

**SUBCHAPTER E : FINANCIAL ASSURANCE REQUIREMENTS  
FOR LIABILITY COVERAGE  
§§37.400, 37.402, 37.404, 37.411  
Effective March 21, 2000**

**§37.400. Applicability.**

This subchapter applies to an owner or operator required to provide financial assurance for sudden or nonsudden liability coverage.

Adopted February 24, 2000

Effective March 21, 2000

**§37.402. Definitions.**

In the liability insurance requirements, the terms “bodily injury” and “property damage” shall have the meanings given these terms by applicable state law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The agency intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The following definitions given of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

(1) **Accidental occurrence** - An accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(2) **Legal defense costs** - Any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(3) **Nonsudden accidental occurrence** - An occurrence which takes place over time and involves continuous or repeated exposure.

(4) **Sudden accidental occurrence** - An occurrence which is not continuous or repeated in nature.

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**§37.404. Liability Requirements for Sudden and Nonsudden Accidental Occurrences.**

(a) An owner or operator shall establish liability coverage for bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden or nonsudden accidental occurrences, exclusive of legal defense costs. The owner or operator shall choose from one or more mechanisms as specified in Subchapter F of this chapter (relating to Financial Assurance

Mechanisms for Liability) to meet the liability requirements for sudden or nonsudden accidental occurrences.

(b) An owner or operator shall notify the executive director in writing within 30 days whenever:

(1) a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial assurance mechanism authorized in Subchapter F of this chapter; or

(2) a Certification of Valid Claim for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a facility is entered between the owner or operator and third-party claimant for liability coverage under Subchapter F of this chapter; or

(3) a final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a facility is issued against the owner or operator, or a financial assurance mechanism that is providing financial assurance for liability coverage under Subchapter F of this chapter.

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**§37.411. Adjustments to the Level of Liability Coverage.**

If the executive director determines that the levels of financial responsibility required are not consistent with the degree and duration of risk associated with the facility or group of facilities, the executive director may adjust the levels of financial responsibility required for liability coverage as may be necessary to protect human health and the environment. An owner or operator must furnish to the executive director, within 30 days, any information which the executive director requests to determine whether cause exists for such adjustments of level of coverage. Any adjustment to the amount of financial assurance due to a change in the degree and duration of risk associated with the permitted facility will be treated as a permit modification.

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