

Summary of Public Comments on the Proposed Design Basis Threat (DBT) 10 CFR 73.1

The proposed rule provided a 75-day public comment period which ended on January 23, 2006. The comment period was extended by another 30 days in response to a request from the Nuclear Energy Institute (NEI), an industry group, to allow additional time for review of the proposed rule because the comment period overlapped the year-end holidays. The extended comment period ended on February 22, 2006. A total of 919 comments were received. Sources for these include about nine hundred individuals, one county, thirteen citizen groups, one utility involved in nuclear activities, and two nuclear industry groups. The comments covered a range of issues, some of which were beyond the scope of this rulemaking in that they were specific to measures but did not relate to the adversary characteristics. The comments have been organized under three groups ; Group I: Consideration of the 12 factors in the EPAct, Group II: In Scope comments, which includes comments raising issues and concerns directly related to the contents of the DBT rule, and Group III: Out of Scope comments, which includes comments raising issues and questions that are not directly related to the DBT rule, although they are relevant to the security of nuclear facilities.

Group I: Considerations of the 12 Factors in the Energy Policy Act

The commission's considerations, public comments and responses to the public comments are provided in the *Federal Register* Notice, Section A.

Group II: In Scope of comments

The commission's considerations, public comments and responses to the public comments are provided in the *Federal Register* Notice, Section B.

1. Definition of the Design Basis Threat
2. Applicability of the Enemy of the State
3. Compliance with Administrative and Procedures Act Notice and Comment Requirements
4. Ambiguous Rule Text
5. Differentiation in Treatment of General and Specific License for ISFSI
6. Applicability of the DBTs to the New Nuclear Power Plants
7. Consideration of Uniqueness of Each Plant in application of the DBTs
8. Continued exemption of Research Reactors from the DBT requirements
9. Changes in Security Requirements to be Addressed Under Backfit Rule

10. Compliance with the Paperwork Reduction Act
11. Adequacy of the Regulatory Analysis
12. Compliance with the National Environmental Protection Agency (NEPA)
13. Issuance of Annual Report Card on Individual Licensees

Group III: Out of Scope Topics

14. Federalization of Security
15. Force-on-Force Tests of Security
16. Screening of Workers of Nuclear Power Plants
17. Self Sufficient Defense Capabilities
18. Security of Dry Cask Storage
19. Spent Fuel Pools
20. Inherent Vulnerabilities of Design

A Comments matrix has been provided in Appendix A, which references each topic with comments.

APPENDIX A

Definition of Comments Issues

Design Basis Threat 73.1

Comment Domain Number/ Name	Comment No.	Individual Comments
1. Dry cask storage	24,94	Dry cask storage
	94	Berming of dry casks
2. Federalization of security	27,31	Federal security of nuclear power plants
	102	The DBT scope must be clear and not greater than the largest threats defined in DBT
	66	Full compliance with the Energy Act Of 2005
3. Air borne attacks	31,	Air borne attacks
	94	No-fly zone
	92,96	Air based threats
4. Tests of Security	31,92	OSRE program exercises must be upgraded
	59	Independent source for staffing “mock terrorists”
5. Spent Fuel Pools	31,58, 96	Spent fuel pools to be considered as targets
	95	Independent, plant-specific review of vulnerabilities and consequences of loss-of-coolant
		Effectiveness of surveillance and security
		Provision of Water spray system to cool fuel in case of damaged storage buliding
		Reconfiguration of fuel pools
6. Types, Numbers and Coordination of Adversaries	55,59, 92	Coordinated attacks by multiple large teams or adversaries of with knowledge of plants
	55	Allowed no. of independent teams & entry

	55	Decrease in allowed no. of independent teams & entry points
	55,56	Insider capabilities remain confusing
	101,104	Continuation of ambiguous language
	61,104	DBT fails to include post 9-11 threat considerations
	92	Active insiders
	92	Defense against a sizable multi-team force
	92	Elevated vulnerability to infiltration during event
7. Consideration of the 12 factors in the Energy Policy Act	6,59	The Commission's deferral of consideration of a rule on airborne attack abrogates the EAct, and undermines the public's ability to comment on the rule.
	66,99	The EAct called for addressing 12 factors in the DBT rule. The Commission decided not to consider some of the factors. The Commission should withdraw and repropose this rule addressing 12 factors.
	Citizen TLReed et al	Withdraw the proposed rule and complete a thorough analysis of the 12 factors required by Congress
8. Research Reactors remain exempt	55	Research reactors are still exempt from Category I facility coverage
9. Self sufficient defense capabilities	57,92	Large metropolis based plants should have self sufficient defense capabilities
10. Weapons and Alternative Types of Threats	57,92	Regulations do not reflect protections against potential of explosive devices of considerable size and other modern weaponry
	94	DBT does not protect against conceivable attacks

11. Potential For Fires	96	The DBT fails to mention consideration of the potential for fires of long duration
12. Water Borne Attacks	31,59, 92,96	The NRC should require physical barriers to prevent intrusion of boats, scuba drivers or floating devices anywhere near the reactor or intake canals
13. Secret Rulemaking/ Use of Regulatory Guides	52,61, 104	The DBT should be based on an objective standard that is related to the expected characteristics of the adversary, not to the size of the licensee's budget
	61,104	Inadequate regulation
	61,104	Arbitrary and capricious decision-making
	66	Deferral of Matters to Final Rulemaking violates APA
	61	Violation of the Administrative Procedure Act as it is based upon Ex Parte communications
	82,102	Appears to provide a potential method to circumvent the Paperwork Reduction Act, meaningful Backfit & Regulatory Analysis
	82,102	The approach used in this rulemaking has the potential to compromise established regulatory processes
	66,82, 102	Future Revisions to ACDs would not require changes to the DBT regulations as long as it remain within the broad scope of the rule text
	66	Much of the rulemaking is designed to eliminate specificity in the current regulation so as to give the NRC freedom to alter the DBT rules without APA-compliant rulemaking
99	The DBT Rulemaking is simply codifying secret orders to avoid public scrutiny	

	82,102	SECY 05-0106 statement that the NRC will use orders where licensees do not “volunteer”, implies that ACDs and RGs are more like requirements, not mere guidance
	102	The Administrative Procedure Act and Paperwork Reduction Act must be followed
	102	Incorporating the ACDs and RG s by reference will provide notice to public
	102	Proposed use of ACDs and RGs to promulgate the details of DBT
	102	These documents may be updated as a result of NRC’s periodic threat review, but no mention of input from affected licensees.
	102	Changes to the DBT details should not be made without input from licensees
14. Annual Report Card on individual licenses	62	NRC should publish an annual report card assessing plant performance
15. Screening of Workers of Nuclear Power Plants	65	NRC to regulate/oversee the initial and follow-on screening of workers having access to the reactor, spent fuel pool
16. Differentiation in treatment of General and Specific License for ISFSI	68	Lack of clarity for application of 73.1 arising from the security requirements in 72.182 and 72.212 for ISFSI
17. Ambiguous language	61,55	The continued use of the phrase “two or more teams” ignore the inherent ambiguity of the phrase, as identified in the Catawba licensing proceedings
18. New Nuclear Power Plants	82,102	DBT should be same for new and existing plants
19. Inherent design problems that make reactors vulnerable	58	DBT ignores vulnerabilities inherent in design of Mark I and II BWR fuel pools

20. Computer System Compromise	92	NRC should develop a comprehensive computer vulnerabilities and cyber attack threat assessment
21. Uniqueness of each plant	94	DBT for each plant must be unique
22. The Proposed Rule fails to satisfy NEPA	97	The NRC has violated Section 102 of NEPA, 42 U.S.C. § 4332, by refusing to prepare an Environmental Impact Assessment (EIS) in connection with the proposed rule
23. Basis of Design Basis Threat (Combined with Enemy of the State and Cost considerations as rationale for limiting the scope of DBT)	82,	Adversaries characteristics beyond the current DBT are enemy of the State and are appropriately addressed through DHS.
	61	Unclear explanation between 73.1 coverage vs. an enemy of the State.
	52,61, 104	Presumed cost consideration as the rationale for limiting the scope of DBT
	101	Instead of sizing the DBT on the actual threat, the NRC bases security standards on what the NRC believes a private guard force can be expected to handle.
	61,52, 104	Nowhere in the proposed rule does the Commission explain what it means by “attacks against which a private security force could reasonably be expected to defend.
	61,104	Unacceptably vague, subjective and unsupported rationale of rulemaking
24. Changes in NRC Security Requirements must be addressed under the Backfit Rule	102	The NRC should follow the backfit process when considering ACDs and RGs changes.
	102	Protection of DBT responsibilities
	102	The Backfit rule requires that the NRC perform an analysis of changes in position

25. The Paperwork Reduction Act/Administrative Act is circumvented by this approach	102	The statement "proposed rule does not contain new or amended information collection requirement is incorrect.
26. NRC's Regulatory Analysis	102	NRC's Regulatory analysis understates the impact of requiring revisions