

December 20, 2013

MEMORANDUM TO: Chairman Macfarlane
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff

FROM: Mark A. Satorius
Executive Director for Operations

SUBJECT: BIFURCATION OF THE ENHANCED WEAPONS, FIREARMS
BACKGROUND CHECKS, AND SECURITY EVENT
NOTIFICATIONS RULE

This paper informs the Commission of the staff's plan to bifurcate the Enhanced Weapons, Firearms Background Checks, and Security Event Notifications rule (Enhanced Weapons Rule) to specifically separate the cyber security event notification requirements from the remaining requirements in that rulemaking. This paper does not address any new commitments.

Section 161A of the Atomic Energy Act of 1954, as amended, confers on the Commission the authority to permit a licensee's or certificate holder's security personnel to possess and use weapons, devices, ammunition, or other firearms, notwithstanding local, State, and certain Federal firearms laws that may prohibit such possession and use. Section 161A.d requires the Commission to develop guidelines for the implementation of this authority (Firearms Guidelines) subject to the approval of the U.S. Attorney General.

On October 26, 2006 (71 FR 62664), the U.S. Nuclear Regulatory Commission (NRC) published a proposed rule to implement the Firearms Guidelines as part of the larger proposed rule for power reactor security requirements. In SECY-08-0050, "Firearms Guidelines Implementing Section 161A of the Atomic Energy Act of 1954 and Associated Policy Issues" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML072920440), staff recommended that this rule be bifurcated into two separate rules; one to address implementation of the Firearms Guidelines and physical security event notification requirements, and the other to address the remaining provisions of the October 2006 proposed power reactor security rule. The staff explained that the time needed to publish a revised proposed rule on the

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Firearms Guidelines, receive comments, and resolve any comments in the final power reactor security rule—all subsequent to the publication of the Firearms Guidelines—could not be accommodated given the schedule to issue the final power reactor security rule. The rule was bifurcated, and on March 27, 2009 (74 FR 13926), the final power reactor security requirements were published in the *Federal Register* without the Firearms Guidelines related requirements. Approximately 6 months later, on September 11, 2009 (74 FR 46800), the Firearms Guidelines were published in the *Federal Register* in a document entitled “Notice of Issuance of Guidelines on Use of Firearms by Security Personnel; Notice of Effective Date of Statute.”

On October 19, 2010, in Staff Requirements Memorandum (SRM) SRM-SECY-10-0085, “Proposed Rule: Enhanced Weapons, Firearms Background Checks and Security Event Notifications” (ADAMS Accession No. ML102920342), the Commission directed the staff to publish a proposed rule implementing the Firearms Guidelines, revising the physical security event notification requirements and adding new cyber security event notification requirements. This proposed rule was published for comment on February 3, 2011 (76 FR 6200). The comment period, following the grant of an extension of time, closed on August 2, 2011 (76 FR 23515).

In SECY-12-0118, “Resource Estimates and Request for Final Rule Schedule Extension and Delegation of Signature Authority for the Enhanced Weapons Rulemaking” (ADAMS Accession No. ML12229A177), staff described resource needs and schedule delays associated with preparing the draft final Enhanced Weapons Rule. Subsequently, in SECY-12-0125, “Interim Actions to Execute Commission Preemption Authority under Section 161A of the Atomic Energy Act of 1954, as Amended” (ADAMS Accession No. ML12171A089), staff described discussions with U.S. Department of Justice (DOJ) staff, including an agreement in principle to revise the Firearms Guidelines so that only the security personnel for licensees and certificate holders that actually apply for Section 161A preemption authority would be subject to the firearms background check requirement. In SRM-SECY-12-0125 (ADAMS Accession No. ML12326A653), the Commission directed staff to revise the Firearms Guidelines accordingly, make any conforming modifications to the associated text in the proposed Enhanced Weapons Rule, and publish a supplemental proposed rule for public comment as soon as possible. Consistent with this direction, staff has reached agreement with DOJ staff on proposed revisions to the Firearms Guidelines. After the U.S. Attorney General and Commission approve the revised Firearms Guidelines, the staff will prepare, for Commission review, a supplemental proposed rule for public comment that reflects the approved changes and will make any necessary changes to DG-5020, “Applying for Enhanced-Weapons Authority, Applying for Preemption Authority, and Performing Firearms Background Checks under 10 CFR [Title 10 of the *Code of Federal Regulations*] Part 73” (ADAMS Accession No. ML100321956), to reflect the revisions to the Firearms Guidelines. The proposed revisions to the Firearms Guidelines would affect the portions of the Enhanced Weapons Rule related to the Section 161A authorities (i.e., preemption and enhanced weapons authorities) and physical security event notification requirements.

The cyber security event notification requirements in the proposed Enhanced Weapons Rule are independent of the Firearms Guidelines revisions described above. The process to finalize the Firearms Guidelines includes publishing a supplemental proposed rule. This creates an inherent schedule uncertainty and will delay final publication of the important cyber security event notification requirements. Accordingly, the staff plans to bifurcate the Enhanced

Weapons Rule into two separate rulemakings; one rule would include the cyber security event notification requirements and the second rule would include the remaining requirements in the proposed Enhanced Weapons Rule (i.e., the enhanced weapons requirements, firearms background check requirements, and physical security event notification requirements).

Bifurcation will remove schedule uncertainty and delay for the cyber security event notification requirements. Bifurcating to avoid delays associated with Firearms Guidelines efforts is consistent with the NRC's 2008 bifurcation of the power reactor security requirements rule from the requirements related to event notification and the Firearms Guidelines. This will allow the staff to prepare a final rule package, including associated regulatory guidance, for cyber event notification requirements expeditiously (i.e., approximately 9 months earlier than if it did not bifurcate). This is significant because, as described in the 2011 proposed Enhanced Weapons Rule, the NRC did not include cyber security event reporting and recording requirements in the 2009 final power reactor security rule requirements (76 FR 6208).

As part of the 2011 proposed rule, the NRC issued and received comments on the proposed cyber event notification requirements (before this proposed bifurcation). Any changes between the proposed rule and final cyber event notification rule will reflect public comments. The staff anticipates that it will not need to re-notice the cyber event notification requirements and can proceed directly to preparing a final rule package, including the associated regulatory guidance. The staff plans to prepare the final rule for the cyber security event notification requirements in parallel with the work on revising the Firearms Guidelines. The draft final rule package for the cyber event notification requirements will be provided for Commission review and approval in an affirmation vote paper before publication in the *Federal Register*.

The staff also anticipates proceeding directly to the development of the associated final regulatory guide supporting the cyber security event notification final rule. To do this, the staff will bifurcate the guidance related to security event notifications that was published for public comment on February 3, 2011 (76 FR 6085), and is currently contained in Draft Guide (DG)-5019, Revision 1, "Reporting and Recording Safeguards Events" (ADAMS Accession No. ML100830413). Upon bifurcating DG-5019, the portion related to cyber security event notifications will be published under a new regulatory guidance number. This guidance for the cyber security event notifications will appropriately reflect stakeholder comments received on DG-5019. This approach is consistent with the agency's efforts to incorporate enhancements in the rulemaking process to address the Cumulative Effects of Regulation (CER), as approved by SRM-SECY-11-0032 (ADAMS Accession No. ML112840466), because the staff issued the draft guidance with the proposed rule for comment, and plans to issue the final guidance with the final rule.

The staff will bifurcate the Enhanced Weapons Rule into two separate rulemakings; one rule will include the cyber security event notification requirements and the second rule will include the remaining requirements in the proposed Enhanced Weapons Rule (i.e., the enhanced weapons requirements, firearms background check requirements, and physical security event notification requirements). Both rulemakings will follow the standard rulemaking process with the CER process enhancements, and will go to the Commission for review and approval.

The Commissioners

- 4 -

Additional resources will be necessary in fiscal years 2014 and 2015 to support the bifurcation of the rulemaking. The resource implications are discussed in Enclosure 1 which will not be made publicly available.

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

SECY, please track.

/RA/

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Executive Director
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Enclosure:
Resources Assessment for the Bifurcation
of the Enhanced Weapons Rulemaking

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