

POLICY ISSUE (Notation Vote)

March 31, 2015

SECY-15-0048

FOR: The Commissioners

FROM: Mark A. Satorius
Executive Director for Operations

SUBJECT: REQUEST FOR APPROVAL OF STAFF RECOMMENDATION TO
AUTHORIZE BABCOCK AND WILCOX NUCLEAR OPERATIONS
GROUP-LYNCHBURG TO USE SECTION 161A PREEMPTION
AUTHORITY

PURPOSE:

The purpose of this paper is to seek Commission approval for the staff's recommendation to approve Babcock and Wilcox Nuclear Operations Group, Inc.'s (B&W NOG) request, on behalf of Babcock and Wilcox Nuclear Operations Group-Lynchburg (B&W NOG-L), to use the preemption authority granted the Commission under Section 161A of the Atomic Energy Act of 1954, as amended.

In accordance with Staff Requirements Memorandum (SRM) SECY-12-0027, "Preemption Authority Pursuant to Section 161A, 'Use of Firearms by Security Personnel,' of the Atomic Energy Act of 1954, as Amended," dated May 3, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12124A377), this paper includes the staff's draft final technical evaluation (Enclosure 1), and a draft final Confirmatory Order (Enclosure 2). In addition, a draft letter to the Governor of Virginia is proposed for signature by the Chairman (Enclosure 3), informing the Governor that the U.S. Nuclear Regulatory Commission (NRC) is granting Section 161A preemption authority to B&W NOG-L located in the Commonwealth of Virginia, should the Commission approve the staff's recommendation.

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There are no resource implications as a result of the commitments made in this paper.

BACKGROUND:

SRM-SECY-12-0027, Tasking No. 2, requires the NRC staff to submit, individually to the Commission for review and approval, a recommendation to approve or deny each application for Section 161A preemption authority, to include the staff's technical evaluations and draft orders designating facilities as receiving preemption authority if the staff's recommendation is to grant the request.

To accomplish this, the NRC staff submitted for Commission approval, SECY-12-0125 (ADAMS Accession No. ML12164A839), which provided two draft orders addressing the need to take interim action prior to the completion of the final rulemaking on enhanced weapons for a limited class of NRC-licensed facilities. In SRM-SECY-12-0125, the Commission approved the staff's proposed six-step process for dispositioning licensee preemption requests, which included issuance of a designation order followed by a confirmatory order.

Following the Commission-approved six-step process, in SECY-13-0006 (ADAMS Accession No. ML12339A053), the NRC staff submitted for Commission approval a draft final order designating an interim class of NRC-licensed facilities as eligible to apply for preemption authority. In SRM-SECY-13-0006, the Commission approved the staff recommended draft final order, and on June 5, 2013, the NRC staff issued Enforcement Action 13-092, "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," hereafter referred to as the "Designation Order" (ADAMS Accession No. ML13121A459). The Designation Order designates a limited interim-class of facilities eligible to apply for Commission authorization to use the authority of Section 161A. The Designation Order also outlines the type of information that must be addressed in an application for preemption authority, and addresses all requirements necessary to implement preemption authority if granted by the Commission. Specifically, the Designation Order provides a process through which the licensee of each eligible facility may apply for Section 161A preemption authority, as well as requiring the security personnel at each designated facility to be subject to a firearms background check.

DISCUSSION:

In accordance with SRM-SECY-12-0027, the staff is submitting the enclosed items for Commission review and approval: (1) staff's technical evaluation (Enclosure 1); and (2) a draft final Confirmatory Order designating the facility as receiving preemption authority (Enclosure 2). The staff has also provided a draft letter to the Governor of Virginia for signature by the Chairman (Enclosure 3), informing the Governor that the NRC is granting Section 161A preemption authority to B&W NOG-L located in the Commonwealth of Virginia, should the Commission approve the staff's recommendation.

On April 24, 2014, B&W NOG submitted their application for preemption authority and identified Federal firearms laws contained in subsections (a)(4), (a)(5), (b)(2), (b)(4), and (o) of section 922 of Title 18, United States Code (U.S.C.); section 925(d)(3) of Title 18, U.S.C.; and section 5844 of the Internal Revenue Code of 1986 that could restrict or prohibit the possession and use of firearms at their site. As directed by the Commission in SRM-SECY-12-0027 Tasking No. 2, the NRC staff has reviewed B&W NOG-L's application and documented this review in the enclosed technical evaluation. The NRC staff reviewed this application against the requirements contained in the Designation Order and the staff developed review criteria entitled "Preemption Authority, Content of Application" (ADAMS Accession No. ML111650348), dated February 27, 2012, set forth in Step 4 of the six-step process approved by the Commission in SRM-SECY-12-0125.

In SRM-SECY-12-0125, the Commission approved the staff recommendation, set forth in Step 5 of the six-step process, to revise the Confirmatory Order template as needed if the NRC staff's recommendation is to approve a licensee's request for preemption authority. Therefore, in Section 4 of the enclosed draft final Confirmatory Orders, the staff has provided two provisions that would, if the Orders are approved by the Commission, require the licensee to: (1) review and revise their NRC-approved security plans or procedures, as needed, to describe how the licensee will implement Section 161A preemption authority; and (2) continue to subject all personnel who require access to firearms in the performance of their official duties to a firearms background check, in accordance with the requirements in the Designation Order. In addition, the staff made a few clarifying and editorial changes to the Confirmatory Order template.

If the Commission grants the authorization to use Section 161A preemption authority at B&W NOG-L, the NRC staff will implement inspection activities through region-based inspection staff to confirm licensee compliance with the Final Confirmatory Orders, as well as the June 5, 2013, Designation Order.

Currently, B&W NOG-L security personnel are authorized to use enhanced weapons because each security guard has been deputized by the local Sheriff's department. This allows the security personnel to utilize their existing weapons as part of the licensee's protective strategy at the B&W NOG-L facility. However, the ownership of the weapons stays with the Sheriff's department, not the licensee. Because of the unique nature of this arrangement, there is uncertainty about what may happen in the future. For example, if the Sheriff's department decided not to deputize the B&W NOG-L security officers, Title 18 U.S.C 922(o)(1)(A) would prohibit the transfer, possession, and use of enhanced weapons at B&W NOG-L. Therefore, the licensee would not be able to rely upon the weapons needed to implement its protective strategy as required by applicable NRC regulations. B&W NOG is requesting that the Commission grant Section 161A preemption authority to B&W NOG-L to ensure regulatory certainty and to provide an explicit legal authority under which the licensee may transfer, possess, and use firearms and devices that would otherwise not be permitted under existing Federal firearms laws. If approved, a Final Confirmatory Order would designate B&W NOG-L as receiving preemption authority. If approved by the Commission, the staff will publish a notice in the *Federal Register* describing the Confirmatory Order to provide other affected stakeholders with an opportunity to request a Section 189a hearing.

B&W NOG has indicated that if preemption authority is approved by the Commission, it intends to apply for enhanced weapons authority. In the event that B&W NOG submits an application for enhanced weapons authority, staff will seek Commission direction on how to handle that application because the Commission has not yet established a process for reviewing enhanced weapons authority applications. Staff is working under the presumption that the Commission would use a similar process for enhanced weapons as was used for preemption authority (i.e., issuance of a designation order and confirmatory order).

COMMITMENTS

The staff is committed to the following activities in this paper. Should the Commission grant Section 161A preemption authority to B&W NOG-L, the NRC staff will implement associated inspection activities through the Baseline Inspection Program. The objective of these inspections would be to confirm licensee compliance with the Final Confirmatory Orders and Designation Order. The NRC staff will develop inspection guidance to facilitate these inspection activities. The NRC staff will also review any applicable security plan changes made by B&W NOG describing how Section 161A preemption authority will be implemented at B&W NOG-L, as required by the Confirmatory Order.

RECOMMENDATIONS:

That the Commission:

1. Approve, B&W NOG authorization to use Section 161A preemption authority at the B&W NOG-L facility.
2. Approve, authorization for the Director, Office of Nuclear Material Safety and Safeguards, to complete the required license amendment actions and issue the attached draft final Confirmatory Order to this facility.
3. Approve, the Chairman's finalization and issuance (on behalf of the Commission) the enclosed letter to the Governor of Virginia informing the Commonwealth that the Commission is granting Section 161A preemption authority at the B&W NOG-L facility.
4. Approve, staff coordination with SECY to support the Chairman's issuance of the Governor's letter concurrent with the issuance of the Final Confirmatory Order and the associated *Federal Register* notice.

COORDINATION:

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

/RA/

Mark A. Satorius
Executive Director
for Operations

Enclosures:

1. Technical Evaluation
2. Draft Final Confirmatory Order
3. Chairman Letter

COORDINATION:

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

/RA/

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Enclosures:

1. Technical Evaluation
2. Draft Final Confirmatory Order
3. Chairman Letter

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