

RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST

2017-0145

1

RESPONSE
TYPE☐

INTERIM

☒

FINAL

REQUESTER:

Julian Tarver

DATE:

11/25/2016

DESCRIPTION OF REQUESTED RECORDS:

Staff recommendations for revision to the ACSP; staff requirements memorandum (SRM) SECY 07-0114, December 4, 2007

PART I. -- INFORMATION RELEASED

- ☒ Agency records subject to the request are already available in public ADAMS or on microfiche in the NRC Public Document Room.
- ☐ Agency records subject to the request are enclosed.
- ☐ Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- ☐ We are continuing to process your request.
- ☐ See Comments.

PART I.A -- FEES

AMOUNT*

\$

0.00

*See Comments for details

☐

You will be billed by NRC for the amount listed.

☒

None. Minimum fee threshold not met.

☐

You will receive a refund for the amount listed.

☐

Fees waived.

PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- ☐ We did not locate any agency records responsive to your request. *Note:* Agencies may treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). 5 U.S.C. 552(c). This is a standard notification given to all requesters; it should not be taken to mean that any excluded records do, or do not, exist.
- ☐ We have withheld certain information pursuant to the FOIA exemptions described, and for the reasons stated, in Part II.
- ☐ Because this is an interim response to your request, you may not appeal at this time. We will notify you of your right to appeal any of the responses we have issued in response to your request when we issue our final determination.
- ☐ You may appeal this final determination within 30 calendar days of the date of this response by sending a letter or email to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, or FOIA.Resource@nrc.gov. Please be sure to include on your letter or email that it is a "FOIA Appeal."

PART I.C COMMENTS (Use attached Comments continuation page if required)

In conformance with the FOIA Improvement Act of 2016, the NRC is informing you that: (1) you have the right to seek assistance from the NRC's FOIA Public Liaison;

SIGNATURE - FREEDOM OF INFORMATION ACT OFFICER

Nina Argent, Acting FOIA Officer



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

SECRETARY

December 4, 2007

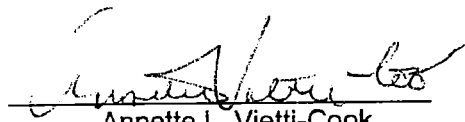
COMMISSION VOTING RECORD

DECISION ITEM: SECY-07-0114

TITLE: SECY-07-0114 – STAFF RECOMMENDATIONS FOR
REVISIONS TO THE ADVERSARY CHARACTERISTICS
SCREENING PROCESS

The Commission (with all Commissioners approving in part and disapproving in part) acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of December 4, 2007.

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

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
OGC
EDO

VOTING SUMMARY - SECY-07-0114

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X	X			X	9/12/07
COMR. JACZKO				X		9/14/07
	X	X			X	10/16/07
COMR. LYONS	X	X			X	8/1/07, 10/9/07 & 11/14/07

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved in part and disapproved in part. Subsequently, the Commission acted on this matter as reflected in the SRM issued on December 4, 2007.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN KLEIN


SUBJECT: **SECY-07-0114 - STAFF RECOMMENDATIONS FOR
REVISIONS TO THE ADVERSARY CHARACTERISTICS
SCREENING PROCESS**

Approved xx ^{in part} Disapproved xx ^{in part} Abstain _____

Not Participating _____

COMMENTS: Below xx Attached _____ None _____

I agree with Commissioner Lyons' vote to approve, in part, and disapprove, in part, the staff's proposal. The staff should add the NRC technical analysis step after Step 3 and analyze resource impacts in Step 4.



SIGNATURE
9/12/07

DATE

Entered on "STARS" Yes ☒ No _____

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary


FROM: **COMMISSIONER JACZKO**

SUBJECT: **SECY-07-0014 - MEMORANDUM OF AGREEMENT
BETWEEN THE NUCLEAR REGULATORY
COMMISSION AND THE DEPARTMENT OF ENERGY
FOR EMERGENCY AND NON-EMERGENCY
HARBORING OF CONVOY VEHICLES**

Approved **X** Disapproved **X** Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached **X** None _____



SIGNATURE
10/16/07

DATE

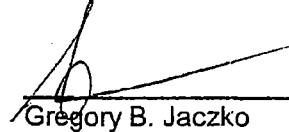
Entered on "STARS" Yes **X** No _____

**Commissioner Jaczko's Supplemental Vote on SECY-07-0114
Staff Recommendations for Revisions to the Adversary Characteristics
Screening Process**

I am revising my vote to approve, in part, of the staff's recommendation of proceeding with option 2 regarding revisions to the Adversary Characteristics Screening Process.

Because the paper contains only a brief mention of classified information and details a public process by which the agency makes important security decisions, I believe it was important for the paper to be publicly available during the Commission's deliberations. For that reason, I originally did not participate in the vote on this item, requesting instead, that the staff send up a revised publicly available version of the paper for the Commission to consider. Although that has not occurred, I am appreciative that Commissioner Lyons supplemented his vote to request that the staff develop a publicly available version. I support that compromise and thus approve, in part.

While I approve of the staff's recommendation regarding where to add an additional step in this process, like Commissioner Lyons I have concerns about the consideration of costs in this process. Because the Commission determined that protecting against the design basis threat was necessary to provide reasonable assurance of adequate protection, resource impacts associated with this effort should not be considered.



Gregory B. Jaczko 10/16/07
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: **COMMISSIONER JACZKO**


SUBJECT: **SECY-07-0114 - STAFF RECOMMENDATIONS FOR
REVISIONS TO THE ADVERSARY CHARACTERISTICS
SCREENING PROCESS**

Approved _____ Disapproved _____ Abstain _____

Not Participating X

COMMENTS: Below X Attached _____ None _____

I have chosen not to participate in the decision on this paper which therefore means there is no Commission quorum to move forward at this time. I look forward to the staff providing a publicly available version of this paper and intend to participate and vote on the proposal at that time.



SIGNATURE 9/14/07

DATE

Entered on "STARS" Yes X No _____

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER LYONS

SUBJECT: **SECY-07-0114 - STAFF RECOMMENDATIONS FOR
REVISIONS TO THE ADVERSARY CHARACTERISTICS
SCREENING PROCESS**

Approved X Disapproved X Abstain _____
 in part in part

Not Participating _____

COMMENTS: Below _____ Attached X None _____



SIGNATURE

11/14/07

DATE

Entered on "STARS" Yes X No _____

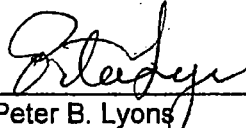
Commissioner Lyons' Supplemental Comments on SECY-07-0114

Further clarification appears needed and therefore warrants this additional vote supplementing my previous two votes. I do so with the hope of achieving a consensus that will address these issues and allow the Commission and staff to move forward.

When the Commission discusses whether to add a characteristic to the Adversary Characteristics Document (ACD), I strongly believe that such discussion must include, in a generic fashion, the integrated effectiveness of applicable national, state, and local measures. If these measures address the characteristic, then the characteristic need not be added to the ACD.

While the staff and Commission may legitimately consider resource impacts when multiple ways exist to adequately mitigate against an adversary characteristic, the basis for any Commission action that modifies the ACD should not include resource impacts. To more clearly demonstrate that such bases rest primarily on evaluations of threat assessment, consequence analysis, and existing protective capabilities and mitigation strategies, I am willing to eliminate resource assessments from the staff's normal process. In this one respect, I disapprove the staff's recommendation to include such assessments.

Following the Commission's determination to add a characteristic to the ACD, if multiple ways exist to mitigate against those characteristics, the Commission may direct staff to evaluate the associated resource impacts.


Peter B. Lyons 11/14/07
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: **COMMISSIONER LYONS**

SUBJECT: **SECY-07-0114 - STAFF RECOMMENDATIONS FOR
REVISIONS TO THE ADVERSARY CHARACTERISTICS
SCREENING PROCESS**

Approved X Disapproved X Abstain

Not Participating

COMMENTS: Below Attached X None


SIGNATURE


10/9/07
DATE

Entered on "STARS" Yes No

Commissioner Lyons' Comments on SECY-07-0114

In my original vote of August 1, 2007, I put forth my views on the subject paper. Those views have not changed and my vote remains in force. However, I am supplementing that vote in an effort to break an impasse on the Commission which has occurred due to lack of full participation, and therefore lack of a quorum, of the reduced member Commission. Specifically, I am supplementing my vote to direct the staff to develop a publically available version of the paper. My understanding is that my action will enable a quorum.

It is unfortunate that so much time has passed without Commission action, which has had a net effect of delaying public release of information on this subject. I believe this issue could have been handled much more appropriately and efficiently through the Staff Requirements Memorandum development process, as I previously indicated to my fellow Commissioners.


Peter B. Lyons

10/7/07
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: **COMMISSIONER LYONS**

SUBJECT: **SECY-07-0114 - STAFF RECOMMENDATIONS FOR
REVISIONS TO THE ADVERSARY CHARACTERISTICS
SCREENING PROCESS**

Approved X Disapproved X Abstain

Not Participating

COMMENTS: Below Attached X None


SIGNATURE

8/1/07
DATE

Entered on "STARS" Yes X No

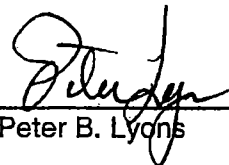
Commissioner Lyons' Comments on SECY-07-0114

I approve, in part, and disapprove, in part, the staff's recommendation to modify the Adversary Characteristics screening process. I approve adding an NRC technical analysis step after receiving Intelligence and Law Enforcement and Homeland Security Communities input in Step 3. I disapprove adding a step for staff to analyze industry resource impacts at this point, and prefer that such resource analysis remain as an element of Step 4 to be conducted under the Disposition and Communication Plan (D&CP) if approved by the Commission.

The staff's currently defined process involves a basic screening step (Step 1), a more detailed screening step (Step 2), an engagement with federal Intelligence, Law Enforcement, and Homeland Security Communities to obtain input on staff's evaluation to that point (Step 3), and a proposed D&CP submitted to the Commission that, if approved, would develop technical and resource analyses, with industry input (Step 4). Upon completion of Step 4, the Commission would make a decision regarding the characteristic under consideration, based on the information developed in Step 4. At each step of this process a characteristic may be screened in (to continue to the next step) or be screened out.

The staff's recommendation to add an initial in-house technical analysis step after receiving input from Intelligence, Law Enforcement, and Homeland Security Communities (tentatively Step 3.5) allows the staff to prepare an initial technical assessment that could potentially help determine whether or not to proceed to the next step. I find this reasoning to be persuasive.

However, I disagree with the staff recommendation to formulate resource impact estimates prior to seeking Commission approval to proceed to Step 4. I do not believe that such estimates should be involved at this stage of the screening process, and have far too much uncertainty at that point to be useful as a Commission decision input. If the Commission approves proceeding into Step 4, then industry and other appropriate stakeholders will have an opportunity to identify all possible mitigation strategies for the particular characteristic under consideration and the choice of strategies could significantly influence resource estimates. The Commission's final decision regarding the characteristic under consideration should be informed by the full range of mitigation strategies available.


Peter B. Lyons 8/1/07
Date

December 4, 2007

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary /RA/

SUBJECT: STAFF REQUIREMENTS MEMORANDUM
SECY-07-0114 – STAFF RECOMMENDATIONS FOR
REVISIONS TO THE ADVERSARY CHARACTERISTICS
SCREENING PROCESS

The Commission has approved the staff's recommendation to add a step for NRC technical analysis after (or as the final part of) Step 3 after receiving Intelligence and Law Enforcement and Homeland Security Communities input. The analysis should include a realistic threat assessment focusing on the use of the adversary characteristic against nuclear facilities in the U.S. The staff should eliminate resource assessments from the process.

In addition, the Commission also approves including, in a generic fashion, an assessment of the integrated effectiveness of applicable existing national, state, and local measures (i.e. such assessment need not be plant-specific). This assessment is intended to facilitate the Commission's discussion of these measures. If these measures address the characteristic, then the characteristic need not be added to the Adversary Characteristic Document (ACD).

Following the Commissions determination to add a characteristic to the ACD, if multiple ways exist to mitigate against that characteristic, the Commission may direct staff to evaluate the associated resource impacts.

The staff should prepare a publicly available version of the SECY paper.

(EDO)

(SECY Suspense:

12/21/07)

cc: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
OGC
CFO
OCA
OPA

POLICY ISSUE NOTATION VOTE

July 6, 2007

SECY-07-0114

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations

SUBJECT: STAFF RECOMMENDATIONS FOR REVISIONS TO THE ADVERSARY
CHARACTERISTICS SCREENING PROCESS

PURPOSE:

To obtain Commission approval of the staff's recommended approach for improving the Adversary Characteristics Screening Process (ACSP). This paper does not address any new resource implications.

BACKGROUND:

On December 12, 2006, the Nuclear Regulatory Commission (NRC) staff briefed the Commission on the current threat environment. Following the briefing, the Commission directed the staff to reconsider the sequence of actions in the ACSP and provide recommendations.

The NRC staff analyzes terrorist and criminal tactics, techniques and procedures (TTPs) occurring both domestically and worldwide throughout the year to ensure the continued adequacy of the NRC's Design Basis Threats (DBTs). The NRC staff analyzes these TTPs relative to the DBT attributes using the ACSP. The ACSP was utilized in determining the initial adversary characteristics used in the supplemented DBT Order issued on April 29, 2003.

CONTACT: Jim Whitney, NSIR/DSO/ILTAB
(301) 415-5253

Since the promulgation of the ACSP and its initial use of drafting the supplemented DBT, staff has used it for the Annual Threat Environment Review (formerly Semiannual). The results of the analysis are provided annually to the Commission unless circumstances dictate earlier.

The ACSP is intended to enhance the transparency, predictability, and consistency of NRC's identification and application for adversary characteristics. The staff uses the screening process to identify adversary characteristics and assign a level of significance to them in order to determine their potential applicability to the regulatory base. The screening process currently comprises four steps – with the Commission being informed of the staffs' efforts throughout the process, and being asked for a vote during the Disposition and Communication Plan (step 4):

Step 1 - The process begins with routine staff review of intelligence reporting consisting of raw and finished reporting coming from the Intelligence and Law Enforcement Communities, open source reporting, and staff participation in a number of interagency groups focused on terrorism related topics. This reporting is evaluated against specific initial criteria (is the attribute absent from the DBT; is the attribute possessed by a terrorist/criminal group; is the attribute possessed outside of a foreign military entity; is the attribute an increased capability; is it man-portable). The staff also performs specific fact-finding to support the understanding of specific adversary characteristics.

Step 2 – If a new potential adversary characteristic passes the first round of screening, then additional weighting factors are considered (what groups possess it; what location is the attribute used; what target type is the attribute used against; what is the social stability of the country where the group is using the attribute; what is the tactical use of the attribute; what is the frequency of use; what is the motive of the group using the attribute; what is the availability of the attribute).

Step 3 – Based on the results of Step 2, staff may interact at the working level with other government agencies within the Intelligence and Law Enforcement Communities. In this informal interaction staff attempts to obtain additional data and insights regarding the characteristic. This interaction will support or refute the staff's working analysis of the characteristic.

Step 4 – Based upon the results of Steps 2 and 3, the staff determines whether the characteristic should be pursued further in a disposition process, which involves preparation of a Disposition and Communication Plan. This plan describes next steps such as engaging stakeholders as appropriate, conducting research and engineering analyses, determining resource impacts and producing a schedule for the process. This Disposition and Communication Plan is then submitted to the Commission for approval before any further action is taken regarding the characteristic.

DISCUSSION:

SRM M061212A – “Subject: Staff Requirements – Briefing on Threat Environment Assessment, 0930 AM, Tuesday, December 12, 2006,” states that the staff should reconsider the sequence of actions. The staff evaluated the viability of simply reversing the sequence of impact assessment and the interagency coordination and determined this would not be efficient. Assuming that the staff performs an in-house technical analysis and impact assessment prior to interagency coordination, then a future analysis by the licensees will be needed due to the

limitations of the NRC in-house analysis. These limitations include not having all the site-specific details in order to perform a more accurate technical and resource analysis.

Based upon Commission direction, the staff identified three options for consideration:

Option 1 – Add an NRC technical and resource analysis step into the screening process before Intelligence, Law Enforcement, and Homeland Security Communities input.

PRO:

Adding a step in the ACSP by conducting an NRC in-house review and technical and resource analysis of the characteristic provides the Commission with more information for its deliberations and pre-decisional thinking without involving stakeholders at this preliminary stage of information gathering.

CON:

Providing the in-house NRC analysis without engaging the Intelligence, Law Enforcement, and Homeland Security Communities first could potentially prove inefficient regarding NRC staff time and resources by deferring staff access to outside agency expert opinion and analysis to the NRC. This increases the possibility that the staff's assessment could incorporate flawed assumptions regarding threat characteristics. The staff focuses its interactions with other agencies to include a discussion of what actions, if any, these agencies are taking to modify the strategies for protection of their equities in the homeland. These interactions have obviated the need for further staff analysis in a number of cases, and could do so for future studies.

Option 2 – Add an NRC technical and resource analysis step into the screening process after Intelligence, law Enforcement, and Homeland Security Communities input.

PRO:

Conducting another step in the ACSP by conducting an NRC in-house review of the technical and resource analysis provides the Commission with more information for its deliberations and pre-decisional thinking before involving non-Federal stakeholders at this preliminary stage of information gathering. Conducting NRC technical and resource analyses after the Intelligence, Law Enforcement, and Homeland Security Communities input step provides NRC staff and the Commission with the greatest amount of information available, and potentially screens out the adversary characteristic before reaching this stage, as stated in Option 1. It may also refine the inputs used in the staff's analysis, thereby making it more effective and reducing the likelihood of subsequent rework.

CON:

Pre-decisional thinking shared outside the Agency could potentially inhibit the independence of the Commission's decision-making process.

Option 3 – Do not change the ACSP – keep it as it currently stands.

This option keeps the process the same and the Commission would not receive an NRC in-house analysis of the technical and resource analysis until the Disposition and Communication Plan at the end of the process.

RECOMMENDATIONS:

The staff recommends Option 2 – add an NRC technical and resource analysis step after Intelligence and Law Enforcement Communities' input. The staff believes this option will give the Commission the greatest amount of information; provide the staff the most amount of information available at the Federal level for the staff to conduct its technical and resource analysis; and not involve non-Federal stakeholders in the Commission's predecisional deliberations at this early stage in the process.

COORDINATION:

The Office of the General Counsel reviewed this package and has no legal objection.

/RA/

Luis A. Reyes
Executive Director
for Operations

The Commissioners

-4-

Option 3 – Do not change the ACSP – keep it as it currently stands.

This option keeps the process the same and the Commission would not receive an NRC in-house analysis of the technical and resource analysis until the Disposition and Communication Plan at the end of the process.

RECOMMENDATIONS:

The staff recommends Option 2 – add an NRC technical and resource analysis step after Intelligence and Law Enforcement Communities' input. The staff believes this option will give the Commission the greatest amount of information; provide the staff the most amount of information available at the Federal level for the staff to conduct its technical and resource analysis; and not involve non-Federal stakeholders in the Commission's predecisional deliberations at this early stage in the process.

COORDINATION:

The Office of the General Counsel reviewed this package and has no legal objection.

/RA/

Luis A. Reyes
Executive Director
for Operations

ADAMS ACCESSION NO.: ML072620339

WITS 200700098

OFFICE	ILTAB	ILTAB	DSO/DDSP	DSO	OGC
NAME	JWhitney	RWarren	RWay	DDorman	JGoldberg
DATE	06/29/07	06/15/07	06/15/07	06/15/07	06/19/07
OFFICE	NSIR	DEDR	DEDR	OEDO	
NAME	RZimmerman	WKane	BMallett	LAReyes	
DATE	06/29/07	09/24/07	12/18/07	12/19/07	

OFFICIAL RECORD COPY

Dear FOIA Requester:

The FOIA Improvement Act of 2016, which was enacted on June 30, 2016, made several changes to the Freedom of Information Act (FOIA). Federal agencies must revise their FOIA regulations to reflect those changes by December 27, 2016. In addition to revising our regulations, we intend to update the Form 464, which we use to respond to FOIA requests.

In the interim, please see the comment box in Part I.C of the attached Form 464. The comment box includes information related to the recent changes to FOIA that is applicable to your FOIA request, including an updated time period for filing an administrative appeal with the NRC.

Sincerely yours,

Nina Argent /S/

Nina Argent
FOIA Officer (Acting)