generating, Unit 1  
Docket No. 50-003, License No. DPR-5  
Indian Point Nuclear Generating, Units 2, and 3  
Docket Nos. 50-247, 50-286, and 72-51, License Nos. DPR-26 and DPR-64  
Mr. John Ventosa  
Vice President, Operations  
Entergy Nuclear Operations, Inc.  
Indian Point Energy Center  
450 Broadway, GSB  
P.O. Box 249  
Buchanan, NY 10511-0249

James A. Fitzpatrick Nuclear Power Plant  
Docket Nos. 50-333 and 72-12, License No. DPR-59  
Mr. Mike Colomb  
Vice President, Operations  
Entergy Nuclear Operations, Inc.  
James A. FitzPatrick Nuclear Power Plant  
P.O. Box 110  
Lycoming, NY 13093

Nine Mile Point Nuclear Station, Units 1 and 2  
Docket Nos. 50-220, 50-410, and 72-1036, License Nos. DPR-63 and NPF-69  
Mr. Ken Langdon  
Vice President Nine Mile Point  
Nine Mile Point Nuclear Station, LLC  
P. O. Box 63  
Lycoming, NY 13093

R.E. Ginna Nuclear Power Plant  
Docket Nos. 50-244 and 72-67, License No. DPR-18  
Mr. Joseph E. Pacher  
Vice President  
R.E. Ginna Nuclear Power Plant, LLC  
R.E. Ginna Nuclear Power Plant  
1503 Lake Road  
Ontario, NY 14519

San Onofre Nuclear Generating Station, Units 2 and 3  
Docket Nos. 50-361, 50-362, and 72-41, License Nos. NPF-10 and NPF-15  
Mr. Peter T. Dietrich  
Senior Vice President and Chief Nuclear Officer  
Southern California Edison Company  
San Onofre Nuclear Generating Station  
P. O. Box 128  
San Clemente, CA 92674-0128

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

Recipients of EA-12-244 are within the interim class of facilities designated by the U.S. Nuclear Regulatory Commission (NRC) as eligible to voluntarily apply for Commission authorization to use preemption authority under Section 161A of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201a). 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," and 10 CFR 72.56 "Application for Amendment of License" as appropriate, and will be reviewed and approved individually on a case-by-case basis.

If an application is approved by the Commission, permission to use Section 161A preemption authority will be granted under a confirmatory order and will permit the security personnel of the licensee granted such permission 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 permission from the NRC through a confirmatory order before they are authorized to use Section 161A preemption authority.

Licensees that choose to apply for Section 161A preemption authority must meet the following criteria: 1) the licensee must fall within the class of facilities, ~~radioactive material, or other property~~ designated by the Commission in Attachment 1; 2) the licensee must employ covered weapons (as defined in 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: September 11, 2009)) ("Firearms Guidelines") as part of its protective strategy; and 3) access to, or possession of, covered weapons must be necessary in the discharge of official duties by personnel assigned to the individual facility falling within the class of facilities designated by the Commission.

A single application should be submitted to the NRC in the form of a letter and, at a minimum, must contain the following:

- name of the licensee
- facility name
- docket number and license number (to include ~~general-license co-located~~ Independent Spent Fuel Storage Installation docket number, if applicable)
- a statement that the licensee is applying for "Commission authorization to use Section 161A preemption authority under 42 U.S.C. 2201a"
- a statement that the facility is within the interim class of facilities designated by the Commission as listed in Attachment 1 of this order
- a statement describing the reason for requesting Section 161A preemption authority. This description shall include: 1) the local, State, or Federal law (or implementing

regulation) for which Section 161A preemption authority is being requested, and 2) a description of the types and calibers of weapons and ammunition feeding devices for which Section 161A preemption authority is necessary. This description must be sufficiently detailed for the NRC staff to conclude the following:

1. the licensee employs firearms or devices defined as covered weapons in accordance with the Firearms Guidelines, and are listed in Section 161A.b;
2. the identified covered weapons are used as part of the site protective strategy at a Commission-designated facility listed in Attachment 1;
3. possession, use, or access to the identified covered weapons is necessary in the discharge of official duties by security personnel who are engaged in protecting a Commission-designated facility listed in Attachment 1; and
4. other information provided by the licensee supports the need for Commission authorization consistent with the criteria in the AEA and Firearms Guidelines.



## Process for Conducting Firearms Background Checks

As required by Section 161A.c. of the Atomic Energy Act (AEA) of 1954, as amended (42 U.S.C. 2201a), any 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 class of facilities identified in Attachment 1 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 of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26, "Fitness for Duty Programs."

1. Within 30 days after the ~~issuance-effective date~~ of EA-12-244XX-XXX, the licensee of each facility listed in Attachment 1 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, use, or access to any firearm.
2. Procedures for processing Form FD-258 for firearms background checks.
  - a. Affected licensees shall submit one completed, legible, standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) for each member of the security organization who will receive, possess, transport, import, or use any firearm, weapon, ammunition, or a device.
  - b. Affected licensees shall submit each Form FD-258, using an appropriate method listed in 10 CFR 73.4, to the Director of the NRC's Division of Facilities and Security, Mail Stop: TWB-05B32M, marked for the attention of the Division's Criminal History Program. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Attention: Forms Manager, Washington, DC 20555-0001; by calling 630-829-9565; or by e-mail to forms@nrc.gov. 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). Because of 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 the electronic information exchange system does not support the transfer of all required information for processing through the FBI NICS database.

- d. The following 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:
- I. first name
  - II. last name
  - III. place of birth
  - IV. gender
  - V. date of birth
  - VI. height
  - VII. weight
  - VIII. race: (choose one of the following codes)
    - o American Indian or Alaska Native
    - o Asian
    - o Black or African-American
    - o Hispanic or Latino
    - o Native Hawaiian or other Pacific Islander
    - o White
  - IX. residence and employer addresses of person fingerprinted:  
Complete mailing addresses of current residence and duty station are required. (NICS check includes query of State records for disqualifying information in both State of residence and State of duty station.)
    - o street number (Post Office box numbers cannot be accepted)
    - o street name
    - o city
    - o State (required)
    - o ZIP Code
  - X. citizenship
  - XI. reason fingerprinted  
"Firearms Background Check (42 U.S.C. 2201a)"
  - XII. social security number
  - XIII. ORI Number: MDNRCNICZ
- 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 Facility and Security Branch, Division of Facilities and Security, at 301-492-3531.) 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 NRC 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 NRC 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.* Before making 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 5 years 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, "Purpose and Scope," through 16.34, "Procedure to Obtain Change, Correction or Updating of Identification Records." 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 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 180 days after the ~~issuance~~effective date of EA-12-244XX-XXX, the licensee shall remove from any current armed duties, any individual who has not completed a satisfactory firearms background check. Additionally, no later than 180 days after the issuance of EA-12-244, licensees at the designated facilities listed in Attachment 1 shall not assign any 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 after the ~~issuance~~effective date of EA-12-244XX-XXX, individuals who receive a "delayed" response from the FBI to their firearms background check may continue to have access to standard weapons as defined in 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) dated September 11, 2009 ("Firearms Guidelines") as part of their official duties not to exceed midnight of the 180<sup>th</sup> 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, "Physical Protection of Plants and Materials," 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, "U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses," 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.

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary

**FROM:** COMMISSIONER MAGWOOD

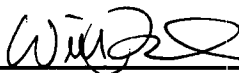
**SUBJECT:** SECY-13-0006 – COMMISSION ORDER TO  
DESIGNATE AN INTERIM CLASS OF U.S. NUCLEAR  
REGULATORY COMMISSION-LICENSED FACILITIES  
THAT ARE ELIGIBLE TO APPLY TO THE  
COMMISSION FOR PREEMPTION AUTHORITY  
UNDER SECTION 161A OF THE ATOMIC ENERGY  
ACT OF 1954, AS AMENDED

Approved   X   Disapproved        Abstain       

Not Participating       

**COMMENTS:** Below   X   Attached   X   None       

I approve the draft designation order and the attachments, subject to the attached edits. I further approve the staff's notification recommendation as outlined in the supplemental material in support of SECY-13-0006. Further, I believe that this notification would be most appropriately handled as Chairman correspondence, consistent with the prior gubernatorial notification of the Commission's intent to begin rulemaking on preemption authority. However, given the status of the proposed Maryland firearms legislation, I disagree with the staff recommendation to include Calvert Cliffs in the order at this time. I recommend that the EDO be delegated authority to issue an identical designation order for Calvert Cliffs or any subsequent licensee that the staff determines has a near-term need for interim action prior to the final rulemaking.

  
\_\_\_\_\_  
**SIGNATURE**

18 April 2013  
\_\_\_\_\_  
**DATE**

Entered on "STARS" Yes   X   No

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

INTERIM ELIGIBLE CLASS OF  
NRC-LICENSED FACILITIES

Docket Nos. (as shown in Attachment 1)  
License Nos. (as shown in Attachment 1)  
EA-132-244XXX

ORDER DESIGNATING AN INTERIM CLASS OF  
NRC-LICENSED FACILITIES THAT ARE ELIGIBLE TO  
APPLY TO THE COMMISSION FOR AUTHORIZATION TO USE  
THE AUTHORITY GRANTED UNDER THE PROVISIONS OF  
SECTION 161A OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

I

In accordance with the Atomic Energy Act (AEA) of 1954, as amended, the licensees identified in Attachment 1 to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC) authorizing the operation of nuclear power reactor facilities ~~and general license at reactor Independent Spent Fuel Storage Installations (ISFSIs)~~ 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," and ~~a specific license, co-located~~ 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 of the co-located power reactor facility respectively. ~~These licenses~~

Enclosure

~~authorize the operation of nuclear power reactors and at reactor ISFSIs, a CAT-I SNM facility, and a specific license, co-located ISFSI in accordance with the conditions specified.~~

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 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.

## II

Section 161A, "Use of Firearms by Security Personnel," of the AEA (42 United States Code (U.S.C.) 2201a) confers upon the Commission the authority to permit the security personnel at designated NRC-licensed facilities 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 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; September 11, 2009) (referred to as “Firearms Guidelines”).

The NRC is issuing EA-1~~32-244~~ ~~XXX~~ to implement the authority granted to the Commission under Section 161A before the completion and 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.

Specifically, this Order accomplishes the following:

1. Designates an interim class of NRC-licensed facilities, as listed in Attachment 1, that are eligible to apply to the Commission for authorization to use Section 161A preemption authority;
2. Provides a process for submitting an application to the Commission for authorization to use Section 161A preemption authority, in accordance with Attachment 2; and,
3. Requires that the licensees, listed in Attachment 1 of this Order, subject all personnel who require access to firearms in the performance of their official duties to a firearms background check in accordance with Section 161A.c as described in Attachment 3.

Nothing in this Order relieves a licensee from compliance with applicable U.S. Department of Alcohol, Tobacco, Firearms, and Explosives requirements, or any other Federal, State, and local firearms laws and regulations. This Order does not provide or grant any authority or permission to transfer, receive, possess, transport, import, ~~and/or~~ 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 together with an application~~

~~for Commission authorization to use Section 161A preemption authority or separately after an application to use Section 161A preemption authority has been submitted to the NRC.~~ The Commission's authority under Section 161A does not include any permission to transfer, receive, possess, transport, import, or use destructive devices as defined under 27 U.S.C. Chapter 53, "The National Firearms Act," including explosive devices such as grenades or weapons with a bore diameter greater than 12.7 mm (0.5 inches or 50 caliber).

As authorized under Section 161A, and as described in Section 2 of the Firearms Guidelines, the Commission is issuing this Order to designate the licensees listed in Attachment 1 as an interim class of NRC-licensed facilities that may voluntarily apply to the Commission for authorization to use Section 161A preemption authority in advance of the Commission's issuance of a final rule on this subject.

A licensee's application for permission to use Section 161A preemption authority is voluntary and, therefore, the designated facilities listed in Attachment 1 are not required to submit an application in response to this Order. However, the designated facilities are required to conduct firearms background checks in accordance with Attachment 3 to this Order. If a licensee at a designated facility chooses to take advantage of the provisions of Section 161A, an application must be submitted to the NRC, in accordance with Attachment 2. In addition, applications and other documents produced in response to 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.

### III

As discussed above, the Commission has designated the facilities listed in Attachment 1 as an interim class of NRC-licensed facilities that are eligible to apply to the NRC for Commission authorization to use Section 161A preemption authority. Licensees choosing to apply to the Commission for Section 161A preemption authority must meet the following conditions:

1. The NRC-licensed facility must ~~fall be~~ within the class of facilities, ~~radioactive material, or other property~~ designated by the Commission in Attachment 1 as eligible to apply for preemption authority.
2. The licensee must employ covered weapons (as defined in the Firearms Guidelines) as part of their protective strategy.
3. Possession, use, or access to covered weapons must be necessary in the discharge of official duties by personnel at a facility falling within the class of facilities designated by the Commission in Attachment 1 as eligible to apply for preemption authority.

Licensees of the facilities listed in Attachment 1 that choose to apply for permission to use Section 161A preemption authority must use the application process outlined in Attachment 2 and must submit the application 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," and 10 CFR 72.56, "Application for Amendment of License," as appropriate. Applications will be subject to a minimum of 60 days



for routine processing. Submittal of an application to the NRC is voluntary and, therefore, recipients of this Order are not required to apply. However, the designated facilities are required to conduct firearms background checks in accordance with Attachment 3 to this Order.

At a minimum, applications must include all the information specified in Attachment 2. All applications will be reviewed on a case-by-case basis. If an application is approved by the Commission, authorization to use Section 161A preemption authority will be granted by the Commission through a confirmatory order that will permit the security personnel at the affected facility 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 the Firearms Guidelines, a~~All personnel at the designated facilities listed in Attachment 1 who are assigned official duties that require access to any firearm listed in Section 161A.b 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. Accordingly, all licensees at the designated facilities listed in Attachment 1 shall submit a completed hard-copy FBI Form FD-258, "Fingerprint Card," to the NRC as specified in Attachment 3, for all security personnel who will receive, possess, transport, import, or use any firearm, weapon, ammunition, or a device listed in Section 161A.b. A \$70 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 shall be made to the NRC using the processes described in Attachment 3.



#### IV

Accordingly, under Sections 53, 103 or 104b (depending on the license), Sections 161b, 161i, 161o, 161A, and 182 of the AEA of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 50, 10 CFR Part 70, and 10 CFR Part 72, IT IS HEREBY ORDERED that all recipients of this Order as listed in Attachment 1 shall:

1. Subject all individuals who are assigned duties that require the possession, use, or access to firearms and devices listed in Section 161A.b to a firearms background check in accordance with Section 161A.c "Background Checks," and the process specified in Attachment 3.
2. Begin submitting requests for firearms background checks within 30 days of the effective date of this Order, and complete all firearms background checks within 180 days of the issuance-effective date of this Order.
3. Notify the NRC after a sufficient number of personnel have successfully completed the requisite firearms background check to staff such that the licensee's security organization can be staffed as specified in each licensee's NRC-approved security plans, and effectively implement the licensee's site protective strategy and procedures, while meeting applicable fatigue requirements in 10 CFR Part 26, "Fitness for Duty Programs." This notification shall be submitted by the licensee or duly authorized officer thereof in writing and under oath and affirmation.

4. Notify the NRC as soon as practicable and in accordance with the applicable reporting requirements in 10 CFR 73.71, "Reporting of Safeguard Events," of any situation in which the licensee would not be able to sufficiently staff the security organization within 180 days of the issuance of this Order.
5. Submit to the NRC a \$70 administrative processing fee for each firearms background check requested using the processes outlined in Attachment 3.

Notifications shall be submitted to the Director of the NRC licensing office responsible for licensing actions at the affected facility and shall be marked and protected as required for the sensitivity of the information presented. ~~The Director of the responsible NRC licensing office may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the licensee.~~

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

As applicable, the Director, Office of Nuclear Reactor Regulation; the Director, Office of Nuclear Material Safety and Safeguards; or the Director, Office of Federal and State Materials and Environmental Management Programs may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

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](mailto:pdr.resource@nrc.gov).

Dated at Rockville, Maryland this

day of [month, year].

FOR THE NUCLEAR REGULATORY COMMISSION

\_\_\_\_\_  
Cathy Haney, Director  
Office of Nuclear Material Safety  
and Safeguards

\_\_\_\_\_  
Mark Satorius, Director  
Office of Federal and State Materials  
and Environmental Management  
Programs

\_\_\_\_\_  
Eric Leeds, Director  
Office of Nuclear Reactor Regulation

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

## LIST OF AFFECTED LICENSEES

Babcock & Wilcox Nuclear Operation Group—Lynchburg  
Docket No. 70-027, License No. SNM-42  
Mr. Sandy Baker, President  
Babcock & Wilcox  
Nuclear Operations Group—Lynchburg  
2016 Mount Athos Road  
Lynchburg, VA 24504

Diablo Canyon Nuclear Power Plant, Units 1 and 2  
Docket Nos. 50-275 and 50-323, License Nos. DPR-80 and DPR-82  
Diablo Canyon-Independent Spent Fuel Storage Installation  
Docket No. 72-26, Specific-License No. SNM-2511  
Mr. John T. Conway  
Senior Vice President - Energy Supply and Chief Nuclear Officer  
Pacific Gas and Electric Company  
Diablo Canyon Power Plant  
77 Beale Street, Mail Code B32  
San Francisco, CA 94105

Indian Point Nuclear Generating, Unit 1  
Docket No. 50-003, License No. DPR-5  
Indian Point Nuclear Generating, Units 2, and 3  
Docket Nos. 50-247, 50-286, and 72-51, License Nos. DPR-26 and DPR-64  
Mr. John Ventosa  
Vice President, Operations  
Entergy Nuclear Operations, Inc.  
Indian Point Energy Center  
450 Broadway, GSB  
P.O. Box 249  
Buchanan, NY 10511-0249

James A. Fitzpatrick Nuclear Power Plant  
Docket Nos. 50-333 and 72-12, License No. DPR-59  
Mr. Mike Colomb  
Vice President, Operations  
Entergy Nuclear Operations, Inc.  
James A. FitzPatrick Nuclear Power Plant  
P.O. Box 110  
Lycoming, NY 13093

Nine Mile Point Nuclear Station, Units 1 and 2  
Docket Nos. 50-220, 50-410, and 72-1036, License Nos. DPR-63 and NPF-69  
Mr. Ken Langdon  
Vice President Nine Mile Point  
Nine Mile Point Nuclear Station, LLC  
P. O. Box 63  
Lycoming, NY 13093

R.E. Ginna Nuclear Power Plant  
Docket Nos. 50-244 and 72-67, License No. DPR-18  
Mr. Joseph E. Pacher  
Vice President  
R.E. Ginna Nuclear Power Plant, LLC  
R.E. Ginna Nuclear Power Plant  
1503 Lake Road  
Ontario, NY 14519

San Onofre Nuclear Generating Station, Units 2 and 3  
Docket Nos. 50-361, 50-362, and 72-41, License Nos. NPF-10 and NPF-15  
Mr. Peter T. Dietrich  
Senior Vice President and Chief Nuclear Officer  
Southern California Edison Company  
San Onofre Nuclear Generating Station  
P. O. Box 128  
San Clemente, CA 92674-0128



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

Recipients of EA-12-244 are within the interim class of facilities designated by the U.S. Nuclear Regulatory Commission (NRC) as eligible to voluntarily apply for Commission authorization to use preemption authority under Section 161A of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201a). 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," and 10 CFR 72.56 "Application for Amendment of License" as appropriate, and will be reviewed and approved individually on a case-by-case basis.

If an application is approved by the Commission, permission to use Section 161A preemption authority will be granted under a confirmatory order and will permit the security personnel of the licensee granted such permission 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 permission from the NRC through a confirmatory order before they are authorized to use Section 161A preemption authority.

Licensees that choose to apply for Section 161A preemption authority must meet the following criteria: 1) the licensee must fall within the class of facilities, ~~radioactive material, or other property~~ designated by the Commission in Attachment 1; 2) the licensee must employ covered weapons (as defined in 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: September 11, 2009) ("Firearms Guidelines") as part of its protective strategy; and 3) access to, or possession of, covered weapons must be necessary in the discharge of official duties by personnel assigned to the individual facility falling within the class of facilities designated by the Commission.

A single application should be submitted to the NRC in the form of a letter and, at a minimum, must contain the following:

- name of the licensee
- facility name
- docket number and license number (to include ~~general license co-located~~ Independent Spent Fuel Storage Installation docket number, if applicable)
- a statement that the licensee is applying for "Commission authorization to use Section 161A preemption authority under 42 U.S.C. 2201a"
- a statement that the facility is within the interim class of facilities designated by the Commission as listed in Attachment 1 of this order
- a statement describing the reason for requesting Section 161A preemption authority. This description shall include: 1) the local, State, or Federal law (or implementing

regulation) for which Section 161A preemption authority is being requested, and 2) a description of the types and calibers of weapons and ammunition feeding devices for which Section 161A preemption authority is necessary. This description must be sufficiently detailed for the NRC staff to conclude the following:

1. the licensee employs firearms or devices defined as covered weapons in accordance with the Firearms Guidelines, and are listed in Section 161A.b;
2. the identified covered weapons are used as part of the site protective strategy at a Commission-designated facility listed in Attachment 1;
3. possession, use, or access to the identified covered weapons is necessary in the discharge of official duties by security personnel who are engaged in protecting a Commission-designated facility listed in Attachment 1; and
4. other information provided by the licensee supports the need for Commission authorization consistent with the criteria in the AEA and Firearms Guidelines.



## Process for Conducting Firearms Background Checks

As required by Section 161A.c. of the Atomic Energy Act (AEA) of 1954, as amended (42 U.S.C. 2201a), any 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 class of facilities identified in Attachment 1 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 of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26, "Fitness for Duty Programs."

1. Within 30 days after the ~~issuance effective date~~ of EA-132-244XXX, the licensee of each facility listed in Attachment 1 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, use, or access to any firearm.
2. Procedures for processing Form FD-258 for firearms background checks.
  - a. Affected licensees shall submit one completed, legible, standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) for each member of the security organization who will receive, possess, transport, import, or use any firearm, weapon, ammunition, or a device.
  - b. Affected licensees shall submit each Form FD-258, using an appropriate method listed in 10 CFR 73.4, to the Director of the NRC's Division of Facilities and Security, Mail Stop: TWB-05B32M, marked for the attention of the Division's Criminal History Program. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Attention: Forms Manager, Washington, DC 20555-0001; by calling 630-829-9565; or by e-mail to forms@nrc.gov. 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). Because of 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 the electronic information exchange system does not support the transfer of all required information for processing through the FBI NICS database.

- d. The following 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:
- I. first name
  - II. last name
  - III. place of birth
  - IV. gender
  - V. date of birth
  - VI. height
  - VII. weight
  - VIII. 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
  - IX. residence and employer addresses of person fingerprinted:  
Complete mailing addresses of current residence and duty station are required. (NICS check includes query of State records for disqualifying information in both State of residence and State of duty station.)
    - street number (Post Office box numbers cannot be accepted)
    - street name
    - city
    - State (required)
    - ZIP Code
  - X. citizenship
  - XI. reason fingerprinted  
"Firearms Background Check (42 U.S.C. 2201a)"
  - XII. social security number
  - XIII. ORI Number: MDNRCNICZ
- 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 Facility and Security Branch, Division of Facilities and Security, at 301-492-3531. 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 NRC 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 NRC 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.* Before making 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 5 years 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, "Purpose and Scope," through 16.34, "Procedure to Obtain Change, Correction or Updating of Identification Records." 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 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 180 days after the issuance-effective date of EA-132-244XXX, the licensee shall remove from any current armed duties, any individual who has not completed a satisfactory firearms background check. Additionally, no later than 180 days after the issuance of EA-12-244, licensees at the designated facilities listed in Attachment 1 shall not assign any 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 after the issuance-effective date of EA-123-244XXX, individuals who receive a "delayed" response from the FBI to their firearms background check may continue to have access to standard weapons as defined in 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) dated September 11, 2009 ("Firearms Guidelines") as part of their official duties not to exceed midnight of the 180<sup>th</sup> 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, "Physical Protection of Plants and Materials," 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, "U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses," 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.

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary

**FROM:** COMMISSIONER OSTENDORFF

**SUBJECT:** SECY-13-0006 – COMMISSION ORDER TO  
DESIGNATE AN INTERIM CLASS OF U.S. NUCLEAR  
REGULATORY COMMISSION-LICENSED FACILITIES  
THAT ARE ELIGIBLE TO APPLY TO THE  
COMMISSION FOR PREEMPTION AUTHORITY  
UNDER SECTION 161A OF THE ATOMIC ENERGY  
ACT OF 1954, AS AMENDED

Approved   X   Disapproved        Abstain       

Not Participating       

**COMMENTS:** Below   X   Attached   X   None     

I approve issuing the draft designation order, including attachments, subject to the attached edits. The staff should issue the order to the licensees listed in Attachment 1 of the order. Consistent with the direction provided in SRM-SECY-12-0125, should the staff determine that any other licensees require preemption authority under § 161A of the Atomic Energy Act, a draft designation order should be submitted to the Commission for review and approval prior to issuance. The list of addressees contained in any subsequent draft designation order should be limited to those that the NRC has determined have a near-term need for interim action prior to the final rulemaking.

  
\_\_\_\_\_  
SIGNATURE

2/11/13  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes      No



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

INTERIM ELIGIBLE CLASS OF  
NRC-LICENSED FACILITIES

Docket Nos. (as shown in Attachment 1)  
License Nos. (as shown in Attachment 1)  
EA-12-244

ORDER DESIGNATING AN INTERIM CLASS OF  
NRC-LICENSED FACILITIES THAT ARE ELIGIBLE TO  
APPLY TO THE COMMISSION FOR AUTHORIZATION TO USE  
THE AUTHORITY GRANTED UNDER THE PROVISIONS OF  
SECTION 161A OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

I

In accordance with the Atomic Energy Act (AEA) of 1954, as amended, the licensees identified in Attachment 1 to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC) authorizing the operation of nuclear power reactor facilities ~~and general license at reactor Independent Spent Fuel Storage Installations (ISFSIs)~~ 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," and ~~a specific license, co-located~~ 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 of the co-located power reactor facility respectively. ~~These licenses~~

Enclosure

~~authorize the operation of nuclear power reactors and at reactor ISFSIs, a CAT-I SNM facility, and a specific license, co-located ISFSI in accordance with the conditions specified.~~

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 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.

## II

Section 161A, "Use of Firearms by Security Personnel," of the AEA (42 United States Code (U.S.C.) 2201a) confers upon the Commission the authority to permit the security personnel at designated NRC-licensed facilities 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 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; September 11, 2009) (referred to as “Firearms Guidelines”).

The NRC is issuing EA-12-244 to implement the authority granted to the Commission under Section 161A before the completion and 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.

Specifically, this Order accomplishes the following:

1. Designates an interim class of NRC-licensed facilities, as listed in Attachment 1, that are eligible to apply to the Commission for authorization to use Section 161A preemption authority;
2. Provides a process for submitting an application to the Commission for authorization to use Section 161A preemption authority, in accordance with Attachment 2; and,
3. Requires that the licensees, listed in Attachment 1 of this Order, subject all personnel who require access to firearms in the performance of their official duties to a firearms background check in accordance with Section 161A.c as described in Attachment 3.

Nothing in this Order relieves a licensee from compliance with applicable U.S. Department of Alcohol, Tobacco, Firearms, and Explosives requirements, or any other Federal, State, and local firearms laws and regulations. This Order does not provide or grant any authority or permission to transfer, receive, possess, transport, import, ~~and-or~~ 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 together with an application for Commission authorization to use Section 161A preemption authority or separately after an~~



~~application to use Section 161A preemption authority has been submitted to the NRC.~~ The Commission's authority under Section 161A does not include any permission to transfer, receive, possess, transport, import, ~~or and~~ use destructive devices as defined under 27 U.S.C. Chapter 53, "The National Firearms Act," including explosive devices such as grenades or weapons with a bore diameter greater than 12.7 mm (0.5 inches or 50 caliber).

As authorized under Section 161A, and as described in Section 2 of the Firearms Guidelines, the Commission is issuing this Order to designate the licensees listed in Attachment 1 as an interim class of NRC-licensed facilities that may voluntarily apply to the Commission for authorization to use Section 161A preemption authority in advance of the Commission's issuance of a final rule on this subject.

A licensee's application for permission to use Section 161A preemption authority is voluntary and, therefore, the designated facilities listed in Attachment 1 are not required to submit an application in response to this Order. However, the designated facilities are required to conduct firearms background checks in accordance with Attachment 3 to this Order. If a licensee at a designated facility chooses to take advantage of the provisions of Section 161A, an application must be submitted to the NRC, in accordance with Attachment 2. In addition, applications and other documents produced in response to 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.

### III

As discussed above, the Commission has designated the facilities listed in Attachment 1 as an interim class of NRC-licensed facilities that are eligible to apply to the NRC for Commission authorization to use Section 161A preemption authority. Licensees choosing to apply to the Commission for Section 161A preemption authority must meet the following conditions:

1. The NRC-licensed facility must fall within the class of facilities, ~~radioactive material, or other property~~ designated by the Commission in Attachment 1.
2. The licensee must employ covered weapons (as defined in the Firearms Guidelines) as part of their protective strategy.
3. Possession, use, or access to covered weapons must be necessary in the discharge of official duties by personnel at a facility falling within the class of facilities designated by the Commission in Attachment 1.

Licensees of the facilities listed in Attachment 1 that choose to apply for permission to use Section 161A preemption authority must use the application process outlined in Attachment 2 and must submit the application 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," and 10 CFR 72.56, "Application for Amendment of License," as appropriate. Applications will be subject to a minimum of 60 days for routine processing. Submittal of an application to the NRC is voluntary and, therefore, recipients of this Order are not required to apply. However, the designated facilities are required to conduct firearms background checks in accordance with Attachment 3 to this Order.

At a minimum, applications must include all the information specified in Attachment 2. All applications will be reviewed on a case-by-case basis. If an application is approved by the Commission, authorization to use Section 161A preemption authority will be granted by the Commission through a confirmatory order that will permit the security personnel at the affected facility 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 the Firearms Guidelines, a~~All personnel at the designated facilities listed in Attachment 1 who are assigned official duties that require access to any firearm listed in Section 161A.b 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. Accordingly, all licensees at the designated facilities listed in Attachment 1 shall submit a completed hard-copy FBI Form FD-258, "Fingerprint Card," to the NRC as specified in Attachment 3, for all security personnel who will receive, possess, transport, import, or use any firearm, weapon, ammunition, or a device listed in Section 161A.b. A \$70 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 shall be made to the NRC using the processes described in Attachment 3.



#### IV

Accordingly, under Sections 53, 103 or 104b (depending on the license), Sections 161b, 161i, 161o, 161A, and 182 of the AEA of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 50, 10 CFR Part 70, and 10 CFR Part 72, IT IS HEREBY ORDERED that all recipients of this Order as listed in Attachment 1 shall:

1. Subject all individuals who are assigned duties that require the possession, use, or access to firearms and devices listed in Section 161A.b to a firearms background check in accordance with Section 161A.c "Background Checks," and the process specified in Attachment 3.
2. Begin submitting requests for firearms background checks within 30 days of the effective date of this Order, and complete all firearms background checks within 180 days of the ~~issuance~~ effective date of this Order.
3. Notify the NRC after a sufficient number of personnel have successfully completed the requisite firearms background check to staff the licensee's security organization as specified in each licensee's NRC-approved security plans, and effectively implement the licensee's site protective strategy and procedures, while meeting applicable fatigue requirements in 10 CFR Part 26, "Fitness for Duty Programs." This notification shall be submitted by the licensee or duly authorized officer thereof in writing and under oath and affirmation.
4. Notify the NRC as soon as practicable and in accordance with the applicable reporting requirements in 10 CFR 73.71, "Reporting of Safeguard Events," of any situation in which the licensee would not be able to sufficiently staff the security organization within 180 days of the issuance of this Order.

5. Submit to the NRC a \$70 administrative processing fee for each firearms background check requested using the processes outlined in Attachment 3.

Notifications shall be submitted to the Director of the NRC licensing office responsible for licensing actions at the affected facility and shall be marked and protected as required for the sensitivity of the information presented. The Director of the responsible NRC licensing office may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the licensee.

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

As applicable, the Director, Office of Nuclear Reactor Regulation, the Director, Office of Nuclear Material Safety and Safeguards, or the Director, Office of Federal and State Materials and Environmental Management Programs may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

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](mailto:pdr.resource@nrc.gov).



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

Recipients of EA-12-244 are within the interim class of facilities designated by the U.S. Nuclear Regulatory Commission (NRC) as eligible to voluntarily apply for Commission authorization to use preemption authority under Section 161A of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201a). 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," and 10 CFR 72.56 "Application for Amendment of License" as appropriate, and will be reviewed and approved individually on a case-by-case basis.

If an application is approved by the Commission, permission to use Section 161A preemption authority will be granted under a confirmatory order and will permit the security personnel of the licensee granted such permission 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 permission from the NRC through a confirmatory order before they are authorized to use Section 161A preemption authority.

Licensees that choose to apply for Section 161A preemption authority must meet the following criteria: 1) the licensee must fall within the class of facilities, ~~radioactive material, or other property~~ designated by the Commission in Attachment 1; 2) the licensee must employ covered weapons (as defined in 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: September 11, 2009)) ("Firearms Guidelines") as part of its protective strategy; and 3) access to, or possession of, covered weapons must be necessary in the discharge of official duties by personnel assigned to the individual facility falling within the class of facilities designated by the Commission.

A single application should be submitted to the NRC in the form of a letter and, at a minimum, must contain the following:

- name of the licensee
- facility name
- docket number and license number (to include ~~general license co-located~~ Independent Spent Fuel Storage Installation docket number, if applicable)
- a statement that the licensee is applying for "Commission authorization to use Section 161A preemption authority under 42 U.S.C. 2201a"
- a statement that the facility is within the interim class of facilities designated by the Commission as listed in Attachment 1 of this order
- a statement describing the reason for requesting Section 161A preemption authority. This description shall include: 1) the local, State, or Federal law (or implementing

## Process for Conducting Firearms Background Checks

As required by Section 161A.c. of the Atomic Energy Act (AEA) of 1954, as amended (42 U.S.C. 2201a), any 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 class of facilities identified in Attachment 1 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 of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26, "Fitness for Duty Programs."

1. Within 30 days after the issuance-effective date of EA-12-244, the licensee of each facility listed in Attachment 1 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, use, or access to any firearm.
2. Procedures for processing Form FD-258 for firearms background checks.
  - a. Affected licensees shall submit one completed, legible, standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) for each member of the security organization who will receive, possess, transport, import, or use any firearm, weapon, ammunition, or a device.
  - b. Affected licensees shall submit each Form FD-258, using an appropriate method listed in 10 CFR 73.4, to the Director of the NRC's Division of Facilities and Security, Mail Stop: TWB-05B32M, marked for the attention of the Division's Criminal History Program. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Attention: Forms Manager, Washington, DC 20555-0001; by calling 630-829-9565; or by e-mail to forms@nrc.gov. 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). Because of 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 the electronic information exchange system does not support the transfer of all required information for processing through the FBI NICS database.



- d. The following 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:
- I. first name
  - II. last name
  - III. place of birth
  - IV. gender
  - V. date of birth
  - VI. height
  - VII. weight
  - VIII. race: (choose one of the following codes)
    - o American Indian or Alaska Native
    - o Asian
    - o Black or African-American
    - o Hispanic or Latino
    - o Native Hawaiian or other Pacific Islander
    - o White
  - IX. residence and employer addresses of person fingerprinted:  
Complete mailing addresses of current residence and duty station are required. (NICS check includes query of State records for disqualifying information in both State of residence and State of duty station.)
    - o street number (Post Office box numbers cannot be accepted)
    - o street name
    - o city
    - o State (required)
    - o ZIP Code
  - X. citizenship
  - XI. reason fingerprinted  
"Firearms Background Check (42 U.S.C. 2201a)"
  - XII. social security number
  - XIII. ORI Number: MDNRCNICZ
- 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 Facility and Security Branch, Division of Facilities and Security, at 301-492-3531.) 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 NRC 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