

Implementation Timelines and Tasks

BACKGROUND:

In developing the firearms guidelines, the staff included language providing the Commission the flexibility to authorize application of section 161A. authority to licensees and certificate holders by the promulgation of rules or by the issuance of orders. The staff had recognized that implementation of this authority by order in individual cases might be faster than the standard rulemaking process, and would thus provide the Commission increased flexibility in implementing this statute. As described in the accompanying paper, section 161A. provides new authority in two ways. The staff is using the phrase “preemption authority alone” to describe the first and “enhanced weapons authority and preemption authority” to describe the second. Licensees and certificate holders wishing to apply for “enhanced weapons authority” must also apply for “preemption authority”; however, licensees and certificate holders may apply for “preemption authority” alone

The staff would use the following example to illustrate how a licensee or certificate holder might benefit from preemption authority. State “A” passed legislation that established a state restriction on large capacity ammunition feeding devices (magazines), mirroring Federal statutory restrictions. However, Federal restrictions on large capacity ammunition magazines have been sunset. Thus, a licensee or certificate holder could use this authority notwithstanding State “A’s” existing statute and thereby increase its defensive firepower. In contrast, the advantages of enhanced weapons authority are much more straightforward, i.e., it would permit a licensee or certificate holder to obtain machine guns or other restricted weapons and thereby increase their defensive capabilities.

DISCUSSION:

The staff’s estimate of the time required by a licensee or certificate holder to deploy enhanced weapons is approximately 16 to 24 months after a licensee or certificate holder begins evaluating their need for specific weapons against the enhanced weapons requirements. The licensee must submit the necessary documents to the NRC (including revised security plans and a weapons safety assessment), and then obtain the required NRC and ATF approvals. The staff did not obtain industry input in developing these time estimates. Fundamentally, the length of time necessary to complete the process cannot be shortened, except through experience. However, some activities could be accomplished in parallel to reduce the overall amount of time needed to deploy enhanced weapons. An additional constraint is the availability of staff resources. Review of a licensee’s revised security plan, training and qualification plan, and weapons safety assessment necessary to deploy enhanced weapons would be required under both approaches and is expected to require a substantial amount of time (staff estimates 0.3 to 0.4 FTE per application). Additionally, the Nuclear Energy Institute has approached the staff about conducting a pilot program on implementing this new process. The staff supports this concept to work out any challenges with a single licensee and thereby make the overall process more efficient.

Also impacting the length of the staff’s review is the specific caliber (or increase in caliber) of the weaponry the licensee or certificate holder is requesting. For example, a licensee currently deploying 5.56 x 45 mm AR-15 semi-automatic rifles in its security plan who wants to obtain 5.56 x 45 mm M-16 automatic rifles would not require the same depth of review as if the licensee also wanted to deploy 7.62 x 51 mm M-240 machine guns. A further complexity might

be introduced if, instead of the M-240, the licensee wants to deploy the 5.56 x 45 mm M-249 squad automatic weapon (i.e., the same caliber round as its current AR-15 rifles, but a much higher rate and quantity of fire for these automatic weapons). The staff's estimate is that this second potential submittal would require a somewhat lesser depth of review than would be necessary to deploy a larger caliber (i.e., more powerful) weapon such as the M-240, due to the greater range and penetrating power of the 7.62 x 51 mm round versus the 5.56 x 45 mm round.

The staff has developed the following timelines to provide the Commission information on implementation issues and resource prioritization. However, the staff notes that significant uncertainty exists with the Phase 1 estimates, specifically the amount of time required for the Attorney General to approve the firearms guidelines. Uncertainty also exists for the Phase 3 timeline with regard to the staff's reviews of the weapons safety assessments, license response to any requests for additional information (RAIs), or ATF's approval to transfer the enhanced weapons to the licensee.

The total number of eligible licensees who would actually apply for section 161A. authority is unknown. Also unknown is the timing of such submittals, due to significant uncertainties on how long it will take a licensee or certificate holder to (1) assess the advantages and disadvantages of deploying enhanced weapons for its protective strategy; (2) select the specific enhanced weapons to be deployed; (3) revise its security plans, training and qualification plans, and complete the weapons safety assessment for the specific weapons; and (4) submit their application and these plans to the NRC for review and approval.

PHASE 1 – FIREARMS GUIDELINES ISSUANCE	SCHEDULE
SECY paper delivered to Commission	+0
Commission issues a partial SRM approving the firearms guidelines and staff forwards the firearms guidelines to the Attorney General (AG)	+4 w
AG approves firearms guidelines	+10 w
Staff publishes firearms guidelines in <i>Federal Register</i> and issues letters to governors. Section 161A. takes effect.	+11 w

Although the estimates in the Phase 2 timeline for completing a direct final rule are consistent with the staff's standard direct final rule schedule, the staff will attempt to shorten the actual time to issue this direct final rule by (1) beginning this work in parallel with the Commission's review of this paper and (2) by aggressively completing the longest duration item (development and office concurrence on the direct final and companion proposed rules) as soon as possible.

PHASE 2 – DIRECT FINAL RULE ISSUANCE	SCHEDULE
Staff begins development of direct final rule, companion proposed rule, OMB information collection burden, and guidance documents	+0
Commission issues a final SRM approving use of a direct final rule and delegating signing to the EDO	+4 w
Staff delivers direct final rule, companion proposed rule, and supporting documents to the EDO	+28 w
EDO review of the rulemaking package, coordination with Commission (per Management Directive 6.3), and publication of direct final rule and companion proposed rule for comment	+32 w

PHASE 2 – DIRECT FINAL RULE ISSUANCE	SCHEDULE
Staff publication of supporting regulatory guidance for comment on enhanced weapons (DG-5020) and final guidance on event notifications (DG-5019)	+32 w
30–day public comment period on companion proposed rule closes	+36 w
Staff review of comments to determine whether there are any significant adverse comments	+39 w
Publication of notice confirming effective date of direct final rule before the 90-day effective date. No significant adverse comments were received and OMB approval of the information collection burden has been received.	+40 w
Direct final rule takes effect 90 days after publication. Supporting final regulatory guidance will be issued subsequently	+42 w

The Phase 2a timeline begins with the close of the comment period on the companion proposed rule and assumes that significant adverse comments have been received and that a separate final rule will be developed and provided to the Commission for its review and approval.

PHASE 2a – SIGNIFICANT ADVERSE COMMENTS RECEIVED	SCHEDULE
30–day public comment period on companion proposed rule closes	+36 w
Staff review of comments on companion proposed rule and evaluation against the significant adverse comment criteria.	+39 w
Significant adverse comments are received and the staff publishes a notice withdrawing direct final rule (before the 90-day nominal effective date)	+41 w
Staff develops a final rule responding to comments and provides the rule to EDO to forward to the Commission	+48 w
Commission issues SRM approving final rule	+54 w
Staff publishes final rule in the <i>Federal Register</i> and supporting final regulatory guidance will be issued subsequently	+60 w

The Phase 3 timeline begins with the publication of the firearms guidelines in the *Federal Register*. This is based upon the assumption that licensees will not begin their planning efforts until they can review the firearms guidelines and this paper (specifically Enclosure 2) following its public release. Moreover, this timeline also assumes that licensees will begin their planning and development efforts before the direct final rule and companion proposed rule are published and industry can review the new implementing language (necessary to develop their plans). To ameliorate the impact from this uncertainty, the staff will evaluate posting preliminary draft companion proposed rule language to the Federal rulemaking Web site at www.regulations.gov as soon as possible.

The 11 week completion point from Phase 1 above was used as the starting point in developing this timeline. Additionally, this timeline assumes that one round of RAIs will be required for the staff to complete its review of the revised security plans, training and qualification plan, contingency response plan, and weapons safety assessment. The creation of the RAIs, the licensee's evaluation and response to the RAIs and any plan changes, and the staff's review of these revised documents is estimated to take 21 weeks. Consequently, if RAIs are not required, then the Phase 3 timeline could be shortened by an estimated 21 weeks.

PHASE 3 – LICENSEE IMPLEMENTATION	SCHEDULE
Firearms guidelines published in the <i>Federal Register</i> and section 161A. takes effect.	+11 w
Licensees begin analysis of potential choices of enhanced weapons and evaluate implementation information in the SECY paper and Enclosure 2. SECY paper will be released with the publication of the firearms guidelines.	+11 w
Licensee applies to the NRC for preemption authority and begins firearms background checks	+12 w
Licensee determines that a sufficient number of firearms background checks have been satisfactorily completed and notifies the NRC.	+20 w
NRC approves preemption authority for licensee after the direct final rule takes effect	+42 w
Licensee develops revised security plan, revised training and qualification plan, revised contingency response plan, and weapons safety assessment and applies to the NRC for enhanced weapons authority	+23 w
Staff reviews licensee's plans and weapons safety assessment and develops draft SER and any RAIs (if required)	+39 w
If no RAIs are required, then NRC issues letter approving the licensee's application for enhanced weapons after the direct final rule takes effect	+42 w
If RAIs are required, they are issued to the licensee	+39 w
Licensee develops response to RAIs and submits them to the NRC	+51 w
Staff evaluates responses to RAIs and develops final SER	+55 w
NRC issues letter approving the licensee's application for enhanced weapons	+57 w
Licensee forwards copy of NRC approval letter to the ATF federal firearms licensee (manufacturer or importer) supplying the enhanced weapons	+59 w
Federal firearms licensee forwards transfer paperwork to ATF, National Firearms Act Branch for ATF review and approval	+60 w
ATF approves transfer of enhanced weapons to NRC licensee	+68 w
Manufacturer or importer delivers enhanced weapons to NRC licensee	+76 w
Licensee trains security offices on the enhanced weapons	+88 w
Licensee deploys the enhanced weapons	+89 w

Confirmatory Orders

As discussed above, the firearms guidelines provide the Commission with flexibility to implement the new authority of section 161A. through the promulgation of regulations or through the issuance of orders. While the promulgation of regulations to implement section 161A. remains the staff's preferred approach, the staff's has analyzed the steps a licensee would need to complete to permit the NRC to issue confirmatory orders and additional security measures (ASMs) implementing section 161A. authority.

The staff notes that the following steps refer to actions taken by a licensee. However, if the Commission approves the staff's recommendations in Enclosure 3, then certificate holders (for gaseous diffusion plants) would also be able to apply for section 161A. authority using this process.

Implementation of preemption authority under confirmatory orders would occur as follows:

- The licensee submits a letter to the NRC applying for preemption authority.
- The licensee can then begin submitting an NRC Form 754, "Armed Security Personnel Firearms Background Check," and fingerprints for each of their security personnel to the NRC for forwarding to the Federal Bureau of Investigation (FBI). The FBI will accomplish the firearms background check under the National Instant Criminal Background Check System (NICS).
- The FBI will return the results of the firearms background checks to the NRC and they will be forwarded to the submitting licensee.
- The licensee receives a sufficient number of satisfactory responses (i.e., a "proceed" response) to the firearms background checks for their security personnel to ensure that sufficient security personnel are available to meet fatigue and overtime requirements. The licensee then submits a second letter to the NRC indicating it is able to comply with the preemption authority ASMs.
- The NRC issues a confirmatory order and ASMs approving the licensee's application for preemption authority.

The staff notes that submission of firearms background check information to the NRC under the proposed NRC Form 754 cannot begin until Office of Management and Budget (OMB) approval is received on the information collection burden for the proposed NRC Form 754. OMB approval is required under the Paperwork Reduction Act of 1995. The staff is currently working on obtaining OMB approval for this new form.

Secondly, implementation of enhanced weapons authority under confirmatory orders would occur as follows:

- The licensee evaluates the enhanced weapons it would like to deploy, completes a weapons safety assessment on these specific weapons, and develops changes to its security plan and training and qualification plan.
- Unless they have already done so, the licensee submits a letter to the NRC applying for preemption authority.
- The licensee also submits a letter to the NRC applying for enhanced weapons authority. The application would include information on the enhanced weapons it wants to obtain (e.g., numbers of weapons, model, caliber), the weapons safety assessment, a revised security plan (to employ the weapons), and a revised training and qualification plan. Note: the licensee's application for enhanced weapons authority may be made in conjunction with its application for preemption authority, or it may be made separately.
- The NRC reviews the licensee's application, develops any requests for additional information, and prepares a security evaluation report approving the licensee's application.
- The NRC issues a confirmatory order and ASMs to the licensee approving their application for section 161A. enhanced weapons authority.
- The letter transmitting the order to the licensee will also include information on the specific numbers of weapons, model, and caliber approved for the licensee or certificate holder.
- The licensee provides a copy of the NRC's approval letter to the ATF federal firearms license (FFL) holder supplying the enhanced weapons.

- The FFL holder submits the necessary ATF paperwork and a copy of the NRC approval letter to ATF and requests approval to transfer the enhanced weapons to the NRC licensee.
- The ATF grants approval to the FFL holder to transfer the enhanced weapons to the licensee. The FFL holder transfers the weapons to the licensee.
- The licensee completes the training for their security personnel on the enhanced weapons as specified under the licensee's approved training and qualification plan.
- The licensee deploys the enhanced weapons.