POLICY ISSUE
NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Hanson

SUBJECT: SECY-20-0070: Technical Evaluation of the Security Bounding Time Concept for Operating Nuclear Power Plants

Approved X **Disapproved** X **Abstain** ____ **Not Participating** ____

COMMENTS: **Below** ____ **Attached** X **None** ____

Christopher T. Hanson

Digitally signed by Christopher T. Hanson
Date: 2020.12.07 10:41:25 -05'00'

Entered in STARS
Yes x
No ____

Signature
Christopher T. Hanson
Date: December 7, 2020

Commissioner Hanson's Comments on SECY-20-0070: Technical Evaluation of the Security Bounding Time Concept for Operating Nuclear Power Plants

In SRM-SECY-17-0100, the Commission directed the staff, in part, to develop "recommendations for providing credit for a broader set of operator actions, including the use of FLEX equipment, and providing credit for response by local, State, and Federal law enforcement in our security inspection program." In response, the staff proposes a holistic regulatory approach that allows consideration of these credits in a licensee's design of its physical protection program.

The staff proposes to use an interpretive rule to clarify that operating nuclear power plant licensees may meet the requirements of 10 C.F.R. § 73.55 by recognizing the contributions of the emergency response from law enforcement when designing their protective strategies. I find the use of an interpretive rule appropriate and prudent in this case. Providing explicit credit for law enforcement response in the design of protective strategies represents a significant departure from past agency practice that should be fully explained to the public using an appropriate process. The agency is obligated to provide a clear justification of this change, taking into account the plain language and structure of our Part 73 regulations. I find that the interpretive rule option provides adequate transparency and opportunity for public comment without the cost and timeline required of a rulemaking.

Further, I believe that this approach is technically viable. In the staff's evaluation of a licensee's physical protection program, the staff will establish a reasonable assurance of protection time (RAPT) of eight hours, defined as the timeframe that the licensee should be capable of independently defending against the design basis threat. The eight-hour RAPT is based on the existing layers of protection afforded by compliance with existing robust NRC requirements, and other factors such as diminishing adversary capability over time following an attack, and expectation of additional available resources after eight hours. Building upon the RAPT concept, this new interpretation would provide an option for licensees to use the license amendment process to justify a site-specific security bounding time (SBT) of less than eight hours with explicit consideration of law enforcement response or licensee recall program. Site and scenario-specific time to core damage calculations and the protection time criterion (e.g., RAPT, SBT) would be used to inform how target set elements are scoped into the licensee's physical protection program. I find that the technical approach is sound, and that it would improve regulatory clarity while providing a framework for licensees to design their physical protection programs with increased realism.

I agree with the staff's proposal to use the license amendment request process for implementation of site-specific SBTs given the comprehensive review that may be needed to evaluate topics such as law enforcement response capabilities, use of beyond design basis equipment, and time to core damage calculation methodology. As acknowledged in the paper, I encourage the staff to continue its efforts to develop appropriate review guidance with stakeholder input.

For the reasons discussed above, I approve the staff's recommendation to use the proposed interpretive rule, subject to the attached edits, and to utilize the license amendment process to implement the site-specific SBT. I disapprove the staff's request to terminate the updates to the Commission on the Integrated Response Program. I share Chairman Svinicki's view that given the current, diminished state of activity, the reporting frequency should be reduced to biennial.

CTH Edits

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NRC-2020-XXXX]

The Role of Law Enforcement in the Physical Protection Program for Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of interpretation; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a proposed interpretive rule to clarify that a power reactor licensee could revise its security plans and/or site procedures to reflect the role of law enforcement in the site physical protection program. In doing so, the licensee would not need to rely solely on its private security force to provide a complete defense of the site against the design basis threat (DBT) of radiological sabotage but could also consider the assistance provided by law enforcement responders. The licensee would still be required to demonstrate that the physical protection program, to include law enforcement assistance, maintains the capabilities to defend against the DBT at all times in accordance with NRC regulations. The NRC is requesting comment on this proposed interpretive rule.

DATES: Submit comments on the proposed interpretive rule by **[INSERT DATE 45 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods:

- **Federal Rulemaking Web Site:** Go to https://www.regulations.gov and search for Docket ID <**INSERT:** NRC-20YY-XXXX>. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions contact the <**SELECT:** individual or individuals> listed in the FOR FURTHER INFORMATION CONTACT section of this document.
- **E-mail comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic e-mail reply confirming receipt, then contact us at 301-415-1677.
- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Rebecca Richardson, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3301; email: Rebecca.Richardson@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2020-XXXX when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal rulemaking Web Site:** Go to https://www.regulations.gov and search for Docket ID **NRC-2020-XXXX**.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Document collection at https://www.nrc.gov/reading-rm/adams.html. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **Attention**: The Public Document Room (PDR), where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via e-mail at PDR.Resource@nrc.gov or call 1-800-397-4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC-2020-XXXX in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at https://www.regulations.gov as well as enter the comment submissions

into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Following the terrorist attacks on September 11, 2001, the Commission issued a series of orders to ensure that nuclear power plants and other licensed facilities continued to have effective security measures in place given the changing threat environment. Through these orders, the Commission supplemented the DBT of radiological sabotage as well as mandated specific training enhancements, access authorization enhancements, and enhancements to defensive strategies, and mitigative measures.

The four following security orders were issued to licensees:

- EA–02–026, ‘‘Interim Compensatory Measures (ICM) Order,’’ issued February 25, 2002 (67 FR 9792; March 4, 2002);
- EA–02–261, ‘‘Access Authorization Order,’’ issued January 7, 2003 (68 FR 1643; January 13, 2003);
- EA–03–039, ‘‘Security Personnel Training and Qualification Requirements (Training) Order,’’ issued April 29, 2003, (68 FR 24514; May 7, 2003); and

- EA–03–086, ‘‘Revised Design Basis Threat Order,’’ issued April 29, 2003, (68 FR 24517; May 7, 2003).

Nuclear power plant licensees revised their physical security plans, access authorization programs, training and qualification plans, and safeguards contingency plans in response to these orders. The Commission completed its review and approval of the revised security plans on October 29, 2004. These plans incorporated the enhancements required by the orders. While the specifics of these enhancements are protected as Safeguards Information consistent with § 73.21 of title 10 of the *Code of Federal Regulations* (10 CFR), the enhancements resulted in measures such as increased patrols; augmented security forces and capabilities; additional security posts; additional physical barriers; vehicle checks at greater standoff distances; enhanced coordination with law enforcement authorities; augmented security and emergency response training, equipment, and communication; and more restrictive site access controls for personnel including expanded, expedited, and more thorough employee background investigations.

The Energy Policy Act of 2005 (EPAct) contains several provisions relevant to security at nuclear power plants. Section 651 of the EPAct required the NRC to conduct a rulemaking to revise the DBT.

The 2007 DBT rule reflected “the Commission’s determination of the composite set of adversary features against which private security forces should reasonably have to defend” (72 FR 12708). The Commission stated that the rule “affirmatively defines a range of attacks and capabilities against which nuclear power plants … must be prepared to defend” (72 FR 12715). The Commission noted that:

> “[t]he defense of our nation’s critical infrastructure is a shared responsibility between the NRC, the [Department of Defense], the [Department of Homeland Security], Federal and State law enforcement, and other Federal agencies. . . . Although licensees are not required to develop protective strategies to defend

> against beyond-DBT events, it should not be concluded that licensees can provide no defense against those threats.

While "[t]he Commission is confident that a licensee's security force would respond to any threat no matter the size or capabilities that may present itself," the Commission stated that it "expects that licensees and State and Federal authorities will use whatever resources are necessary in response to both DBT and beyond-DBT events" (72 FR 12714).

In 2009, the NRC amended its security regulations in § 73.55 and added new security requirements pertaining to nuclear power reactors (~~58~~ 74 FR 13926). The final rule established and updated generically applicable security requirements similar to those previously imposed by Commission orders issued after September 11, 2001. Additionally, this final rule added several new requirements not derived directly from the security order requirements but developed as a result of insights gained by the NRC from the implementation of the security orders, the review of site security plans, the implementation of the enhanced baseline inspection program, and the NRC's evaluation of force-on-force exercises. The final rule also updated the NRC's security regulatory framework for the licensing of new nuclear power plants.

The NRC regulations in § 73.55(b)(1) through (3) provide a general performance objective and requirements that "the licensee shall establish and maintain a physical protection program" that must protect against the DBT of radiological sabotage, as stated in § 73.1. Specific requirements for the design and implementation of the physical protection program are provided in § 73.55(c) through (q). These regulatory requirements establish that the ultimate responsibility for protecting an operating power reactor site against an adversary force up to and including the DBT of radiological sabotage rests with the licensee. The Commission further stated that "a licensee's

ability to defend against the DBT of radiological sabotage is not dependent on the availability of offsite responders" (~~72~~ 74 FR 13940).

Taken together, the 2007 and 2009 final rules established an interpretation of the security regulations that required licensees to establish a physical protection program, including a private security organization, that is capable of defending against the DBT without the assistance of local, State, or Federal law enforcement. As currently implemented, a licensee's physical protection program does not include credit for law enforcement response. Although § 73.55(k)(9) and paragraph II.B.3.d in appendix C to 10 CFR part 73 require licensees to document the capabilities of available law enforcement responders and to maintain agreements with law enforcement agencies, to the extent practicable, licensees do not recognize this response as an essential contributor for how the site will defend against the DBT.

In the Staff Requirements Memorandum to SECY-20-0070, the Commission approved the issuance of this proposed interpretive rule related to crediting law enforcement response. The proposed interpretive rule would revise the NRC's previous interpretation to allow a licensee to consider the assistance of law enforcement responders as part of the physical protection program to defend against the DBT and revise its security plans and site procedures to reflect this reading of the regulations in part 73.

III. Proposed Interpretive Rule

Under the proposed interpretive rule, operating power reactor licensees may meet the general performance objective and requirements of § 73.55(b)(1) through (3) by including law enforcement response as part of the physical protection program.

The NRC does not have regulatory authority over law enforcement agencies, and licensees lack the ability to compel law enforcement agencies to maintain the capabilities documented in their agreements. Nevertheless, the NRC has confidence that in a real emergency, law enforcement agencies will honor their commitments. As the Commission stated in the DBT final rule, "~~T~~[t]he Commission expects that licensees and State and Federal authorities will use whatever resources are necessary in response to both DBT and beyond-DBT events." 72 FR 12714. Additionally, the Commission has recognized in regulation, in the emergency planning context, "the reality that in an actual emergency, state and local government officials will exercise their best efforts to protect the health and safety of the public." 10 CFR § 50.47(c)(1)(iii)(B). The NRC expects that these "best efforts" would extend to law enforcement response to a security emergency, consistent with the existing agreements between licensees and law enforcement agencies. Accordingly, it is ~~prudent~~ reasonable to allow licensees to consider the assistance that law enforcement will provide when designing their physical protection programs.

The inclusion of law enforcement response in the licensee's physical protection program does not mean that law enforcement responders must be trained by the licensee. NRC regulations in § 73.55(d)(3) require that "~~T~~[t]he licensee may not permit any individual to implement any part of the physical protection program unless the individual has been trained, equipped, and qualified to perform their assigned duties and responsibilities in accordance with appendix B" to Part 73. Further, § 73.55(k)(1) states that "[t]he licensee shall establish and maintain, at all times, properly trained, qualified and equipped personnel required to interdict and neutralize threats up to and including the design basis threat of radiological sabotage." These provisions are properly applied solely to the licensee's own personnel (i.e., employees or contractors), as they are

today, and not to any law enforcement responders who may be part of the law enforcement response that would be credited in the physical protection program. Although law enforcement responders may be considered a part of the licensee's physical protection program, they should not be considered to comprise part of a licensee's "security personnel" or the "security organization" required by § 73.55(d)(1).

IV. Discussion

The interpretive rule, if issued, would apply to any operating power reactor. The NRC expects that the interpretive rule would allow licensees to take into consideration when designing their physical protection programs the reality that law enforcement agencies will exercise their best efforts to protect the health and safety of the public.

The interpretive rule would not supplant any physical protection strategies currently authorized under the NRC's regulations. Rather, the interpretive rule explains that licensees could consider the expected law enforcement response as part of the physical protection program and revise its security plans and/or site procedures to reflect this. The interpretive rule would recognize how, over time, following initiation of an attack, the security at a site evolves and additional support from law enforcement would be reasonably provided to the licensee to continue to defend against the DBT. Recognizing this support from law enforcement does not reduce the NRC's confidence that licensees can maintain adequate physical protection of their sites against the DBT.

V. Backfitting, Issue Finality, and Forward Fitting

The NRC considered whether the proposed interpretive rule would constitute a backfit. Backfitting occurs when the NRC imposes new or changed regulatory requirements or staff interpretations of the regulations or requirements on nuclear power reactor licensees, certain nuclear power reactor applicants, or select nuclear material licensees. The backfitting requirements for nuclear power reactor licensees are in § 50.109. The proposed interpretive rule would expand the options available for licensee physical protection programs to meet NRC requirements. The licensee could continue to comply with the requirements of its current licensing basis or voluntarily choose to adopt the alternative method by revising its security plans and/or site procedures to reflect the role of law enforcement in the site protective strategy. This is not backfitting, because it is an additional available option that the licensee may choose to adopt.

Dated Month, XX, 2020.

For the Nuclear Regulatory Commission.

Shana Helton
Director
Division of Physical and Cyber Security Policy
Office of Nuclear Security and Incident Response