



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

**OFFICE OF THE
INSPECTOR GENERAL**

December 20, 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 NEW REACTORS,
MEMORANDUM DATED NOVEMBER 13, 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 November 13, 2012. Based on OIG's analysis of this response, recommendations 1, 2, 3, 4, and 5 remain in resolved status. Please provide an update on the status of resolved recommendations by April 30, 2013.

If you have questions or concerns, please call me at 415-5915, or RK Wild, Team Leader, at 415-5948.

Attachment: As stated

CC:
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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
November 13, 2012

(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 (FR) Notice published October 13, 2011. The discussion pertaining to Part 21 was removed.

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

The staff issued a Commissioners' Assistants (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 Office of the General Counsel (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.

(2) Interim guidance was developed communicating the staff's position detailed in the CA note. The staff documented its position in a draft regulatory issue summary (RIS) however, subsequently decided to focus staff resources on the development on the Part 21 regulatory basis. The rulemaking effort will more clearly articulate the staff's position by revising 10 CFR Part 21 to full conformity with ERA Section 206.

On July 5 and 12, 2012, discussions were held with the OIG on the staff's proposal to shift resources to the ongoing rulemaking effort to meet Recommendation 1.

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Status of Recommendations

Recommendation 1 (cont.):

Target Completion Date: Changed—Closure of the item will be based on OIG review and acceptance of the action associated with Recommendation 2.

(3) Consistent with Recommendation 4, the staff will revise NUREG-0302, "Remarks Presented (Questions/Answers Discussed) at Public Regional Meetings to Discuss Regulations (10 CFR Part 21) for Reporting of Defects and Noncompliance," issued October 1977, to ensure reporting guidance associated with 10 CFR Part 21 is clear (see Recommendation 4 for additional information).

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

(4) The Office of New Reactors (NRO) continues to work with other offices on 10 CFR Part 21 rulemaking. The rulemaking will clarify 10 CFR Part 21 language and prevent interpretations that could potentially allow less than full conformity with ERA Section 206. The staff's effort to issue a Commission paper outlining the rulemaking activities has been completed. The staff issued SECY-11-0135, "Staff Plans to Develop the Regulatory Basis for Clarifying the Requirements in Title 10 of the Code of Federal Regulations Part 21, 'Reporting of Defects and Noncompliance,'" dated 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:

On December 6, 2012, OIG obtained clarification from the agency that NRC anticipates finalizing the rulemaking to revise 10 CFR Part 21 for full conformity with the *Energy Reorganization Act of 1974, As Amended, Section 206, Noncompliance*, no later than December 2014. This clarification and the proposed corrective actions described in

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Status of Recommendations

Recommendation 1 (cont.):

the agency response above 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

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
November 13, 2012:

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 ERA, Section 206. The OGC reviewed and concurred on the CA note.

Interim guidance was developed communicating the staff's position detailed in the CA note. The staff documented its position in a draft regulatory issue summary (RIS) however, subsequently decided to focus staff resources on the development on the Part 21 regulatory basis. The rulemaking effort will more clearly articulate the staff's position by revising 10 CFR Part 21 to full conformity with ERA Section 206.

On July 5 and 12, 2012, discussions were held with OIG on the staff's proposal to shift resources to the ongoing rulemaking effort to meet Recommendation 1.

Issuance of the draft regulatory bases for the 10 CFR Part 21 rulemaking effort will serve as the staff's communication mechanism to stakeholders. The normal rulemaking effort does not require release of the draft regulatory bases this early in the process. Early release will provide stakeholders additional time to develop and implement actions to address the staff's position.

Target Completion Date: Changed—The draft regulatory bases are in concurrence. The staff has tentatively scheduled a public meeting to present the draft regulatory bases to stakeholders on December 5, 2012.

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Status of Recommendations

Recommendation 2 (cont.):

OIG Analysis:

On December 6, 2012, OIG obtained clarification from the agency on the actions planned to issue interim guidance via a public meeting and by publication of a regulatory basis document that specifies the basis for proposed future changes to Part 21 reporting in accordance with the *Energy Reorganization Act of 1974, As Amended, Section 206, and Noncompliance*. The agency reiterated that a form of interim guidance was earlier promulgated via the 2011 and 2012 NRC Regulatory Information Conferences, and that the slide presentations from those presentations are publically available via the agency Web site and serve as guidance. As part of its ongoing communication efforts to industry, the agency confirmed that NRC staff will communicate the Part 21 regulatory basis to stakeholders during a public meeting on January 24, 2013, and either schedule more public meetings, or finalize the regulatory basis and publish it in the Federal Register. OIG noted that publication of a regulatory basis document does not provide guidance but communicates the proposed basis for future rulemaking. The regulatory basis document states that its purpose is to promote early stakeholder feedback and does not state that it provides interim guidance for Part 21.

The agency also provided a copy of the regulatory basis document that will be communicated. OIG verified that it more clearly articulates the staff's position on revising 10 CFR Part 21 to full conformity with ERA Section 206, though it does not in and of itself constitute guidance. The agency stated that it will also provide to OIG for review the presentation materials to be used to inform stakeholders.

OIG recognizes that because rulemaking is not expected to be final until December 2014, agency staff will periodically provide stakeholders with communications throughout the rulemaking process and will issue additional guidance that further specifies requirements for Part 21 reporting in accordance with the *Energy Reorganization Act*

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Status of Recommendations

Recommendation 2 (cont.):

of 1974, As Amended, Section 206, Noncompliance.

As noted above, while the regulatory basis document does not constitute interim guidance, the proposed corrective action to communicate the staff position on Part 21 reporting requirements is an action that assists in meeting the intent of the recommendation. This recommendation will be closed upon staff completion and OIG review of any additional guidance that specifies Part 21 reporting requirements, until such time that the agency's actions in response to Recommendation 1 are met.

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
November 13, 2012:

The staff revised and issued for public comment NUREG-1022, "Event Reporting Guidelines: 10 CFR 50.72 and 50.73, Revision 3," in an FR notice (76 FR 63564; October 13, 2011). On February 2, 2012, the staff met with the Nuclear Energy Institute and stakeholders to discuss the public comments. The staff is currently working on resolution of the comments. The discussion pertaining to 10 CFR Part 21 has been removed.

In parallel, and in accordance with Recommendation 2, the staff will coordinate the rulemaking effort to ensure that clear and proper guidance is communicated and 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 meets the intent of the recommendation. This recommendation will be closed upon staff completion and OIG review of the final revised version of 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 November 13, 2012:	Staff guidance will be developed to clarify evaluating and reporting concurrent with NRO's rulemaking on 10 CFR Part 21. Target Completion Date: Unchanged—Issue guidance by June 26, 2015.
OIG Analysis:	The agency's proposed action continues 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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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
November 12, 2012:

The staff revised IP 71152, "Problem Identification and Resolution," issued in December 2011, to better identify instances in which licensees may not be appropriately identifying 10 CFR Part 21 issues. As discussed below, the staff will add additional guidance to IP 71152 for the routine evaluation of potential 10 CFR Part 21 issues.

SECY-99-007, "Recommendations for Reactor Oversight Process Improvements," dated January 8, 1999, which defines the baseline inspection program as the set of risk informed inspectable areas that, together with performance indicators, provide sufficient information to assess licensee performance within cornerstones, and to detect trends in performance. It is the minimum inspection performed at all operating nuclear power plants.

As to the specific recommendation in Recommendation 5, IP 36100 is a programmatic inspection that evaluates whether licensees, suppliers, or applicants for combined licenses have an established program to effectively implement the requirements of 10 CFR Part 21. Since the IP is not risk-informed, it is not appropriate be directly incorporated into the baseline inspection program. However, if there appears to be a programmatic breakdown with the licensee's 10 CFR Part 21 program, regional management can supplement the baseline inspection program with IP 36100 in accordance with Inspection Manual Chapter (IMC)-2515, Light Water Reactor Inspection Program—Operations Phase," dated September 24, 2009.

For the reasons above, the staff elected to enhance IP 71152, which is risk-informed, to include inspection samples involving defects and nonconforming conditions as follows:

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Status of Recommendations

Recommendation 5 (cont.):

Defects and Nonconformance Defects and conconforming materials, parts, or components may present a substantial safety hazard. Inspectors should consider using an annual followup sample to inspect defects or non conforming conditions for compliance with 10 CFR 50, Appendix B and 10 CFR 21. Inspectors may refer to IP 36100, "10 CFR Part 21 Inspections at Nuclear Power Reactors" and IP 38703, "Commercial Grade Dedication," for additional guidance.

This guidance does not require each annual inspection to include a sample, but it allows the inspectors flexibility to select samples in accordance with IP 71152, Section 03.06. This section provides guidance on selecting samples based on performance attributes of specific licensees and the safety significance of the attributes.

To address the OIG's most recent concern the staff will further enhance IP 71152, Section 02.01, to specifically state that the inspector's routine (daily) screening of problem identification and resolution issues include an assessment of whether the licensee should perform an evaluation in accordance with 10 CFR Part 21 of any identified defects or nonconformances. This will ensure that the inspectors are evaluating potential 10 CFR Part 21 issues on a continual basis. The enhancements will be complete by December 31, 2012.

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 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.