7. Section 923.45 is revised to read as follows:

§ 923.45 Production and marketing research, promotion and market development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research, marketing research and development, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption or efficient production of cherries. The expense of such projects shall be paid from funds collected pursuant to §§ 923.41 and 923.43.

8. Section 923.64 is amended by:

A. Revising paragraph (c).

B. Redesignating paragraph (d) as paragraph (e).

C. Adding a new paragraph (d).

The revision and addition read as follows:

§ 923.64 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this part whenever it is found that such termination is favored by a majority of growers who, during a representative period, have been engaged in the production of cherries: *Provided*, that such majority has, during such representative period, produced for market more than 50 percent of the volume of such cherries produced for market.

(d) The Secretary shall conduct a referendum six years after the effective date of this section and every sixth year thereafter, to ascertain whether continuance of this subpart is favored by growers. The Secretary may terminate the provisions of this subpart at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by growers who, during a representative period determined by the Secretary, have been engaged in the production of cherries in the production area.

* * * * *

[FR Doc. 05–825 Filed 1–13–05; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM–20–25]

Sander C. Perle, ICN Worldwide Dosimetry; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by Sander C. Perle, ICN Worldwide Dosimetry (now Global Dosimetry Solutions, Inc.) (PRM–20–25). The petitioner requested that the NRC amend its regulations to require that any dosimeter, without exception, that is used to report dose of record and demonstrate compliance with the 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; the definition of ''Individual monitoring devices'' (individual monitoring equipment) be revised to mean any device used by licensees to show compliance with the Commission's regulations; and ''electronic dosimeters and optically stimulated dosimeters'' be added as additional examples of individual monitoring devices.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection and/or copying in the NRC Public Document room, 11555 Rockville Pike, Rockville, Maryland. These same documents are also available on the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. For information about the interactive rulemaking Web site, contact Carol Gallagher, (301) 415–5905, e-mail: *CAG@nrc.gov*.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. Note: Public access to documents, including access via ADAMS and the PDR, has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. However, access to the documents identified in this **Federal Register** continues to be available through the rulemaking Web site at *http://ruleforum.llnl.gov*, which was not affected by the ADAMS shutdown. Please check with the listed NRC contact concerning any issues related to document availability.

FOR FURTHER INFORMATION CONTACT: Torre Taylor, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–7900; e-mail: *tmt@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The Petition

On May 5, 2003 (68 FR 23618), the NRC published a notice of receipt of a petition for rulemaking filed by Sander C. Perle, ICN Worldwide Dosimetry (now Global Dosimetry Solutions, Inc.). The petitioner requested that the NRC amend its regulations to require that any dosimeter, without exception, that is used to report dose of record and demonstrate compliance with the dose limits specified in the Commission's regulations be processed and evaluated by a dosimetry processor holding accreditation from NVLAP; the definition of ''Individual monitoring devices'' [in 10 CFR 20.1003] (hereafter, ''10 CFR Section'' referred to as §) (individual monitoring equipment) be revised to mean any device used by licensees to show compliance with § 20.1201; and ''electronic dosimeters and optically stimulated dosimeters'' be added as additional examples of individual monitoring devices in the definition of ''Individual monitoring devices.''

The petitioner stated that the current wording of § 20.1501©) precludes testing and accreditation requirements for an electronic dosimeter. The petitioner also stated that today's electronic dosimeters use multiple microprocessors that include many complex user input parameters that ultimately affect the final dose and/or dose rate reported. The dose determined from an electronic dosimeter is a ''processed'' dose. The electronic dosimeter requires that the licensee program the dosimeter to respond to various spectra, based on the calibration and other licensee set parameters. According to the petitioner, the NRC's position is that, because the current § 20.1501(c) does not appear to include

the definition of an electronic dosimeter, nothing prohibits a licensee from using an electronic dosimeter to establish a dose of record. The petitioner states that the NRC's philosophy is that the NRC onsite inspector can assess the validity of the electronic dosimeter quality assurance program. The petitioner believes that the NVLAP onsite assessor [the NVLAP onsite assessor who inspects the facility requesting accreditation] is the most appropriate individual to assess a facility's quality assurance program, and to determine if the electronic dosimeter is capable of measuring and reporting accurate and precise dose results for workers in a specific radiation work environment, as the NVLAP onsite assessor does for all other NVLAP accredited whole body dosimeters.

The petitioner also stated that the current wording of § 20.1501(c) precludes testing and accreditation requirements for an extremity dosimeter (finger or wrist dosimeter). The petitioner states that because § 20.1201, Occupational dose limits for adults, specifies a dose limit, including the annual limits to the extremities, which are a shallow dose equivalent of 50 rems (0.5 Sv) to the skin or to an extremity, it would seem logical that the dosimeter used to make this dose determination should be accredited through the same process as a whole body dosimeter. The petitioner indicated that NVLAP has accredited [processors of] extremity dosimeters per American National Standards Institute (ANSI) standard N13.32–1995, ''Performance Testing of Extremity Dosimeters,'' for the past 8 years. The petitioner believes that there is no reason to continue to exclude [processors of] extremity dosimeters from required NVLAP accreditation.

The petitioner believes that requiring NVLAP accreditation [for the use] of electronic dosimeters provides an unbiased third-party evaluation and recognition of performance, as well as expert technical guidance to upgrade laboratory performance. NVLAP accreditation signifies that a laboratory has demonstrated that it operates in accordance with NVLAP management and technical requirements pertaining to quality systems; personnel; accommodation and environment; test and calibration methods; equipment; measurement traceability; sampling; handling of test and calibration items; and test and calibration reports. NVLAP accreditation does not imply any guarantee (certification) of laboratory performance or test/calibration data; it is solely a finding of laboratory competence.

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. The petition was docketed as PRM–20–25. The petition was published in the **Federal Register** on May 5, 2003 (68 FR 23618), for a 75-day comment period. The comment period closed on July 21, 2003. NRC received nine comment letters from utilities, industry, the public, and a State radiation control program. NRC also received three comment letters from the petitioner, in response to public comments NRC received regarding the petition. Six commenters recommended that NRC deny the petition, three commenters supported the petition, but with substantial changes, and three comments were received from the petitioner responding to comments that the NRC received on the petition. The majority of the commenters opposed the petition. Two commenters agreed with the intent of the petition; however, they had concerns with the proposed regulatory language. Several commenters noted that the proposed revision would require NVLAP accreditation [of processors] for all dosimeters, including dosimeters that are used as backup dosimeters. [Note that the terms ''secondary'' and ''backup dosimetry'' are used by the commenters. NRC does not have a definition for ''secondary'' or ''backup dosimetry.''] Some commenters indicated that electronic dosimeters are control devices for real-time exposure information and should not be subject to NVLAP accreditation for the processor. The concern is that licensees might then issue only one NVLAP accredited dosimeter and remove the redundancy now in place with wearing a second dosimeter.

Cost was a major issue with the commenters. One commenter believes the proposed revision could force a licensee to hire a third party to oversee and implement its use of electronic dosimeters. Others commented that NVLAP testing costs would at least double. Some commenters believe that the cost of accreditation does not warrant the benefit of having all dosimeters evaluated by a NVLAP accredited dosimetry processor. Several commenters believed that the proposed revision would impose additional burden that is unnecessary and unjustified.

One commenter questioned the petitioner's statement that electronic dosimetry is processed. One commenter questioned the availability of a viable standard for electronic dosimetry upon which to base NVLAP testing.

Regarding the petitioner's proposed change to require NVLAP accreditation for processors of extremity dosimetry, one commenter indicated that the current standard for extremity dosimetry, ANSI/Health Physics Society (HPS) N13.32–1995, ''Performance Testing of Extremity Dosimeters,'' is undergoing a major revision, and that NRC should defer any rulemaking on this issue until the revision of this standard is completed.

One commenter believes that the proposed revision represents a backfit requirement and that it would impose new requirements on licensees with an additional burden to revise programs and procedures, and to provide training. Many commenters believe that the current programs for monitoring and recording occupational radiation dose are adequate to assure protection of worker health and safety and did not believe the petitioner provided information to the contrary. One commenter did not believe that the petition described a regulatory problem or issue in the current program and that the proposed revision only provided an enhancement to the regulations. One commenter stated that: ''There are certain situations where NVLAP accreditation is not available for all neutron fields. * * * the proposal would leave no compliance option for licensees with radiation fields beyond the standard NVLAP parameters.'' Another commenter indicated that the proposed revision would empower NVLAP to dictate to the licensee the categories for which testing would be required.

The petitioner provided three comments in response to public comments that were submitted to NRC, which are summarized as follows. The petitioner stated that the intent of the petition is for the proposed revisions to apply only to the primary dosimeter, and not to the secondary dosimeter. [Note that the terms ''primary'' and ''secondary'' are used by the petitioner; NRC does not have a definition of these terms in its regulations. The NRC staff understands that the petitioner means the ''primary'' dosimeter as the dosimeter that provides the ''dose of record'' and that the ''secondary'' dosimeter is the ''backup'' dosimeter.] The petitioner disagreed with a comment that no compliance options are left for licensees with radiation fields beyond NVLAP parameters. A facility would test in those radiation categories that are representative of the radiation field to which its employees are exposed. The petitioner also stated

that if the petition was not approved, the extremity ring or wrist dosimeters would continue to be worn with no requirement that they be tested under any proficiency testing program.

Reasons for Denial

After reviewing the petition and the public comments, the NRC is denying the petition. NRC has determined that the current NRC regulations are adequate to protect worker and public health and safety. The NRC is denying the petition because there is insufficient evidence that it solves a regulatory problem or improves health and safety. The additional requirements would be an increase in burden for licensees who have their own accreditation, and for processors, without a commensurate benefit of increased protection of worker health and safety. The increase in burden would be from the additional resources for the NVLAP accreditation process, which includes the accreditation fee, as well as the staff time to go through the accreditation process, which includes an on-site assessment of the facility. The accreditation is renewed every two years, so this is not a one time cost. This would be an imposed burden with no additional benefit in health and safety.

Discussion of the specific requests of the petitioner follows. The NRC is denying the petitioner's request that the NRC amend its regulations to require that any dosimeter, without exception, that is used to report dose of record and demonstrate compliance with the dose limits specified in the Commission's regulations be processed and evaluated by a dosimetry processor holding accreditation from NVLAP. The NRC does not agree with the petitioner that electronic dosimeters are processed. Although not defined in the regulations, NRC interprets processing to mean a process, separate from, and independent of, the design of the dosimeter, that is required to extract dose information from the dosimeter after exposure to radiation. Processing is necessary with film or thermoluminescent (TLD) dosimetry to obtain the dose information. With film or TLD dosimetry, the quality of the processing is dependent on the competence of the processor, and not on the dosimeter design. Quality is built into the design of dosimeters that do not require processing. Additionally, these devices are calibrated on a routine basis to ensure the device is responding properly. The NRC is not aware of any problem with the current calibration processes, and the petitioner has not provided any evidence of an existing deficiency in the calibration process. The NRC reviews licensees' calibration programs during routine inspections. Subjecting processors to NVLAP accreditation for dosimeters that do not require processing will not improve the reliability of these dosimeters.

Regarding the petitioner's request to remove the exception for NVLAP accreditation for extremity dosimetry, currently allowed in § 20.1501(c), the NRC agrees in principle that it is a good idea to include extremity dosimeters that require processing in the requirement for NVLAP accreditation for processors. However, the ANSI and HPS standard for extremity dosimeters, ANSI/HPS N13.32–1995, ''Performance Testing of Extremity Dosimeters,'' is undergoing a major revision. The petitioner has provided no evidence that there is a current health and safety problem and much of the industry is voluntarily obtaining NVLAP accreditation for processing of extremity dosimetry. Consequently, the NRC believes it is premature to remove this regulatory exception. Therefore, NRC is not taking regulatory action on this issue.

Granting the petitioner's request to revise the definition of ''Individual monitoring device'' in § 20.1003 to add ''used by licensees to show compliance with § 20.1201'' would result in unintended requirements. There are many devices used to show compliance, such as alarming ratemeters, chirpers, and lapel air samplers. The petition, if granted, would result in a requirement that users of essentially all listed types of dosimeters would go through a process that is accredited by NVLAP. Many individual monitoring devices do not require processing to obtain the dose information, such as alarming ratemeters, chirpers, etc., and NVLAP accreditation will not improve the reliability of the devices. The petitioner also proposed adding two more examples, electronic dosimeters and optically stimulated dosimeters, in the definition of ''Individual monitoring device.'' The current examples in the definition of ''Individual monitoring device'' are not meant to be all inclusive, and adding two more examples will not add any safety value and does not justify a rulemaking.

This petition must also be evaluated with respect to NRC's backfitting requirements. Backfit is defined, in part, as the modification of, or addition to, the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position (See §§ 50.109, 70.76, 72.62, and 76.76). The NRC requires backfitting only when it determines that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit, and that the direct and indirect costs of implementation are justified in view of this increased protection.

The petitioner's proposed action would be considered a backfit because it would require licensees to modify their procedures and organization to operate a facility, and the proposed action does not fall within any of the exceptions in the above referenced sections of the regulations. The petition, if granted, would require that any dosimeter that could possibly be used to report the dose of record and demonstrate compliance with the dose limits specified in the NRC regulations be processed and evaluated by a dosimetry processor holding NVLAP accreditation. This would require an expansion of the requirements for the dosimeters with an increased cost and burden to licensees, without a commensurate benefit in health and safety or the common defense and security.

After reviewing the proposed actions, NRC believes that the proposed actions would not pass a detailed backfit analysis. There is insufficient evidence that the petition, if granted, would solve a regulatory problem or improve health and safety. No data were provided by the petitioner, nor did the NRC find any data, to show that existing regulations are inadequate to protect health and safety. The increase in cost to licensees, without a commensurate health and safety benefit or the common defense and security, does not warrant granting this petition.

In conclusion, there is insufficient evidence that the petition solves a regulatory problem or improves health and safety. If the petition were granted, there would be a large increase in burden to licensees that is unjustified without a health and safety concern. Therefore, the NRC has determined that existing NRC regulations are adequate to provide the basis for reasonable assurance that worker health and safety are protected.

For the reasons cited in this document, the NRC denies this petition.

Dated at Rockville, Maryland, this 23 day of December, 2004.

For the Nuclear Regulatory Commission.

Ellis W. Merschoff,

Acting, Executive Director for Operations.

[FR Doc. 05–778 Filed 1–13–05; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 312

RIN 3084–AB00

Children's Online Privacy Protection Rule

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice of proposed rulemaking, request for comment.

SUMMARY: The Federal Trade Commission proposes amending the Children's Online Privacy Protection Rule (''the Rule'') to permanently allow website operators and online services to obtain verifiable parental consent for the collection of personal information from children for internal use by the website operator through sending an e-mail message to parents coupled with additional steps.

DATES: Comments must be received by February 14, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Sliding Scale 2005, Project No. P054503'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 159–H (Annex Y), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2004).[1]

Comments filed in electronic form should be submitted by clicking on the following Web link: *https://secure.commentworks.com/ftcslidingscale/* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the *https://secure.commentworks.com/ftcslidingscale/* Web link. You may also visit *http://www.regulations.gov* to read this notice of proposed rulemaking, and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/privacy/privacyinitiatives/childrens_lr.html.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Rona Kelner, (202) 326–2752, or Karen Muoio, (202) 326–2491, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 601 New Jersey Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

On October 20, 1999, the Commission issued its final Rule[2] pursuant to the Children's Online Privacy Protection Act (''COPPA''), 15 U.S.C. 6501, *et seq.* The Rule imposes certain requirements on operators of websites or online services directed to children under 13 years of age, or other websites or online services that have actual knowledge that they have collected personal information from a child under 13 years of age. Among other things, the Rule requires that website operators or online services obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children under 13 years of age.

II. The Sliding Scale

The Rule provides that, ''[a]ny method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.'' [3] The Rule sets forth a sliding scale approach to obtaining verifiable parental consent. If the website operator is collecting personal information for its internal use only, the Rule allows verifiable parental consent to be obtained through the use of an e-mail message to the parent, coupled with additional steps to provide assurances that the parent is providing the consent. Such additional steps include: sending a confirmatory e-mail to the parent after receiving consent or obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call.[4]

In contrast, for uses of personal information that will involve disclosing the information to the public or third parties, the Rule requires that website operators use more reliable methods of obtaining verifiable parental consent. These methods include: using a print-and-send form that can be faxed or mailed back to the website operator; requiring a parent to use a credit card in connection with a transaction; having a parent call a toll-free telephone number staffed by trained personnel; using a digital certificate that uses public key technology; and using e-mail accompanied by a PIN or password obtained through one of the above methods.[5]

An effect of the sliding scale is that the relatively lower cost of seeking permission for internal use of children's information may encourage website operators to collect personal information for their internal use only, rather than for disclosure to third parties and the public. As noted in the Rule's Statement of Basis and Purpose, ''the record shows that disclosures to third parties are among the most sensitive and potentially risky uses of children's personal information.'' [6]

The sliding scale was originally set to expire on April 21, 2002, but was extended, following a notice and public comment period, for an additional three years.[7] It is now scheduled to expire on April 21, 2005, at which time website operators would have to obtain verifiable parental consent using the more reliable (and costly) methods for all uses of personal information.[8] At the time it issued the final Rule, the Commission anticipated that the sliding scale was necessary only in the short term because more reliable methods of obtaining verifiable parental consent would soon be widely available at a

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] 64 FR 59888 (1999).

[3] 16 CFR 312.5(b)(1).

[4] *Id.*

[5] 16 CFR 312.5(b)(2).

[6] 64 FR 59899 (1999).

[7] *See http://www.ftc.gov/privacy/privacyinitiatives/childrens_lr.html* for notice and public comments.

[8] 67 FR 18818 (2002).