



OFFICE OF THE
INSPECTOR GENERAL

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

January 11, 2016

MEMORANDUM TO: Victor M. McCree
Executive Director for Operations

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

SUBJECT: STATUS OF RECOMMENDATIONS: AUDIT OF NRC'S
REGULATORY OVERSIGHT OF SPECIAL NUCLEAR
MATERIALS (OIG-03-A-15)

REFERENCE: ACTING DIRECTOR, OFFICE OF NUCLEAR MATERIAL
SAFETY AND SAFEGUARDS, MEMORANDUM DATED
DECEMBER 18, 2015

Attached is the Office of the Inspector General's (OIG) analysis and status of report recommendations as discussed in the agency's response dated December 18, 2015. Based on this response, recommendations 1 and 3 remain in a resolved status. All other recommendations were previously closed.

Recommendations 1 and 3 will be closed once the agency provides, and OIG verifies, information confirming that all corrective actions have been finalized.

Please provide an updated status of recommendations 1 and 3 by December 27, 2016.

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

Attachment: As stated

cc: J. Jolicoeur, OEDO
F. Brown, OEDO
B. Pham, OEDO
S. Moore, NMSS
EDO_ACS_Distribution Resource

Audit Report

AUDIT OF NRC'S REGULATORY OVERSIGHT OF SPECIAL NUCLEAR MATERIALS

OIG-03-A-15

Status of Recommendations

Recommendation 1: Conduct periodic inspections to verify that material licensees comply with material control and accounting (MC&A) requirements, including, but not limited to, visual inspections of licensees' special nuclear material (SNM) inventories and validation of report information.

Agency Response Dated
December 18, 2015:

Remaining condition:

Document the basis for risk-informing the MC&A program (and apply it to the program) with respect to conducting periodic inspections.

December 2015 Status:

In the February 7, 2006, memorandum, the Office of the Inspector General (OIG) stated that two of the three conditions identified by OIG that needed to be met to close this recommendation have been satisfied. The remaining condition is the need to complete documentation of the basis for risk informing the MC&A program (and apply it to the program) with respect to conducting periodic inspections. In a subsequent memorandum dated August 24, 2006, OIG requested an estimated completion date for this recommendation.

In SECY-05-0143, "Proposed Changes to the Material Control and Accounting Program," the staff recommended that the Commission approve the staff's proposed enhancements to the MC&A regulations, inspection program, and licensing process. Consistent with information provided in previous status reports, in response to the associated staff requirements memorandum (SRM) to SECY-05-0143 dated November 18, 2005, the staff completed the development of the technical basis for the Part 74 rulemaking. This technical basis addressed the requirement to risk inform the MC&A requirements. This was further delineated in the MC&A rulemaking plan (SECY-08-0059, "Rulemaking Plan: Part 74 – Material Control and Accounting of Special Nuclear Material") dated April 25, 2008. The technical basis for the Part 74

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Status of Recommendations

Recommendation 1(cont.):

rulemaking in SECY-08-0059 addressed the need to complete documentation of the basis for risk informing the MC&A program.

The SRM for SECY-08-0059 was issued on February 5, 2009. The Commission approved the staff's rulemaking Option 4, directing the staff to revise and consolidate current MC&A regulations into Part 74.

The proposed rule package to amend Title 10 of the *Code of Federal Regulations* (10 CFR) Part 74, "Material Control and Accounting of Special Nuclear Material," was submitted to the Executive Director for Operations (EDO) on August 29, 2011, and subsequently forwarded to SECY on September 14, 2011. The package was withdrawn on November 8, 2011, to allow staff to resolve an inconsistency. The revised proposed rule package SECY-11-0175, "Proposed Rule: Amendments to Material Control and Accounting Regulations," was provided to the Commission on December 21, 2011. In April 2012, SRM-SECY-11-0175 approved the proposed rule package and identified seven issues to be resolved in the *Federal Register* notice for the proposed rule. In November 2012, the revised rule package was submitted to SECY and was converted to COMSECY-12-0026, which needed a Commission revote. In May 2013, SRM-COMSECY-12-0026 directed the staff to complete the rulemaking effort. The proposed rule [NRC-2009-0096], titled "Amendments to Material Control and Accounting Regulations," and associated guidance documents [NRC-2013-0195] were completed and published in the *Federal Register* on November 08, 2013.

The staff held two public meetings on the proposed rule during the public comment period in January and February 2014. After the comment period closed, the staff held two additional public meetings in September 2014 and March 2015 to discuss the comments with stakeholders.

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Status of Recommendations

Recommendation 1(cont.):

Based on concerns raised in the comments, the staff has been re-evaluating the applicability of the backfit rule to all of the proposed rule changes. The increased complexity of the staff's review and backfit evaluation has required additional discussion and interactions.

Target Completion Date:

The due date for the final rulemaking package has been extended 1 year and is scheduled to be sent to the Commission in November 2016. Thereafter, with the Commission's approval, the final rule will be published in the *Federal Register*.

OIG Analysis:

This status update recounts the agency's efforts towards meeting the intent of this recommendation. OIG will continue to monitor the agency's slow progress. Recommendation 1 will be closed once the agency provides, and OIG verifies, the information in the final rulemaking.

Status:

Resolved.

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Status of Recommendations

Recommendation 3: Document the basis of the approach used to risk inform NRC's oversight of MC&A activities for all types of materials licensees.

Agency Response Dated
December 18, 2015:

December 2015 Status:

As part of the 10 CFR Part 74, "Material Control and Accounting of Special Nuclear Material" rulemaking, the staff completed incorporating the basis for risk-informing MC&A related activities into the technical basis for this subject rulemaking in April 2010.

The proposed rule package to amend Title 10 of the *Code of Federal Regulations* (10 CFR) Part 74, "Material Control and Accounting of Special Nuclear Material," was submitted to the Executive Director for Operations (EDO) on August 29, 2011, and subsequently forwarded to SECY on September 14, 2011. The package was withdrawn on November 8, 2011, to allow staff to resolve an inconsistency. The revised proposed rule package SECY-11-0175, "Proposed Rule: Amendments to Material Control and Accounting Regulations," was provided to the Commission on December 21, 2011. In April 2012, SRM-SECY-11-0175 approved the proposed rule package and identified seven issues to be resolved in the *Federal Register* notice for the proposed rule. In November 2012, the revised rule package was submitted to SECY and was converted to COMSECY-12-0026, which needed a Commission revote. In May 2013, SRM-COMSECY-12-0026 directed the staff to complete the rulemaking effort. The proposed rule [NRC-2009-0096], titled "Amendments to Material Control and Accounting Regulations," and associated guidance documents [NRC-2013-0195] were completed and published in the *Federal Register* on November 08, 2013. The proposed rule includes the approach to risk inform MC&A activities for all types of materials licensees.

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Status of Recommendations

Recommendation 3 (cont):

The staff held two public meetings on the proposed rule during the public comment period in January and February 2014. After the comment period closed, the staff held two additional public meetings in September 2014 and March 2015 to discuss the comments with stakeholders.

Based on concerns raised in the comments, the staff has been re-evaluating the applicability of the backfit rule to all of the proposed rule changes. The increased complexity of the staff's review and backfit evaluation has required additional discussion and interactions.

Target Completion Date:

The due date for the final rulemaking package has been extended 1 year and is scheduled to be sent to the Commission in November 2016. Thereafter, with the Commission's approval, the final rule will be published in the *Federal Register*.

OIG Analysis:

This status update recounts the agency's efforts towards meeting the intent of this recommendation. OIG will continue to monitor the agency's slow progress. Recommendation 3 will be closed once the agency provides, and OIG verifies, the information in the final rulemaking.

Status:

Resolved.