



SECRETARY

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

October 5, 2016

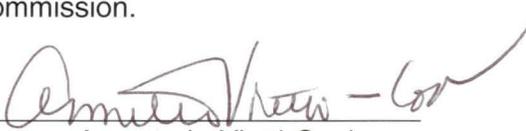
COMMISSION VOTING RECORD

DECISION ITEM:           SECY-16-0073

TITLE:                    OPTIONS AND RECOMMENDATIONS FOR THE FORCE-ON-  
FORCE INSPECTION PROGRAM IN RESPONSE TO  
SRM-SECY-14-0088

The Commission acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of October 5, 2016.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

  
Annette L. Vietti-Cook  
Secretary of the Commission

Enclosures:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Burns  
Commissioner Svinicki  
Commissioner Baran  
OGC  
EDO  
PDR

VOTING SUMMARY – SECY-16-0073

RECORDED VOTES

	<u>APPROVED</u>	<u>DISAPPROVED</u>	<u>ABSTAIN</u>	<u>NOT PARTICIPATING</u>	<u>COMMENTS</u>	<u>DATE</u>
Chrm. Burns	X				X	08/18/16
Cmr. Svinicki	X	X			X	09/19/16
Cmr. Baran	X	X			X	07/19/16

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Burns

SUBJECT: SECY-16-0073: OPTIONS AND RECOMMENDATIONS  
FOR THE FORCE-ON-FORCE INSPECTION  
PROGRAM IN RESPONSE TO SRM-SECY-14-0088

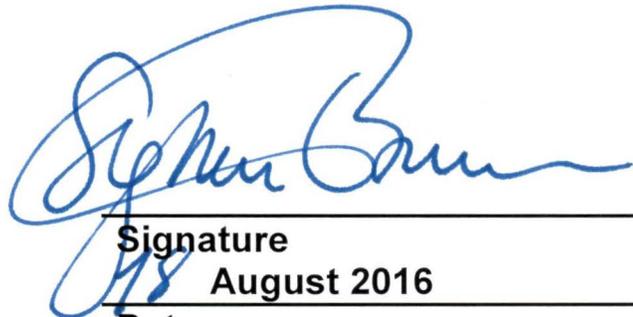
Approved  Disapproved  Abstain  Not Participating

COMMENTS: Below  Attached  None

Entered in STARS

Yes

No

  
\_\_\_\_\_  
Signature  
18 August 2016  
\_\_\_\_\_  
Date

**Chairman Burns's Comments on SECY-16-0073  
Options and Recommendations for the Force-on-Force  
Inspection Program in Response to SRM-SECY-14-0088**

I appreciate the NRC staff's efforts to address the Staff Requirements Memorandum (SRM) to SECY-14-0088, "Proposed Options to Address Lessons-Learned Review of the NRC's Force-on-Force Inspection Program in Response to Staff Requirements COMGEA/COMWCO-14-0001." In SRM-SECY-14-0088, the Commission approved the staff's recommendation to establish a working group to determine how to better integrate knowledge of adversary training methodologies and actual attacks with the tactics, techniques, and procedures (TTPs) used by the NRC composite adversary force (CAF). The Working Group found that the NRC has successfully integrated knowledge of adversary training methodologies and actual attacks with the TTPs used by the CAF during NRC-conducted Force-on-Force (FOF) exercises and that the TTPs are consistent with the design basis threat and real-world threat information on terrorist training and attack methodologies. The Working Group recommended that no changes be made to the TTPs used by the CAF during NRC-conducted FOF exercises. Based on these findings, I approve the staff's recommendation to terminate the working group and conduct any necessary follow-on activities within the program offices.

Along with its analysis of the Working Group's report, the staff also considered comments submitted by the Union of Concerned Scientists and the Nuclear Energy Institute (NEI) on the security inspection program. Based on its analysis of these documents, the staff identified two options for the Commission's consideration: (1) maintain the current program with incremental improvements to guidance or (2) conduct an assessment of the security baseline inspection program, including FOF. The staff recommended the second option. In my subsequent dialogue with staff management regarding its recommendation, it was clear to me that staff did not intend to look at redesigning the program from scratch, but that it did believe that the opportunity to look more broadly at the current FOF program (instituted more than a decade ago) would likely yield improvements and efficiencies and that latitude from the Commission in approving Option 2 would allow it to do so.

In addition to the staff's paper and input from external stakeholders, I have also considered the vote issued by former Commissioner Ostendorff on SECY-16-0073 and, although he did not support Option 2, he did suggest that the staff evaluate two issues with regard to the FOF program. Those issues are:

1. Evaluate how vulnerability assessments could be used to evaluate the effectiveness of licensee protective strategies, and whether credit could be given for operator actions or for the use of additional equipment such as "flex equipment," which was installed to enhance safety but can also provide a security benefit.
2. Evaluate whether the NRC should provide any credit for local state or federal law enforcement response to establish coping time for security events. For example, if a licensee engages with state and local law enforcement to conduct site familiarization tours and site security exercises, could the staff give credit for integrated response capability in establishing the required coping time for a security event?

The staff should include these issues in its evaluation to determine whether crediting of operator actions, the use of FLEX equipment, or response by local, state, or federal law enforcement could make the FOF exercises more realistic.

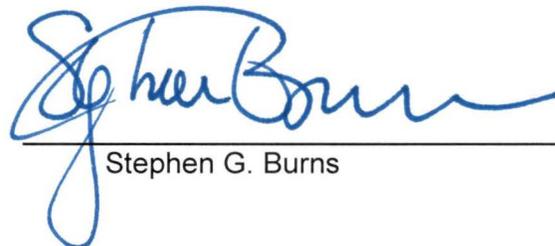
I had the opportunity to observe a recent FOF exercise and discuss the FOF program with both the NSIR team conducting the exercise and the licensee. This experience confirmed my impression

that the current FOF program overall is sound, but that there are likely improvements that can be made to ensure we are focusing our security inspection resources wisely. Therefore, I approve Option 2. While I do not believe that a wholesale reconsideration of the program is necessary, I believe that there are worthwhile improvements that could be made that go beyond incremental improvements to guidance documents.

The staff should perform a holistic review of the security inspection program, considering both internal and external feedback, to identify potential changes that can provide efficiencies while maintaining an appropriate level of regulatory oversight that takes into account the maturity of the current security inspection program. The staff should submit a notation vote paper to the Commission within 12 months from the date of the SRM for SECY-16-0073 which would include recommendations on improvements to the security inspection program. The staff should continue its dialogue with external stakeholders as part of its evaluation.

I would also like to mention one specific industry-proposed change to the current FOF program. This is the industry proposal that, rather than NRC conducting FOF exercises, the NRC should instead observe and evaluate licensee conducted FOF exercises similar to how the NRC oversees biannual emergency preparedness exercises. Although there may be some merit to this concept, the language requiring FOF exercises in Section 170D of the Atomic Energy Act of 1954, as amended, arguably creates challenges for implementation of this proposal. Therefore, to the extent that staff intends to address this as part of their overall evaluation, any further staff assessment of this industry proposal should be informed by a complete legal analysis from the Office of the General Counsel (OGC) on this matter. The legal analysis provided by OGC to the staff should also be provided to the Commission.

Lastly, in his vote, Commissioner Ostendorff also discussed the notion of “high assurance of adequate protection” found in our security regulations in 10 CFR Part 73. Reflecting back on my time in the General Counsel’s office in the years following the terrorist attacks of September 11, it was always my understanding that the concept of “high assurance” (first introduced into the regulatory vernacular in the 1979 Physical Protection Upgrade rule) did not establish a “higher” or more “risk averse” standard as it applies to security than the NRC has with regard to how it regulates safety. The regulatory history cited by Commissioner Ostendorff has always, in my view, reflected that “high assurance” is equivalent to “reasonable assurance” when it comes to determining what level of regulation is appropriate. In other words, and as I have attempted to articulate many times during my tenure, the NRC should not be applying a “zero risk” mentality to security any more than we should be doing so with respect to safety. Therefore, when the staff is implementing the NRC’s regulatory program, either in developing new regulations, inspecting licensee compliance with regulations, or executing the FOF program, I urge the staff to be mindful of our regulatory mandate.



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Stephen G. Burns

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER SVINICKI  
SUBJECT: SECY-16-0073: OPTIONS AND RECOMMENDATIONS  
FOR THE FORCE-ON-FORCE INSPECTION  
PROGRAM IN RESPONSE TO SRM-SECY-14-0088

Approved XX In-part Disapproved XX In-part Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached XX None \_\_\_\_\_

  
\_\_\_\_\_  
SIGNATURE

09/ 19 /16  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

**Commissioner Svinicki's Comments SECY-16-0073**  
**Options and Recommendations for the Force-on-Force Inspection Program**  
**in Response to SRM-SECY-14-0088**

In this paper, the staff requests approval to: 1) conduct an assessment of the security baseline inspection program, including force-on-force (FOF) (termed Option 2, by the staff), and 2) terminate the NRC Working Group formed at the Commission's direction to assess the tactics, techniques, and procedures (TTPs) used by the NRC composite adversary force (CAF). I approve termination of the working group and direction that the group's findings and any follow-on activities be addressed through the program offices. I approve the staff's proposal to conduct an assessment of the security baseline inspection program, including FOF, as limited and conditioned by the comments contained in this vote. Prior to ending his term of service on the Commission earlier this year, Commissioner Ostendorff provided his views on this paper. Although I am not specifically in alignment with each of his views, I will make reference to some of them here and therefore I attach his written vote commentary (although not binding on this deliberation) to my vote, for ease of reference.

In implementing the assessment called for in the staff's Option 2, the staff should avoid attempting a fundamental redesign of the program. Rather, the staff should conduct a review limited to those areas that are the most likely to yield improvements and efficiencies. Three issues specifically suggested by Commissioner Ostendorff should be included. Paraphrased somewhat, they are as follows:

1. Evaluate how vulnerability assessments could be used to determine the effectiveness of licensee protective strategies and whether credit could be given for operator actions or for the use of additional equipment such as FLEX equipment, which was installed to enhance safety but can also provide a security benefit.
2. Evaluate whether the NRC should provide any credit for local, State, or Federal law enforcement response to establish coping time for security events. For example, if a licensee engages with State or local law enforcement to conduct site familiarization tours and site security exercises, should the staff give credit for integrated response capability in establishing the required coping time for a security event?
3. Evaluate whether the NRC's historical application of the backfit rule for safety-related matters should find some analogue in security decision-making in order to provide a measure of greater finality and regulatory stability to our security framework.

In evaluating these issues, the staff should attempt to establish whether crediting operator actions; the use of FLEX equipment; or response by local, State, and Federal law enforcement would make the FOF exercises challenging but more realistic and if so, how. Areas of examination, such as these, have the potential to provide incremental and worthwhile improvements.

I agree that the NRC's baseline and FOF inspection programs are mature and well-understood. Consequently, the staff's more limited Option 2 assessment should be completed and a notation vote paper provided to the Commission within 12 months from the date of the staff requirements memorandum on this paper. A Commission decision on this future paper, coupled with the Commission's existing decision to review and approve any proposed staff revisions to Regulatory Guides 5.69, "Guidance for the Application of Radiological Sabotage Design-Basis Threat in the Design, Development and Implementation of a Physical Security Program that Meets 10 CFR 73.55 Requirements" and 5.77, "Insider Mitigation Program," will make substantial headway in re-affirming the alignment between the staff's day-to-day implementation

of the security framework and the Commission's standing policies in this area. I agree with former Commissioner Ostendorff that the "Commission is responsible for establishing the Design Basis Threat (DBT) and approving any proposed changes to the DBT based on the threat environment" and "has the ability to view safety and security protections as one integrated regime that assures adequate protection of public health and safety." For these reasons, Commission-level review and approval of these associated regulatory guides does not reflect a lack of confidence in the staff's work but rather reflects a needed intermittent validation of this alignment. As such, Commission review is both needed and appropriate.

I specifically disapprove the creation of a new NRC guidance document to house operating experience associated with the FOF program. Such operating experience is more traditionally and effectively housed in and disseminated through industry guidance, endorsed by the NRC. Consequently, FOF operating experience, to the extent not documented elsewhere, is likely best consolidated into existing industry guidance documents.

Finally, I add my understanding of the agency's history of "high assurance" of adequate protection with respect to NRC's security regulations in 10 CFR Part 73. My understanding of the history of this issue is entirely consistent with that of Chairman Burns and former Commissioner Ostendorff, namely, that the concept of "high assurance" does not and was not intended to differ fundamentally from the rubric of "reasonable assurance of adequate protection" applied to the broad category of safety concerns dispositioned by the NRC under the Atomic Energy Act, as amended. Thus, our standard for security is the same as our standard for safety – "reasonable assurance of adequate protection" – not higher assurance, or zero risk, and the Commission sets the guideposts for how this standard is achieved through exercising its policymaking role. The staff should operate under this paradigm and eliminate ambiguity on this point in its guidance documents or other internal directives, instructions, or training materials, to the extent such ambiguity exists.

  
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Kristine L. Svinicki                      09/19/16

Enclosure: Commissioner Ostendorff's  
comments on SECY-16-0073

**Commissioner Ostendorff's Comments on SECY-16-0073:  
"Options and Recommendations for the Force-On-Force Inspection Program in  
Response to SRM SECY 14-0088"**

It is my intent in this vote to share with the staff and my fellow Commissioners my thoughts on security regulatory matters in a broad context rather than limit my comments to the specific matters discussed in SECY-16-0073.

As discussed in COMWCO-14-0001/COMGEA-14-0001, and subsequently in my vote on SECY-14-0088, the current force-on-force program has been in place for twelve years, and significant security enhancements have been implemented by licensees since the terrorist attacks of September 11, 2001. I have confidence through our licensing and oversight programs that commercial nuclear power facilities are protected by robust security measures.

A Commission-directed lessons-learned review of the force-on-force program was initiated in 2014 and resulted in enhancements and clarifications to the force-on-force program in several areas. These areas include the timing of compensatory measures and the realistic ability to exploit unattended openings. Other staff-initiated changes were implemented over the past two years including reducing the number of exercises during triennial force-on-force inspections from three to two, increasing notification time for force-on-force inspections to allow more effective resource planning, and enhancing the significance determination process for security. I applaud the staff's actions in these areas.

Recently, industry has suggested reducing the number of force-on-force exercises from two to one. I do not support this proposal. While this could result in some resource savings, it could also introduce challenges if the exercise is indeterminate due to controller issues or must be cancelled due to inclement weather or other unforeseen circumstances. The staff should evaluate a change to the force-on-force program wherein the staff would plan two exercises and establish criteria to permit the staff to cancel the second exercise if the licensee demonstrates an effective protective strategy in the first exercise and has no significant performance deficiencies in the security cornerstone. On a related matter, it is important to note that force-on-force exercises are designed to be very challenging and that a "failed" force-on-force exercise does not necessarily indicate that a licensee's protective strategy is ineffective or noncompliant. Any performance deficiencies identified during the force-on-force inspection or other security inspections must be appropriately evaluated through the significance determination process. The need for changes to a licensee's protective strategy in response to inspection findings must be evaluated carefully in the context of the licensing basis and backfit considerations.

I am also opposed to industry's suggestion that the NRC observe licensee-conducted force-on-force exercises in lieu of NRC-conducted force-on-force exercises. This should not be viewed as criticism of licensee efforts. Rather, NRC-conducted force-on-force exercises have an important role in the public confidence in physical security programs and are mandated by

legislation. Furthermore, NRC-conducted force-on-force exercises establish a consistent and structured framework to fulfill the agency's regulatory responsibilities.

As a Commissioner, my votes have been grounded in the NRC's longstanding regulatory framework of adequate protection and the application of the backfit rule. I have also been guided by the principles of good regulation. Consistent with our principles of good regulation, regulatory activities should be consistent with the degree of risk reduction they achieve, and once established should be perceived as reliable and not unjustifiably in a state of transition. In that context, in my deliberations on safety matters, I ask the questions: "What problem are we trying to fix?" and "How safe is safe enough?" As I read SECY-16-0073, and as I listened to discussions during a recent Commission meeting on related topics, I was struck that we must exercise the same degree of discipline in regulatory decisions on security matters as we do on safety matters and ask similar questions: "What problem are we trying to fix?" and "How secure is secure enough?"

I would also like to provide some context for the Commission's recent direction to the staff in SRM-M160623 to provide proposed revisions to Regulatory Guides 5.69, "Guidance for the Application of Radiological Sabotage Design-Basis Threat in the Design, Development and Implementation of a Physical Security Program that Meets 10 CFR 73.55 Requirements" and 5.77, "Insider Mitigation Program," to the Commission for review and approval. The Commission is responsible for establishing the Design Basis Threat (DBT) and approving any proposed changes to the DBT based on the threat environment. To fulfill this obligation, the Commission has access to current intelligence information through frequent briefings and interactions with federal law enforcement and intelligence agencies. The Commission also has awareness of the broader context of security requirements within the NRC's regulatory framework, and therefore has the ability to view safety and security protections as one integrated regime that assures adequate protection of public health and safety. For these reasons, proposed revisions to the DBT and associated regulatory guides should be subject to Commission-level review and approval.

Further reinforcing this direction, I will note that there is scant explanation in our regulatory history of the basis for the standard of "high assurance" used in Part 73 to ensure adequate protection of public health and safety. It is the Commission's responsibility to provide direction to the staff, and this vote paper offers an appropriate means to clarify what "high assurance" is. Through discussions with senior NRC staff and review of the Part 73 statements of consideration, it is my understanding that when it introduced the term "high assurance," the Commission did not intend to establish a separate standard for security regulations. Instead, as explained in 1979, when the Commission updated Part 73 and revised its "high assurance" objective in the performance of security systems, the Commission explained that "'reasonable assurance,' commonly used in safety evaluations, is applied to a broad category of safety concerns. . . . [T]he degree of assurance necessary to provide 'reasonable assurance' varies with the gravity of the safety concern." 44 Fed. Reg. 68,184, 68,185 (Nov. 28, 1979). Thus, the regulatory standard for security is the same as the regulatory standard for safety—reasonable

assurance of adequate protection of public health and safety—and the Commission sets the standard.

I will now turn to the use of quantitative analysis to evaluate regulatory changes on security matters. I recognize that tools such as probabilistic risk assessment are more easily applied to regulatory decisions in the safety arena. However, the same regulatory framework and backfit provisions apply to both safety and security requirements. Any proposed changes to security requirements and guidance should be supported by thorough regulatory analysis and quantitative analysis to the extent practical. Vulnerability assessment tools may be of use to evaluate proposed regulatory requirements and to assess licensees' protective strategies, for example the size of the licensees' protective force.

Finally, with regard to the specific recommendations in SECY-16-0073, I approve the staff's proposal in Option 1 to terminate the Tactics, Techniques, and Procedures Working Group. All follow-on activities from the Working Group and the direction received from the Commission should be conducted by the program offices. Regarding Option 2, the staff has not made it clear what problem they are trying to fix, what the expected outcomes are, and what resources would be required. In the current budgetary environment we cannot spend resources on new projects without a clear understanding of the objective. Therefore, I disapprove Option 2. Instead of Option 2, the staff should evaluate the following issues and provide a notation vote paper discussing any proposed actions:

1. Evaluate how vulnerability assessments could be used to evaluate the effectiveness of licensee protective strategies, and whether credit could be given for operator actions or for the use of additional equipment such as "flex equipment," which was installed to enhance safety but can also provide a security benefit.
2. Evaluate whether the NRC should provide any credit for local state or federal law enforcement response to establish coping time for security events. For example, if a licensee engages with state and local law enforcement to conduct site familiarization tours and site security exercises, could the staff give credit for integrated response capability in establishing the required coping time for a security event?
3. Evaluate the NRC's historical application of the backfit rule to security decision-making and whether additional guidance is needed in this area regarding the ability to quantify the benefit of security enhancements.

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Baran

SUBJECT: SECY-16-0073: OPTIONS AND RECOMMENDATIONS  
FOR THE FORCE-ON-FORCE INSPECTION  
PROGRAM IN RESPONSE TO SRM-SECY-14-0088

Approved  X  Disapproved  X  Abstain   Not Participating

COMMENTS: Below   Attached  X  None

**Entered in STARS**

Yes  XX

No

  
\_\_\_\_\_  
Signature

7/19/14  
\_\_\_\_\_  
Date

**Commissioner Baran's Comments on SECY-16-0073, "Options and Recommendations for the Force-on-Force Inspection Program in Response to SRM-SECY-14-0088"**

I appreciate the efforts of NRC's Force-on-Force (FOF) Tactics, Techniques, and Procedures (TTPs) Working Group, which found that the TTPs used by the NRC composite adversary force in FOF exercises are consistent with both NRC's design-basis threat and the TTPs of actual terrorist groups. With its report complete, I approve the staff's recommendation to terminate the Working Group.

I also approve Option 1 – to maintain the current FOF inspection program while making incremental improvements through the normal self-assessment process. I do not believe it is necessary to conduct a comprehensive assessment of the security inspection program at this time, particularly in light of the staff's acknowledgement that the significant resources expended on such an assessment "might result in only limited improvements to the security program." In addition, some of the potential initiatives being discussed in the context of a broad assessment could weaken the FOF program. For example, I do not support the use of novel performance metrics that are not tied to the Security Cornerstone of the Reactor Oversight Process. I also do not support reducing the number of exercises conducted during NRC's triennial FOF inspections.

However, there are two specific elements of the security inspection program that the NRC staff should examine further. First, in future self-assessments, the staff should evaluate the licensee Insider Mitigation Program, an increasingly important aspect of the security inspection program that has not been assessed recently. Second, within six months of the Staff Requirements Memorandum resulting from this paper, the staff should provide an information paper to the Commission on the status of and next steps for facilitating an integrated response by site security and law enforcement to security threats at licensee facilities.