

October 1, 2004

The Honorable Edward J. Markey
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

On behalf of the U. S. Nuclear Regulatory Commission (NRC), I am responding to your letter of August 23, 2004, regarding changes in force-on-force exercises and information security at nuclear power plants licensed by the NRC.

The NRC staff has prepared answers to your questions, which are enclosed. If you need additional information, please contact me.

Sincerely,

/RA/

Nils J. Diaz

Enclosure: As stated

**NRC RESPONSE TO QUESTIONS FROM CONGRESSMAN EDWARD MARKEY
DATED AUGUST 23, 2003
REGARDING
FORCE-ON-FORCE EXERCISES AT NRC-LICENSED FACILITIES**

Question 1: Please fully describe the Commission's re-vamped force-on-force (FOF) program. How often will FOF exercises be conducted? Who is responsible for designing the FOF exercises? Who will conduct them? How will they be evaluated? What enforcement actions can be taken if a licensee "fails" an FOF exercise? What are the criteria for "passing" an FOF exercise?

Answer:

The NRC's enhanced FOF program is the result of over 2 years of program redesign and pilot testing at almost two-thirds of the nuclear power reactors in the country. An expanded table-top exercise program conducted during 2002 and an expanded FOF exercise program (EFOF) conducted during 2003 evaluated the bases for revised FOF procedures and the impacts of compensatory measures and expanded adversary characteristics associated with the Orders issued on February 25, 2002, by the Commission. A transitional FOF program (TFOF) conducted during 2004 focused on implementation of the lessons learned in the EFOF program and refinement of the FOF procedures and guidance. During the TFOF period, the NRC increased staffing levels, established initial qualifications, and conducted training for its FOF staff. At the conclusion of the current TFOF program in October 2004, the program will enter a full regulatory oversight program with an NRC-evaluated FOF exercise at each licensee site once every 3 years.

Beginning in November 2004, NRC-evaluated FOF exercises will be fully integrated with the baseline inspection program for physical protection and material control and accounting for power reactors and Category I fuel facilities. The NRC inspection program is designed to verify compliance with the regulatory requirements. The NRC conducts inspections that evaluate the effectiveness of security program performance and include observations of the security force members and their supervisors. Only the NRC team is responsible for NRC-evaluated FOF exercises, including designing exercises and evaluating licensees' performance. The NRC will use an industry-supplied adversary force in FOF exercises, but the adversary force will be directed by the NRC team. Regardless of whether the plant security force is composed of licensee employees or contractor employees, the NRC holds licensees, not contractors, accountable for security performance.

NRC-evaluated FOF exercises are not pass/fail inspections. At the conclusion of an FOF exercise, NRC's evaluators assess their observations and findings in accordance with the Physical Protection Significance Determination Process (PPSDP). The PPSDP comprises two parts, a baseline portion and an FOF portion. Security-compliance findings identified during triennial FOF activities that are not directly related to an FOF exercise outcome are assessed using the baseline portion of the PPSDP. Outcome-related findings are assessed using the FOF portion of the PPSDP. The FOF PPSDP assesses the significance of a licensee's demonstrated performance relative to preventing significant core damage or spent fuel sabotage resulting in a radiological release.

The FOF PPSDP considers the defense of target sets (combinations of components that could result in significant core damage) in conjunction with preventing a radiological release path as the measure of significance. The loss of a single target set with no radiological release represents the least significant finding and the loss of multiple target sets with the creation of a radiological release path represents the most significant finding. For any exercise result that indicates a significant weakness in the licensee's protective strategy, the NRC team remains on site until appropriate compensatory measures are in place.

Throughout the EFOF and TFOF pilot programs in 2003 and 2004, respectively, the NRC observed modified enforcement guidance under which enforcement discretion was applied to findings which were determined to be related to either the FOF process itself or the April 2003 supplemental requirements that implement the enhanced Design Basis Threat (DBT). Beginning in November 2004, the supplemental requirements will be fully effective in accordance with the April 2003 Orders from the Commission. NRC-evaluated FOF exercises will then be conducted using exclusively the supplemental requirements and the licensees' approved Security and Contingency Plans. The enforcement discretion guidance of the pilot programs will no longer apply, and licensee performance will be subject to enforcement action consistent with PPSDP findings and the provisions of NRC's Enforcement Manual.

Question 2: Why isn't the NRC providing its own dedicated mock terrorist force to conduct FOF exercises at nuclear reactors, or making arrangements with other federal agencies with experience in this area, rather than allowing NEI -- the trade association and lobbying arm of the nuclear industry -- to perform this function?

Answer:

Since the inception of the force-on-force (FOF) security exercise program in the early 1980's, there has been essentially no change in the practice of using security officers from the facility being evaluated, other nuclear power facilities, or local law enforcement officers to serve as mock adversaries. During pilot program FOF exercises aimed at strengthening the program in 2003, the NRC identified a need to improve the offensive abilities, consistency, and effectiveness of the exercise adversary force. Staff evaluated several options, including continuing under the established process or establishing a dedicated adversary force (the dedicated adversary force considered the use of NRC staff, other federal personnel, or industry personnel). Staff evaluated the impacts and benefits of each option and provided a recommendation to the Commission. The staff recommended and the Commission approved the establishment of adversary force standards and guidelines for the industry as a group. The industry would select and train a pool of personnel for the adversary force cadre. The Commission directed the staff to develop a training standard for a Composite Adversary Force (CAF), which will travel from site to site to serve as the mock adversary. The CAF for a given NRC-evaluated FOF exercise will be comprised of security officers from various nuclear power facilities (excluding the licensee being evaluated) and will have been trained in offensive, rather than defensive, skills to perform the adversary function. As a result of this initiative, a significant problem of a lack of uniformity in the quality of adversary forces has been resolved. For the first time, NRC staff and contractors will have available a uniform, high quality adversary force trained to NRC standards at all force-on-force exercises conducted by NRC starting later this year.

CAF members do not perform an evaluative function. The NRC and its subject matter expert (SME) contractors evaluate the performance of each licensee during FOF exercises, and the NRC will continue to evaluate the abilities, consistency, and effectiveness of the exercise adversary force.

The industry has selected Wackenhut to manage the CAF. Wackenhut also provides protective services to a substantial number of operating power reactors. The NRC recognizes that some may perceive a conflict of interest with respect to the same contractor providing both the protective services to some individual sites and staffing some members of the adversary force used for exercises. The Commission has directed the staff to ensure that there is a separation of functions, including appropriate management and administrative controls in place within the Wackenhut organization to provide adequate independence between the CAF and the nuclear reactor guard force. In addition, the NRC will continue to assess the performance of the adversary force and require improvements if appropriate, up to and including developing an NRC-contracted adversary force. However, one of the benefits of an industry adversary force is the feedback of an adversary's perspective into enhancement of site protective strategies and security officer training at his or her normally assigned facility, as well as improving the quality of FOF exercises conducted by the licensees annually for training.

The NRC staff considered the aspect of possible conflicts of interest in the exercise program, and the Commission deliberated on the issue before deciding that the industry could be permitted to use its own employees as mock adversaries. Potential drawbacks to NEI's decision, including questions about objectivity, are outweighed by the opportunity to promptly field adversary forces that are better trained and dedicated to the role assigned them.

It is important to note that licensee employees have been used in the role of the mock adversary since the earliest force-on-force testing was initiated in 1982. Sometimes, the teams were made up of security force members from the site being tested, sometimes they were security force members from other licensee facilities within the same corporate structure, and sometimes they were from other security forces altogether, including other licensees and law enforcement agencies. The CAF is a distinct improvement over those practices. NEI's selection of a contractor with an extensive history of training and qualifying security officers for the nuclear industry should ensure that they will bring a high level of skill to bear on the exercises. In addition, their familiarity with nuclear power plant design should make them a more worthy adversary for licensees responding to the exercises. The NRC has issued standards for physical fitness, training, and knowledge of attack strategies to ensure that the CAF will be better trained than previous adversary forces. NEI's selection of a contractor with an extensive history of training and qualifying security officers for the nuclear industry should ensure that they will bring a high level of skill to bear on the exercises.

Further, NEI, in a letter dated September 10, 2004, has made a commitment to the NRC that: (a) the manager of the CAF will report directly to the Chief Executive Officer for Wackenhut, (b) CAF members will be selected from all sites, including those where security is provided by Wackenhut's competitors, and (c) a CAF member will not participate in exercises at his or her home site.

Question 3: The nuclear industry has long resisted most efforts to increase security at nuclear reactors, and has even challenged the Commission's authority to perform FOF tests in the first place (see NRC email cited in http://www.house.gov/markey/issues/iss_nuclear_ltr990708.pdf). Don't you think there would be a disincentive for any mock terrorist force paid for by the nuclear industry to conduct FOF exercises in a rigorous manner that could uncover systemic weaknesses in security at nuclear reactors? If not, why not?

Answer:

The NRC will independently evaluate licensee performance in FOF exercises at each site on at least a triennial basis, using the CAF to provide a consistent, capable, and effective adversary. The CAF will not perform an evaluative role in the exercises. CAF members will arrive on site at about the same time that the NRC evaluation team arrives and will be coordinating closely with the NRC evaluation team and the NRC's subject matter expert contractors before and during the exercises. Any indication that CAF members are not performing rigorously in their role will be promptly identified and addressed by the NRC. The NRC routinely reassesses the effectiveness and efficiency of its FOF evaluation program and has mechanisms in place to revise or improve its FOF processes and procedures as needed. Should the industry be unable to maintain an adequate and objective CAF that meets the standards mandated by the NRC, the NRC will take the necessary actions to ensure the effectiveness of the FOF evaluation program.

Question 4: Wackenhut is responsible for nuclear reactor security at 30 of 64 nuclear power plants in the U.S. Don't you think that there would be a disincentive for the Wackenhut mock terrorist force to rigorously test security at power plants at which Wackenhut also provided the security forces as rigorously as it would at power plants at which Wackenhut's competitors provided the security guard forces? If not, why not?

Answer:

As discussed in answers 2 and 3, above, the NRC recognizes that a perceived conflict of interest exists regarding the industry's selection of a CAF management organization that provides protective services to a large portion of the operating power reactors. Because the CAF does not establish the exercise objectives, boundaries, or timelines, and because the CAF's performance is subject to continual observation by NRC's staff and contractors, the NRC can control the exercise. The commitments by NEI in its letter of September 10, 2004, provide additional assurance that the CAF will conduct exercises at all sites with equal rigor.

Question 5: Was the NRC aware that NEI planned to hire Wackenhut to conduct the FOF tests, even though Wackenhut is responsible for security at 30 of 64 nuclear power plants? If so, why did the NRC allow a contract that poses such a blatant conflict of interest to proceed?

Answer:

The NRC was aware that NEI was considering Wackenhut among other suppliers of CAF member personnel. At the time, the NRC expressed concern and understood that, if Wackenhut were to be selected, the CAF would be managed by a separate business entity within the Wackenhut organizational structure. NRC's published standards for CAF members are focused on performance and qualification standards.

NEI, in a letter dated September 10, 2004, has made a commitment to the NRC that: (a) the manager of the CAF will report directly to the Chief Executive Officer for Wackenhut, (b) CAF members will be selected from all sites, including those where security is provided by Wackenhut's competitors, and (c) a CAF member will not participate in exercises at his or her home site.

Question 6: The Commission recently announced that it would no longer provide any information regarding the assessment of security at nuclear reactors or enforcement actions taken regarding security at nuclear reactors to the public. Please explain why this decision was made. Why can't any information, even information that is not specific to particular reactor vulnerabilities, be publicly available?

Answer:

The Commission deliberated for many months on how to balance its commitment to openness with the concern that some key information is sensitive and might be misused by those who wish us harm. While we have worked diligently to share sensitive information with licensees, Federal agencies, and State and local governments to enhance protection of the public, we have also redoubled our efforts to ensure that we do not release information that could be exploited by adversaries in sabotaging nuclear facilities or stealing nuclear materials. As you recognize, the Commission has overall responsibility for public health and safety and the common defense and security with regard to the utilization of commercial nuclear material. Therefore, we must weigh the information that is made public in that context. Accordingly, the Commission determined that security findings in the Reactor Oversight Process and similar programs for other facilities will no longer be made public. However, the staff plans to develop a publicly available report that would provide some general information about plant performance assessment in the physical protection and security area without revealing any site specific details or compromising security.

Question 7: Please provide copies of all correspondence, emails, memoranda, and telephone logs in the possession of the NRC, including those received by and sent to representatives of the nuclear industry, regarding the decision to withhold this information from the public.

Answer:

The material requested is being prepared. It will be forwarded to you under separate cover.