

**Methodology to Indicate Changes to
DPH-13-001 – Compatibility Maintenance with NRC Regulations**

The proposed changes for comment that are the subject of this notice (second 15-day public comment period) are indicated as follows:

- Deletions from the proposed text presented during the second 15-day public comment period are indicated by a shaded double strike-through (~~strike-through~~).
- Additions to the proposed text presented during the second 15-day public comment period are indicated by a shaded double underline (underline).

Regulation text not subject to this second 15-day public comment period are presented for the reader's convenience and are indicated as follows:

- Deleted text as initially proposed is indicated by single strike-through (~~strike-through~~).
- Additions to the regulation text as initially proposed is indicated by single underline (underline).
- Deletions from the proposed text presented during the first 15-day public comment period are indicated by double strike-through (~~strike-through~~).
- Additions to the proposed text presented during the first 15-day public comment period are indicated by double underline (underline).

Amend Section 30210 to read as follows:

§ 30210. Authorization for Transfer of Radioactive Material.

~~(a) A licensee may transfer radioactive material only to persons listed below and only following acceptance of such transfer:~~

- ~~(1) the Department;~~
- ~~(2) any person who is exempt from this regulation to the extent permitted under such exemption; or~~
- ~~(3) any person licensed or authorized to receive the material by the United States Nuclear Regulatory Commission, the Department, or any other Agreement State.~~

~~(b) This section does not authorize the commercial distribution of radioactive material other than those items listed in Section 30192 through 30192.6, except when such distribution is authorized by a specific license.~~

(a) A licensee may only transfer radioactive material in accordance with this section.

(b) Except as otherwise provided in the license and subject to subsection (c), any licensee may transfer radioactive material:

- (1) To the Department;
- (2) To the U.S. Department of Energy;
- (3) To the applicable licensing agency of any Agreement State that regulates radioactive material pursuant to an agreement with the United States Nuclear Regulatory Commission (NRC) under section 274 of the Atomic Energy Act of 1954, Title 42, United States Code, section 2021(b) (formerly section 274(b));

(4) To any person exempt, as specified in Article 3 of this Group, from the licensing requirements of this regulation, to the extent permitted under such exemption;

(5) To any person in an Agreement State, subject to the jurisdiction of that State, who has been exempted from the licensing requirements and regulations of that State, to the extent permitted under such exemption;

(6) To any person licensed or authorized to receive radioactive material by the Department, the United States Nuclear Regulatory Commission (NRC), or any other Agreement State; or

(7) As otherwise authorized by the Department in writing.

(c) Before transferring radioactive material to a specific licensee of the Department, the NRC, or an Agreement State, the licensee transferring the material shall verify by one of the following methods that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred:

(1) The transferor may have in his possession, and read, a current copy of the transferee's specific license;

(2) The transferor may have in his possession a written certification by the transferee that he is authorized by license to receive the type, form, and quantity of radioactive material to be transferred, specifying the license number, issuing agency and expiration date;

(3) For emergency shipments, the transferor may accept oral certification by the transferee that he is authorized by license to receive the type, form, and quantity of radioactive material to be transferred, specifying the license number, issuing agency and expiration date, only if the oral certification is confirmed in writing within 10 days;

(4) The transferor may obtain other sources of information, compiled by a reporting service from official records of the NRC or the licensing agency of an Agreement State, as to the identity of licensees and the scope and expiration dates of licenses; or

(5) When none of the methods of verification described in paragraphs (1) to (4), inclusive, are readily available, or when a transferor desires to verify that information received by one of those methods is correct or up-to-date, the transferor may obtain and document confirmation from the Department, the NRC or the licensing agency of an Agreement State that the transferee is licensed to receive the radioactive material.

(d) This section does not authorize the commercial distribution of radioactive material other than those items listed in sections 30192 through 30192.7, except when such distribution is authorized by a specific license.

~~Note: Authority cited: Sections 102, 208 and 25811, Health and Safety Code.
Reference: Sections 25801, 25802, 25815, 25855, 25875 and 25876, Health and Safety Code.~~

Note: Authority cited: Sections 114975, 115000 and 131200, Health and Safety Code. Reference: Sections 114965, 114970, 115060, 115165, 115235, 131050, 131051 and 131052, Health and Safety Code.

Adopt Section 30220 within Article 6 to read as follows:

§ 30220. Special Requirements for Issuance of Specific Licenses – Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.

(a) In addition to meeting the requirements set forth in sections 30194, 30194.1, 30195, 30195.1, 30195.2, 30195.3 and 30196, specific licenses shall be issued only if the applicant submits documentation demonstrating that it is capable of complying, and following issuance of the license will continue to comply, with the regulations governing the physical protection of category 1 and category 2 quantities of radioactive material in Title 10, Code of Federal Regulations (10 CFR), Part 37 and Appendix A of 10 CFR Part 37 (January 1, 2016), which are hereby incorporated by reference with the following exceptions.

(1) Title 10, CFR sections 37.1, 37.3, 37.7, 37.9, 37.11(a) & (b), 37.13, 37.105, 37.107, and 37.109 are not incorporated by reference.

(2) The ~~terms “fingerprint orders” and “government agency”~~ found in 10 CFR 37.5 ~~are~~ is not incorporated by reference.

(3) Part 73, as referenced in sections 37.21, 37.25, and 37.27 of 10 CFR 37, is not incorporated by reference, except that a licensee may meet the applicable provision by compliance with Part 73 as referenced.

(4) Except as follows, any reference to the United States Nuclear Regulatory Commission (NRC) or any component thereof shall be deemed to be a reference to the Department:

(A) Section 37.5 of 10 CFR 37. The reference to the NRC found in the term “fingerprint orders” shall be deemed to include both the NRC and the Department, as

applicable. The term “agreement state” found within the definition of “fingerprint orders” shall be as defined in paragraph (6):

(B) Section 37.25 of 10 CFR 37, subject to paragraph (3). The reference to the NRC found in the definition of “security orders” in Section 37.25(b)(2) shall remain a reference to the NRC:

(A)(C) Section 37.27 of 10 CFR 37, subject to paragraphs (3) and (9). Licensees shall comply with all submittals and processes specified in 10 CFR 37.27 by submitting and corresponding directly to the NRC as required by 10 CFR 37.27; and

(B)(D) Section 37.71 of 10 CFR 37. Any reference to the NRC shall be deemed to include both the NRC and the Department, the NRC, the Department, and any Agreement State, as applicable, except that any reference to “NRC’s license verification system” remains a reference to the NRC.

(5) Reference to 10 CFR 30.41(d) found in 10 CFR 37.71 shall be deemed to be a reference to section 30210(c) of this subchapter.

(6) For purposes of this section, any reference to the below identified federal term found within 10 CFR 37.5 shall be deemed to be a reference to the below identified Department term that is defined as specified in the following table:

<u>Federal term found within 10 CFR 37.5</u>	<u>Department term</u>
<u>Act</u>	<u>“Act” as defined in section 30100.</u>
<u>Agreement State</u>	<u>“Agreement State” as defined in section 30100.</u>
<u>Becquerel</u>	<u>“Becquerel” as defined in 10 CFR 20.1005 incorporated by reference in section 30253.</u>
<u>Byproduct material</u>	<u>“Radioactive material” as defined in section 30100.</u>
<u>Curie</u>	<u>“Curie” as defined in 10 CFR 20.1005 incorporated by reference in section 30253.</u>

<u>Federal term found within 10 CFR 37.5</u>	<u>Department term</u>
<u>License</u>	<u>"License" as defined in section 30100.</u>
<u>Person</u>	<u>"Person" as defined in section 30100.</u>

~~(7) Subdivision (b)(1) of 10 CFR 37.25 is substituted with the following:~~

~~(A) Individuals who have been determined, pursuant to any condition of use in the specific license pertaining to fingerprinting and criminal history record checks, to be trustworthy and reliable for unescorted access to category 1 or category 2 quantities of radioactive material prior to [effective date to be inserted by Office of Administrative Law], may continue to have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. These individuals shall be subject to the reinvestigation requirement specified in section 37.25(c).~~

~~(8) Subdivision (b)(2) of 10 CFR 37.25 is substituted with the following, subject to paragraph (3):~~

~~(A) Individuals who have been determined, pursuant to any condition of use in the specific license pertaining to fingerprinting and criminal history record checks, to be trustworthy and reliable for access to safeguards information, safeguards information-modified handling, or risk significant material such as special nuclear material or large quantities of uranium hexafluoride prior to [effective date to be inserted by Office of Administrative Law], may continue to have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. These individuals shall be subject to the reinvestigation requirement specified in section 37.25(c).~~

~~(9) Subdivision (a)(4) of 10 CFR 37.27 is substituted with the following, subject to paragraph (3):~~

~~(A) Fingerprints do not need to be taken if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to category 1 or category 2 quantities of radioactive material, access to safeguards~~

~~information, or safeguards information modified handling by another licensee, based upon a background investigation conducted pursuant to subpart B of Part 37 or, prior to [effective date to be inserted by Office of Administrative Law], any condition of use in the specific license pertaining to fingerprinting and criminal history record checks. An existing criminal history records check file may be transferred to the licensee asked to grant unescorted access in accordance with section 37.31(c).~~

~~(40)(7)~~ Title 10, CFR sections 37.101 and 37.103 are substituted with section 30293.

Note: Authority cited: Sections 114975, 115000 and 131200, Health and Safety Code.
Reference: Sections 114965, 114970, 115060, 115165, 115230, 115235, 131050, 131051 and 131052, Health and Safety Code.

Article 3.1. Records and Notification

Amend Section 30293 to read as follows:

§ 30293. Records.

(a) Each user shall keep records showing the receipt, transfer, and disposal of each source of radiation which is subject to licensure or registration pursuant to groups 1.5 and 2 of this subchapter as follows:

(1) *No change to text.*

(2) The user who transferred the source of radiation shall retain each record of transfer for three years after each transfer unless a specific requirement in another part of the regulations in this subchapter dictates otherwise, except that if the source of radiation is source material, as defined in Health and Safety Code section 114985(e), the user shall retain each record of transfer until the Department terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

(3) *No change to text.*

(b) through (g) *No change to text.*

Note: Authority cited: Sections 100275 and 115000, Health and Safety Code.
Reference: Sections 114965, 114970, 115105, 115110, 115230 and 115235, Health and Safety Code.

Group 4. Transportation of Radioactive Material
Article 1. Requirements for Transportation of Radioactive Material

Amend Section 30373 to read as follows:

§ 30373. Transportation Regulations.

(a) Except as authorized in a general license or a specific license, or as exempted in this subchapter, a licensee may not deliver radioactive material to a carrier for transport, or transport radioactive material. Licensees authorized to receive, possess, use or transfer radioactive material shall, if they deliver radioactive material to a carrier for transport, transport ~~it~~radioactive material outside the site of usage as specified in the specific license, or transport radioactive material on public highways, comply with, as appropriate to the mode of transport, title 10, Code of Federal Regulations, part 71 (10 CFR 71) and Appendix A (as of January 1, 2016~~January 1, 2007~~), which is hereby incorporated by reference with the following exceptions:

(1) 10 CFR 71, sections 71.0 through 71.3, 71.6, 71.7, 71.9 through ~~71.13~~71.12, 71.14(b), 71.16, 71.18, 71.19, 71.24, 71.25, 71.31 through 71.45, 71.51 through 71.81, 71.85(a)-(c), 71.91(b), 71.93, 71.95, 71.99, 71.100, 71.101(c)(2), (d), (e), and (f), 71.103(a), ~~(c)~~ through (f), and 71.107 through 71.131 are not incorporated by reference;

(2) Any references to the United States Nuclear Regulatory Commission or any component thereof shall be deemed to be a reference to the "Department" as defined in section 30100, except for: ~~the reference found in the definition of "certificate of compliance" in 10 CFR 71.4.~~

(A) The reference found in the definition of "certificate of compliance" in 10 CFR 71.4 and any reference, within the provisions incorporated by reference in subsection (a), to a certificate of compliance, a certificate holder or applicant for a certificate of compliance; and

(B) References found in 10 CFR 71.5(b), 71.17(c)(3) and (e), 71.88(a)(4) and 71.97(c), (c)(3)(iii) and (f);

(3) The terms “Close reflection by water,” “Containment system,” “Maximum normal operating pressure,” “Optimum interspersed hydrogenous moderation,” “Spent nuclear fuel or spent fuel,” and “State” found in 10 CFR 71.4 are not incorporated by reference;

(4) When the term “licensed material” is used within the material incorporated by this section, it shall mean any radioactive material including source material, special nuclear material, or byproduct material received, possessed, used, transferred or disposed of under a general or specific license issued by the NRC, or by any other Agreement State or by any state that has been either provisionally or finally designated as a Licensing State by the Conference of Radiation Control Program Directors, Inc.; and

(5) Federal Department of Transportation regulations as of January 1, ~~2016, 2007~~ referenced in 10 CFR 71.5, are hereby incorporated by reference. ~~and;~~

(6) Notwithstanding paragraph (1), 10 CFR 71.85(a) through (c) is incorporated by reference only for the purpose of requiring the licensee, as specified in 10 CFR 71.85(d), to ascertain that the determinations specified in 10 CFR 71.85(a) through (c) have been made. This paragraph may not be construed to incorporate by reference 10 CFR 71.85(a) through (c) so as to establish, imply, or otherwise infer any authority over or control of a certificate holder, as defined in 10 CFR 71.4, by the Department;

(7) Title 10, CFR section 71.8 is substituted with section 30105 of this subchapter; and

(8) Title 10, CFR section 71.13 is substituted with subsection (c) of this section.

(b) Persons are exempt from this regulation to the extent that they transport any radioactive material or offer any radioactive material to a carrier for transportation where such transportation is subject to the exclusive jurisdiction of the United States Federal Government.

(c) Physicians are exempt from the requirements of this section to the extent that they transport radioactive material for use in the practice of medicine. However, any

physician operating under this exemption shall possess a specific license issued pursuant to section 30195 authorizing human use of radioactive material.

Note: (1) Authority cited: Sections 114765, 114820, 115000 and 131200, Health and Safety Code. Reference: Sections 114740, 114765, 115230, 115235, 131050, 131051 and 131052, Health and Safety Code.

Note: (2) Copies of Title 10, Code of Federal Regulations-Energy, and Title 49, Code of Federal Regulations-Transportation, are for sale by the Superintendent of Documents, [U.S. Government Printing Office](http://www.gpo.gov/nara/cfr/cfr-table-search.html#page1), Washington, D.C. 20402. Copies can also be obtained at:~~http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1~~
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.