



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

**OFFICE OF THE  
INSPECTOR GENERAL**

February 19, 2014

MEMORANDUM TO: Mark A. Satorius  
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 21, 2013

Attached is the Office of the Inspector General's analysis and status of recommendations 1, 2, and 4, as discussed in the agency's response dated November 21, 2013. Based on OIG's analysis of this response, recommendations 1, 2, and 4 remain in resolved status. Recommendations 3 and 5 were previously closed. Please provide an update on the status of the resolved recommendations by June 20, 2014.

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  
C. Jaegers, 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  
November 21, 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, "Reporting of Defects and Noncompliance". The U.S Nuclear Regulatory Commission (NRC) published Revision 3 of NUREG-1022 in January 2013, and it took 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. 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 Revision 1 of the draft regulatory basis in December 2013.

## **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 (cont.):

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," 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 Revision 1 of the draft regulatory basis is December 2013. The staff will host public meetings to discuss Revision 1 with stakeholders in early 2014. Based on the outcome of those public meetings, the staff will determine whether the regulatory basis is adequate to begin development of the proposed rule. The staff will undertake regulatory guidance development in parallel with the development of the proposed rule. Target Completion Date: Changed—Finalize Revision 1 of the draft regulatory basis in December 2013.

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#### **Status of Recommendations**

##### Recommendation 1 (cont.):

##### **OIG Analysis:**

On the basis of the agency's response of November 21, 2013, and a followup meeting between OIG and agency staff, OIG agrees with the agency's proposed actions. OIG met with agency staff on January 27, 2014, to clarify the steps and corresponding dates in the agency's plan to complete the revision of 10 CFR Part 21 for full conformity with the Energy Reorganization Act of 1974, As Amended, Section 206, Noncompliance. During this meeting, the staff confirmed that Revision 1 of the draft regulatory basis was not completed in December 2013, revised the estimate for completing it, and clarified the status of additional actions underway to complete the recommendations in this report.

Staff also agreed to include in future updates the specific planned steps with concomitant milestone dates for finalizing the Part 21 rulemaking as needed to complete recommendation 1. This recommendation will be closed upon completion and OIG review of the relevant, completed staff actions.

##### **Status:**

Resolved.

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### AUDIT OF NRC'S IMPLEMENTATION OF 10 CFR PART 21, REPORTING OF DEFECTS AND NONCOMPLIANCE

OIG-11-A-08

#### 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>
Agency Response Dated November 21, 2013:	<p>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 held public meetings on April 10, 2013, for 10 CFR 50.55(e); on April 11, 2013, for the fuel cycle facility rulemaking initiatives; and on May 30, 2013, for the evaluating and reporting process, related to reporting of defects and noncompliance. The staff continues to receive considerable stakeholder interest and requests for interaction before the staff completes the next step in the rulemaking process. The staff's estimate for completing Revision 1 of the draft regulatory basis is December 2013. The staff will host public meetings to discuss Revision 1 with stakeholders in early 2014. Based on the outcome of those public meetings, the staff will determine if the regulatory basis is adequate to begin development of the proposed rule. The staff anticipates making this decision in March 2014. 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 Revision 1 of the draft regulatory basis in December 2013.</p>
OIG Analysis:	<p>On the basis of the agency's response of November 21, 2013, and a followup meeting between OIG and agency staff, OIG agrees with the agency's proposed actions. OIG met with agency staff on January 27, 2014, to clarify the steps and corresponding dates in the agency's plan to</p>

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#### **Status of Recommendations**

Recommendation 2 (cont.):

complete Draft Regulatory Guide DG-1291, "Evaluating Deviations and Reporting Defects and Noncompliance," which remains a number and title place holder. Staff agreed to include in future updates the specific planned steps with concomitant milestone dates for developing this guidance, as well as document any agency outreach efforts that serve to communicate the pending changes regarding component defect reporting under Part 21. This recommendation will be closed upon staff completion and OIG review of interim guidance that specifies Part 21 reporting requirements.

**Status:** Resolved.

## 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 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.*

Agency Response Dated  
November 21, 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.

OIG Analysis: The agency's proposed action continues to meet the intent of the recommendation. As with Recommendations 1 and 2, and given the extended targeted dates for completion of the Part 21 rulemaking, OIG encourages staff to also provide steps and corresponding dates in the agency's plan towards the reissuance of NUREG-0302. This recommendation will be closed upon completion and OIG review of the revisions to NUREG-0302.

**Status:** Resolved.