UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
OFFICE OF NUCLEAR MATERIALS SAFETY AND SAFEGUARDS
WASHINGTON. D.C. 20555-0001

July 11, 2005

# NRC REGULATORY ISSUE SUMMARY 2005-12
# TRANSPORTATION OF RADIOACTIVE MATERIAL QUANTITIES OF CONCERN
# NRC THREAT ADVISORY AND PROTECTIVE MEASURES SYSTEM

## ADDRESSEES

U.S. Nuclear Regulatory Commission (NRC or Commission) licensees authorized to possess radioactive material that equals or exceeds the threshold values in the Additional Security Measures (ASM) for transportation of Radioactive Material Quantities of Concern (RAMQC) under their 10 CFR Part 30, 32, 50, 70, and 71 licenses and Agreement State licensees similarly authorized to possess such material in such quantities under their Agreement State licenses.

## INTENT

The NRC is issuing this Regulatory Issue Summary (RIS) to inform addressees of changes to the threat advisory conditions and protective measures system for their use in preplanning graded protective measures to respond to changes in the threat environment. A RIS is generally used to communicate with the nuclear industry on various matters for which no response or action is required. This RIS communicates actions that the NRC considers appropriate at each threat level. The Commission has determined that issuance of this RIS is the most efficient mechanism to align the Department of Homeland Security (DHS), the NRC, and licensee expectations about licensees' response to threat advisories.

When separated from Attachment B this document is DECONTROLLED.

**WARNING:** Violations of Section 147 of the Atomic Energy Act, "Safeguards Information" is subject to Civil and Criminal Penalties

**BACKGROUND INFORMATION**

DHS has developed a Homeland Security Advisory System (HSAS) to provide a comprehensive and effective system for disseminating information concerning the risk of terrorist attacks to Federal, State, and local authorities and the public. The HSAS implements Homeland Security Presidential Directive 3, as amended (HSPD-3), dated March 11, 2002 (Attachment A). Additional information on HSPD-3 can also be found on the White House Web site at http://www.whitehouse.gov/news/releases/2002/03/20020312-1.html. The NRC previously issued RIS 2003-16 to identify a change in the HSPD-3, as amended (HSPD-3), dated March 11, 2002 to addressees who received RISs 2002-12A, -12B, -12C, -12D, -12E, -12F, -12G, -12H, -12I, -12I Revision 1, and -12L. The change was required by Homeland Security Presidential Directive (HSPD-5), "Management of Domestic Incidents," dated February 28, 2003. HSAS has included five color-coded threat conditions with a description of corresponding actions at each level:

- Green (low condition) Low risk of terrorist attack
- Blue (guarded condition) General risk of terrorist attack
- Yellow (elevated condition) Significant risk of terrorist attack
- Orange (high condition) High risk of terrorist attack
- Red (severe condition) Severe risk of terrorist attack

**SUMMARY OF ISSUE**

The HSAS provides a consistent national framework for government officials and citizens to communicate the nature and extent of terrorist threats. The advisory system characterizes appropriate levels of vigilance, preparedness, and readiness for each threat condition, and describes associated actions that should be taken to counter and respond to terrorist activities.

In declaring threat conditions, the Secretary of Homeland Security in consultation with the Attorney General, members of the Homeland Security Council, and any other appropriate federal agency heads, will consider, but is not limited to, the following factors:

- To what degree is the threat information credible?
- To what degree is the threat information corroborated?
- To what degree is the threat specific and/or imminent?
- How grave are the potential consequences of the threat?
- To what degree is the target vulnerable to the threat?

HSAS advisories regarding threat conditions may be declared for the entire Nation, a specific geographical area or an industrial sector. The advisories will be sent to local, State, and Federal government agencies as appropriate. In general, the threat conditions escalate as the likelihood or imminence of an attack increases.

Although the threat condition will be determined by the Attorney General, the NRC is responsible under HSPD-3 to establish the appropriate protective measures for the facilities under its regulatory authority. In addition, the NRC is responsible for responding to risks, threats, incidents, and events at NRC licensed facilities or involving NRC licensed material.

Upon a declaration of an HSAS threat condition, the NRC will promptly notify affected licensees of the threat condition and the appropriate recommended protective measures to be taken. In addition, the NRC may notify affected licensees to establish certain protective measures in the absence of an HSAS declaration. For example, the NRC could take such a step in response to an emergency or site-specific situation.

The NRC is using this RIS to announce its threat advisory and protective measures system to implement the HSAS for licensees transporting RAMQC, and spent nuclear fuel less than 100 grams. The NRC will use the color-coded system defined by the HSAS to relay information on the threat conditions. The NRC has also defined five levels of protective measures (Attachment B containing Safeguards Information), which generally correlate with the five color-coded conditions of the HSAS. Protective measures at each level build upon the actions defined in the lower levels. For example, measures at Level III will include those measures taken at levels I and II.

- Level I (low) protective measures, which generally correspond to the green threat condition, are considered routine level of operation. The protective measures are met by licensees maintaining their security programs required by the regulations, licenses, or Orders. Measures to enhance security need to be available for implementation in the event of a higher threat condition.

- Level II (guarded) protective measures, which generally correspond to the blue threat condition, involve more activities by the licensees, but generally do not involve significant non-routine actions. The activities typically relate to readiness, (e.g., notifying personnel to stand by or bringing in additional security officers to prepare for an enhanced response). Actions taken at Level II include actions taken at Level I.

- Level III (elevated) protective measures, which generally correspond to the yellow threat condition, involve enhanced security measures and additional resources, perhaps on a sustained basis, but utilize hardware and personnel already at the licensee's disposal. The first HSAS announcement on March 12, 2002, DHS considered the country to be in a yellow threat condition. Actions taken at Level III will include actions taken at Levels I and II.

- Level IV (high) protective measures, which generally correspond to the orange threat condition, assume that the licensee's security organization is at its highest sustainable level and that the licensee will request augmentation from local and State and possibly Federal resources to provide additional defensive capabilities. NRC advisories will provide additional specific information to the licensee(s) as information about the threat develops. Any additional licensee actions will be based on threat specific information. Actions taken at Level IV include actions taken at Levels I, II, and III.

- Level V (severe) protective measures, which generally correspond to the red threat condition, assume that the licensee will request augmentation by Federal resources (in addition to already requested State and local resources) to provide additional defensive capabilities. The NRC will facilitate implementation of this added Federal presence. It is expected that this condition will be limited to one or a very small number of licensees for a limited period of time. Any additional specific actions will be based on an ongoing

assessment of the threat by the NRC and other Federal agencies. Actions taken at Level V will include actions taken at Levels I, II, III, and IV.

When a change in threat condition that affects NRC and Agreements States' licensees, the NRC will issue a threat advisory to its licensees. The NRC will refer licensees to the recommended protective measures described in Attachment B. Regardless of the current threat condition, licensees are required to comply with existing regulations, licenses, and Orders. Attachment B provides clear descriptions of the basic actions that are necessary to achieve the desired level of protection. The NRC may tailor the protective measures, including specific instructions on protection against a specific mode of attack.

In some cases, the circumstances of a particular threat may warrant that additional security measures be implemented beyond those provided in Attachment B. Such additional measures may be necessary depending on the type of licensee affected, the safeguards risks associated with various licensed activities, the specific vulnerabilities of a given activity, the suspected mode of attack, and the likelihood and nature of the threat. Although most terrorist attacks occur without specific warning, whenever possible the NRC will provide information about the nature and projected time frame of the threat.

The protective measures in Attachment B are specified for particular threat levels depending on the seriousness of the threat and the urgency of the action to address the threat. Therefore, it is imperative that prompt implementation of the measures are performed to protect the facility (or activities).

HSPD-3 makes clear that agency heads "retain the authority to respond, as necessary, to risks, threats, incidents, or events at facilities (or activities) within the specific jurisdiction of their department or agency." Therefore, the Commission may need to impose additional measures in response to a fast-moving situation during the transition period prior to formal declaration of a threat escalation by the Attorney General.

The NRC will revise Attachment B to this RIS as necessary. In addition, this RIS will be reviewed at least once a year and revised as necessary. Licensees seeking to provide input to the RIS and possible revisions should forward comments to the contact listed below.

**BACKFIT DISCUSSION**

This RIS requires no action or written response and is therefore not a backfit under 10 CFR Part 50.109, 70.76, and 76.76. This RIS communicates actions the NRC considers appropriate at each threat level, but these actions are not requirements. Therefore, the staff did not perform a backfit analysis.

## *FEDERAL REGISTER* NOTIFICATION

A notice of opportunity for public comment was not published in the *Federal Register* because this RIS is informational. The Commission also plans to issue additional regulatory issue summaries in this series to cover additional classes of licensees, or NRC-licensed activities, as NRC's review progresses. Any specific comments should be forwarded to the contact listed below.

## SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT of 1996

In accordance with the Small Business Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

## PAPERWORK REDUCTION ACT STATEMENT

This RIS does not contain information collections and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.).

## CONTACT

Please direct any questions about this matter to the technical contact listed below.

**/RA/**

Patrick L. Hiland, Chief
Reactor Operations Branch
Division of Inspection Program Management
Office Nuclear Reactor Regulation

**/RA/**

Charles L. Miller, Director
Division of Industrial and Medical Nuclear Safety
Office of Nuclear Material Safety and Safeguards

CONTACT: Rocky Foster, NSIR/DNS
(301) 415-7670
E-mail: rdf@nrc.gov

Attachments:
(A) HSPD-3, Homeland Security Advisory System, as amended by HSPD-5
(B) Threat Conditions and Recommended Actions for the Transportation of Radioactive Material Quantities of Concern, and Spent Nuclear Fuel Less Than 100 grams
(C) List of Recently Issued NMSS Generic Communications

Attachment B will not be released to the public because it contains Safeguards Information and must be accorded the protection required under 10 CFR 73.21

Note: NRC generic communications may be found on the NRC public website, http://www.nrc.gov, under Electronic Reading Room/Document Collections.