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Title 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 40—LICENSING OF SOURCE MATERIAL

The following amendments to Part 40 constitute an over-all revision of 10 CFR Part 40, "Control of Source Material".

Notice of proposed issuance of the following rules was published in the FEDERAL REGISTER on September 7, 1960 (25 F.R. 8619). A detailed statement of considerations explaining the provisions of the following amendments was published with the notice of proposed rule making. Comments filed by interested persons have been given careful consideration. The following amendments are the same as those incorporated in the notice of proposed rule making, except that § 40.42 has been revised to take into account long-period facility licenses which incorporate in a single document licenses also for source material which may be used as fuel or blanket material.

Accordingly, effective 30 days after publication in the FEDERAL REGISTER, 10 CFR Part 40 is amended to read as follows:

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AUTHORITY: §§ 40.1 to 40.90 issued under sec. 161, 68 Stat. 948, 42 U.S.C. 2201. Interpret or apply secs. 62, 63, 64, 65, 182, 183, 68 Stat. 932, 933, 934, 42 U.S.C. 2092, 2093, 2094, 2095, 2233, 2234. For the purposes of sec. 223, 68 Stat. 958; 42 U.S.C. 2273, sec. 40.41(c) issued under sec. 161b., 68 Stat. 948; 42 U.S.C. 2201(b) and secs. 40.61, 40.62 and 40.63 issued under sec. 161p., 68 Stat. 950; 42 U.S.C. 2201(p).

GENERAL PROVISIONS

§ 40.1 Purpose.

(a) The regulations in this part establish procedures and criteria for the issuance of licenses to receive title to, receive, possess, use, transfer, deliver, or import into or export from the United States source material and establish and provide for the terms and conditions upon which the Commission will issue such licenses.

(b) The regulations contained in this part are issued pursuant to the Atomic Energy Act of 1954, as amended (68 Stat. 919).

§ 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.

§ 40.3 License requirements.

No person subject to the regulations in this part shall receive title to, receive,

possess, use, transfer, deliver, or import into or export from the United States any source material after removal from its place of deposit in nature, except as authorized in a specific or general license issued by the Commission pursuant to the regulations in this part.

§ 10.1 Definitions.

As used in this part:

(a) "Act" means the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto;

(b) "Commission" means the Atomic Energy Commission or its duly authorized representatives;

(c) "Government agency" means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government;

(d) "License", except where otherwise specified, means a license issued pursuant to the regulations in this part;

(e) "Person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent or agency of the foregoing;

(f) "Pharmacist" means an individual registered by a state or territory of the United States, the District of Columbia or the Commonwealth of Puerto Rico to compound and dispense drugs, prescriptions and poisons.

(g) "Physician" means an individual licensed by a state or territory of the United States, the District of Columbia or the Commonwealth of Puerto Rico to dispense drugs in the practice of medicine.

(h) "Source Material" means (1) uranium or thorium, or any combination thereof, in any physical or chemical

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form or (2) ores which contain by weight one-twentieth of one percent (0.05%) or more of (i) uranium, (ii) thorium, or (iii) any combination thereof. Source material does not include special nuclear material.

(i) "Special nuclear material" means (1) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Act, determines to be special nuclear material; or (2) any material artificially enriched by any of the foregoing;

(j) "United States," when used in a geographical sense, includes all territories and possessions of the United States, the Canal Zone and Puerto Rico;

(k) "Unrefined and unprocessed ore" means ore in its natural form prior to any processing, such as grinding, roasting or beneficiating, or refining;

(l) Other terms defined in section 11 of the Act shall have the same meaning when used in the regulations in this part.

§ 40.5 Communications.

All communications concerning the regulations in this part should be addressed to the Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

§ 40.6 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

EXEMPTIONS

§ 40.11 Exemption for persons acquiring or transferring source material under contract with and for the account of the Commission.

The regulations in this part do not apply to any person to the extent that such person receives possession of source material owned by the Atomic Energy Commission, or transfers, delivers, or exports source material owned by the Commission under and in accordance with a contract with and for the account of the Commission. In any such case, such person's obligations with respect to the source material are governed by the applicable contract between such person and the Commission.

§ 40.12 Carriers.

Common and contract carriers, warehousemen, and the United States Post Office Department are exempt from the requirements for a license set forth in section 62 of the Act and from the regulations in this part to the extent that they transport or store source material in the regular course of carriage for another or storage incident thereto.

§ 40.13 Unimportant quantities of source material.

(a) Any person is exempt from the regulations in this part and from the requirements for a license set forth in section 62 of the Act to the extent that

such person receives, possesses, uses, transfers, delivers, or imports into or exports from the United States source material in any chemical mixture, compound, solution, or alloy in which the source material is by weight less than one-twentieth of 1 percent (0.05 percent) of the mixture, compound, solution or alloy.

(b) Any person is exempt from the regulations in this part and from the requirements for a license set forth in section 62 of the Act to the extent that such person receives, possesses, uses, transfers, or imports into the United States unrefined and unprocessed ore containing source material; provided, that, except as authorized in a specific license, such person shall not refine or process such ore. The exemption contained in this paragraph shall not be deemed to authorize the export of source material.

(c) Any person is exempt from the regulation in this part and from the requirements for a license set forth in section 62 of the Act to the extent that such person receives, possesses, uses, transfers, or imports into the United States:

(1) Any quantity of thorium contained in (i) incandescent gas mantles;

(ii) vacuum tubes; or (iii) welding rods;

(2) Source material contained in the following products: (i) Glazed ceramic tableware, provided that the glaze contains not more than 20 percent source material; (ii) glassware containing not more than 10 percent source material; but not including glass brick, pane glass, ceramic tile or other glass or ceramic used in construction;

(3) Photographic film, negatives, and prints containing uranium or thorium;

(4) Any finished product or part fabricated of, or containing tungsten or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed 4 percent by weight and that the exemption contained in this subparagraph shall not be deemed to authorize the chemical, physical or metallurgical treatment or processing of any such product or part; and

(5) (i) Uranium contained in aircraft counterweights installed in aircraft; *Provided*, That any such counterweight has been impressed with a statement, clearly legible after plating, which states "Caution-Radioactive Material-Uranium"; *And provided further*, That the exemption contained in this paragraph shall not be deemed to authorize the chemical, physical, metallurgical or other treatment or processing of any such counterweight or the installation in, or removal from, an aircraft of any such counterweight, without a specific license from the Commission.

(ii) The exemptions contained in this section shall not be deemed to authorize the manufacture of any of the products described herein.

§ 40.14 Specific exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulation in this part as it determines are authorized by law and will not endanger life or

property or the common defense and security and are otherwise in the public interest.

GENERAL LICENSES

§ 40.20 Types of licenses.

Licenses for source material are of two types: general and specific. The general licenses provided in this part are effective without the filing of applications with the Commission or the issuance of licensing documents to particular persons. Specific licenses are issued to named persons upon applications filed pursuant to the regulations in this part.

§ 40.21 General license to receive title to source material.

A general license is hereby issued authorizing the receipt of title to source material without regard to quantity. This general license does not authorize any person to receive, possess, deliver, use, import, export or transfer source material.

§ 40.22 Small quantities of source material.

(a) A general license is hereby issued authorizing use and transfer of not more than fifteen (15) pounds of source material at any one time by persons in the following categories:

(1) Pharmacists using the source material solely for the compounding of medicinals;

(2) Physicians using the source material for medicinal purposes;

(3) Persons receiving possession of source material from pharmacists and physicians in the form of medicinals or drugs;

(4) Commercial and industrial firms, and research, educational and medical institutions for research, development, educational or commercial purposes;

And provided, That no such person shall pursuant to this general license receive more than a total of 150 pounds of source material in any one calendar year; and provided further that the general license contained in this paragraph shall not be deemed to authorize the export of source material, except as authorized in a specific or general license issued pursuant to this part.

(b) Persons who receive, possess, use, or transfer source material pursuant to the general license issued in paragraph (a) of this section are exempt from the provisions of Part 20 of this chapter to the extent that such receipt, possession, use or transfer are within the terms of such general license; *Provided, however*, That this exemption shall not be deemed to apply to any such person who is also in possession of source material under a specific license issued pursuant to this part.

§ 40.23 General licenses to export.

(a) A general license, designated AEC-GRO-SMA, is hereby issued authorizing the export at any one time of up to three (3) pounds of source material from the United States to any foreign country or destination except countries or areas listed in § 40.90. Each person exporting source material pursuant to this general license shall file with the Collector of

Customs or the Postmaster one copy, in addition to those otherwise required, of the Shipper's Export Declaration covering each export, and mark such copy for transmittal to the Division of Licensing and Regulation of the United States Atomic Energy Commission, Washington 25, D.C.

(b) A general license, designated AEC-GRO-SMB, is hereby issued authorizing the export of incandescent gas mantles containing thorium, without regard to quantity, from the United States to any foreign country or destination except countries or destinations listed in § 40.90.

LICENSE APPLICATIONS

§ 40.31 Applications for specific licenses.

(a) Applications for specific licenses should be filed in quadruplicate on Form AEC-2, "Application for Source Material License", on Form AEC-7, "Application for Source Material Export License", as appropriate, with the United States Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation. Applications may also be filed in person at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C., or the Commission's offices at Germantown, Maryland.

(b) The Commission may at any time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Commission to determine whether the application should be granted or denied or whether a license should be modified or revoked. All applications and statements shall be signed by the applicant or licensee or a person duly authorized to act for and on his behalf.

(c) Applications and documents submitted to the Commission in connection with applications will be made available for public inspection in accordance with the provisions of the regulations contained in Parts 2 and 9 of this chapter.

(d) An application for a license filed pursuant to the regulations in this part will be considered also as an application for licenses authorizing other activities for which licenses are required by the Act: *Provided*, That the application specifies the additional activities for which licenses are requested and complies with regulations of the Commission as to applications for such licenses.

(e) In his application, the applicant may incorporate by reference information contained in previous applications, statements or reports filed by the applicant with the Commission's Division of Licensing and Regulation: *Provided*, That such references are clear and specific.

§ 40.32 Requirements for issuance of specific licenses.

An application for a specific license for purposes other than export will be approved if:

(a) The application is for a purpose authorized by the Act; and

(b) The applicant is qualified by reason of training and experience to use the source material for the purpose re-

quested in such manner as to protect health and minimize danger to life or property; and

(c) The applicant's proposed equipment, facilities and procedures are adequate to protect health and minimize danger to life or property; and

(d) The issuance of the license will not be inimical to the common defense and security or to the health and safety of the public.

§ 40.33 Requirements for issuance of export licenses.

(a) An application for a license to export uranium will be approved if the Commission determines that:

(1) The proposed export is within the scope of and consistent with the terms of an agreement between the United States and the government of the recipient containing safeguards against diversion of the material to military use; or

(2) The cumulative quantity of uranium specifically licensed for export to the consignee since July 1, 1957, does not exceed one hundred (100) kilograms, provided that the cumulative quantity specifically licensed for export to the recipient country since July 1, 1957, does not exceed one thousand (1,000) kilograms, excluding any amounts exported pursuant to either subparagraph (1) of this paragraph or § 40.23; and

(3) The export will not be inimical to the interests of the United States.

(b) An application for a license to export thorium will be approved if the Commission determines that the export will not be inimical to the interests of the United States.

LICENSES

§ 40.11 Terms and conditions of licenses.

(a) Each license issued pursuant to the regulations in this part shall be subject to all the provisions of the Act, now or hereafter in effect, and to all rules, regulations and orders of the Commission.

(b) Neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of the Act.

(c) Each person licensed by the Commission pursuant to the regulations in this part shall confine his possession and use of source material to the locations and purposes authorized in the license. Except as otherwise provided in the license, a license issued pursuant to the regulations in this part shall carry with it the right to receive, possess, use and import source material and to deliver or transfer such material to other licensees within the United States authorized to receive such material.

(d) Each license issued pursuant to the regulations in this part shall be deemed to contain the provisions set forth in sections 183a to 183d, of the Act, whether or not said provisions are expressly set forth in the license.

(e) The Commission may incorporate in any license at the time of issuance, or thereafter by appropriate rule, regulation or order, such additional requirements and conditions with respect to

the licensee's receipt, possession, use, transfer, import and export of source material as it deems appropriate or necessary in order to:

(1) Promote the common defense and security;

(2) Protect health or to minimize danger to life or property;

(3) Protect restricted data;

(4) Require such reports and the keeping of such records, and to provide for such inspections of activities under the license as may be necessary or appropriate to effectuate the purposes of the Act and regulations thereunder.

§ 40.12 Expiration.

Except as provided in § 40.43(b), and except as may be provided in licenses issued for operation of production or utilization facilities pursuant to Part 50 of this chapter, each specific license shall expire no later than three years from the last day of the month in which it is issued.

§ 40.13 Renewal of licenses.

(a) Applications for renewal of a specific license shall be filed in accordance with § 40.31.

(b) In any case in which a licensee, not less than thirty (30) days prior to expiration of his existing license, has filed an application in proper form for renewal or for a new license, such existing license shall not expire until the application for renewal or for a new license has been finally determined by the Commission.

§ 40.14 Amendment of licenses at request of licensee.

Applications for amendment of a license shall be filed in accordance with § 40.31 and shall specify the respects in which the licensee desires his license to be amended and the grounds for such amendment.

§ 40.15 Commission action on applications to renew or amend.

In considering an application by a licensee to renew or amend his license, the Commission will apply the applicable criteria set forth in §§ 40.32 and 40.33.

§ 40.16 Inalienability of licenses.

No license issued or granted pursuant to the regulations in this part shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act, and shall give its consent in writing.

§ 40.17 License requirements for persons possessing source material on the effective date of this amendment.

(a) Any person who on the effective date of this amendment possesses source material received pursuant to a specific license issued by the Commission shall be deemed to possess such material pursuant to a license issued under the regulations in this part. Such license shall be deemed to include all terms and conditions incorporated in the previous

License which are not inconsistent with the regulations in this part shall expire 90 days from the effective date of this amendment or on the expiration date contained in the previous license, whichever is later.

(b) Any person who on the effective date of this amendment possesses source material received pursuant to a general license issued by the Commission shall be deemed to possess such material pursuant to a license issued under the regulations in this part. To the extent that such possession is not authorized under an exemption or general license pursuant to §§ 40.11 through 40.14 or §§ 40.20 through 40.23, respectively, the license granted pursuant to this paragraph shall expire ninety (90) days from the effective date of this amendment.

TRANSFER OF SOURCE MATERIAL

§ 40.51 Transfer of source material.

(a) No licensee shall transfer source material except as authorized pursuant to this section.

(b) Any licensee may transfer source material:

- (1) To the Commission;
- (2) To a specific or general licensee whose license authorizes him to receive such material;
- (3) To any person exempt from the regulations in this part to the extent permitted under such exemption; or
- (4) As otherwise authorized by the Commission in writing.

RECORDS AND INSPECTIONS

§ 40.61 Records.

(a) Each person who receives source material pursuant to a license issued pursuant to the regulations in this part shall keep records showing the receipt, transfer, export, and disposal of such source material.

§ 40.62 Inspections.

(a) Each licensee shall afford to the Commission at all reasonable times opportunity to inspect source material and the premises and facilities wherein source material is used or stored.

(b) Each licensee shall make available to the Commission for inspection, upon reasonable notice, records kept by him pursuant to the regulations in this chapter.

§ 40.63 Tests.

Each licensee shall perform, or permit the Commission to perform, such tests as the Commission deems appropriate or necessary for the administration of the regulations in this part, including tests of:

- (a) Source material;
- (b) Facilities wherein source material is utilized or stored;
- (c) Radiation detection and monitoring instruments; and
- (d) Other equipment and devices used in connection with the utilization or storage of source material.

OF LICENSES

§ 40.71 Modification, revocation and termination of licenses.

(a) The terms and conditions of each license shall be subject to amendment, revision, or modification by reason of amendments to the Act, or by reason of rules, regulations, or orders issued in accordance with the Act.

(b) Any license may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or any statement of fact required under section 162 of the Act, or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license on an original application, or for violation of, or failure to observe any of the terms and conditions of the Act, or the license, or of any rule, regulation or order of the Commission.

(c) Except in cases of willfulness or those in which the public health, interest or safety requires otherwise, no license shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements.

(d) The Commission may terminate a specific license upon request submitted by the licensee to the Commission in writing.

ENFORCEMENT

§ 40.81 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Act or any regulation or order issued thereunder. Any person who willfully violates any provision of the Act or any regulation or order issued thereunder may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

§ 40.90 Schedule A.

Albania.
Bulgaria.
China, including Manchuria (and excluding Taiwan (Formosa)) (includes Inner Mongolia; the provinces of Tsinghai and Sinkiang; Tibet; the former Kwantung Leased Territory, the present Port Arthur Naval Base Area and Liaoning Province).
Communist-controlled area of Viet Nam.
Czechoslovakia.
East Germany (Soviet Zone of Germany and the Soviet Sector of Berlin).
Estonia.
Hungary.
Latvia.
Lithuania.
North Korea.
Poland (including Danzig).
Outer Mongolia.
Rumania.
Union of Soviet Socialist Republics.

DAY OF JANUARY 1961.

For the Atomic Energy Commission

WOODFORD B. MCCOOL,
Secretary.

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