

AUDIT REPORT

Audit of NRC's Use of Orders

OIG-12-A-19 September 25, 2012



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EXECUTIVE SUMMARY

BACKGROUND

The U.S. Nuclear Regulatory Commission (NRC) is authorized to enforce its regulatory requirements by imposing sanctions, such as orders, against licensees or other persons subject to the Commission's jurisdiction who are in violation of requirements. An order is a written NRC directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to take such other action as may be proper. The Commission's order issuing authority under the *Atomic Energy Act of 1954, as amended* (AEA), Section 161 extends to any area of licensed activity that the Commission deems necessary to promote the common defense and security or to protect health or to minimize danger to life or property.

The enforcement program supports the agency's overall safety and security mission, and the *NRC Enforcement Policy* and *NRC Enforcement Manual (Manual)*—maintained by the Office of Enforcement—are the primary sources of guidance for NRC staff implementing the enforcement program. According to the *Manual*, order-issuing authority resides in several offices and regions and order followup is dependent upon the type of order, and may consist of inspection activity, tracking, and order closure.

OBJECTIVE

The audit objective was to evaluate the efficiency and effectiveness of NRC's documentation, verification, and closure process for issued orders.

RESULTS IN BRIEF

Based on the Office of the Inspector General's (OIG) review of followup for selected orders, OIG did not identify instances where the agency did not follow up on the recipients' implementation of the requirements stipulated in orders. However, the efficiency and effectiveness of NRC's documentation, verification, and closure process for issued orders can be improved. Specifically, opportunities exist to:

1. Enhance agency guidance defining order types and for the followup, tracking, and closure of orders.

2. Obtain updated documented delegations of authority for issuing orders for selected offices.

ORDER GUIDANCE

Guidance for following up on orders should be clear and comprehensive; yet, this is not the case for all types of NRC orders. This is because some offices have not identified, documented, and coordinated order followup, tracking, and closure requirements. Improvements to the guidance on orders would support NRC's knowledge management efforts and would better inform licensees and the public of NRC's order process.

DELEGATIONS OF AUTHORITY

Commission authorities, including the authority to issue orders, may be delegated as per the AEA. The delegations of authority to issue orders for three key officers—including the Office of International Programs (OIP) Director, the Executive Director for Operations (EDO), and the Chief Financial Officer (CFO)—is documented inconsistently. Specifically, the CFO's authority to issue orders was delegated via a Chairman's memo, whereas agency staff have been unable to locate a similar document for the OIP Director and the EDO. Agency staff have not sought a similar updated documented delegation of authority for the OIP Director and the EDO to issue orders. Absent an updated documented delegation of authority to issue orders, the agency could face delays in pursuing enforcement of orders in the event of noncompliance by an order recipient.

RECOMMENDATIONS

This report makes recommendations to improve the agency's use of orders. A consolidated list of these recommendations appears on page 10 of this report.

AGENCY COMMENTS

On August 28, 2012, OIG issued the discussion draft of this report to the EDO. OIG met with NRC management and staff on September 6, 2012, at an exit conference to discuss the draft report content. At this meeting, the agency provided informal comments, which OIG subsequently incorporated into the draft report as appropriate. NRC management and staff reviewed the revised draft report and opted not to provide formal comments for inclusion in this final report.

ABBREVIATIONS AND ACRONYMS

AEA	Atomic Energy Act of 1954, as amended
CFO	Chief Financial Officer
CFR	Code of Federal Regulations
EDO	Executive Director for Operations
Manual	NRC Enforcement Manual
NRC	Nuclear Regulatory Commission
OEDO	Office of the Executive Director for Operations
OGC	Office of the General Counsel
OIG	Office of the Inspector General
OIP	Office of International Programs

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I. BACKGROUND

The U.S. Nuclear Regulatory Commission (NRC) is authorized to enforce its regulatory requirements by imposing sanctions, such as orders, against licensees or other persons subject to the Commission's jurisdiction who are in violation of requirements. An order is a written NRC directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to take such other action as may be proper. The Commission's order issuing authority under the *Atomic Energy Act of 1954, as amended* (AEA), Section 161 extends to any area of licensed activity that the Commission deems necessary to promote the common defense and security or to protect health or to minimize danger to life or property.¹ Commission regulations provide that orders may be issued to non-licensees, including holders of NRC approvals (e.g. NRC certificates of compliance, early site permits, standard design certifications, quality assurance program approvals), applicants for NRC approvals, and non-licensed individuals and their employees, including contractors and subcontractors.

The enforcement program supports the agency's overall safety and security mission, and the *NRC Enforcement Policy* and *NRC Enforcement Manual (Manual)*—maintained by the Office of Enforcement—are the primary sources of guidance for NRC staff implementing the enforcement program. According to the *Manual*, order-issuing authority resides in the Offices of Enforcement, New Reactors, Nuclear Reactor Regulation, Nuclear Material Safety and Safeguards, Federal and State Materials and Environmental Management Programs, the Chief Financial Officer, and the regional offices. The Office of International Programs (OIP) has issued orders. The Offices of Nuclear Security and Incident Response, the General Counsel, and Investigations are not order-issuing offices, however, these offices may provide supportive roles in preparing and drafting orders, the hearing process, and following up on orders after issuance.

Order followup is dependent upon the type of order, and may consist of inspection activity, tracking, and order closure. NRC issues various types

¹ NRC implements AEA Section 161 through *Title 10, Code of Federal Regulations* (10 CFR), Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders." 10 CFR Part 2, Subpart B, "Procedure for Imposing Requirements by Order, or for Modification, Suspension, or Revocation of a License, or for Imposing Civil Penalties," describes the formal procedures that NRC uses to implement its enforcement authority.

of orders such as transfer, security, safety, and nonpayment of license and inspection fee orders; the type of order and/or language in the order determines the level of followup needed. Some program and regional offices have responsibilities to follow up on orders. For example, the regions are responsible for tracking, inspection, and followup of actions contained in Alternative Dispute Resolution confirmatory orders involving wrongdoing cases for their region.

II. OBJECTIVE

The audit objective was to evaluate the efficiency and effectiveness of NRC's documentation, verification, and closure process for issued orders. Appendix A of this report contains information on the audit scope and methodology.

III. FINDINGS

Based on the Office of the Inspector General's (OIG) review of followup for selected orders, OIG did not identify instances where the agency did not follow up on the recipients' implementation of the requirements stipulated in orders. However, the efficiency and effectiveness of NRC's documentation, verification, and closure process for issued orders can be improved. Specifically, opportunities exist to:

- 1) Enhance agency guidance defining order types and for the followup, tracking, and closure of orders.
- 2) Obtain updated documented delegations of authority for issuing orders for selected offices.

A. ORDER GUIDANCE

Guidance for following up on orders should be clear and comprehensive; yet, this is not the case for all types of NRC orders. This is because some offices have not identified, documented, and coordinated order followup, tracking, and closure requirements. Improvements to the guidance on orders would support NRC's knowledge management efforts and would better inform licensees and the public of NRC's order process.

Order Guidance Should Be Clear and Comprehensive

To be effective, agency guidance should be clear and comprehensive. During an agencywide project to revise the NRC's management directive system, NRC stakeholders—including staff who review, author, or use NRC guidance—confirmed the importance of an effective system of

guidance to help them understand and carry out their responsibilities. To be truly effective, guidance must be high-profile, easily accessible, trusted, user-friendly, current, accurate, and comprehensive. Guidance that is more specific than the management directives—including guidance on NRC's followup process for orders—should also be concise and specific, and clearly communicate NRC's intent and expectations to facilitate staff in implementing a fully successful process for following up on orders.

Guidance for Followup of Orders Is Not Clear and Comprehensive

The guidance for order followup is not clear and comprehensive in that not all program and regional offices that follow up on orders cited relevant guidance needed to document the order followup, tracking, and closure process described by agency staff. Not all offices and regions provided OIG with guidance describing their respective process for following up on orders. Some offices reported having no relevant guidance for followup of orders. For those offices that did provide guidance, the guidance ranged from a verbal description of the process to various types of documents including office instructions, inspection procedures, memoranda, and/or agencywide enforcement procedures that do not include specific information needed to document their followup, tracking, and closure of the various order types described by agency staff.

Followup Requirements and Expectations Have Not Been Documented and Coordinated

Guidance on order followup is not clear and comprehensive because some offices have not identified, documented, and coordinated the requirements of the followup process—including inspection activity, and order tracking and closure—for the types of orders for which they are responsible.

In some instances, when asked about the process for following up on orders, staff members stated that orders are used for high-profile or significant agency actions and, therefore, staff members are already aware of the followup needed for the issued orders. Additionally, staff members stated that under some circumstances, they do not have to follow up on orders. However, NRC has not documented this expectation. Other offices reference the *Manual* as their source for order followup guidance, but concepts—such as the applicability of followup options, tracking, and closure—are not addressed in the *Manual*. The *Manual* does not provide

followup procedures and expectations for all program and regional offices. For example, the *Manual* is silent on whether all, some, or none of the different types of orders require followup; the extent of verification needed for followup on orders; and whether orders need to be tracked for purposes of monitoring the recipient's progress in meeting the requirements of the order.

The Office of Enforcement is responsible for maintaining the *Manual*; however, Office of Enforcement staff stated that they cannot address requirements and expectations for all order types, followup, tracking, and closure without coordination with and input from other NRC offices. In fact, the *Manual* only addresses followup for a single type of order, the Alternative Dispute Resolution related order. The *Manual* mentions other types of orders—including security, safety, and non-enforcement related orders—yet does not consistently provide clear definitions of each type or any delineation between the types of followup expected for each. For example, staff explained that transfer orders do not require additional followup or closure, whereas security and safety related orders may require regional inspections to verify the recipients' implementation of items in the orders.

Impact on Knowledge Management and Agency Accountability

Without clear and comprehensive guidance on how NRC follows up on orders, NRC may not be able to meet its knowledge management goals, and places licensees and the public at a disadvantage with regard to understanding NRC's processes for order followup.

Knowledge management consists of a continuous, disciplined, and timely process of identifying, collecting, and using information to better accomplish NRC activities. Without a documented process of followup for all the various types of orders NRC issues, NRC must rely on experienced staff to teach them the process. During the audit, staff also explained that they had to figure out how to follow up on orders without the benefit of any documentation of the process.

NRC promulgates "Openness," stating, "Nuclear regulation is the public's business, and it must be transacted publicly and candidly." Essentially, openness helps the licensees and the public hold public officials accountable. Full disclosure and transparency of the agency's process for

followup on orders—which are predominantly issued to licensees and/or the public—assists in this accountability. Until the agency provides a documented process for followup for all the various types of orders NRC issues, licensees and the public will be left to accept on good faith NRC's representation of the process at the time the process is ongoing.

Recommendations

OIG recommends that the Executive Director for Operations:

1. Identify and document order followup requirements and/or revise the *NRC Enforcement Policy*, as appropriate, and *Manual* to include, for each type of order, descriptions of the order type, definitions, and expectations for order followup, tracking, and closure.

OIG recommends that the Chief Financial Officer:

2. Identify and document order followup requirements for Chief Financial Officer issued orders and/or coordinate with Office of Enforcement staff to revise the *NRC Enforcement Policy*, as appropriate, and *Manual* to include definitions, and expectations for order followup, tracking, and closure.

OIG recommends that the Director, Office of International Programs:

3. Identify and document order followup requirements for Office of International Programs issued orders and/or coordinate with Office of Enforcement staff to revise the *NRC Enforcement Policy*, as appropriate, and *Manual* to include definitions, and expectations for order followup, tracking, and closure.

B. DELEGATIONS OF AUTHORITY

Commission authorities, including the authority to issue orders, may be delegated as per the AEA. The delegations of authority to issue orders for three key officers—OIP Director, Executive Director for Operations (EDO), and Chief Financial Officer (CFO)—is documented inconsistently. Specifically, the CFO's authority to issue orders was delegated via a Chairman's memo, whereas agency staff have been unable to locate a similar document for the OIP Director and the EDO. Agency staff have not sought a similar updated documented delegation of authority for the OIP Director and the EDO to issue orders. Absent an updated documented delegation of authority to issue orders, the agency could face delays in pursuing enforcement of orders in the event of noncompliance by an order recipient.

Commission Authorities May Be Delegated

The AEA grants the Commission various authorities, including the authority to issue orders, and provides for the delegation of Commission authorities to agency staff. Section 161 of the AEA, General Provisions, states that;

In the performance of its functions the Commission is authorized to establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property.

The AEA further describes how the Commission may, in turn, delegate its authorities in Section 161(n): the Commission is authorized to, "delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this Act."

Documentation of Authorities for Issuing Orders Is Inconsistent Among Offices

OIG auditors sought assistance from agency staff in locating the Commission's delegation of authority to three primary officers—including the OIP Director, the EDO, and the CFO—and found the documented authorities to be granted inconsistently. Staff located a January 1997 memorandum from the Chairman to the CFO that delegated various authorities to the CFO. Among these authorities was one that specifically delegated the authority to issue orders to revoke or suspend a license for nonpayment of license fees. However, staff were unable to locate a similar memo or documentation for OIP Director and EDO.

Despite the staff's inability to locate a Commission or Chairman memorandum or similar document granting order-issuing authority to the OIP Director and EDO, the NRC's Office of the General Counsel (OGC) stated that the OIP Director and EDO have a legal authority to issue orders. As such, OGC provided legal analyses of various regulations, Management Directives, and other documents that OGC asserts demonstrates this authority.

Offices Have Not Sought Updated Documentation

Two offices—OIP and Office of the Executive Director for Operations (OEDO)—have not sought an updated documented delegation of authority from the Commission to issue orders. Historically, with years of practice issuing orders, OIP and OEDO did not recognize the need for seeking an updated documented delegation of authority from the Commission.

Risks for NRC

Absent an updated, documented delegation of authority from the Chairman or Commission to the OIP Director and the EDO to issue orders, the agency could face delays in pursuing enforcement of orders issued by OIP and OEDO in the event of noncompliance by an order recipient. Given that OGC's analysis of the legal authority to issue orders is based on multiple documents, agency managers and staff stated that the authority could be made clearer. From a documentation perspective, the agency would be better served by having updated documentation similar to the Chairman's 1997 memorandum to the CFO.

Recommendations

OIG recommends that the Director, Office of International Programs:

4. Seek an updated, documented delegation of authority to issue orders from the Chairman and/or Commission.

OIG recommends that the Executive Director for Operations:

5. Seek an updated, documented delegation of authority to issue orders and to re-delegate that authority from the Chairman and/or Commission.

IV. CONSOLIDATED LIST OF RECOMMENDATIONS

OIG recommends that the Executive Director for Operations:

1. Identify and document order followup requirements and/or revise the *NRC Enforcement Policy*, as appropriate, and *Manual* to include, for each type of order, descriptions of the order type, definitions, and expectations for order followup, tracking, and closure.

OIG recommends that the Chief Financial Officer:

2. Identify and document order followup requirements for Chief Financial Officer issued orders and/or coordinate with Office of Enforcement staff to revise the *NRC Enforcement Policy*, as appropriate, and *Manual* to include definitions, and expectations for order followup, tracking, and closure.

OIG recommends that the Director, Office of International Programs:

3. Identify and document order followup requirements for Office of International Programs issued orders and/or coordinate with Office of Enforcement staff to revise the *NRC Enforcement Policy*, as appropriate, and *Manual* to include definitions, and expectations for order followup, tracking, and closure.

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Appendix A

OBJECTIVE, SCOPE, AND METHODOLOGY

OBJECTIVE

The audit objective was to evaluate the efficiency and effectiveness of NRC's documentation, verification, and closure process for issued orders.

SCOPE

This audit focused on reviewing the management and internal controls over the agency's followup of orders, including the documentation, verification, and closure process, issued between 2005 and 2011. We conducted this performance audit at NRC headquarters in Rockville, MD, from February 2012 to July 2012. Internal controls related to the audit objectives were reviewed and analyzed. Throughout the audit, auditors were aware of the possibility or existence of fraud, waste, or misuse in the program.

METHODOLOGY

To accomplish the audit objective, OIG reviewed Federal and internal agency guidance, including the AEA, as amended, the *Code of Federal Regulations*, the *NRC Enforcement Policy*, and the *NRC Enforcement Manual*. OIG also reviewed various management directives, inspection manual chapters and procedures, and office-specific guidance on orders. To evaluate the agency's followup of issued orders, OIG selected a judgmental sample of orders issued between 2005 and 2011 and reviewed order followup for 38 of 703 orders that 11 offices and regions indicated NRC issued during that period. Furthermore, OIG interviewed agency staff, including all program and regional office points-of-contact identified by the agency, to obtain staff insights into the agency's use of orders.

We conducted this performance audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a

reasonable basis for our findings and conclusions based on our audit objectives.

The work was conducted by R.K. Wild, Team Leader; Vicki Foster, Audit Manager; Kevin Nietmann, Senior Technical Advisor; Andrea Ferkile, Senior Analyst; Ziad Buhaissi, Senior Auditor; and Dana Furstenau, Student Analyst.