

FINAL STATEMENT OF REASONS

The information contained in the Initial Statement of Reasons (ISR) at the time of Public Notice remains unchanged except for the following modifications:

The date of December 6, 2021 by which comments should be submitted identified in the Public Notice published on October 22, 2021 was extended to December 16, 2021. An Addendum was published on the Department's website for DPH-20-017 on October 27, 2021.

The list of sections being adopted, amended, or repealed as specified on Page 1 of the ISR under the Authority and Reference heading is revised to include §§ 30393, 30394, and 30395.

Section 30195(a)(14): This provision is amended to address NRC's final rule published at 86 FR 43397 (Aug. 9, 2021) and 86 FR 47209 (Aug. 24, 2021). The NRC made grammatical and spelling corrections, and a name change to a cited organization in 10 CFR 35.50(c)(3), 35.55(a)(1) and 35.57(b)(2). However, because this proposal would adopt the 2021 edition of 10 CFR 35, the NRC's changes will not be reflected in that adopted edition. Subsection (a)(14) is amended to address these changes by revising the initially proposed language for consistency with NRC's changes. The semi-colon added during the 15-day written public comment period at the end of subsection (a)(14)(B) is deleted.

Section 30220:

- **(a)(4)(C):** This provision is amended to address NRC's final rule published at 86 FR 43397 (Aug. 9, 2021) and 86 FR 47209 (Aug. 24, 2021). The mailstop number used for mailing fingerprint cards for purposes of 10 CFR Part 37 requirements has changed due to NRC organizational restructuring. The NRC designates 10 CFR 37.27 as a compatibility category B, requiring agreement states to adopt an essentially identical provision. However, because this proposal would adopt the 2021 edition of Part 37, the NRC's changes will not be reflected in that adopted edition.
- **(a)(8):** This provision is added to address NRC's final rule published at 86 FR 67839 (Nov. 30, 2021), wherein the mathematical formula found in Appendix A of 10 CFR 37 was revised to make the expression mathematically reflect that an indefinite number of nuclides may be included in the calculation, consistent with the explanations in the Note to Appendix A. NRC designates Appendix A as a compatibility category B, requiring Agreement States to adopt an essentially identical provision. However, because this proposal would adopt by reference the 2021 edition of Part 37, the NRC's changes will not be reflected in that adopted edition. This provision incorporates by reference the published Federal Register, so that the formula is clearly presented through federally issued documents. The Department determined that publishing the formula within the California Code of Regulations (CCR) is cumbersome and confusing, given that both existing regulations and this proposal incorporate by reference 10 CFR 37, so that publishing within the CCR would result in numerous publications from both State and federal agencies containing both the existing formula

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and the corrected formula. The word “forumla” as published in the additional 15-day public comment text is changed to “formula.”

Section 30253(a)(1): This provision is amended to address NRC’s final rule published at 86 FR 43397 (Aug. 9, 2021) and 86 FR 47209 (Aug. 24, 2021). Section 20.2207(h) of 10 CFR 20 expired January 31, 2009 and NRC removed the provision from 10 CFR 20. However, § 20.2207(h) remains in the January 2021 edition of 10 CFR 20, being incorporated by reference in this provision, though it is an expired provision. The expired provision is listed in subsection (a)(1) to clarify that it is no longer adopted by reference.

Section 30373(a)(1): This provision is amended to address NRC’s final rule published at 85 FR 65656 (Oct. 16, 2020) that removed and “reserved” section 71.97(c)(3)(i) of 10 CFR 71. The NRC uses this editorial method to indicate no provision exists in that specified structural position allowing existing structural designations to remain unchanged. Since Department regulations do not use that editorial method, this proposal lists section 71.97(c)(3)(i) in those provisions not incorporated by reference for clarity.

The title of Reference 1 listed in the ISR was incorrect. The correct title is *Adequacy and Compatibility of Program Elements for Agreement State Programs*.

The Supplemental Statement of Reasons was made available pursuant to Government Code § 11347.1.

Documents incorporated by reference in this rulemaking were made available upon request directly from the agency.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF OCTOBER 22, 2021 THROUGH DECEMBER 16, 2021, AND THE 15-DAY ADDITIONAL PUBLIC COMMENT PERIOD OF DECEMBER 21, 2021 THROUGH JANUARY 7, 2022.

Following is the list of persons who commented on the initial proposed regulations (DPH-20-017) during the minimum 45-day public comment period beginning on October 22, 2021 and ending at 5:00 p.m. on December 16, 2021. The Department received two letters of comment as identified below. A request to hold a public hearing was not received so no public hearing was held. A 15-day public comment period was conducted beginning on December 21, 2021 and ending at 5:00 p.m. on January 7, 2022. The Department received no comments during the 15-day public availability comment period.

List of Commenters during Initial 45-day Proceeding held from October 22, 2021 through December 16, 2021. (Written testimony)

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1. Brian C. Anderson, Chief, State Agreement and Liaison Programs Branch, Division of Materials Safety, Security, State and Tribal Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC).
2. Jeff Pappa, Fire Chief (A), CMF Fire Department, 1600 California Dr., Vacaville, CA.

No Comments were received during the 15-day availability period held from December 21, 2021 through January 7, 2022.

Summary of comments and responses

Note: The digit or digit and letter before the decimal point designation identifies the Commenter as listed above. The digit(s) after the decimal point indicate the identified comment from that commenter.

1.0 Commenter had no comments.

Response: The Department appreciates NRC's review.

2.0 Commenter wondered what was needed in an institutional setting and attached a copy of the NOPA to the comment.

Response: The commenter was contacted, and the proposal summarized. Informed commenter could provide additional comments.

ALTERNATIVES DETERMINATION: In accordance with Government Code Section 11346.9(a)(4), the Department has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

This determination is based on the following:

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

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- 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.” (HSC § 115235, art. V.)
- To determine a state's compatibility, the NRC (via Reference 1) requires an agreement state’s regulations to meet specific compatibility categories.
- The NRC, commenter one, determined the proposal meets the specified compatibility categories.
- No affected private or other public persons, after conducting public comment periods, presented concerns, recommended alternatives, or identified additional cost data for Department consideration.

IMPOSITION OF LOCAL MANDATE

The Department has determined that the 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, nor are there any other nondiscretionary costs imposed.

IMPACT ON BUSINESS

The Department has made a determination that the regulations 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.