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February 24, 2000



References: a) Boeing Letter G-1151-RSO-92-264 Dated June 12, 1992; R.S. Orr to Director, Office of Inspection and Enforcement.

b) NRC Letter Docket No. 99901227 Dated August 12, 1992; L.J. Norrholm to R.S. Orr; Subject: Response to 10 CFR 21 Inquiry.

Mr. Petrocino:

1. Background

For an unspecified period of time, ending in 1991, Boeing leased computer time and use of specific programs to outside customers. Some of these customers were in the business of designing nuclear plants. Part 21 of the NRC regulations (10 CFR Part 21) governs the reporting of defects or errors that might affect safety related components or designs.

Since at least 1992, Boeing has been acting as a conduit between software vendors such as Georgia Tech and our computer time customers for Part 21 error notices that concern the software programs which were used on our machines when we leased time.

In June of 1992, Boeing requested clarification from the NRC of Boeing's notification responsibility. The NRC's response stated that Boeing was required to forward the error notices to the customers. Where Boeing was unable to contact the former customers, Boeing was to notify the NRC (references a and b above).

Since the start of the notification program, Boeing has been informed by certain of our former customers that they no longer use the software programs for which error notices are being forwarded. The question arose whether Boeing was obligated to continue to forward the notices to these customers.

We would like to know if the NRC concurs with the answers we arrived at for the following questions:

- a. How long is Boeing required to continue to forward the Part 21 error notices to the NRC and to our customers?
- b. Is Boeing required to forward the Part 21 error notices to customers who no longer use the programs for which the notices are issued?

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2. Discussion

Part 21 applies to any errors or defects found in “basic components” of nuclear power plants. The definition of “basic components” includes “**safety-related design, analysis, inspection, testing, fabrication, replacement of parts, or consulting services** that are associated with the component hardware whether these services are performed by the component supplier or others” (emphasis added). This has been interpreted to include the types of services offered by Boeing prior to 1991.

a. Time for Forwarding Notices

Neither Part 21, nor any case law, nor the letters exchanged with the NRC specified how long Boeing was to continue sending out the error notices.

The recordkeeping aspect of Part 21 can be found in section 21.51. Prior to July of 1991, this section did not contain any time limits for record retention. In July of 1991, the section was amended, in part to clarify this retention question (see 56 FR 36081). The current version of this section contains two specific, date related requirements. They are:

(a)(2) *Suppliers of basic components* must retain any *notifications* sent to purchasers and affected licensees for a minimum of **five years** after the date of the notification.

(a)(3) *Suppliers of basic components* must retain a *record of the purchasers* of basic components for **10 years after delivery** of the basic component or service associated with a basic component.

Since the purchase information need only be kept for ten years, the period during which error notifications must be forwarded to customers can be no longer than ten years after delivery of the service ceases. Since Boeing ceased offering this service in 1991, notices would not have to be forwarded after the end of 2001.

b. Obligation to Forward Notices to Non-Users.

The purpose of the Part 21 notice program is to make sure that all errors or defects with the potential to affect safety are evaluated for their impact. When the supplier of the component or service is unable to perform the safety evaluation, the notice of error is forwarded to the nuclear customer for such evaluation. If the customer is not available, the notice is forwarded to the NRC so they can determine if the error or defect is severe enough to warrant notification of the nuclear industry as a whole. (NRDC v. NRC, 666 F.2d 595 (D.C. Cir.1981)). There are many discussions of the purpose of Part 21 that emphasize that it is to assure the safety of the components of nuclear power plants.

Suppliers of components are allowed to evaluate errors and defects to determine if they have a substantial safety effect. Suppliers are also allowed to decline to provide error notices where the error or defect is determined to have no substantial effect on safety (In



the Matter of Rosemount Nuclear Instruments, Inc., 40 N.R.C. 370 (1994) and In the Matter of Rosemount Nuclear Instruments, Inc., 42 N.R.C. 9 (1995))

Boeing is not in a position to evaluate the effect of the error or defect. However, where the software is no longer in use, the error cannot affect safety. Therefore, when Boeing has written notification that the program at issue is no longer used by the customer, there would be no need to forward the error notification for evaluation.

3. Conclusion

- a. For each individual former computer time customer, error notices do not have to be provided after 10 years from the date of the final service provided to each such customer, and
- b. If a former customer represents to Boeing in writing that it no longer uses the program containing the error, the obligation to forward the error notification thereupon ceases.

Please confirm whether the above conclusions are correct. If they are not, we would appreciate the NRC's view on how long Part 21 notices should continue to be forwarded.

Sincerely,



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