State of California—Health and Human Services Agency
California Department of Public Health

MARK B HORTON, MD, MSPH
Director

ARNOLD SCHWARZENEGGER
Governor

ACTION: Notice of Proposed Rulemaking
Title 17, California Code of Regulations

SUBJECT: Financial Surety, **DPH-06-018**

PUBLIC PROCEEDINGS: Notice is hereby given that the California Department of Public Health will conduct a written public proceeding, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW: The proposed amendments to Title 17, California Code of Regulations, § 30195.1, update financial assurance requirements for certain radioactive material licensees to maintain adequate financial coverage for decommissioning. The regulations that implement, interpret and make specific the provisions of the Radiation Control Law are in Title 17, California Code of Regulations, §§30100 through 30395.

The Radiation Control Law (Health & Saf. Code, §§ 114960 – 115273), requires the California Department of Public Health (Department), the successor to the California Department of Health Services pursuant to the California Public Health Act (CPHA) of 2006 (Stats. 2006, c. 241 (Ortiz, SB 162)) as of July 1, 2007, to develop programs for licensing and regulating radioactive materials. (Health & Saf. Code, § 115000, subd. (b).) In 1962, the State of California ratified and approved the State entering into an agreement with the United States Atomic Energy Commission (AEC), the predecessor of the United States Nuclear Regulatory Commission (NRC), by which the federal agency discontinued its regulatory authority over certain radioactive materials. (Health & Saf. Code, § 115230.) By such action California became an "Agreement State."

A provision of the agreement between California and the NRC specifies that the State "will use its best efforts to maintain continuing compatibility between its program and the program of the [United States Atomic Energy] Commission for the regulation of like materials." (Health & Saf. Code, § 115235, art. V.) NRC's stated policy is "to evaluate Agreement State programs established pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, to ensure they are adequate to protect public health and

safety and compatible with NRC's regulatory program." [1] To determine a state's compatibility, the NRC uses Management Directive 5.9, *Adequacy and Compatibility of Agreement State Programs*, *Handbook 5.9.* [2] This handbook describes the specific criteria and process that are used to clarify the NRC program elements that should be adopted and implemented by an Agreement State for purposes of compatibility, and those NRC program elements that have a particular health and safety significance. The NRC rates the elements on the degree of compatibility required. Thus, the NRC requires that some be adopted by the states in a form identical to the NRC's while adoption of others need not be identical but are required to meet the essential objective of the program element. (For NRC compatibility definitions, see Attachment 1.) The overall determination of adequacy and compatibility for an Agreement State is made pursuant to Management Directive 5.6, *The Integrated Materials Performance Evaluation Program (IMPEP).* [3] The NRC evaluates Agreement States every three to four years to determine if a state's radiation safety program meets the adequacy and compatibility criteria. If California fails to meet those criteria the NRC may revoke California's status as an Agreement State.

The NRC amends its regulations continuously, which affect the State's status as an Agreement State and the compatibility of State regulations with those of the NRC. To ensure compliance with the NRC agreement and compatibility of State regulations, this proposal addresses changes made to NRC's Financial Surety regulations found in title 10, Code of Federal Regulations, Parts 30 and 40 as specified in the following federal registers:

62 Fed.Reg. 23394 (Apr. 30, 1997)
63 Fed.Reg. 29535 (June 1, 1998)
67 Fed.Reg. 62403 (Oct. 7, 2002)
68 Fed.Reg. 57327 (Oct. 3, 2003)

On October 7, 2002, the NRC published proposed amendments to the requirements for financial assurance for certain radioactive materials licensees (67 Fed.Reg. 62403 (Oct. 7, 2002)). Revision to financial assurance requirements for some licensees is needed because there have been increases in decommissioning costs since the NRC established financial assurance requirements in 1988. (53 Fed.Reg. 24018 (June 27, 1988).) Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license. (Cal. Code Regs., tit. 17, § 30100(c).)

The financial assurance regulations are part of an overall NRC strategy to maintain safety and protection of the public and the environment during and after

[1] "Adequacy and Compatibility of Agreement State Programs," Management Directive 5.9, page 1. The document is available at the Nuclear Regulatory Commission, Office of State Programs website: http://www.hsrd.ornl.gov/nrc/procfrm.htm. (Reference 1.)

[2] "Adequacy and Compatibility of Agreement State Programs," Management Directive 5.9, Handbook 5.9. The document is available at the Nuclear Regulatory Commission, Office of State Programs website: http://www.hsrd.ornl.gov/nrc/procfrm.htm. (Handbook 5.9 is included within Reference 1.)

[3] "Integrated Materials Performance Evaluation Program (IMPEP)," Management Directive 5.6. The document is available at the Nuclear Regulatory Commission, Office of State Programs website: http://www.hsrd.ornl.gov/nrc/procfrm.htm. (Reference 2.)

decommissioning and decontamination of licensed facilities. These regulations would also decrease the likelihood that State and local governments and/or the general public would have to bear the costs of decommissioning, should the licensee not be able to do so.

If a radioactive materials facility remains in a non-operational status without being decommissioned, public health and safety could be compromised by leakage, contamination, and/or loss of control of radioactive materials. Availability of adequate funding is necessary to assure that timely decommissioning of facilities takes place following cessation of licensed operations.

The NRC amended its regulations for financial assurance (68 Fed.Reg. 57327 (Oct. 3, 2003)) for certain materials licensees, including all waste processors and collectors, to bring the required financial assurance dollar amounts more in line with current decommissioning costs. The objective is to ensure that licensees maintain adequate financial assurance so that decommissioning can be carried out following shutdown of normal operations at a licensed facility.

This proposal readopts the NRC financial assurance regulations as amended by NRC.

The Department proposes to amend **Section 30195.1** for consistency with NRC's regulations in title 10, Code of Federal Regulations (10 CFR), section 30.35 and appendices A through E of 10 CFR 30 and 10 CFR 40.36 both published January 1, 2007, which are incorporated by reference, relating to financial surety.

AUTHORITY: Sections 115000, 115091 and 131200, Health and Safety Code.

REFERENCE: Sections 114965, 114970, 115060, 115091, 115092, 115235, 131050, 131051 and 131052, Health and Safety Code.

COMMENTS: Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations and Hearings by 5 p.m. on October 24, 2008, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations and Hearings, California Department of Public Health, MS 0507, 1501 Capitol Avenue, P.O. Box 997377, Sacramento, CA 95899-7377. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or

2. By fax transmission: (916) 440-5747; or

3. By email to regulations@cdph.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "DPH -06-018" in the subject line to facilitate timely identification and review of the comment).

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES: Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Phillip L. Scott of the Radiologic Health Branch at (916) 440-7978, or to the designated backup contact person, Jennifer Granger at (916) 440-7443.

All other inquiries concerning the action described in this notice may be directed to Barbara Gallaway of the Office of Regulations and Hearings at (916) 440-7689, or to the designated backup contact person, Maureen Miyamura at (916) 440-7841.

CONTACTS: In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DPH-06-018.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS: The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations and Hearings, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations and Hearings.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.cdph.ca.gov by clicking on these links, in the following order: Decisions Pending and Opportunity for Public Participation (at the bottom of the page): Regulations; Proposed and Emergency Regulations.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email regulations@cdph.ca.gov, or write to the Office of Regulations and Hearings at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of the proposed action will be

made available by the Department's Office of Regulations and Hearings at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE:

A. FISCAL IMPACT ON LOCAL GOVERNMENT: None

B. FISCAL IMPACT ON STATE GOVERNMENT: None

C. FISCAL IMPACTS ON FEDERAL FUNDING OF STATE PROGRAMS: None.

D. FISCAL IMPACT ON PRIVATE PERSONS OR BUSINESSES DIRECTLY AFFECTED: Estimated impact on licensees is as follows:
   - $75,000 surety level increases to $113,000;
   - $150,000 level increases to $225,000.
   - $750,000 level increases to $1,125,000.
   - Funding plan required for licensees.

   Costs to obtain surety instruments vary within the industry and cannot be accurately estimated.

E. OTHER NON-DISCRETIONARY COST OR SAVINGS IMPOSED ON LOCAL AGENCIES: None.

DETERMINATIONS: The Department has determined that the proposed regulation would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made the initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the proposed regulation would not significantly affect the following:

1. The creation or elimination of jobs within the State of California.

2. The creation of new businesses or the elimination of existing businesses within the State of California.

3. The expansion of businesses currently doing business within the State of California.

The Department has determined that the proposed regulations will affect small business because they will be legally required to comply with the regulation and may incur a detriment from the enforcement of the regulation.

The Department has determined that the proposed regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS: In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Barbara Gallaway, Office of Regulations and Hearings, MS 0507, P.O. Box 997377, Sacramento, CA 95899-7377, voice (916) 440-7689 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

DPH-06-018

Date: July 30, 2008

Mark Horton, M.D., M.S.P.H.
Director