

**JAMES LIEBERMAN**  
**REGULATORY AND NUCLEAR SAFETY CONSULTANT**

1 1804 ROSALINDA DRIVE  
POTOMAC, MARYLAND 20854  
[JL@LIEBLET.COM](mailto:JL@LIEBLET.COM)  
301 – 299 – 2294

---

September 16, 2013

Ms. Annette Vietti-Cook  
Secretary of the Commission  
Attention: Rulemakings and Adjudications Staff,  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

SUBJECT: Amended Rulemaking Petition To Amend the NRC Regulations for Completeness and Accuracy of Information – 10 CFR 30.9, 40.9, 50.9, 52.6, 60.10, 61.9a, 63.10, 70.9, 71.7, and 72.11

Dear Ms. Vietti-Cook:

Pursuant to 10 CFR 2.802, I am submitting this amended rulemaking petition (Petition) to the U.S. Nuclear Regulatory Commission (NRC) to address a gap in the NRC regulatory framework. Specifically, the NRC regulations do not require all persons who seek NRC approvals to provide the NRC with complete and accurate information in all material respects. The purpose of the attached amended Petition is to expand my April 15, 2013 petition (docketed as PRM-50-107) that only addressed the regulatory framework for reactors in Parts 50 and 52 to include radioactive materials, waste disposal, transportation, and spent fuel storage in Parts 30, 40, 60, 61, 63, 70, 71, and 72 in order to make it a legal obligation for non-licensees who seek NRC regulatory approvals to be held to the same legal standard for the submittal of complete and accurate information as would a licensee or an applicant for a license.

I appreciate your attention to this matter. If the Commission or staff has any question on this petition, please contact me.

Respectively submitted,  
*James Lieberman*

Attachment

cc: The Honorable Allison M. Macfarlane, Chairman  
The Honorable Kristine L. Svinicki, Commissioner  
The Honorable William C. Ostendorff, Commissioner  
The Honorable William D. Magwood, IV, Commissioner  
The Honorable George Apostolakis, Commissioner  
Mr. Mark A. Satorius, EDO,  
Ms. Margaret Doane, GC  
Mr. Brian Holian, FSME  
Ms. Cathy Chaney, NMSS  
Mr. Eric Leeds, NRR  
Mr. Glenn Tracy, NRO  
Mr. Roy Zimmerman, OE  
Mr. Manash Bagchi, NRR

**Before the  
UNITED STATES NUCLEAR REGULATORY COMMISSION  
Rockville, Maryland**

**In the Matter of a Proposed  
Rulemaking Regarding Amendment  
of 10 CFR Parts 30, 40, 50, 52, 60, 61,  
63, 70, 71, and 72 To Amend  
10 CFR 30.9, 40.9, 50.9, 52.6, 60.10, 61.9a,  
63.10, 70.9, 71.7, and 72.11, Completeness  
and Accuracy of Information**

**Docket No. 50-107; NRC-2013-0077**

**PETITION FOR RULEMAKING**

Pursuant to 10 CFR 2.802, this amended rulemaking petition (Petition) to the U.S. Nuclear Regulatory Commission (NRC) is submitted to address a gap in the NRC regulatory framework. Specifically, the NRC regulations do not require all persons who seek NRC approvals to provide the NRC with complete and accurate information in all material respects. The purpose of the attached amended Petition is to expand my April 15, 2013 petition ( Original Petition) ( docketed as PRM-50-107;NRC-2013-0077) that only addressed the regulatory framework for reactors in Parts 50 and 52 to include radioactive materials, waste disposal, transportation, and spent fuel storage in Parts 30, 40, 60, 61, 63, 70, 71, and 72 in order to make it a legal obligation for those non-licensees who seek NRC regulatory approvals to be held to the same legal standard for the submittal of complete and accurate information as would a licensee or an applicant for a license.

**Statement of Petitioners Interest**

This Petition is being submitted on behalf of myself, as a member of the public, based on my own experiences as a former NRC employee and a consultant in the nuclear industry. In this effort I have not been sponsored or financially supported by any organization or company. By way of background, I was involved in the development of both the NRC rule on completeness and accuracy of information, e.g.10 CFR 50.9, and the NRC rule on deliberate misconduct, e.g., 10 CFR 50.5. My interest is that the NRC should have a regulatory framework that requires persons who seek NRC approval on regulatory matters to have a legal obligation to provide materially complete and accurate information and be subject to sanction for failure to meet those requirements.

**Requested Action**

For the reasons provided below and in the Original Petition, the Petitioner request that the NRC amend paragraph (a) of 10 CFR §§30.9, 40.9, 50.9, 52.6, 60.10, 61.9a, 63.10, 70.9, 71.7, and 72.11 to require information provided to the Commission by an applicant for an NRC approval such as a topical report, an exemption from licensing, a QA plan, or a 20.2002 waste disposal, or a holder of an NRC approval to be complete and accurate in all material respects. The language for the specific requested changes is provided below.

### **Rational for Requested Action**

I have read the August 29, 2013, comment of Mr. Hugh Thompson on the Original Petition (PRM-50-107) that I submitted and he raises a very good point about expanding it to include Parts 30, 40, 61, 70, 71, and 72. I noted in the Original Petition that the NRC might on its own choose to expand my request to cover 10 CFR 30.9, 40.9, and 70.9. It is not just important for reactor regulation that persons who seek the NRC approval for regulated activities provide complete and accurate information. All persons seeking regulatory approvals including those involving licensed materials, waste, and spent fuel arenas should be required to provide complete and accurate information. As Mr. Thompson notes there are requests submitted to the NRC to exempt persons from the NRC regulations and requests to have the NRC exercise discretion not to require specific activities to be licensed. In addition, there are requests to permit disposal at non-licensed disposal sites under 10 CFR 20.2002. All of these requests should be covered by the NRC regulations for the reasons that Mr. Thompson cites and the reasons in my Original Petition.

In publishing the Original Petition for comment, the NRC chose not to include parts other than 50 and 52. Accordingly, after further consideration and review of Mr. Thompson's comments this submittal amends the Original Petition to cover all regulatory activities so that persons who seek NRC approvals including exemptions from regulations or licensing under Parts 30, 40, 50, 52, 60, 61, 70, 71, and 72 to provide complete and accurate information in all material requests. If there are parts of the CFR that I have left out, I respectfully ask the NRC to include the missing provisions in the interest to ensure that the NRC has complete and accurate information in all material respects when it makes regulatory decision. Given the potential impacts of erroneous NRC decisions on the public health and safety, common defense and security, and the environment, the NRC should not be making regulatory decisions based on information submitted by non-licensees if it cannot require that the submitted information be complete and accurate in all material respects. This proposal should have minimum cost impact on the nuclear industry as it has been my experience that most persons are already providing complete and accurate information to the NRC and certainly that has been the expectation of the NRC in the past. This proposal will provide a legal mechanism for NRC to deal with those persons who do not meet this expectation.

In hindsight, as I noted in the Original Petition, language such as proposed in this Petition could have been included in the original rulemaking. However, the original rulemaking was focused primarily on licensees and applicants and addressed the issue of material false statements under section 186 of the Atomic Energy Act (Act) and not the broader authority of section 161 of the Act that was addressed in the rule on deliberateness misconduct.

Based on my more than 30 years of experience in nuclear regulation, it is clear to me that the NRC expects persons who deal with it to provide complete and accurate information. However,

currently except for licensees and applicants this is essentially a moral obligation and not a legal obligation. This is true even if the information was submitted with gross negligence or careless disregard. The current legal obligation for non-licensees is only not to deliberately provide inaccurate or incomplete information. From a safety, security, environmental perspective the public may be harmed when the NRC relies on inaccurate or incomplete information when it makes its regulatory decisions. The fact the information was inadvertently wrong versus deliberately wrong is immaterial if the erroneous material permitted an inappropriate regulatory decision or at worse an accident.

### **Requested Change<sup>1</sup>**

A) In light of the above including the information contained in the Original Petition, it is proposed that in addition to the proposal in the Original Petition for amendment of paragraph (a) of §§50.9 and 52.6 that §§ 30.9, 40.9, 60.10, 61.9a, 63.10, 70.9, 71.7, and 72.11 be amended to include the underlined language and delete the stricken language as follows:

§ 30.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee, or by an applicant for an NRC approval including an exemption request, or by a holder of an NRC approval, or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

§ 40.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee, or by an applicant for an NRC approval including an exemption request, or by a holder of an NRC approval, or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

§ 60.10 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee, or by an applicant for an NRC approval including an exemption request, or by a holder of an NRC approval, or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

§ 61.9a Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee, or by an applicant for an NRC approval including an exemption request, or by a holder of

---

<sup>1</sup> Included in the language for the proposed amendments of the provisions in Parts 60, 63, and 72 are references to exemption requests and requests to permit activities without obtaining an NRC license. The Petitioner leaves it up to the NRC to decide whether similar to Parts 50 and 52 that this language is not relevant to those parts.

an NRC approval, or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

§ 63.10 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee, or by an applicant for an NRC approval including an exemption request, or by a holder of an NRC approval, or information required by statute, or required by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee must be complete and accurate in all material respects.

§ 70.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee, or by an applicant for an NRC approval including an exemption request, or by a holder of an NRC approval, or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

§ 71.7 Completeness and accuracy of information.

(a) Information provided to the Commission by a licensee, certificate holder, or an applicant for a license or CoC, or by an applicant for an NRC approval including an exemption request, or by a holder of an NRC approval; or information required by statute or by the Commission's regulations, orders, license or CoC conditions, to be maintained by the licensee or certificate holder, must be complete and accurate in all material respects.

§ 72.11 Completeness and accuracy of information.

(a) Information provided to the Commission by a licensee, certificate holder, or an applicant for a license or CoC, or by an applicant for an NRC approval including an exemption request, or by a holder of an NRC approval; or information required by statute or by the Commission's regulations, orders, license or CoC conditions, to be maintained by the licensee or certificate holder, must be complete and accurate in all material respects.

B) In addition, to provide notice to persons that they may be subject to this legal obligation and associated enforcement action, it is proposed that in addition to the proposal in the Original Petition for amendment of the scope sections of Parts 50 and 52 that §§ 30.1, 40.2, 60.1, 61.1, 63.1, 70.2, 71.0, and 72.2 be amended to include the underlined language and delete the stricken language as follows:

§ 30.1 Scope.

This part prescribes rules applicable to all persons in the United States governing domestic licensing of byproduct material under the Atomic Energy Act of 1954, as

amended (68 Stat. 919), and under title II of the Energy Reorganization Act of 1974 (88 Stat. 1242), and exemptions from the domestic licensing requirements permitted by Section 81 of the Act. This part also gives notice to all persons who knowingly provide to any licensee, applicant, certificate of registration holder, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's, applicant's or certificate of registration holder's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 30.10. In addition, this part also gives notice to persons, who seek or obtain an NRC approval related to regulated activities including exemption requests and requests to permit activities without obtaining an NRC license that they are subject to this part and are subject to enforcement action for violation of § 30.9.

#### § 40.2 Scope.

Except as provided in §§ 40.11 to 40.14, inclusive, the regulations in this part apply to all persons in the United States. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 40.10. In addition, this part also gives notice to persons, who seek or obtain an NRC approval related to regulated activities including exemption requests and requests to permit activities without obtaining an NRC license that they are subject to this part and are subject to enforcement action for violation of § 40.9.

#### § 60.1 Purpose and scope.

This part prescribes rules governing the licensing (including issuance of a construction authorization) of the U.S. Department of Energy to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area sited, constructed, or operated in accordance with the Nuclear Waste Policy Act of 1982, as amended. This part does not apply to any activity licensed under another part of this chapter. This part does not apply to the licensing of the U.S. Department of Energy to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area sited, constructed, or operated at Yucca Mountain, Nevada, in accordance with the Nuclear Waste Policy Act of 1992, as amended, and the Energy Policy Act of 1992, subject to part 63 of this chapter. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 60.11. In addition, this part also gives notice to persons, who seek or obtain an NRC approval related to regulated activities including exemption requests and requests to permit activities without obtaining an NRC license that they are subject to this part and are subject to enforcement action for violation of § 60.10.

## § 61.1 Purpose and scope.

...

(c) This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 61.9b. In addition, this part also gives notice to persons, who seek or obtain an NRC approval related to regulated activities including exemption requests and requests to permit activities without obtaining an NRC license that they are subject to this part and are subject to enforcement action for violation of § 61.9a.

## § 63.1 Purpose and scope

This part prescribes rules governing the licensing (including issuance of a construction authorization) of the U.S. Department of Energy to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area sited, constructed, or operated at Yucca Mountain, Nevada, in accordance with the Nuclear Waste Policy Act of 1982, as amended, and the Energy Policy Act of 1992. As provided in 10 CFR 60.1, the regulations in part 60 of this chapter do not apply to any activity licensed under another part of this chapter. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 63.11. . In addition, this part also gives notice to persons, who seek or obtain an NRC approval related to regulated activities including exemption requests and requests to permit activities without obtaining an NRC license that they are subject to this part and are subject to enforcement action for violation of § 63.10.

## § 70.2 Scope.

Except as provided in §§ 70.11 to 70.13, inclusive, the regulations in this part apply to all persons in the United States. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 70.10. In addition, this part also gives notice to persons, who seek or obtain an NRC approval related to regulated activities including exemption requests and requests to permit activities without obtaining an NRC license that they are subject to this part and are subject to enforcement action for violation of § 70.9.

## § 71.0 Purpose and scope

....

(g) This part also gives notice to all persons who knowingly provide to any licensee, certificate holder, quality assurance program approval holder, applicant for a license, certificate, or quality assurance program approval, or to a contractor, or subcontractor of any of them, components, equipment, materials, or other goods or services, that relate to

a licensee's, certificate holder's, quality assurance program approval holder's, or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 71.8. In addition, this part also gives notice to persons, who seek or obtain an NRC approval related to regulated activities including exemption requests and requests to permit activities without obtaining an NRC license that they are subject to this part and are subject to enforcement action for violation of § 71.7.

§ 72.2 Scope.

...

(e) This part also gives notice to all persons who knowingly provide to any licensee, certificate holder, applicant for a license or certificate, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's, certificate holder's, or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 72.12. In addition, this part also gives notice to persons, who seek or obtain an NRC approval related to regulated activities including exemption requests and requests to permit activities without obtaining an NRC license that they are subject to this part and are subject to enforcement action for violation of § 71.11.

Respectively submitted,

James Lieberman



## RulemakingComments Resource

---

**From:** Jim Lieberman <jl@lieblet.com>  
**Sent:** Monday, September 16, 2013 3:31 PM  
**To:** CHAIRMAN Resource; CMRSVINICKI Resource; CMRAPOSTOLAKIS Resource; CMRMAGWOOD Resource; CMROSTENDORFF Resource; Satorius, Mark; Doane, Margaret; Leeds, Eric; Zimmerman, Roy; Tracy, Glenn; Julian, Emile; Vietti-Cook, Annette  
**Cc:** Holian, Brian; Bagchi, Manash  
**Subject:** Amended Rulemaking Petition To Amend the NRC Regulations for Completeness and Accuracy of Information – 10 CFR 30.9, 40.9, 50.9, 52.6, 60.10, 61.9a, 63.10, 70.9, 71.7, and 72.11  
**Attachments:** amended 50-9 rulemaking petition9-16-13.pdf

Pursuant to 10 CFR 2.802, I am submitting this amended rulemaking petition (Petition) to the U.S. Nuclear Regulatory Commission (NRC) to address a gap in the NRC regulatory framework. Specifically, the NRC regulations do not require all persons who seek NRC approvals to provide the NRC with complete and accurate information in all material respects. The purpose of the attached amended Petition is to expand my April 15, 2013 petition (docketed as PRM-50-107) that only addressed the regulatory framework for reactors in Parts 50 and 52 to include radioactive materials, waste disposal, transportation, and spent fuel storage in Parts 30, 40, 60, 61, 63, 70, 71, and 72 in order to make it a legal obligation for non-licensees who seek NRC regulatory approvals to be held to the same legal standard for the submittal of complete and accurate information as would a licensee or an applicant for a license.

I appreciate your attention to this matter. If the Commission or staff has any question on this petition, please contact me.

--

Best Regards

Jim Lieberman

Regulatory and Nuclear Consultant

Cell: 301-526-4790  
e-mail: [jl@lieblet.com](mailto:jl@lieblet.com)

The information contained in this message from Jim Lieberman and any attachments are confidential and intended only for the named recipient(s). If you have received this message in error, you are prohibited from copying, distributing or using the information. Please contact the sender immediately by return email and delete the original message.