NIST
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National Institute of Standards and Technology
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Office of the Secretary of the Commission
Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Ref: RIN 3150-AF81 (64FR54543, 10CFR20 Subpart H)

Dear Sir:

In reading the recently revised version of 10CFR20 Subpart H and the associated statement of considerations, I believe I have identified a number of areas that require additional guidance and clarification by the Nuclear Regulatory Commission (NRC). First, please clarify the intent of the applicability of the revision to 10CFR20 Subpart H (Respiratory Protection) for licensees who use respirators where exposures to licensed material are essentially incidental, *i.e.*, are at levels less than the Airborne Radioactivity Area criterion and with exposures of a small fraction of an ALI. My concern is that the final rule is silent on this issue, that the Statements of Consideration are ambiguous in this regard, and that the Regulatory Guide conflicts with what might be (and what I hope is) the intended interpretation of the rule.

The issue in this regard is that the vast majority of materials and non-power reactor licensees have no need for a 20.1703 program based on potential exposures, and that their OSHA compliant programs are adequate for personnel safety for any use of respirators. Irrespective of that, on 64FR54544 NRC specifies that it has jurisdiction and that 20.1703 rules apply (with no qualification or exceptions stated), which results in duplicate and redundant respiratory protection programs for most licensees (as discussed in our previous submission on the proposed rule).

A number of statements are made that relate to this issue. On 64FR54545 it states "... 20.1703 come into effect if the licensee assigns or permits the use of respiratory protection equipment to *limit the intake* of radioactive material. ... If the licensee determines that respiratory protection is not required to limit intake of radioactive material and a respirator is used for some other reason, then the 20.1703 conditions are not applicable." Further, Regulatory Guide 8.15 states "... 20.1703 requires a minimum respiratory program ..., even if the licensee does not intend to take credit for the protection provided by the respirators in estimating intakes," and "... NRC considers a respiratory protection device is being used to limit intakes of airborne radioactive materials unless the device is clearly and exclusively used for protection against non-radiological hazards."

But on 64FR54550 it states that "If analysis shows that respiratory protection would not have been required in order to limit intake of radioactive material, then compliance with Subpart H would not be required," implying that usage does not really need to be exclusionary. Further, on 64FR54550, the example interpretation of the meaning of the phrase *limit intake* allows incidental exposure to radioactive materials when respirators are used for non-radiological reasons.

The conflicting or ambiguous issues raised by these statements:

1. The use of *assign or permit* to trigger a application of 20.1703, regardless of the underlying reasons for usage and regardless of the level of exposure;

2. Reference to *not required* to limit intake where the only requirements are the Part 20 limits and the ALARA program, which are always applicable, resulting in a null statement (unless no radioactive material is present);

3. Excluding "... not taking credit ..." as a basis for exclusion of 20.1703, when in fact for very low exposure potentials that is the common reality of the workplace and an expression of ALARA;

4. The "... clearly and exclusively ..." phraseology of Reg. Guide 8.15 which clearly is inconsistent with the definition of limiting intake in 64FR54550;

5. The definition of *limit intake*, which appears in the Statements of Consideration and does not appear in the Reg. Guide, results in a very black-and-white interpretation of the words in that guide, inconsistent with the Statements of Consideration;

6. Intermittent or occasional use of a respirator in environments of less than Airborne Radioactivity Area levels, *i.e.*, less than 2.5 mrem/hr, by definition results in exposures less than 10% of the regulatory limits and hence (in general) are not subject to individual monitoring requirements (20.1502), but simply putting on a respirator precipitates such requirements (20.1703(c)). As an aside, if the regulatory analysis and justification of 20.1502 was acceptable then it would appear that 20.1703 is an unneeded and excessive requirement in these exposure circumstances.

With the above preamble I ask: If a licensee, in an environment of less than Airborne Radioactivity Area levels and with projected annual dose commitments of less than 10% of the regulatory limit, chooses to use any type of respirator within the auspices of an OSHA compliant program for any reason other than controlling radiological exposure, *i.e.*, limiting intake, is that licensee subject to 20.1703? If the NRC answer is yes, then under what exposure and usage conditions would the licensee not be subject to 20.1703?

A second question: If a licensee commits to the use of an OSHA compliant program, *i.e.*, using the OSHA compliant respiratory protection program that already exists in most large organizations, would the NRC accept this in lieu of a 20.1703 program for any use of a respirator

(including to limit intakes) where the exposure conditions are less than Airborne Radioactivity Area levels and where work without respiratory protection would have projected annual dose commitment of less than 10% of the regulatory limit?

Regarding this second question, we recognize that the involvement of NRC licensed material makes NRC the controlling regulatory agency in this circumstance. However, when no respiratory protection is an acceptable option, it would seem that the only NRC interest is worker safety, in which case commitment to an OSHA program would seem to be equivalent and avoids duplicate programs. Note that even if the regulatory rules are identical, programs mandated by two different regulatory agencies as a practical fact result in two separate programs to implement those two sets of rules, because different organizational elements deal with those different agencies. Hence, mandating the applicability of 20.1703 in the above circumstances results in redundant programs. Consequently, allowance by NRC to use the existing organizational OSHA program would result in a reduction in federally mandated programs without any reduction in worker safety.

Also note, regarding the question above, that Section 6.8 of Regulatory Guide 8.15 does not provide this relief. It basically is intended to relieve the licensee of having an OSHA program if the licensee has a 20.1703 program but does nothing for those that already have the OSHA program. Furthermore, the statement, "The NRC requirements ... are not likely to place any significant burden on licensees," ignores the reality of a dual regulatory environment in which dual regulation frequently results in redundant programs (for very real and valid organizational concerns).

I would appreciate your response to these issues and, if a clarification of the rule or regulatory guide is necessary, what the projected schedule for completion for this would be.

Sincerely,

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