



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

**OFFICE OF THE
INSPECTOR GENERAL**

January 7, 2011

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, OFFICE OF FEDERAL AND STATE
MATERIALS AND ENVIRONMENTAL MANAGEMENT
PROGRAMS, MEMORANDUM DATED NOVEMBER 15,
2010

Attached is the Office of the Inspector General's (OIG) analysis and status of recommendations as discussed in the agency's response dated November 15, 2010. Based on the response, recommendation 3 has been closed and recommendations 1, 2, and 4 remain resolved. Recommendation 5 was previously closed. Please provide an update for these recommendations by April 15, 2011.

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

Attachment: As stated

cc: M. Muessle, OEDO
J. Andersen, 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
November 15, 2010:

The first self-assessment of the IMPEP was completed and a report was issued to Robert J. Lewis, Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs (FSME) on July 22, 2010 (ML102030209). Appendix C of the report is a draft procedure for future self-assessments. Using this Appendix as a template, staff plans to finalize a procedure for future self-assessments by September 30, 2011.

OIG Analysis:

The agency's self-assessment of IMPEP completed during 2010 and ongoing effort to develop a procedure for future self-assessments, meets the intent of the recommendation. OIG commends the agency's performance of this initial self-assessment, which was comprehensive and thorough and sets the standard for future IMPEP self-assessments. This recommendation will be closed when the agency submits, and OIG reviews, the finalized procedure for conducting future self-assessments.

Status:

Resolved.

Audit Report

AUDIT OF NRC'S AGREEMENT STATE PROGRAM

OIG-09-A-08

Status of Recommendations

<u>Recommendation 2:</u>	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 November 15, 2010:	Staff has re-evaluated the FSME State Agreements (SA) Procedures and determined that FSME Procedures SA-112, "Emergency Suspension of a Section 274b. Agreement" and SA-114, "Suspension of a Section 274b. Agreement," are the most appropriate places to include the identified information. Staff has drafted revisions to these procedures and expects these two documents to go out for comment both internally within the U.S. Nuclear Regulatory Commission (NRC) and externally to stakeholders in December 2010. The current estimated date of completion for both documents is March 2011.
OIG Analysis:	The agency's proposed corrective action to revise FSME Procedures SA-112 and SA-114 to include guidance for identifying information needed about Agreement State programs and materials licensees in the event that an Agreement State is no longer capable of adequately performing its function meets the intent of the recommendation. The recommendation will be closed when the agency submits, and OIG reviews, the revised FSME procedures.
Status:	Resolved.

Audit Report

AUDIT OF NRC'S AGREEMENT STATE PROGRAM

OIG-09-A-08

Status of Recommendations

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

Agency Response Dated
November 15, 2010:

In your December 10, 2009, memorandum to R. W. Borchardt, Executive Director for Operations, you indicated that the Office of the Inspector General (OIG) will consider this recommendation closed when the agency submits, and OIG reviews, the revised FSME Procedure AD-200, "Format for FSME Letters." Staff has finished revisions to FSME Procedure AD-200 and is currently in the process of submitting the procedure to OIG by November 15, 2010. With the completion of OIG's review of the procedure, we consider this recommendation to be closed.

OIG Analysis:

OIG auditors reviewed the revised FSME Procedure AD-200, "Format for FSME and RCPD Letters," and determined that the procedure, along with FSME Procedure AD-800, includes detailed guidance for standardizing communications, both formal and informal, between NRC and Agreement States. OIG concludes that the agency's actions satisfy the intent of this recommendation. Therefore, recommendation 3 is now closed.

Status: Closed.

Audit Report

AUDIT OF NRC'S AGREEMENT STATE PROGRAM

OIG-09-A-08

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
November 15, 2010:

Staff has engaged the Office of the General Counsel (OGC) in discussions on the legality of collecting Agreement State information on bans against individuals from using radioactive materials, revocations and suspensions of radioactive materials licenses, enforcement actions taken against licensees, and allegations involving radioactive materials. OGC ruled that, although NRC has relinquished its regulatory authority in the Agreement States, NRC does legally have a right to collect the above listed information if NRC determines it is necessary to collect the information in order to fulfill its statutory oversight role. FSME staff is evaluating the benefits of the collection of this information versus the NRC's and Agreement States' annual resource burdens for providing, analyzing, and sharing the information.

A mandatory requirement for collection of this information from the Agreement States would require a policy change to the "Commission's Policy Statement on the Adequacy and Compatibility of Agreement State Programs" (62 FR 4517). Also, staff would be required to obtain a new or modify an existing Office of Management and Budget information collection clearance. A voluntary sharing of the information would have to yield to State privacy laws, specifically allegation information and actions taken against individuals. Implementation of any data collection for this information, whether mandatory or voluntary, could take as long as five years to institute. On April 16, 2010, staff issued a questionnaire to the Agreement States in order to obtain their input on their willingness to share certain information, estimates of the annual burden to share the information, and

Audit Report

AUDIT OF NRC'S AGREEMENT STATE PROGRAM

OIG-09-A-08

Status of Recommendations

Recommendation 4 (continued):

the legality of sharing the information from the State perspective (RCPD-10-006, ML100750102). As of October 2010, 18 of the 37 Agreement States had responded to the questionnaire. These 18 Agreement States represent approximately 61 percent of the licensees located in Agreement States. Staff is currently in the process of reaching out to Agreement States who have not yet provided a response in hopes of encouraging more Agreement States to respond. Staff then plans to analyze all of the data collected and provided the OIG with a proposed path forward with regards to this recommendation in early 2011.

OIG Analysis:

The agency's ongoing effort to obtain Agreement State input on their willingness to share certain information, estimates of the annual burden to share the information, and the legality of sharing the information in order to develop a data collection process that can be used as the basis of an information sharing tool on a national level 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 NRC and Agreement States officially determine that the annual resource burden for Agreement States to share this information prevents the agency from implementing the recommendation.

Status:

Resolved.