

ILLINOIS REGISTER

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ILLINOIS EMERGENCY MANAGEMENT AGENCY

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Financial Assurance Requirements
- 2) Code Citation: 32 Ill. Adm. Code 326
- 3) 

<u>Section Number:</u>	<u>Proposed Action:</u>
326.80	Amendment
326.90	Amendment
- 4) Statutory Authority: Implementing and authorized by Section 9 of the Radiation Protection Act of 1990 [420 ILCS 40/9]
- 5) A Complete Description of the Subjects and Issues Involved: The Agency is amending Section 326.80 and 326.90 to incorporate, for compatibility, the United States Nuclear Regulatory Commission's (USNRC) changes to 10 CFR Part 30 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 requiring further information for the licensee's or applicant's reclamation plan and cost estimate and requiring the licensee to submit a signed original financial surety instrument instead of a copy.
- 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 rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: The requirements imposed by the 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

217/785-9860  
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 small businesses or municipalities or not-for-profit corporations.
  - B) Reporting, bookkeeping or other procedures required for compliance: None
  - 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 Amendments begins on the next page:-

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TITLE 32: ENERGY

CHAPTER II: ILLINOIS EMERGENCY MANAGEMENT AGENCY  
SUBCHAPTER b: RADIATION PROTECTION

PART 326

FINANCIAL ASSURANCE REQUIREMENTS

Section

326.10	Purpose and Scope
326.20	Incorporations by Reference
326.30	General Provisions
326.40	Definitions
326.50	Exemptions
326.60	Low-Level Radioactive Waste Licensees
326.70	Financial Assurance Amounts
326.80	Cost Estimates and Reclamation Plans
326.90	Financial Assurance Arrangements
326.100	Surety Bond as a Financial Assurance Arrangement
326.110	Letter of Credit as a Financial Assurance Arrangement
326.120	Certificate of Deposit as a Financial Assurance Arrangement
326.130	Self-Guarantee as a Financial Assurance Arrangement
326.140	Financial Tests for Self-Guarantee
326.150	Parent Company Guarantee as a Financial Assurance Arrangement
326.160	Financial Tests for Parent Company Guarantee
326.170	Modification or Replacement of Financial Assurance Arrangements
326.180	Drawing on Financial Assurance Arrangements
326.190	Implementation
326.APPENDIX A	Quantities of Material for Major Possessor Determination
326.APPENDIX B	Wording for Surety Bonds
326.APPENDIX C	Wording for Letters of Credit
326.APPENDIX D	Wording for Certificates of Deposit
326.APPENDIX E	Wording for Self-Guarantee Documents
326.APPENDIX F	Wording for Parent Company Guarantee Documents

AUTHORITY: Implementing and authorized by the Radiation Protection Act of 1990 [420 ILCS 40.

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SOURCE: Adopted at 24 Ill. Reg. 7989, effective June 1, 2000; recodified from the Department of Nuclear Safety to the Illinois Emergency Management Agency at 27 Ill. Reg. 13641; amended at 29 Ill. Reg. 20781, effective December 16, 2005; amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 326.80 Cost Estimates and Reclamation Plans**

Licenses required to perform cost estimates, as described in Sections 326.60 and 326.70(b) of this Part, shall submit reclamation plans and cost estimates to the Agency for approval prior to securing financial assurance arrangements. **The cost estimate shall reflect the cost of an independent contractor to perform decommissioning activities and include a contingency factor of 25 percent of the total cost estimate.** The Agency shall allow material described in Section 326.50(b) of this Part as exempt to be excluded from all financial assurance estimates. For licenses described in Section 326.70(b) of this Part, the material described in Section 326.50(c) of this Part shall also be excluded from financial assurance estimates. The plan shall describe reclamation actions to be taken in order to terminate the license in accordance with the requirements of 32 Ill. Adm. Code 330. The Agency shall consider, but is not limited to, the following in approving the reclamation plan and cost estimates, and determining the financial assurance requirements for each individual licensee:

- a) The probable extent of contamination resulting from the use or possession of radioactive material as authorized by a radioactive material license at the facility or site, and the probable cost of removal of such contamination in order to terminate the license in accordance with the requirements of 32 Ill. Adm. Code 330. This consideration shall encompass probable contaminating events associated with the licensee's methods or modes of operation and shall be based on factors such as quantities, half-lives, radiation hazards and toxicities, and chemical and physical forms;
- b) The extent of possible offsite property damage caused by operation of the facility or site that is to be reclaimed;
- c) The cost and method of removal and disposal of radioactive material and sources of radiation, **including subsurface material**, that are or would be generated, stored, processed, or otherwise present at the facility or site; **and**
- d) The costs and methods involved in reclamation of the site or the property on which the facility is located and all other properties contaminated by radioactive material authorized by the license **in order to meet 32 Ill. Admin. Code 330.325;-**

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- e) The volume of onsite subsurface material containing residual radioactivity that will require remediation to meet the criteria for license termination; and
- f) Whether at the time of license renewal, at intervals not to exceed 3 years, or pursuant to Section 326.90(c) of this Part, the reclamation plan and cost estimate updates the information submitted with the original or prior approved plan, and specifically considers the effect of the following events on decommissioning costs:
  - 1) Spills of radioactive material producing additional residual radioactivity in onsite subsurface material;
  - 2) Waste inventory increasing above the amount previously estimated;
  - 3) Waste disposal costs increasing above the amount previously estimated;
  - 4) Facility modifications;
  - 5) Changes in authorized possession limits; and
  - 6) Actual remediation costs that exceed the previous cost estimate.

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

**Section 326.90 Financial Assurance Arrangements**

This Section shall apply to applicants for specific licenses and general and specific licensees required to secure and file financial assurance arrangements with the Agency:

- a) The licensee or applicant shall choose from the financial assurance arrangements specified in Sections 326.100 through 326.160 of this Part.
- b) The wording of the financial assurance arrangement shall contain the provisions described in this Part, and may use wording identical to the wording of the corresponding arrangement in Appendices B through F of this Part. No additional restrictions may be placed on any financial assurance arrangement filed with the Agency.
- c) A signed original of the ~~The~~ financial assurance arrangements shall be provided to and filed with the Agency in a dollar amount greater than or equal to either the

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amount specified in Section 326.70(a) of this Part or the amount specified in a cost estimate approved by the Agency.

- 1) The cost estimate and reclamation plan shall be reviewed annually by the licensee or when required by the Agency. The Agency may require the licensee to adjust the value of the cost estimate and reclamation plan to recognize any increases or decreases resulting from inflation or deflation, changes in engineering plans, activities performed and any other condition affecting costs for reclamation. These changes will be required to ensure that sufficient financial assurance amounts are provided and retained to cover cost of reclamation.
- 2) When a change in activities not requiring a license amendment would raise the cost estimate for reclamation to an amount greater than the amount of the financial assurance arrangements currently filed with the Agency, the licensee shall notify the Agency within 60 days after the increase. This notification shall include submission of revised cost estimates and reclamation plans for Agency review and approval. Upon approval of the revised cost estimates, the licensee may be required to file additional financial assurance arrangements at least equal to this increase.
- 3) When a license amendment would raise the cost estimate for reclamation to an amount greater than the amount of the financial assurance arrangements currently filed with the Agency, the amendment shall be held until the required financial assurance arrangements are established.
- 4) When the current reclamation cost estimate decreases, upon the written request of the licensee, and provided that the decrease is verified by the Agency, the Agency shall authorize the reduction in the amount of financial assurance required for the facility to the amount of the approved amended reclamation cost estimate.

AGENCY NOTE: If the license is amended and the licensee no longer meets the criteria for needing a reclamation plan (specified in Section 326.60 or 326.70(b) of this Part), but still must secure financial assurance in accordance with Section 326.70(a) of this Part, the licensee may substitute new arrangements to meet the requirements of Section 326.70(a) of this Part.

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- 5) For specific licensees, the term of the financial assurance arrangement shall be for the period from issuance of the license until termination of the license by the Agency in accordance with 32 Ill. Adm. Code 330.
  - 6) For general licensees, the term of the financial assurance arrangement shall be for the period from approval of the financial assurance arrangement until all devices covered by the instrument have been properly transferred or disposed of.
  - 7) The Agency will release all financial assurance arrangements not drawn upon pursuant to Section 326.180 of this Part, upon termination of the license, or if the license is amended so that the license is no longer subject to financial assurance requirements of Section 326.60 or 326.70 of this Part.
- d) Use of Multiple Financial Assurance Arrangements. The licensee or applicant may utilize more than one financial assurance arrangement per facility to satisfy the requirement specified in this Section. Unless agreed otherwise by the Agency and the licensee, financial assurance arrangements may be drawn upon in any order determined by the Agency. The arrangements shall be as specified in Appendices B-F of this Part, and the sum value of all arrangements shall be in an amount greater than or equal to either the amount specified in Section 326.70(a) of this Part, or the amount specified in a cost estimate approved by the Agency.
- e) Use of a Financial Assurance Arrangement for Multiple Facilities or Multiple Licensees at a Facility. The licensee or applicant may use a financial assurance arrangement specified in Appendices B-F of this Part to meet the requirements of this Section for more than one license, or more than one facility owned or operated in Illinois. The arrangement submitted to the Agency shall include a list indicating, for each facility, the registration numbers, license numbers, names, addresses and amounts of funds for reclamation assured by the arrangement. The amount of funds available through the financial assurance arrangement shall not be less than the aggregate total of the funds that would be available if separate arrangement had been filed and maintained for each license or facility. If more than one license exists for a facility, the amount of funds for each license shall be specified.
- f) Any applicant or licensee who fulfills the requirements of this Section by obtaining a surety bond or letter of credit will be deemed to be without the required financial assurance arrangement in the event of commencement of bankruptcy proceedings involving the issuing institution, or a suspension,

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termination, or revocation of the authority of the institution issuing the surety bond or letter of credit to issue such instruments. The applicant or licensee shall establish other Agency-approved financial assurance arrangements within 30 days after such an event.

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