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## **SUBCHAPTER 58. DOMESTIC LICENSING OF SOURCE MATERIAL**

### 7:28-58.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference [10 CFR Part 40](#).

(b) The following provisions of 10 CFR Part 40 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 40.2a, Coverage of inactive tailings sites;
2. 10 CFR 40.4, Definitions. The following definitions in 10 CFR 40.4 are not incorporated by reference: "Commission," "decommission," and "license."
3. 10 CFR 40.5, Communications;
4. 10 CFR 40.8, Information collection requirements: OMB approval;
5. 10 CFR 40.12(b), Carriers;
6. 10 CFR 40.20(b) and (c), Types of licenses;
7. 10 CFR 40.23, General license for carriers of transient shipments of natural uranium other than in the form of ore or ore residue;
8. 10 CFR 40.26, General license for possession and storage of byproduct material as defined in this part;
9. 10 CFR 40.27, General license for custody and long-term care of residual radioactive material disposal sites;
10. 10 CFR 40.28, General license for custody and long-term care of uranium or thorium byproduct materials disposal sites;
11. 10 CFR 40.31(c), (f) through (h), (j), (k), (l), Application for specific licenses;
12. 10 CFR Part 40.32(d), (e), (g), General requirements for issuance of specific licenses;
13. 10 CFR 40.33, Issuance of a license for a uranium enrichment facility;
14. 10 CFR 40.35(f), Conditions of specific licenses issued pursuant to §40.34
15. 10 CFR 40.38, Ineligibility of certain applicants;
16. 10 CFR 40.41(d), (e)(1), (e)(3), and (g), Terms and conditions of licenses;
17. 10 CFR 40.51(b)(6), Transfer of source or byproduct material;
18. 10 CFR 40.64, Reports;
19. 10 CFR 40.65, Effluent monitoring reporting requirements;
20. 10 CFR 40.66, Requirements for advance notice of export shipments of natural uranium;
21. 10 CFR 40.67, Requirement for advance notice for importation of natural uranium from countries that are not party to the Convention on the Physical Protection of Nuclear Material and
22. 10 CFR 40 Appendix A, Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or

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### Concentration of Source Material from Ores Processed Primarily for Their Source Material Content.

(c) The following provisions of 10 CFR Part 40 are incorporated by reference with the specified changes:

1. "Commission," "Nuclear Regulatory Commission," "NRC," and "U.S. Nuclear Regulatory Commission," as used in the provisions of Part 40 of the Code of Federal Regulations that are incorporated by reference, means the Department, except when specifically noted in this subchapter.
2. "Registrant" as used in the provisions of Part 40 of the Code of Federal Regulations that are incorporated by reference, means a "radioactive materials registrant" except when specifically noted.
3. 10 CFR 40.6, delete "Except as specifically authorized by the Commission in writing, no" with "No," and replace "by the General Counsel" with "signed and approved by the Commissioner of the Department,";
4. 10 CFR 40.9(b), replace "Administrator of the appropriate Regional Office" with "Department";
5. 10 CFR 40.14(a), replace "Commission" with "Department, with approval of the Commission on Radiation Protection," and replace "by law and will not endanger life or property or the common defense and security and are otherwise in the public interest" with "in accordance with the provisions of N.J.A.C. 7:28-2.8";
6. 10 CFR 40.21, delete "or byproduct material";
7. 10 CFR 40.22(b), replace "parts 19, 20, and 21, of this chapter" with "part 21 of this chapter and N.J.A.C. 7:28-6 and N.J.A.C. 7:28-50" ;
8. 10 CFR 40.25(c)(1), replace "NRC Form 244, "Registration Certificate--Use of Depleted Uranium Under General License" with "forms available from the Department";
9. 10 CFR 40.25(c)(2), replace "Director, Division of Industrial and Medical Nuclear Safety, with a copy to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D of part 20 of this chapter" with "Department";
10. 10 CFR 40.25(d)(4), replace "Director, Division of Industrial and Medical Nuclear Safety, with a copy to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D of part 20 of this chapter" with "Department";
11. 10 CFR 40.25(e), delete " parts 19, 20, and 21, of this chapter" with "part 21 of this chapter and N.J.A.C. 7:28-6 and N.J.A.C. 7:28-50" ;
12. 10 CFR 40.31(a), replace "NRC Form 313, 'Application for Material License,' in accordance with the instructions in § 40.5 of this chapter" with "forms available from the Department";
13. 10 CFR 40.31(e), replace "§ 170.31" with "N.J.A.C. 7:28-64";
14. 10 CFR 40.34(a)(2), replace "§ 20.1201(a)" with "N.J.A.C. 7:28-6";
15. 10 CFR 40.25(c)(1), (c)(2), and (d)(3), add "or Department equivalent" after "'Registration Certificate-Use of Depleted Uranium Under General License,'";
16. 10 CFR 40.35(d)(1) and (d)(2), add "or Department equivalent" after "'Registration Certificate-Use of Depleted Uranium Under General License,'";

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17. 10 CFR 40.35(e)(1), replace "Director, Office of Nuclear Material Safety and Safeguards" with "Department";
18. 10 CFR 40.31(c), replace "regulations contained in parts 2 and 9 of this chapter" with "the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.)";
19. 10 CFR 40.31(e), replace "part 170" with "Subchapter 64" and "§ 170.31" with "Subchapter 64";
20. 10 CFR 40.36(e)(2), replace "part 30" with "Subchapter 51";
21. 10 CFR 40.36(f)(3)(i), replace "10 CFR 20.1003" with "N.J.A.C. 7:28-6";
22. 10 CFR 40.36(f)(3)(iii), replace "10 CFR 20.2108" with "N.J.A.C. 7:28-6";
23. 10 CFR 40.36(f)(3)(iv), replace "10 CFR part 20, subpart E" with "N.J.A.C. 7:28-12" and replace "10 CFR 20.2002" with "N.J.A.C. 7:28-6";
24. 10 CFR 40.41(c), replace "part 71" with "N.J.A.C. 7:28-61";
25. 10 CFR 40.41(f)(1), replace "appropriate NRC Regional Administrator" with "Department";
26. 10 CFR 40.42(j)(2), replace "10 CFR part 20, subpart E" with "N.J.A.C. 7:28-12";
27. 10 CFR 40.42(k)(3)(i), replace "10 CFR part 20, subpart E" with "N.J.A.C. 7:28-12";
28. 10 CFR 40.42(k)(3)(ii), replace "10 CFR part 20, subpart E" with "N.J.A.C. 7:28-12";
29. 10 CFR 40.43(a), add "or Department equivalent" after "NRC Form 313";
30. 10 CFR 40.44, add "or Department equivalent" after "NRC Form 313";
31. 10 CFR 40.60(b)(1)(ii), replace "appendix B of §§ 20.1001-20.2401 of 10 CFR part 20" with "N.J.A.C. 7:28-6";
32. 10 CFR 40.60(b)(4)(i), replace "appendix B of §§ 20.1001-20.2401 of 10 CFR part 20" with "N.J.A.C. 7:28-6";
33. 10 CFR 40.60(c)(2), replace "NRC's Document Control Desk" with "Department" and replace "appropriate NRC regional office listed in appendix D to part 20 of this chapter" with "Department";
34. 10 CFR 40.61(d)(1), replace "§ 20.2002, (including burials authorized before January 28, 1981), 20.2003, 20.2004, 20.2005" with "N.J.A.C. 7:28-6";
35. 10 CFR 40.61(d)(2), replace "§20.2103(b)(4)" with "N.J.A.C. 7:28-6";
36. 10 CFR 40.61(e)(1), replace "§ 20.2002, 20.2003, 20.2004, 20.2005" with "N.J.A.C. 7:28-6"; and
37. 10 CFR 40.61(e)(2), replace "§ 20.2103(b)(4)" with "N.J.A.C. 7:28-6."

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, "Notice to Employees" shall mean the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation," available from the Department via the Department's website at:

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[www.nj.gov/dep/rpp/rms/rmsdown.htm](http://www.nj.gov/dep/rpp/rms/rmsdown.htm), or by requesting a copy by telephone during business hours at (609) 984-5462.

(e) Those facilities which possess a license from the Department and the NRC for radioactive materials shall post both the NRC's Form 3, "Notice to Employees" and the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation."

(f) Reports that are to be submitted to the Department pursuant to this subchapter shall be submitted to the address at N.J.A.C. 7:28-1.5.

(g) Requests for adjudicatory hearings shall be made in accordance with N.J.A.C. 7:28-4.17, and requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested are set forth at N.J.A.C. 7:28-4.18.