

25 TEXAS ADMINISTRATIVE CODE

§289.205

Hearing and Enforcement Procedures

Texas Regulations for Control of Radiation

(revisions effective December 27, 2007 are shown as **shaded** text)

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§289.205. Hearing and Enforcement Procedures.

(a) Purpose. This section governs the following in accordance with the Texas Radiation Control Act (Act), the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001, and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title (relating to the Texas Board of Health):

- (1) proceedings for the granting, denying, renewing, transferring, amending, suspending, revoking, or annulling of a:
 - (A) license or certificate of registration;
 - (B) accreditation of a mammography facility; or
 - (C) industrial radiographer certification;
- (2) determining compliance with or granting of exemptions from the requirements of this chapter, order, or condition of the license or certificate of registration;
- (3) assessing administrative penalties; and
- (4) determining propriety of other agency orders.

(b) Definitions. The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative penalty -- A monetary penalty assessed by the agency in accordance with the **Texas Radiation Control Act (Act)**, §401.384, to emphasize the need for lasting remedial action and to deter future violations.

(2) Administrative Law Judge (ALJ) - Administrative law judge from the State Office of Administrative Hearings.

(3) Applicant -- A person seeking a license, certificate of registration, accreditation of mammography facility, or industrial radiographer certification, issued **in accordance with** the provisions of the Act and the requirements in this chapter.

(4) Certified industrial radiographer -- An individual who meets the definition of radiographer as stated in §289.255(c) of this title (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography).

(5) Commissioner -- The commissioner of the Texas Department of State Health Services.

(6) Contested case -- A proceeding in which the agency determines the legal rights, duties, or privileges of a party after an opportunity for adjudicative hearing.

(7) Director -- The director of the radiation control program in accordance with the agency's jurisdiction.

(8) Hearing -- A proceeding to examine an application or other matter before the agency in order to adjudicate rights, duties, or privileges.

(9) Informal Conference -- A meeting held by the department with a person to discuss the following:

(A) safety, safeguards, or environmental problems;

(B) compliance with regulatory, license condition, or registration condition requirements;

(C) proposed corrective measures including, but not limited to, schedules for implementation; and

(D) enforcement options available to the department.

(10) Interested person -- A person who participates in a hearing concerning a contested case but who is not admitted as a party by the ALJ.

(11) Major amendment -- An amendment to a license issued in accordance with the requirements of §289.260 of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities) that:

(A) reflects a transfer of ownership of the licensed facility;

(B) authorizes enlargement of the licensed area beyond the boundaries of the existing license;

(C) authorizes a change of the method specified in the license for disposal of byproduct material as defined in the Act, §401.003(3)(B); or

(D) grants an exemption from any provision of §289.260 of this title.

(12) Notice of violation -- A written statement prepared by the department of one or more alleged infringements of a legally binding requirement.

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(13) Order -- A specific directive contained in a legal document issued by the agency.

(14) Party -- A person designated as such by the ALJ. A party may consist of the following:

(A) the agency;

(B) an applicant, licensee, registrant, accredited mammography facility, or certified industrial radiographer; and

(C) any person affected.

(15) Person affected -- A person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is:

(A) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located; or

(B) doing business or has a legal interest in land in the county or adjacent county.

(16) Preliminary report -- A document prepared by the agency containing the following:

(A) a statement of facts on which the agency bases the conclusion that a violation has occurred;

(B) recommendations that an administrative penalty be imposed on the person charged;

(C) recommendations for the amount of that proposed penalty; and

(D) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(17) Radiation and Perpetual Care Account -- An account established for the purposes described in the Act, §401.305.

(18) Requestor -- A person claiming party status as a person affected.

(19) Severity level -- A classification of violations based on relative seriousness of each violation and the significance of the effect of the violation on the occupational or public health or safety or the environment.

(20) Violation -- An infringement of any rule, license or registration condition, order of the agency, or any provision of the Act.

(c) Procedures for licensing actions **in accordance with** the Act, §401.054.

(1) Except as provided in subsections (d)-(f) of this section, when the agency grants, renews, denies, transfers, or amends any specific license for the possession of radioactive materials, or grants exemptions from requirements of this chapter, orders, or licenses in accordance with the Act, the agency shall, no later than 30 days following the end of the month in which the action was taken, submit notice of the action for publication in the *Texas Register*. The action taken will remain in full force and effect unless and until modified by subsequent action of the agency.

(2) Any person who considers himself/herself a person affected by an agency action described in paragraph (1) of this subsection or any applicant/licensee may request a hearing by submitting a written request to the director within 30 days after the notice is published in the *Texas Register*.

(A) The request for a hearing must contain the following:

(i) name and address of the person/applicant/licensee who considers himself/herself affected by agency action;

(ii) identification of the subject license;

(iii) reasons why the person/applicant/licensee considers himself/herself affected;

(iv) relief sought; and

(v) name and address of the attorney if the applicant/licensee or requestor is represented by an attorney.

(B) Failure to submit a written request for a hearing within 30 days could result in denial of party status and render the agency action final.

(3) Either the applicant/licensee or the agency may contest the standing of a requestor as a person affected by motion filed with the ALJ no later than ten days prior to the hearing. The requestor has the burden of proof in a hearing to determine whether the requestor is a person affected.

(4) The ALJ may designate parties at the commencement of the hearing on the merits.

(5) A hearing may be scheduled by the agency regardless of whether a request for a hearing has been received.

(d) Special procedures for issuing, renewing, or amending byproduct material licenses in accordance with §289.260 of this title.

(1) When the agency determines that the issuance or renewal, in accordance with §289.260 of this title, of a license to process materials resulting in byproduct material or to dispose of byproduct materials as defined in the Act, §401.003(3)(B), will have a significant impact on the human environment, the agency shall prepare or secure a written analysis of the impact and make it available to the public for written comment at least 30 days before a public hearing, if any, on the issuance or renewal of the license.

(2) At least 30 days prior to the issuance of a new license, renewal, or major amendment, a notice of such action will be published in the following:

(A) *Texas Register*; and

(B) a newspaper published in each county in which the proposed facility is located or, in which the proposed facility will be located. The applicant/licensee shall do the following:

(i) cause notice of the proposed action to be published and pay for the publication of the newspaper notice(s); and

(ii) file proof of publication required in this subparagraph with the agency within 30 days of publication. An affidavit by the publisher accompanied by a printed copy of the notice as published shall be conclusive evidence of publication.

(3) The notice referenced in paragraph (2) of this subsection shall contain at least the following:

(A) statement identifying the location of the proposed facility and a summary of the proposed actions;

(B) availability of an environmental analysis for the proposed facility; and

(C) offer of an opportunity for a hearing to any person affected.

(4) When a hearing is requested in writing within 30 days after publication of the notice described in paragraph (2) of this subsection, the procedures described in subsection (c)(3) and (4) of this section and Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title apply. Failure to submit a written request for a hearing in the form specified by subsection (c)(2) of this section within 30 days may result in no hearing being held and the proposed agency action being taken.

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(5) A hearing may be scheduled by the agency regardless of whether a request for a hearing has been received.

(e) Special procedures for issuing or renewing licenses to process or store radioactive waste from other persons in accordance with §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities).

(1) At least 30 days prior to issuance or renewal of a license to process or store radioactive waste from other persons, in accordance with §289.254 of this title, a notice of such action will be published in the following:

(A) *Texas Register*; and

(B) a newspaper published in each county in which the proposed facility is located or, in which the proposed facility will be located. The applicant/licensee shall do the following:

(i) cause notice to be published and pay for the publication of the newspaper notice(s); and

(ii) file proof of publication of the notice required in paragraph (1)(B) of this subsection with the agency within 30 days of publication. An affidavit by the publisher accompanied by a printed copy of the notice as published shall be conclusive evidence of publication.

(2) The notice specified in paragraph (1) of this subsection shall contain at least the following:

(A) the agency's intent to issue or renew a license in accordance with §289.254 of this title;

(B) location of the proposed facility;

(C) in the case of a Category III storage or processing facility, the availability of an environmental analysis for each proposed activity the agency determines has a significant impact on the human environment; and

(D) opportunity for a person affected to request a hearing.

(3) A hearing will be held only when requested, unless scheduled by the agency on its own motion. When a hearing is requested in writing by the date stated in the notice described in paragraph (1) of this subsection, the procedures described in subsection (c)(3) and (4) of this section and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title apply. Failure to submit a written request for a hearing in the form prescribed in subsection (c)(2) of this section on or before the stated date could result in denial of party status and in issuance or renewal of the license by the commissioner.

(A) Notice of the hearing shall be published in the following:

(i) *Texas Register*; and

(ii) a newspaper published in each county in which the proposed facility is located or, in which the proposed facility will be located.

(B) Notice of the hearing shall contain the subject, time, date, and location of the hearing.

(C) The applicant/licensee shall cause notice to be published and pay for the publication of the newspaper notice(s).

(D) The applicant/licensee shall file proof of publication of the notice required in subparagraph (A)(ii) of this paragraph with the agency at least ten days before the hearing. An affidavit by the publisher accompanied by a printed copy of the notice as published shall be conclusive evidence of publication.

(E) If no newspaper is published in the county or counties in which the proposed facility is to be located, a written copy of the notice of hearing shall be posted at the courthouse door and five other public places in the immediate locality to be affected for at least 30 days prior to the beginning of the hearing.

(F) The return of service by the sheriff or constable, or the affidavit of any credible person made on a written copy of the notice so posted showing the fact of the posting and filed with the agency at least ten days prior to the hearing date shall be conclusive evidence of posting.

(G) The applicant/licensee shall give written notice of the hearing by certified mail, addressed to the last known address, to persons shown on the current county tax records as owning property adjacent to the proposed site. The written notice shall contain the same information described in subparagraph (B) of this paragraph.

(i) The applicant/licensee shall furnish the agency with a list of names and addresses of the adjacent property owners no later than ten days before the hearing.

(ii) The list of names and addresses will be deemed accurate and valid if obtained from the current county tax records of the county where the adjacent property is located as of the mailing date of the notice of hearing. The information shall be certified by an appropriate county official.

(iii) The applicant/licensee shall certify to the mailing of the notice of hearing by certified mail, and proof of mailing to the proper address or the receipt shall be accepted at the hearing as conclusive evidence of the fact of the mailing.

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(H) Failure to comply with the provisions of subparagraphs (A)(ii), (E), and (G) of this paragraph may result in denial of the license.

(f) Special procedures for amending waste licenses in accordance with §289.254 of this title.

(1) If the agency amends a license to process or store radioactive waste, in accordance with §289.254 of this title, the amendment will take effect immediately.

(2) Notice of amendment shall be published one time in the following:

(A) *Texas Register*;

(B) a newspaper of general circulation in the county or counties in which the licensed activity is located. The licensee shall file with the agency, within 30 days of publication, proof of publication of the notice.

(3) The licensee shall cause notice to be published and pay for publication of the newspaper notice(s).

(4) An affidavit from the publisher accompanied by a printed copy of the notice as published shall be conclusive evidence of publication.

(5) The notice shall contain the following:

(A) identity of the licensee and the license amended;

(B) a concise statement of the substance of the amendment; and

(C) opportunity for a person affected to request a hearing.

(6) The agency shall notify any person who has submitted an advance, written request to be notified of any proposed amendment to the license. Proof of mailing to the proper address shall be conclusive evidence of the agency's compliance.

(7) A person who considers himself/herself a person affected may request the agency to hold a hearing by writing the director, in the manner provided by subsection (c)(2) of this section, no later than 30 days after the notice is published. Failure to submit a written request for a hearing within 30 days could result in denial of party status and render the agency action final.

(8) Upon receipt of a request for hearing, the agency or the licensee may follow the procedures set out in subsection (c)(3) and (4) of this section to contest standing.

(9) Notice of a hearing on the merits shall be given in accordance with appropriate provisions of subsection (e)(3) of this section.

(g) Revocation of accreditation of mammography facilities.

(1) An accreditation of a mammography facility may be revoked, for any of the following:

(A) any material false statement in the application or any statement of fact required **in accordance with** the Act;

(B) conditions revealed by such application or statement of fact or any report, record, inspection, or other means that would warrant the agency to refuse to grant an accreditation of mammography facility on an original application; or

(C) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, or order of the agency.

(2) Before the agency revokes an accreditation of mammography facility, the agency shall give notice by personal service or by certified mail, addressed to the last known address, of the facts or conduct alleged to warrant the revocation by complaint, and order the accredited mammography facility to show cause why the mammography facility accreditation should not be revoked. The accredited mammography facility shall be given an opportunity to request a hearing on the matter no later than 30 days after service of the notice.

(3) Any accredited mammography facility against whom the agency contemplates an action described in paragraph (1) of this subsection may request a hearing by submitting a written request to the director within 30 days of service of the notice.

(A) The written request for a hearing must contain the following:

(i) statement requesting a hearing;

(ii) name, address, and identification number of the accredited mammography facility against whom the action is being taken.

(B) Failure to submit a written request for a hearing within 30 days will render the agency action final.

(h) Denial of an application for a license, certificate of registration, accreditation of a mammography facility, or industrial radiographer certification.

(1) When the agency contemplates denial of an application for a license, certificate of registration, accreditation of a mammography facility, or industrial radiographer certification, the licensee, registrant, mammography facility seeking accreditation, or certified industrial radiographer shall be afforded the opportunity for a hearing. Notice of the denial shall be delivered by personal service or certified mail, addressed to the last known address, to the licensee, registrant, mammography facility seeking accreditation, or certified industrial radiographer.

(2) Any applicant, licensee, registrant, mammography facility seeking accreditation, or certified industrial radiographer against whom the agency contemplates an action described in paragraph (1) of this subsection may request a hearing by submitting a written request to the director within 30 days of service of the notice.

(A) The written request for a hearing must contain the following:

(i) statement requesting a hearing; and

(ii) name and address of the applicant, licensee, registrant, mammography facility seeking accreditation, or certified industrial radiographer;

(B) Failure to submit a written request for a hearing within 30 days will render the agency action final.

(i) Compliance procedures for licensees, registrants, certified industrial radiographers, and other persons.

(1) A licensee, registrant, certified industrial radiographer, or other person who commits a violation(s) will be issued a notice of violation. The person receiving the notice shall provide the agency with a written statement and supporting documentation by the date stated in the notice describing the following:

(A) steps taken by the person and the results achieved;

(B) corrective steps to be taken to prevent recurrence; and

(C) the date when full compliance was or is expected to be achieved. The agency may require responses to notices of violation to be under oath.

(2) The terms and conditions of all licenses and certificates of registration shall be subject to amendment or modification. A license, certificate of registration, or industrial radiographer certification may be modified, suspended, or revoked by reason of amendments to the Act, or for violation of the Act, the requirements of this chapter, a condition of the license, certificate of registration, or an order of the agency.

(3) Any license, certificate of registration, or industrial radiographer certification may be modified, suspended, or revoked in whole or in part, for any of the following:

(A) any material false statement in the application or any statement of fact required in accordance with provisions of the Act;

(B) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a license, certificate of registration, or industrial radiographer certification on an original application; or

(C) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, or of the license, certificate of registration, or industrial radiographer certification or order of the agency; or

(D) existing conditions that constitute a substantial threat to the public health or safety or the environment.

(4) If another state or federal entity takes an action such as modification, revocation, or suspension of the license, certificate of registration, or industrial radiographer certification, the agency may take a similar action against the licensee, registrant, or certified industrial radiographer.

(5) When the agency determines that the action provided for in paragraph (8) of this subsection or subsection (j) of this section is not to be taken immediately, the agency may offer the licensee, registrant, or certified industrial radiographer an opportunity to attend an informal **conference** to discuss the following with the agency:

(A) methods and schedules for correcting the violation(s); or

(B) methods and schedules for showing compliance with applicable provisions of the Act, the rules, license or registration conditions, or any orders of the agency.

(6) Notice of any informal conference shall be delivered by personal service, or certified mail, addressed to the last known address. An **informal** conference is not a prerequisite for the action to be taken **in accordance with** paragraph (8) of this subsection or subsection (j) of this section.

(7) Except in cases in which the occupational and public health, or safety requires otherwise, no license, certificate of registration, or industrial radiographer certification shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the licensee, registrant, or certified industrial radiographer in writing, and the licensee, registrant, or certified industrial radiographer shall have been **afforded** an opportunity to demonstrate compliance with all lawful requirements.

(8) When the agency contemplates modification, suspension, or revocation of the license, certificate of registration, or industrial radiographer certification, the licensee, registrant, or certified industrial radiographer shall be afforded the opportunity for a hearing. Notice of the contemplated action, along with a complaint, shall be given to the licensee, registrant, or certified industrial radiographer by personal service or certified mail, addressed to the last known address.

(9) Any applicant, licensee, registrant, or certified industrial radiographer against whom the agency contemplates an action described in paragraph (8) of this subsection may request a hearing by submitting a written request to the director within 30 days of service of the notice.

(A) The written request for a hearing must contain the following:

(i) statement requesting a hearing;

(ii) name, address, and identification number of the licensee, registrant, or certified industrial radiographer against whom the action is being taken.

(B) Failure to submit a written request for a hearing within 30 days will render the agency action final.

(j) Assessment of administrative penalties.

(1) When the agency determines that monetary penalties are appropriate, proposals for assessment of and hearings on administrative penalties shall be made in accordance with the Act, §401.384, and applicable sections of the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title.

(2) Assessment of administrative penalties shall be based on the following criteria:

(A) the seriousness of the violation(s);

(B) previous compliance history;

(C) the amount necessary to deter future violations;

(D) efforts to correct the violation; and

(E) any other mitigating or enhancing factors.

(3) Application of administrative penalties. The agency may impose differing levels of penalties for different severity level violations and different classes of users as follows.

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(A) Administrative penalties may be imposed for severity level I and II violations. Administrative penalties may be imposed for severity level III, IV, and V violations when they are combined with those of higher severity level(s) or for repeated violations.

(B) The following Tables IA and IB show the base administrative penalties.

TABLE I
BASE ADMINISTRATIVE PENALTIES

Table IA – Base Amounts

Type of User	Amount
All licensees, registrants, or certified industrial radiographers	\$5,000
Other persons not licensed, registered, or certified	\$10,000

Table IB – Percentage of Base Amounts Based on Severity Level of Violation

Severity Level	Percent of Amount Listed in Table IA
I	100
II	80
III	50
IV	15
V	5

(C) Adjustments to the percentages of base amounts in Table IB may be made for the presence or absence of the following factors:

- (i) prompt identification and reporting;
- (ii) corrective action to prevent recurrence;
- (iii) compliance history;
- (iv) prior notice of similar event;
- (v) multiple occurrences; and

(vi) negligence that resulted in or increased adverse effects.

(D) The penalty for each violation may be in an amount not to exceed \$10,000 a day for a person who violates the Act or a rule, order, license or registration issued in accordance with the Act. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(4) The department may conduct settlement negotiations.

(k) Severity levels of violations for licensees, registrants, certified industrial radiographers, or other persons.

(1) Violations for licensees, registrants, certified industrial radiographers, or other persons shall be categorized by one of the following severity levels.

(A) Severity level I are violations that are most significant and may have a significant negative impact on occupational and/or public health and safety or on the environment. Severity level I violations are most significant and may have a significant negative impact by increasing the risk of unauthorized use of radioactive material that would be detrimental to public health and safety.

(B) Severity level II are violations that are very significant and may have a negative impact on occupational and/or public health and safety or on the environment. Severity level II violations are very significant and may have a negative impact by increasing the risk of unauthorized use of radioactive material that would be detrimental to public health and safety.

(C) Severity level III are violations that are significant and which, if not corrected, could threaten occupational and/or public health and safety or the environment. Severity level III are significant and, if not corrected, could increase the risk of unauthorized use of radioactive material that would be detrimental to public health and safety.

(D) Severity level IV are violations that are of more than minor significance, but if left uncorrected, could lead to more serious circumstances.

(E) Severity level V are violations that are of minor safety or environmental significance.

(2) Additional violations for mammography registrants. Violations for mammography registrants shall be categorized by one of the following severity levels.

(A) Severity level I violations indicate a serious noncompliance that may adversely affect image quality or that may compromise the quality of mammography services.

(B) Severity level II violations indicate key quality system requirements are being met, but there is a failure to meet one or more quality standards that may lead to a compromise of the quality of mammography services.

(C) Severity level III violations indicate that the quality system requirements are being met, but minor corrective actions are required for compliance with the quality standards.

(D) Severity level IV violations indicate that the quality system requirements and standards are being met, but minor corrective actions are required for compliance.

(3) Criteria to elevate or reduce severity levels.

(A) **Severity levels** may be elevated to a higher severity level for the following reasons:

(i) more than one violation resulted from the same underlying cause;

(ii) a violation contributed to or was the consequence of the underlying cause, such as a management breakdown or breakdown in the control of licensed or registered activities;

(iii) a violation occurred multiple times between inspections;

(iv) a violation was willful **or grossly negligent**;

(v) compliance history; **or**

(vi) **other mitigating factors**.

(B) **Severity levels** may be reduced to a lower level for the following reasons:

(i) the licensee/registrant identified and corrected the violation prior to the agency inspection;

(ii) the licensee/registrant's actions corrected the violation and prevented recurrence; or

(iii) other mitigating factors.

(4) Examples of severity levels. Examples of severity levels are available upon request to the agency.

(1) Impoundment of sources of radiation.

(1) In the event of an emergency, the agency shall have the authority to impound or order the impounding of sources of radiation possessed by any person not equipped to observe or failing to observe the provisions of the Act, or any rules, license or registration conditions, or orders issued by the agency. The agency shall submit notice of the action to be published in the Texas Register no later than 30 days following the end of the month in which the action was taken.

(2) At the agency's discretion, the impounded sources of radiation may be disposed of by:

(A) returning the source of radiation to a properly licensed or registered owner, upon proof of ownership, who did not cause the emergency;

(B) releasing the source of radiation as evidence to police or courts;

(C) returning the source of radiation to a licensee or registrant after the emergency is over and settlement of any compliance action; or

(D) sale, destruction or other disposition within the agency's discretion.

(3) If agency action is necessary to protect the public health and safety, no prior notice need be given the owner or possessor. If agency action is not necessary to protect the public health and safety, the agency will give written notice to the owner and/or the possessor of the impounded source of radiation of the intention to dispose of the source of radiation. Notice shall be the same as provided in subsection (i)(8) of this section. The owner or possessor shall have 30 days from the date of personal service or mailing to request a hearing **in accordance with I TAC, Chapter 155**, and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title, and in accordance with subsection (i)(9) of this section, concerning the intention of the agency. If no hearing is requested within that period of time, the agency may take the contemplated action, and such action is final.

(4) Upon agency disposition of a source of radiation, the agency may notify the owner and/or possessor of any expense the agency may have incurred during the impoundment and/or disposition and request reimbursement. If the amount is not paid within 60 days from the date of notice, the agency may request the Attorney General to file suit against the owner/possessor for the amount requested.

(5) If the agency determines from the facts available to the agency that an impounded source of radiation is abandoned, with no reasonable evidence showing its owner or possessor, the agency may make such disposition of the source of radiation as it sees fit.

(m) Emergency orders.

(1) When an emergency exists requiring immediate action to protect the public health or safety or the environment, the agency may, without notice or hearing, issue an order citing the existence of such emergency and require that certain actions be taken as it shall direct to meet the emergency. The agency shall, no later than 30 days following the end of the month in which the action was taken, submit notice of the action for publication in the *Texas Register*. The action taken will remain in full force and effect unless and until modified by subsequent action of the agency.

(2) In addition to the requirements of paragraph (1) of this subsection, the agency shall issue an order directing any action and corrective measure needed to remedy or neutralize the following emergency situations:

(A) when the agency determines that byproduct material as defined in the Act, §401.003(3)(B), or the operation generating the byproduct material, or that radioactive waste threatens the public health or safety or the environment; and

(B) if the person managing the byproduct material, or the operation generating the byproduct material or the radioactive waste, is unable to correct or neutralize the threat.

(3) An emergency order takes effect immediately upon service.

(4) Any person receiving an emergency order shall comply immediately.

(5) The agency shall use any security provided by a licensee in accordance with the Act to pay toward the costs of such actions and corrective measures taken. If the cost of actions and corrective measures require more funds than the security has provided, the agency shall request the Attorney General to seek reimbursement from the licensee or person causing the threat.

(A) The agency may send a copy of its order specified in this subsection to the Comptroller of Public Accounts together with necessary documents authorizing the Comptroller of Public Accounts to enforce security supplied by the licensee, convert the necessary amount of security into cash, and disburse from this security in the fund the amount necessary to pay costs of the agency actions and corrective measures. The agency shall direct the comptroller as to the amounts and recipients of the funds.

(B) The agency may request the Attorney General to file suit for reimbursement if the agency uses security from the Radiation and Perpetual Care Account to pay for actions or corrective measures to remedy spills or contamination by radioactive material resulting from a violation of the Act or requirements of this chapter, license, or order of the agency.

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(6) The person receiving the order shall be afforded the opportunity for a hearing on an emergency order. Notice of the action, along with a complaint, shall be given to the person by personal service or certified mail, addressed to the last known address. A hearing shall be held on an emergency order if the person receiving the order submits a written request to the director within 30 days of the date of the order.

(A) The hearing shall be held not less than 10 days nor more than 20 days after receipt of the written application for hearing.

(B) At the conclusion of the hearing and after the proposal for decision is made as provided in the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001, the commissioner shall take one of the following actions:

(i) determine that no further action is warranted;

(ii) amend the license or certificate of registration;

(iii) revoke or suspend the license, certificate of registration, or industrial radiographer certification;

(iv) rescind the emergency order; or

(v) issue such other order as is appropriate.

(C) The application and hearing shall not delay compliance with the emergency order.

(n) Miscellaneous provisions.

(1) Computation of time. A time period established by the requirements of this chapter shall begin on the first day after the event that invokes the time period. When the last day of the period falls on a Saturday, Sunday, or state or federal holiday, the period shall end on the next day that is not a Saturday, Sunday, or state or federal holiday. The time period shall expire at 5:00 p.m. of the last day of the computed period.

(2) Interested person.

(A) An interested person may:

(i) make sworn or unsworn statements;

(ii) attend a hearing and may present evidence after the presentation of evidence by the parties; or

(iii) be represented by an attorney.

(B) An interested person may not:

- (i) cross-examine the witnesses of the parties;
- (ii) object to evidence presented by the parties; or
- (iii) appeal a decision rendered by the agency.

(C) An interested person is not responsible for sharing the costs of the transcription of the hearing, but may purchase a transcript.

(D) The parties may cross-examine witnesses presented by an interested person.

(E) At the discretion of the ALJ an interested person may make an unsworn statement. Such statement shall not be made a part of the record.

(3) Hearing location. Hearings will be held at the offices of the State Office of Administrative Hearings in Austin unless the ALJ specifies another location.

(4) Prepared testimony. The following shall apply to written testimony of a witness:(A) the testimony of a witness may be reduced to writing and offered into evidence as an exhibit, provided:

(A) the testimony of a witness may be reduced to writing and offered into evidence as an exhibit, provided:

- (i) the witness is present and has been sworn;
- (ii) the witness identifies and adopts the written testimony as his/her own; and
- (iii) all parties receive a copy of the testimony at least ten days before its submission at the hearing.

(B) written testimony shall be subject to objection and may be stricken by the ALJ. The witness shall be subject to cross-examination.

(5) Prior testimony. Testimony and evidence presented in the hearing to determine standing have the same weight at the hearing on the merits if a tape recording or written transcript of the standing hearing is available.

(6) Non-party witness and mileage fees.

§289.205(n)(6)(A)

(A) A witness or deponent who is not a party (or an employee, agent, or representative of a party) and who is subpoenaed or otherwise compelled to attend an agency hearing or a proceeding to give a deposition, or to produce books, records, papers, accounts, documents, or other objects necessary and proper for the purposes of the hearing or proceeding may receive reimbursement for transportation and other costs at rates established by the current Appropriations Act for state employees.

(B) The person requesting the attendance of the witness or deponent must deposit with the agency the funds estimated to accrue in accordance with subparagraph (A) of this paragraph when filing a motion for the issuance of a subpoena or a commission to take a deposition.

(7) Service. A return of service by the person who performed personal service, postal return receipt, or proof of mailing to the last known address shall be conclusive evidence of service.