

**SUPPLEMENT TO THE STATEMENT OF REASONS  
DPH-12-004, 15-Day Public Availability**

The California Department of Public Health (Department) has instituted additional changes to these proposed regulations and is providing additional discussion as presented below.

**Initial Statement of Reasons (ISR):**

- As discussed in the ISR (pp. 17-18) regarding sections 30197.3(e); 30197.4(e); 30197.5(e); and 30197.6(f) that address the terms of financial sureties under the parent company guarantee or the self-guarantee methods, the material incorporated by reference in section 30195.1 is carried over into these proposed provisions, resulting in relocating existing provisions with no regulatory effect. This carryover more directly displays existing regulatory language written from the dual perspective of both an applicant (i.e. who is applying for a license) and a licensee (i.e., who already holds a license), while some specific criteria refers only to the licensee. When this occurs, the specific criterion presumes the applicant has become a licensee, invoking the legal status of the guarantee upon license issuance. The Department's experience, as is also Nuclear Regulatory Commission's (NRC) experience, is that applicants are clearly aware of this presumption and prepare these guarantees in consultation with the applicable regulator to ensure the validity of guarantee methods and issuance of the license. This proposal retains the existing regulatory language for consistency with NRC provisions since a number of Department licensees also hold an NRC license.
- Because the economic impact assessment failed to fully address Government Code section 11346.3(b)(1)(A) and (B), the following items found on page 20 of the ISR are revised to read as follows:
  1. **The creation or elimination of jobs within the State of California.** This proposal is not likely to create new jobs or eliminate 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 or eliminate existing businesses because it clarifies activities currently performed by licensees or applicants.

**Proposed Text:**

Changes to the proposed text are made for the indicated reasons.

**Section 30197:**

- Subsection (a)(1): The word “here” is deleted as it is unnecessary. Punctuation corrections are made for consistency with the designation structure of existing regulations and proposed provisions.
- Subsection (b): No additional changes are proposed.
- Subsection (c): Punctuation corrections are made at the end of each paragraph for consistency with the designation structure of existing regulations and proposed provisions. In paragraph (2), the comma found after “\$1,125,000” is deleted so that the language “in accordance with the criteria in this section” that follows that dollar amount clearly refers only to the certification of financial surety instead of to both the certification and the DFP pathways.
- Subsections (d) through (f): No additional changes are proposed.
- Subsection (g): The word “at” found in the first sentence is changed to “in” to maintain proper grammar. Grammatical and punctuation corrections are made to the third sentence for clarity. The phrase “or signed original duplicate” found in the last sentence is deleted for consistency with the discussion of changes in the ISR (p. 13) pertaining to section 30197(g).
- Subsection (g)(2):
  - Second sentence: The word “may” is changed to “shall” to clarify the mandatory nature of the identified surety methods.
  - Newly added third sentence is included to clearly identify the Attorney General-approved form that must be used when a surety bond is used to establish the surety method.
  - Newly added fourth sentence is included to clarify the phrase “other guarantee method” and where those methods are described.
  - The sixth sentence (originally, the fourth) is deleted for consistency with NRC’s changes to 10 CFR 30.35(f)(2). The Department intended this proposal to be consistent with NRC’s provisions as described in the ISR beginning on page nine regarding proposed section 30197.
  - The tenth sentence (originally, the eighth) is amended for consistency with NRC’s changes to 10 CFR 30.35(f)(2). The Department intended this proposal to be consistent with NRC’s provisions as described in the ISR beginning on page nine regarding proposed section 30197.
  - The preamble sentence to subparagraphs (A), (B) & (C), and its subparagraphs, are revised and restructured for clarity. Subparagraphs (A) and (B) address conditions of the actual financial instrument. Subparagraph (C) speaks to the broader requirement, as evidenced in the preamble sentence, that the licensee must have an effective surety method or insurance at all times until the license is terminated. By

restructuring the provisions (and relocating subparagraph (C) content to the preamble sentence), this difference is more clearly presented.

- Subparagraph (A) is further amended for clarity as follows:
  - As existing within the material incorporated by reference in section 30195.1 and as proposed, the issuer, when deciding to not renew the surety or insurance, is to notify the Department, the beneficiary, and the licensee, implying that three entities must be notified. However, because the Department is the beneficiary of the surety method or insurance, and the actual instrument will so state, the notice need be sent to two entities, not three. The revision clarifies the number of entities to whom the notice is sent and that the Department is the beneficiary.
  - Pertaining to surety methods or insurances written for specific terms: Though the provision exists within the material incorporated by reference in section 30195.1(a) (i.e. 10 CFR 30.35(f)(2)(i), 2007 edition), the proposal is revised to clarify that it is the surety method or insurance that states the “full face amount,” that it is expiring, and that it is being replaced. The phrase “without proof of forfeiture,” (also within existing section 30195.1(a)) broadly addresses the recovering the face amount (i.e. dollars) of the bond or insurance without any evidence, proof, or contest.
- Subsection (g)(3): The opening sentence is revised to delete an unnecessary word. The sentence referring to the “other guarantee method” is revised to clarify it is referring to the methods found in the cited sections.
- Subsections (g)(4) and (g)(5): No additional changes are proposed.
- Subsections (h) and (i): No additional changes are proposed.

**Section 30197.1:**

- Subsections (a) and (b): No additional changes are proposed.
- Subsection (c): Punctuation corrections are made at the end of each paragraph for consistency with the designation structure of existing regulations and proposed provisions. Additional changes are as follows:
  - Paragraph (1): Existing section 30195.1 incorporates by reference 10 CFR 40.36, and the phrase “the criteria set forth in this section” found in 10 CFR 40.36(c)(1) is clear because Part 40.36 contains the criteria. Section 30197.1(c)(1) is the equivalent provision to 10 CFR 40.36(c)(1). This proposal is placing those adopted provisions directly into the California Code of Regulations and restructures those provisions to remove duplication by providing cross references to the applicable provision. Thus, as carried over and restructured with cross references, the phrase is

no longer clear. This provision is revised to clearly identify where applicable criteria are found.

- Paragraph (2): Punctuation corrections are made for the same reason stated regarding section 30197(c)(2).

### **Section 30197.2**

- Subsection (a): The word “here” is deleted as it is unnecessary.
- Subsection (b): No additional changes are proposed.
- Subsection (c): Punctuation corrections are made at the end of each paragraph for consistency with the designation structure of existing regulations and proposed provisions. Additional changes are as follows:
  - Paragraph (1): The provision is revised for the same reasons as stated regarding section 30197.1(c)(1).

### **Section 30197.3:**

- Subsection (a): No additional changes are proposed.
- Subsection (b)(1):
  - Paragraphs (1)(B) and (1)(D) are deleted because these provisions, equivalent to 10 CFR 30 Appendix A, II,A.1.(ii) and II,A.1.(iv), respectively, apply to power reactor licensees. Existing section 30195.1(a)(11) excludes those provisions from the incorporation by reference, and this proposal failed to also exclude those provisions. Regulatory oversight of nuclear power plants is reserved to the NRC only.
  - The paragraph is revised to maintain a coherent structure.
- Subsection (b)(2):
  - Paragraphs (1)(B) and (1)(D) are deleted because these provisions, equivalent to 10 CFR 30 Appendix A, II,A.2.(ii) and II,A.2.(iv), respectively, apply to power reactor licensees. Existing section 30195.1(a)(11) excludes those provisions from the incorporation by reference, and this proposal failed to also exclude those provisions. Regulatory oversight of nuclear power plants is reserved to the NRC only.
  - The paragraph is revised to maintain a coherent structure.
- Subsections (c) and (d): No additional changes are proposed.
- Subsection (e):
  - Paragraph (1): First sentence: the word “will” is changed to “shall” to clarify the mandatory nature of the identified surety methods. Also, the phrase “return receipt requested” is added for consistency with the second sentence regarding receipts.
  - Paragraph (4): Fifth sentence: the word “will” is changed to “shall” to clarify the mandatory nature of the referenced criteria.
  - Paragraph (7)(C): The citation to “11 U.S.C. 101(14)” is changed to “11 U.S.C. 101(15)” to correctly indicate where in federal law the term “entity” is defined.

**Section 30197.4:**

- The Title of the section is revised to clearly indicate the section’s content.
- Subsection (b):
  - Paragraphs (1) and (2) are deleted because these provisions, equivalent to 10 CFR 30 Appendix C, II,A.1 and II,A.2, respectively, apply to power reactor licensees. Existing section 30195.1(a)(11) excludes those provisions from the incorporation by reference, and this proposal failed to also exclude those provisions. Regulatory oversight of nuclear power plants is reserved to the NRC only.
  - The subsection is revised to maintain a coherent structure.
- Subsections (c) and (d): Due to the corrections in subsection (b), the reference to subsections “(b)(1) through (b)(3)” is changed for consistency.
- Subsection (e): Punctuation corrections are made at the end of each paragraph for consistency with the designation structure of existing regulations and proposed provisions. Additional changes are as follows:
  - Paragraph (1): First sentence: the word “will” is changed to “shall” to clarify the mandatory nature of the terms of a self-guarantee. Also, the phrase “return receipt requested” is added for consistency with the second sentence regarding receipts.
  - Paragraph (3) is revised to clarify where the referenced financial test provisions are located.
  - Paragraph (4): The word “will” is changed to “shall” to clarify the mandatory nature of the submittal of the indicated reports.
  - Paragraph (5): Due to the corrections in subsection (b), the reference to subsections “(b)(1) through (b)(3)” is changed for consistency.
  - Paragraph (7): Fifth sentence: the word “will” is changed to “shall” to clarify the mandatory nature of the referenced criteria.

**Section 30197.5:**

- Subsections (b)(1) and (b)(2) are revised for clarity by citing where the “certification” provisions are found.
- Subsection (c) is revised for consistency with the NRC’s changes to Appendix D, II.B(1) of 10 CFR 30 (76 FR 35567 (June 17, 2011)).
- Subsection (d): No additional changes are proposed.
- Subsection (e): Punctuation corrections are made at the end of each paragraph for consistency with the designation structure of existing regulations and proposed provisions. Additional changes are as follows:
  - Paragraph (2) is amended to clarify where the financial surety regulations are located.
  - Paragraph (5): Fifth sentence: the word “will” is changed to “shall” to clarify the mandatory nature of the referenced criteria.

**Section 30197.6:**

- Subsection (a): The reference to subsection “(e)” is changed to “(f)” to correctly indicate the location of the terms of the self-guarantee.
- Subsection (b): The preamble sentence is revised to delete unnecessary words for clarity.
  - Paragraph (2) is revised for clarity by citing where the “certification” provisions are found.
- Subsection (c): The preamble sentence is revised to delete unnecessary words for clarity.
  - Paragraph (1) is revised for consistency with Appendix E, II.B(1) of 10 CFR 30.
  - Paragraph (2)(D) is revised to clarify where the “certification” provisions are found.
- Subsection (d) is revised for consistency with the NRC’s changes to Appendix E, II.C(1) of 10 CFR 30 (76 FR 35567 (June 17, 2011)).
- Subsection (e) is amended to clarify where the financial surety regulations are located.
- Subsection (f): Punctuation corrections are made at the end of paragraphs (4) through (7) for consistency with the designation structure of existing regulations and proposed provisions. Additional changes are as follows:
  - Paragraph (1) is amended for clarify by deleting the phrase “and/or.”
  - Paragraph (2) is amended to clarify where the financial surety regulations are located.
  - Paragraph (6): the word “will” is changed to “shall” to clarify the mandatory nature of the referenced criteria.