

June 29, 2017

MEMORANDUM TO: Andrew J. Pretzello, Deputy Director
Division of Security Operations
Office of Nuclear Security and Incident Response

FROM: Doug G. Huyck, Chief */ra/*
Security Oversight and Support Branch
Division of Security Operations
Office of Nuclear Security and Incident Response

SUBJECT: RESPONSE TO PUBLIC COMMENTS ON DRAFT
REGULATORY ISSUE SUMMARY 2016-XX, "CLARIFICATION
ON THE IMPLEMENTATION OF COMPENSATORY MEASURES
FOR PROTECTIVE STRATEGY DEFICIENCIES OR DEGRADED
OR INOPERABLE SECURITY SYSTEMS, EQUIPMENT, OR
COMPONENTS"

A notice of opportunity for public comment on this draft regulatory issue summary (RIS) was published in the *Federal Register* (81 FR 10686) on March 1, 2016, for a 30-day comment period. Two organizations provided comments, which were considered before issuance of this RIS in final form. Comments were received from the Nuclear Energy Institute (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16095A206), and Exelon Generation Company, LLC (ADAMS Accession No. ML16099A105). Enclosed are the staff responses to all public comments.

Enclosure:
As stated

CONTACT: Carl L. Grigsby, NSIR/DSO/SOSB
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SUBJECT: RESPONSE TO PUBLIC COMMENTS ON DRAFT REGULATORY ISSUE SUMMARY 2016-XX, "CLARIFICATION ON THE IMPLEMENTATION OF COMPENSATORY MEASURES FOR PROTECTIVE STRATEGY DEFICIENCIES OR DEGRADED OR INOPERABLE SECURITY SYSTEMS, EQUIPMENT, OR COMPONENTS" DATED: June 29, 2017

ADAMS Accession Nos.: Package/ML16110A363; Memo/ML16110A370; RIS/ML16110A366; FRN/ML16131A187

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DATE	02/14/17	03/02/17	06/29/2017

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**NRC STAFF RESPONSE TO PUBLIC COMMENTS ON
DRAFT NRC REGULATORY ISSUE SUMMARY 2016-XX,
“CLARIFICATION ON THE IMPLEMENTATION OF COMPENSATORY MEASURES FOR
PROTECTIVE STRATEGY DEFICIENCIES OR DEGRADED OR INOPERABLE SECURITY
SYSTEMS, EQUIPMENT, OR COMPONENTS”**

Comments on the subject draft regulatory issue summary (RIS) are available electronically at the U.S. Nuclear Regulatory Commission’s (NRC’s) electronic reading room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into the Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC’s public documents. Comments were received from the following individuals or groups:

Letter No.	ADAMS Accession No.	Commenter Affiliation	Commenter Name
1	ML16095A206	Nuclear Energy Institute	David R. Kline
2	ML16099A105	Exelon Generation Co, LLC	David P. Helker

The NRC assigned each of the two submittals a letter number. Each submittal contains comments. For each comment, the NRC has provided a summary of the comment followed by the NRC’s response. Each comment is referred to below by its associated letter number and its own sequential number. For example, Comment No. 1-1 is the first comment in Letter No. 1 submitted by Nuclear Energy Institute.

Comments

Comment No. 1-1: The main overarching comment is that the RIS addresses compensatory measures related to findings, deficiencies, and failures identified during tactical response drills and force-on-force exercises, but does not address compensatory measures for the many other aspects of security protection program elements.

NRC Response: The NRC reviewed the comment and decided that no change was required to the RIS. The requirements of 10 CFR 73.55(o) apply to a licensee’s entire physical protection program, not just to deficiencies and failures identified during tactical response drills or FOF exercises. This RIS is being issued to address lessons learned as a result of the staff’s review of the NRC’s Force-on-Force Inspection Program. The Commission directed the staff to conduct this review in staff requirements memoranda (SRM) SECY-14-0088, “Proposed Options to Address Lessons-Learned Review of the U.S. Nuclear Regulatory Commission’s Force-on-Force Inspection Program in Response to Staff Requirements Memorandum – COMGEA/COMWCO 14-0001.” As a result of the Lessons Learned Review, the NRC staff identified that in certain cases licensees are applying immediate compensatory measures where such measures are not required by NRC regulations and guidance. This RIS is being issued to clarify the NRC’s expectations regarding the implementation of compensatory measures, as required by NRC regulations, for any degradation in security equipment, systems, or components relied upon to implement the requirements of 10 CFR 73.55(b)(3)(i) and (ii).

Comment No. 1-2: The commenter recommended that the same logic discussed for the evaluation of findings, deficiencies, and failures identified during tactical response drills and force-on-force exercises should be applied to other aspects of the security protection program elements. Specifically, compensatory measures should be implemented in accordance with the approved Physical Security Plan.

NRC Response: The NRC reviewed the comment and decided that no change was required to the RIS. The NRC believes the RIS clearly outlines the expectations to document compensatory measures within licensee physical security plans. The NRC's regulatory requirements in 10 CFR 73.55(o)(1) require licensees to identify and implement, as appropriate, comp measures for any inoperable equipment, systems or components needed to meet the requirements of 10 CFR 73.55. This requirement applies to all aspects of a licensee's physical protection program, not just those findings, deficiencies, and failures identified during tactical response drills and force-on-force exercises. Furthermore, consistent with 10 CFR 73.55(o)(3), licensee compensatory measures must be described in and implemented in accordance with the licensee's NRC-approved physical security plan.

Comment No. 1-3: The commenter suggested that the RIS should clarify that "at all times" as described in 10 CFR 73.55(b)(3)(i) to detect, assess, interdict, and neutralize threats up to and including the design basis threats of radiological sabotage is related to the holistic physical protection program, and not each individual program capability.

NRC Response: The NRC reviewed the comment and decided that no change was required to the RIS. The NRC staff believes that the language on page 2 of the RIS clearly describes the requirements within 10 CFR 73.55(b)(3)(i) and (ii), which requires each licensee to ensure that the site's physical protection program up to and including the design-basis threat for radiological sabotage, as identified in 10 CFR 73.1, are maintained at all times and provide defense-in-depth through the integration of systems, technologies, programs, equipment, supporting processes, and implementing procedures as needed to ensure the effectiveness of the physical protection program. The inclusion of a requirement for compensatory measures is an implicit recognition that a specific security component, system, or piece of equipment may become degraded or inoperable. However, that does not relieve a licensee from maintaining at all times the capability to detect, assess, interdict, and neutralize threats, and to maintain the integrity and operability of any systems, components, or equipment relied upon to implement the licensee's physical protection program.

Comment No. 2-1: The commenter suggested that the current language in the draft RIS could be misinterpreted and is perhaps misleading, as it "... reminds licensees of the requirement to implement compensatory measures, supported by a site-specific analysis...." Specifically, in reference to the phrase "supported by a site-specific analysis," the commenter believes that the NRC appears to be adding the need for additional analysis for which there are no specific regulatory requirements or supporting NRC-endorsed industry guidance on what the analysis would entail. In this situation, the commenter does not consider the use of a RIS as the appropriate mechanism or process for establishing new guidance.

NRC Response: The NRC reviewed the comment and agrees that the referenced language could potentially be misinterpreted. The RIS will be modified by deleting the referenced language from page 3 of the RIS. Furthermore, the NRC will add the words "site-specific analysis" to the Background Information section of the RIS to clarify the use of a site-specific analysis to identify security equipment, systems, or components relied upon to implement its

physical protection program. A site-specific analysis may also be used to identify the impact of a degradation of such equipment, systems, or components on the physical protection program, including, for example, the physical protection system, and address safety interface requirements contained in 10 CFR 73.58. Additionally, a site-specific analysis may also be used to identify the specific criteria and measures, associated timelines, and level of protection required to compensate for degraded or inoperable security equipment, systems, or components.

Comment No. 2-2: The commenter asserted that the *Federal Register* notice referenced “should” as it relates to the use of a site-specific analysis for determining specific timelines and measures to compensate for protective strategy deficiencies as well as for degraded or inoperable security equipment, systems, or components. The commenter is requesting further clarification as to whether or not the NRC is inferring that the site-specific analysis is “required” or should be used for determining compensatory measures.

NRC Response: The NRC believes that modifying this RIS, as noted in NRC’s response to Comment 2-1, addresses this comment. The requirements for the implementation of compensatory measures are sufficiently captured on bottom of page 1 and the top of page 2 of the RIS. Specifically, each licensee is required to implement compensatory measures as stated in 10 CFR 73.55(o). This includes an assessment to determine the implementation of compensatory measures, as well as the specific timeframes as outlined in the NRC-approved physical security plan and site implementing procedures.

Comment No. 2-3: The commenter has requested further clarification to ascertain if it is the NRC’s intent to use the RIS to allow licensees to evaluate a force-on-force loss or marginal exercise results to determine if the failure was due to the protective strategy, a controller issue, an individual human error, or artificiality or simulation, prior to implementing compensatory measures.

NRC Response: The RIS does not discuss the basis for evaluating the outcome of force-on-force exercises. As stated in the RIS, licensees are required to identify criteria and measures for the implementation of compensatory measures, and enter findings, deficiencies, and failures identified during force-on-force exercises and drills into their site’s corrective action program to ensure timely corrections are made to the appropriate program areas. The NRC is issuing this RIS to remind addressees of requirements for implementation of compensatory measures supported by an assessment to ensure the licensee’s physical protection program maintains, at all times, the capability to detect, assess, interdict, and neutralize threats, as identified in 10 CFR 73.1.