**Section 704.219 Financial Test and Corporate Guarantee**

a) An owner or operator may satisfy the financial assurance requirement by demonstrating that the owner or operator passes a financial test as specified in this Section. To pass this test the owner or operator must meet the criteria of either subsection (a)(1) or (a)(2):

1) The owner or operator must have each of the following:

A) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

B) Net working capital and tangible net worth each at least six times the sum of the current cost estimate;

C) A tangible net worth of at least $10 million; and

D) Assets in the United States amounting to at least 90 percent of the owner or operator's total assets or at least six times the sum of the current cost estimate.

2) The owner or operator must have each of the following:

A) A current rating for the owner or operator's most recent bond issuance of AAA, AA, A, or BBB, as issued by Standard and Poor's, or Aaa, Aa, A, or Baa, as issued by Moody's;

B) A tangible net worth at least six times the sum of the current cost estimate;

C) A tangible net worth of at least $10 million; and

D) Assets located in the United States amounting to at least 90 percent of the owner or operator's total assets or at least six times the sum of the current cost estimates.

b) The phrase "current cost estimate" as used in subsection (a) refers to the cost estimate required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer, as specified in Section 704.240.

c) To demonstrate that the owner or operator meets this test, the owner or operator must submit the following items to the Agency:

1) A letter signed by the owner's or operator's chief financial officer and worded as specified in Section 704.240;

2) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

3) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that the following are true:

A) The accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

B) In connection with that procedure, no matters came to the accountant's attention that caused the accountant to believe that the specified data should be adjusted.

d) An owner or operator of a new injection well must submit the items specified in subsection (c) to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subsection (c).

e) After the initial submission of items specified in subsection (c), the owner or operator must send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subsection (c).

f) If the owner or operator no longer meets the requirements of subsection (a), the owner or operator must send notice to the Agency intent to establish alternate financial assurance. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

g) The Agency may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (a), require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (c). If the Agency finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (a), the owner or operator must provide alternate financial assurance within 30 days after notification of such a finding.

h) The Agency may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see subsection (c)(2)). An adverse opinion or disclaimer of opinion will be cause for disallowance. The Agency must evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance within 30 days after notification of the disallowance.

i) The owner or operator is no longer required to submit the items specified in subsection (c) when either of the following occurs:

1) An owner or operator substitutes alternate financial assurance; or

2) The Agency releases the owner or operator in accordance with Section 704.222.

j) An owner or operator may meet the requirements of this Section by obtaining a written guarantee, hereafter referred to as "corporate guarantee". The guarantor must be the parent corporation of the owner or operator. The guarantor must meet the requirements for owners or operators in subsections (a) through (h) and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be as specified in Section 704.240. The corporate guarantee must accompany the items sent to the Agency, as specified in subsection (c). The terms of the corporate guarantee must provide that the following limitations apply:

1) If the owner or operator fails to perform plugging and abandonment of the injection well covered by the corporate guarantee in accordance with the plan and other permit requirements whenever required to do so, the guarantor must do so or establish a trust fund, as specified in Section 704.214 in the name of the owner or operator.

2) The corporate guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and the Agency, as evidenced by the return receipts. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

3) If the owner or operator fails to provide alternate financial assurance and obtain the written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor must provide such alternative financial assurance in the name of the owner or operator.

BOARD NOTE: Derived from 40 CFR 144.63(f) (2017).

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