

DOCKET NUMBER

PETITION RULE PRM 40-25

(50 FR 53335)

DOCKETED  
USNRC

*Sandy S*

*TFPR*

'88 MAR 17 P4:11

[7590-01]

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

NUCLEAR REGULATORY COMMISSION

10 CFR PART 40

[DOCKET NO. PRM-40-25]

The State of Alabama; Withdrawal of  
Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; withdrawal.

SUMMARY: The Commission is withdrawing, at the petitioner's request, a petition for rulemaking that was filed by the State of Alabama. In the petition, dated August 26, 1985, the State of Alabama had requested that the Commission review the exemption from licensing requirements for products or parts containing tungsten or magnesium-thorium alloys whose thorium content does not exceed 4% by weight, and either remove the prohibition on processing the parts or set out the prohibition as part of a general license.

8803250290 880317  
PDR PRM  
40-25 PDR

*DS1101*

*add: D. Meyer, 4000 MHBB*

ADDRESSEES: Copies of the petitioner's letters of request and withdrawal are available for public inspection in the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. Single copies of these letters may be obtained by writing to the Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: Sterling W. Bell, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: 301-492-0617.

SUPPLEMENTARY INFORMATION: Section 40.13(c)(4) of 10 CFR Part 40, "Domestic Licensing of Source Material," provides an exemption from licensing requirements for any person who possesses finished products or parts containing tungsten or magnesium-thorium alloys up to 4% thorium by weight. However, the exemption does not authorize chemical, physical, or metallurgical treatment or processing of the products. Therefore, an unlicensed person may possess and use the products as long as the person does not treat or process them.

On August 26, 1985, the State of Alabama, Department of Public Health, submitted a petition for rulemaking which requested NRC to review the exemption and make certain amendments to its regulations. A notice of receipt of the petition was published in the Federal Register on December 31, 1985 (50 FR 53335). Public comments were requested by March 3, 1986.

The petitioner stated the prohibition on treatment and processing of the products containing thorium is unenforceable for unlicensed persons. The State of Alabama said that it had identified thorium products in scrap which were being melted or cut by unlicensed persons. The petitioner requested that NRC review the restriction on processing, and delete the restriction if it is unnecessary to protect the public health and safety. The petitioner believed that the restriction was necessary and, therefore, recommended that the exemption be deleted and replaced by a general license. The general license would be similar to the existing general license provided in 10 CFR 40.25, "General license for use of certain industrial products or devices." The petitioner requested that the general license require that the product be obtained from a licensed manufacturer, be labeled, and be authorized for distribution only if the manufacturer demonstrates that its use will not result in radiation doses to persons above certain specified limits.

Only one comment was received on the petition. Covington and Burling, Counsel for North American Philips Lighting Corporation, opposed the petition on the basis that the petition did not demonstrate any significant health risks resulting from the current regulatory approach, or demonstrate that any health and safety benefit would result which would justify imposing additional regulatory burden on licensees.

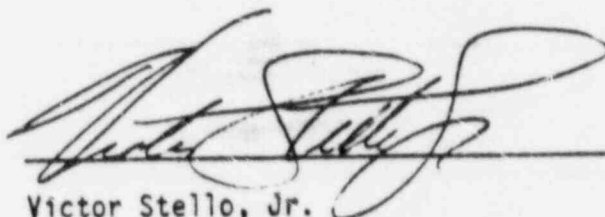
After reviewing the original reasons for the petition and the availability of sufficient supporting data at this time, the petitioner believes that the best approach is to have the requested changes retained by the NRC staff for its considerations when the NRC next considers general revision to this portion of its regulations. Therefore, by letter dated January 15, 1988, the petitioner requested that the petition be withdrawn.

The NRC concurs with the State of Alabama. The NRC staff believes that 10 CFR Part 40, including the exemption questioned by the petition, provides adequate protection of the public health and safety. However, the NRC staff also believes that, in light of the many exemptions which currently exist in Part 40, a general revision of that portion of the regulations would provide consistency and clarity to the regulatory framework.

The NRC accepts the State of Alabama's request that the petition be withdrawn.

Dated at Bethesda, Maryland, this 17<sup>th</sup> day of March 1988.

For The Nuclear Regulatory Commission.



Victor Stello, Jr.

Executive Director for Operations.