
40 C.F.R. § 146.85

Financial responsibility.

(a) The owner or operator must demonstrate and maintain financial responsibility as determined by the Director that meets the following conditions:

(1) The financial responsibility instrument(s) used must be from the following list of qualifying instruments:

- (i) Trust Funds.
- (ii) Surety Bonds.
- (iii) Letter of Credit.
- (iv) Insurance.
- (v) Self Insurance (*i.e.*, Financial Test and Corporate Guarantee).
- (vi) Escrow Account.
- (vii) Any other instrument(s) satisfactory to the Director.

(2) The qualifying instrument(s) must be sufficient to cover the cost of:

- (i) Corrective action (that meets the requirements of § 146.84);
- (ii) Injection well plugging (that meets the requirements of § 146.92);
- (iii) Post injection site care and site closure (that meets the requirements of § 146.93); and
- (iv) Emergency and remedial response (that meets the requirements of § 146.94).

(3) The financial responsibility instrument(s) must be sufficient to address endangerment of underground sources of drinking water.

(4) The qualifying financial responsibility instrument(s) must comprise protective conditions of coverage.

(i) Protective conditions of coverage must include at a minimum cancellation, renewal, and continuation provisions, specifications on when the provider becomes liable following a notice of cancellation if there is a failure to renew with a new qualifying financial instrument, and requirements for the provider to meet a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.

(A) *Cancellation*—for purposes of this part, an owner or operator must provide that their financial mechanism may not cancel, terminate or fail to renew except for failure to pay such financial instrument. If there is a failure to pay the financial instrument, the financial institution may elect to cancel, terminate, or fail to renew the instrument by sending notice by certified mail to the owner or operator and the Director. The cancellation must

not be final for 120 days after receipt of cancellation notice. The owner or operator must provide an alternate financial responsibility demonstration within 60 days of notice of cancellation, and if an alternate financial responsibility demonstration is not acceptable (or possible), any funds from the instrument being cancelled must be released within 60 days of notification by the Director.

(B) *Renewal*—for purposes of this part, owners or operators must renew all financial instruments, if an instrument expires, for the entire term of the geologic sequestration project. The instrument may be automatically renewed as long as the owner or operator has the option of renewal at the face amount of the expiring instrument. The automatic renewal of the instrument must, at a minimum, provide the holder with the option of renewal at the face amount of the expiring financial instrument.

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