

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: Commissioner Baran  
SUBJECT: SECY-18-0058: Draft Final Rule – Enhanced Weapons, Firearms Background Checks, and Security Event Notifications (RIN-3150-AI49; NRC-2011-0014, NRC-2011-0015, NRC-2011-0017, and NRC-2011-0018)

Approved  Disapproved  Abstain  Not Participating

COMMENTS: Below  Attached  None

Entered in "STARS"

Yes

No

  
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3/21/18

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DATE

**Commissioner Baran's Comments on SECY-18-0058,  
"Draft Final Rule—Enhanced Weapons, Firearms Background Checks,  
and Security Event Notifications"**

This draft final rule has three elements, all of which relate to the physical security of NRC-regulated facilities.

First, the rule implements NRC's authority under the Energy Policy Act of 2005 to designate classes of licensees eligible to apply to possess and use weapons that would otherwise be prohibited by state or local laws. This is referred to "stand-alone preemption authority." Under the rule, licensees seeking stand-alone preemption authority may also seek authority to possess enhanced weapons, such as machine guns and short-barreled shotguns. To date, NRC has provided seven sites with stand-alone preemption authority through orders. The staff is not aware of any other licensees who plan to apply for such authority under the rule.

Second, the rule updates the security event notification requirements for the first time since 1987 in order to better reflect the security significance of the events being reported. Instead of requiring licenses to report all security events within one hour, the rule adopts a graded approach requiring notification "within 15 minutes to within 24 hours of discovery, depending on the significance and impact of the event being reported."<sup>1</sup>

Third, the rule establishes new requirements for licensees to report suspicious activities to NRC and law enforcement agencies. Currently, this type of reporting is voluntary. However, the NRC staff has found that licensee reporting over the last decade "has been inconsistent both in terms of participation and the timeliness of reports."<sup>2</sup> The rule would make reporting mandatory "[b]ecause licensee's timely and consistent submission of suspicious activity reports (SARs) to the NRC and to law enforcement is an important part of the U.S. government's efforts to disrupt or dissuade malevolent acts against the nation's critical infrastructure."<sup>3</sup> As the staff explains:

Attack planning and preparation generally proceed through several predictable stages, including intelligence gathering and pre-attack surveillance. Reporting suspicious activities that could be indicative of preoperational surveillance or reconnaissance efforts, challenges to security systems and protocols, or elicitation of non-public information related to security or emergency response programs, offer law enforcement and security personnel the greatest opportunity to disrupt or dissuade acts of terrorism before the occur. ... The NRC objective is to increase the flow of information to the law enforcement and intelligence communities.<sup>4</sup>

According to the staff, "DHS and FBI continue to view SARs from critical infrastructure owners and operators as key to maintaining situational awareness over these sectors and providing early warning of potential malevolent acts."<sup>5</sup> The staff believes that meeting the new

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<sup>1</sup> NRC, *Regulatory Analysis for Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Final Rule* (2018) at 7.

<sup>2</sup> SECY-18-0058 at 5.

<sup>3</sup> Draft *Federal Register* Notice at 4-5.

<sup>4</sup> *Id.* at 18.

<sup>5</sup> SECY-18-0058 at Enclosure 5.

requirements would require minimal effort, with a licensee submitting an average of two to three SARs per year, each requiring about 30 minutes to complete.<sup>6</sup>

I agree with the staff that the provisions of the draft final rule would enhance the physical security of nuclear power plants and other NRC-regulated entities. Therefore, I approve its publication in the *Federal Register*, subject to the attached edits. As the staff recommends, the final rule should be published after the Attorney General has approved the latest revision of the Firearms Guidelines. Pursuant to the Regulatory Flexibility Act, I certify that the rule would not have a significant economic impact on a substantial number of small entities.

Most of my proposed edits to the draft *Federal Register* notice are aimed at ensuring that the rule language is clear and enforceable. For example, while the proposed rule required licensees to report imminent or actual hostile actions “as soon as possible but within 15 minutes,” the draft final rule requires reporting “as soon as possible but within approximately 15 minutes.”<sup>7</sup> I would revert to the proposed rule language, which is much clearer. The intent of the provision is to require a licensee to report this type of serious event as soon as possible. In order to provide clarity, the provision includes an explicit 15 minute backstop. The addition of the word “approximately” would render that backstop vague and potentially unenforceable.

Similarly, a provision in the draft final rule requires a licensee to notify NRC “[i]f a suspicious activity report results in a [local law enforcement agency] response and that response may result in public or media inquiries to the NRC.”<sup>8</sup> This provision would be difficult to implement or enforce because it requires a licensee to predict whether a law enforcement response “may” result in a reporter or local resident later asking NRC about the incident. Even if it were not so nebulous, it is not clear why that would be the right standard for reporting. I propose a clarifying edit to this provision.

In some cases, my edits would tighten up particular requirements in order to avoid unnecessary reporting delays. For instance, for the category of security events that includes the actual theft or diversion of Category 1 strategic special nuclear material or significant physical damage to a nuclear power reactor, I think it is important to require the notification to occur as soon as possible with a one hour backstop rather than simply anytime within one hour.<sup>9</sup> Those are very serious events, and NRC should be notified as quickly as possible should they occur.

I take a similar approach to the requirement to notify NRC of any stolen or lost enhanced weapons. The draft final rule requires a licensee to immediately notify ATF of such an event, which makes sense. But the draft final rule then requires licensees to notify NRC “as soon as possible, but not later than 4 hours.” I agree with the staff that ATF should be notified first and that NRC should be subsequently notified as soon as possible, but given that the licensee will already have gathered all of the information necessary for a notification, I see no reason to allow a licensee to take as long as four hours to notify NRC. In my view, a one hour backstop is more reasonable.

Finally, the proposed rule required monthly enhanced weapons inventories but allowed licensees an additional three days to complete each inventory. In other words, inventories had to be performed every 33 days. The draft final rule expands the leeway period to seven days,

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<sup>6</sup> SECY-18-0058 at 5.

<sup>7</sup> Draft *Federal Register* Notice at 112-113.

<sup>8</sup> *Id.* at 136.

<sup>9</sup> *Id.* at 114.

resulting in a requirement to perform an inventory every 37 days.<sup>10</sup> I support reverting to the three-day approach because providing seven days of leeway for every 30 days could unnecessarily reduce the number of "monthly" inventories conducted each year. For the annual enhanced weapons inventory, I do not believe a leeway period is needed.

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<sup>10</sup> *Id.* at 86.

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Parts 20, 21, 50, 70, 73, 74, and 76**

**[NRC-2011-0014; NRC-2011-0015; NRC-2011-0017; NRC-2011-0018]**

**RIN 3150-AI49**

**Enhanced Weapons, Firearms Background Checks,  
and Security Event Notifications**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule and guidance; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to implement its authority under Section 161A of the Atomic Energy Act of 1954, as amended (AEA). This final rule applies to several classes of facilities as well as activities involving the transportation of radioactive material and other property designated by the NRC. This final rule also revises the physical security event notification requirements for different classes of facilities and the transportation of radioactive material to add consistency and clarity. Further, the NRC is adding new event notification requirements associated with the possession of enhanced weapons and imminent or actual hostile acts, and new reporting requirements for suspicious activity.

**DATES:** *Effective date:* This final rule is effective **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. *Compliance date:* Compliance with

Part 3 adds requirements for reporting suspicious activities to law enforcement agencies and the NRC.

#### A. Need for the Regulatory Action

Part 1 of this final rule amends the NRC's regulations to implement the Commission's authority under Section 161A of the AEA (Section 161A authority). Without implementing regulations, the Commission would need to grant Section 161A authority through confirmatory orders. This process is unnecessarily **burdensome** **inefficient for** licensees and the NRC. Additionally, this process lacks the transparency and regulatory certainty provided by regulations. These amendments will establish a clear and consistent regulatory process to enable licensees to apply for and effectively implement the Commission's Section 161A authority.

Part 2 of this final rule amends the NRC's regulations in 10 CFR part 73 to modify the physical security event notification requirements. Currently, all physical security event notifications must be submitted to the NRC within 1 hour. The revised regulations provide a graded approach that takes into account the security significance of the physical security event, which in most cases will provide licensees greater flexibility. Additionally, this final rule adds new requirements to notify the NRC following actual or imminent hostile action as well as lost or stolen enhanced weapons. These new requirements will ensure licensees provide notification to the NRC of all appropriate physical security events.

Part 3 of this final rule amends the NRC's regulations in 10 CFR part 73 to add requirements for licensees to report suspicious activities. Currently, licensees voluntarily report suspicious activities. Licensee implementation of voluntary suspicious activity reporting has been inconsistent in terms of both the types of data reported and the timeliness of reports. Because licensees' timely and consistent submission of

### C. Costs and Benefits

The NRC has prepared a regulatory analysis to determine the expected quantitative costs and benefits of this final rule, as well as qualitative factors considered in the NRC's rulemaking decision. The quantitative analyses evaluates four attributes—industry implementation, industry operation, NRC implementation, and NRC operation. Qualitative analyses were used because monetizing the full impact of each attribute is not possible or practical. Monetizing the impact of these attributes would require estimation of factors such as the frequency of security-related events and the consequences of such events.

The analysis concluded that this final rule will result in net quantified costs to the industry and the NRC. The total costs of the rule reflect, in part, the costs that will be incurred by eight NRC licensees at seven sites that were granted stand-alone preemption authority by confirmatory orders to update their applicable procedures, instructions, and training to reflect the final rule's requirements.

The total costs of the rule also reflect the implementation and operations costs to comply with the new physical security event notification and suspicious activity reporting requirements. These costs apply to the following licensed sites: nuclear power reactor sites (operating and under construction), decommissioning nuclear power reactor sites, away-from-reactor independent spent fuel storage installations (ISFSIs), non-power production or utilization facilities (NPUFs),<sup>1</sup> and strategic special nuclear material (SSNM) facilities. The costs result from these licensees having to update their

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<sup>1</sup> The term "NPUF" will be defined in a separate NRC rulemaking called "Non-Power Production or Utilization Facility License Renewal" (Docket ID NRC-2011-0087, RIN 3150-A196). [Until that rule is finalized, for the purposes of this rule, a non-power production or utilization facility is defined as "a non-power reactor, testing facility, or other production or utilization facility, licensed under the authority of Section 103, Section 104a, or Section 104c of the AEA that is not a nuclear power reactor."](#)

procedures to reflect the new requirements as well as estimated costs associated with providing event notification and suspicious activity reporting.

The costs for the NRC to implement this final rule include the costs associated with licensees' transitioning from the confirmatory orders to the requirements of the final rule. The NRC operational costs include reviewing and receiving both the physical security event notifications and SARs. The benefits to the NRC are avoided costs associated with not issuing confirmatory orders to future licensees requesting Section 161A authority. The regulatory analysis concludes that this final rule as a whole results in an estimated cost of between \$2.73 million at a 7-percent discount rate and \$2.95 million at a 3-percent discount rate.

The regulatory analysis also considered the following qualitative considerations and the associated benefits: security-related attributes such as the occurrence of a possible attack and the successful thwarting and mitigation of such an attack, flexibility of response to physical security events, suspicious activity reporting, and enhancements to regulatory efficiency. Based on the assessment of the costs and benefits of this final rule, including those benefits which are unquantified, the NRC has concluded that the final rule provisions are justified to protect public health and safety and the common defense and security. For more information, please see the regulatory analysis (ADAMS Accession No. ML16278A235).

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Additionally, draft Regulatory Guide (DG) 5019, Revision 1, "Reporting and Recording Safeguards Events" (ADAMS Accession No. ML100830413), was issued for public comment on February 3, 2011 (76 FR 6085). The portions of DG-5019, Revision 1, related to CSEN were also bifurcated from the original draft guide, and are now included in the final CSEN guidance in RG 5.83, "Cyber Security Event Notifications" (ADAMS Accession No. ML14269A388).

Accordingly, the NRC has removed all CSEN provisions from this final rule and associated guidance.

#### H. September 2015 Supplemental Proposed Rule

On September 22, 2015, the NRC published a second supplemental proposed rule, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications" (80 FR 57106), to conform Part 1 of the rule with the 2014 Revision 1 to the Firearms Guidelines. The 2009 Firearms Guidelines provided that the security personnel for all licensees and certificate holders that fall within the designated classes of facilities must undergo firearms background checks, whether or not a particular licensee or certificate holder intends to seek Section 161A authority. The NRC staff determined that this requirement placed an unnecessary cost and undue burden on licensees who had not applied for Section 161A authority without serving any relevant security purpose. Consequently, under Revision 1 of the 2014 Firearms Guidelines, the requirement for background checks applies to only those licensees and certificate holders who apply for Section 161A authority.

In addition to conforming the 2011 proposed rule to Revision 1 of the 2014 Firearms Guidelines, the 2015 supplemental proposed rule also made three other changes. First, the 2015 supplemental proposed rule made several clarifying and

Licensees' timely submission of SARs to the NRC and to law enforcement is an important part of the U.S. government's efforts to disrupt or dissuade malevolent acts against the nation's critical infrastructure. Attack planning and preparation generally proceed through several predictable stages, including intelligence gathering and pre-attack surveillance. Reporting suspicious activities that could be indicative of preoperational surveillance or reconnaissance efforts, challenges to security systems and protocols, or elicitation of non-public information related to security or emergency response programs, offer law enforcement and security personnel the greatest opportunity to disrupt or dissuade acts of terrorism before they occur. Additionally, licensees' timely submission of SARs to the NRC supports one of the agency's primary mission essential functions of threat assessment for licensed facilities, materials, and shipping activities.

In this new regulation, the NRC is seeking to balance agency and national objectives of reporting suspicious activities, while not imposing unnecessary or undue ~~costsburden~~ on licensees. In this regard, it is not the NRC's intent to dispute a licensee's conclusions about whether an event is considered to be suspicious. Accordingly, the NRC intends to focus any inspection and enforcement efforts regarding this new regulation on programmatic aspects (e.g., procedures, training, establishing points of contact, and the reporting process). The NRC objective is to increase the flow of information to the law enforcement and intelligence communities and thus, potentially disrupt or dissuade potential terrorist attacks.

These new provisions apply to nuclear power reactors, fuel cycle facilities authorized to possess and use Category I quantities of SSNM, certain facilities that possess Category II and Category III quantities of SNM using Restricted Data (RD) materials, technology, and information in the enrichment process, hot cell facilities,

Paragraph (e) describes the information that a licensee must submit to the NRC for each individual subject to a firearms background check. This paragraph also specifies how long the licensee must retain this information as a record.

Paragraph (f) describes the requirements for periodic firearms background checks, which are to be completed at least once every 5 calendar years. The paragraph also specifies an allowance period for completion of a satisfactory periodic firearms background check of midnight of the end of the month that is 5 years from the date of the most recent firearms background check. Security personnel may remain assigned to duties requiring access to covered weapons, while pending completion of a periodic firearms background check (started before the end of the allowance period). However, if a satisfactory firearms background check is not completed by the end of the allowance period, then the security personnel must be removed from duties requiring access to covered weapons. Paragraph (f) also specifies that an individual who receives a "denied" or "delayed" NICS response during a periodic firearms background check must be removed, without delay, from duties requiring access to covered weapons.

Paragraph (g) requires affected licensees to notify the NRC that an individual with access to covered weapons has been removed from all duties requiring such access because of the discovery of a disqualifying status condition or disqualifying event under applicable Federal, State, or local law. ~~The licensee is not required to notify the NRC if the licensee's security management was notified by the affected security personnel within 72 hours of the identification or occurrence of any Federal or State disqualifying status condition or disqualifying event. However, in all circumstances, the~~ licensee is required to maintain records of such removals under the Firearms Background Check Plan, as required under revised paragraph (b)(3)(vi).

*§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage*

This final rule updates § 73.55(b)(12) to cross reference to the firearms background check requirements of § 73.17. Additionally, § 73.55(p)(3) is updated to reflect the reporting requirements for suspension of security measures in accordance with §§ 73.1200 and 73.1205 instead of § 73.71.

*§ 73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance*

This final rule updates § 73.67(e)(3)(vii) and (g)(3)(iii) to update the cross reference to the new §§ 73.1200 and 73.1205.

*§ 73.71 Reporting of safeguard events*

This final rule removes and reserves § 73.71. The regulations on physical security event notifications, written follow-up reports, and lesser-significance recordable physical security events that were previously located in § 73.71 and appendix G to 10 CFR part 73 are relocated to new §§ 73.1200, 73.1205, and 73.1210, respectively.

*§ 73.1200 Notification of physical security events*

This final rule adds new § 73.1200 on physical security event notifications. This section describes categories of physical security events and the timeframes by which the licensee must notify the NRC of these events.

Paragraph (a) adds a 15-minute notifications requirement for a licensee's initiation of a security response based on an imminent or actual hostile actions against

~~its facilities or for a licensee being notified by where the licensee has initiated a response under its protective strategy (e.g., in response to LLEA or government officials notifications~~ of potential hostile action or sabotage anticipated within the next 12 hours). These notifications requirements apply only to nuclear power reactors, fuel cycle facilities authorized to possess and use Category I quantities of SSNM, and ISFSIs. In addition, these requirements will apply to future licensees such as MRSs, GROAs, and production facilities.

Paragraph (b) adds a 15-minute notification requirements for imminent or actual hostile actions against shipments ~~where the licensee has initiated a response under its protective strategy (e.g., in response to~~ or for a licensee being notified by LLEA or government officials notifications of potential sabotage anticipated within the next 12 hours). These notifications requirements apply only to shipments of Category I SSNM, SNF, and high-level radioactive waste (HLW).

Paragraph (c) clarifies the 1-hour notifications for significant security events against facilities. These notifications apply to nuclear power reactors, fuel cycle facilities authorized to possess and use Category I quantities of SSNM, facilities that possess Category II and Category III quantities of SNM, hot cell facilities, ISFSIs, and NPUFs. In addition, these requirements will apply to future licensees such as MRSs, GROAs, and production facilities. Significant security events requiring notification include actual, attempted, or a threat to cause: theft or diversion of Category I SSNM or Category II or III SNM; significant physical damage to a facility; unauthorized operation, manipulation, or tampering that results in interruption of normal operation of a reactor or an accidental criticality at a Category I SSNM facility or a Category II or III SNM; introduction of a quantity of explosives that exceeds the facility's adversary characteristics beyond a protected area's vehicle barrier system; and notification from LLEA or other government

being transported, which involves shipment of Category I SSNM, Category II or III SNM, SNF, or HLW; and actual or attempted introduction of contraband into a transport vehicle or the material being transported, which involves shipment of Category I SSNM, Category II or III SNM, SNF, or HLW.

Paragraph (g) adds 8-hour notifications for security program failure events at facilities. These notifications apply to the same classes of facilities as specified under paragraph (c). A security program failure is a programmatic failure of a security system, process, or procedure. Examples of security program failures include but are not limited to: the failure, degradation, or vulnerability of a security system, process, or procedure (for which compensatory measures have not been implemented) that could have allowed an unauthorized individual or contraband into a PA, VA, MAA, or CAA or that could have allowed a quantity of explosives exceeding the facility's adversary characteristics beyond a vehicle barrier; and the unauthorized operation, manipulation, or tampering with a nuclear reactor's controls or SSCs that does not interrupt the normal operation of a reactor.

Paragraph (h) adds 8-hour notifications for security program failure events for those classes of shipments as specified under paragraph (d). Examples of security program failures include but are not limited to: failure, degradation, or discovered vulnerability (for which compensatory measures have not been implemented) that could have allowed an unauthorized individual or contraband into a transport vehicle or the material being transported.

Paragraphs (i), (j), (k), and (l) are reserved.

Paragraph (m) adds a requirement for licensees to notify the ATF immediately upon the discovery of any stolen or lost enhanced weapons. After which, licensees must notify the NRC as soon as possible, but not later than 14 hours.

§ 73.1200. This section is applicable to licensees who are also subject to the various provisions of § 73.1200.

Paragraph (a) adds the general requirement to submit written follow-up reports to the NRC within 60 days of the licensee's notification made under § 73.1200.

Paragraph (a) also adds several exceptions to the requirement to submit written follow-up reports for certain security events.

Paragraph (b) adds criteria for written follow-up report development and submission, including the development of significant supplemental information.

Paragraph (c) adds requirements on the contents of a written follow-up report.

Paragraph (d) adds requirements regarding the transmission of a written follow-up report to the NRC.

Paragraph (e) adds requirements for licensees to retain records of written follow-up reports submitted to the NRC for 3 years from the date of the report.

#### *§ 73.1210 Recordkeeping of physical security events*

This final rule adds new § 73.1210 on the recording of less significant security events and conditions adverse to security. It consolidates and clarifies the safeguards event log requirements into this new section. This section is applicable to licensees who are also subject to the various provisions of § 73.1200.

Paragraph (a) specifies the **broad** categories of events and conditions that must be recorded and adds the objective and purpose for recording such events. The recording of appropriate events is intended to facilitate the licensee's monitoring of the effectiveness of its physical security program as part of the licensee's overall quality assurance program.

Paragraph (g) requires that events or conditions involving infractions, losses, compromises, or possible compromise of classified information or classified documents be recorded under the requirements found in § 95.57.

*§ 73.1215 Suspicious activity reports*

This final rule adds new § 73.1215, which requires that licensees report suspicious activities to their off-site LLEA, their FBI local field office, the NRC, and the local FAA control tower (for suspicious activities involving aircraft), as soon as possible, but within 8 hours of the time of discovery. The NRC's objective is to encourage licensees to use their best judgement to promptly assess whether a potential activity is suspicious and must be reported. As part of this assessment, licensees may discuss a potential event with local authorities or review electronic information, such as (e.g., surveillance video.) before concluding that a potential activity is suspicious.

The new suspicious activity reporting requirement is applicable to all licensees subject to provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.55, 73.60, or 73.67 with the following exceptions: 1) licensees subject to § 73.67 that are SNM enrichment facilities do not need to report the suspicious activities defined in § 73.1215(d) but must report those suspicious activities related to RD discussed in § 73.1215(f), and 2) licensees subject to § 73.67 that are Category II or III SNM fuel fabrication facilities are also exempt from suspicious activity reporting requirements.

Paragraphs (a) and (b) add the NRC's purpose and objective of this new requirement.

Paragraph (c) adds general requirements for the reporting of suspicious activities, the establishment of points of contact with the licensee's LLEA, local FBI field

72.62, and are not otherwise inconsistent with any issue finality provision in 10 CFR part 52.

This final rule contains three requirements that were not imposed by order on the eight licensees with stand-alone preemption authority: notification of disqualifying events or conditions (10 CFR 73.17(g)), training supporting notification of disqualifying events or conditions and information for appealing an adverse firearms background check to the FBI (10 CFR 73.17(j)), and protection of information from unauthorized disclosure (10 CFR 73.17(q)). Although these amendments represent new requirements, they involve recordkeeping, reporting requirements or an appeals process, which do not constitute backfitting as defined in 10 CFR Chapter I or a violation of issue finality in 10 CFR part 52.

This final rule also imposes new physical security event notification and suspicious activity reporting requirements. These amendments involve information collection and reporting activities, which are outside the purview of the backfitting and issue finality provisions. Therefore, a backfit analysis is not required and has not been prepared for this final rule.

## **IX. Cumulative Effects of Regulation**

Cumulative Effects of Regulation (CER) consists of the challenges licensees may face in addressing the implementation of new regulatory positions, programs, and requirements (e.g., rulemaking, guidance, generic letters, backfits, inspections). The CER may manifest in several ways, including the total ~~impactburden imposed~~ on licensees ~~by the NRC~~ from simultaneous or consecutive regulatory actions that can

considered public comments in developing the final weapons safety assessment. Additional information can be found under docket ID NRC-2011-0017.

The NRC is also issuing a revision to RG 5.62. Revision 2 to RG 5.62 provides guidance on the implementation of physical security event notification requirements, as modified by this final rule. The NRC published DG-5019, Revision 1, on February 3, 2011 (76 FR 6085) for public comment after the publication of the 2011 proposed rule. The final guidance reflects public comments received on the draft regulatory guide.

The NRC has bifurcated the guidance in DG-5019, Revision 1, regarding suspicious activity reporting into a separate new RG 5.87. The final guidance reflects public comments received on the draft regulatory guide.

The NRC is temporarily withdrawing NUREG-1304, "Reporting of Safeguards Events," dated February 1988, (ADAMS Accession No. ML16012A188). NUREG-1304 contains a set of questions and answers on physical security event notifications and reports. Since the new and old physical security event notification regulations differ, the NRC will temporarily withdraw this NUREG to prevent **regulatory** confusion. The NRC will conduct a workshop after licensees have implemented the revised physical security event notification and new suspicious activity reporting requirements. The NRC will publish the results of the workshop as NUREG-1304, Revision 1, Volumes 1 and 2. Volume 1 will address physical security event notifications, and Volume 2 will address suspicious activity reporting.

The NRC is withdrawing Generic Letter (GL) 91-03, "Reporting of Safeguards Events" (ADAMS Accession No. ML031140131). This GL is no longer consistent with the revised physical security event notification regulations in §§ 73.1200 and 73.1205 and will be withdrawn to prevent **regulatory** confusion. The staff has incorporated relevant topics from GL 91-03 into the new revision of RG 5.62.

(o) *Periodic inventories of enhanced weapons.* (1) Licensees possessing enhanced weapons under this section must conduct the following periodic accountability inventories of the enhanced weapons in their possession to verify the continued presence of each enhanced weapon that the licensee is authorized to possess.

(2) Monthly enhanced weapons inventory. (i) Licensees must conduct a monthly inventory to verify that the authorized quantity of enhanced weapons are present at the licensee's facility.

(ii) Licensees must verify the presence of each individual enhanced weapon.

(iii) Licensees that store enhanced weapons in a locked secure weapons container (e.g., a ready-service arms locker) located within a protected area, vital area, or material access area may verify the presence of an intact tamper-indicating device (TID) on the locked secure weapons container, instead of verifying the presence of each individual weapon.

(iv) Verification of the presence of enhanced weapons via the presence of an intact TID must be documented in the inventory records and include the serial number of the TID.

(v) Licensees may use electronic technology (e.g., bar-codes on the weapons) in conducting such inventories.

(vi) The time interval from the previous monthly inventory must not exceed ~~30~~ <sup>+</sup> 7 days.

(3) Annual enhanced weapons inventory.

(i) Licensees must conduct an annual inventory to verify that each authorized enhanced weapon is present at the licensee's facility through the verification of the serial number of each enhanced weapon.

(ii) Licensees must verify the presence of each enhanced weapon located in a locked secure weapons container (e.g., a ready-service arms locker) through the verification of the serial number of each enhanced weapon located within the container.

(iii) The time interval from the previous annual inventory must not exceed 365 +7 days.

(iv) Licensees conducting an annual inventory may substitute this annual inventory in lieu of conducting the normal monthly inventory for that particular month, as required under paragraph (o) of this section.

(4) Licensees must conduct periodic inventories of enhanced weapons using either a two-person team or a single individual, provided the individual is subject to the licensee's behavioral observation or human reliability programs.

(5) The results of any periodic inventories of enhanced weapons must be retained in accordance with the records requirements of paragraph (q) of this section.

(6) Licensees must inventory any locked secure weapons container that was sealed with a TID and has subsequently been opened and must verify the serial number for each of the enhanced weapons stored in the weapons container. The inventoried weapons container must be relocked and resealed with a new TID and the new TID's serial number must be recorded in the periodic inventory records. The inventory must be conducted in accordance with the requirements of paragraph (o)(4) of this section.

(i) Licensees must use TIDs with unique serial numbers on locked secure weapons containers containing enhanced weapons.

(ii) Licensees must store unused TIDs in a manner similar to other security access control devices (e.g., keys, lock cores, etc.) and must maintain a log of issued TID serial numbers.

(7) Licensees must resolve any discrepancies identified during periodic inventories within 24 hours of their identification; otherwise, the discrepancy must be treated as a stolen or lost enhanced weapon and notifications must be made in accordance with paragraph (p) of this section.

(8) Exception. Enhanced weapons that are offsite for authorized purposes, in accordance with paragraphs (m) and (n) of this section, are required to be included in a periodic inventory but are not considered lost or stolen solely because they are offsite. The licensee must document the absence of these weapon(s) from the licensee's facility in the report of the results of a completed periodic enhanced weapons inventory, as required under paragraph (q) of this section.

(p) *Stolen or lost enhanced weapons.* (1) Licensees that discover that any enhanced weapons they are authorized to possess under this section are stolen or lost, must notify the NRC and local law enforcement officials in accordance with § 73.1200 of this part.

(2) Licensees that discover that any enhanced weapons they are authorized to possess under this section are stolen or lost are also required to notify ATF in accordance with ATF's regulations in 27 CFR part 479.

(q) *Records requirements.* (1) Licensees possessing enhanced weapons under this section must maintain records relating to the receipt, transfer, transportation, and inventory of such enhanced weapons.

(2) Licensees must maintain the following minimum records regarding the receipt of each enhanced weapon, including—

(i) Date of receipt of the weapon;

(ii) Name and address of the transferor, who transferred the weapon to the licensee;

application for stand-alone preemption authority or for combined preemption authority and enhanced weapons authority.

(7) ~~Applicability of firearms background checks to applicants for an NRC license:~~

(i) Applicants for a license who have also submitted an application for Section 161A authority must only commence firearms background checks after:

(A) The NRC has issued its license; and

(B) The NRC has accepted its application for stand-alone preemption authority or for combined preemption authority and enhanced weapons authority for review.

(ii) Subsequent to **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**, applicants for a license who have also applied for Section 161A authority and been issued their license must ensure that a satisfactory firearms background check (as defined in § 73.2 of this part) has been completed for all security personnel who require access to covered weapons, before the licensee's initial receipt of any source material, special nuclear material, or radioactive material specified under the license.

(8) ~~Licensee actions in~~ response to an adverse firearms background check (as defined in § 73.2 of this part):

(i) The licensee must remove, without delay, from duties requiring access to covered weapons, any security personnel who receive a "denied" or "delayed" NICS response.

(ii) If the security personnel to be removed is on duty at the time of removal, then the licensee must fill the vacated position within the timeframe specified in its physical security plan.

(9) ~~Accomplishment of break-in-service firearms background checks.~~ (i) The licensee must complete a new satisfactory firearms background check for any of its security personnel that has had a break-in-service greater than 1 week.

(ii) The licensee must complete a new satisfactory firearms background check if the security personnel has transferred from a different licensee.

(iii) A break-in-service means the security personnel's cessation of employment with the licensee or its security contractor, notwithstanding that the previous licensee completed a satisfactory firearms background check on the individual within the last 5 years.

(iv) Exceptions: (A) For the purposes of this section, a break-in-service does not include a security personnel's temporary active duty with the U.S. military reserves or National Guard.

(B) The licensee, in lieu of completing a new satisfactory firearms background check, may instead verify, via an industry-wide information-sharing database, that the security personnel has completed a satisfactory firearms background check within the previous 12 months, provided that this previous firearms background check included a duty station location in the State or Territory where the licensee (who would otherwise be accomplishing the firearms background check) is located or the activity is solely occurring.

(10) Changes in the licensee's ownership or its security contractor services are not considered a break-in-service for current security personnel whose duties require access to covered weapons. Licensees are not required to conduct a new firearms background check for these security personnel.

(11) With regard to accomplishing the requirements for other background (e.g., criminal history records) checks or personnel security investigations under the NRC's

access authorization or personal security clearance program requirements of this chapter, the licensee may not substitute a satisfactory firearms background check in lieu of completing these other required background checks or security investigations.

(12) If a licensee has completed initial satisfactory firearms background checks pursuant to an NRC order issued before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**, then the licensee is not required to conduct a new initial firearms background check for its current security personnel. However, the licensee must conduct initial firearms background checks on new security personnel and periodic and break-in-service firearms background checks on current security personnel in accordance with the provisions of this section.

(13) A licensee who withdraws its application for Section 161A authority or who has its application disapproved by the NRC, must discontinue conducting firearms background checks.

(14) A licensee whose authority under Section 161A has been rescinded or whose authority has been revoked by the NRC must discontinue conducting firearms background checks.

(c) [Reserved]

(d) *Firearms background check requirements.* A firearms background check for security personnel must include—

(1) A check of the individual's fingerprints against the Federal Bureau of Investigation's (FBI's) fingerprint system; and

(2) A check of the individual's identifying information against the FBI's National Instant Criminal Background Check System (NICS).

allowance period to midnight (local time) of the last day of the calendar month of expiration.

(3) The licensee may conduct periodic firearms background checks at an interval of less than once every 5 calendar years, at its discretion.

(4) (i) Licensees may assign security personnel to duties requiring access to covered weapons while the results of the periodic firearms background check are pending.

(ii) Licensees must remove security personnel from duties requiring access to covered weapons if the satisfactory completion of a periodic firearms background check does not occur before the expiration of the allowance period.

(5) Licensees must remove, without delay, from duties requiring access to covered weapons, any security personnel who receive either a "denied" or "delayed" NICS response during a periodic firearms background check.

(g) *Notification of removal.* (1) Licensees must notify the NRC Headquarters Operations Center by telephone within 72 hours after removing security personnel from duties requiring access to covered weapons due to the identification or occurrence of any Federal or State disqualifying status condition or disqualifying event that would prohibit them from possessing, receiving, or using firearms or ammunition. Licensees must contact the NRC Headquarters Operations Center at the phone numbers specified in Table 1 of appendix A of this part.

~~(2) Exception. The licensee is not required to notify the NRC if the licensee's security management was notified by the affected security personnel within 72 hours of the identification or occurrence of any Federal or State disqualifying status condition or disqualifying event that would prohibit the individual from possessing, receiving, or using firearms or ammunition.~~

(23) The NRC will subsequently inform the FBI of any notifications received under this paragraph.

(h) *Security personnel responsibilities.* Security personnel assigned to duties requiring access to covered weapons must notify the licensee's security management within 72 hours of the identification or occurrence of any Federal or State disqualifying status condition or disqualifying event that would prohibit the individual from possessing, receiving, or using firearms or ammunition. This requirement is applicable to security personnel directly employed by the licensee or employed by a contractor providing security services to the licensee.

(i) [Reserved]

(j) *Training for security personnel subject to firearms background checks on disqualifying status conditions and disqualifying events.* (1) Licensees must include, within their Firearms Background Check Plan, training modules for security personnel assigned to official duties requiring access to covered weapons that provide training on the following topics:

(i) Federal disqualifying status conditions or disqualifying events specified in 27 CFR 478.32;

(ii) Applicable State disqualifying status conditions or disqualifying events;

(iii) The responsibility of security personnel subject to a firearms background check and assigned to official duties that require access to covered weapons to promptly notify their employing licensee of the occurrence of any disqualifying status condition or disqualifying event; and

(iv) Information for appealing an adverse firearms background check (i.e., a "denied" or "delayed" NICS response) to the FBI.

**§ 73.71 [Reserved]**

31. Remove and reserve § 73.71.

**Subpart I – Enforcement**

32. Add subpart I, consisting of existing §§ 73.76 through 73.81, under the heading set forth above. **Subparts J through S [Reserved]**

33. Add and reserve subparts J through S.

34. Add Subpart T – Security Notifications, Reports, and Recordkeeping to read as follows:

**Subpart T – Security Notifications, Reports, and Recordkeeping**

Sec.

73.1200 Notification of physical security events.

73.1205 Written follow-up reports of physical security events.

73.1210 Recordkeeping of physical security events.

73.1215 Suspicious activity reports

**§ 73.1200 Notification of physical security events.**

(a) *15-minute notifications—facilities.* Each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.51, or 73.55 of this part must notify the NRC Headquarters Operations Center, as soon as possible but within ~~approximately~~ 15 minutes after—

(1) The licensee's initiation of a security response in accordance with its safeguards contingency plan or protective strategy, based on an imminent or actual hostile action against a licensee's facility; or

(2) The licensee's notification by law enforcement or government officials of a potential hostile action or act of sabotage anticipated within the next 12 hours against a licensee's facility.

(3) Licensee notifications to the NRC must:

(i) Identify the facility's name; and

(ii) Briefly describe the nature of the hostile action or event, including:

(A) The type of hostile action or event (e.g., armed assault, vehicle bomb, bomb threat, sabotage, etc.); and

(B) The current status (i.e., imminent, in progress, or neutralized).

(4) Notifications must be made according to paragraph (o) of this section, as applicable.

(5) Exceptions: (i) The licensee is not required to notify the NRC of security responses initiated as a result of threat or warning information communicated to the licensee from the NRC.

(ii) The licensee's request for immediate local law enforcement agency (LLEA) assistance or initiation of a contingency response may take precedence over the notification to the NRC. However, in such instances, the licensee must notify the NRC as soon as possible thereafter.

(b) *15-minute notifications—shipments.* Each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, or 73.37 of this part or its designated movement control center must notify the NRC Headquarters Operations Center, as soon as possible but within ~~approximately~~ 15 minutes after—

(1) The licensee's initiation of a security response in accordance with its safeguards contingency plan or protective strategy, based on an imminent or actual hostile action against a shipment of Category I SSNM, spent nuclear fuel (SNF), or high-level radioactive waste (HLW); or

(2) The licensee's notification by law enforcement or government officials of a potential hostile action or attempted act of sabotage anticipated within less than the next 12 hours against a shipment of Category I SSNM, SNF, or HLW.

(3) Licensee notifications to the NRC must:

(i) Identify the name of the facility making the shipment, the material being shipped, and the last known location of the shipment; and

(ii) Briefly describe the nature of the threat or event, including:

(A) Type of hostile threat or event (e.g., armed assault, vehicle bomb, theft of shipment, sabotage, etc.); and

(B) Threat or event status (i.e., imminent, in progress, or neutralized).

(4) Notifications must be made according to paragraph (o) of this section, as applicable.

(5) Exceptions: (i) The licensee is not required to notify the NRC of security responses initiated as a result of threat or warning information communicated to the licensee from the NRC.

(ii) The licensee's request for immediate LLEA assistance may take precedence over the notification to the NRC. However, in such instances, the licensee must notify the NRC as soon as possible thereafter.

(c) *One-hour notifications—facilities.* (1) Each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.55, 73.60, or 73.67 of this part must notify the NRC Headquarters Operations Center as soon as possible but no later than within 1 hour after the time of discovery of the following significant facility security events involving—

(i) Any event in which there is reason to believe that a person has committed or caused, or attempted to commit or cause, or has made a threat to commit or cause:

(d) *One-hour notifications—shipments.* (1) Each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, 73.37, or 73.67 of this part or its designated movement control center must notify the NRC Headquarters Operations Center as soon as possible but no later than within 1 hour after time of discovery of the following significant transportation security events involving—

(i) Any event in which there is reason to believe that a person has committed or caused, or attempted to commit or cause, or has made a threat to commit or cause:

(A) The theft or diversion of the Category I SSNM, Category II or III SNM, SNF, or HLW being transported;

(B) Significant physical damage to any vehicle transporting Category I SSNM, Category II or III SNM, SNF, or HLW; or

(C) Significant physical damage to the Category I SSNM, Category II or III SNM, SNF, or HLW being transported.

(ii) The discovery of the loss of a shipment of Category I SSNM.

(iii) The recovery of, or accounting for, a lost shipment of Category I SSNM.

(iv) The licensee's notification by law enforcement or government officials of a potential hostile action or attempted act of sabotage anticipated within greater than the next 12 hours against a shipment of Category I SSNM, Category II or III SNM, SNF, or HLW.

(2) Notifications must be made according to paragraph (o) of this section, as applicable.

(3) Notifications made under paragraph (b) of this section are not required to be repeated under this paragraph.

(e) *Four-hour notifications—facilities.* (1) Each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.55, 73.60, or 73.67 of this part must notify

(B) This provision is applicable to facilities where the vehicle barrier system protecting the facility is located at a distance from the Protected Area boundary greater than that assumed in the facility's blast analysis.

(2) An event related to the licensee's implementation of their security program for which a notification was made to local, State, or Federal law enforcement officials provided that the event does not otherwise require a notification under paragraphs (a) through (h) of this section.

(3)(i) An event involving a law enforcement response to the facility that could reasonably be expected to result in public or media inquiries and that does not otherwise require a notification under paragraphs (a) through (h) of this section, or in other NRC regulations such as § 50.72(b)(2)(xi) of this chapter.

(ii) Exceptions: Licensees need not report law enforcement responses to minor incidents, such as ~~(e.g.,~~ traffic accidents).

(4) An event involving the licensee's suspension of security measures.

(5) Notifications must be made according to paragraph (o) of this section, as applicable.

(6) Notifications made under paragraphs (a) and (c) of this section are not required to be repeated under this paragraph.

(f) *Four-hour notifications—shipments.* (1) Each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, 73.37, or 73.67 of this part or its designated movement control center must notify the NRC Headquarters Operations Center within 4 hours after time of discovery of the following transportation security challenges involving—

(i) The actual entry of an unauthorized person into a transport vehicle transporting Category I SSNM, Category II or III SNM, SNF, or HLW;

(i) Immediately notify the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) upon discovery of any stolen or lost enhanced weapons (see 27 CFR 479.141).

(ii) Notify the NRC Headquarters Operations Center as soon as possible, but not later than 14 hours, after notification to the ATF of the discovery of any stolen or lost enhanced weapons possessed by the licensee.

(iii) Notify the appropriate local law enforcement agency (LLEA) officials as soon as possible, but not later than 48 hours, after the discovery of stolen or lost enhanced weapons. This notification must be made by telephone or in person to the appropriate LLEA officials. Licensees must include appropriate point of contact information in their security event notification procedures.

(2) Notifications to the NRC must be made according to paragraph (o) of this section, as applicable.

(n) *Enhanced weapons—adverse ATF findings.* (1) Each licensee possessing enhanced weapons in accordance with § 73.15 of this part must—

(i) Notify the NRC Headquarters Operations Center as soon as possible, but not later than 24 hours, after receipt of an adverse inspection finding, enforcement finding, or other adverse notice from the ATF regarding the licensee's possession, receipt, transfer, transportation, or storage of enhanced weapons; and

(ii) Notify the NRC Headquarters Operations Center as soon as possible, but not later than 24 hours after receipt of an adverse inspection or enforcement finding or other adverse notice from the ATF regarding any ATF issued Federal firearms license to the NRC licensee.

(2) Notifications must be made according to paragraph (o) of this section, as applicable.

(o) *Notification process.* (1) Each licensee must make the telephonic notifications to the NRC required by paragraphs (a) through (n) of this section to the NRC Headquarters Operations Center via any available telephone system. Commercial telephone numbers for the NRC Headquarters Operations Center are specified in Table 1 of appendix A of this part.

(2) Licensees must make required telephonic notifications via ~~any~~ method that will ensure that a report is received by the NRC Headquarters Operations Center or other specified government officials within the timeliness requirements of paragraphs (a) through (n) of this section, as applicable.

(3) Notifications required by this section that contain Safeguards Information may be made to the NRC Headquarters Operations Center without using secure communications systems under the exception of § 73.22(f)(3) of this part for the communication of emergency or extraordinary conditions.

(4)(i) Notifications required by this section that contain classified national security information and/or classified restricted data must be made to the NRC Headquarters Operations Center using secure communications systems appropriate to the classification level of the message. Licensees making classified telephonic notifications must contact the NRC Headquarters Operations Center at the commercial numbers specified in Table 1 of appendix A to this part and request a transfer to a secure telephone, as specified in paragraph III of appendix A to this part.

(ii) If the licensee's secure communications capability is unavailable (e.g., due to the nature of the security event), the licensee must provide to the NRC the information required by this section, without revealing or discussing any classified information, in order to meet the timeliness requirements of this section. The licensee must also indicate to the NRC that its secure communications capability is unavailable.

(iii) Licensees using a non-secure communications capability may be directed by the NRC emergency response management to provide classified information to the NRC over the non-secure system, due to the significance of the ongoing security event. In such circumstances, the licensee must document this direction and any information provided to the NRC over a non-secure communications capability in the follow-up written report required in accordance with § 73.1205.

(5) For events reported under paragraph (a) of this section, the NRC may request that the licensee establish and maintain an open and continuous communications channel with the NRC Headquarters Operations Center as soon as possible.

(i) Licensees must establish the requested continuous communications channel once the licensee has completed other required notifications under this section, § 50.72 of this chapter, appendix E of part 50 of this chapter, § 70.50 of this chapter; or § 72.75 of this chapter; as appropriate.

(ii) Licensees must cComplete any immediate actions required to stabilize the plant, to place the plant in a safe condition, to implement defensive measures, or to request assistance from the LLEA.

(iii) When established, the continuous communications channel must be staffed by a knowledgeable individual in the licensee's security, operations, or emergency response organizations from a location deemed appropriate by the licensee.

(iv) The continuous communications channel may be established via any available telephone system.

(6) For events reported under paragraph (b) of this section, the NRC may request that the licensee or its movement control center establish and maintain an open and continuous communications channel with the NRC Headquarters Operations Center as soon as possible.

(d) *Transmission criteria.* (1) In addition to the addressees specified in § 73.4 of this part, the licensee must also provide one copy of the written follow-up report addressed to the Director, Office of Nuclear Security and Incident Response (NSIR).

(2) For copies of a classified written follow-up report, the licensee must transmit them to the NRC via either the NRC Headquarters classified mailing address specified in Table 2 of appendix A to this part or via the NRC's secure e-mail address specified in Table 1 of appendix A to this part.

(3) Each written follow-up report containing classified information must be created, stored, marked, labeled, handled, transmitted to the NRC, and destroyed in accordance with the requirements of part 95 of this chapter.

(4) Each written follow-up report containing Safeguards Information must be created, stored, marked, labeled, handled, transmitted to the NRC, and destroyed in accordance with the requirements of §§ 73.21 and 73.22 of this part.

(e) *Records retention.* Licensees must maintain a copy of a written follow-up report as a record for a period of 3 years from the date of the report or until termination of the license, whichever is later.

#### **§ 73.1210 Recordkeeping of physical security events.**

(a) *Objective and purpose.* (1) Licensees with facilities or shipment activities subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, 73.37, 73.45, 73.46, 73.50, 73.51, 73.55, 73.60, or 73.67 of this part must record the ~~less significant~~ physical security events and conditions adverse to security that are specified in paragraphs (c) through (f) of this section.

(2) These records facilitate the licensee's monitoring of the effectiveness of its physical security program. These records also facilitate the licensee's effective tracking,

(ix) Whether this event or condition is a recurring failure of a structure, system, component, or procedure;

(x) What compensatory measures, if any, were implemented in response to the event or condition;

(xi) What corrective actions, if any, were taken in response to the event or condition; and

(xii) When corrective actions, if any, were taken or will be completed.

(5) Physical security events and conditions adverse to security for which notifications were made to the NRC under § 73.1200 of this part are not required to be recorded under this section.

(6) Suspicious activities that are reported under § 73.1215 of this part are not required to be recorded under this section.

(7) Enhanced weapons events that are reported under § 73.1200 of this part are not required to be recorded under this section.

(c) *Compensated security events.* [The requirements of this section apply to](#) [a](#)Any failure, degradation, or discovered vulnerability in a security or safeguards system for which compensatory measures were established within the required timeframe and for which the following could have resulted in—

(1) Undetected access of unauthorized explosives beyond a vehicle barrier;

(2) Unauthorized personnel gaining access to a protected area (PA), vital area (VA), material access area (MAA), or controlled access area (CAA);

(3) Undetected access of contraband into a PA, VA, MAA, or CAA;

(4) Unauthorized personnel into a vehicle transporting Category I strategic special nuclear material (SSNM), Category II or III special nuclear material (SNM), spent nuclear fuel (SNF), or high-level radioactive waste (HLW);

(5) Unauthorized personnel into the Category I SSNM, Category II or III SNM, SNF, or HLW material being transported;

(6) Undetected access of contraband into a vehicle transporting Category I SSNM, Category II or III SNM, SNF, or HLW; or

(7) Undetected access of contraband into the Category I SSNM, Category II or III SNM, SNF, or HLW material being transported.

(d) *Ammunition events.* [The requirements of this section apply to:](#) (1) The discovery that greater than a small quantity of live ammunition authorized by the licensee's security plan:

(i) Has been lost inside a PA, VA, MAA, or CAA; or

(ii) Has been found uncontrolled inside a PA, VA, MAA, or CAA.

(2)(i) The discovery that greater than a small quantity of unauthorized live ammunition is inside a PA, VA, MAA, or CAA.

(ii) A small quantity of live ammunition means five rounds or fewer of ammunition.

(iii) Uncontrolled authorized ammunition means ammunition authorized by the licensee's security plans that is not in the possession of authorized personnel or is not in an authorized ammunition storage location.

(iv) Unauthorized ammunition means ammunition that is not authorized by the licensee's security plans.

(3) Exceptions: (i) Ammunition that is in the possession of Federal, State, or local law-enforcement personnel performing official duties inside a PA, VA, MAA, or CAA is considered controlled and authorized; or

(ii) Blank ammunition used for training purposes by the licensee is not subject to this recording requirement.

(e) [Reserved]

(f) *Decreases in the effectiveness of the physical security program.* The requirements of this section apply to aAny other threatened, attempted, or committed act not previously defined in this section that has resulted in or has the potential for decreasing the effectiveness of the licensee's physical security program below that committed to in a licensee's NRC-approved physical security plan.

(g) *Classified Information.* Licensee recordkeeping requirements regarding any security events or conditions adverse to security involving any infractions, losses, compromises, or possible compromise of classified information or classified documents are found in § 95.57 of this chapter.

#### **§ 73.1215 Suspicious activity reports.**

(a) *Purpose.* This regulation sets forth the reporting criteria and process for licensees to use in reporting suspicious activities. Licensees are required to report suspicious activities to the local law enforcement agency (LLEA), the Federal Bureau of Investigation (FBI) local field office, the NRC, and, if aircraft are a part of the suspicious activity, the Federal Aviation Administration (FAA) local control tower ~~if aircraft are a part of the suspicious activity~~.

(b) *Objective.* (1) A licensee's timely submission of suspicious activity reports (SARs) to Federal and local law enforcement agencies is an important part of the U.S. government's efforts to disrupt or dissuade malevolent acts against the nation's critical infrastructure. Despite the increasingly fluid and unpredictable nature of the threat environment, some elements of terrorist tactics, techniques, and procedures remain constant. For example, attack planning and preparation generally proceed through several predictable stages, including intelligence gathering and preattack surveillance or reconnaissance. These preattack stages, in particular, offer law enforcement and

security personnel a significant opportunity to identify and disrupt or dissuade acts of terrorism before they occur. However, to use this information most effectively, timely reporting of suspicious activities by licensees to both Federal and local law enforcement is of vital importance.

(2) Licensee's timely submission of SARs to the NRC supports one of the agency's primary mission essential functions of threat assessment for licensed facilities, materials, and shipping activities.

(c) *General requirements.* (1)(i) Licensees subject to paragraphs (d), (e), and (f) of this section must report suspicious activities that are applicable to their facility, material, or shipping activity.

(ii) If a suspicious activity requires a physical security event notification pursuant to § 73.1200 of this part, then the licensee is not required to also report the occurrence as a suspicious activity pursuant to this section.

(iii) If a suspicious activity report results in a LLEA response ~~and that response may result in public or media inquiries to the NRC,~~ the licensee must notify the NRC in accordance with the requirements of § 73.1200 of this part.

(2)(i) Licensees must promptly assess whether an activity is suspicious. Licensees may review additional information as part of an assessment process, including interactions with their off-site LLEA. However, such assessments and any subsequent reporting must be completed as soon as possible, but within 8 hours of the time of discovery. The licensee must base its assessment upon its best available information on the activity, which may include its knowledge of its locale and the local population.