



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

**OFFICE OF THE
INSPECTOR GENERAL**

May 4, 2012

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 APRIL 3, 2012

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 April 3, 2012. Based on OIG's analysis of this response, recommendations 1, 2, 3, 4, and 5 remain resolved.

Please provide an update for these recommendations by November 13, 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
K. Brock, OEDO
J. Arildsen, 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
April 3, 2012:

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 Notes To Commissioners' Assistants (CA), "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).

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Status of Recommendations

Recommendation 1 (Cont'd):

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 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.

OIG Analysis:

The proposed corrective actions continue to meet the intent of the recommendation. This recommendation remains resolved and will be closed upon completion and OIG review of the staff actions as listed above.

Status:

Resolved.

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Status of Recommendations

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*.

Response Dated
April 3, 2012:

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.

OIG Analysis:

The proposed corrective action continues to meet 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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Status of Recommendations

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
April 3, 2012

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.

OIG Analysis:

The proposed corrective action continues to meet 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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Status of Recommendations

<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 April 3, 2012:	<u>Update:</u> 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.
OIG Analysis:	The agency's proposed actions continue to meet the intent of the recommendation. This recommendation will be closed upon OIG review of the revisions to NUREG-0302.
Status:	Resolved.

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Status of Recommendations

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.

Response Dated
April 3, 2012:

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.

OIG Analysis:

The agency's revisions to IP 71152, as described above, do not meet the intent of this recommendation. The agency's original response, dated August 18, 2011, stated that "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."

The language in the revision to IP 71152, dated December 5, 2011, however, states that inspectors should "choose a sample of four to eight issues per year for an in-depth review, as necessary, to verify that the licensee has taken corrective actions commensurate with the significance of the issue." IP 71152 language further states that "Inspectors should consider using an annual follow-up sample to inspect defects or non-conforming conditions for compliance with 10 CFR 50, Appendix B and 10 CFR 21."

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Status of Recommendations

Recommendation 5 (Cont'd):

This response does not meet the intent of the recommendation because it directs inspectors to sample issues involving identified defects and evaluate the corrective actions taken for the defects. The intent of the recommendation was for inspectors to periodically review licensee documents for compliance with Part 21 reporting and other requirements.

Recommendation 5 will be closed once NRR revises the language in inspection procedures to more closely align with the intent of the recommendation and with the language suggested by the staff's August 18, 2011, response, which was to strengthen NRC's ability to proactively identify unreported Part 21 defects.

This recommendation remains resolved.

Status: Resolved.