

**SUPPLEMENT TO THE STATEMENT OF REASONS
DPH-07-008, Second 15-Day Public Availability**

The California Department of Public Health (Department) has instituted additional changes to these proposed regulations as discussed below.

Section 30373(a): Section 30373(a) refers to 10 CFR 71 “and Appendix A (January 1, 2007).” To ensure clarity the reference is amended to read “and Appendix A (as of January 1, 2007).”

Section 30373(a)(4): As originally proposed, subsection (a)(4) states that “When the term “licensed material” is used within the material incorporated by this section, it shall mean the same as defined in title 10, Code of Federal Regulations, part 20 section 20.1003 incorporated by reference in section 30253.” Licensed material as defined in 10 CFR 20.1003 means 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 Commission.”

However, existing section 30253(a)(5) modifies the term’s definition as found in 10 CFR 20.1003 as follows:

The definition of the term “Licensed material” in 10 CFR 20, section 20.1003 is modified to 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. With respect to dose limits and reporting requirements, the term “Licensed material” is to be construed broadly in context to include any source of ionizing radiation subject to the requirements of this regulation.

Thus, it is unclear as to which definition section 30373(a)(4) refers to; namely, the definition in 10 CFR 20 or the definition as modified by section 30253(a)(5). The Department’s intent is that the term for purposes of section 30373 be defined as:

“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.”

That definition is verbatim to section 30253(a)(5) except that it does not include the second sentence, which states “With respect to dose limits and reporting requirements, the term "Licensed material" is to be construed broadly in context to include any source of ionizing radiation subject to the requirements of this regulation.” Because 10 CFR 20 specifies dose limits and reporting requirements for personnel, the second sentence of section 30253(a)(5) clarifies that the Department applies those same dose and reporting standards to personnel who use other sources of radiation such as radiation-producing (X-ray) machines.

Section 30373 incorporates standards that apply to packages containing radioactive materials to ensure that the amount of radiation measured on the outside of the package is limited to a specific level and identified. It does not apply to personnel or use of X-ray machines. If the proposal was modified to identify the definition found in section 30253(a)(5), it could create confusion because of the second sentence that broadens the application of 10 CFR 20. Therefore, the proposal is amended to insert the above definition in proposed section 30373(a)(4).

As discussed in the Initial Statement of Reasons, an Agreement State is any state that has entered into an agreement with NRC pursuant to the Atomic Energy Act of 1954, as amended, by which the NRC discontinues its regulatory authority over certain radioactive materials, giving it to the state. Currently, there are 38 Agreement States. Thus, the modified definition recognizes licensees from other agreement states, other than California, that have equivalent regulatory structures and implements Legislative policy to “Promote an orderly regulatory pattern within the State, among the states, and between the federal government and the State, and facilitate intergovernmental co-operation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized.” (Health & Saf. Code, § 114970(b).)

In furtherance of that policy, licensees from states that are provisionally or finally designated as a Licensing State (as opposed to an Agreement State) by the Conference of Radiation Control Program Directors (CRCPD) are included in the modified definition. This maintains consistency with existing section 30225, which recognizes licensees from NRC, licensing states, and Agreement States.

The CRCPD consists of the program directors who oversee radiation control in each state and issues radioactive material licenses, recognized by the NRC and other state programs for operations that use radioactive material. Designation as

a licensing state requires that the state have equivalent CRCPD requirements, a licensing program for the regulatory control of radioactive material, and final or provisional designation by the CRCPD. Those states that have received such designation are called Licensing States. The CRCPD licensing state concept is a peer and state acknowledgement that a state is able to protect the citizenry from exposure to naturally occurring or accelerator-produced radiation. Licensing states include: Arizona, Colorado, Florida, Georgia, Illinois, Louisiana, Maryland, Mississippi, North Dakota, Oregon, Rhode Island, Tennessee, Texas, Utah, and Washington.

Clarifying that the term Licensed Material recognizes CRCPD-licensing states will benefit California businesses because it will permit them to receive reciprocal licenses from other states and reduce regulatory duplication as it relates to transportation of radioactive material. Many state programs grant reciprocal recognition to licensed individuals or entities from a licensing state but require those individuals or entities, which are from a non-licensing state, to obtain a radioactive materials license issued by that state. If the proposal does not recognize individuals or entities from licensing states, some CRCPD licensing states could refuse to grant California businesses the reciprocal recognition which would allow them to transport material in those states. Also, some states that are both agreement states and licensing states may not recognize California licenses because California does not recognize licensing states' licenses and some states that are only licensing states will not recognize California businesses. This forces California businesses to obtain a separate license from that state, increasing operational costs for California businesses wishing to work or transport material in a licensing state. Thus, by recognizing the CRCPD licensing state designation, California businesses will be able to compete in more states than they presently do.