



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

OFFICE OF THE
INSPECTOR GENERAL

October 8, 2009

MEMORANDUM TO: R. William Borchardt
Executive Director for Operations

FROM: Stephen D. Dingbaum */RA/*
Assistant Inspector General for Audits

SUBJECT: STATUS OF RECOMMENDATIONS: AUDIT OF NRC'S
AGREEMENT STATE PROGRAM (OIG-09-A-08)

REFERENCE: DIRECTOR OF THE OFFICE OF FEDERAL AND STATE
MATERIALS AND ENVIRONMENTAL MANAGEMENT
PROGRAMS MEMORANDUM DATED AUGUST 27, 2009

Attached is the Office of the Inspector General's (OIG) analysis and status of recommendations as discussed in the agency's response dated August 27, 2009. Based on the response, recommendation 4 has been resolved and recommendations 1, 2, 3, and 5 remain resolved. Please provide an update for these recommendations by April 15, 2010.

If you have questions or concerns, please call me at 415-5915 or Sherri Miotla, Team Leader, at 415-5914.

Attachment: As stated

cc: V, Ordaz, OEDO
J. Arildsen, OEDO
C. Jaegers, OEDO

Audit Report
Audit of NRC's Agreement State Program
OIG-09-A-08

Status of Recommendations

Recommendation 1: Develop a mechanism for conducting self-assessments and capturing lessons learned for IMPEP on a regular basis.

Agency Response Dated
August 27, 2009: The Agency's responses remain on schedule as indicated in the April 14, 2009, and June 24, 2009, responses.

OIG Analysis: The agency's proposed corrective action to perform a self-assessment of IMPEP by 2010, and examine the frequency for repeat assessments, meets the intent of the recommendation. This recommendation will be closed when the agency submits, and OIG reviews, the results of the proposed self-assessment and the mechanism for conducting an ongoing assessment and capturing lessons learned.

Status: Resolved.

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Status of Recommendations

Recommendation 2: Develop formal procedural guidance for identifying what information is needed about Agreement State programs and materials licensees in the event that an Agreement State is no longer capable of adequately performing its function of protecting public health and safety for an indeterminate period of time.

Agency Response Dated
August 27, 2009: The Agency's responses remain on schedule as indicated in the April 14, 2009, and June 24, 2009, responses.

OIG Analysis: The agency's proposed corrective action to identify the information needed to temporarily take back a Section 274b Agreement and incorporate it into FSME guidance meets the intent of the recommendation. The recommendation will be closed when the agency submits, and OIG reviews, the FSME guidance used to incorporate the proposed action.

Status: Resolved.

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Status of Recommendations

Recommendation 3: Develop a set of procedures that standardizes communications from NRC to the Agreement States.

Agency Response Dated
August 27, 2009: The Agency's responses remain on schedule as indicated in the April 14, 2009, and June 24, 2009, responses.

OIG Analysis: The agency's proposed corrective action to revise AD-200 and SA-1101 and strengthen RSAO information sharing and knowledge management meets the intent of the recommendation. The recommendation will be closed when the agency submits, and OIG reviews, the revised guidance and the actions taken to strengthen RSAO communication.

Status: Resolved.

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Status of Recommendations

Recommendation 4: Develop a standardized data collection process that can be used as the basis of an information sharing tool on a national level.

Agency Response Dated
August 27, 2009:

Staff has engaged the Office of the General Counsel (OGC) and is currently awaiting OGC's ruling on the potential legal impediments to Office of the Inspector General's (OIG) envisioned information sharing tool on allegation and enforcement data, as well as all regulatory information that may be beneficial to the conduct of regulatory business among the States and NRC. Some potential impediments for allegation and enforcement data identified by staff are: (1) Agreement States are subject to their State laws that could prohibit or limit the State from sharing information or taking a specific action that NRC can take. Recently, the wide range of administrative and legal impediments that the Agreement States faced for implementing the fingerprinting orders resulted in their licensees sending the fingerprints directly to the NRC for processing. (2) If NRC's public, or even a protected, website was used as the portal to share certain types of this information, it could result in a defacto "Black List" of individuals who have not been given full benefit of due process. (3) If OGC does not identify any legal impediments, NRC would have to pursue an Office of Management and Budget information collection clearance to collect the information. Given that NRC has relinquished its regulatory authority, it could be difficult to justify the additional paperwork burden that would be placed on the States as a result of this information collection.

Once staff has OGC's ruling, staff will have a better idea of the next step staff will need to take to address this recommendation. Regardless, staff will engage the Organization of Agreement States (OAS) Executive Board to discuss options for voluntary collection of this information during the OAS Annual Meeting in September 2009. We also intend to poll the Agreement States to gather

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Status of Recommendations

Recommendation 4 continued:

information regarding the States' abilities, as well as the legality, of the sharing of this information, in addition to determining what may already be available. The responses from the individual States will also inform the staff's formulation of potential options for collection of this information.

Completion Date: December 2009

OIG Analysis:

The agency's proposed corrective action to discuss with OGC the potential legal impediments of implementing an information sharing tool and the agency's intention to poll the Agreement States in order to develop a standardized data collection process meets the intent of the recommendation. The recommendation will be closed when the agency develops a standardized data collection process that can be used as the basis of an information sharing tool on a national level or when OGC officially determines that legal impediments prevent NRC from implementing the recommendation.

Status:

Resolved.

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Status of Recommendations

Recommendation 5: Revise the applicable IMPEP procedure(s) to include a review of Agreement State events that are not recorded in the Nuclear Materials Events Database (NMED) for an analysis of whether they should have been included.

Agency Response Dated August 27, 2009: The Agency's responses remain on schedule as indicated in the April 14, 2009, and June 24, 2009, responses.

OIG Analysis: The agency's proposed corrective action to revise SA-105 to include a review of Agreement State events that are not recorded in NMED for an analysis of whether they should have been included meets the intent of the recommendation. This recommendation will be closed when the agency submits, and OIG reviews, the final revision for SA-105.

Status: Resolved.