

567 IAC Chapter 101, Division VIII – Financial Assurance (Final Draft, September 2024)

**The purpose of this document is to identify proposed revisions and to indicate where amendment have been incorporated within the proposed rulemaking. For ease of use, the DNR is focusing on substantive revisions within this document, and will not individually highlight minor revisions made for solely for clarification purposes.*

Subject	Rule Citation	Existing Rule	Proposed Rule Citation	Proposed Rule <i>(Description & Substantive Revisions)</i>	Iowa Code Citation	Notes/Discussion
Purpose	113.14(1)	<p>*Because the financial assurance requirements have been incorporated into several Solid Waste IAC chapters, and these are all based upon the financial assurance requirements within rule 567—113.14(455B) for MSWLFs, the requirements within this rule will be used for referencing the applicable “Existing Rule.”</p> <p>113.14(1) Purpose. The purpose of this rule is to implement Iowa Code sections 455B.304(8) and 455B.306(8) by providing the criteria for establishing financial assurance for closure, post-closure care and corrective action at MSWLFs.</p>	101.700	<p>Restated to include all sanitary disposal projects (SDPs), not just municipal solid waste landfills (MSWLFs), as required by Iowa law.</p> <p>567—101.700(455B) Purpose. The purpose of this division is to implement Iowa Code subsections 455B.304(8) and 455B.306(9) by providing the criteria for establishing financial assurance for closure, post-closure care, and corrective action at sanitary disposal projects, whichever is applicable.</p>		<p>Revisions were made to these requirements to align with statutory authority and federal regulatory obligations (40 CFR 258, Subpart G and 40 CFR 264, Subpart H), where applicable, and to standardize terminology. Financial assurance is required of all SDPs by Iowa Code, and over time, these requirements have been incorporated into several Solid Waste Iowa Administrative Code (IAC) chapters. This proposed rulemaking consolidates financial assurance requirements in one location, eliminating significant duplication, and at times, the omission of statutory obligations.</p>
Applicability	113.14(2)	<p>113.14(2) Applicability. The requirements of this rule apply to all owners and operators of MSWLFs except owners or operators that are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.</p>	101.701	<p>567—101.701(455B) Applicability.</p> <p>The rule was revised to: 1) include exemptions for certain sanitary landfills that ceased accepting solid waste prior to adoption of these requirements, and 2) non-landfill SDPs that have either completed proper site closure or sanitary landfills that have completed post-closure care obligations.</p>	<p>455B.304(8) & 455B.306(9)</p>	<p>These financial assurance exemptions are carried over from current IAC provisions and are not “new” exemptions.</p>
Definitions and incorporation by reference	NA	NA	101.702	<p>567—101.702(455B) Definitions and incorporation by reference.</p> <p>These definitions only apply to financial assurance and therefore have only been incorporated within this division, and not in proposed 567 IAC 100. Several definitions are already defined within rule 567—113.14(455B) and some definitions have been taken from 40 CFR, 264.141(f) for consistency in terminology.</p>		<p>As the rule catchwords state, the definitions in Iowa Code section 455B.301 and in proposed 567—Chapter 100 have been incorporated by reference to this division.</p>

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<p>Financial assurance for closure of sanitary disposal projects that are not sanitary landfills</p>	<p>NA</p>	<p>NA</p>	<p>101.703</p>	<p>567—101.703(455B) Financial assurance for closure of sanitary disposal projects that are not sanitary landfills.</p> <p>This rule was added to incorporate the financial assurance requirements for SDPs that are not sanitary landfills (i.e., solid waste transfer stations and solid waste incinerators). Submission frequency will remain a function of the permit renewal process for these non-landfill SDP facility types.</p>	<p>The applicable closure criteria (e.g., closure cost estimates) will be expressed within each SDP’s applicable division, and will reference this financial assurance division regarding allowable instruments.</p> <p>It’s important to note that for non-landfill SDPs, there is no “pay-in period” or “closure and post-closure care account” requirement, and the selected financial assurance instrument(s) must be in an amount equal to the current closure cost estimate.</p>
<p>Financial assurance for closure of sanitary landfills</p>	<p>113.14(3)</p>	<p>113.14(3) <i>Financial assurance for closure.</i></p>	<p>101.704</p>	<p>567—101.704(455B) Financial assurance for closure of sanitary landfills.</p> <p>This rule was revised to broaden its applicability to all sanitary landfills, as required by Iowa Code, and not just MSWLFs, as expressed within subrule 113.14(3).</p>	<p>This proposed rule places a not to exceed 5-year limitation upon the consecutive application of the Inflation Factor to the annual cost estimate before a new detailed written estimate is required. Sanitary landfills routinely undergo closure and construction of new cells, and only applying the Inflation Factor will not accurately account for these site modifications.</p> <p>To address the issue of delayed annual audits being approved by the State Auditor’s Office, this proposed rule codifies the present practice of allowing publicly-owned sanitary landfills to submit financial institution statements to document the current balance of a trust fund, local government dedicated fund, or the statutorily-mandated closure and post-closure care accounts. Upon completion and approval of the annual audit, a copy shall be provided to the DNR to substantiate the financial institution account statement.</p> <p>The remaining provisions mirror the current sanitary landfill closure requirements in subrule 113.14(3).</p>
<p>Financial assurance for</p>	<p>113.14(4)</p>	<p>113.14(4) <i>Financial assurance for postclosure care.</i></p>	<p>101.705</p>	<p>567—101.705(455B) Financial assurance for post-closure care of sanitary landfills.</p>	<p>As noted above, this rule also includes a 5-year limitation upon the consecutive application of the</p>

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<p>post-closure care of sanitary landfills</p>				<p>This rule was revised to broaden its applicability to all sanitary landfills, as required by Iowa Code, and not just MSWLFs, as expressed within subrule 113.14(3).</p>	<p>Inflation Factor, and allows publicly-owned sanitary landfills to submit financial institution statements to document the current account balance(s).</p> <p>The remaining provisions mirror the current sanitary landfill post-closure care requirements in subrule 113.14(4).</p>
<p>Financial assurance for corrective action at sanitary landfills</p>	<p>113.14(5)</p>	<p>113.14(5) <i>Financial assurance for corrective action.</i></p>	<p>101.706</p>	<p>567—101.706(455B) Financial assurance for corrective action at sanitary landfills.</p> <p>This rule was revised to clarify the process and what documentation needs to be submitted to the DNR and when.</p>	<p>Minor revisions were made to this rule to align with the requirements established in 40 CFR 258, Subpart G. For example, there is no DNR “approved corrective action plan” but rather there is an “approved assessment of corrective measures.”</p> <p>As was noted above for Closure and Post-closure care, the Inflation Factor may be used for up to three consecutive years before submitting a new detailed written estimate.</p>
<p>Allowable financial assurance instruments</p>	<p>113.14(6)</p>	<p>113.14(6) <i>Allowable financial assurance mechanisms.</i></p>	<p>101.707</p>	<p>567—101.707(455B) Allowable financial assurance instruments.</p> <p>This rule was revised to align with the terminology and phrasing established in 40 CFR 258, Subpart G, as well as to acknowledge the difference in requirements for SDPs that are not sanitary landfills (e.g., no pay-in period for non-landfill SDPs).</p>	<p>For entities using the Letter of Credit instrument, a standby trust fund must be established so that if called upon, there is a location for the funds to be deposited. This is the same requirement that is already in the Surety Bond regulations.</p> <p>Notification timeframes (e.g., cancellation and proof of alternative financial assurance) have been revised and standardized between instruments for consistency.</p> <p>455B.301(9) & 455B.306(9)</p> <p>Applicable definitions have been removed from the individual financial assurance instruments and consolidated within new rule 567—101.702(455B).</p> <p>For the Corporate Financial Test, the required letter shall be submitted by the owner’s or operator’s chief financial officer rather than a certified public accountant. This mirrors the requirement in 40 CFR 258, Subpart G and has been an issue that has previously required waivers.</p>

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<p>General requirements</p>	<p>113.14(7)</p>	<p>113.14(7) <i>General requirements.</i></p>	<p>101.708</p>	<p>567—101.708(455B) General requirements.</p> <p>This rule was revised to clarify the process and what documentation needs to be submitted to the DNR and when.</p>	<p>455B.304(8) & 455B.306(9)</p>	<p>Minor revisions were made to this rule to account for the statutory obligation to establish financial assurance prior to permit issuance.</p> <p>A provision was included to stipulate the DNR’s authority to request payment from financial assurance providers when the owner or operator declares an economic inability to comply (e.g., filing for bankruptcy).</p> <p>Also, a clarifying sentence was added stating that instruments guaranteeing performance rather than payment may not be combined with other instruments, which is stipulated in 40 CFR 258.74(k).</p> <p>A provision was included to address “Financial assurance cancellation and permit suspension.” These criteria and timeframes were included within the individual financial assurance instruments and consolidating them allows for greater consistency and the removal of significant duplication.</p>
<p>Closure and post-closure care accounts</p>	<p>113.14(8)</p>	<p>113.14(8) <i>Closure and post-closure accounts.</i></p>	<p>101.709</p>	<p>567—101.709(455B) Closure and post-closure care accounts.</p> <p>Closure and Post-closure care accounts are a unique component of Iowa’s financial assurance requirements and these proposed revisions provide clarification regarding how these accounts fit into financial assurance, the documentation needed to ensure such accounts are restricted, and how to calculate the annual projected deposit.</p>	<p>455B.306(9)(b)</p>	<p>This rule now explicitly states that the closure and post-closure care accounts are a part of financial assurance.</p> <p>Proof of establishment of accounts was revised to include submission at the time of permit application and renewal. The DNR has found that over time, these accounts have been modified without notice to the DNR, and this revision will ensure these accounts are current, appropriately restricted, and documented. The DNR will continue to review these establishment documents as part of the annual financial assurance submissions.</p> <p>A statement was include to clarify that the closure and post-closure care accounts shall be</p>

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					<p>fully-funded at the time of site closure, which addresses this issue with the deposit calculation when RPC = 0 (e.g., if LF closes early).</p> <p>A statement was included that codifies a prior policy change that “RPC may include those areas that have yet to be constructed, but have received written design approval from the department.”</p> <p>§455B.306(9)(b) requires the operator of a sanitary landfill to maintain closure and post-closure accounts, which may be combined into one account. This requirement was inadvertently omitted from current rule 567—115.31(455B) for industrial monofill sanitary landfill financial assurance. Because this consolidated financial assurance division will apply to all sanitary landfills (as they are SDPs), this requirement will apply upon adoption. To provide these entities time, subrule 101.709(11) was included to provide entities 6 months to submit proof of establishment of the accounts and 10-years to demonstrate compliance with this financial assurance requirement.</p>
Amount of required financial assurance	113.14(9)	113.14(9) <i>Amount of required financial assurance.</i>	101.710	567—101.710(455B) Amount of required financial assurance.	<p>455B.304(8) & 455B.306(9)</p> <p>Minor revisions to this rule were made to acknowledge that sanitary landfills have the ability to reduce the amount of financial assurance required based upon the value of the closure/post-closure account. This allowance does not apply to non-landfill SDPs.</p>