



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

**OFFICE OF THE
INSPECTOR GENERAL**

September 16, 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
IMPLEMENTATION OF 10 CFR PART 21, REPORTING OF
DEFECTS AND NONCOMPLIANCE (OIG-11-A-08)

REFERENCE: DIRECTOR, OFFICE OF NUCLEAR REACTOR
REGULATION, MEMORANDUM DATED AUGUST 18, 2011

Attached is the Office of the Inspector General's analysis and status of recommendations 1, 2, 3, 4 and 5 as discussed in the agency's response, dated August 18, 2011. Based on OIG's analysis of this response, recommendations 1, 3, and 5 are resolved. Recommendations 2 and 4 were previously resolved.

Please provide an update for these recommendations by April 6, 2012. If you have questions or concerns, please call me at 415-5915, or RK Wild, Team Leader, at 415-5948.

Attachment: As stated

cc:

N. Mamish, OEDO
J. Arildsen, OEDO
K. Brock, OEDO
C. Jaegers, OEDO

Audit Report

Audit of NRC's Implementation of 10 CFR Part 21, Reporting of Defects and Noncompliance

OIG-11-A-08

Status of Recommendations

Recommendation 1:

Revise 10 CFR Part 21 for full conformity with the *Energy Reorganization Act of 1974, As Amended, Section 206, Noncompliance*.

Response Dated
August 18, 2011:

Actions taken and planned: The staff has reevaluated its initial proposed approach to address this recommendation. The staff agrees that because of the differing interpretations associated with 10 CFR Part 21 (Part 21) and its associated guidance that full conformance with the *Energy Reorganization Act of 1974, As Amended, Section 206* could be impacted. As identified in the OIG's report and reiterated in the OIG response to the staff's initial proposed resolution for Recommendation 1, varying interpretations of Part 21 reporting requirements exist. The concern is the use of only the 10 CFR 50.72/50.73 evaluation criteria in lieu of Part 21 evaluation criteria.

The staff proposes to take the following actions to meet the intent of this recommendation:

- 1) NUREG-1022, "Event Reporting Guidelines: 10 CFR 50.72 and 50.73, Revision 3" is currently being revised and issued for public comment. The discussion pertaining to Part 21 has been removed since this document provides guidance on how to meet 10 CFR 50.72/50.73 and these regulations do not discuss Part 21. Target date for issuing draft NUREG-1022 to the Federal Register Notice for public comment is by December 2011.

Target Completion Date: Issue revised guidance by December 31, 2012.

The staff is preparing a Commissioner Assistants (CA) Note to communicate the staff's position to ensure full conformity with the *Energy Reorganization Act (ERA) of 1974, As Amended, Section 206, Noncompliance*. The CA Note will

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Status of Recommendations

Recommendation 1 (cont.):

be reviewed and concurred on by Office of General Counsel (OGC). This existing position does not require a revision to Part 21.

a. The staff's position is:

If the evaluation of a deviation in basic component under the guidance for §§ 50.72 and 50.73 results in a report, the obligations under Part 21 for evaluation and reporting have been met. In the event that the evaluation of a deviation under the guidance for §§ 50.72 and 50.73 does not result in a report, licensees must ensure that the evaluation also meets Part 21 and its associated guidance to ensure Part 21 reporting requirements are satisfied.

This is consistent with the existing staff position which is identified in NUREG-0302 "Remarks Presented (Questions/Answers Discussed) at Public Regional Meetings to Discuss Regulations (10 CFR Part 21) for Reporting of Defects and Noncompliance," and Part 21.2 (a) (4) (c) which states in part "...evaluation of potential defects **and** (emphasis added) appropriate reporting of defects under §§ 50.72, 50.73, or 73.71 of this chapter, satisfies each person's evaluation, notification and reporting obligation..." The staff believes that this position fully meets the original intent of Part 21, ensures conformity with Section 206 of the ERA of 1974 and obviates the necessity of Part 21 rulemaking.

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Status of Recommendations

Recommendation 1 (cont):

Target Completion Date: Commissioner Assistants note by October 28, 2011.

- b. Following issuance of the CA Note and consistent with Recommendation 2, the staff will expedite development and issuance of interim guidance communicating this staff position (see Recommendation 2 for additional information).

Target Completion Date: Unchanged – Issue interim guidance by March 31, 2012

- c. Consistent with Recommendation 4, the staff will revise NUREG-0302 to ensure reporting guidance associated with Part 21 is clear (see Recommendation 4 for additional information).

Target Completion Date: Unchanged – Issue guidance by June 26, 2015.

The staff continues to pursue rulemaking by working with NRO on its Commission Paper on Part 21 rulemaking. The intended rulemaking will clarify the Part 21 language and prevent interpretations that could potentially allow less than full conformity with Section 206 of the ERA.

Target Completion Date: Unchanged – Issue Commission paper by September 30, 2011.

OIG Analysis:

The proposed corrective actions meet the intent of the recommendation. Therefore, this recommendation is resolved and will be closed upon completion and OIG review of the completed staff actions as listed above.

Status:

Resolved.

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Status of Recommendations

<u>Recommendation 2:</u>	Expedite publication of interim guidance that specifies requirements for Part 21 reporting in accordance with the <i>Energy Reorganization Act of 1974, As Amended, Section 206, Noncompliance</i> .
Response Dated August 18, 2011:	<p>Actions taken and planned: The staff is preparing a Commissioner Assistants (CA) Note to clarify the staff's position to ensure full conformity with the <i>Energy Reorganization Act of 1974, As Amended, Section 206, Noncompliance</i>. The CA Note will be reviewed and concurred on by OGC. Following issuance of the CA Note the staff will expedite development and issuance of interim guidance. NRR will coordinate this effort with NRO.</p> <p>Target Completion Date: Unchanged – Issue interim guidance by March 31, 2012.</p>
OIG Analysis:	The proposed corrective action meets the intent of the recommendation. This recommendation will be closed upon staff completion and OIG review of interim guidance.
Status:	Resolved.

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Recommendation 3:

Correct the sections of NUREG-1022, *Event Reporting Guidelines 10 CFR 50.72 and 50.73, October 2000*, that are in conflict with the *Energy Reorganization Act of 1974, as Amended, Section 206, Noncompliance* and 10 CFR Part 21.

Response Dated
August 18, 2011:

Actions taken or planned: Part 21 reports are not discussed in 10 CFR 50.72 or 50.73 regulations. Therefore, to avoid potential conflicts with any future guidance that the staff issues regarding Part 21 reporting requirements (e.g., potential rulemaking, interim guidance and/or an update to NUREG-0302), the staff has removed section 5.1.8, "10 CFR Part 21 Reports" from the draft NUREG-1022, Rev. 3. Part 21 reporting will not be discussed in the NUREG. NUREG-1022 is currently being revised and should be published in the Federal Register for public comment in the 1st quarter of fiscal year 2012. The staff expects to publish the final NUREG by December 2012 once all of the public comments have been addressed.

Target Completion Date: Unchanged – Issue revised guidance by December 31, 2012.

OIG Analysis:

The proposed corrective action meets the intent of the recommendation. This recommendation will be closed upon staff completion and OIG review of revised NUREG 1022 that includes the corrected sections that are in conflict with the *Energy Reorganization Act of 1974, as Amended, Section 206, Noncompliance*.

Status:

Resolved.

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<u>Recommendation 4:</u>	Review, revise as applicable, and reissue NUREG 0302, <i>Remarks Presented (Questions/Answers Discussed) at Public Regional Meetings to Discuss Regulations (10 CFR Part 21) for Reporting of Defects and Noncompliance</i> , July 12 – 26, 1977.
Response dated August 18, 2011:	<p>Actions taken and planned: NRR plans to revise NUREG-0302 to ensure evaluation and reporting guidance associated with Part 21 is clear. NRR will commence a revision to NUREG-0302 to incorporate the interim guidance once issued. A more extensive revision will be addressed once the NRO proposed rulemaking effort is concluded.</p> <p>Target Completion Date: Unchanged – Issue guidance by June 26, 2015.</p>
OIG Analysis:	The agency's proposed actions continue to meet the intent of the recommendation. This recommendation will be closed upon completion, and OIG review of the revisions to NUREG-0302.
Status:	Resolved.

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<u>Recommendation 5:</u>	Incorporate Inspection Procedure 36100, <i>Inspection of 10 CFR Parts 21 and 10 CFR 50.55(e) Programs for Reporting Defects and Noncompliance</i> into the NRC Baseline Inspection Program.
Response Dated August 18, 2011:	<p>Actions taken or planned: IP 36100 is a programmatic based inspection which does not align well with the performance based approach of the ROP inspection program. Therefore, in lieu of incorporating IP 36100 directly into the baseline inspection program the elements of the Part 21 and non-conforming part inspection will be incorporated into an existing baseline inspection procedure (e.g., IP 71152, "Problem Identification and Resolution" or another IP). The staff is currently performing its bi-annual ROP realignment review. NRR will work with the regional offices to determine the best IP to implement a periodic review of licensee documents (e.g., condition reports, corrective action reports, etc.) for adherence to the requirements of Part 21. This will be completed by December 2011.</p> <p>Target Completion Date: Unchanged – Incorporate inspection procedures by December 31, 2011.</p>
OIG Analysis:	The agency's proposed action meets the intent of the recommendation. This recommendation will be closed when the agency incorporates requirements to inspect licensee reporting of Part 21 defects into the appropriate inspection procedure.
Status:	Resolved.

Memo Location: G:\AUDIT\11-A-08 Part 21\Followup\OIG Response to agency's 08 18 2011 Part 21 followup.docx

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