

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

PRM-40-27

[NRC-2008-0453]

**State of Colorado and the Organization of Agreement States;
Consideration of Petition in the Rulemaking Process**

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: Resolution and closure of petition docket.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received a petition for rulemaking dated May 10, 1999, filed by the State of Colorado and the Organization of Agreement States. The petition was docketed by the NRC and was assigned as PRM-40-27. The petitioners requested that the NRC regulations governing small quantities of source material be amended to eliminate the exemption for source material general licensees from the requirements that specify standards of protection against radiation, and require notification and instruction of individuals who participate in licensed activities. The petitioners believe that no basis exists for the existing exemption for these licensees from these requirements and that the licensee could exceed dose limits, in certain situations, that would normally apply to licensed operations. The NRC reviewed the petition and determined that this petition merits further consideration. Therefore, the

concerns and issues raised in the petition will continue to be considered through an ongoing rulemaking.

DATES: The docket for the petition for rulemaking, PRM-40-27, is closed on **[insert date of publication in the Federal Register]**.

ADDRESSES: Public comments and NRC actions on the issues raised by this petition are accessible at the Federal rulemaking website, <http://www.regulations.gov>, by searching on Docket ID NRC-2008-0453. Rulemaking documents that will further consider the issues related to PRM-40-27 may be located by searching on Docket ID NRC-2009-0084 at the Federal rulemaking website. The NRC also tracks all rulemaking actions in the “NRC Regulatory Agenda: Semiannual Report (NUREG-0936).” The Regulatory Agenda is a semiannual compilation of all rules on which the NRC has recently completed action, has proposed action, or is considering action, and of all petitions for rulemaking that the NRC is working to resolve.

You can access publically available documents related to this petition for rulemaking using the following methods:

Federal Rulemaking Website: Go to <http://www.regulations.gov> and search for documents filed under the following Docket ID: NRC-2008-0453.

NRC’S Public Document Room (PDR): The public may examine, and have copied for a fee, publicly available documents at the NRC’s Public Document Room, Public File Area, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD.

NRC’s Agency-wide Document Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC’s Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC’s public

documents. 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 (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Kimyata Morgan Butler, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-0733, e-mail: Kimyata.MorganButler@nrc.gov or Gary Comfort, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-8106, e-mail: Gary.Comfort@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Petition

On July 7, 1999 (64 FR 36615), the NRC published a notice of receipt of a petition for rulemaking filed by the State of Colorado and the Organization of Agreement States. The petitioners requested that the NRC amend its regulations to eliminate an exemption from the requirements of 10 CFR Parts 19 and 20 that currently applies under the general license for small quantities of source material found in 10 CFR 40.22(b) and require notification and instruction of individuals who participate in licensed activities. The petitioners believe that generally licensed quantities of source material may not have been regarded as a health and safety hazard when the exemption was enacted. However, the petitioners contend that industry experience has revealed that source material general licensees:

- (1) Can expose workers to levels of radiation that would normally require monitoring;

(2) Dispose of radioactive materials in a manner that would not be acceptable for other licensees;

(3) Produce contamination that exceeds release limits; and

(4) Potentially exceed public dose limits to individuals other than those working at their facilities.

The petitioners support their claims with examples of two cases that they believe illustrate the problem of the blanket exemption in 10 CFR 40.22(b).

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. The comment period closed on September 20, 1999. The NRC received ten comment letters. Comment letters were submitted by two members of the public, one private company, and seven Agreement States. All of the commenters supported the petition. In addition, one comment letter was also considered as a separate petition for rulemaking (PRM-40-28) on depleted uranium counterweights and subsequently resolved separately from this petition.

Most of the commenters reiterated the claims presented in the original petition. One commenter suggested that persons distributing source material should notify the recipients of the hazards of the material and the distributor should report shipments of "larger" quantities to appropriate regulatory agencies. The same commenter also suggested that the 15-pound limit should potentially be reduced to a lower limit that was more appropriate for use under a general license. Two commenters provided additional examples of cases when the use of source material under the general license could have resulted in exposures in excess of the limits specified in 10 CFR Part 20.

Reasons for Closure of the Petition

Although the NRC is not aware of widespread issues with the current general license requirements in 10 CFR 40.22, the NRC has collected and evaluated data on practices allowed under the general license which indicate that it may be possible in certain situations for exposures to occur when the requirements in 10 CFR Parts 19 and 20 would normally apply. The NRC concluded that the underlying issue of re-evaluating the safety significance of granting exemption for source material general licenses from 10 CFR Parts 19 and 20 is an important one and merits further consideration through rulemaking. The NRC will continue consideration of this issue as part of a proposed rulemaking on "Distribution of Source Material to Exempt Persons and General Licensees and Revision of 10 CFR 40.22 General License (Part 40)," RIN 3150-AH15. Further information on the rulemaking may be tracked through <http://www.regulations.gov> under Docket ID NRC-2009-0084.

Although the NRC will continue to consider the issues raised by the petition in the rulemaking process, the petitioners' concerns may not be addressed exactly as the petitioners have requested. During the rulemaking process, the NRC will solicit comments from the public and will consider all comments before finalizing the rule.

For the reasons cited in this document, the NRC closes the docket for PRM-40-27.

Dated at Rockville, Maryland, this 20th day of August, 2009.

For the Nuclear Regulatory Commission.

/RA/

Bruce S. Mallett,
Acting Executive Director for Operations

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Although the NRC will continue to consider the issues raised by the petition in the rulemaking process, the petitioners' concerns may not be addressed exactly as the petitioners have requested. During the rulemaking process, the NRC will solicit comments from the public and will consider all comments before finalizing the rule.

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