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ILLINOIS REGISTER

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ILLINOIS EMERGENCY MANAGEMENT AGENCY

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Licensing Requirements for Source Material Milling Facilities
- 2) Code Citation: 32 Ill. Adm. Code 332
- 3) 

<u>Section Number:</u> 332.260	<u>Proposed Action:</u> Amendment
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- 4) Statutory Authority: Implementing and authorized by Section 10 of the Radiation Protection Act of 1990 [420 ILCS 40/10] and Section 30 of the Uranium and Thorium Mill Tailings Control Act [420 ILCS 42/30].
- 5) A Complete Description of the Subjects and Issues Involved: The Agency is amending Section 332.260 to incorporate, for compatibility, the United States Nuclear Regulatory Commission's (USNRC) changes to 10 CFR Part 40 pursuant to RATS ID #2011-1 (76 FR 35512, published June 17, 2011). The State must have these amendments in place by December 17, 2015. The USNRC has reviewed these proposed amendments and finds them compatible. The proposed amendments include an increase in the amount of information the licensee must provide in their financial surety cost estimate and adds circumstances to when a cost estimate needs to be reviewed and revised.
- 6) Any published studies or reports, along with the sources of underlying data, that were used when composing this rulemaking, in accordance with 1 Ill. Adm. Code 100.335: No, this rule has been amended solely on the basis of compatibility with the USNRC's changes to 10 CFR Part 40 pursuant to RATS ID #2011-1 (76 FR 35512, published June 17, 2011).
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed amendments pending on this Part? No
- 11) Statement of Statewide Policy Objective: The requirements imposed by this proposed rulemaking are not expected to require local governments to establish, expand or modify their activities in such a way as to necessitate additional expenditures from local revenues.

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- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. The Agency will consider fully all written comments on this proposed rulemaking submitted during the 45 day comment period. Comments should be submitted to:

Traci Burton  
Paralegal Assistant  
Illinois Emergency Management Agency  
1035 Outer Park Drive  
Springfield, IL 62704

217/524-0770  
fax: 217/524-3698

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities or not-for-profit corporations affected: The Agency believes that this rulemaking will have no direct impact on any small businesses, small municipalities or not-for-profit corporations.
  - B) Reporting, bookkeeping or other procedures required for compliance: The licensee will be required to provide more information for financial surety cost estimates and to review and revise the cost estimate for more circumstances.
  - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2015

The full text of the Proposed Amendment begins on the next page.

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TITLE 32: ENERGY

CHAPTER II: ILLINOIS EMERGENCY MANAGEMENT AGENCY

SUBCHAPTER b: RADIATION PROTECTION

PART 332

LICENSING REQUIREMENTS FOR SOURCE MATERIAL MILLING FACILITIES

Section	
332.10	Purpose and Scope
332.20	Definitions
332.30	License Required
332.40	Application Content and Procedure
332.50	General Information
332.60	Technical Information
332.70	Technical Analyses
332.80	Institutional Information
332.90	Financial Information
332.100	Evaluation of License Application and Issuance of a License
332.110	General Conditions of Licenses
332.120	Application for Renewal or Closure
332.130	Contents of Application for Site Closure and Stabilization
332.140	Postclosure Observation and Maintenance
332.150	Termination of Source Material Milling Facility License
332.160	General Requirements
332.170	Protection of the General Population from Radiation
332.180	Protection of Individuals from Inadvertent Access
332.190	Protection of Individuals During Operations
332.200	Stability of the Byproduct Material Disposal Site After Closure
332.210	Technical Criteria for Byproduct Material Disposal Sites – Siting Criteria
332.220	Technical Criteria for Byproduct Material Disposal Sites – Design Criteria
332.230	Technical Criteria for Byproduct Material Licensed Sites – Groundwater Protection
332.240	Technical Criteria for Byproduct Material Disposal Sites – Control of Radiation Hazards
332.250	Technical Criteria – Source Material Milling Operations
332.260	Financial Surety Requirements
332.270	Long-Term Care Payment
332.280	Land Ownership
332.290	Maintenance of Records, Reports, and Transfers

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**AUTHORITY:** Implementing and authorized by the Radiation Protection Act of 1990 [420 ILCS 40] and the Uranium and Thorium Mill Tailings Control Act [420 ILCS 42].

**SOURCE:** Adopted at 14 Ill. Reg. 1333, effective January 5, 1990; amended at 18 Ill. Reg. 3128, effective February 22, 1994; emergency amendment adopted at 18 Ill. Reg. 17933, effective December 1, 1994, for a maximum of 150 days; amended at 19 Ill. Reg. 6601, effective April 28, 1995; amended at 21 Ill. Reg. 3897, effective March 13, 1997; recodified from the Department of Nuclear Safety to the Illinois Emergency Management Agency at 27 Ill. Reg. 13641; amended at 32 Ill. Reg. 16765, effective October 6, 2008; amended at 38 Ill. Reg. 21459, effective October 31, 2014; amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 332.260 Financial Surety Requirements**

- a) The license applicant shall establish financial surety arrangements, prior to the Agency authorization of commencement of operations, to assure the availability of sufficient funds for decontaminating, decommissioning and reclaiming the source material milling facility and licensed site, as well as the stabilization and closure of the byproduct material disposal site and the long-term care payment.
- b) An acceptable surety arrangement may consist of cash or negotiable securities deposited with the Agency, irrevocable assignments of savings or certificates of deposit, or the deposit of an instrument executed by the applicant or licensee and a corporate surety or financial institution with the Agency designated as the beneficiary. However, self insurance, or any arrangement that essentially constitutes self insurance (e.g., a contract with a State or federal agency) will not satisfy the surety requirement since this provides no additional assurance other than that which already exists through license requirements. The value of the deposit shall be equal to or greater than the amount of the surety required by subsection (c). Any surety arrangement must be available in Illinois subject to judicial process and execution in the event required for the purposes set forth in this Part.
- c) The amount of funds to be ensured by such surety arrangements shall be greater than or equal to the Agency approved cost estimates for:
  - 1) decontamination, decommissioning, restoration and reclamation of buildings and the licensed site;

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- 2) stabilization and closure of the disposal area; and
- 3) the requirements of Section 332.270 for the long-term care payment.
- d) The cost estimate shall contain:
  - 1) A detailed cost estimate for decontamination, decommissioning, and reclamation, in an amount reflecting:
    - A) The cost of an independent contractor to perform the work identified in subsections (c)(1) and (2); and
    - B) A contingency factor of 25 percent of the total cost estimate.
  - 2) An estimate of the amount of radioactive contamination in onsite subsurface material.
  - 3) Identification and justification for using key assumptions in the cost estimate.
  - 4) A description of the method of assuring that funds for the decontamination, decommissioning, and reclamation are adequate until license termination.
- ~~d) In establishing specific surety arrangements, the applicant's or licensee's cost estimates shall take into account the total costs that would be incurred if an independent contractor were hired to perform the work identified in subsections (c)(1) and (2).~~
- e) To avoid duplication and expense, the Agency will accept surety arrangements that have been consolidated with surety arrangements established to meet requirements of other agencies in Illinois for decontamination, reclamation, restoration and disposal, if the applicant demonstrates, in writing, that the surety provides the same or a greater degree of protection for the licensed site, provided that the arrangements are adequate to satisfy these requirements and that the portion of the surety that covers the decommissioning, decontamination, reclamation and stabilization of the site and the long-term care payment is specifically identified and committed for use in accomplishing these activities.

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- f) The applicant's or licensee's surety arrangements will be reviewed annually by the Agency to assure that sufficient funds will be available for completion of the closure plan if the work was to be performed by an independent contractor. The amount of surety shall be adjusted to recognize any increases or decreases resulting from inflation, changes in engineering plans, activities performed, **spills, leakage or migration of radioactive material producing additional contamination in onsite subsurface material that must be remediated to meet applicable remediation criteria, waste inventory increasing above the amount previously estimated, waste disposal cost increasing above amount previously estimated, facility modifications, changes in authorized possession limits, actual remediation costs that exceed the previous cost estimate, onsite disposal, and any other conditions affecting costs.** Regardless of whether closure is phased through the life of the operation or takes place at the end of operations, a portion of the surety shall be retained until final compliance with the closure plan is determined by the Agency.
- g) The term of the surety mechanism shall be open-ended, unless the licensee proposes another arrangement that provides an equivalent or greater level of assurance. The surety instrument shall provide that the surety mechanism will not be cancelled unless the surety notifies both the Agency and the licensee at least 90 days prior to cancellation. Proof of forfeiture shall not be necessary to collect the surety so that, in the event the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration or cancellation.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)