
OFFICE OF THE INSPECTOR GENERAL

US NUCLEAR

REGULATORY COMMISSION

FOLLOWUP REVIEW OF NRC'S
MANAGEMENT OF
REPORTING REQUIREMENTS
UNDER 10 CFR PART 21

OIG/94A-21 June 28, 1994

AUDIT REPORT



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

June 28, 1994

OFFICE OF THE
INSPECTOR GENERAL

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: *for Robert W. Shideler*
Thomas J. Barchi
Assistant Inspector General for Audits

SUBJECT: REPORT ON FOLLOWUP REVIEW OF NRC'S
MANAGEMENT OF REPORTING REQUIREMENTS
UNDER 10 CFR PART 21

Attached is the Office of the Inspector General's (OIG) followup report on recommendations contained in OIG's report entitled "Review of NRC's Management of Reporting Requirements under 10 CFR Part 21," dated November 30, 1990.

The report contained eight recommendations which OIG began a followup review of in March 1994. As a result of our recently completed review, we found that NRC staff has completed action on seven of the eight recommendations contained in the report. The staff has taken some action to implement the one remaining open recommendation; however, this action has not been completed.

The Offices of Nuclear Regulatory Research, Nuclear Material Safety and Safeguards, and General Counsel have been working to revise 10 CFR Part 21 in order to make it more appropriate for nonreactor licensees and reduce the regulatory burden for many of these licensees by either exempting them outright or requiring compliance with only selective requirements in Part 21. We recognize that regulatory revisions can be an involved and lengthy process, and therefore we have monitored its progress through the Audit Followup Official's (AFO) tracking system. However, this effort has been going on for over three years and needs to be brought to

closure. We met with EDO officials and informed them of our concern regarding the status of recommendation 5b. They informed us that increased management attention will be given to this issue. While we continue to support the agency's endeavor to complete this task, we have decided to report this as a significant recommendation not yet completed in our next semi-annual report to Congress.

Attachment:

As stated

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REPORT SYNOPSIS

The Office of the Inspector General's (OIG) followup review of recommendations contained in its November 1990 report on the Nuclear Regulatory Commission's management of reporting requirements under 10 CFR Part 21 disclosed that corrective action has been taken on seven of the eight recommendations. The one recommendation not completed addresses the agency's need to revise 10 CFR Part 21 to accommodate material licensees.

In passing the Energy Reorganization Act of 1974, Congress created improvements for the nuclear industry to detect and report on the use of defective parts. Under Section 206 of the Act, a vendor or a licensee is required to notify the NRC promptly whenever a defective part that could pose a substantial safety hazard has been supplied to an NRC licensee.

In our 1990 report, we found that the Office of Nuclear Material Safety and Safeguards (NMSS) did not have a program to monitor its licensees. We recommended that the Office of General Counsel (OGC) determine whether Section 206 applied to NMSS-type licensees, and if it applies, NRC should establish a policy and program to address Part 21 reporting requirements for NMSS licensees. Our followup review found that OGC determined in 1990, Part 21 requirements do apply to material licensees, but needed revisions to 10 CFR Part 21 have yet to be made. While we recognize that regulatory revisions can be an involved and lengthy process, we believe that increased management attention is needed to bring this recommendation to closure. Therefore, in our next semi-annual report to Congress, we will report this as a significant recommendation not yet completed.

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INTRODUCTION

In November 1990, the Office of the Inspector General (OIG) issued an audit report on its review of the Nuclear Regulatory Commission's (NRC) management of reporting requirements under 10 CFR Part 21. The objectives of that audit were to determine if:

- 10 CFR Part 21 and proposed revisions were adequate for assuring compliance with Section 206 of the Energy Reorganization Act of 1974, as amended, and
- NRC's management of 10 CFR Part 21 reports was adequate to assure resolution of defects reported.

As a result of the review, OIG made eight recommendations to NRC officials to improve upon NRC's management of 10 CFR Part 21 reports. In October 1990, the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research (DEDO) responded to OIG's draft report noting his agreement with OIG's recommendations.

In accordance with its policy of periodically following up on selected audit reports, OIG initiated a review in March 1994, of actions taken to implement the eight recommendations. This report provides the results of that followup review.

BACKGROUND

In its November 1990 audit report, OIG commented on three areas of concern arising from its review. OIG noted that:

- NRC had not completed its commitments to revise 10 CFR Part 21;
- NRC's Office of Nuclear Reactor Regulation's (NRR) tracking and management of Part 21 reports was inadequate; and,
- NRC's Office of Nuclear Materials Safety and Safeguards (NMSS) lacked a policy and program for managing 10 CFR Part 21 reports.

To address these concerns, OIG made recommendations to several officials to take actions to bring about improvements in NRC's management of reports under 10 CFR Part 21; including the Executive Director for Operations (EDO), the Directors of NRR and NMSS and the General Counsel, and NRC's Regional Administrators. The DEDO, in responding to OIG's draft report, agreed with all of the recommendations except recommendation 1.

In recommendation 1, OIG believed the revision to 10 CFR Part 21 should include in the text of the rule a specific timeframe for the evaluation of deviations to identify defects which could create substantial safety hazards. In his response, the DEDO stated that the staff had previously recommended to the Commission such revisions; but, that the Commission had not approved them.

Because of this disagreement, OIG requested that the EDO provide a resolution to recommendation one. The EDO subsequently submitted a request to the Commission to reconsider its position on whether 10 CFR Part 21 should be revised to include a specific timeframe for evaluating defects.

In February 1991, the Commission agreed to consider a revised final rule that included a specific timeframe for evaluating defects in a revision to 10 CFR Part 21. Subsequently, the EDO submitted a proposed revision to Part 21 to include reference to a specific timeframe, for reconsideration by the Commission.

FINDINGS

OIG'S followup review shows that NRC has taken action on all but one of the eight recommendations made in the audit report. Based on our review, we believe the staff has satisfactorily addressed the intent of seven of the eight recommendations contained in our report. One recommendation, (5b), still remains open. The staff has taken steps to implement the one recommendation still open; however, these actions are yet to be completed. Therefore, we will note in our semi-annual report to Congress that this is a significant recommendation not yet implemented. Following is a more detailed description of each recommendation and actions taken to implement it.

Recommendation 1.

OIG recommended that the EDO submit to the Commissioners a revision to 10 CFR Part 21, including in the text of the rule, a specific timeframe for evaluation of deviations in identifying defects which could create substantial safety hazards.

This recommendation was intended to ensure the issuance of a rule more suited for regulation and enforcement.

On July 31, 1991, a proposed revision to 10 CFR Part 21, containing a requirement that deviations be evaluated within 60 days of discovery, was published in the Federal Register (56 FR 36081) and became effective on October 29, 1991.

Recommendation 2.

OIG recommended that the Director, NRR develop procedures which prescribe the management process for 10 CFR Part 21 reports and specifically address the findings in the report. The findings in OIG's report showed that the tracking and accountability of Part 21 reports was inadequate. As a result, many reports remained unresolved; the log for recording Part 21 reports was overstated; and, internal procedures and instructions were outdated, just to mention some of the inadequacies.

NRR developed procedures which describe the staff's management process for Part 21 reports. These procedures were incorporated into Office Letter No. 1300, Revision 1 - "Procedures for Handling 10 CFR Part 21 and 10 CFR 50.55(e) Notifications of Defects, Noncompliances, and Construction Deficiencies Related to Nuclear Power Reactors and Their Vendors." This Office Letter addresses the Part 21 notification review process, including the basis for closing staff actions on Part 21 notifications.

NRR also addressed the findings noted in OIG's report. Specifically, NRR has made improvements to its tracking of Part 21 reports and significantly reduced its backlog of open reports.

Office Letter No. 1300 provides a more definitive and up-to-date prescription of the Part 21 management process. NRR's efforts to reduce its backlog of open reports and monitor Part 21 issues have resulted in an improved process for tracking and resolving Part 21 reported issues. We believe these efforts have resulted in the satisfactory implementation of this recommendation.

Recommendation 3.

OIG recommended that the Director, NRR provide for training to individuals involved in the managing and closeout of 10 CFR Part 21 reports. This

recommendation was intended to improve the effectiveness of NRR's management and resolution of 10 CFR Part 21 reports.

In September and October of 1991, NRR conducted seminars at NRC headquarters and each of NRC's five Regional Offices. This training consisted of a presentation, handouts and discussion of NRC's revised procedures for handling Part 21 reports.

Recommendations 4. and 5.

Recommendations 4 and 5 are interrelated. Recommendation 4 requested the Office of General Counsel (OGC) make a determination of whether Section 206 of the Energy Reorganization Act of 1974, as amended, was applicable to materials licensees and depending upon that determination, recommendation 5a or 5b would then be applicable. In recommendation 5a, if OGC determined that Section 206 was not applicable, then the staff was to take action to delete materials licensees from Part 21; or, if it was applicable, then in recommendation 5b, NMSS was required to establish a policy for the management of Part 21 with its licensees and vendors, including the development of instructions and a tracking system for managing that policy.

OGC advised the staff that the "statute encompasses all activities 'licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954 as amended,'... and therefore the activities of material licensees and their vendors are within the scope of Section 206 of the Act." The DEDO agreed that OGC and NMSS would work together on determining the best means for ensuring materials licensees and vendors compliance with Part 21.

In reviewing the actions taken by the staff to comply with OGC's determination, we found that recommendation 5b has not been completed. Although some action has been taken to respond to some elements of our recommendation, the most significant part of the recommendation has not been addressed. Since the issuance of our audit report in November 1990, OGC, NMSS and the Office of Nuclear Regulatory Research (RES) have been trying to develop a revision to 10 CFR Part 21, in order to satisfy and comply with the intent of Section 206 of the Act. Actions that have been taken as a result of OGC's determination include the Director, Division of Industrial & Medical and Nuclear Safety, NMSS (DIMNS) establishing a system for tracking Part 21 reports related to materials licensees, in April 1991. Also, in June of 1991, the Director, DIMNS issued Information Notice 91-39, Compliance With 10 CFR Part 21, "Reporting of Defects and

Noncompliance," to all NRC materials licensees. In October 1991, the EDO approved a request to initiate a rulemaking on the regulation of Part 21 related activities of materials licensees.

RES has drafted a proposed rule regarding Part 21 related activities of materials licensees which has been circulated within NRC and to Agreement States for comment. In commenting on the proposed rule, a number of the Agreement States noted their expectations of jurisdictional problems in implementing Part 21 under the current regulatory framework. Many of the Agreement States indicated that resolution of these issues would likely necessitate legislative changes in their respective states. Because of these and other questions regarding the application of Part 21, the DEDO requested a legal analysis of OGC related to establishing compatibility policy on 10 CFR Part 21.

Although this request was made in November of 1993, OGC waited until May 1994 before providing a written response to the DEDO's request. According to this response, the Deputy General Counsel for Licensing and Regulations, OGC had provided an oral response to the staff in October 1993, stating that Section 206 of the Act was not applicable to the Agreement States. Thus, the proposed rulemaking would only be applicable to NRC-regulated licensees and not licensees of Agreement States. Since receiving OGC's response, RES and NMSS have been working towards a revised rule covering materials licensees under Part 21. However, these offices had not yet defined which types of licensees would be considered for exclusion from the rule at the end of OIG's field work.

While NRC has taken action to implement recommendation 5b, this action is yet to be completed. Therefore, OIG considers this recommendation still open and will include it in our next semi-annual report to Congress as a significant recommendation not yet completed.

Recommendation 6.

To improve the effectiveness of NRR's management and resolution of Part 21 reports, OIG recommended that the Director, NRR review and revise the Manual Chapters and Inspection Procedures used to describe NRR's management and regulation of 10 CFR Part 21 reports.

NRR issued revised and updated Manual Chapters and Inspection Procedures associated with Part 21, effective August 30, 1991. The revised guidance addresses Part 21 inspections and procedures for handling Part 21 reports for operating reactors and their vendors. We believe these revised Manual Chapters

and Inspection Procedures provide a more effective basis for staff actions related to Part 21 activity.

Recommendation 7.

OIG recommended that NRC's Regional Administrators review their procedures to ensure consistency with procedures revised by NRC headquarters. To implement this recommendation, the Generic Communications Branch (OGCB) conducted training seminars at NRC headquarters and each of the five Regional Offices during the latter part of 1991. These seminars were intended to ensure the consistent handling of Part 21 reports by all persons involved in the management of Part 21 reports. OGCB also prepared a regional instruction for processing Part 21 reports which was distributed to each of NRC's five Regional Offices. We believe these efforts have resulted in a more uniform and effective handling of Part 21 reports.

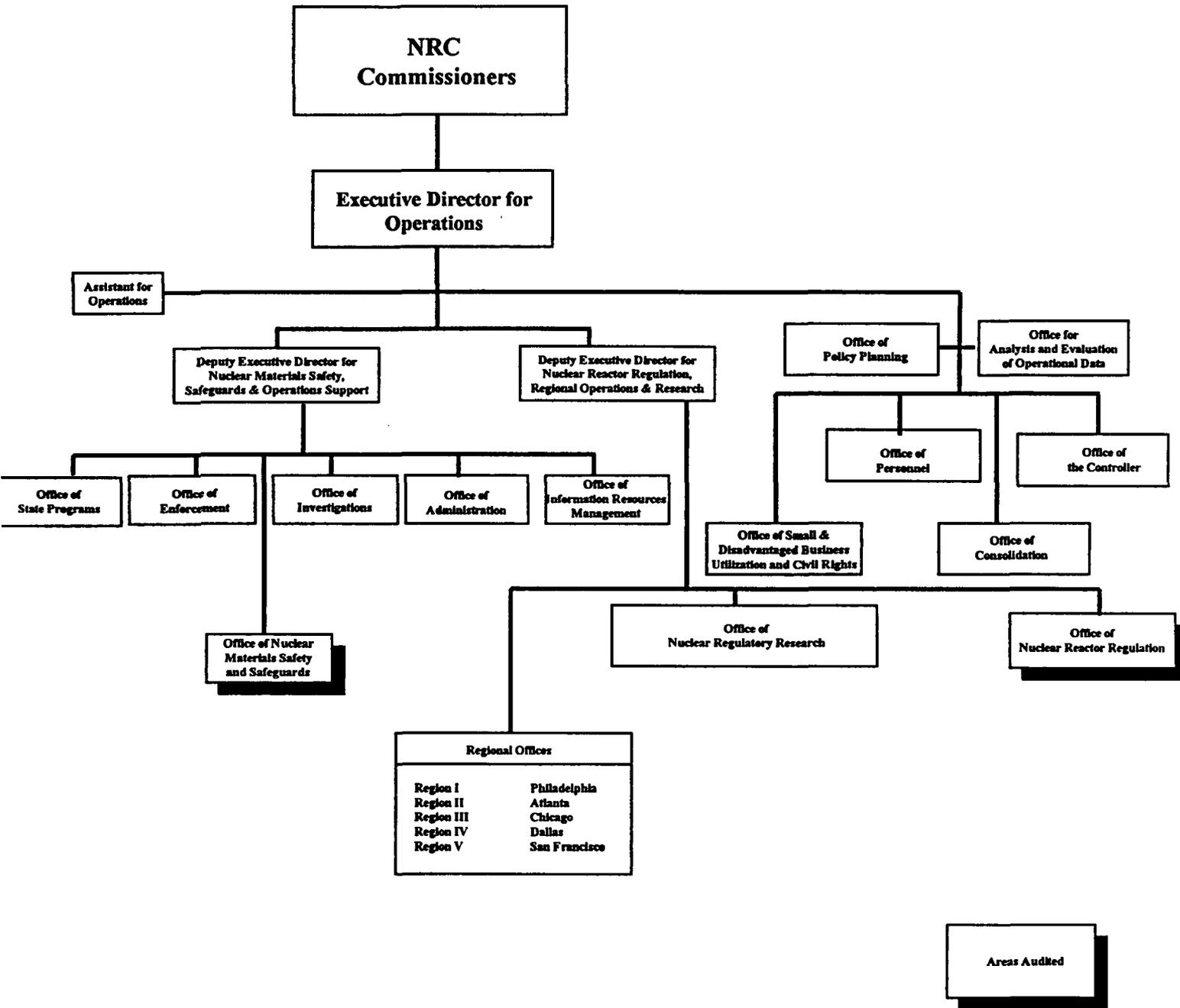
Recommendation 8.

In this recommendation, OIG suggested that the Director, NRR consider consolidating all procedures and instructions pertaining to Part 21 issues into a single source document. As part of its process of revising and upgrading Part 21 guidance, NRR summarized the various Part 21 directives and incorporated them into NRR Office Letter No. 1300 and selected inspection procedures. These revised directives provide a more composite and definitive basis for use in handling Part 21 reports.

CONCLUSION

Our review shows that NRC has taken steps to improve the management and resolution of 10 CFR Part 21 reports. We believe that NRC's actions have resulted in the implementation of all recommendations except recommendation 5b. Although NRC has yet to complete its work on developing a policy for managing Part 21 reports from materials licensees as suggested in recommendation 5b, it has created a tracking system for such reports and issued guidance to NMSS staff for managing those reports. As required by Section 5(a)(3) of the Inspector General Act of 1978, as amended, we plan to report to the Congress in our semi-annual report that this is a significant recommendation not yet completed.

U.S. NRC FUNCTIONAL ORGANIZATION CHART



MAJOR CONTRIBUTORS TO THIS REPORT

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