



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

**OFFICE OF THE
INSPECTOR GENERAL**

July 23, 2013

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 APRIL 23, 2013

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 23, 2013. Based on OIG's analysis of this response, recommendations 1, 2, and 4 remain in resolved status. Recommendations 3 and 5 are closed. Please provide an update on the status of the resolved recommendations by November 22, 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:
R. Mitchell, OEDO
K. Brock, OEDO
J. Arildsen, OEDO
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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*.

Agency Response Dated
April 23, 2013:

1) The staff revised and issued for public comment NUREG-1022, Revision 3, "Event Reporting Guidelines: 10 CFR 50.72 and 50.73," in a Federal Register (FR) notice published October 13, 2011. The staff removed the discussion pertaining to 10 CFR Part 21. The NRC published Revision 3 of NUREG-1022 in January 2013, and it takes effect July 1, 2013. Target Completion Date: Complete.

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: Complete.

2) The staff developed a draft regulatory issue summary (RIS) documenting the staff's position detailed in the CA Note. However, on July 5 and July 12, 2012, the staff held discussions with OIG on the staff's proposal to shift resources to the ongoing rulemaking effort in order to meet Recommendation 1. The rulemaking effort will more clearly articulate the staff's position by revising 10 CFR Part 21 to full conformity with the Energy Reorganization Act (ERA) of 1974, As Amended, Section 206, Noncompliance.

As noted below, regarding Recommendation 2, the staff's next major milestone will be to finalize the regulatory basis. Target Completion Date: Changed—Finalize regulatory basis in September 2013.

3) Consistent with Recommendation 4, the staff will revise NUREG-0302, "Remarks Presented

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Status of Recommendations

Recommendation 1 (cont.):

(Questions/Answers Discussed) at Public Regional Meetings to Discuss Regulations (10 CFR Part 21) for Reporting of Defects and Noncompliance,” 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.

The Office of New Reactors (NRO) continues to work with other offices on 10 CFR Part 21 rulemaking. The rulemaking will clarify the 10 CFR 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 Part 21, ‘Reporting of Defects and Noncompliance’,” on September 29, 2011.

The staff’s next major milestone will be to finalize the regulatory basis. The staff expects considerable stakeholder interest and interaction before it can complete this next step in the rulemaking process. The staff’s estimate for completing the regulatory basis is September 2013. The staff will undertake regulatory guidance development in parallel with the development of the proposed rule.

Target Completion Date: Finalize regulatory basis in September 2013. Point of Contact: Paul Prescott

OIG Analysis:

OIG recognizes that the rulemaking effort will more clearly articulate the staff’s position by revising 10 CFR Part 21 to full conformity with the Energy Reorganization Act (ERA) of 1974, As Amended, Section 206, Noncompliance. OIG also

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Status of Recommendations

Recommendation 1 (cont.):

recognizes that the next step in the rulemaking effort is to complete the regulatory basis, which will require stakeholder interaction. The proposed corrective actions described in the agency response above meet the intent of the recommendation. This recommendation is therefore resolved and will be closed upon completion and OIG review of the relevant, 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*.

Agency Response Dated
April 23, 2013:

The staff's next major milestone will be to finalize the regulatory basis. On January 24, 2012, the staff conducted a public meeting with stakeholders to discuss the Part 21 draft regulatory basis. In addition, the staff will schedule additional meetings for specific areas of the rulemaking. There was a public meeting held on April 10, 2013, for 50.50(e); and a meeting on April 11, 2013, for the fuel cycle facility rulemaking initiatives. The staff expects considerable stakeholder interest and interaction before it can complete this next step in the rulemaking process. The staff's estimate for completing the regulatory basis is September 2013. As part of the rulemaking, the staff coordinated with the Office of Nuclear Regulatory Research to create Draft Regulatory Guide DG-1291, "Evaluating Deviations and Reporting Defects and Noncompliance." The staff will undertake regulatory guidance development in parallel with the development of the proposed rule. This effort will begin following issuance of the regulatory basis.

Target Completion Date: Changed—Finalize regulatory basis in September 2013. Point of Contact: Paul Prescott

OIG Analysis:

OIG obtained clarification that Draft Regulatory Guide DG-1291, "Evaluating Deviations and Reporting Defects and Noncompliance," does not yet exist. This document is a number and title place holder. According to agency staff, the content of the Regulatory Guide DG-1291 will be written after the regulatory basis is complete and will be issued in parallel with the rulemaking. These actions assist in meeting the intent of the recommendation. This recommendation continues to be resolved and will be closed upon staff completion and OIG review of interim guidance that specifies Part 21 reporting requirements.

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Status of Recommendations

Recommendation 2 (cont.):

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.

Agency Response Dated
April 23, 2013:

The staff revised and issued NUREG-1022, Revision 3, "Event Reporting Guidelines: 10 CFR 50.72 and 50.73," for public comment in a FR notice published October 13, 2011. On February 2, 2012, the staff met with the Nuclear Energy Institute and other stakeholders to discuss the public comments. The discussion pertaining to 10 CFR Part 21 has been removed.

In parallel, and in accordance with Recommendation 2, the staff will coordinate with 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: NUREG-1022, Revision 3, was published in January 2013, and will take effect July 1, 2013.
Point of Contact: Timothy Kobetz

OIG Analysis:

OIG has reviewed the final revised version of NUREG-1022 and found that the sections that were in conflict with the Energy Reorganization Act of 1974, as Amended, Section 206, Noncompliance have been corrected. The corrective action meets the intent of the recommendation. This recommendation is therefore closed.

Status:

Closed.

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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.
Agency Response Dated April 23, 2013:	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. Point of Contact: Paul Prescott
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

<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.
Agency Response Dated April 23, 2013:	<p>To address OIG's most recent concern, the staff further enhanced Inspection Procedure (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 defects or nonconformances that have been identified. This will ensure that the inspectors are evaluating potential 10 CFR Part 21 issues on a continual basis.</p> <p>Target Completion Date: Complete. The staff issued a revision to IP 71152 on January 31, 2013. Point of Contact: Timothy Kobetz</p>
OIG Analysis:	OIG reviewed IP 71152 and found that the update includes guidance to ensure that potential Part 21 issues are evaluated on a continual basis. This action meets the intent of the recommendation. Therefore recommendation 5 is closed.
Status:	Closed.