

PROPOSED RULE 36.11(F),(G),(H)	Current Rule 36.11(F),(G),(H)
<p>F. Replacement of financial assurance.</p> <p>(1) The division may allow an operator to replace existing forms of financial assurance with other forms of financial assurance that provide equivalent coverage.</p> <p>(2) The division shall not release existing financial assurance until the operator has submitted, and the division has approved, an acceptable replacement.</p> <p>(3) <u>Any time an operator changes the corporate surety, financial institution or amount of financial assurance, the operator shall file updated financial assurance documents on division-prescribed forms within 30 days. Notwithstanding the foregoing, if an operator makes other changes to its financial assurance documents, the division may require the operator to file updated financial assurance documents on division-prescribed forms within 45 days after notice to the operator from the division.</u></p> <p>G. Review of adequacy of financial assurance. The division may at any time not less than five years after initial acceptance of financial assurance for a commercial facility, or whenever the operator applies for a major modification of the commercial facility's permit, and at least once during every successive five-year period, initiate a review of such financial assurance's adequacy. Additionally, whenever the division determines that a landfarm operator has not achieved the closure standards specified in Paragraph (3) of Subsection G of 19.15.36.15 NMAC, the division may review the adequacy of the landfarm operator's financial assurance, without regard to the date of its last review. Upon determination, after notice to the operator and an opportunity for a hearing, that the financial assurance is not adequate to cover the reasonable and probable cost of a commercial facility's closure and post closure monitoring operations, the division may require the operator to furnish additional financial assurance sufficient to cover such reasonable and probable cost [, provided that the financial assurance required of a commercial facility permitted prior to the effective date of 19.15.36 NMAC shall not exceed \$250,000 except in the event of a major modification of the commercial facility. If such a</p>	<p>F. Replacement of financial assurance.</p> <p>(1) The division may allow an operator to replace existing forms of financial assurance with other forms of financial assurance that provide equivalent coverage.</p> <p>(2) The division shall not release existing financial assurance until the operator has submitted, and the division has approved, an acceptable replacement.</p> <p>G. Review of adequacy of financial assurance. The division may at any time not less than five years after initial acceptance of financial assurance for a commercial facility, or whenever the operator applies for a major modification of the commercial facility's permit, initiate a review of such financial assurance's adequacy. Additionally, whenever the division determines that a landfarm operator has not achieved the closure standards specified in Paragraph (3) of Subsection G of 19.15.36.15 NMAC, the division may review the adequacy of the landfarm operator's financial assurance, without regard to the date of its last review. Upon determination, after notice to the operator and an opportunity for a hearing, that the financial assurance is not adequate to cover the reasonable and probable cost of a commercial facility's closure and post closure monitoring, the division may require the operator to furnish additional financial assurance sufficient to cover such reasonable and probable cost, provided that the financial assurance required of a commercial facility permitted prior to the effective date of 19.15.36 NMAC shall not exceed \$250,000 except in the event of a major modification of the commercial facility. If such a commercial facility applies for a major modification, the division shall determine the applicable financial assurance requirement based on the total estimated closure and post closure cost of the commercial facility as modified, without regard to the \$250,000 limit.</p>

~~commercial facility applies for a major modification, the division shall determine the applicable financial assurance requirement based on the total estimated closure and post closure cost of the commercial facility as modified, without regard to the \$250,000 limit.]~~

H. Duty to report. Any operator who files for bankruptcy shall provide notice to the division, through the process provided for under the rules of the United States bankruptcy court, and the New Mexico attorney general.