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**TITLE 17. CALIFORNIA DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED RULEMAKING  
Financial Surety (DPH-12-004)  
Notice published February 23, 2018**

**NOTICE IS HEREBY GIVEN** that the California Department of Public Health (Department) proposes to amend Section 30195.1, and to adopt Sections 30197, 30197.1, 30197.2, 30197.3, 30197.4, 30197.5, 30197.6, 30197.7 in Title 17, Division 1, Chapter 5, Subchapter 4.0, Group 2, of the California Code of Regulations (17 CCR), Licensing of Radioactive Materials, Article 4.Licenses.

**SUMMARY OF THE PROPOSED REGULATORY ACTION**

This proposal updates funding requirements applicable to certain radioactive material licensees in order to improve decommissioning planning, and to ensure that the licensees maintain adequate financial coverage for decommissioning activities. It seeks to address changes made by the U.S. Nuclear Regulatory Commission (NRC) regarding decommissioning planning, as contained in applicable sections of title 10, Code of Federal Regulations part 30, (10 CFR 30<sup>1</sup>), part 40 (10 CFR 40), and part 70 (10 CFR 70). Nonsubstantial changes are also proposed to existing regulations.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action described in this notice to:

California Department of Public Health  
Office of Regulations  
1415 L Street, Suite 500  
Sacramento, CA 95814

Comments may be submitted by facsimile (FAX) at (916) 440-5747 or by e-mail to [Regulations@cdph.ca.gov](mailto:Regulations@cdph.ca.gov). The written comment period closes at **5:00 p.m. on April 9, 2018**. The Department will consider only comments received at the Department by that time. **Please include the package identifier DPH-12-004.**

Written comments should include the author's contact information so that the Department can provide notification of any further changes to the regulation proposal.

<sup>1</sup> This short format "10 CFR 30" for a given part of NRC regulations is used throughout the document for brevity. For example, "10 CFR 39.33" means title 10, Code of Federal Regulations, part 39 section 39.33.



A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a hearing if a written request for a public hearing is received from any interested person, or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code Section 11346.8.

The Department will consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

### **ASSISTIVE SERVICES**

The Department can provide assistive services such as the conversion of written materials into Braille, large print, audiocassette, and computer disk. For public hearings, assistive services can include sign-language interpretation, real-time captioning, note takes, reading or writing assistance. To request these assistive services, please call (916) 558-1710 (or California Relay at 711 or 1-800-735-2929), email [Regulations@cdph.ca.gov](mailto:Regulations@cdph.ca.gov) or write to the Office of Regulations at the address noted above. Note: The range of assistive services available may be limited if requests are received less than 10 business days prior to a public hearing.

### **AUTHORITY AND REFERENCE**

The Department proposes to adopt, amend, or repeal, as applicable, the regulation sections identified in this document under the authority provided in Sections 115000, 115091, and 131200 of the Health & Safety Code<sup>2</sup>. This proposal implements, interprets, and makes specific sections 114965, 114970, 115060, 115091, 115092, 115230, 115235, 131050, 131051, and 131052 of the H&S Code.

### **INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW**

*Problem Statement:* Existing Department regulations that address decommissioning planning and maintenance of adequate financial coverage of decommissioning activities are not compatible with those of the NRC, and contain provisions that are out-of-date, or that have unclear references, inconsistencies, and grammatical errors.

### **Anticipated Objectives and Benefits of the Proposed Regulation:**

*Objectives:* The broad objectives of this regulatory action are to:

- Ensure compatibility between Department regulations and NRC regulations.
- Update existing regulations.
- Clarify existing regulations.

*Benefits:* Anticipated monetary (and nonmonetary) benefits of this proposed regulatory action are:

- Continued protection of the public health and safety, worker safety, and environmental concerns established by the California Legislature in H&S Code sections 114705, 114740, 114755, 114965, 114970, 115000, 115230 and 115235.

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<sup>2</sup> This short format "H&S Code section 114705" for a given Health and Safety Code section will be used throughout this document for brevity. For example, "H&S Code section 114705" means California Health and Safety Code section 114705.

- Compatibility with the standards and regulatory programs of the NRC, as specified in H&S Code sections 114965(a), 115000(b), and 115235 (article V).
- Consistency with the regulatory programs of other states, as specified in H&S Code section 114965(c).
- Orderly regulatory pattern within the State, among the States and between the federal government and the State, as specified in H&S Code section 114965(b).
- Updating and clarification of existing regulations and deleting unnecessary regulations.

### **Evaluation of Inconsistency/Incompatibility with Existing State Regulations:**

The Department evaluated this proposal to determine whether the proposed regulations are inconsistent or incompatible with existing state regulations. This evaluation included a review of both the Department's existing general regulations, and those regulations specific to the regulatory control of radioactive material. Some inconsistencies in those specific regulations were found and are addressed in this proposal. An Internet search of other state agency regulations was also performed and it was determined that no other state regulations addressed the same subject matter and that this proposal was not inconsistent or incompatible with other state regulations. Therefore, the Department has determined that this proposal, if adopted, would not be inconsistent or incompatible with existing state regulations.

### **AUTHORITY AND BACKGROUND**

The Radiation Control Law (H&S Code §§ 114960 through 115273) requires the Department to develop programs for licensing and regulating radioactive materials. (H&S Code § 115000(b).) The Department is the successor of the California Department of Health Services and, as such, has the authority to license and regulate radioactive material under the California Public Health Act of 2006. (Chapter 241, Statutes of 2006; SB 162, Ortiz.)

In 1962, the State of California ratified and approved an agreement with the United States Atomic Energy Commission, the predecessor of the NRC, by which the federal agency discontinued its regulatory authority over certain radioactive materials. (H&S Code § 115230.) By such action, California became an "Agreement State."

A provision of the agreement between California and the NRC requires that the State "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." (H&S Code § 115235, art. V.) The NRC's stated policy is "to evaluate Agreement State programs established pursuant to Section 274 of the Atomic Energy Act (AEA) of 1954, as amended, to ensure they are adequate to protect public health and safety and compatible with NRC's regulatory program."<sup>3</sup>

To determine a state's compatibility, the NRC uses Management Directive 5.9,

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<sup>3</sup> [Adequacy and Compatibility of Agreement State Programs, Management Directive 5.9](https://scp.nrc.gov/procedures/md0509.pdf), page 1. The document is available at the Nuclear Regulatory Commission, Office of State Programs website: <https://scp.nrc.gov/procedures/md0509.pdf> (Reference 1).

*Adequacy and Compatibility of Agreement State Programs, Handbook 5.9.*<sup>4</sup> This handbook describes the specific criteria and process that are used to determine which NRC program elements should be adopted and implemented by an Agreement State for purposes of maintaining compatibility, and which NRC program elements have a particular health and safety significance. The NRC rates the elements according to the degree of compatibility required. Thus, the NRC requires that some elements be adopted by the states in a form identical to the NRC's, while other elements need not be adopted in identical form, but are still required to meet the "essential objective" of the program element. The NRC's 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)*.<sup>5</sup> The NRC evaluates Agreement States every 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 and assume direct regulation and control of byproduct, source, and special nuclear matter within the State.

In conjunction with the NRC's IMPEP review every four years, the NRC procedures (SA-200<sup>6</sup>) require that Agreement States, when adopting regulations required for meeting the adequacy and compatibility determinations, submit proposed regulations to the NRC for review. The NRC then reviews the proposal to ensure that the proposed regulations meet the applicable NRC compatibility category, defined as follows:

**NRC Compatibility Categories<sup>7</sup> (underlined words are defined below)**

**Category A:** Basic radiation protection standard or related definitions, signs, labels or terms that are necessary for a common understanding of radiation protection principles. The State program element should be essentially identical to that of NRC;

**Category B:** Program element with significant direct transboundary implications. The State program element should be essentially identical to that of NRC;

**Category C:** Program element, the essential objectives of which should be adopted by the State to avoid conflicts, duplications, or gaps. The manner in which the essential objectives are addressed need not be the same as NRC, provided the essential objectives are met;

**Category D:** Not required for purposes of compatibility;

**Category NRC:** Not required for purposes of compatibility. These are NRC program elements that address areas of regulation that cannot be relinquished to Agreement States pursuant to the AEA or provisions of Title 10 of the Code of Federal Regulations. The State should not adopt these program elements;

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<sup>4</sup> *Ibid.*

<sup>5</sup> [Integrated Materials Performance Evaluation Program \(IMPEP\), Management Directive 5.6](https://scp.nrc.gov/procedures/md0506.pdf). The document is available at the Nuclear Regulatory Commission, Office of State Programs website: <https://scp.nrc.gov/procedures/md0506.pdf> (Reference 2.)

<sup>6</sup> [SA-200](https://scp.nrc.gov/procedures/sa200.pdf) is available at: <https://scp.nrc.gov/procedures/sa200.pdf> (Reference 3.)

<sup>7</sup> [Volume 5, Governmental Relations and Public Affairs, Adequacy and Compatibility of Agreement State Programs](https://scp.nrc.gov/procedures/md0509.pdf), February 27, 1998, Handbook 5.9, Part II, pp. 4-7, available at: <https://scp.nrc.gov/procedures/md0509.pdf> (same link as Reference 1.)

**Category Health & Safety (H&S):** Program elements identified as H&S are not required for purposes of compatibility; however, they do have particular health and safety significance. The State should adopt the essential objectives of such program elements in order to maintain an adequate program.

[ ] = A bracket around a category (e.g., [B]) means that the section may have been adopted elsewhere and it is not necessary to adopt it again.

### **Definitions**<sup>8</sup>

**Conflict** means that the essential objectives of regulations or program elements are different and an undesirable consequence is likely to result in another jurisdiction or in the regulation of agreement material on a nationwide basis.

**Duplication** means that identical regulations or program elements apply to the same material at the same time. Note: this definition applies primarily to review of Agreement State regulations.

**Essential objective** of a regulation or program element means the action that is to be achieved, modified, or prevented by implementing and following the regulation or program element. In some instances, the essential objective may be a numerical value (e.g., restriction of exposures to a maximum value) or it may be a more general goal (e.g., access control to a restricted area).

**Essentially Identical** means the interpretation of the text must be the same regardless of the version (NRC or Agreement State) that is read.

**Gap** means that the essential objectives of NRC regulations or program elements are absent from the Agreement State program and an undesirable consequence is likely to result in another jurisdiction or in the regulation of agreement materials on a nationwide basis.

The NRC amends its regulations continuously. The NRC's amendments directly impact the compatibility of State regulations with the NRC regulations, and have the potential to impact California's status as an Agreement State. On January 22, 2008, the NRC published proposed amendments for decommissioning planning, applicable to certain radioactive materials licensees. (73 FR 3812 (Jan. 22, 2008).<sup>9</sup>) The NRC issued its final rules on June 17, 2011 (76 FR 35512 (June 17, 2011)). The objective of the final rules is to ensure that licensees maintain adequate financial surety, in order to ensure that decommissioning activities can be carried out following shutdown of normal operations at a licensed facility.

The financial surety regulations are part of an overall NRC strategy to ensure the safety and protection of the public and the environment during and after the decommissioning of licensed facilities. State legislation was also enacted (Chapter 635, Statutes of 1993)

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<sup>8</sup> *Ibid*, pg. 17.

<sup>9</sup> This short format of 76 FR 35512 (June 17, 2011) for citations to Federal Register publications will be used throughout the remainder of this document for brevity. For example, 76 FR 35512 (June 17, 2011) references Volume 76, Federal Register, page 35512, published on June 17, 2011.

to ensure that licensees and applicants set aside adequate funds for decommissioning costs. Both the NRC's and State's financial surety regulations are intended to ensure that state and local governments, and/or the general public, would not have to bear the costs of a decommissioning, should a licensee not be able to do so. Additionally, these surety regulations encourage safe design and operation of a licensee's facility, thereby enhancing protection of the environment and the public. 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 ensure that timely decommissioning of facilities takes place following cessation of licensed operations.

In amending its financial surety regulations, the NRC repealed a number of financial instrument options and amended, adopted, or repealed other provisions. Financial instrument options repealed by the NRC and its reasons for doing so are referenced below. The number in parentheses (e.g., (24)) indicates the number of NRC licensees using the indicated option. (76 FR 35517 (June 17, 2011).)

- Prepayment Mechanisms
  - Trust Funds (6) – Maintained.
  - Escrow Accounts (24) – Repealed.
  - Certificates of Deposit (3) – Repealed.
  - Government Funds (0) – Repealed.
  - Deposits of Government Securities (0) – Repealed.

**NRC's reason for repealing four of the five prepayment mechanism options:**

Because of their relative risk in bankruptcy and their non-use by licensees, the NRC eliminated four of these five options as alternatives for providing financial assurance for decommissioning. The NRC staff reviewed several studies of escrows in bankruptcy and concluded that the most accurate summary of those studies was follows: funds contained in escrows that are set up correctly before a licensee's entry into bankruptcy will likely be secure from transfer into the bankruptcy estate as assets of the debtor, and they will not be reachable by the bankruptcy trustee using doctrines of fraudulent conveyance or voidable preference. However, correctly setting up an escrow is difficult. The NRC was also concerned that a determination of the legal status of an escrow may cause considerable delay. Also, a bankruptcy trustee could attempt to use the automatic stay provisions of the bankruptcy code to stop payment by an escrow agent under the escrow, if that payment is occurring following the commencement of the bankruptcy action. While this attempt may fail, it could postpone the NRC's access to the funds held in the escrow and thereby preclude the prompt commencement of decommissioning. (76 FR 35523 (June 17, 2011).)

- Guarantee Mechanisms
  - Letters of Credit (84) – Maintained.
  - Parent Company Guarantees (24) – Maintained.
  - Licensee Self-Guarantee (21) – Maintained.
  - Surety Bonds (24) – Maintained.
  - Insurance Policies (0) – Maintained.
  - Lines of Credit (0) – Repealed.

**NRC's reason for repealing lines of credit option:** Although the line of credit was initially authorized for use to provide an alternative to licensees that elected not to use a surety or letter of credit, the NRC believed that it posed a greater risk than the other two surety methods, because it might be subject to underlying loan covenants that could make it more vulnerable to cancellation if the licensee experienced financial difficulties. However, since 1988, no NRC licensees have elected to use a line of credit to provide financial assurance for decommissioning. Because of its perceived greater risk of cancellation and its nonuse by NRC's licensees, the NRC decided to eliminate the line of credit as an alternative for providing financial assurance for decommissioning. (76 FR 35526 (June 17, 2011).)

The regulations that implement, interpret, and make specific the provisions of the Radiation Control Law (H&S Code sections 114960 et seq.) are found in 17 CCR, sections 30100 through 30395.<sup>10</sup>

The Department proposes to make the following changes:

**Section 30195.1, Special Requirements for Issuance of Specific Licenses-Financial Surety for Decommissioning.** Currently, section 30195.1 incorporates by reference certain provisions in 10 CFR 30.35 and 40.36, as of January 1, 2007. Initially, the Department intended to re-incorporate by reference the NRC's recent changes. However, a review of the number of Department licensees using financial instrument options repealed by the NRC indicated that a number of Department licensees would be financially impacted if the Department repealed acceptance of a certificate of deposit (CD) as a surety option. Although the NRC repealed use of CDs as a surety option, the Department is retaining the CD option because the CD instrument is in fact held by the Department, in its name, and the Department does not anticipate that a bankruptcy court would order it to turnover a CD to a bankruptcy trustee. In enforcing decommissioning requirements, the Department is in fact exercising its State police and regulatory powers in order to protect public health and safety and the environment, and debtors and trustees in bankruptcy would have a duty to comply with environmental laws and regulations, including financial security provisions tied to environmental remediation obligations.

Thus, the Department proposes to:

- For Prepayment Mechanisms:
  - Maintain use of trust funds as did NRC.
    - (One CDPH licensee uses this option.)
  - Repeal use of escrow accounts, government funds, and government securities as did NRC.
    - (There are no CDPH licensees using these options.)
  - Maintain use of CDs, unlike NRC.
    - (10 CDPH licensees use this option.)
- For Guarantee Mechanisms:
  - Maintain letters of credit, parent company guarantees, licensee self-guarantees, surety bonds, and insurance policies as did NRC.
    - (70 CDPH licensees use these options.)

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<sup>10</sup> This short format "17 CCR 30190" for a given regulation found within title 17, California Code of Regulations will be used throughout this document for brevity.

- Repeal use of lines of credit as did NRC.
  - (There are no CDPH licensees using this option.)
- Maintain Statement of Intent Mechanisms (government entities only) and External sinking funds as did the NRC.

Section 30195.1 is amended to remove the incorporation by reference and present all requirements within 17 CCR, so that a licensee need only refer to 17 CCR. This proposal is intended to maintain certain existing financial instrument options, to provide clarity for licensees and Department staff, to be compatible and consistent with the NRC's changes, and to implement the Legislature's direction, as follows:

- Pursuant to H&S Code section 115091(a), Department regulations adopted for establishing financial sureties are to consider the appropriateness of the NRC's financial assurance regulations.
- Pursuant to H&S Code section 115235, article V, the State is to use its best efforts to maintain continuing compatibility between its program and the NRC's program for the regulation of like materials.

Existing regulations comply and are consistent with H&S Code section 115091(a), and meet the NRC's compatibility criteria. The NRC's compatibility categories for the 10 CFR provisions addressed in this proposal are as follows (76 FR 35561 (June 17, 2011)):

- Compatibility Category D
  - 30.35(c)(6), (d), (f), (h), and appendices A, C, D, and E;
  - 40.36(c)(5), (e), and (g); and
  - 70.25(c)(5), (d), (f), and (h).
- Compatibility Category H&S
  - 30.35(e)(1) and (2);
  - 40.36(d)(1) and (2); and
  - 70.25(e)(1) and (2).

Existing subsections 30195.1(a) and (b) are deleted and addressed in proposed sections 30197 through 30197.7, respectively, as follows:

- Restructure 30195.1 as follows:
  - Subsection (a) is placed in new section 30197, making it applicable to radioactive material except source material and special nuclear material (SNM). Corresponds to 10 CFR 30.35. SNM addressed in new section 30197.2.
  - Subsection (b) is placed in new section 30197.1, applicable only to source material. Corresponds to 10 CFR 40.36.
  - Subsection (c) is retained in 30195.1, and the section is restructured for clarity.
- Designate a section number to each 10 CFR part 30 appendix, and replace the appendix reference with a section number referenced below. The provisions of 10 CFR 30.35, 40.36, and 70.25 cite to and use the financial tests found in the appendices of part 30.
  - Appendix A = 30197.3
  - Appendix B = 30197.7
  - Appendix C = 30197.4
  - Appendix D = 30197.5

○ Appendix E = 30197.6

- Restructure 10 CFR provisions and appendices using California methodology.
- Make grammatical and punctuation changes, section internal reference changes, federal law reference changes, phraseology changes, etc.
- Revise section and appendix titles.

**Section 30197, Financial Surety for Decommissioning Except as Provided for in Sections 30197.1 and 30197.2**, is proposed to carry forward the existing provisions found in section 30195.1 that are specific to radioactive materials except source material and special nuclear material, which are addressed in proposed sections 30197.1 and 30197.2, respectively.

Source material is defined in H&S Code section 114985(e) as: “(1) uranium, thorium, or any other material which the department declares by rule to be source material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such; or (2) ores containing one or more of the foregoing materials, in such concentration as the department declares by rule to be source material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material in such concentration to be source material.”

Special nuclear material is defined in H&S Code section 114985(f) as: “(1) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the department declares by rule to be special nuclear material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.”

This proposed section recodifies 10 CFR 30.35, formerly incorporated by reference in section 30195.1(a). The section is structured nearly identical to 10 CFR 30.35 to maintain consistency and uniformity with the NRC, since some California licensees may also hold an NRC license. The NRC’s compatibility categories for 10 CFR 30.35, including the changes made under 76 FR 35561 (June 17, 2011), are as follows:

- Compatibility Category B
  - Appendix B to part 30.
- Compatibility Category D
  - 30.35(c), (d), (f), (h), and appendices A, C, D, and E to part 30.
- Compatibility Category H&S
  - 30.35(a), (b), (e), and (g).

**Section 30197.1, Financial Surety for Decommissioning – Source material**, is proposed to carry forward the existing provisions found in section 30195.1(b) that are specific to source material, with revisions.

This proposed section recodifies 10 CFR 40.36, formerly incorporated by reference in section 30195.1(b). The section is structured nearly identical to 10 CFR 40.36, to maintain consistency and uniformity with the NRC, since some California licensees may

also hold an NRC license. The NRC's compatibility categories for 10 CFR 40.36, including the changes made under 76 FR 35561 (June 17, 2011), are as follows:

- Compatibility Category D
  - 40.36(c), (e), and (g).
- Compatibility Category H&S
  - 40.36(a), (b), (d), and (f).

**Section 30197.2, Financial Surety for Decommissioning – Unsealed Special Nuclear Material**, is proposed to be specific to special nuclear material (SNM) licensees and structured nearly identical to 10 CFR 70.25 in order to maintain consistency and uniformity with the NRC, since some California licensees may also hold an NRC license. The NRC's financial assurance provisions in 10 CFR 30.35, 40.36, and 70.25 are nearly identically structured.

The NRC's compatibility categories for 10 CFR 70.25, including changes made under 76 FR 35561 (June 17, 2011), are as follows:

- Compatibility Category NRC
  - 70.25(a)(1)
- Compatibility Category D
  - 70.25(c), (d), (f), and (h).
- Compatibility Category H&S
  - 70.25(a)(2), (b), (e), and (g).

**Section 30197.3, Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Surety of Funds for Decommissioning**, is proposed to carry forward the provisions incorporated by reference in existing section 30195.1(a), corresponding to appendix A of 10 CFR 30.

This proposed section is based on the 2007 version of appendix A, as currently incorporated by reference, and revised to address the NRC's changes in 76 FR 35512 (June 17, 2011).

**Section 30197.4, Criteria Relating to Use of Financial Tests and Self Guarantees for Providing Reasonable Surety of Funds for Decommissioning**, is proposed to carry forward the provisions incorporated by reference in existing section 30195.1(a), corresponding to appendix C of 10 CFR 30.

This proposed section is based on the 2007 version of appendix C, as currently incorporated by reference, and revised to address the NRC's changes in 76 FR 35512 (June 17, 2011).

**Section 30197.5, Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Surety of Funds for Decommissioning by Commercial Companies That Have No Outstanding Rated Bonds**, is proposed to carry forward the provisions incorporated by reference in existing section 30195.1(a), corresponding to appendix D of 10 CFR 30.

This proposed section is based on the 2007 version of appendix D, as currently incorporated by reference, and revised to address the NRC's changes in 76 FR 35512 (June 17, 2011).

**Section 30197.6, Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Surety of Funds for Decommissioning by Nonprofit Colleges, Universities, and Hospitals**, is proposed to carry forward the provisions incorporated by reference in existing section 30195.1(a), corresponding to appendix E of 10 CFR 30.

This proposed section is based on the 2007 version of appendix E, as currently incorporated by reference, and revised to address the NRC's changes in 76 FR 35512 (June 17, 2011).

**Section 30197.7, Schedule of Material Quantities for Use in Determining Financial Surety Amounts**, is proposed to carry forward the provisions incorporated by reference in existing section 30195.1(a), corresponding to appendix B of 10 CFR 30 (January 1, 2007), resulting in no regulatory effect. The NRC has designated appendix B of 10 CFR 30 as compatibility category B, meaning Agreement States must adopt equivalent regulations that are essentially identical to the NRC's provision. Therefore, appendix B of 10 CFR 30 is proposed to be adopted in an essentially identical manner.

### **CONSIDERATION OF ALTERNATIVES**

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 agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Alternatives have been considered in those areas not subject to or specifically limited by the adequacy and compatibility criteria made applicable under the State of California agreement with the United States Atomic Energy Commission, the predecessor to the United States Nuclear Regulatory Commission. (H&S Code § 115230.) The NRC categories A and B require that the State be "essentially identical" to the NRC; category C requires that the "essential objectives" are met; category D is not required for purposes of compatibility; and category H&S is not required for purposes of compatibility, but does have health and safety significance and requires adoption of regulations meeting the essential objectives for an adequate program. According to the agreement, the state is to 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..." (H&S Code §115235, art. V.) 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; would be as effective and less burdensome to affected private persons than the proposed action; or, would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations or during the written comment period.

**Local Mandate:** The Department has determined that this regulatory action would not impose a mandate on local agencies or school districts, nor are there any costs that require state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

**Mandated by Federal Law or Regulations:** Not applicable. See Authority and Background on Pg. 3 of this document.

**Other Statutory Requirements:** None.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

*The Department has made the following initial determinations:*

**Mandate on local agencies and school districts:** Not applicable.

**Cost or savings to any state agency:** None.

**Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:** None.

**Other nondiscretionary cost or savings imposed on local agencies:** None.

**Cost or savings in federal funding to the state:** None.

**Cost impacts on a representative private person or business:** The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This proposal comports with NRC's adoption except that CDPH is retaining use of certificates of deposits (CD) for purposes of establishing required financial surety. By retaining use of CD's, licensees using CDs will not be required to establish a new financial instrument resulting in a savings annually from \$181 to \$16,475, if the licensee used letters of credit or surety bonds for the new financial surety instrument.

**Statewide adverse economic impact directly affecting businesses and individuals:** There is no impact because the proposal clarifies activities currently performed by licensees or applicants and it would not require a licensee to establish a new financial instrument.

**Significant effect on housing costs:** The Department has determined that the proposed regulations will not have an impact on housing costs.

**Business Reporting Requirement:** No report required.

**Small Business Determination:** There would be an affect on small business because they will be legally required to comply with the regulations, and may incur a detriment from the enforcement of the regulation.

### **RESULTS OF THE ECONOMIC IMPACT ASSESSMENT**

The Department analyzed whether and to what extent this proposal affects the following:

1. **The creation or elimination of jobs within the State of California.** This proposal is not likely to create new jobs because it clarifies activities currently performed by licensees or applicants.
2. **The creation of new businesses or the elimination of existing businesses within the State of California.** This proposal is unlikely to create new businesses because it clarifies activities currently performed by licensees or applicants.
3. **The expansion of businesses currently doing business within the State of California.** This proposal is unlikely to result in the expansion of businesses currently doing business in California because it clarifies activities currently performed by licensees or applicants.
4. **The benefits of the regulation to the health and welfare of California residents, worker safety, and the State's environment.** This proposal increases the benefits to the health and welfare of California residents and worker safety because it increases the likelihood that licensees will improve decommissioning planning, and have adequate funds for effective decommissioning. This proposal would benefit the State's environment because it reduces the likelihood that an operating facility will become a legacy site. The above benefits specifically demonstrate:
  - Continued protection of the public health and safety, worker safety, and the environment, as established by the Legislature in the following provisions:
    - H&S Code sections 114705, 114740, 114755, 114965, 114970, 115000, 115230, and 115235.
  - Compatibility with the standards and regulatory programs of the NRC, as specified in H&S Code sections 114965(a), 115000(b), and 115235 (article V).
  - Consistency with the regulatory programs of other states, as specified in H&S Code section 114965(c).
  - Evidence of orderly regulatory pattern within the State, among the states, and between the federal government and the State, as specified in H&S Code section 114965(b).
  - Initiation and administration of programs of surveillance and control of those activities that could lead to the introduction of radioactive materials into the environment, as specified in H&S Code section 114705.

## **REFERENCES**

1. [\*Adequacy and Compatibility of Agreement State Programs, Management Directive 5.9\*](#) as published in Volume 5: Governmental Relations and Public Affairs. Available at: <https://scp.nrc.gov/procedures/md0509.pdf>. Accessed April 8, 2016.
2. [\*Integrated Materials Performance Evaluation Program \(IMPEP\), Management Directive 5.6\*](#) as published in Volume 5: Governmental Relations and Public Affairs. Available at: <https://scp.nrc.gov/procedures/md0506.pdf>. Accessed April 8, 2016.
3. NRC Procedure SA-200, [\*Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements – SA – 200\*](#). Available at: <https://scp.nrc.gov/procedures/sa200.pdf>. Accessed April 8, 2016.

- 3a. NRC Procedure SA-201, [Review of State Regulatory Requirements – SA – 201](#). Available at: <https://scp.nrc.gov/procedures/sa201.pdf>. Accessed April 8, 2016.
4. NRC Review Summary Sheets, *Domestic Licensing of Special Nuclear Material*, available at: <https://scp.nrc.gov/regulationtoolbox/10cfr70.pdf>. Accessed April 8, 2016.
5. [NUREG-1757, Vol. 3, Rev. 1](#), *Consolidated Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness*, NRC, February 2012, available at: <https://www.nrc.gov/docs/ML1204/ML12048A683.pdf>. Accessed April 8, 2016.
6. Comparison of title 10 CFR 30.35, 2007 and 2014 versions.
7. Comparison of title 10 CFR 40.36, 2007 and 2014 versions.

### **CONTACT PERSONS**

Inquiries concerning the subject matter in this notice may be directed to Phillip Scott of the Department's Radiologic Health Branch, at (916) 440-7978. For inquiries related to the regulatory process, to Laurel Prior, Office of Regulations, at (916) 440-7673.

### **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS, AND RULEMAKING FILE**

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting the Office of Regulations at [Regulations@cdph.ca.gov](mailto:Regulations@cdph.ca.gov) or by phone at (916) 558-1710.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the Office of Regulations at [Regulations@cdph.ca.gov](mailto:Regulations@cdph.ca.gov). The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

A copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout are available via the Internet by clicking [here](#) ([www.cdph.ca.gov](http://www.cdph.ca.gov).)