

February 3, 2014

MEMORANDUM TO: Stephen D. Dingbaum
Assistant Inspector General for Audits

FROM: Glenn M. Tracy, Director */RA by Gary Holahan for/*
Office of New Reactors

SUBJECT: STATUS OF RECOMMENDATIONS AND STAFF RESPONSE TO
THE OFFICE OF THE INSPECTOR GENERAL'S AUDIT OF THE
U.S. NUCLEAR REGULATORY COMMISSION'S VENDOR
INSPECTION PROGRAM (OIG-10-A-20)

This memorandum provides the U.S. Nuclear Regulatory Commission (NRC) staff's updates for the remaining open recommendations from the Office of the Inspector General's (OIG) audit OIG-10-A-20, "Audit of NRC's Vendor Inspection Program," dated September 28, 2010. The staff continues to implement actions in response to OIG's audit and remains responsive to OIG's recommendations. Enclosure 1 to this memorandum presents a history of correspondence for this audit.

Recommendation 1:

Develop an Office of New Reactors (NRO) Vendor Inspection Program planning document that:

- a. Articulates a clear purpose for the Vendor Inspection Program
- b. Establishes metrics to evaluate the success of the Vendor Inspection Program

Status: Closed.

Recommendation 2:

Develop and document a methodology to identify vendors that supply safety related parts and services to the nuclear industry with Appendix B quality assurance programs.

OIG analysis dated October 17, 2013:

The proposed actions to issue a regulatory issue summary (RIS) and publish a Web site constitute the agency's proposed methodology to identify vendors that supply safety-related parts and services to the nuclear industry. These actions continue to meet the intent of OIG's

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recommendation. OIG notes that the NRC is still awaiting final review from the Office of Management and Budget (OMB) for the Web site and RIS, thus delaying completion by the original September 2013 completion date. OIG will close this recommendation upon issuance and OIG review of the proposed RIS and review of the finalized framework of the NRO vendor Web site upon final completion.

Status: Resolved.

NRC Staff Update:

Actions taken and planned: The staff drafted the RIS, and had planned to issue it by September 2013 but now plans to issue it by March 2014. Staff postponed the issuance because OMB requested one additional clarification regarding the NRC's protection of the information which could be subject to Freedom of Information Act (FOIA) requests. Specifically, OMB asked the NRC:

How NRC is protecting the confidentiality of which vendors were submitted by general contractors and licensees? General contractors and licensees will likely not want their competitors to know which vendors they use.

The staff responded to OMB in early January 2014 with the following:

According to the FOIA coordinator it was confirmed that there are two possible scenarios for a possible FOIA situation:

(1) A submitter (licensee) may very well have a privacy interest that outweighs the public interest in disclosure of the vendors' contact information to the FOIA requester. In this case, any information that is submitted to the NRC by a licensee or vendor that is claimed by the submitter to be confidential based on its containing proprietary information will be sent to the submitter for a 5 U.S.C. 552(b)(4) review prior to the disclosure to the requester who has submitted the FOIA. This is what is colloquially called a "submitter notice". In response to that submitter notice, the submitter identifies any information that they assert is subject to withholding pursuant to that exemption. Following the review completed by the submitter, the NRC will conduct its own review of the information, as well as any privacy information subject to withholding pursuant to 5 U.S.C. 552(b)(6).

(2) The submitters (licensee) may have no objection to the release of the vendor contact information. As a practical matter from a FOIA perspective, the balancing inquiry set forth in (b)(6) will be examined by the NRC, on a case by case basis, to properly protect both the privacy and proprietary interests of submitters while maintaining transparency.

In its latest question to the NRC, OMB noted that it was eager to complete its review and requested that the NRC respond the same day. The staff believes that this was the final clarification request from OMB and expects to receive the necessary clearance shortly. The staff now anticipates issuing the RIS and posting the Web site in March 2014.

Target Completion Date: March 2014.

Contact: Shavon Edmonds, NRO/DCIP

Recommendation 3:

Develop and document a risk-informed methodology to select vendors for inspection.

Status: Closed.

Recommendation 4:

Develop and use a vendor outreach/communications plan.

Status: Closed.

Recommendation 5:

Align NRC guidance and regulations to clarify acceptance methods for commercial-grade dedication (CGD).

OIG analysis dated October 17, 2013:

This recommendation remains resolved. OIG will close this recommendation upon review of (1) Revision 1 to the draft regulatory basis, which was to be completed in September 2013, and (2) the proposed and final rules in 2014 and 2015, respectively. Closure will be contingent upon OIG review of the steps taken by NRO to implement those actions necessary to align the guidance and the regulation to clarify acceptance methods for CGD.

Status: Resolved.

NRC Staff Update:

Actions taken and planned: The staff continues to make progress on its rulemaking efforts to clarify Title 10 of the *Code of Federal Regulations* (10 CFR) Part 21, "Reporting of Defects and Noncompliance." This progress includes clarifying acceptance methods for commercial grade dedication.

The staff has continued to participate in the Electric Power Research Institute (EPRI) Technical Advisory Group meetings on CGD. These meetings have focused on the industry's proposals to issue a revision to EPRI NP-5652, "Guideline for the Utilization of Commercial Grade Items in Nuclear Safety Related Applications (NCIG-07)." If the staff agrees the revision is an acceptable means of demonstrating compliance with the NRC's regulations, the document will be endorsed through a regulatory guide and will provide detailed guidelines for CGD. The staff has coordinated with the Office of Nuclear Regulatory Research to create draft guide DG-1292, "Dedication of Commercial Grade Items." EPRI plans to finalize its guidance in spring 2014.

From the beginning of this rulemaking project, the staff has emphasized its commitment to keeping its stakeholders informed and involved. Comments received during the public meetings have provided excellent insights for improving the regulatory basis. This extensive stakeholder participation and feedback has led to a revision of the schedule. In addition, the staff has been developing solutions to many of the complex issues associated with the rulemaking. One example of this has been the staff's work on defining basic component for nonreactor facilities. Staff from NRO and the Office of Nuclear Materials Safety and Safeguards (NMSS) has been coordinating this effort to develop a common solution that avoids potential detrimental effects. The staff performed four site visits in the summer of 2013, at different fuel cycle facilities, to gauge the differences in interpretation of the current definition and inform a path forward.

The staff's updated schedule is included in the table below. The latest schedule reflects a targeted issuance of Revision 1 to the draft regulatory basis in April 2014. This moves the projected dates for the proposed and final rules to September 2015, and December 2016, respectively.

Milestones	Target Date
Internal Collaboration on Draft Regulatory Basis	Ongoing
Final NMSS Site Visit at Fuels Facilities (COMPLETE)	September 27, 2013
NMSS Public Meeting to Include Potential Solutions to Policy Issues	March 6, 2014
Begin Concurrence of Revision 1 to the Draft Regulatory Basis	March 31, 2014
Release Revision 1 to the Draft Regulatory Basis	April 30, 2014
Public Meetings to Discuss Regulatory Basis	Summer 2014
Finalize Regulatory Basis	September 2014
Proposed Rule with draft guides	September 2015
Final Rule	December 2016

Target Completion Date: Issue proposed rule and draft guides, DG-1291, "Evaluating Deviations and Reporting Defects and Noncompliance," and DG-1292, "Dedication of Commercial Grade Items:" September 2015. Issue final rule: December 2016.

Contact: Victor Hall, NRO/DCIP

Recommendation 6:

Issue regulatory guidance to clarify sampling expectations for CGD.

OIG analysis dated October 17, 2013:

This recommendation remains resolved and will be closed when OIG reviews the updated actions deemed necessary to clarify sampling expectations for CGD.

Status: Resolved.

NRC Staff Update:

Actions taken and planned: As noted above for Recommendation 5, the staff continues to make progress on its rulemaking efforts to clarify 10 CFR Part 21, which includes sampling expectations for commercial grade dedication. Section G, "Sampling Requirements," of Chapter 3, "Commercial Grade Dedication," of the draft regulatory basis describes the staff's technical analysis of sampling. The staff is discussing development of an updated industry sampling guidance document with stakeholders, and will undertake regulatory guidance development in parallel with the development of the proposed rule.

Target Completion Date: Issue proposed rule and draft guides, DG-1291, "Evaluating Deviations and Reporting Defects and Noncompliance," and DG-1292, "Dedication of Commercial Grade Items:" September 2015. Issue final rule: December 2016.

Contact: Victor Hall, NRO/DCIP

Recommendation 7:

Issue regulatory guidance describing a process that NRC considers acceptable for compliance with Part 21.

OIG analysis dated October 17, 2013:

This recommendation remains resolved. OIG will continue to review agency actions as provided above, to include work being done on completing the regulatory basis, as well as the issuance of a final rule and final regulatory guides. Closure will also be contingent upon OIG's final review of implemented actions NRC considers acceptable for compliance with Part 21 as previously indicated.

Status: Resolved.

NRC Staff Update:

Actions taken and planned: As noted above for Recommendation 5, the staff continues to make progress on its rulemaking efforts to clarify 10 CFR Part 21, which includes describing a process that the NRC considers acceptable for compliance to the regulations. Section 1, and Section A, each entitled, "Lack of Regulatory Guidance," of the draft regulatory basis describe the staff's technical analysis of regulatory guidance for 10 CFR Part 21. The staff will undertake regulatory guidance development in parallel with the development of the proposed rule.

During the May 30, 2013, public meeting on evaluating and reporting (i.e., the 10 CFR Part 21 process), the Nuclear Energy Institute (NEI) agreed to author a guidance document on the evaluating and reporting process. Development is expected to be similar to EPRI's efforts to revise guidance on CGD. This may be useful guidance that could be endorsed through the planned NRC regulatory guide. The staff continues to communicate with NEI regarding development of the guide. NEI plans to complete a first draft of the guide in the spring of 2014.

Target Completion Date: Issue proposed rule and draft guides, DG-1291, "Evaluating Deviations and Reporting Defects and Noncompliance," and DG-1292, "Dedication of Commercial Grade Items:" September 2015. Issue final rule: December 2016.

Contact: Victor Hall, NRO/DCIP

Recommendation 8:

Clearly indicate via the NRC public Web site how and when Part 21 has changed.

Status: Closed.

Recommendation 9:

Develop guidance that clarifies the requirements for vendors on how to approve accredited commercial-grade calibration laboratories for safety-related applications.

OIG analysis dated October 17, 2013:

The proposed actions continue to meet the intent of the recommendation. The recommendation will be closed after OIG reviews the proposed safety evaluation report (SER) and related generic communications prior to final publication in 2014 to determine if they clarify the vendor requirements as described in the recommendation.

Status: Resolved.

NRC Staff Update:

Actions taken and planned: The staff continues to work toward clarifying the requirements for licensees and vendors for how to approve accredited commercial grade calibration laboratories for use in safety-related applications. From November 11–15, 2013, the NRC staff participated, as observers, in an International Laboratory Accreditation Cooperation's (ILAC) evaluation of the Japan Accreditation Board (JAB), in Tokyo, Japan. A team representing the Nuclear Utilities Procurement Issues Committee and the NEI also observed the evaluation of JAB's accreditation. The results of the staff's observation are summarized in a trip report (Agencywide Document Access and Management System Accession No. ML13330A978).

NEI is expected to submit for NRC review an industry proposal to expand the NRC's current acceptance of third-party accreditation to include both domestic and international calibration and testing laboratories accredited under ILAC for purposes of commercial grade dedication. NEI stated that it expects to submit this proposal by June 2014. After the review of NEI's proposal, the NRC staff plans to issue a generic communication to convey and clarify to the nuclear industry the NRC's technical position on the use of the ILAC accreditation process. The staff still plans to issue a SER and a generic communications document within 6 months of receiving an industry submittal. The staff continues to make presentations to stakeholders to clarify the topic.

S. Dingbaum

- 7 -

Based on NEI's updated schedule, the staff expects to complete the SER and issue generic communications in December 2014.

Target Completion Date: Complete SER and issue generic communications by December 2014

Contact: Yamir Diaz-Castillo, NRO/DCIP

Recommendation 10:

Develop and implement a formal agencywide strategy and plan to monitor and evaluate counterfeit, fraudulent, and suspect items.

Status: Closed.

Enclosure:

Correspondence History OIG-10-A-20, "Audit of NRC's Vendor Inspection Program"

cc: Chairman Macfarlane
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
SECY
EDO

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ADAMS Accession No: ML13295A433 (pkg)

*via e-mail

NRO-002

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OFFICE	NRO				
NAME	GTracy (GHolahan for)				
DATE	02/03/2014				

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Correspondence History
OIG-10-A-20, "Audit of NRC's Vendor Inspection Program"

- September 28, 2010—*Audit Report*: AUDIT OF NRC'S VENDOR INSPECTION PROGRAM (OIG-10-A-20)
 - Agencywide Documents Access & Management System (ADAMS) Accession No. ML102730627
- October 30, 2010—*Memo to the Assistant Inspector General for Audits*: STAFF RESPONSE TO THE OFFICE OF THE INSPECTOR GENERAL'S AUDIT OF THE NUCLEAR REGULATORY COMMISSION'S VENDOR INSPECTION PROGRAM (OIG-10-A-20)
 - ADAMS Accession No. ML102950601
- January 11, 2011—*Memo to the EDO*: STATUS OF RECOMMENDATIONS: AUDIT OF THE NUCLEAR REGULATORY COMMISSION'S VENDOR INSPECTION PROGRAM (OIG-A-20)
 - ADAMS Accession No.
- May 26, 2011—*Memo to the Assistant Inspector General for Audits*: STATUS OF RECOMMENDATIONS AND STAFF RESPONSE TO THE OFFICE OF THE INSPECTOR GENERAL'S AUDIT OF THE U.S. NUCLEAR REGULATORY COMMISSION'S VENDOR INSPECTION PROGRAM (OIG-10-A-20)
 - ADAMS Accession No. ML111290142
- July 27, 2011—*Memo to the EDO*: STATUS OF RECOMMENDATIONS: AUDIT OF THE NUCLEAR REGULATORY COMMISSION'S VENDOR INSPECTION PROGRAM (OIG-10-A-20)
 - ADAMS Accession No. ML11209C350
- January 6, 2012—*Memo to the Assistant Inspector General for Audits*: STATUS OF RECOMMENDATIONS AND STAFF RESPONSE TO THE OFFICE OF THE INSPECTOR GENERAL'S AUDIT OF THE U.S. NUCLEAR REGULATORY COMMISSION'S VENDOR INSPECTION PROGRAM (OIG-10-A-20)
 - ADAMS Accession No. ML12004A064
- March 9, 2012—*Memo to the EDO*: STATUS OF RECOMMENDATIONS: AUDIT OF THE NUCLEAR REGULATORY COMMISSION'S VENDOR INSPECTION PROGRAM (OIG-10-A-20)
 - ADAMS Accession No. ML120690007
- August 3, 2012—*Memo to the Assistant Inspector General for Audits*: STATUS OF RECOMMENDATIONS AND STAFF RESPONSE TO THE OFFICE OF THE INSPECTOR GENERAL'S AUDIT OF THE U.S. NUCLEAR REGULATORY COMMISSION'S VENDOR INSPECTION PROGRAM (OIG-10-A-20)
 - ADAMS Accession No. ML12207A607
- September 13, 2012—*Memo to the EDO*: STATUS OF RECOMMENDATIONS: AUDIT OF THE NUCLEAR REGULATORY COMMISSION'S VENDOR INSPECTION PROGRAM (OIG-10-A-20)
 - ADAMS Accession No. ML12257A180

Enclosure 1

- February 4, 2013—*Memo to the Assistant Inspector General for Audits*: STATUS OF RECOMMENDATIONS AND STAFF RESPONSE TO THE OFFICE OF THE INSPECTOR GENERAL'S AUDIT OF THE U.S. NUCLEAR REGULATORY COMMISSION'S VENDOR INSPECTION PROGRAM (OIG-10-A-20)
 - ADAMS Accession No. ML13028A364
- March 26, 2013—*Memo to the EDO*: STATUS OF RECOMMENDATIONS: NRC'S VENDOR INSPECTION PROGRAM (OIG 10-A-20)
 - ADAMS Accession No. ML13085A004
- July 31, 2013—*Memo to the Assistant Inspector General for Audits*: STATUS OF RECOMMENDATIONS AND STAFF RESPONSE TO THE OFFICE OF THE INSPECTOR GENERAL'S AUDIT OF THE U.S. NUCLEAR REGULATORY COMMISSION'S VENDOR INSPECTION PROGRAM (OIG-10-A-20)
 - ADAMS Accession No. ML13199A511
- October 17, 2013—*Memo to the EDO*: STATUS OF RECOMMENDATIONS: NRC'S VENDOR INSPECTION PROGRAM (OIG 10-A-20)
 - ADAMS Accession No. ML13290A366