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DOCKET NUMBER

PETITION RULE PRM 20-25

(68FR 23618)



NUCLEAR ENERGY INSTITUTE

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July 21, 2003

Secretary
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001

ATTN: Rulemakings and Adjudications Staff

SUBJECT: Comments on "Sander C. Perle, ICN Worldwide Dosimetry Service,
Receipt of Petition for Rulemaking," (68 Fed. Reg. 23618, dated May 5,
2003) [Docket No. PRM-20-25]

This letter provides comments of the Nuclear Energy Institute (NEI)¹, on behalf of the nuclear energy industry, on a petition for rulemaking to Title 10 Code of Federal Regulations Part 20 (10 CFR 20) described in the subject *Federal Register* notice.

The petitioner requests that the Nuclear Regulatory Commission (NRC) amend its regulations to require that any dosimeter, without exception, that is used to report a dose of record and demonstrate compliance with the occupational dose limits specified in the Commission's regulations be processed and evaluated by a dosimetry processor holding accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology.

We believe that current programs for monitoring and recording occupational radiation dose at nuclear energy facilities are adequate to help assure protection of worker health and safety and are in compliance with NRC regulatory requirements. We see nothing in the subject notice and supporting documents to indicate that the petitioner believes otherwise, and we understand the intent of the petition is to propose rulemaking that will potentially have the effect of enhancing the quality of current programs. It is with this understanding that, although we do not take issue

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory aspects of generic operational and technical issues. NEI members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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SECY-02

with the intent of the petition, we do not support the suggested NRC rulemaking, for the following reasons:

1. Justification for Rulemaking Is Lacking

The petition does not describe a regulatory problem or issue to be resolved, nor does the petition describe how the suggested changes to 10 CFR 20 will resolve such a problem or issue. The "primary reasons" stated by the petitioner for proposing rulemaking appear to include the rationale that the use of NVLAP onsite assessor is "more appropriate" than the current use of onsite NRC inspectors, and more generally, that the requirement for NVLAP accreditation should be imposed for reasons of feasibility, comprehensiveness and consistency. The petition does not provide an explanation of why NVLAP accreditation and assessment is "more appropriate" than NRC oversight and inspection. The petition also does not explain if and how the proposed new requirements would have the effect of improving the existing level of protection of worker health and safety.

2. The Scope of the Proposal for Rulemaking Is Unclear

The specific proposal for changes to 10 CFR 20 will create new requirements that may lead to outcomes that are not intended by the petitioner. For example, the specific proposed wording in the petition might be taken to mean that secondary (backup) individual monitoring devices would require NVLAP accreditation. We are aware that the petitioner has submitted supplemental comments on the docket in order to clarify the intent of his petition -i.e., that only "primary dosimeters" shall require NVLAP accreditation. However, we do not agree that a proposal for rulemaking should go forward with either the original, or potentially amended, scope.

In regard to the petitioner's request for rulemaking to require NVLAP accreditation for extremity dosimeters, we believe that consideration of possible rulemaking is premature. It is our understanding that the standard governing extremity dosimetry (ANSI/HPS N13.32-1995), referenced in the petition, is currently undergoing revision, involving substantive changes from the existing version. We suggest that consideration by NRC of possible rulemaking in this regard be deferred until such time as an updated standard is published and available for review as part of an appropriate process for seeking public comment.

3. The Proposal for Rulemaking Represents a Backfit

An effect of the petitioner's request for rulemaking, if adopted by the NRC, would be to impose new requirements on licensees who utilize dosimeters of the types described in the petition. Such new requirements will lead to additional burden in the form of needing to revise programs, procedures, and training, as part of acquiring initial NVLAP accreditation, as well as to maintain accreditation into the future, including periodic on-site NVLAP assessments, NVLAP-specific recordkeeping, and payments of NVLAP fees. We view this additional burden as unnecessary and unjustified because the current programs already ensure adequate protection of worker health and safety and are in compliance with NRC rules. The proposal does not define or redefine what level of protection of worker health and safety should be regarded as adequate, nor will it result in a substantial improvement to protection of health and safety. Therefore, we believe that such a rule, if adopted, would constitute a backfit for Part 50 licensees, as described in 10 CFR 50.109.

Imposition of the new requirements on front-end fuel cycle licensees, including uranium recovery and conversion facilities (Part 40 licensees) and enrichment and fuel fabrication facilities (Part 70 and 76 licensees), will also be unnecessarily and unjustifiably burdensome, although specific backfit provisions for these licensees are not in place. We note that a draft backfit provision for Part 70 licensees has been issued by the NRC, analogous to that currently existing for Part 50 licensees. The draft backfit provision will not become effective until the NRC approves licensees' Integrated Safety Analyses, expected in 2005 or 2006.

For the reasons described above, we recommend that the NRC deny the petitioner's request for rulemaking.

Thank you for the opportunity to provide our comments on the petition. If you have any questions regarding our comments, please contact me at (202) 739-8111.

Sincerely,



Ralph L. Andersen