

Doris Mendiola

From: Williams, Gary E [Gary.Williams3@va.gov]
Sent: Monday, June 15, 2009 10:10 AM
To: Rulemaking Comments
Cc: Thomas.Huston2@va.gov; Frazier, Cassandra
Subject: Comments for NRC Enforcement Policy revision (NRC-2008-0497)
Attachments: VHA comments for enforcement policy supplements security.doc

I am attaching Veterans Health Administration comments on the NRC Enforcement Policy revision (NRC-2008-0497).

<<VHA comments for enforcement policy supplements security.doc>>

Gary E. Williams
National Health Physics Program
Veterans Health Administration
North Little Rock, Arkansas
(501) 257-1572

6/8/09

74FR 27191

①

RECEIVED

JUN 15 PM 3:10

RULES AND DIRECTIVES
BRANCH
FBI

SONSI Review Complete
Template = ADM-013

E-RFDS = ADM-03
Add = J. Starkey (dAS)

One comment is provided for section 6.7(a)(1) and (b)(1) to request clarification for the use of these guidelines. Specifically, is this addition to the guidelines established for action levels or other working levels established during the licensing process or is this addition for the purpose of citing licensees that exceed a regulatory limit with possible health and safety consequences and outcomes? For example, does this guideline apply to the 2 mRem in one hour public dose limit or to monthly sewer discharge concentrations?

The proposed changes for this draft revision related to materials security are noted below and indicated by strikethrough and revised wording in yellow highlight. The proposed changes are also summarized below for the examples under 6.12 for materials security.

a. For 6.12(a)(1)(a), “unescorted” is added for clarity given access, if escorted, is allowed under the NRC order for increased controls.

b. For 6.12(a)(1)(b), “without undue delay...” is added for clarity given that responses are not immediate and should be evaluated in the context of the licensee security plan.

c. For 6.12(b)(1)(a), “unescorted” is added for clarity given access, if escorted, is allowed under the NRC order for increased controls.

d. For 6.12(b)(1)(b), “without undue delay...” is added for clarity given that responses are not immediate and should be evaluated in the context of the licensee security plan.

e. For 6.12(c)(1), “without undue delay...” is added for clarity given that responses are not immediate and should be evaluated in the context of the licensee security plan.

f. For 6.12(c)(2), clarification is provide to the significance of the information that might have been comprised. The clarification reflects the broad definition for physical protection information that is important to restrict but, even if known to an adversary, does not provide a likelihood that unescorted access might occur.

g. For 6.12(c)(11), “without undue delay...” is added for clarity given detection, response, and assessment actions are not immediate and should be evaluated in the context of the licensee security plan.

h. For 6.12(d)(1) and (2), recommend combine the two examples.

i. For 6.12(d)(9), “without undue delay...” is added for clarity given detection, response, and assessment actions are not immediate and should be evaluated in the context of the licensee security plan.

j. For 6.12(d)(12), additional wording is added to clarify that violations should be cited based on outcomes contrary to the regulations and not for theoretical possibilities.

a. Severity Level I Violations involve, for example:

1. The theft, diversion, or sabotage of a Category 1 quantity of radioactive material resulting from the failure to establish or implement one or more requirements, such as:

(a) Failure to control **unescorted** access to a Category 1 quantity of radioactive material to only individuals deemed trustworthy and reliable and having job duties that require unescorted access to the radioactive material;

(b) Failure to ~~immediately~~ respond **without undue delay per the licensee security plan** to an attempted theft, sabotage, or diversion of a Category 1 quantity of radioactive material, including requesting assistance from the local law enforcement agency;

(c) Failure to provide enhanced monitoring during periods of source delivery and shipment of a Category 1 quantity of radioactive material; or

(d) Failure to implement the Radioactive Material Quantities of Concern (RAM QC) requirements prior to shipping a consignment containing a Category 1 quantity of radioactive material.

b. Severity Level II Violations involve, for example:

1. The theft, diversion, or sabotage of a Category 2 quantity of radioactive material resulting from the failure to establish or implement one or more increased controls requirements, such as:

(a) Failure to control **unescorted** access to a Category 1 or Category 2 quantity of radioactive material to only individuals deemed trustworthy and reliable and having job duties that require unescorted access to the radioactive material;

(b) Failure to ~~immediately~~ respond **without undue delay per the licensee security plan** to an attempted theft, sabotage, or diversion of a Category 1 or Category 2 quantity of radioactive material including requesting assistance from the local law enforcement agency;

(c) Shipping a consignment of a Category 2 quantity of radioactive material by a carrier, other than the licensee, without first verifying that the carrier uses a package tracking system, implements methods to assure trustworthiness and reliability of drivers, maintains constant control and/or surveillance during transit, and has the capability for immediate communication to summon appropriate response or assistance;

(d) Failure to provide enhanced monitoring during periods of source delivery and shipment of a Category 1 quantity of radioactive material;

(e) Failure to implement the RAM QC ASM prior to shipping a consignment containing a Category 1 quantity of radioactive material; or

(f) Failure to utilize a method to disable a vehicle or trailer, in or on which a Category 1 or Category 2 quantity of radioactive material is stored, when not under direct control and constant surveillance by the licensee.

c. Severity Level III Violations involve, for example:

1. Failure to immediately respond without undue delay per the licensee security plan to an attempted theft, sabotage, or diversion of a Category 1 or Category 2 quantity of radioactive material, including a failure to request assistance from the local law enforcement agency, that does not result in actual theft, sabotage, or diversion of radioactive material;
2. Failure to determine trustworthiness and reliability of individuals having unescorted access to radioactive material quantities of concern and devices;
3. Failure to limit access to physical protection information to only those persons with an established need-to-know, and who were determined to be trustworthy and reliable, if access to the information might have resulted in unescorted access;
4. Failure to verify that a carrier uses package tracking systems, implements methods that assure trustworthiness and reliability of drivers, maintains constant control and/or surveillance during transit, and has the capability for immediate communication to summon appropriate response or assistance, prior to shipping a Category 2 quantity of radioactive material, per consignment, by the carrier;
5. Failure to provide enhanced monitoring during periods of source delivery and shipment of a Category 1 quantity of radioactive material;
6. Failure to initiate an investigation to determine the location of a shipment of licensed material containing a Category 2 quantity of radioactive material when the shipment does not arrive on or about the expected arrival time;
7. Failure to notify the NRC Operations Center promptly after initiating a response to any actual or attempted theft, diversion, or sabotage of sources or devices containing a Category 1 or Category 2 quantity of radioactive material;
8. Failure to implement the RAM QC prior to shipping a Category 1 quantity of radioactive material, per consignment;
9. Failure to utilize a method to disable a vehicle or trailer, in or on which a Category 1 or Category 2 quantity of radioactive material is stored, when not under direct control and constant surveillance by the licensee;
10. Failure to establish or programmatic failure to implement a pre-arranged response plan with the local law enforcement agency;
11. Failure to establish or programmatic failure to implement a program to monitor and immediately respond without undue delay per the licensee security plan to detect, assess, and respond to unauthorized access to a Category 1 or Category 2 quantity of radioactive material; or
12. Failure to have a dependable means to transmit information between, and among, the various components of the intrusion detection system or to summon the appropriate responder.

d. Severity Level IV Violations involve, for example:

- ~~1. Failure to document the basis for concluding that an individual was determined to be trustworthy and reliable for the purposes of granting unescorted access to a Category 1 or Category 2 quantity of radioactive material;~~
2. Failure to perform **or document** a complete and adequate trustworthiness and reliability determination for an individual such that information relevant to access approval was not obtained or considered, but the individual would likely have been granted unescorted access if the required information had been obtained or considered;
3. Failure to limit approval for unescorted access with respect to Category 1 or Category 2 quantity of radioactive material to individuals with job duties requiring unescorted access;
4. Failure to maintain a list of persons approved for unescorted access;
5. Failure to confirm receipt of transferred radioactive material;
6. Failure to document the pre-arranged plan with the local law enforcement agency or update the pre-arranged plan when changes to the facility design or operation affect the potential vulnerability of sources;
7. Isolated failure of the dependable means to transmit information between, and among, the various components of the intrusion detection system or to summon the appropriate responder, to operate as designed;
8. Failure to contact the recipient or originator of a shipment to coordinate an expected arrival time for a shipment of a Category 2 quantity of radioactive material;
9. Isolated failure to implement a portion of the licensee's program to monitor and **immediately** respond **without undue delay per the licensee security plan to** detect, assess, and respond to unauthorized access to a Category 1 or Category 2 quantity of licensed radioactive material, such that an opportunity exists that could allow unauthorized and undetected access to the material, but that was neither easily or likely to be exploitable;
10. Isolated failure to limit access to physical protection information to only those persons with an established need-to-know and who are considered to be trustworthy and reliable, where with a high degree of confidence it is unlikely that the information could be used by an unauthorized individual who represents a predictable threat to circumvent or defeat the licensee's physical protection program;
11. Failure to comply with an element of the licensee's procedure to provide enhanced monitoring during periods of source delivery and shipment of a Category 1 quantity of radioactive material that does not seriously degrade the enhanced monitoring capability; or
12. Other violations involving materials safety **or security** that have more than minor safety or security significance **and an outcome contrary to the regulations occurred.**