

**SUBCHAPTER B: FINANCIAL ASSURANCE REQUIREMENTS  
FOR CLOSURE, POST CLOSURE, AND CORRECTIVE ACTION  
§§37.100, 37.101, 37.111, 37.121, 37.131, 37.141, 37.151, 37.161  
Effective February 12, 2003**

**§37.100. Applicability.**

This subchapter applies to an owner or operator required to provide financial assurance for closure, post closure, or corrective action.

Adopted February 24, 2000

Effective March 21, 2000

**§37.101. Drawing on the Financial Assurance Mechanisms.**

The executive director may call on the financial assurance mechanism(s) when an owner or operator who is required to comply with this chapter has:

- (1) failed to perform closure, post closure, or corrective action when required;
- (2) failed to provide an alternate financial assurance mechanism, when required; or
- (3) failed to provide continuous financial assurance coverage.

Adopted February 24, 2000

Effective March 21, 2000

**§37.111. Continuous Financial Assurance Required.**

The owner or operator of a facility required by this chapter to provide financial assurance for closure, post closure, or corrective action, shall provide continuous financial assurance until the executive director provides written consent to termination in accordance with §37.61 of this title (relating to Termination of Mechanisms).

Adopted February 24, 2000

Effective March 21, 2000

**§37.121. Current Cost Estimate.**

The owner or operator of each facility required by this chapter to provide financial assurance for closure, post closure, or corrective action must establish financial assurance in an amount no less than the current cost estimate.

Adopted February 24, 2000

March 21, 2000

**§37.131. Annual Inflation Adjustments to Closure Cost Estimates.**

During the active life of the facility, the owner or operator must adjust the current cost estimate for inflation within 60 days prior to the anniversary date of the first establishment of the financial assurance mechanism. For owners or operators using the financial test or corporate guarantee, the current cost estimate must be adjusted for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the executive director as specified in this chapter. The adjustment must be made using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business, as specified in paragraphs (1) and (2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the current cost estimate by the inflation factor. The result is the adjusted current cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.

(3) If there is a revised current cost estimate in current dollars approved by the executive director prior to the anniversary date described in this section, then the owner or operator is not required to make an inflation adjustment. However, a revised current cost estimate in current dollars shall be adjusted for inflation for subsequent years as required by this section.

Adopted January 23, 2003

Effective February 12, 2003

**§37.141. Increase in Current Cost Estimate.**

Whenever the current cost estimate increases to an amount greater than the amount being provided in the financial assurance mechanism(s), the owner or operator must either cause the amount of the financial assurance to be increased and submit evidence of such increase to the executive director, or obtain additional financial assurance in accordance with this chapter to cover the increase. This adjustment must be made within 60 days after the owner or operator becomes aware, or is notified by the executive director, of the increase.

Adopted January 23, 2003

Effective February 12, 2003

**§37.151. Decrease in Current Cost Estimate.**

An owner or operator may request that the executive director approve a decrease in the current cost estimate. The revised current cost estimate must be approved by the executive director. Whenever the revised current cost estimate decreases to an amount less than the amount being provided in the financial assurance mechanism(s), the owner or operator may submit a written request for a reduction in the amount of the financial assurance to the executive director. Following written approval by the executive director, the amount of the financial assurance may be reduced to the

amount of the revised current cost estimate. An owner or operator may simultaneously request the executive director's approval of both a revised current cost estimate and a reduction in the amount of the financial assurance.

Adopted January 23, 2003

Effective February 12, 2003

**§37.161. Establishment of a Standby Trust.**

An owner or operator who uses a surety bond or an irrevocable standby letter of credit to satisfy the requirements of this chapter must establish a standby trust fund. Under the terms of the bond or letter of credit, all payments made under the bond or all amounts paid pursuant to a draft by the executive director shall be deposited by the surety or issuing institution directly into the standby trust fund or in accordance with instructions from the executive director. This standby trust fund must meet the requirements of the trust fund specified in §37.201 of this title (relating to Trust Fund), except that:

- (1) an originally signed duplicate of the trust agreement must be submitted to the executive director with the surety bond or irrevocable standby letter of credit; and
- (2) unless the standby trust fund is funded pursuant to the requirements of this chapter, the following are not required by this section:
  - (A) payments into the trust fund as specified in §37.201 of this title;
  - (B) updating of Schedule A of the trust agreement to show current cost estimates for closure, post closure, or corrective action;
  - (C) annual valuations as required by the trust agreement; and
  - (D) notices of nonpayment as required by the trust agreement.

Adopted February 24, 2000

Effective March 21, 2000