



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

**OFFICE OF THE
INSPECTOR GENERAL**

May 23, 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: ACTING DIRECTOR, OFFICE OF FEDERAL AND STATE
MATERIALS AND ENVIRONMENTAL MANAGEMENT
PROGRAMS, MEMORANDUM DATED APRIL 15, 2011

Attached is the Office of the Inspector General's analysis and status of recommendations as discussed in the agency's response dated April 15, 2011. Based on this response, recommendation 2 is now closed and recommendations 1 and 4 remain resolved. Recommendations 3 and 5 were previously closed. Please provide an update for the resolved recommendations by August 10, 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

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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
April 15, 2011:

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). To establish the self-assessment process, staff has drafted FSME State Agreements (SA) Procedure SA-123, "Conducting Self-Assessment of the Integrated Materials Performance Evaluation Program." The document was distributed for comment both internally within U.S. Nuclear Regulatory Commission (NRC) and externally to stakeholders on January 21, 2011 (ML103630011). The current estimated date of completion of the final procedure is June 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. This recommendation will be closed when the agency submits, and OIG reviews, the finalized procedure for conducting future self-assessments.

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
April 15, 2011:

Staff 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," were the most appropriate places to include the identified information. Staff has completed and finalized revisions to these procedures. These procedures were submitted to the Office of the Inspector General (OIG) on March 4 and March 9, 2011, respectively. With the completion of OIG's review of these procedures, we consider this recommendation to be closed.

OIG Analysis:

OIG auditors reviewed the revised FSME Procedures SA-112, *Emergency Suspension of a Section 274b. Agreement*, and SA-114, *Suspension of a Section 274b. Agreement*. OIG determined that these procedures include detailed 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. OIG concludes that the agency's actions satisfy the intent of this recommendation. Therefore, recommendation 2 is now closed.

Status:

Closed.

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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
April 15, 2011:

Staff 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 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 5 years to institute.

On April 16, 2010, staff issued a questionnaire to the Agreement States in order to obtain their input on their

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Status of Recommendations

Recommendation 4 (continued):

willingness to share certain information, estimates of the annual burden to share the information, and the legality of sharing the information from the State perspective (RCPD 10-006, ML100750102). As of November 2010, 22 of the 37 Agreement States responded to the questionnaire. Staff evaluated 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 (ML110880109, enclosed). Staff analyzed the data and concluded that a voluntary, password protected database on the FSME public website should be created to include Agreement State enforcement actions involving bans, revocations, suspensions and denials. Staff is currently proceeding to build the database. Staff plans to issue an Agreement State letter by June 15, 2011, to solicit for information for the database.

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 development of 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.

Status:

Resolved.