

April 3, 2012

MEMORANDUM TO: Stephen D. Dingbaum
Assistant Inspector General for Audits
Office of the Inspector General

FROM: Eric J. Leeds, Director */RA/ (Melanie A. Galloway acting for)*
Office of Nuclear Reactor Regulation

SUBJECT: STATUS OF RECOMMENDATIONS FROM AUDIT OF "NRC'S
IMPLEMENTATION OF 10 CFR PART 21, REPORTING OF
DEFECTS AND NONCOMPLIANCE" (OIG-11-A-08)

This is in response to the June 10, 2011, memorandum to the Executive Director for Operations, transmitting the Office of the Inspector General's (OIG) Audit Report, "Audit of NRC's Implementation of 10 CFR Part 21, Reporting of Defects and Noncompliance" (OIG-11-A-08). I have enclosed an updated staff response to each of the five OIG recommendations.

Enclosure:
As stated

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(301) 415-3026

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ADAMS ACCESSION NO.: PKG. ML12093A452, Response ML12065A463

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NRC Staff Response to Office of the Inspector General Report
“Audit of NRC’s Implementation of 10 CFR Part 21, Reporting of Defects and
Noncompliance” (OIG-11-A-08)

Recommendation 1:

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

OIG Analysis dated September 16, 2011:

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.

Update:

- 1) The staff revised and issued for public comment NUREG-1022, “Event Reporting Guidelines: 10 CFR 50.72 and 50.73, Revision 3,” in a *Federal Register* Notice published October 13, 2011. The discussion pertaining to Part 21 was removed.

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

- 2) The staff issued a CA Note, “Clarification of Staff Position on Part 21 Reporting Requirements,” dated September 19, 2011. The CA Note communicated the staff’s position to ensure full conformity with the *Energy Reorganization Act (ERA) of 1974, As Amended, Section 206, Noncompliance*. OGC reviewed the CA Note and offered no legal objection.

Target Completion Date: The CA Note was issued September 19, 2011. Closure of the item will be based on OIG review and acceptance of the item.

- 3) The staff is developing interim guidance communicating the staff’s proposed position. A draft Regulatory Issues Summary is being prepared for public comment.

Target Completion Date: Changed – Issue interim guidance by December 31, 2012.

- 4) 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.

- 5) NRO continues to work with other offices on Part 21 rulemaking. The rulemaking will clarify the Part 21 language and prevent interpretations that could potentially allow less

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than full conformity with Section 206 of the ERA. The staff's effort to issue a Commission Paper outlining the rulemaking activities has been completed. The staff issued the SECY-11-0135, "Staff Plans to Develop the Regulatory Basis for Clarifying the Requirements in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 21, 'Reporting of Defects and Noncompliance', " on September 29, 2011.

Target Completion Date: SECY-11-0135 was issued on September 29, 2011. Closure of the item will be based on OIG review and acceptance of the item.

Point of Contact: Paul Prescott, NRR/DIRS/IRIB
(301) 415-3026

Recommendation 2:

Expedite publication of interim guidance that specifies requirements for Part 21 reporting in accordance with the *Energy Reorganization Act of 1974, As Amended, Section 206, Noncompliance*.

OIG Analysis dated September 16, 2011:

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

Update:

The staff issued a CA Note, "Clarification of Staff Position on Part 21 Reporting Requirements," dated September 19, 2011. The CA Note communicated the staff's position to ensure full conformity with the *Energy Reorganization Act (ERA) of 1974, As Amended, Section 206, Noncompliance*. The CA Note was reviewed and concurred on by OGC.

The staff will issue interim guidance to provide clarification of the evaluation and reporting requirements of defects and noncompliance for licensees and vendors as outlined in 10 CFR 21. In parallel, and in accordance with recommendation 3, the staff revised and issued for public comment NUREG-1022, "Event Reporting Guidelines: 10 CFR 50.72 and 50.73, Revision 3," to solicit public comments. The staff will coordinate and issue the RIS and NUREG-1022 concurrently to ensure that clear and proper interim guidance is issued to the industry to avoid ambiguity in reporting requirements.

Target Completion Date: Changed to align with target completion date for Recommendation 3 – Issue interim guidance by December 31, 2012.

Point of Contact: Paul Prescott, NRR/DIRS/IRIB
(301) 415-3026

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.

OIG Analysis dated September 16, 2011:

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

Update:

The staff revised and issued for public comment NUREG-1022, "Event Reporting Guidelines: 10 CFR 50.72 and 50.73, Revision 3," in a *Federal Register* Notice published October 13, 2011. On February 2, 2012, the staff met with NEI and stakeholders to discuss the public comments. The staff is currently working on resolution of the comments. The discussion pertaining to Part 21 has been removed.

In parallel, and in accordance with Recommendation 2, the staff will coordinate and issue the RIS and NUREG-1022 concurrently to ensure that clear and proper interim guidance is issued to the industry to avoid ambiguity in reporting requirements.

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

Point of Contact: Timothy Kobetz, NRR/DIRS/IRIB
(301) 415-1932

Recommendation 4:

Review, revise as applicable, and reissue NUREG-0302, *Remarks Presented (Questions/Answers Discussed) at Public Regional Meetings to Discuss Regulations (10 CFR Part 21) for Reporting of Defects and Noncompliance*, July 12 – 26, 1977.

OIG Analysis dated September 16, 2011:

The agency's proposed corrective 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

Update:

Staff guidance will be developed to clarify evaluating and reporting concurrent with NRO's rulemaking on Part 21.

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

Point of Contact: Paul Prescott, NRR/DIRS/IRIB
(301) 415-3026

Recommendation 5:

Incorporate Inspection Procedure 36100, *Inspection of 10 CFR Parts 21 and 10 CFR 50.55(e) Programs for Reporting Defects and Noncompliance* into the NRC Baseline Inspection Program.

OIG Analysis dated September 16, 2011:

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

Update:

On December 5, 2011, a revision of IP 71152 (ADAMS Accession No. ML112360542) was issued that added guidance to verify applicable Part 21 notifications entered into the licensee's corrective action program. Additionally, guidance was given to select a sample and references were provided related to inspecting defects and nonconforming materials, parts or components.

Target Completion Date: A revision to IP 71152 was issued December 5, 2011. Closure of the item will be based on OIG review and acceptance of the item.

Point of Contact: Timothy Kobetz, NRR/DIRS/IRIB
(301) 415-3969

Correspondence Reference
OIG-11-A-08, "Audit of NRC's Vendor Inspection Program"

- Office of the Inspector General (OIG) Audit OIG-11-A-08, "Audit of NRC's implementation of 10 CFR Part 21, Reporting of Defects and Noncompliance," dated March 23, 2011 (ADAMS Accession No. ML110820426)
- Memorandum from S. Dingbaum to R. Borchardt, "Status of Recommendations: Audit of NRC's Implementation of 10 CFR Part 21, Reporting of Defects and Noncompliance (OIG-11-A-08)," dated June 10, 2011 (ADAMS Accession No. ML111610150)
- Memorandum from E. Leeds to S. Dingbaum, "Status of Recommendations from Audit of NRC's Implementation of 10 CFR Part 21, Reporting of Defects and Noncompliance (OIG-11-A-08)," dated August 18, 2011 (ADAMS Accession No. ML112150597)
- Memorandum from S. Dingbaum to R. Borchardt, "Status of Recommendations: Audit of NRC's Implementation of 10 CFR Part 21, Reporting of Defects and Noncompliance (OIG-11-A-08)," dated September 16, 2011 (ADAMS Accession No. ML112590026)
- Memorandum from N. Mamish to Commissioner Assistants, "Clarification of Staff Position on Part 21 Reporting Requirements," dated September 19, 2011 (ADAMS Accession No. ML11258A065)
- SECY 11-0135, "Staff Plans to Develop the Regulatory Basis for Clarifying the Requirements in Title 10 of the Code of Federal Regulations (10 CFR) Part 21, 'Reporting of Defects and Noncompliance'," dated September 29, 2011 (ADAMS Accession No. ML112430138)
- Draft NUREG-1022, "Event Reporting Guidelines 10 CFR 50.72 and 50.73," Revision 3, issued for public comment October 13, 2011 (ADAMS Accession No. ML11273A065)
- NUREG-0302, "Remarks Presented (Questions/Answers Discussed) at Public Regional Meetings to Discuss Regulations (10 CFR Part 21) for Reporting of Defects and Noncompliance," dated October 1977. A copy is available at the following website: <http://pbadupws.nrc.gov/docs/ML0620/ML062080399.pdf>