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RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Christi Craddick
Commissioner Wayne Christian
Commissioner Jim Wright

FROM: Leslie Savage, Chief Geologist
Betsy Peticolas, Attorney
Office of General Counsel

THROUGH: Alexander C. Schoch, General Counsel

DATE: October 6, 2026

SUBJECT: Item 478; Proposed amendments to 16 TAC §§
5.102, 5.202, 5.203, 5.204, 5.205, and 5.206

October 6, 2026		
Approved	Denied	Abstain
DS CC		
DS WC		
DS JW		

Attached is Staff's recommendation to publish proposed amendments to various rules in 16 Texas Administrative Code Chapter 5, Subchapters A and B. Specifically, the proposed amendments would affect §5.102 (relating to Definitions) in Subchapter A; and §5.202 (relating to Permit Required, and Draft Permit and Fact Sheet); §5.203 (relating to Application Requirements), §5.204 (relating to Notice of Permit Actions and Public Comment Period), §5.205 (relating to Fees, Financial Responsibility, and Financial Assurance), and §5.206 (relating to Permit Standards) in Subchapter B.

The amendments are proposed to add two definitions, amend two definitions, and flexibility with respect to casing/tubing through the injection interval and the placement of packer with respect to cemented casing, clarify the difference between a public meeting and a contested case hearing, and expand the options for financial responsibility mechanisms.

Staff requests the Commission's approval to publish the proposed amendments in the Texas Register for public comment. If approved at conference on October 6, 2026, the proposal should appear in the October 23, 2026 issue of the Texas Register. The proposal and an online comment form would also be made available on the Commission's website, giving interested persons more than two additional weeks to review and submit comments to the Commission.

cc: Wei Wang, Executive Director
David Lindley, Director, Oil and Gas Division
Paul Dubois, Assistant Director, Technical Permitting, Oil and Gas Division

1 The Railroad Commission of Texas (the "Commission") proposes amendments to §5.102 (relating
2 to Definitions) in Subchapter A; and in Subchapter B proposes amendments to §5.202 (relating to Permit
3 Required, and Draft Permit and Fact Sheet); §5.203 (relating to Application Requirements), §5.204 (relating
4 to Notice of Permit Actions and Public Comment Period), §5.205 (relating to Fees, Financial
5 Responsibility, and Financial Assurance), and §5.206 (relating to Permit Standards).

6 The Commission proposes to add two definitions, amend two definitions, add flexibility with
7 respect to casing/tubing through the injection interval and the placement of a packer with respect to
8 cemented casing, clarify the difference between a public meeting and a contested case hearing, and expand
9 the options for financial responsibility mechanisms.

10 The Environmental Protection Agency (EPA) protects underground sources of drinking water
11 (USDW) by regulating the injection of fluids underground for storage or disposal. The Safe Drinking Water
12 Act (SDWA) and the Underground Injection Control (UIC) program provide the primary regulatory
13 framework. From the early 1980s until 2010, EPA regulated five classes of wells according to the type of
14 fluid injected, the depth of injection, and the potential to endanger USDWs. In 2010, EPA promulgated
15 rules creating a sixth well class (Class VI) specifically to regulate the injection of carbon dioxide ("CO₂")
16 into deep subsurface rock formations. EPA established minimum technical criteria for permitting, site
17 characterization, area of review and corrective action, financial responsibility, well construction, operation,
18 mechanical integrity testing, monitoring, well-plugging, post-injection site care, and site closure
19 requirements.

20 Under the SDWA, EPA may delegate its authority to implement and enforce the UIC program to
21 states upon application. Until a state receives primacy, EPA directly implements the UIC program through
22 its regional offices.

23 The Commission adopted initial regulations to implement the Class VI UIC program effective
24 December 20, 2010, and amended those regulations to be effective on September 19, 2022, and again on
25 September 13, 2023, to reflect changes in the Texas statutes and to ensure that the state's program meets
26 the minimum federal requirements for Class VI UIC wells. The State submitted to EPA its official
27 application for primacy of the Class VI UIC program on December 19, 2022. EPA determined that the
28 Commission's program met the minimum federal requirements and approved the Commission's application
29 for primacy over Class VI UIC wells effective December 15, 2025.

30
31 *Proposed Amendments to §5.201 Definitions*

32 The Commission proposes to amend the definition of "Affected person" in §5.102(1) to clarify that
33 an affected person is a person who has a personal justiciable interest related to a legal right, duty, or

1 privilege and that has suffered or may suffer actual injury or economic damage as a result of the activity
2 sought to be permitted. Affected persons may protest a permit and request a contested case hearing.

3 The Commission proposes to amend §5.201(14) to add a definition for “contaminant” as “any
4 physical, chemical, biological, or radiological substance or matter in water.”

5 The Commission also proposes to amend the definition for “Offshore” to indicate the area in the
6 Gulf of Mexico/America seaward of the coast that is within three marine leagues of the coast.

7 The Commission proposes to add a definition for “Public meeting” as a meeting held by the
8 Commission to receive comments on a draft permit for a Class VI injection well.

9 The Commission proposes to renumber the remaining definitions.

10 The Commission proposes to amend the definition of “Geologic Storage Facility” to replace the
11 undefined term “area of elevated pressure” with the term “pressure front,” as that term is defined in 16
12 TAC §5.102(47). The current definition uses the term “area of elevated pressure,” which could be
13 interpreted to encompass any non-zero pressure increase. The proposed clarification resolves this
14 ambiguity by incorporating the existing defined term.

15
16 *Proposed Amendments to §5.202, Permit Required, and Draft Permit and Fact Sheet*

17 The Commission proposes to amend §5.202(e)(2)(C)(iv)(III) to replace the term “hearing” with
18 “public meeting” to clarify that the fact sheet must include the date, time, and location of the public meeting
19 if a public meeting has been scheduled.

20
21 *Proposed Amendments to §5.203 Application Requirements*

22 The Commission proposes to amend §5.203(e)(1)(B)(v) to state that an operator may request
23 approval of an exception to a cemented well string or liner through the injection zone by filing with the
24 director of the Oil and Gas Division a written request for such approval providing all pertinent information
25 to support the exception. The current language requires that if the long string casing does not extend
26 through the injection zone, another well string or liner must be cemented through the injection zone (for
27 example, a chrome liner).

28 The Commission proposes to amend §5.203(e)(1)(C)(i) to provide for approval of an exception to
29 the requirement that the packer must be set at a depth opposite of a cemented interval by filing with the
30 director a written request for such approval providing all pertinent information to support the exception.

31 The Commission proposes to amend §5.203(j) (relating to Plan for monitoring, sampling, and
32 testing after initiation of operation) to delete language in subsection (j)(2)(C) to delete the phrase “after
33 initiation of injection” as superfluous because subsection (j) relates to activities after initiation of
34 operation.

1 The Commission proposes to amend §5.203(j)(2)(D)(i) by deleting the requirement for periodic
2 sampling of the fluid temperature, pH, conductivity, reservoir pressure and static fluid level of the
3 injection zone. The Federal regulations at 40 CFR §146.87 require this information prior to injection well
4 operation – not during injection – and this requirement is already in existing §5.203(f)(3)(A).

5 The Commission proposes to amend §5.203(j)(2)(E) to clarify that both direct and indirect
6 methods of tracking the extent of the CO₂ plume and the position of the pressure front are required by the
7 current Federal regulations at 40 CFR §146.90(g), and to clarify that indirect methods other than those
8 enumerated in the section may be required based on site-specific geology.

9 The Commission proposes to clarify §5.203(m)(7)(H) by replacing the phrase “area of elevated
10 pressure” with the term “pressure front” as defined in §5.201(48) consistent with the changes discussed
11 above.

12
13 *Proposed Amendments to §5.204 Notice of Permit Actions and Public Comment Period*

14 The Commission proposes to amend §5.204, relating to Notice of Permit Actions and Public
15 Comment Period, to clarify the difference between a contested case hearing to consider protests from
16 affected persons and a public meeting to accept comments from interested persons. The Commission has
17 replaced the term “public hearing” with the terms “public meeting” and “contested case hearing”, where
18 appropriate.

19 The Commission proposes to amend §5.204(a), relating to Notice requirements, to distinguish
20 between a “public meeting” and a “contested case hearing”. The Commission proposes to amend
21 §5.204(a)(1) to clarify that the Commission will give notice when the Commission has scheduled a public
22 meeting to accept comment from interested persons under §5.204(b)(1)(A) and a contested case hearing
23 to consider protests from affected persons under §5.204(b)(2).

24 The Commission proposes to amend §5.204(a)(3), relating to Methods of notification, to clarify
25 that the Commission will give individual notice of a draft permit, public meeting, or contested case
26 hearing.

27 The Commission proposes to amend §5.204(a)(4)(E)(i) to clarify that interested persons may
28 request a public meeting. The Commission proposes to amend §5.204(a)(4)(E)(ii) to add a requirement
29 that affected persons include a basis for their claimed status as an affected person and to distinguish
30 between a public meeting and a contested case hearing. The Commission proposes to amend
31 §5.204(a)(4)(E)(iii) to clarify the beginning and end of the period during which the Commission will
32 receive comments, requests for a public meeting, and protests.

33 The Commission proposes to amend §5.204(a)(6) to delete existing language and add language to
34 require that notices of public meetings include information satisfying the requirements of 40 CFR

§124.10(d)(2), which requires that notice of public hearings include reference to the date of previous public notices relating to the permit; date, time, and place of the meeting; and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

The Commission proposes to amend §5.204(a)(6) to replace “Notice to certain communities” with “Public outreach and community engagement.” The Commission proposes to create new subparagraphs (A), (B), and (C). Subparagraph (A) requires the applicant to conduct engagement with key stakeholders such as state and local emergency response officials while developing required Class VI project plans such as the Emergency and Remedial Response Plan, to better understand community concerns and needs.

New subparagraph (B) would encourage applicants to initiate public outreach as well as community engagement during the planning stage of a project to appropriately incorporate input from the surrounding community prior to the eventual development and submittal of a Class VI permit application. The Commission proposes to delete reference to the term “Environmental Justice” community to emphasize that the Commission encourages the applicant to initiate public outreach and community engagement for *all* communities in the area of a project. The Commission does not propose to change the language regarding Limited English-Speaking Household communities.

New subparagraph (C) would require the applicant to provide the Commission with a list and summary of meetings held under subparagraphs (A) and (B).

The Commission proposes to add new paragraph §5.204(a)(7) to replace “Notice to certain communities” with “Public outreach and community engagement” to clarify that such activities should include all communities. The Commission proposes to amend §5.204(a)(7)(B) to change the language to active voice, make other grammatical changes, and to delete reference to environmental justice to reflect the fact that public outreach and engagement should involve all communities in the area of a specific proposed project. The Commission proposes to move the current language in §5.204(a)(7) relating to comment period for a draft permit more appropriately to §5.204(b) relating to public comment.

The Commission proposes to amend §5.204(b) to distinguish between public meetings and contested case hearings.

The Commission proposes to amend §5.204(b)(1)(A) to clarify that public notice of a draft permit, including a notice of intent to deny a permit application, must allow at least 30 days for public comment. The Commission also proposes to replace “public hearing” with “public meeting” to clarify that the purpose of the public meeting is to receive public comment and the public comment period must be extended to the close of any public meeting, rather than contested case hearing, which is addressed in §5.204(b)(3). The Commission also proposes to add language that states that, if the director extends the comment period, the Commission must notice such extension on the Commission’s public website.

1 The Commission proposes to amend §5.204(b)(1)(B) to delete the language regarding reasonable
2 limits for oral statement and the possible requirement that statements be in writing and move the language
3 to the section discussing public meetings. The Commission also proposes to clarify that during the public
4 comment period, any interested person may submit written comments on the draft permit and may request
5 a public meeting rather than a contested case hearing if one has not already been scheduled as this section
6 addresses receipt of public comment.

7 The Commission proposes to move the language in current §5.204(b)(1)(C) regarding automatic
8 extension of the public comment period to the close of any public meeting to §5.204(b)(1)(A), which
9 addresses public comment. The Commission proposes to delete the current language stating that the
10 hearing examiner may also extend the comment period by so stating at the hearing to distinguish the
11 public comment period and public meeting from a contested case hearing.

12 The Commission proposes to amend §5.204(b)(2) to add a new paragraph relating to
13 public meetings to clarify that the Commission must hold a public meeting if the director finds, on the
14 basis of requests, a significant degree of public interest in a draft permit. The public meeting shall be
15 structured for the receipt of oral or written comments. The Commission also proposes to clarify that the
16 Commission may set reasonable limits upon the time allowed for oral statements at a public meeting, and
17 the submission of statements in writing may be required. The Commission also proposes to clarify that
18 the director must issue a response to comments specifying which provisions, if any, of the draft permit
19 have been changed in the final permit decision, and the reasons for the change, and briefly describing and
20 responding to all significant comments on the draft permit raised during the public comment period. The
21 Commission must post the response to comments on the Commission's public website.

22 The Commission proposes to amend §5.204(b)(3) to clarify that the paragraph relates to contested
23 case hearings. The Commission proposes to reorganize the language in subparagraph (B) to clarify that
24 the subparagraph relates to contested case hearings and to clarify that it is the Commission, rather than the
25 director, that conducts contested case hearings. Current subparagraph (D) is renumbered to (C).

26 The Commission proposes to amend subparagraph §5.204(b)(3)(D) (current subparagraph (E)) to
27 delete the phrase “Upon written request of the applicant” and to reorganize the language to make the
28 subparagraph clearer.

29 The Commission proposes to renumber current paragraph §5.204(b)(3) to (4) and current
30 paragraph §5.204(b)(4) to (5) and to clarify that the paragraphs relate to contested case hearings.

31 The Commission proposes to renumber current paragraph §5.204(b)(5) to (6) and to clarify that
32 response to issues considered during a contested case hearing will be addressed in the Hearing
33 Examiners’ recommendation for final action and to state that the Commission will post the Hearing
34 Examiners’ recommendation for final action and the final order on the Commission's public website.

1 *Proposed Amendments to §5.205 Fees, Financial Responsibility, and Financial Assurance*

2 The Commission proposes to amend §5.205 Fees, Financial Responsibility, and Financial
3 Assurance to expand the options for financial assurance mechanisms. Currently, the rule allows bonds
4 and letters of credit. The current rules in Chapter 5 do not include the additional options partly because
5 the various potential additional forms of financial assurance had not been fully evaluated in terms of
6 either their compliance with EPA's rules or the nature and extent of the financial risk to the state. The
7 Commission stated that it would consider future amendments to allow additional mechanisms for
8 financial assurance in the future. The Commission has reviewed the various options for financial
9 assurance mechanisms and proposes to broaden the options allowed by the current rule.

10 Section 5.205 requires financial assurance for corrective action, post-injection site care and
11 monitoring, site closure (including injection well plugging), and emergency and remedial response. The
12 financial responsibility requirements are designed to ensure that owners and operators have the resources
13 to carry out required geologic storage activities related to operating, closing and remediating geologic
14 storage sites, if needed, so that they do not endanger USDWs. Financial assurance is intended to prevent
15 the general public from bearing the costs of any emergency response, closure, and/or monitoring of a
16 geologic storage facility.

17 Staff have received numerous questions from industry regarding calculating the necessary
18 financial assurance to cover the Emergency and Remedial Response Plan. Staff plans to develop guidance
19 that will incorporate all the considerations necessary to ensure that there will be adequate financial
20 assurance to cover emergency and remedial response actions and welcomes input into such guidance.

21 The federal regulations allow for trust funds, surety bonds, letters of credit, insurance, self-
22 insurance (*i. e.*, Financial Test and Corporate Guarantee), escrow accounts, and any other instrument(s)
23 satisfactory to the Director. The Commission has evaluated the various options for financial assurance for
24 geologic storage activities and proposes that, in addition to surety bonds and letters of credit, an owner or
25 operator of a geologic storage facility may use trust funds, insurance, escrow accounts, and any other
26 instrument(s) satisfactory to the director to meet the financial responsibility requirements of the rule.

27 The Commission proposes to amend §5.204(i) to allow an owner or operator to demonstrate
28 financial responsibility by using one or multiple qualifying financial instruments for specific phases of a
29 geologic storage project. In the event that the owner or operator combines more than one instrument for a
30 specific geologic storage phase (e.g., well plugging), such combination must be limited to instruments
31 that are not based on financial strength or performance (*i.e.*, performance bond), for example trust funds,
32 surety bonds guaranteeing payment into a trust fund, letters of credit, escrow account, and insurance. and
33 any other instrument(s) satisfactory to the director. In this case, it is the combination of mechanisms,

1 rather than the single mechanism, which must provide financial responsibility for an amount at least equal
2 to the current cost estimate. This language is consistent with federal requirements.

3 Certain financial assurance instruments are not appropriate for all geologic storage activities. The
4 appropriateness of the instrument is tied to the financial risk to the state. Trust funds, letters of credit, and
5 surety bonds may be appropriate for corrective action. Trust funds may be appropriate for post-injection
6 site care and site closure. Insurance may be appropriate for unforeseen circumstances, such as emergency
7 response and remedial action.

8 The Commission is not specifically proposing to allow self insurance or financial assurance
9 mechanisms based on financial strength of the owner or operator of a geologic storage facility. Under
10 self-insurance, an owner or operator assumes full financial responsibility for potential losses rather than
11 transferring risk to an insurance company. Although self insurance is beneficial for owners and operators
12 because it is likely to have the lowest overhead cost, it exposes the owner or operator to possible
13 catastrophic financial exposure and unpredictable out-of-pocket expenses. Unlike traditional insurance
14 that pools risks across thousands of policyholders, self insurance leaves the owner or operator solely
15 responsible for covering massive, unexpected events. A single large claim can devastate cash flow or
16 even cause bankruptcy.

17 Self insurance also represents the highest financial risk to the public. There is a greater risk of
18 instrument failure for self-insurance. This is particularly true in the post injection site care period, because
19 the facility represents an ongoing liability as the injection well is no longer in operation and profitable. In
20 addition, in the past several large corporations that were considered unimpeachable and too big to fail
21 have ultimately collapsed, leaving the state to bear the costs. Furthermore, self insurance is the most labor
22 intensive form of financial assurance for the permitting agency.

23 In Water Code Section 27.073, relating to injection wells, the statute provides that a person to
24 whom an injection well permit is issued may be required by the Railroad Commission to maintain a
25 performance bond or other form of financial security to ensure that an abandoned injection well is
26 properly plugged; or funds are available for plugging, postinjection site care, and closure of an
27 anthropogenic carbon dioxide injection well. By using the phrase “other form of financial security”
28 alongside a specific security instrument, a performance bond, the Legislature appears to have intended for
29 the rules of the Commission to require entities to supply fungible financial assurance, rather than just
30 evidence of financial assurance.

31 The Commission welcomes comments from interested persons regarding the various forms of
32 financial assurance and specifically whether certain forms of financial assurance are appropriate to
33 mitigate particular risks to the state.

1 The Commission proposes to amend §5.204(c) to add the language surrounding these additional
2 financial assurance mechanisms to make sure they comport with federal regulations. The Commission
3 proposes to add a sentence to clarify that financial responsibility instruments must be approved by the
4 director. The Commission also proposes to amend §5.204 to replace the phrase “bond or letter of credit”
5 with “financial assurance instrument” to reflect the expansion of financial assurance options.

6 The Commission proposes to amend §5.204(c)(2)(C)(i) to replace the term “perform” with the
7 phrase “cover the cost of” to clarify that the amount of financial assurance must be equal to or greater
8 than the maximum amount necessary to cover the cost of corrective action, emergency response, and
9 remedial action, post-injection monitoring and site care, and closure of the geologic storage facility,
10 including plugging of wells, at any time during the permit term in accordance with all applicable state
11 laws, Commission rules and orders, and the permit. The Commission also proposes to add a sentence to
12 clarify that the financial assurance instruments must be sufficient to address endangerment of
13 underground sources of drinking water consistent with the federal requirements for Class VI injection
14 wells. The Commission also proposes to add a new clause (iii) to state that the requirement to maintain
15 adequate financial responsibility and resources is directly enforceable regardless of whether the
16 requirement is a condition of the permit consistent with the federal requirements. The Commission
17 proposes to renumber the remaining clauses.

18 The Commission proposes to amend §5.204(c)(2) to add a new subparagraph (D) relating to the
19 acceptable financial responsibility instruments. Such instruments include trust funds, surety bonds, letters
20 of credit, insurance, escrow accounts, and any other instrument(s) satisfactory to the director. The owner or
21 operator may demonstrate financial responsibility by using one or multiple qualifying financial instruments
22 for specific phases of the geologic storage project. In the event that the owner or operator combines more
23 than one instrument for a specific geologic storage phase, such combination must be limited to instruments
24 that are not based on financial strength or performance, for example trust funds, surety bonds guaranteeing
25 payment into a trust fund, letters of credit, escrow account, and insurance. In this case, it is the combination
26 of mechanisms that must provide financial responsibility for an amount at least equal to the current cost
27 estimate.

28 The Commission also proposes to add language that requires that the owner or operator provide
29 proof that any third-party provider either has passed financial strength requirements based on credit ratings;
30 or has met a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.
31 In addition, an owner or operator using certain types of third-party instruments must establish a standby
32 trust to enable the Commission to be party to the financial responsibility agreement without EPA being the
33 beneficiary of any funds. The standby trust fund must be used along with other financial responsibility

1 instruments (e.g., surety bonds, letters of credit, or escrow accounts) to provide a location to place funds if
2 needed.

3 The Commission proposes to add language that states that an owner or operator may deposit money
4 into an escrow account to cover financial responsibility requirements and that this account must segregate
5 funds sufficient to cover estimated costs for Class VI financial responsibility from other accounts and uses.
6 The director must approve the use and length of pay-in-periods for trust funds or escrow accounts.

7 The Commission proposes to add language that allows an owner or operator to obtain an insurance
8 policy to cover the estimated costs of geologic storage activities requiring financial responsibility, but that
9 the insurance policy must be obtained from a third-party provider.

10 The Commission proposes to amend §5.204(c) to add new paragraph (6) to clarify that the director
11 may deny the use of a financial instrument if the director determines that it is not sufficient to meet the
12 requirements of this section.

13 The Commission proposes to amend §5.204(c) to add new paragraph (7) to state that the owner or
14 operator must provide any updated information related to its financial responsibility instrument(s) on an
15 annual basis and, if there are any changes, the director must evaluate, within a reasonable time, the
16 financial responsibility demonstration to confirm that the instruments used remain adequate for use.

17 The Commission proposes to amend new subsection (d), relating to notice of adverse financial
18 conditions, to state that, in the event that the owner or operator or the third party provider of a financial
19 responsibility instrument is going through a bankruptcy, the owner or operator must notify the director by
20 certified mail of the commencement of a voluntary or involuntary proceeding under Title 11
21 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of
22 the proceeding.

23 The Commission proposes to renumber current paragraph (3) and replace the term “bond” with
24 “financial assurance”.

25 The Commission proposes to add new paragraph (5) to state that an owner or operator who
26 fulfills the requirements of this section by obtaining a trust fund, surety bond, letter of credit, escrow
27 account, or insurance policy will be deemed to be without the required financial assurance in the event of
28 bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the
29 trustee institution to act as trustee of the institution issuing the trust fund, surety bond, letter of credit,
30 escrow account, or insurance policy. The owner or operator must establish other financial assurance
31 within 60 days after such an event. This language is required to ensure that the rule language is consistent
32 with the federal requirements.

33 The Commission proposes to amend §5.206(k)(3)(A) to replace the phrase “area of elevated
34 pressure” with “pressure front” as discussed above.

1 Leslie Savage, Chief Geologist, Oil and Gas Division, has determined that for each year of the
2 first five years that the amendments will be in effect, there will be no additional economic costs for
3 persons required to comply with the proposed amendments. Similarly, there will be no additional
4 economic costs, reduction in costs, or losses or increases in revenue to the state or local governments as a
5 result of enforcing or administering the rule. The federal regulations governing Class VI wells may create
6 costs for persons required to comply. However, persons required to comply with the federal requirements
7 must do so regardless of whether the requirements are adopted in Commission rules because if the
8 Commission were not approved to enforce the Class VI program, EPA would enforce the same
9 requirements. The proposed amendments to Commission rules do not create any additional economic
10 costs for persons required to comply. The proposed amendments provide clarity and flexibility to the
11 requirements of the rules.

12 Ms. Savage has determined that for each year of the first five years that the amendments will be
13 in effect, the public benefit will be the clarification of the Commission regulations regarding geologic
14 storage of anthropogenic carbon dioxide, and flexibility for financial assurance of such facilities in
15 support of the prevention of pollution of surface and subsurface waters of the state and promotion of
16 safety in accordance with Texas Natural Resources Code, §85.042 and §91.101. Achieving meaningful
17 reductions in CO₂ emissions while preserving the benefits of our energy-intensive economy cannot be
18 accomplished without significant deployment of carbon sequestration.

19 Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic
20 Effect, requires that, before adopting a rule that may have an adverse economic effect on small businesses
21 or micro-businesses, a state agency prepare an economic impact statement and a regulatory flexibility
22 analysis. The economic impact statement must estimate the number of small businesses subject to the
23 proposed rule and project the economic impact of the rule on small businesses. A regulatory flexibility
24 analysis must include the agency's consideration of alternative methods of achieving the purpose of the
25 proposed rule. If consistent with the health, safety, and environmental and economic welfare of the state,
26 the analysis must consider the use of regulatory methods that will accomplish the objectives of applicable
27 rules while minimizing adverse impacts on small businesses. Government Code §2006.001(2) defines
28 "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is
29 formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100
30 employees or less than \$6 million in annual gross receipts. A "micro-business" is defined as a legal entity,
31 including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a
32 profit; is independently owned and operated; and has no more than 20 employees.

33 Entities that perform activities under the jurisdiction of the Commission are not required to report
34 to the Commission their number of employees or their annual gross receipts, which are elements of the

1 definitions of "micro-business" and "small business" in Texas Government Code, §2006.001; therefore,
2 the Commission has no factual bases for determining whether any persons who drill and complete wells
3 under the jurisdiction of the Railroad Commission will be classified as small businesses or micro-
4 businesses, as those terms are defined. The North American Industrial Classification System (NAICS)
5 sets forth categories of business types. The Texas Comptroller of Public Accounts website page entitled
6 "HB 3430 Reporting Requirements-Determining Potential Effects on Small Businesses" provides
7 information regarding various categories of businesses. There appears to be no category for "carbon
8 sequestration". Based on the information available to the Commission regarding oil and gas operators
9 and the complexity of the Class VI UIC requirements, Ms. Savage has concluded that, of the businesses
10 that could be affected by the proposed amendments, it is unlikely that many would be classified as small
11 businesses or micro-businesses, as those terms are defined in Texas Government Code, §2006.001.
12 Furthermore, the bulk of the proposed amendments are necessary to ensure that the Commission's
13 regulations meet the requirements of the U.S. Environmental Protection Agency (EPA) to enable EPA to
14 approve state primacy for the Class VI UIC program. If the state does not have primacy for the Class VI
15 program, EPA would be the permitting agency. Therefore, the costs imposed by the proposed
16 amendments would be comparable to the costs imposed by the federal regulations.

17 The Commission has also determined that the proposed amendments will not affect a local
18 economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to
19 Texas Government Code §2001.022.

20 The Commission has determined that the amendments do not meet the statutory definition of a
21 major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory
22 analysis conducted pursuant to that section is not required.

23 The Commission reviewed the proposed amendments and found that they are neither identified in
24 Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(4), nor would they affect any action
25 or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(3).
26 Therefore, the proposed amendments are not subject to the Texas Coastal Management Program.

27 During the first five years that the rules would be in full effect, the proposed amendments would
28 not create or eliminate a new government program because the amendments are proposed to the
29 Commission's existing Class VI program. The proposed amendments would not create new employee
30 positions or eliminate any existing employee positions; increase or decrease future legislative
31 appropriations to the agency; or increase or decrease fees paid to the agency. The proposed amendments
32 would not create a new regulation and will not expand, limit, or repeal an existing regulation because the
33 Commission is adopting requirements that are included in existing federal regulations. Similarly, because
34 federal regulations are in place to govern Class VI UIC activities, the proposed amendments also do not

1 increase responsibility for persons under the Commission's jurisdiction and would not increase or
2 decrease the number of individuals subject to the rules. Finally, the proposed amendments would not
3 affect the state's economy and would not require a change in employee positions.

4 As part of the public comment period, the Commission will hold a virtual public hearing to
5 receive comments on the proposed amendments to Chapter 5.

6 The hearing will be structured for the receipt of oral or written comments by interested persons.
7 Individuals may present oral statements when called upon in order of registration. Open discussion will
8 not be permitted during the virtual hearing; however, Commission staff will be available after the meeting
9 to discuss the proposal. Depending on the number of persons wishing to speak, the Commission may
10 impose a time limit so that everyone who wishes to make a public comment will have the opportunity to
11 do so.

12 The hearing will be conducted remotely using an internet meeting service. Individuals who plan
13 to participate in the hearing and provide oral comments and/or want their participation on record must
14 register in accordance with instructions provided on the Commission's website. Information regarding the
15 public hearing will be posted on the Commission's website at least 10 business days in advance of the
16 hearing, which will occur within the comment period. Instructions for participating in the hearing will be
17 sent to those who register for the hearing. Individuals who do not wish to provide oral comments but
18 would like to view the hearing may do so. A link to the webcast will be added on the Commission's
19 website.

20 Any individual with a disability who plans to participate in the hearing and who requires auxiliary
21 aids or services should notify the Commission as far in advance as possible so that appropriate
22 arrangements can be made. Requests may be made to the Human Resources Department of the Railroad
23 Commission of Texas by mail at P.O. Box 12967, Austin, Texas 78711-2967; by telephone at 512-463-
24 6981 or TDD No. 512-463-7284; by e-mail at ADA@rrc.texas.gov; or in person at 1701 North Congress
25 Avenue, Suite 12-110, Austin, Texas.

26 Comments on the proposed amendments may be submitted to Rules Coordinator, Office of
27 General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at
28 www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail
29 to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on November
30 23, 2026. The Commission finds that this comment period is reasonable because the proposal and an
31 online comment form will be available on the Commission's website more than two weeks prior to Texas
32 Register publication of the proposal, giving interested persons additional time to review, analyze, draft,
33 and submit comments. The Commission cannot guarantee that comments submitted after the deadline will
34 be considered. For further information, call Ms. Savage at (512) 463-7308. The status of Commission

1 rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules. Once
2 received, all comments are posted on the Commission's website at [https://rrc.texas.gov/general-](https://rrc.texas.gov/general-counsel/rules/proposed-rules/)
3 [counsel/rules/proposed-rules/](https://rrc.texas.gov/general-counsel/rules/proposed-rules/). If you submit a comment and do not see the comment posted at this link
4 within three business days of submittal, please call the Office of General Counsel at (512) 463-7149. The
5 Commission has safeguards to prevent emailed comments from getting lost; however, your operating
6 system's or email server's settings may delay or prevent receipt.

7 The Commission proposes the amendments pursuant to Texas Natural Resources Code, §§81.051
8 and 81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or
9 operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and
10 regulating persons and their operations under the jurisdiction of the Commission; Texas Natural
11 Resources Code, Chapter 91, Subchapter R, relating to authorization for multiple or alternative uses of
12 wells; Texas Water Code, Chapter 27, Subchapter C-1, which gives the Commission jurisdiction over the
13 geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a reservoir that is initially
14 or may be productive of oil, gas, or geothermal resources or a saline formation directly above or below
15 that reservoir; Texas Health and Safety Code §382.502, which allows the Commission to adopt by rule
16 standards for the location, construction, maintenance, monitoring, and operation of a carbon dioxide
17 repository and requires the Commission to ensure standards comply with federal requirements issued by
18 the EPA; and Texas Water Code, Chapter 120, which establishes the Anthropogenic Carbon Dioxide
19 Storage Trust Fund, a special interest-bearing fund in the state treasury, to consist of fees collected by the
20 Commission and penalties imposed under Texas Water Code, Chapter 27, Subchapter C-1, and to be used
21 by the Commission for only certain specified activities associated with geologic storage facilities and
22 associated anthropogenic carbon dioxide injection wells.

23 Statutory authority: Texas Natural Resources Code, §§81.051, 81.052; Texas Natural Resources
24 Code, Chapter 91, Subchapter R; Texas Health and Safety Code §382.502; and Texas Water Code,
25 Chapters 27 and 120.

26 Cross reference to statute: Texas Natural Resources Code, Chapters 81 and 91, Texas Health and
27 Safety Code, Chapter 382, and Texas Water Code, Chapters 27 and 120.

28 29 30 **SUBCHAPTER A. GENERAL PROVISIONS**

31 §5.102. Definitions.

32 The following terms, when used in Subchapter B of this chapter, shall have the following
33 meanings, unless the context clearly indicates otherwise.

(1) Affected person--A person who has a personal justiciable interest related to a legal right, duty, or privilege, and who ~~[, as a result of activity sought to be permitted]~~ has suffered or may suffer actual injury or economic damage as a result of the activity sought to be permitted. An interest common to members ~~[other than as a member]~~ of the general public does not qualify as a personal justiciable interest.

(2) – (13) (No change.)

(14) Contaminant—Any physical, chemical, biological, or radiological substance or matter in water.

(15) ~~[(14)]~~ Corrective action--Methods to assure that wells within the area of review do not serve as conduits for the movement of fluids into or between underground sources of drinking water, including the use of corrosion resistant materials, where appropriate.

(16) ~~[(15)]~~ Delegate--The person authorized by the director to take action on behalf of the Railroad Commission of Texas under this chapter.

(17) ~~[(16)]~~ Director--The director of the Oil and Gas Division of the Railroad Commission of Texas or the director's delegate.

(18) ~~[(17)]~~ Division--The Oil and Gas Division of the Railroad Commission of Texas.

(19) ~~[(18)]~~ Draft permit--A document prepared indicating the director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination is not a draft permit.

(20) ~~[(19)]~~ Enhanced recovery operation--Using any process to displace hydrocarbons from a reservoir other than by primary recovery, including using any physical, chemical, thermal, or biological process and any co-production project. This term does not include pressure maintenance or disposal projects.

(21) ~~[(20)]~~ EPA--The United States Environmental Protection Agency.

(22) ~~[(21)]~~ Exempted aquifer--An aquifer or its portion that meets the criteria in the definition of underground source of drinking water but which has been exempted according to the procedures in 40 CFR §144.7.

(23) ~~[(22)]~~ Facility closure--The point at which the operator of a geologic storage facility is released from post-injection storage facility care responsibilities.

(24) ~~[(23)]~~ Flow rate--The volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel.

(25) ~~[(24)]~~ Fluid--Any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

(26) [(25)] Formation--A body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

(27) [(26)] Formation fluid--Fluid present in a formation under natural conditions.

(28) [(27)] Fracture pressure--The pressure that, if applied to a subsurface formation, would cause that formation to physically fracture.

(29) [(28)] Geologic storage--The long-term containment of gaseous, liquid, or supercritical anthropogenic CO₂ in subsurface geologic formations.

(30) [(29)] Geologic storage facility or storage facility--The underground geologic formation, underground equipment, injection wells, and surface buildings and equipment used or to be used for the geologic storage of anthropogenic CO₂ and all surface and subsurface rights and appurtenances necessary to the operation of a facility for the geologic storage of anthropogenic CO₂. The term includes the subsurface three-dimensional extent of the CO₂ plume, pressure front, ~~[associated area of elevated pressure, and displaced fluids, as well as]~~ the surface area above that delineated region, and any reasonable and necessary areal buffer and subsurface monitoring zones. The term does not include a pipeline used to transport CO₂ from the facility at which the CO₂ is captured to the geologic storage facility. The storage of CO₂ incidental to or as part of enhanced recovery operations does not in itself automatically render a facility a geologic storage facility.

(31) [(30)] Good faith claim--A factually supported claim based on a recognized legal theory to a continuing possessory right in pore space such that the pore space can be used for geologic storage of carbon dioxide.

(32) [(31)] Injection zone--A geologic formation, group of formations, or part of a formation that is of sufficient areal extent, thickness, porosity, and permeability to receive CO₂ through a well or wells associated with a geologic storage facility.

(33) [(32)] Injection well--A well into which fluids are injected.

(34) [(33)] Interested person--Any person who expresses an interest in an application, permit, or Class VI UIC well.

(35) [(34)] Limited English-speaking household--A household in which all members 14 years and older have at least some difficulty with English.

(36) [(35)] Lithology--The description of rocks on the basis of their physical and chemical characteristics.

(37) [(36)] Mechanical integrity--

(A) An anthropogenic CO₂ injection well has mechanical integrity if:

(i) there is no significant leak in the casing, tubing, or packer; and

(ii) there is no significant fluid movement into a stratum containing an underground source of drinking water through channels adjacent to the injection well bore as a result of operation of the injection well.

(B) The Commission will consider any deviations during testing that cannot be explained by the margin of error for the test used to determine mechanical integrity, or other factors, such as temperature fluctuations, to be an indication of the possibility of a significant leak and/or the possibility of significant fluid movement into a stratum containing an underground source of drinking water through channels adjacent to the injection wellbore.

(38) ~~[(37)]~~ Monitoring well--A well either completed or re-completed to observe subsurface phenomena, including the presence of anthropogenic CO₂, pressure fluctuations, fluid levels and flow, temperature, and/or in situ water chemistry.

(39) ~~[(38)]~~ Offshore--The area in the Gulf of Mexico/America seaward of the coast that is within three marine leagues of the coast.

(40) ~~[(39)]~~ Operator--A person, acting for itself or as an agent for others, designated to the Railroad Commission of Texas as the person with responsibility for complying with the rules and regulations regarding the permitting, physical operation, closure, and post-closure care of a geologic storage facility, or such person's authorized representative.

(41) ~~[(40)]~~ Owner--The owner of any facility or activity subject to regulation under the UIC program.

(42) ~~[(41)]~~ Owner or operator--The owner or operator of any injection well, or any other facility or activity that is subject to regulation under the UIC program. When a geologic storage facility is owned by one person but is operated by another person, it is the operator's duty to comply with the requirements of this subchapter and any permit issued under this subchapter, except that either the owner or the operator may demonstrate financial responsibility.

(43) ~~[(42)]~~ Packer--A device lowered into a well to produce a fluid-tight seal.

(44) ~~[(43)]~~ Permit--An authorization, license, or equivalent control document issued by the Commission to implement the requirements of this chapter.

(45) ~~[(44)]~~ Person--A natural person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(46) ~~[(45)]~~ Plugging--The act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation.

(47) ~~[(46)]~~ Post-injection facility care--Monitoring and other actions (including corrective action) needed following cessation of injection to assure that underground sources of drinking

water are not endangered and that the anthropogenic CO₂ remains confined to the permitted injection interval.

(48) [(47)] Pressure front--The zone of elevated pressure that is created by the injection of the CO₂ stream into the subsurface where there is a pressure differential sufficient to cause movement of the CO₂ stream or formation fluids from the injection zone into an underground source of drinking water.

(49) Public meeting--A meeting held by the Commission to receive public comment on a draft permit for a Class VI injection well.

(50) [(48)] Reservoir--A natural or artificially created subsurface stratum, formation, aquifer, cavity, void, or coal seam.

(51) [(49)] Stratigraphic test well--An exploratory well drilled for the purpose of gathering information in connection with a proposed carbon dioxide geologic storage project, including formation testing to obtain information on the chemical and physical characteristics of the injection zones and confining zones. Such testing may include injectivity testing.

(52) [(50)] Stratum (or strata)--A single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

(53) [(51)] Surface casing--The first string of well casing to be installed in the well.

(54) [(52)] Transmissive fault or fracture--A fault or fracture that has sufficient permeability and vertical extent to allow fluids to move beyond the confining zone.

(55) [(53)] UIC--Underground injection control.

(56) [(54)] Underground source of drinking water (USDW)--An aquifer or its portion which is not an exempt aquifer as defined in 40 CFR §146.4 and which:

- (A) supplies any public water system; or
- (B) contains a sufficient quantity of ground water to supply a public water system; and

- (i) currently supplies drinking water for human consumption; or

- (ii) contains fewer than 10,000 mg/l total dissolved solids.

(57) [(55)] Well injection--The subsurface emplacement of fluids through a well.

(58) [(56)] Well stimulation--Any of several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for fluid to move more readily into the formation including, but not limited to, surging, jetting, blasting, acidizing, and hydraulic fracturing.

(59) [(57)] Workover--An operation in which a down-hole component of a well is repaired or the engineering design of the well is changed. Workovers include operations such as

sidetracking, the addition of perforations within the permitted injection interval, and the addition of liners or patches. For the purposes of this chapter, workovers do not include well stimulation operations.

SUBCHAPTER B. GEOLOGIC STORAGE AND ASSOCIATED INJECTION OF ANTHROPOGENIC CARBON DIOXIDE (CO₂)

§5.202. Permit Required, and Draft Permit and Fact Sheet.

(a)-(d) (No change.)

(e) Draft permit and fact sheet.

(1) (No change.)

(2) Fact sheet.

(A)-(B) (No change.)

(C) The fact sheet shall include, when applicable:

(i)-(iii) (No change.)

(iv) a description of the procedures for reaching a final decision on the draft permit including:

(I) the beginning and ending dates of the comment period;

(II) the address where comments will be received;

(III) the ~~[The]~~ date, time, and location of the storage facility permit public meeting ~~[hearing]~~, if a public meeting ~~[hearing]~~ has been scheduled; and

(IV) any other procedures by which the public may participate in the final decision; and

(v) (No change.)

§5.203. Application Requirements.

(a)-(d) (No change.)

(e) Injection well construction.

(1) Criteria for construction of anthropogenic CO₂ injection wells. This paragraph establishes the criteria for the information about the construction and casing and cementing of, and special equipment for, anthropogenic CO₂ injection wells that an applicant must include in an application.

(A) (No change.)

(B) Casing and cementing of anthropogenic CO₂ injection wells.

(i)-(iv) (No change.)

(v) At least one long string casing, using a sufficient number of centralizers, must extend from the surface to the injection zone and must be cemented by circulating

1 cement to the surface in one or more stages. The long string casing must isolate the injection zone and
2 other intervals as necessary for the protection of USDWs and to ensure confinement of the injected and
3 formation fluids to the permitted injection zone using cement and/or other isolation techniques. If the long
4 string casing does not extend through the injection zone, another well string or liner must be cemented
5 through the injection zone (for example, a chrome liner). An operator may request an exception to the
6 packer setting depth by submitting a written request to the director and providing all pertinent information
7 to support the requested exception..

8 (vi)-(vii) (No change.)

9 (C) Special equipment.

10 (i) Tubing and packer. All injection wells must inject fluids through
11 tubing set on a packer. Packers must be set at a depth opposite of a cemented interval and no higher than
12 100 feet above the top of the permitted injection interval or at a location approved by the director. An
13 operator may request an exception to the packer setting depth by submitting a written request to the
14 director and providing all pertinent information to support the requested exception.

15 (ii) (No change.)

16 (2)-(4) (No change.)

17 (f)-(i) (No change.)

18 (j) Plan for monitoring, sampling, and testing after initiation of operation.

19 (1) (No change.)

20 (2) The plan must include the following:

21 (A)-(B) (No change.)

22 (C) ~~[after initiation of injection,]~~ the performance on a quarterly basis of
23 corrosion monitoring of the well materials for loss of mass, thickness, cracking, pitting, and other signs of
24 corrosion to ensure that the well components meet the minimum standards for material strength and
25 performance set forth in subsection (e)(1)(A) of this section. The operator must report the results of such
26 monitoring semi-annually. Corrosion monitoring may be accomplished by:

27 (i)-(iii) (No change.)

28 (D) monitoring of geochemical and geophysical changes, including:

29 (i) periodic ~~[sampling of the fluid temperature, pH, conductivity,~~
30 ~~reservoir pressure and static fluid level of the injection zone and]~~ monitoring for pressure changes, and for
31 changes in geochemistry, in a permeable and porous formation near to and above the top confining zone;

32 (ii)-(iv) (No change.)

33 (E) tracking the extent of the CO₂ plume and the position of the pressure front by
34 using direct methods in the injection zone and indirect methods, [geophysical techniques,] which may

include seismic, electrical, gravity, or electromagnetic surveys and/or down-hole CO₂ detection tools
unless the director determines, based on site-specific geology, that such methods are not appropriate;

(F)-(H) (No change.)

(k)-(l) (No change.)

(m) Post-injection storage facility care and closure plan. The applicant must submit a post-injection storage facility care and closure plan. The plan must include:

(1)-(6) (No change.)

(7) consideration and documentation of:

(A)-(G) (No change.)

(H) the presence of potential conduits for fluid movement including planned injection wells and project monitoring wells associated with the proposed geologic storage project or any other projects in proximity to the predicted/modeled, final extent of the CO₂ plume and pressure front ~~[area of elevated pressure]~~;

(I)-(K) (No change.)

(8) (No change.)

(n)-(p) (No change.)

§5.204. Notice of Permit Actions and Public Comment Period.

(a) Notice requirements.

(1) The Commission shall give notice of the following actions:

(A) a draft permit has been prepared under §5.202(e) of this title (relating to Permit Required, and Draft Permit and Fact Sheet) or the director proposes to deny an application; ~~[and]~~

(B) a public meeting has been scheduled under subsection (b)(2)(A) of this section; and

(C) ~~[(B)]~~ a contested case hearing has been scheduled under subsection (b)(3) ~~[(b)(2)]~~ of this section.

(2) (No change.)

(3) Methods of notification. The Commission shall give notice by the following methods:

(A) Individual notice. Notice of a draft permit, a public meeting, or a contested case ~~[public]~~ hearing shall be given by mailing a copy of the notice to the following persons:

(i)-(xi) (No change.)

(xii) persons on the mailing list developed by the Commission, including those who request in writing to be on the list and by soliciting participants in public meetings ~~[hearings]~~ in that area for their interest in being included on area mailing lists; and

1 (xiii) (No change.)

2 (B) (No change.)

3 (4) Content of notice. Individual notice must consist of:

4 (A)-(D) (No change.)

5 (E) a statement that:

6 (i) affected persons may protest~~[;]~~ and request a contested case hearing,
7 and interested persons may request a public meeting ~~[hearing]~~ on~~[;]~~ the application;

8 (ii) protests and requests for a public meeting ~~[hearing]~~ must be
9 submitted ~~[filed]~~ in writing and may ~~[must]~~ be mailed or delivered to Technical Permitting, Oil and Gas
10 Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711 or submitted
11 electronically to SIP@rrc.texas.gov; and

12 (iii) Protests must include information sufficient to explain the basis for
13 the protestant's status as an affected person, as defined by §5.102(1), relating to Definitions, including but
14 not limited to:

15 (I) the protestant's location relative to the proposed facility; and

16 (II) a description of how and why the protestant will be
17 adversely affected in a manner not common to the general public.

18 (iv) ~~[(iii)]~~ public comments, requests for a public meeting, and requests
19 for a contested case hearing may be submitted at any time during the public comment period. Unless
20 extended by the director for good cause, the public comment period ends 30 days after the notice of the
21 draft permit, 30 days from the date of the last publication of notice, or at the close of any public meeting
22 ~~[protests and requests for a hearing must be received by the director within 30 days of the date of receipt~~
23 ~~of the application by the division, receipt of individual notice, or last publication of notice],~~ whichever is
24 later.~~[; and]~~

25 (F) information satisfying the requirements of 40 CFR §124.10(d)(1).

26 (5) (No change.)

27 (6) Notices of public meetings shall include information satisfying the requirements of 40
28 CFR §124.10(d)(2).

29 (7) ~~[(6)]~~ Public outreach and community engagement. ~~[Notice to certain communities.]~~

30 (A) The applicant shall conduct engagement with key stakeholders such as state
31 and local emergency response officials while developing required Class VI project plans such as the
32 Emergency and Remedial Response Plan, to better understand community concerns and needs.

33 (B) The Commission encourages applicants to initiate public outreach and
34 community engagement during the planning stage of a project to appropriately incorporate input from the

1 surrounding community prior to the eventual development and submittal of a Class VI permit application.
2 If [The applicant shall identify whether] any portions of the AOR encompass a [an Environmental Justice
3 (EJ) or] Limited English-Speaking Household community using the most recent U.S. Census Bureau
4 American Community Survey data, the applicant is encouraged to:]- If the AOR includes an EJ or Limited
5 English-Speaking Household community, the applicant shall conduct enhanced public outreach activities
6 to these communities. Efforts to include EJ and Limited English-Speaking Household communities in
7 public involvement activities in such cases shall include:]

8 (i) [(A)] publish any [published] meeting notice in English and the
9 identified language (e.g., Spanish);

10 (ii) [(B)] post comment forms [posted] on the applicant's webpage and
11 make them available at any public meeting in English and the alternate language;

12 (iii) [(C)] provide interpretation services [accommodated] upon request;

13 (iv) [(D)] provide a [English] translation of any public comments [made
14 during any comment period] in the alternate language; and

15 (v) [(E)] to the extent possible, locate public meeting venues near public
16 transportation.

17 (C) The applicant shall provide the Commission with a list and summary of any
18 meetings held under subparagraphs (A) and (B) of this paragraph.

19 [(7) Comment period for a draft permit. Public notice of a draft permit, including a notice of
20 intent to deny a permit application, shall allow at least 30 days for public comment.]

21 (b) Public comment, public meeting, and contested case hearing requirements.

22 (1) Public comment.

23 (A) Public notice of a draft permit, including a notice of intent to deny a permit
24 application, shall allow at least 30 days for public comment. The public comment period shall
25 automatically be extended to the close of any public meeting under this section. The director may also
26 extend the comment period for good cause. If the director extends the comment period, the Commission
27 shall post notice of the extension on the Commission's public website.

28 (B) During the public comment period, any interested person may submit written
29 comments on the draft permit and may request a public meeting if one has not already been scheduled.

30 (C) During the public comment period, any affected person may submit written
31 comments on the draft permit and may request a contested case hearing.

32 (D) All comments, requests for a public meeting, and requests for a contested
33 case hearing must be received by the director before the end of the public comment period. Unless
34 extended by the director for good cause, the public comment period ends 30 days after the notice of the

draft permit, 30 days from the date of the last publication of notice, or at the close of any public meeting, whichever is later.

(E) The director shall issue a response to comments. The response shall specify which provisions, if any, of the draft permit have been changed in the final permit decision, the reasons for the change, and shall briefly describe and respond to all significant comments on the draft permit raised during the public comment period. The Commission shall post the response to comments on the Commission's public website.

~~[(A) During the public comment period, any interested person may submit written comments on the draft permit and may request a hearing if one has not already been scheduled.~~

~~(B) Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.~~

~~(C) The public comment period shall automatically be extended to the close of any public hearing under this section. The hearing examiner may also extend the comment period by so stating at the hearing.]~~

(2) Public meeting.

(A) The Commission shall hold a public meeting if the director finds, on the basis of requests, a significant degree of public interest in a draft permit. The public meeting shall be structured for the receipt of oral or written comments. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.

(B) Notice of a public meeting shall be given at least 30 days before the hearing. Public notice of a public meeting may be given at the same time as public notice of the draft permit and the two notices may be combined.

(C) The Commission must give notice of a public meeting to all persons who express, in writing, an interest in the application.

(3) [(2)] Contested case [Public] hearing.

(A) All protests regarding an application for a new permit or for an amendment of an existing permit for a geologic storage facility from any affected person, as defined by §5.102(1) of this chapter, must be received by the director before the end the public comment period. Unless extended by the director for good cause, the public comment period ends 30 days after the notice of the draft permit, 30 days from the date of the last publication of notice, or at the close of any public meeting, whichever is later.

(B) [(A)] If the director [Commission] receives a timely protest [regarding an application for a new permit or for an amendment of an existing permit for a geologic storage facility] from an affected person [a person notified pursuant to subsection (a) of this section or from any other

1 ~~affected person within 30 days of the date of receipt of the application by the division, receipt of~~
2 ~~individual notice, or last publication of notice, whichever is later]~~, then the director will notify the
3 applicant that the director cannot administratively approve the application. Upon the written request of the
4 applicant, the director will schedule a contested case hearing on the application.

5 ~~[(B) The director shall hold a public hearing whenever the director finds, on the~~
6 ~~basis of requests, a significant degree of public interest in a draft permit.]~~

7 (C) The Commission ~~[director]~~ may also hold a contested case ~~[public]~~ hearing at
8 the director's discretion, whenever, for instance, such a hearing might clarify one or more issues involved
9 in the permit decision or the director determines there is a significant degree of public interest in a draft
10 permit.

11 (D) Notice ~~[Public notice]~~ of a contested case ~~[public]~~ hearing shall be given in
12 accordance with Texas Government Code §2001.052 ~~[at least 30 days before the hearing]~~. Notice ~~[Public~~
13 ~~notice]~~ of a contested case hearing may be given at the same time as public notice of the draft permit and
14 the two notices may be combined.

15 (E) The ~~[Upon the written request of the applicant, the]~~ Commission must give
16 notice of a contested case hearing to all affected persons, local governments, and other persons who
17 express, in writing, an interest in the application. Notice of a contested case hearing shall include
18 information satisfying the requirements of 40 CFR §124.10(d)(2) and Texas Government Code,
19 §2001.052. After the contested case hearing, the examiner will recommend a final action to [by] the
20 Commission. ~~[Notices shall include information satisfying the requirements of 40 CFR §124.10(d)(2) and~~
21 ~~the Texas Government Code, §2001.052.]~~

22 (4) ~~[(3)]~~ If the Commission receives no timely protest regarding an application for a new
23 permit or for the amendment of an existing permit for a geologic storage facility from an ~~[a person~~
24 ~~notified pursuant to subsection (a) of this section or from any other]~~ affected person, the director may
25 administratively approve the application.

26 (5) ~~[(4)]~~ If the director administratively denies an application for a new permit or for the
27 amendment of an existing permit for a geologic storage facility, upon the written request of the applicant,
28 the director will schedule a contested case hearing. After the contested case hearing, the examiner will
29 recommend a final action to [by] the Commission.

30 (6) ~~[(5)]~~ ~~[Upon making a final permit decision, the director shall issue a response to~~
31 ~~comments. The response shall specify which provisions, if any, of the draft permit have been changed in~~
32 ~~the final permit decision, and the reasons for the change, and shall briefly describe and respond to all~~
33 ~~significant comments on the draft permit raised during the public comment period or during any hearing.]~~

The Commission shall post the hearing examiner's recommendation for final action and the final order ~~[response to comments]~~ on the Commission's public ~~[internet]~~ website.

§5.205. Fees, Financial Responsibility, and Financial Assurance.

(a)-(b) (No change.)

(c) Financial assurance. The qualifying financial responsibility instruments must be approved by the director. The director shall consider and approve the ~~[applicant's]~~ demonstration of financial responsibility for all the phases of the geologic sequestration project, including the post-injection storage facility care and closure phase and the plugging phase, prior to issuance of a geologic storage injection well permit.

(1) (No change.)

(2) Geologic storage facility.

(A) The applicant must include in an application for a geologic storage facility permit:

(i) (No change.)

(ii) a copy of the form of the financial assurance instruments ~~[bond or letter of credit]~~ that will be filed with the Commission; and

(iii) information concerning the issuer of the financial assurance instrument, ~~[bond or letter of credit]~~ including the issuer's name and address and evidence of authority to issue financial assurance instruments ~~[bonds or letters of credit]~~ in Texas.

(B) A geologic storage facility shall not receive CO₂ until financial assurance ~~[a bond or letter of credit]~~ in an amount approved by the director under this subsection and meeting the requirements of this subsection as to form and issuer has been filed with and approved by the director.

(C) The determination of the amount of financial assurance for a geologic storage facility is subject to the following requirements:

(i) The director must approve the dollar amount of the financial assurance. The amount of financial assurance required to be filed under this subsection must be equal to or greater than the maximum amount necessary to cover the cost of ~~[perform]~~ corrective action, emergency response, and remedial action, post-injection monitoring and site care, and closure of the geologic storage facility, including plugging of wells, at any time during the permit term in accordance with all applicable state laws, Commission rules and orders, and the permit. The financial assurance instruments must be sufficient to address endangerment of USDWs. The cost estimate must be performed for each phase separately and must be based on the costs to the Commission of hiring a third party to

perform the required activities. A third party is a party who is not within the corporate structure of the owner or operator;

(ii) (No change)

(iii) The requirement to maintain adequate financial responsibility and resources is directly enforceable regardless of whether the requirement is a condition of the permit.

(iv) [(iii)] The Commission may use the proceeds of financial assurance filed under this subsection to pay the costs of plugging any well or wells at the facility if the financial assurance for plugging costs filed with the Commission is insufficient to pay for the plugging of such well or wells.

(D) Financial responsibility instruments.

(i) Qualifying financial assurance instrument(s) must be:

(I) trust funds;

(II) surety bonds;

(III) letter of credit;

(IV) insurance;

(V) escrow account; or

(VI) any other instrument(s) satisfactory to the director.

(ii) The owner or operator may demonstrate financial responsibility by using one or more qualifying financial instruments for specific phases of the geologic storage project. In the event that the owner or operator combines more than one financial instrument for a specific geologic storage phase (e.g., well plugging), such combination must be limited to instruments that are not based on financial strength or performance (i.e., performance bond), for example trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, escrow account, or insurance. In this case, it is the combination of mechanisms, rather than the single mechanism, which must provide financial responsibility for an amount at least equal to the current cost estimate.

(iii) When using a third-party instrument to demonstrate financial responsibility, the owner or operator must provide proof that the third-party provider(s) either have passed financial strength requirements based on credit ratings or have met a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.

(iv) An owner or operator using certain types of third-party instruments must establish a standby trust to enable the Commission to be party to the financial responsibility agreement without EPA being the beneficiary of any funds. The standby trust fund must be used along with other financial responsibility instruments (e.g., surety bonds, letters of credit, or escrow accounts) to provide a location to place funds if needed.

1 (E) ~~(D)~~ Financial responsibility instruments ~~[Bonds and letters of credit]~~ filed
2 in satisfaction of the financial assurance requirements for a geologic storage facility must comply with the
3 following standards as to issuer and form.

4 (i) The issuer of any geologic storage facility bond filed in satisfaction of
5 the requirements of this subsection must be a corporate surety authorized to do business in Texas. The
6 form of bond filed under this subsection must provide that the bond be renewed and continued in effect
7 until the conditions of the bond have been met or its release is authorized by the director.

8 (ii) Any letter of credit filed in satisfaction of the requirements of this
9 subsection must be issued by and drawn on a bank authorized under state or federal law to operate in
10 Texas. The letter of credit must be an irrevocable, standby letter of credit subject to the requirements of
11 Texas Business and Commerce Code, §§5.101 - 5.118. The letter of credit must provide that it will be
12 renewed and continued in effect until the conditions of the letter of credit have been met or its release is
13 authorized by the director.

14 (iii) An owner or operator may deposit money into an escrow account to
15 secure financial responsibility requirements; this account must segregate funds sufficient to secure
16 estimated costs for Class VI financial responsibility from other accounts and uses. The director must
17 approve the use and length of pay-in-periods for trust funds or escrow accounts.

18 (vi) An owner or operator may obtain an insurance policy to cover the
19 estimated costs of geologic storage activities requiring financial responsibility. This insurance policy must
20 be obtained from a third-party provider.

21 (F) ~~(iii)~~ The qualifying financial responsibility instruments must comprise
22 protective conditions of coverage. Protective conditions of coverage must include at a minimum
23 cancellation, renewal, and continuation provisions; specifications on when the provider becomes liable
24 following a notice of cancellation if there is a failure to renew with a new qualifying financial instrument;
25 and requirements for the provider to meet a minimum rating, minimum capitalization, and ability to pass
26 the bond rating when applicable.

27 (i) ~~(4)~~ Cancellation. An owner or operator must provide that its
28 financial instrument may not cancel, terminate, or fail to renew except for failure to pay such financial
29 instrument. If there is a failure to pay the financial instrument, the financial institution may elect to
30 cancel, terminate, or fail to renew the instrument by sending notice by certified mail to the owner or
31 operator and the director. The cancellation must not be final until at least 120 days after the Commission
32 receives the cancellation notice. The owner or operator must provide an alternate financial responsibility
33 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.

(ii) ~~[(H)]~~ Renewal. If a financial instrument expires, the owner or operator must renew the financial instrument for the entire term of the geologic storage 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.

(iii) ~~[(HH)]~~ Financial instrument to remain in effect. Cancellation, termination, or failure to renew shall not occur and the financial instrument shall remain in full force and effect if on or before the date of expiration:

(I) ~~[(a)]~~ the director deems the facility abandoned;

(II) ~~[(b)]~~ the permit is terminated or revoked or a new permit is denied;

(III) ~~[(c)]~~ closure is ordered by the director or a United States district court or other court of competent jurisdiction;

(IV) ~~[(d)]~~ the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(V) ~~[(e)]~~ the amount due is paid.

(G) ~~[(E)]~~ During the active life of the geologic storage project, the owner or operator must adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with paragraph (2)(C)(i) of this subsection and provide this adjustment to the director. The owner or operator must also provide to the director written updates of adjustments to the cost estimate within 60 days of any amendments to the area of review and corrective action plan, the injection well plugging plan, the post-injection storage facility care and closure plan, and the emergency and remedial response plan.

(H) ~~[(F)]~~ The owner or operator of a geologic storage facility must provide to the director, and the director must approve, annual written updates of the cost estimate to increase or decrease the cost estimate to account for any changes to the AOR and corrective action plan, the emergency response and remedial action plan, the injection well plugging plan, and the post-injection storage facility care and closure plan. The director ~~[Director]~~ must approve any decrease or increase to the initial cost estimate. During the active life of the geologic storage project, the owner or operator must revise the cost estimate no later than 60 days after the director has approved the request to modify the AOR and corrective action plan, the injection well plugging plan, the post-injection storage facility care and closure plan, and the emergency and response plan, if a change in any of these plans increases the cost. If a

change to a plan decreases the cost, any withdrawal of funds must be approved by the director. Any decrease to the value of a financial assurance instrument must first be approved by the director. The revised cost estimate must be adjusted for inflation as specified at paragraph (2)(G) [~~(2)(E)~~] of this subsection. The owner or operator must provide to the director, within 60 days of notification by the director, an adjustment of the cost estimate if the director determines during the annual evaluation of the qualifying financial responsibility instruments that the most recent demonstration is no longer adequate to cover the cost of corrective action, injection well plugging and post-injection storage facility care and closure, and emergency and remedial response.

(I) [~~(G)~~] Whenever the current cost estimate increases to an amount greater than the face amount of a financial instrument currently in use, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the director or obtain other financial responsibility instruments to cover the increase. Whenever the current cost estimate decreases, the face amount of the financial assurance instrument may be reduced to the amount of the current cost estimate only after the owner or operator has received written approval from the director.

(J) [~~(H)~~] The requirement to maintain adequate financial responsibility is directly enforceable regardless of whether the requirement is a condition of the permit.

(i) The owner or operator must maintain financial responsibility until:

(I) the director receives and approves the completed post-injection storage facility care and closure plan; and

(II) the director issues the certificate of closure.

(ii) The owner or operator may be released from a financial instrument in the following circumstances:

(I) The owner or operator has completed the phase of the geologic storage project for which the financial instrument was required and has fulfilled all its financial obligations as determined by the director, including obtaining financial responsibility for the next phase of the geologic storage project, if required; or

(II) The owner or operator has submitted a replacement financial instrument and received written approval from the director accepting the new financial instrument and releasing the owner or operator from the previous financial instrument.

(3) The director may consider allowing the phasing in of financial assurance for only corrective action based on project-specific factors.

(4) The director may approve a reduction in the amount of financial assurance required for post-injection monitoring and/or corrective action based on project-specific monitoring results.

(5) The owner or operator must maintain the required financial responsibility regardless of the status of the director's review of the financial responsibility demonstration.

(6) The director may deny the use of a financial instrument if the director determines that it is not sufficient to meet the requirements of this section.

(7) The owner or operator must provide any updated information related to its financial responsibility instruments on an annual basis and if there are any changes, the director must evaluate, within a reasonable time, the financial responsibility demonstration to confirm that the instruments used remain adequate.

(d) Notice of adverse financial conditions.

(1)-(2) (No change.)

(3) In the event that the owner or operator or the third-party provider of a financial responsibility instrument is going through a bankruptcy, the owner or operator must notify the director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding.

(4) [(3)] Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency or suspension, or revocation of its charter or license, the Commission must deem the owner or operator to be without financial assurance [bond] coverage. The Commission must issue a notice to any owner or operator who is without financial assurance [bond] coverage and must specify a reasonable period to replace financial assurance [bond] coverage, not to exceed 60 days.

(5) An owner or operator who fulfills the requirements of this section by obtaining a trust fund, surety bond, letter of credit, escrow account, or insurance policy will be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee of the institution issuing the trust fund, surety bond, letter of credit, escrow account, or insurance policy. The owner or operator must establish other financial assurance within 60 days of such an event.

§5.206. Permit Standards.

(a)-(j) (No change.)

(k) Permit conditions for post-injection storage facility care and closure.

(1)-(2) (No change.)

(3) Prior to closure. Prior to authorization for storage facility closure, the operator must demonstrate to the director, based on monitoring, other site-specific data, and modeling that is reasonably consistent with site performance that no additional monitoring is needed to assure that the geologic

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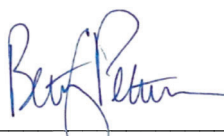
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- 1 storage facility will not endanger USDWs. The operator must demonstrate, based on the current
2 understanding of the site, including monitoring data and/or modeling, all of the following:
- 3 (A) the estimated magnitude and extent of the facility footprint (the CO₂ plume
4 and the pressure front [~~area of elevated pressure~~]);
- 5 (B)-(E) (No change.)
- 6 (4)-(7) (No change.)
- 7 (I)-(o) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on October 6, 2026.

Filed with the Office of the Secretary of State on October 6, 2026.



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