

**NRC FORM 8**  
(7-94)  
NRCMD 3 57

**INCOMING AND SIGNATURE TAB**  
**USE THIS SIDE OF THE SHEET TO PRECEDE**  
**THE INCOMING MATERIAL**  
**WHEN ASSEMBLING CORRESPONDENCE**  
**(USE REVERSE SIDE FOR SIGNATURE TAB)**

**INCOMING**

**INCOMING AND SIGNATURE TAB**

**USE THIS SIDE OF THE SHEET TO PRECEDE  
THE SIGNATURE PAGE  
WHEN ASSEMBLING CORRESPONDENCE  
(USE REVERSE SIDE FOR INCOMING TAB)**

**SIGNATURE**



## Texas Department of Health

Eduardo J. Sanchez, M.D., M.P.H.  
Commissioner of Health

1100 West 49th Street  
Austin, Texas 78756-3189  
1-888-963-7111

Radiation Control  
(512) 834-6688

Gary R. B  
Chief Operating Off

Charles E. Bell, M  
Executive Deputy Commissic

January 2, 2003

Ms. Josephine Piccone  
Deputy Director  
Office of State and Tribal Programs  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Dear Ms. Piccone:

Enclosed is a copy of the final revisions to the Texas Regulations for Control of Radiation, 25 Texas Administrative Code, §289.252, "Licensing of Radioactive Material."

The changes from the proposed rule to the final rule are identified by double underlining for new language and bold-faced, brackets, and single underlining for deleted language. None of the changes implement any compatibility items that had not already been adopted. Therefore, the column for the FR Notice (State Due Date) is not completed as such and the RATS ID column is completed as "N/A." Some of the changes impact compatibility items already adopted. For those changes, the impact on compatibility as designated in STP Internal Procedure SA-200, is noted. Some revisions are not items of compatibility, but are being provided for informational purposes.

NRC Regulation	FR Notice (State Due Date)	RATS ID	Texas Regulation*	Final Texas Regulation (Effective Date)**
Deleted language that financial qualifications be submitted in conjunction with a decommissioning funding plan	Not a compatibility item	N/A	§289.252(d)(6)	12/26/02

Clarified that reference is to the requirements in the chapter and not just those in §289.252	Not a compatibility item	N/A	§289.252(d)(10)(C)	12/26/02
Clarified requirement about request for additional information by agency after license is issued	Not a compatibility item	N/A	§289.252(w)(3)	12/26/02
Added language to clarify when to reference drawings in a license renewal and information the reference should include	Not a compatibility item	N/A	§289.252(z)(1)	12/26/02
Deleted proposed language to allow department to further study the appropriateness of the decommissioning funding requirements and consistency of those requirements among other sections in this chapter	Deleted language not a compatibility item - reformatting does not impact category D, H, & S compatibility of 30.35(a)	N/A	§289.252(gg)(1)	12/26/02
Clarified to whom requirements applied	Change does not impact category D, H, & S compatibility of 30.35(b)	N/A	§289.252(gg)(2)	12/26/02
Deleted language made unnecessary because of clarifications in §289.252(gg)(1), (2) and (5)	Change does not impact category D, H, and S compatibility of 30.35(b)	N/A	§289.252(gg)(2)(B)	12/26/02
Deleted language made unnecessary because of addition of §289.252(gg)(5)	Change does not impact category D compatibility of 30.35(e)	N/A	§289.252(gg)(4)	12/26/02

Language added to clarify when financial assurance in conjunction with a decommissioning funding plan must be submitted	Change does not impact category D, H, & S compatibility of 30.35(b)	N/A	§289.252(gg)(5)	12/26/02
Language added to further clarify approval by the agency	Change does not impact category D, compatibility of 30.35(f)	N/A	§289.252(gg)(6)	12/26/02
Deleted language made redundant because of new language in §289.252(gg)(5)	Change does not impact category D, compatibility of 30.35(d)	N/A	§289.252(gg)(6)(A)	12/26/02
Deleted language that did not add to intent of the requirement	Change does not impact category D, H, & S compatibility of 30.35(g)	N/A	§289.252(gg)(7)(D)	12/26/02
Deleted date because it no longer applies	Not a compatibility item	N/A	§289.252(gg)(8)	12/26/02
Revised language to ensure adequate flexibility to provide equivalent financial qualification documentation	Not a compatibility item	N/A	§289.252(ii)(8)(D)	12/26/02

If you have any questions, please feel free to contact me at 512-834-6688 or [Cindy.Cardwell@tdh.state.tx.us](mailto:Cindy.Cardwell@tdh.state.tx.us).

Sincerely,

Cynthia C. Cardwell, Deputy Director  
Standards and Special Projects  
Bureau of Radiation Control  
Texas Department of Health

LEGEND: (Final Amendments - With additional changes not proposed)

Double Underline = New language not proposed

**[Bold, underline, and brackets]** = Proposed new language now being deleted

**[Bold and brackets]** = Final language now being deleted

Regular Print = Current language incorporating proposed changes for final adoption

(No change) = No changes are being considered for the designated subdivision

§289.252. Licensing of Radioactive Material.

(a)-(c) (No change.)

(d) Filing application for specific licenses. The agency may, at any time after the filing of the original application, require further statements in order to enable the agency to determine whether the application should be denied or the license should be issued.

(1) (No change.)

(2) Each application shall be signed by the chief executive officer or other individual delegated the authority to manage, direct, or administer the licensee's activities.

(3)-(5) (No change.)

(6) Each applicant shall demonstrate to the agency that the applicant is financially qualified to conduct the activity requested for licensure, including any required decontamination, decommissioning, reclamation, and disposal before the agency issues a license. Each licensee shall demonstrate to the agency that it remains financially qualified to conduct the licensed activity before a license is renewed. Methods for demonstrating financial qualifications are specified in subsection (ii)(8) of this section. The requirement for demonstration of financial qualification is separate from the requirement specified in subsection (gg) of this section for certain applicants or licensees to provide financial assurance, **[in conjunction with a decommissioning funding plan.]**

(7) If facility drawings submitted in conjunction with the application for a license are prepared by a professional engineer or engineering firm, those drawings shall be final and shall be signed, sealed and dated in accordance with the requirements of the Texas Board of Professional Engineers, 22 Texas Administrative Code, Chapter 131.

(8) Applications for licenses shall be processed in accordance with the following time periods:

§289.252

(A) The first period is the time from receipt of an application by the Division of Licensing, Registration and Standards to the date of issuance or denial of the license or a written notice outlining why the application is incomplete or unacceptable. This time period is 60 days.

(B) The second period is the time from receipt of the last item necessary to complete the application to the date of issuance or denial of the license. This time period is 30 days.

(C) These time periods are exclusive of any time period incident to hearings and post-hearing activities required by the Government Code, Chapter 2001.

(9) Notwithstanding the provisions of §289.204(e)(1) of this title, reimbursement of application fees may be granted in the following manner.

(A) In the event the application is not processed in the time periods as stated in paragraph (8) of this subsection, the applicant has the right to request of the director of the Radiation Control Program full reimbursement of all application fees paid in that particular application process. If the director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(B) Good cause for exceeding the period established is considered to exist if:

(i) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(ii) another public or private entity utilized in the application process caused the delay; or

(iii) other conditions existed giving good cause for exceeding the established periods.

(C) If the request for full reimbursement authorized by subparagraph (A) of this paragraph is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title (relating to the Texas Board of Health).

(10) Applications for licenses may be denied for the following reasons:

(A) any material false statement in the application or any statement of fact required under provisions of the Texas Radiation Control Act (Act);

§289.252

(B) conditions revealed by the 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 on an application; or

(C) failure to clearly demonstrate how the [these] requirements in this chapter have been addressed.

(e) General requirements for the issuance of specific licenses. A license application will be approved if the agency determines that:

(1)-(8) (No change.)

(9) the owner of the property is aware that radioactive material is stored on the property, if the proposed storage facility is not owned by the applicant. The applicant shall provide a written statement from the owner, or from the owner's agent, indicating such. This paragraph does not apply to property owned or held by a government entity or to property on which radioactive material is used under an authorization for temporary job site use.

(10) there is no reason to deny the license as specified in subsection (d)(10) of this section.

(f)-(n) (No change.)

(o) Specific licenses for the manufacture and commercial distribution of sealed sources or devices containing radioactive material for medical use. In addition to the requirements in subsection (e) of this section, a specific license to manufacture and commercially distribute sealed sources and devices containing radioactive material to persons licensed for use of sealed sources in the healing arts for use as a calibration or reference source will be issued if the agency approves the following information submitted by the applicant:

(1) an evaluation of the radiation safety of each type of sealed source or device including the following:

(A)-(G) (No change.)

(H) procedures for disposition of unwanted or unused radioactive material;

(2)-(4) (No change.)

(p) Specific licenses for the manufacture and commercial distribution of radioactive material for certain *in vitro* clinical or laboratory testing in accordance with the general license. In addition to the requirements in subsection (e) of this section, a



§289.252

specific license to manufacture or commercially distribute radioactive material for use in accordance with the general license in §289.251(k)(2) of this title will be issued if the agency approves the following information submitted by the applicant:

(1) (No change.)

(2) that each prepackaged unit bears a durable, clearly visible label:

(A) (No change.)

(B) displaying the radiation caution symbol in accordance with §289.202(z) of this title and the words, "CAUTION, RADIOACTIVE MATERIAL," and "Not for Internal or External Use in Humans or Animals"; [;"]

(3)-(4) (No change.)

(q)-(r) (No change.)

(s) Specific licenses for the manufacture and commercial distribution of products containing depleted uranium for mass-volume applications.

(1)-(3) (No change.)

(4) Each person licensed in accordance with paragraph (1) of this subsection shall:

(A)-(B) (No change.)

(C) assure that before being installed in each product or device, the depleted uranium has been impressed with the following legend clearly legible through any plating or other covering: "Depleted Uranium"; [;"]

(D) furnish a copy of the following:

(i) the general license in §289.251(g)(5) of this title to each person to whom the licensee commercially distributes depleted uranium in a product or device for use in accordance with the general license in §289.251(g)(5) of this title;

(ii)-(iii) (No change.)

(E)-(G) (No change.)

(t)-(v) (No change.)

(w) Issuance of specific licenses.

§289.252

(1)-(2) (No change.)

(3) The agency may [also] request and the licensee shall provide, additional information after the license has been issued to enable the agency to determine whether the license should be modified in accordance with subsection (dd) of this section.

(x) (No change.)

(y) Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(1)-(2) (No change.)

(3) Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the agency in writing and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building and/or outdoor area is suitable for release in accordance with §289.202(eee) of this title, or submit within 12 months of notification a decommissioning plan, if required by paragraph (6) of this subsection, and begin decommissioning upon approval of that plan if:

(A) the license has expired in accordance with this subsection or subsection (dd)(3) of this section;

(B) the licensee has decided to permanently cease principal activities, as defined in §289.201(b) of this title, at the entire site or in any separate building or outdoor area;

(C)-(D) (No change.)

(4) Coincident with the notification required by paragraph (3) of this subsection, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee in accordance with subsection (gg) of this section in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance shall be increased, or may be decreased, as appropriate, with agency approval, to cover the detailed cost estimate for decommissioning established in accordance with paragraph (9)(E) of this subsection.

(5)-(13) (No change.)

(14) As the final step in decommissioning, the licensee shall do the following:

(A) (No change.)

§289.252

(B) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in accordance with the radiological requirements for license termination specified in §289.202(ddd) of this title. The licensee shall do the following, as appropriate:

(i) report the following levels:

(I) gamma radiation in units of microroentgen per hour ( $\mu\text{R/hr}$ ) (millisieverts per hour ( $\text{mSv/hr}$ )) at 1 meter (m) from surfaces;

(II) radioactivity, including alpha and beta, in units of disintegrations per minute (dpm) or microcuries ( $\mu\text{Ci}$ ) (megabecquerels ( $\text{MBq}$ )) per 100 square centimeters ( $\text{cm}^2$ ) for surfaces;

(III)  $\mu\text{Ci}$  ( $\text{MBq}$ ) per milliliter for water; and

(IV) picocuries ( $\text{pCi}$ ) (becquerels ( $\text{Bq}$ )) per gram (g) for solids such as soils or concrete; and

(ii) (No change.)

(15) The agency will provide written notification to specific licensees, including former licensees with provisions continued in effect beyond the expiration date in accordance with paragraph 2 of this subsection, that the provisions of the license are no longer binding. The agency will provide such notification when the agency determines that:

(A)-(B) (No change.)

(C) a radiation survey has been performed that demonstrates that the premises are suitable for release in accordance with the radiological requirements for license termination specified in §289.202(ddd) of this title, or other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the radiological requirements for license termination specified in §289.202(ddd) of this title; and

(D) (No change.)

(16) (No change.)

(z) Renewal of license.

(1) Requests for renewal of specific licenses shall be filed in accordance with subsection (d)(1)-(3) and (5)-(7) of this section. In any application for renewal, the applicant may incorporate drawings by clear and specific reference (for

§289.252

example, title, date and unique number of drawing), if no modifications have been made since previously submitted.

(2) (No change.)

(aa)-(cc) (No change.)

(dd) Modification and revocation of licenses.

(1) The terms and conditions of all licenses shall be subject to amendment, revision, or modification. A license may be suspended or revoked by reason of amendments to the Act, by reason of rules in this chapter, or orders issued by the agency.

(2) Any license may be revoked, suspended, or modified, in whole or in part, for any of the following:

(A)-(B) (No change.)

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

(3) Each specific license revoked by the agency ends at the end of the day on the date of the [he] agency's final determination to revoke the license, or on the revocation date stated in the determination, or as otherwise provided by the agency order.

(4) Except in cases in which the occupational and public health, interest or safety requires otherwise, no license 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 in writing and the licensee shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(ee) Reciprocal recognition of licenses.

(1) Subject to this section, any person who holds a specific license from [the] NRC, any agreement state, or any licensing state, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is granted a general license to conduct the activities authorized in such licensing document within the state of Texas provided that:

(A) (No change.)

(B) the out-of-state licensee notifies the agency in writing at least three working days prior to engaging in such activity. If, for a specific case, the

§289.252

three-working-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the agency, obtain permission to proceed sooner. The agency may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities in accordance with the general license provided in this subsection. Such notification shall include:

(i) the exact location, start date, duration, and type of activity to be conducted;

(ii)-(vi) (No change.)

(C)-(E) (No change.)

(2) In addition to the provisions of paragraph (1) of this subsection, any person who holds a specific license issued by [the] NRC, an agreement state, or a licensing state authorizing the holder to manufacture, transfer, install, or service the device described in §289.251 (h)(1)(C) and (k)(1) of this title, within areas subject to the jurisdiction of the licensing body, is granted a general license to install, transfer, demonstrate, or service the device in the state of Texas provided that:

(A)-(B) (No change.)

(C) the person assures that any labels required to be affixed to the device in accordance with requirements of the authority that licensed manufacture of the device bear a statement that "Removal of this label is prohibited"; [;"] and

(D) (No change.)

(3) (No change.)

(ff) (No change.)

(gg) Financial assurance and record keeping for decommissioning.

(1) The applicant for a specific license or renewal of a specific license, or holder of a specific license, authorizing the possession and use of radioactive material shall submit and receive written authorization for a decommissioning funding plan as described in paragraph (4) of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license for the following situations:

(A) when unsealed radioactive material requested or authorized on the license, with a half-life greater than 120 days, is in quantities exceeding  $10^5$  times the applicable quantities set forth in subsection (ii)(2) of this section; or

§289.252

(B) when a combination of the unsealed radionuclides requested or authorized on the license, with a half-life greater than 120 days, results in the R of the radionuclides divided by  $10^5$  being greater than 1 (unity rule), where R is defined as the sum of the ratios of the quantity of each radionuclide to the applicable value in subsection (ii)(2) of this section.

**[(1)] [The applicant for or holder of each specific license authorizing the possession and use of unsealed radioactive material with a half-life greater than 120 days and in quantities exceeding  $10^5$  times the applicable quantities set forth in subsection (ii)(2) of this section shall submit a decommissioning funding plan as described in paragraph (4) of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license. The decommissioning funding plan shall also be submitted when a combination of isotopes is involved if R divided by  $10^5$  is greater than 1 (unity rule), where R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in subsection (ii)(2) of this section. Those persons who receive, possess, or process sealed sources as radioactive waste from other persons and who are exempt from §289.254 of this title shall submit a decommissioning funding plan as described in paragraph (4) of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license. Persons who receive, possess, or process sealed sources of radioactive material from other persons for recycle or beneficial reuse and store the sealed sources of radioactive material for longer than two years, are considered to be receiving, possessing, or processing sealed sources of radioactive material as radioactive waste from other persons and shall submit a decommissioning funding plan as described in paragraph (4) of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license.]**

(2) The applicant for a specific license or renewal of a specific license or the holder of a [each] specific license authorizing possession and use of radioactive material as [of half-life greater than 120 days and in quantities] specified in paragraph (3) of this subsection shall either:

(A) submit a decommissioning funding plan as described in paragraph (4) of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license; or

(B) submit financial assurance for decommissioning in the amount in accordance with paragraph (3) of this subsection using one of the methods described in paragraph (6) [(5)] of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license. [Upon renewal, the holder of a specific license shall certify that the current financial assurance is adequate to meet the requirements of this subparagraph or submit financial assurance that meets the requirements of this subparagraph. For an applicant, the financial assurance will be obtained after the application has been approved and the license issued, but prior to the receipt of licensed material. If the

§289.252

applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (5) of this subsection shall be submitted to the agency before receipt of licensed material. If the applicant does not defer execution of the financial instrument, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (5) of this subsection shall be submitted to the agency.]

(3) The required amount of financial assurance for decommissioning is determined by the quantity of material authorized by the license and is determined as follows:

(A) \$850,000 for quantities of material greater than  $10^4$  but less than or equal to  $10^5$  times the applicable quantities in subsection (ii)(2) of this section in unsealed form. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by  $10^4$  is greater than 1 but R divided by  $10^5$  is less than or equal to 1 [one].);

(B) \$170,000 for quantities of material greater than  $10^3$  but less than or equal to  $10^4$  times the applicable quantities in subsection (ii)(2) of this section in unsealed form. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by  $10^3$  is greater than 1 but R divided by  $10^4$  is less than or equal to 1 [one].); or

(C) \$85,000 for quantities of material greater than  $10^{10}$  times the applicable quantities in subsection (ii)(2) of this section in sealed sources or plated foils. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by  $10^{10}$  is greater than 1 [one].)

(4) Each decommissioning funding plan shall contain a cost estimate for decommissioning in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license and a description of the method of assuring funds for decommissioning from paragraph (6) [(5)] of this subsection, including means of adjusting cost estimates and associated funding levels periodically over the life of the facility. The required amount of financial assurance for decommissioning is determined by the quantity of material authorized by the license. **[The applicant for or holder of the specific license shall submit with the decommissioning funding plan a signed original of the financial instrument obtained to satisfy the requirements of paragraph (5) of this subsection.]** Upon approval of the decommissioning funding plan by the agency, the amount of financial assurance shall be adjusted and submitted [posted] in conformance with the agency approval.

(5) Financial assurance in conjunction with a decommissioning funding plan shall be submitted as follows:

§289.252

(A) for an applicant for a specific license, financial assurance as described in paragraph (6) of this subsection, may be obtained after the application has been approved and the license issued by the agency, but shall be submitted to the agency prior to receipt of licensed material; or

(B) for an applicant for renewal of a specific license, or a holder of a specific license, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (6) of this subsection shall be submitted with the decommissioning funding plan.

(6) [(5)] Financial assurance for decommissioning shall be provided by one or more of the following methods, [and shall be reviewed and approved by the agency.] The financial instrument obtained shall be continuous for the term of the license [.] in a form prescribed by the agency. The applicant or licensee shall obtain written approval of the financial instrument or any amendment to it from the agency.

(A) Prepayment. Prepayment is the deposit [**prior to issuance of the license**] into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(B) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in subsection (ii)(3) of this section. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in subsection (ii)(4) of this section. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in subsection (ii)(5) of this section. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in subsection (ii)(6) of this section. A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions.

(i) The surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the agency, the



§289.252

beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the agency within 30 days after receipt of notification of cancellation.

(ii) The surety method or insurance shall be payable in the state of Texas to the Radiation and Perpetual Care Fund.

(iii) The surety method or insurance shall remain in effect until the agency has terminated the license.

(C) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be in accordance with subparagraph (B) of this paragraph.

(D) In the case of federal, state, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount in accordance with paragraph (4) of this subsection, and indicating that funds for decommissioning will be obtained when necessary.

(E) When a governmental entity is assuming custody and ownership of a site, there shall be an arrangement that is deemed acceptable by such governmental entity.

(7) [(6)] Each person licensed in accordance with this section shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the agency. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the agency considers important to decommissioning consists of the following:

(A) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas, as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations;

§289.252

(B) as-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes that may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(C) except for areas containing only sealed sources (provided the sealed sources have not leaked or no contamination remains after any leak) or byproduct materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, of the following:

(i) all areas designated and formerly designated as restricted areas as defined in §289.201(b) of this title;

(ii) all areas outside of restricted areas that require documentation under subparagraph (A) of this paragraph; and

(iii) all areas outside of restricted areas where current and previous wastes have been buried as documented in accordance with §289.202(tt) of this title; and

(D) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds. **[if either a funding plan or certification is used.]**

(8) ~~[(7)]~~ Any licensee who has submitted an application before January 1, 1995, for renewal of license in accordance with this section shall provide financial assurance for decommissioning in accordance with paragraphs (1) and (2) of this subsection. **[This assurance shall be submitted when this section becomes effective March 1, 1998.]**

(hh) (No change.)

(ii) Appendices.

(1) (No change.)

(2) Isotope quantities (for use in subsection (gg) of this section).

Figure: 25 TAC §289.252(ii)(2)

(3)-(4) (No change.)

§289.252

(5) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning by commercial companies that have no outstanding rated bonds.)

(A) (No change.)

(B) Financial test.

(i) (No change.)

(ii) In addition, to pass the financial test, a company shall meet all of the following requirements:

(I) the company's independent certified public accountant shall have compared the data used by the company in the financial test, that is required to be derived from the independently audited year end financial statement based on United States generally accepted accounting practices for the latest fiscal year, with the amounts in the financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters that may cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test;

(II)-(III) (No change.)

(C) (No change.)

(6) Criteria relating to use of financial tests and self-guarantees for providing reasonable assurance of funds for decommissioning by nonprofit entities, such as colleges, universities, and nonprofit hospitals.

(A) (No change.)

(B) Financial test.

(i) To pass the financial test, a college or university shall meet the criteria of subclause (I) or (II) of this clause. The college or university shall meet one of the following:

(I) for applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's .

(II) (No change.)

(ii)-(iii) (No change.)

(C) Self-guarantee. The terms of a self-guarantee that an applicant or licensee furnishes shall provide the following:

(i)-(iv) (No change.)

(v) If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the licensee shall provide notice in writing of the fact to the agency within 20 days after publication of the change by the rating service.

(7) (No change.)

(8) Requirements for demonstrating financial qualifications.  
**[Demonstrating Financial Qualification.]**

(A) If an applicant or licensee is not required to submit financial assurance in accordance with subsection (gg) of this section, that applicant or licensee shall demonstrate financial qualification by submitting attestation that the applicant or licensee is financially qualified to conduct the activity requested for licensure, including any required decontamination, decommissioning, reclamation, and disposal before the agency issues a license.

(B) If an applicant or licensee is required to submit financial assurance in accordance with subsection (gg) of this section, that applicant or licensee shall:

(i) submit one of the following:

(I) the bonding company report or equivalent (from which information can be obtained to calculate a ratios in clause (ii) of this subparagraph) that was used to obtain the financial assurance instrument used to meet the financial assurance requirement specified in subsection (gg) of this section. However, if the applicant or licensee posted collateral to obtain the financial instrument used to meet the requirement for financial assurance specified in subsection (gg) of this section, the applicant or licensee shall demonstrate financial qualification by one of the methods specified in subclause (II) or (III) of this clause;

(II) SEC documentation (from which information can be obtained to calculate a ratio as described in clause (ii) of this subparagraph, if the applicant or licensee is a publicly-held company; or

(III) a self-test (for example, an annual audit report certifying a company's assets and liabilities and resulting ratio as described in clause (ii) of this subparagraph or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues).

(ii) declare its Standard Industry Classification (SIC) code. Several companies publish lists, on an annual basis, of acceptable assets-to-liabilities (assets divided by liabilities) ratio ranges for each type of SIC code. If an applicant or licensee submits documentation of its current assets and current liabilities or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues, and the resulting ratio falls within an acceptable range as published by generally recognized companies (for example, Almanac of Business and Industrial Financial Ratios, Industry NORM and Key Business Ratios, Dun [Dunn] & Bradstreet Industry publications, and Manufacturing USA: Industry Analyses, Statistics, and Leading Companies), the agency will consider that applicant or licensee financially qualified to conduct the requested or licensed activity.

(C) If the applicant or licensee is a state or local government entity, a statement of such will suffice as demonstration that the government entity is financially qualified to conduct the requested or licensed activities.

(D) The agency will consider other types of documentation if that documentation provides an equivalent measure of assurance of the applicant's or licensee's financial qualifications as found in subparagraphs (A) and (B) of this paragraph [assets and liabilities and the resulting ratio].