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Rules Coordinator
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Via email: rulescoordinator@rrc.texas.gov

Re: Formal Comments on the Proposed Amendments to 16 TAC §3.15 and §3.58 Implementing Senate Bill 1150

Rules Coordinator:

The Texas Independent Producers and Royalty Owners Association (TIPRO) submits these comments on the Railroad Commission's proposed amendments to 16 Texas Administrative Code §3.15 and §3.58, filed with the Secretary of State on October 6, 2026, to implement Senate Bill 1150 (89th Legislature). TIPRO represents Texas oil and gas producers and royalty owners, including operators that will be directly affected by the rule. TIPRO supports the Commission's objective of reducing the number of inactive wells that become orphaned and shift plugging costs to the State. TIPRO's recommendations are intended to make the rule workable for operators that are managing their wells responsibly while meeting the September 1, 2042, deadline in the statute. TIPRO's recommendations also bear on waste. Section 85.045 of the Natural Resources Code is captioned "Waste Illegal and Prohibited," and §85.046(a)(6) includes in waste "physical waste or loss incident to or resulting from drilling, equipping, locating, spacing, or operating a well or wells in a manner that reduces or tends to reduce the total ultimate recovery of oil or gas from any pool." Plugging a wellbore that has remaining reserves is permanent.

These comments are organized by subject. Each recommendation identifies the provision of the proposal it addresses and, where a change to the rule text is requested, includes proposed language. Section references are to the proposal as filed. Statutory references are to the Texas Natural Resources Code as amended by Senate Bill 1150.

TIPRO's principal recommendations are listed below.

- To remove Commission staff time and indirect administration from the full cost calculation and to publish the method and the amounts.
- To allow surety bonds, letters of credit, cash deposits, and non-cancellable financial assurance instruments that continue until the well is plugged, and to delete the requirement that a bond be issued by a bank.
- To allow the annual number of wells in a compliance plan to vary at the operator's discretion so long as the plan remains on track for September 1, 2042.

- To state that any one financial hardship criterion is sufficient and to state each criterion in direct terms.
- To extend the reactivation look-back period to three years.
- To allow an operator to apply the reactivation criteria and the compliance pathways to a lease, field, or other group of wells.
- To measure reactivation history against an operator's 15/25 wells and to make the numeric criteria a safe harbor.
- To add a third reactivation criterion based on the operator's share of inactive wells compared to its total well count.
- To state that a permitted and operated injection or disposal well is in active operation and that a compliance plan commitment to injection service qualifies.
- To set a decision deadline, provisional approval, and a transition schedule for the first applications.
- To conform the age measures to the statute and stage the first testing reports.
- To restore the 10-year inactivity condition for testing, to the extent consistent with §89.050.
- To narrow the mandatory denial grounds and add cure periods.
- To eliminate the requirement in proposed §3.15(h)(3) that an operator identify nonoperators and submit their names, addresses, and contact information or, if the requirement is retained, to limit the collection and use of nonoperator information, protect its confidentiality to the extent the law allows, and add notice, cure, and proportionality protections for nonoperators.
- To add a review period, a grace period, and transition provisions for well transfers, with discretion for the Commission to extend the grace period.

**Provisions of the Proposal That TIPRO Supports**

TIPRO supports the following provisions and asks that they be retained in the adopted rule.

- Proposed §3.15(h)(4)(B)(i) requires sworn financial statements certified by a certified public accountant, the standard stated in §89.023(d)(2).
- Proposed §3.15(h)(4)(C)(i)(III) and §3.15(i)(1)(C)(i) require a compliance plan schedule that specifies a number of wells to be plugged or restored each year rather than a calendar assigning individual wells to individual years.
- Proposed §3.15(i)(1)(C)(iv) bases prioritization on the considerations listed in §89.023(f)(1) and (7), and §3.15(i)(1)(C)(v) allows the Commission to consider wells plugged or restored above the required minimum.
- Proposed §3.15(i)(2)(F) limits denial for deviation from a prior year's plan to deviation in bad faith.
- Proposed §3.15(n)(3) and (n)(6) provide that a hydraulic pressure test is performed once every five years and valid for five years, with results submitted annually as §89.050 provides.
- Proposed §3.58(a)(5) and (a)(6) cite the correct definition and extension provisions of §3.15.

**Definitions and Scope**

***Applies to:*** *Proposed §3.15(a)(1); §3.15(c)(4), (e)(5), (n), and (o)*

Proposed §3.15(a)(1) defines a 15/25 well as an inactive land well that "has been inactive for more than 15 years and was completed more than 25 years ago." Section 89.023(b)(1)(B) measures the 25 years from completion to "the date the operator submitted the request for the extension." The proposal does not state the date from which "ago" is measured and does not define when a well is "completed." The testing provisions have a related gap. Section 89.050 applies to each inactive well "for which 15 years have elapsed from the date on which the relevant well completion report was filed with the commission," while proposed §3.15(c)(4), (e)(5), and (n) refer to a well that is "more than 15 years old," and §3.15(o) refers to a well that is "less than 15 years old," without saying how age is determined. The rule should state both measures and identify the Commission record that governs, so that operators and Commission staff reach the same result for the same well.

> ***Proposed language:*** *Amend §3.15(a)(1) to read: "15/25 well--An inactive land well that has been inactive for more than 15 years and was completed more than 25 years before the date the operator submits an application under subsection (h) of this section." Add a new definition: "Completed--The date of completion shown on the well completion report filed with the Commission for the well. A well that is recompleted in a different zone, or converted to disposal or injection service, is treated as completed on the date of the most recent recompletion or conversion shown on a completion report filed with the Commission."*
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> *Amend the references to a well's age in §3.15(c)(4), (e)(5), (n), and (o) to apply the measure in Texas Natural Resources Code §89.050, that is, whether 15 years have elapsed from the date on which the relevant well completion report was filed with the Commission. For a well that has been recompleted in a different zone, or converted to disposal or injection service, the relevant well completion report is the most recent completion report filed with the Commission for the recompletion or conversion.*

***Applies to:*** *Proposed §3.15(a)(1), (a)(2), and (a)(8); §3.15(h)(4)(C)*

Under proposed §3.15(a)(8), an inactive well includes a well with no reported "production, disposal, injection, or other permitted activity" for more than 12 months, which tracks the statutory definition in §89.002(a)(12). The definition of active operation in proposed §3.15(a)(2) applies its production thresholds only to a well "that is not permitted as a disposal or injection well," and proposed §3.15(h)(4)(C) contemplates a well being brought into "operation as an injection well or other type of operation." Read together, these provisions appear to place inactive disposal and injection wells within the definition of a 15/25 well, but the rule does not say so, and it does not say how the testing, reporting, and restoration provisions apply to those wells. TIPRO asks the Commission to state expressly whether inactive disposal and injection wells are 15/25 wells. If they are, the rule should state which test satisfies §3.15(n) for those wells, how the completion date is determined for a well converted to disposal or injection service, and what return to operation means for purposes of the reactivation history and compliance plan provisions. TIPRO also asks

the Commission to state expressly that a well that is permitted and operated as an injection or disposal well is engaged in active operation, because the production thresholds in the definition of active operation apply by their terms only to a well "that is not permitted as a disposal or injection well."

> ***Proposed language:*** *Add to §3.15(a)(2): "A well that is permitted and operated as an injection or disposal well is engaged in active operation under this paragraph, and the production thresholds in this paragraph do not apply to such a well."*

***Applies to:*** *Proposed §3.15(a)(6)*

Proposed §3.15(a)(6) defines the "full cost calculation for plugging an inactive well" as "the total cost to plug an inactive well in compliance with Commission regulations, including all direct and indirect costs associated with third party goods and services, but not including any of the operator's overhead or other internal costs." Items (D) and (E) then add "RRC staff time for directly monitoring the well plugging and site remediation activities" and "RRC indirect administration using the most recent Negotiated Indirect Cost Rate Agreement used for federal grants." The definition sets the amount of an individual performance bond under §3.15(h)(4)(D) and (i)(1)(D), and it is the basis for the hardship criteria in §3.15(i)(1)(B) and the cost schedule in §3.15(h)(4)(C)(i)(V).

TIPRO has three concerns. First, items (D) and (E) are inconsistent with the lead-in. Commission staff time and Commission administrative costs are not costs of "third party goods and services," and the definition excludes the operator's own overhead while including the Commission's. Second, the rule does not explain how the amount is determined, who determines it, or when an operator will know it. Section 89.023(c)(3) refers to a full cost calculation "as established by the commission," which calls for a defined method and a published result. The per-foot cost calculation in proposed §3.15(a)(3) is already based on "average actual plugging costs for wells plugged by the Commission for the preceding state fiscal year" in the district where the well is located, which follows the cost calculation described in §89.002(a)(9). An operator cannot size a bond, or test hardship, without a figure it can rely on. Third, adding Commission staff time and an indirect cost rate drawn from a federal grant agreement increases the bond required for every well, and therefore the cost of financial assurance, without any limit or review.

TIPRO recommends that items (D) and (E) be deleted. If the Commission retains Commission costs in the definition, they should be limited to the documented direct costs of Commission personnel who monitor plugging operations, disclosed by rate and methodology, and should not be applied to third-party contractor costs or duplicate costs already reflected in the district average. The Commission should also publish the methodology and the resulting amount for each district before the rule takes effect, fix the amount for a period of two years, provide the figure for a specific well on request, and provide a process to request review of a well-specific figure.

> ***Proposed language:*** *Amend §3.15(a)(6) to delete items (D) and (E) and add: "The full cost calculation is based on average actual plugging costs for comparable wells in the Commission district in which the well is located, adjusted only for documented well-specific factors reasonably expected to materially affect cost. The Commission will publish the*

*methodology used to determine the full cost calculation and the resulting amount for each Commission Oil and Gas Division district not later than 90 days before the effective date of this subsection, and will not change the published amount more often than once every two years. On request of an operator, the Commission will provide the full cost calculation for a specific well within 30 days. An operator may request review of a well-specific full cost calculation, and the Commission will issue a written determination within 30 days of the request."*

***Applies to:*** *Proposed §3.15(a); §3.15(h)(4); §3.15(i)(1)*

The proposal does not provide expedited review or simplified documentation for small operators or operators with a clean compliance record. TIPRO recommends that the Commission define "small operator" and "prudent operator" using objective criteria and extend targeted relief to operators that meet those definitions, including expedited administrative review and simplified documentation, subject to later audit or risk-based verification. The recommended criteria, fewer than 50 wells or under $10 million in annual revenue for a small operator and no material compliance violation in the preceding five years for a prudent operator, are objective and can be verified from Commission records and financial statements. See also the comments on the preamble's economic analysis below.

***Proposed language:*** *Add new defined terms to §3.15(a): "Small operator--An operator with fewer than 50 wells or under $10 million in annual revenue." and "Prudent operator--An operator with no material compliance violation in the preceding five years." Add a new paragraph §3.15(h)(7): "(7) The Commission will give expedited administrative review to an application by a small operator or a prudent operator, and may accept simplified documentation from those operators, subject to later audit or risk-based verification."*

**Extension Application Process**

***Applies to:*** *Proposed §3.15(i)(1)*

Proposed §3.15(i)(1) gives an operator 90 days to cure an incomplete application but sets no time within which the Commission will act on a complete one. Because an extension under proposed §3.15(h)(2) lasts one year and must be renewed with the organization report each year, every operator with a 15/25 well will depend on a Commission decision annually, and the preamble's cost estimate assumes the Commission will hire and retain 86 full-time employees to implement the rule. A decision that arrives after the organization report renewal date, or after the period in which an extension would otherwise lapse, leaves the operator's wells without an approved extension through no fault of the operator.

TIPRO recommends a defined review period of 60 days, intentionally different from the 90-day cure period in the same paragraph so that the two periods are not confused, with provisional approval if the Commission does not act. Section 89.023(c)(2) provides for approval of compliance plans by the Commission or its delegate. For the determinations that §89.023(c)(1) assigns to the Commission by order, the Commission should adopt an order procedure that does not depend on

the schedule of open meetings, such as delegation or standing orders for applications that meet the objective criteria in §3.15(i)(1), to the extent consistent with §89.023(c)(1).

> ***Proposed language:*** *Add new paragraphs §3.15(i)(1A) and (i)(1B): "(1A) Once an application is complete, the Commission will act on it within 60 days. If the Commission has not issued a decision within that period, the extension is provisionally approved until the Commission issues a final decision." "(1B) While a timely and complete application or renewal under subsection (h) of this section is pending before the Commission, and during any period in which the operator may request or has requested a hearing under paragraph (3) of this subsection, a well identified in the application is not subject to enforcement for failure to plug under this section."*

***Applies to:*** *Proposed §3.15(h) and (i)*

Senate Bill 1150 provides that rules adopted by the Commission must take effect September 1, 2027, and that §89.023, as amended, takes effect on that date. From that date, an operator of a 15/25 well may not obtain an extension by complying with §89.023(a) and must either qualify for an extension under §89.023(c) or plug the well. The proposal does not say when an operator may file an application or how the applications that will be due on the effective date will be processed. TIPRO recommends that the Commission publish the application forms and instructions for public review before adoption, accept applications beginning not later than 180 days before the effective date, act on timely applications so that approvals take effect on September 1, 2027, and treat wells covered by a timely application as covered by an extension while the application is pending.

The statute also directs the Commission to establish an administrative penalty for a violation of §89.023 (§89.023(j)). The proposal does not include that penalty. TIPRO asks that penalty guidelines be proposed through a separate notice and comment process and that they provide notice and an opportunity to cure before a penalty is assessed.

> ***Proposed language:*** *Add a new paragraph §3.15(h)(5): "(5) The Commission will make the forms required by this subsection available not later than 180 days before the effective date of this subsection and will accept applications beginning on the date the forms are available. The Commission will act on an application filed not later than 60 days before the effective date so that an approval takes effect on the effective date. A well identified in a timely and complete application is treated as covered by an extension until the Commission issues a decision under subsection (i) of this section."*

***Applies to:*** *Proposed §3.15(h)(2)*

Proposed §3.15(h)(2) provides that an extension is "only valid for one year" and "must be annually renewed, concurrent with the operator's organization report renewal." The rule does not say how long an extension approved at a time other than the organization report renewal remains valid, what a renewal requires, or whether a renewal is a new application. Section 89.023(f)(4) ties a compliance plan to the plan of action submitted "with the organization report," which supports aligning every renewal with that date. TIPRO recommends that the rule state that the first renewal occurs at the operator's next organization report renewal after approval and that each renewal after

that is concurrent with the organization report, provide that an extension remains in effect while a timely filed renewal is pending, and provide a streamlined renewal. For an extension under §3.15(h)(4)(C) or (D), a renewal should consist of the status update already required by §3.15(h)(4)(C)(iii) or evidence that the bond remains in effect, together with a certification that no material change has occurred. For an extension under §3.15(h)(4)(A) or (B), the operator should provide updated information for the period since the last approval and need not resubmit documentation it has already provided.

> ***Proposed language:*** *Amend §3.15(h)(2) to add: "An extension approved at any time during the year remains valid until the operator's next organization report renewal date, at which time it must be renewed, and each renewal after that is concurrent with the operator's organization report renewal. An extension remains in effect while a timely filed renewal is pending. An operator renewing an extension under paragraph (4)(C) or (D) of this subsection may satisfy the renewal requirement by filing the status update required by paragraph (4)(C)(iii) or evidence that the bond remains in effect, together with a certification that no material change in circumstances has occurred since the prior approval. An operator renewing an extension under paragraph (4)(A) or (B) must submit updated documentation for the period since the prior approval and need not resubmit documentation previously provided."*

***Applies to:*** *Proposed §3.15(h)(4)(A), (h)(4)(C)(i), and (h)(4)(C)(iii)*

Proposed §3.15(h)(4)(A)(i) through (v) require an operator seeking an extension based on its history to document all of its wells, their status, the length of inactivity of each inactive well, the date a previously inactive well was restored, and the permit numbers, lease numbers, API numbers, and production report filing dates for each active well that was previously inactive. Proposed §3.15(h)(4)(C)(i) and (iii) require well-level data for every well in a compliance plan and an annual status for every other 15/25 well. Most of this information is already in the Commission's records. TIPRO recommends that the Commission allow these submissions in a standardized electronic format, such as a spreadsheet keyed to API number, allow operators to rely on a Commission-generated report of their wells and their status, and require an operator to provide only information that the Commission does not already hold. This is most important for operators with large inventories, and it also reduces the Commission's review time.

> ***Proposed language:*** *Add a new paragraph §3.15(h)(6): "(6) An operator may submit the documentation required by this subsection in a standardized electronic format prescribed by the Commission. Where the Commission's records contain information required by this subsection, including the status and length of inactivity of a well and the permit, lease, and API numbers and production report filing dates for a well, the operator may satisfy the requirement by certifying that the information in a Commission-generated report of the operator's wells is accurate, and by correcting any error."*

***Applies to:*** *Proposed §3.15(h)(4)*

Proposed §3.15(h)(4) directs the operator to "submit one of the following," and the compliance plan and bond provisions are written in terms of "the inactive well." The rule should state that an

operator may use different pathways for different 15/25 wells or groups of wells, such as the wells on a lease or in a field, for example a bond for some wells and a compliance plan for others, and that a determination under §3.15(h)(4)(A) or (B) applies to each 15/25 well identified in the application. Proposed §3.15(h)(4)(C)(iii) already assumes that some of an operator's 15/25 wells may be outside the compliance plan. The proposed language below assumes the Commission retains the nonoperator documentation in subsection (h)(3). If the Commission eliminates that requirement as TIPRO recommends above, the lead-in should omit the reference to documentation that identifies nonoperators.

> ***Proposed language:*** *Amend the lead-in of §3.15(h)(4) to read: "In addition to the documentation that identifies nonoperators, and the affirmation required by subsection (f)(2)(A) of this section, the operator shall submit one of the following for each 15/25 well identified in the application for Commission approval. An operator may use different paragraphs of this paragraph for different wells or groups of wells, such as the wells on a lease or in a field, and a determination under subparagraph (A) or (B) applies to each 15/25 well identified in the application:"*

***Applies to:*** *Proposed §3.15(h)(4) and (k)*

Proposed §3.15(h)(4) requires "the affirmation required by subsection (f)(2)(A)," which implements the affirmation that Texas Natural Resources Code §89.029(a), as amended in 2025, requires with an application for an extension. Under §89.029(a), the operator affirms that electric service to the well's production site has been physically terminated and, where the operator does not own the surface and the well has been inactive for at least 10 years, that it has removed surface process equipment, related piping, tanks, tank batteries, pump jacks, headers, fences, and junk and trash, and all equipment associated with providing electric service to the production site other than equipment owned by an electric utility. Section 89.029(g) requires an administrative penalty of up to $25,000 for each violation by a person who makes the affirmation but fails to terminate electric service or remove the equipment. Every 15/25 well has been inactive for more than 15 years. Section 89.029(d) and (e) provide a temporary extension or exemption where the operator cannot comply because of safety concerns or required maintenance of the well site, and an exemption for a well associated with an enhanced oil recovery project, and the existing rule implements them in proposed §3.15(k)(3) and (k)(4). The proposal does not say whether those provisions are available to an applicant under subsection (h). TIPRO asks the Commission to confirm that they are.

> ***Proposed language:*** *Add to §3.15(k): "Paragraphs (3) and (4) of this subsection apply to an application under subsection (h) of this section."*

**Nonoperator Information and Nonoperator Responsibility**

***Applies to:*** *Proposed §3.15(h)(3); conforming changes to §3.15(h)(4) and (i)(2)(A)*

Proposed §3.15(h)(3) would require an operator applying for a plugging extension for a 15/25 well to use good faith and reasonable effort to identify nonoperators, as defined in Texas Natural Resources Code §89.002(a)(3), and to include documentation of the name, address, and contact information of all nonoperators. The proposal provides that an operator that cannot ascertain that

information for every nonoperator is considered to have used good faith and reasonable effort if it has examined Commission filings, current county tax rolls, and other reliable and readily available sources of information. TIPRO recommends that the Commission eliminate the requirement that the operator identify nonoperators and submit their names, addresses, and contact information with an extension application. Senate Bill 1150 does not expressly direct the Commission to establish a new system for identifying nonoperating working interest owners. Existing Texas Natural Resources Code §89.012 provides that if an operator fails to plug a well as required, each nonoperator is responsible for "his proportionate share of the cost of the proper plugging of the well within a reasonable time, according to the rules of the commission in effect at the time the responsibility attaches." That statute supplies the Commission with authority to pursue recovery when appropriate. It does not require the Commission to compel operators to furnish nonoperator information as a condition of obtaining a plugging extension.

Many of the wells affected by the 15/25 framework have been inactive for more than 15 years and were drilled decades earlier. Ownership may have changed through death and inheritance, corporate mergers, acquisitions, dissolutions, bankruptcy, assignments, and conveyances that were never communicated to the operator. An operator's records frequently reflect historical division-of-interest information rather than current legal ownership. The good faith standard and the safe harbor in the proposal reduce the risk that an operator is penalized for an incomplete list, but they do not remove the obligation to assemble and submit the information with every application, and they do not make the information accurate. Accurate identification of current nonoperators for a long-inactive well can require title research, and the proposal conditions each extension on an effort to identify them.

Working interest ownership cannot always be expressed in a way that corresponds to plugging liability. Before-payout and after-payout arrangements, carried interests, production payments, farmouts, reversionary interests, non-consent elections under joint operating agreements, and contractual allocations of plugging costs can produce a material difference between record working interest and actual financial responsibility. A list of the names and addresses of working interest owners in the Commission's records risks being read as a statement of who is responsible for plugging costs. The Commission should not assume that a party's appearance on an operator's list establishes that party's responsibility or any particular share of plugging costs.

In some cases operators have already collected funds from nonoperators toward anticipated asset retirement obligations through joint-interest billings, property acquisitions, or contractual settlements. A nonoperator that has already contributed its contractual share could face a second demand if the operator later fails to plug. The proposal does not address how prior contributions would be identified, credited, or protected. A regulatory system that identifies nonoperators in connection with an operator's extension application, without accounting for previously funded obligations, creates the possibility of duplicative demands.

Under most joint operating agreements the designated operator controls day-to-day operations. Nonoperators frequently lack contractual authority to require that a well be plugged. A nonoperator that has requested plugging but cannot obtain the necessary vote under the joint operating agreement may still be identified in the Commission's records as an owner of a well for which the

operator has sought an extension. It is problematic to associate regulatory exposure with a party that lacks the authority to control the activity giving rise to that exposure.

Incorrect or outdated ownership information supplied by an operator could result in demands against parties that no longer own an interest. Those parties could be required to produce conveyance documents to demonstrate that they had transferred the interest. The Commission is a regulatory agency, not a title examination company or a court charged with resolving complex private ownership disputes. A requirement that leads to such disputes would impose an administrative burden without necessarily resulting in additional wells being plugged.

Ownership information maintained by the Commission could become accessible to the public under the Public Information Act, to the extent it is not excepted from disclosure. The public may assume that information held by a state regulatory agency has been verified. An incorrect listing could create practical uncertainty during property sales, acquisitions, financing, or due diligence and could expose former owners to unwarranted claims or reputational harm. The Commission should be reluctant to establish a repository of ownership information that it is not equipped to maintain accurately.

The proposed requirement would also create new administrative responsibilities for Commission staff. The Commission would need to receive and maintain nonoperator information for each well in each application, process corrections, respond to disputes, evaluate conflicting claims, and handle public information requests from parties seeking working interest data without conducting their own title work. Whether the information is treated as merely informational or as evidence of potential liability, it creates additional expense without directly advancing the physical plugging of inactive wells.

Requiring operators to research and report nonoperators as a condition of any extension application under subsection (h) could delay the very programs intended to reduce the inactive well inventory. An operator with a large number of long-inactive wells could be required to devote time and money to historical ownership research rather than to developing and implementing a plugging schedule. A regulatory requirement intended to support plugging compliance should not become an obstacle to obtaining approval of the extensions and plans designed to accomplish that objective.

Existing law already supplies a framework for determining responsibility. Section 89.012 and related provisions govern when a nonoperator may be responsible for its proportionate share of plugging costs. When the Commission actually incurs plugging expenses and determines that recovery is warranted, it can investigate the parties potentially responsible under existing law on a case-by-case basis. There is a substantial difference between investigating ownership when a recovery action becomes necessary and requiring every operator seeking an extension to undertake that investigation in advance.

Reliance on unverified operator submissions could effectively reverse the practical burden of proof. A nonoperator whose name appears on a list submitted by another private party could be placed in the position of having to disprove responsibility based on decades-old records. No party should be presumed legally responsible for plugging expenses merely because its name appears on a list supplied by the operator.

The requirement could also generate disputes between operators and nonoperators over the proper allocation of costs under joint operating agreements and other contracts. An operator may not possess every agreement that affects a nonoperator's economic interest. Requiring a list of nonoperators risks converting private contractual disagreements into regulatory disputes. The Commission should avoid unnecessarily placing itself in the middle of those disagreements.

The burden would fall particularly hard on smaller operators that lack dedicated land departments and title resources. Operators already seeking financial hardship relief could face additional administrative and legal costs as a condition of obtaining that relief. It is contradictory to require an operator demonstrating financial hardship to incur potentially significant expenses researching ownership of long-inactive wells before it can obtain the extension intended to address them.

Nonoperators frequently have no notice of the operator's regulatory status. They do not receive routine Commission correspondence concerning inactive-well deficiencies, extension requests, or enforcement. If the Commission intends to use nonoperator information to pursue nonoperators for plugging costs, fundamental fairness requires that those parties receive advance notice and an opportunity to respond. The proposal does not address that issue.

TIPRO recognizes that existing Texas law provides the Commission with authority to pursue certain responsible parties for the recovery of plugging expenses. TIPRO is not suggesting that the Commission relinquish or disregard that authority. However, requiring operators seeking plugging extensions to furnish the names, addresses, and contact information of nonoperators is unnecessary, impractical, and potentially counterproductive. In many instances the ownership information associated with these long-inactive wells is decades old and cannot be reliably verified without substantial title research. Record working interest ownership does not necessarily reflect contractual obligations for plugging expenses, prior contributions toward those expenses, or the ability of a nonoperator to influence or direct plugging operations.

Requiring operators to furnish this information would impose additional financial and administrative burdens on operators, nonoperators, and the Commission itself. It could also create disputes regarding ownership, financial responsibility, and the accuracy of information maintained in regulatory records. Most importantly, these additional requirements would do little, if anything, to accomplish the principal objective of Senate Bill 1150 of ensuring that inactive wells are plugged in a timely and responsible manner.

Eliminating the requirement does not prevent the Commission from applying proposed §3.15(i)(2)(A). That subparagraph applies where the well is owned, in whole or in part, by a nonoperator who was a previous operator of record, or an officer, director, general partner, owner of more than 25 percent, or trustee of an operator of record, for the well, and who currently is barred from being on an organization report under Texas Natural Resources Code §91.114(2), and its text does not depend on the documentation required by §3.15(h)(3). Proposed §3.15(h)(3) itself recognizes that an operator may be unable to ascertain the name, address, or contact information of every nonoperator even after good faith and reasonable effort. TIPRO therefore recommends that denial under §3.15(i)(2)(A) rest on what the operator actually knew, with notice and an opportunity to cure.

TIPRO therefore recommends that the Commission eliminate the requirement in proposed §3.15(h)(3) that an operator identify nonoperators and submit their names, addresses, and contact information with an extension application, and make the corresponding conforming changes to the references to that documentation in §3.15(h)(4) and (i)(2)(A). Existing statutory provisions governing responsibility for plugging expenses should remain available to the Commission when appropriate, with determinations of responsibility made on a case-by-case basis and supported by reliable ownership information and applicable law. If the Commission retains the requirement, TIPRO asks that it retain the good faith and reasonable effort standard and the safe harbor in §3.15(h)(3) and adopt the protections described in the alternative recommendations that follow and the knowledge standard and cure period TIPRO recommends below for §3.15(i)(2)(A). The Commission's limited resources, and those of Texas oil and gas operators, should be directed toward plugging inactive wells rather than creating and maintaining an extensive nonoperator reporting system that Senate Bill 1150 did not expressly require.

Alternative recommendations if the Commission retains §3.15(h)(3). TIPRO's primary recommendation is that the Commission eliminate the requirement, for the reasons stated above. If the Commission retains it, those concerns remain, and TIPRO asks that the Commission adopt the protections described below. If the requirement is retained, TIPRO does not object to the Commission's knowing who the nonoperators are for the purpose of administering the provisions of Chapter 89 that apply to them, including §89.012, provided that what is collected is limited, its use is limited, and it is protected.

***Applies to:*** *Proposed §3.15(h)(3); §3.15(h)(3A) (new); §3.15(s)(1) (new)*

The information collected should be limited to what the Commission needs to send a written notice. A name and last known mailing address are sufficient for that purpose. Telephone numbers, email addresses, and other contact information add to the privacy exposure of passive owners without a stated use. The information should be used only for notices and administration under Chapter 89. The information should also be treated as confidential to the extent the law permits. Nonoperators include individuals, estates, and trusts, and their names and addresses are supplied to the Commission by the operator, not by the nonoperators themselves. Chapter 552, Government Code, provides exceptions to disclosure for certain information, and the Commission should apply them consistently and notify the operator before releasing nonoperator information in response to a request. TIPRO also asks the Commission to confirm that identifying a nonoperator in an application does not create or expand the nonoperator's responsibility, which remains as provided in Chapter 89.

> ***Proposed language:*** *Amend §3.15(h)(3) to replace the second sentence with: "The operator shall include documentation of the name and last known mailing address of each nonoperator it identifies," and to replace "name, address or contact information" in the third sentence with "name or last known mailing address." Add a new paragraph §3.15(h)(3A): "(3A) The Commission will treat nonoperator information filed under paragraph (3) of this subsection as confidential to the extent permitted by law, will use it only for the purposes stated in subsection (s) of this section, and will notify the operator before releasing it in response to a request under Chapter 552, Government Code." Add a*

*new subsection §3.15(s): "(s) Nonoperators. (1) Nonoperator information filed under subsection (h)(3) of this section is used only to provide the notices and respond to the requests described in this subsection and to administer Texas Natural Resources Code Chapter 89. Identification of a nonoperator in an application under subsection (h) of this section does not create or expand any responsibility of that nonoperator, and nothing in this section changes a nonoperator's responsibility under Texas Natural Resources Code Chapter 89."*

***Applies to:*** *Proposed §3.15(s)(2) (new)*

Many nonoperators are passive owners with no operational role. The operator, not the nonoperator, files the Commission's required reports, receives its notices, and responds to violations, so a nonoperator may not learn that an operator is out of compliance until the problem is serious. Section 89.012 makes a nonoperator responsible when an operator fails to plug a well as required, "according to the rules of the commission in effect at the time the responsibility attaches," which contemplates that Commission rules will govern how that responsibility is administered. The proposal does not provide for notice to a nonoperator when an operator's noncompliance may lead the Commission to look to the nonoperator. Existing law gives a nonoperator the right to request notice of certain Commission plugging actions (§89.043(e) and §89.085(f), with requests recorded under §89.088), but the proposal contains nothing comparable for the extension and compliance process. TIPRO recommends that, before the Commission holds a nonoperator responsible under Chapter 89 for plugging obligations arising from an operator's noncompliance with §3.15, it give the nonoperator direct written notice and a defined period to cure the noncompliance or to cause the operator to cure it. Notice and an opportunity to cure do not help a person who was listed in error, so the nonoperator should also be able to respond during the same period that it does not hold a working interest in the well, that its interest is smaller than the Commission has assumed, or that it has already contributed toward plugging the well, and the Commission should credit documented prior contributions. Identification of a person as a nonoperator by an operator should not by itself establish that the person is a nonoperator or the amount of its share.

***Proposed language:*** *Add §3.15(s)(2): "(2) Before the Commission holds a nonoperator responsible under Texas Natural Resources Code Chapter 89 for plugging obligations arising from an operator's noncompliance with this section, the Commission shall provide the nonoperator written notice of the noncompliance, sent to the address filed under subsection (h)(3) of this section or otherwise known to the Commission, describing the well or wells affected and the nature of the noncompliance. The nonoperator has not less than 90 days from the notice to cure the noncompliance directly or to cause the operator to cure it. A nonoperator that timely cures the noncompliance, or causes the operator to cure it, within that period is not responsible under Chapter 89 for the obligation cured. During that period the nonoperator may submit written information that it does not hold a working interest in the well, that its interest is smaller than the Commission has assumed, or that it has already contributed funds toward plugging the well. The Commission will consider that information and will credit documented prior contributions against any amount sought from the nonoperator. Identification of a person as a nonoperator in an application under subsection (h) of this section does not by itself establish that the person is a nonoperator or the amount of its share."*

***Applies to:*** *Proposed §3.15(s)(3) (new)*

Section 89.012 provides that a nonoperator is responsible for its "proportionate share of the cost of the proper plugging of the well." The rule should state that the Commission will not seek more than that share. Nonoperating interests are held by individuals, estates, family trusts, partnerships, investment funds, charities, universities, and others, and some are very small fractional interests. TIPRO recommends that the rule provide that the Commission will not seek from a nonoperator more than that nonoperator's proportionate working interest share of the plugging cost, and that the Commission, in exercising its discretion in administering Chapter 89, establish a de minimis working interest threshold below which it will not seek payment from a nonoperator for obligations arising from an operator's noncompliance, to the extent consistent with Chapter 89.

> ***Proposed language:*** *Add §3.15(s)(3): "(3) A nonoperator's responsibility under Texas Natural Resources Code Chapter 89 for plugging obligations arising from an operator's noncompliance with this section shall not exceed that nonoperator's proportionate working interest share of the cost of plugging the well. The Commission will not seek payment from a nonoperator that holds a working interest below the de minimis threshold established by the Commission by rule for those obligations."*

***Applies to:*** *Proposed §3.15(s)(4) (new)*

Because nonoperators generally have no ongoing relationship with the Commission comparable to the operator's, they should be able to ask the Commission about the status of a well in which they own an interest, rather than learning of a problem only after it has become serious. Existing law already allows a nonoperator to request notice of certain Commission plugging actions. TIPRO recommends extending a similar request mechanism to the compliance status of a well under §3.15.

> ***Proposed language:*** *Add §3.15(s)(4): "(4) A nonoperator identified under subsection (h)(3) of this section, or that otherwise demonstrates a working interest in a well, may request from the Commission the current compliance status of the well under this section, including whether the well is covered by an extension, an approved compliance plan, or an individual performance bond. The Commission will respond within 15 business days of the request."*

**Reactivation History Standard**

***Applies to:*** *Proposed §3.15(i)(1)(A)*

Proposed §3.15(i)(1)(A) treats an operator as having a satisfactory history if it has restored one well in "the preceding year" (operators with no more than 10 inactive wells) or the equivalent of at least 10 percent of its inactive wells in "the preceding year" (operators with more than 10). Section 89.023(c)(1)(A) refers to the operator's "demonstrated history of returning inactive wells to operation." A single year is a snapshot, not a history, and an operator that restored wells in earlier years would receive no credit. The one-year period also makes the standard sensitive to timing, because a well returned to production late in the year may not yet meet the definition of

active operation, which requires three consecutive months of minimum production or 12 months at a lower threshold. TIPRO recommends a three-year look-back.

TIPRO also recommends that the rule state when a well is "restored," count wells returned to injection, disposal, or other permitted operation, as the statute's reference to "operation" contemplates, and state how the 10 percent threshold is rounded and when the population is measured. An operator with 10 inactive wells needs one restored well, which is 10 percent, and the rule does not say whether an operator with 11 inactive wells, for which 10 percent is 1.1, must restore one well or two. The preamble describes the first tier as operators with "less than 10" inactive wells, while the rule text says "no more than 10," and the two should be conformed so that an operator with exactly 10 inactive wells is plainly covered. The same rounding and measurement questions apply to the measure recommended below, which applies the 10 percent to the operator's 15/25 wells, and the proposed language below addresses them.

> ***Proposed language:*** *Amend §3.15(i)(1)(A) to read: "(A) the operator has a satisfactory history of restoring inactive wells to active operation if the application and additional documentation required under subsection (h) demonstrates one of the following criteria: (i) for an operator with no more than 10 inactive wells, the operator has restored one well to active operation in the preceding three years; (ii) for all operators with more than 10 inactive wells, the operator has restored to active operation, in the preceding three years, at least 10 percent of the number of its 15/25 wells at the beginning of that period, rounded down to the nearest whole well but not fewer than one well; or (iii) the operator's inactive wells, as of the date the application is filed, constitute no more than 25 percent of the operator's total well count, and the operator has restored at least one inactive well to active operation in the preceding three years. For purposes of this subparagraph, a well is restored on the date it is returned to production, disposal, injection, or other permitted operation and is counted in the period in which that return occurs, provided the well satisfies the definition of active operation within 12 months after that date."*

***Applies to:*** *Proposed §3.15(i)(1)(A)*

The reactivation criteria in proposed §3.15(i)(1)(A) measure only restorations. Section 89.023(c)(1)(A) leaves to the Commission the determination whether the operator's "demonstrated history of returning inactive wells to operation warrants the granting of the extension" and sets no percentage, look-back period, or denominator, so each figure in the criteria is the Commission's construction. The statute also identifies the share of an operator's wells that are inactive as relevant to the Commission's review: §89.023(f)(3) lists "the operator's percentage of inactive wells compared to the operator's total well count" among the factors the Commission considers in approving a compliance plan. TIPRO recommends a third criterion under which an operator qualifies if its inactive wells constitute no more than 25 percent of its total well count, the measure used in §89.023(f)(3), as of the date the application is filed, and it has restored at least one inactive well to active operation in the preceding three years. The criterion still requires an actual restoration, so it remains a measure of history. It applies in the alternative to the other criteria, so an operator that does not meet it keeps every other path, and it gives an operator that does meet it a defined answer before the application cycle begins. TIPRO believes that an operator with no

more than 25 percent of its wells inactive has a continuing source of revenue from which to meet its plugging obligations.

> ***Proposed language:*** *Clause (iii) is set out in the amended §3.15(i)(1)(A) above.*

***Applies to:*** *Proposed §3.15(i)(1)(A)*

The proposal has no adjustment for periods in which reactivation was uneconomic. Operators cannot economically return marginal wells to production during a sustained price downturn, and an operator should not lose credit for a history of restoring wells because the look-back period coincided with one. TIPRO recommends that an operator may substitute an earlier period of equal length if, for a majority of the months in the period that would otherwise apply, the average taxable price certified by the Comptroller was at or below the level at which a tax credit is available for qualifying low-producing oil leases under Texas Tax Code §202.058 or low-producing gas wells under Texas Tax Code §201.059. TIPRO also recommends that an operator may substitute an earlier period of equal length if it documents that operational or financial conditions outside its reasonable control delayed planned reactivation of inactive wells during the period that would otherwise apply.

> ***Proposed language:*** *Add to §3.15(i)(1)(A): "An operator may substitute an earlier period of equal length for the period specified in this subparagraph if, for a majority of the months in the period that would otherwise apply, the average taxable price certified by the Comptroller of Public Accounts was at or below the level at which a tax credit is available for qualifying low-producing oil leases under Texas Tax Code §202.058 or low-producing gas wells under Texas Tax Code §201.059. An operator may also substitute an earlier period of equal length if the operator documents that operational or financial conditions outside its reasonable control delayed planned reactivation of inactive wells during the period that would otherwise apply."*

***Applies to:*** *Proposed §3.15(i)(1)(A)*

The proposal credits only wells restored to active operation. An operator that has permanently plugged inactive wells has resolved those wells as completely as one that has restored them, and a plugged well cannot become inactive again. The Commission recognizes this principle in proposed §3.15(r), under which wells an operator plugs above 10 percent of its inactive land wells in a 12-month cycle count toward the 10 percent blanket option in the next cycle. Section 89.023(c)(1)(A) leaves the determination to the Commission, which by order determines whether the operator's history "warrants" an extension. Section 89.023(a)(3)(A), which applies to an extension under subsection (a), credits an operator that "has plugged, or restored to active operation as defined by commission rule," a number of inactive wells, and proposed §3.15(i)(1) states that approval "is warranted if" the operator meets the criteria. TIPRO recommends that plugged wells count toward the thresholds in §3.15(i)(1)(A) in addition to wells restored.

> ***Proposed language:*** *Add to §3.15(i)(1)(A): "For purposes of this subparagraph, an inactive well that the operator has permanently plugged in the applicable period is counted in the same manner as an inactive well restored to active operation."*

***Applies to:*** *Proposed §3.15(i)(1)(A)*

Under the 10 percent tier of proposed §3.15(i)(1)(A), the operator's restored wells are measured against its "total inactive well population." Section 89.023(c)(1)(A) refers to "the operator's demonstrated history of returning inactive wells to operation" and does not state a unit of measurement. The extension in §89.023(c) applies only to 15/25 wells, yet the rule sets the number of wells the operator must restore by reference to all of its inactive wells, including wells that are not subject to the extension. TIPRO recommends that the 10 percent be measured against the operator's 15/25 wells. An operator's reactivation on a particular lease or in a particular field may also be a small share of a large inventory and may not be reflected when measured only against the operator's entire inventory, so TIPRO also recommends that the operator be allowed to elect to apply the criteria to a lease, a field, or another group of its 15/25 wells.

> ***Proposed language:*** *Add to §3.15(i)(1)(A): "At the operator's election, the criteria in clauses (i) and (ii) of this subparagraph may be applied separately to the 15/25 wells on a lease, in a field, or in another group of the operator's 15/25 wells that the operator identifies in the application, in which case the determination applies to each 15/25 well in that group."*

***Applies to:*** *Proposed §3.15(i)(1)(A)*

Section 89.023(c)(1) provides that, on request of the operator, the Commission by order determines whether the operator's demonstrated history of returning inactive wells to operation warrants the granting of the extension. Proposed §3.15(i)(1) states that approval "is warranted if" the operator meets the criteria in subparagraph (A), but it does not say whether an operator that does not fit the numeric criteria may show a satisfactory history in another way. An operator with a strong record that does not fit the formula has no route to a determination by order. TIPRO recommends that the numeric criteria operate as a safe harbor and not as the exclusive test. TIPRO also recommends that the Commission not draw an adverse inference from an operator's failure to satisfy a numeric criterion, either in its determination under §89.023(c)(1)(A) or in its consideration of a compliance plan under §89.023(c)(2).

> ***Proposed language:*** *Add to §3.15(i)(1)(A): "An operator that does not satisfy a criterion in clauses (i), (ii), or (iii) of this subparagraph may request that the Commission determine by order, under Texas Natural Resources Code §89.023(c)(1)(A), that the operator's demonstrated history of returning inactive wells to operation warrants the granting of the extension. The criteria in this subparagraph establish circumstances in which approval is warranted and do not limit the Commission's authority to make that determination on the record before it. An operator's failure to satisfy a numeric criterion in this subparagraph is not a basis for an adverse inference in the Commission's determination under Texas Natural Resources Code §89.023(c)(1)(A) or its consideration of a compliance plan under §89.023(c)(2)."*

**Financial Hardship Standard**

***Applies to:*** *Proposed §3.15(i)(1)(B)*

Proposed §3.15(i)(1)(B) lists five hardship criteria, (i) through (v), "in accordance with the following criteria." The rule does not say whether an operator must meet one criterion or all five, and the surrounding text points in different directions. Subparagraph (A) requires an operator to meet "one of the following criteria," subparagraph (C) requires a compliance plan to satisfy "each of the following criteria," and the only "or" in subparagraph (B) follows criterion (v) and connects the subparagraph to subparagraph (C). An operator reading subparagraph (B) against those two could conclude that all five criteria apply. That reading would require an applicant to show, among other things, that paying one-fifteenth of the cost would cause it both to seek bankruptcy relief and to default on a material debt obligation, a showing the statute does not require. The rule should state that satisfying any one criterion is sufficient.

> ***Proposed language:*** *Amend the introductory clause of §3.15(i)(1)(B) to end "in accordance with any one of the following criteria:", insert "or" at the end of clause (iv), and replace the semicolon and "or" at the end of clause (v) with a period.*

***Applies to:*** *Proposed §3.15(i)(1)(B)(i) through (iii)*

Each of the first three criteria is stated as a "difference" that "is negative," without saying which amount is subtracted from which. Criterion (iii) compares "three-year earnings before interest, taxes, depreciation and amortization" with the full cost calculation "divided by fifteen (15)." Read literally, it compares three years of cumulative earnings with one-fifteenth of the cost, which mixes a multi-year total with an annual share and makes the criterion harder to meet than a comparison of annual figures would. It is also unclear whether "divided by fifteen" applies to the cost alone or to the difference. The preamble describes the criterion differently, as the difference between the operator's earnings and "one-fifteenth of the full cost calculation," without the reference to three years. TIPRO recommends that each criterion state the comparison in direct terms and that criterion (iii) use average annual earnings for the three most recent fiscal years. The preamble and the rule should use the same terms.

> ***Proposed language:*** *Amend §3.15(i)(1)(B)(i) through (iii) to read: "(i) the full cost calculation for plugging all of the operator's 15/25 wells exceeds the operator's total annual revenue as shown in the most recent annual financial statements; (ii) the full cost calculation for plugging all of the operator's 15/25 wells exceeds the operator's total assets as shown in the most recent annual financial statements; (iii) one-fifteenth of the full cost calculation for plugging all of the operator's 15/25 wells exceeds the operator's average annual earnings before interest, taxes, depreciation and amortization for the three most recent fiscal years;"*

***Applies to:*** *Proposed §3.15(h)(4)(B)(i)*

Proposed §3.15(h)(4)(B)(i) tracks §89.023(d)(2) in requiring "sworn financial statements, certified by a certified public accountant," and TIPRO supports that standard. The rule does not say what level of involvement by the accountant satisfies it. An accountant may audit, review, or compile

financial statements, and many small operators do not maintain audited statements or statements prepared under generally accepted accounting principles. The statute requires neither. TIPRO recommends that the rule state that the statements need not be audited and may be prepared on any basis of accounting that the operator applies consistently, and that an operator in business for fewer than three years provide statements for the years it has operated.

> ***Proposed language:*** *Amend §3.15(h)(4)(B)(i) to read: "sworn financial statements, certified by a certified public accountant, which shall include financial information for the three fiscal years prior to the operator's organization report renewal date, or for each fiscal year the operator has operated if fewer than three. The statements need not be audited and may be prepared on any basis of accounting that the operator applies consistently;"*

***Applies to:*** *Proposed §3.15(h)(4)(B)(iii) and (iv); §3.15(i)(1)(B)*

Proposed §3.15(h)(4)(B)(iii) requires evidence "specific to the inactive well," but the criteria in §3.15(i)(1)(B) compare an operator's finances with the cost of plugging all of its 15/25 wells. For an operator with many wells, the rule should allow evidence on an aggregate or representative basis, including the Commission's district figures, rather than a separate showing for each well. The same provision recognizes that costs specific to a well, such as wellbore construction, access, and location, can differ materially from average costs. TIPRO recommends that the rule also allow a well-specific hardship showing, so that an operator that is otherwise financially sound but holds a well that is unusually expensive to plug can obtain relief for that well without showing broader financial distress. An extension on that basis would apply only to that well.

> ***Proposed language:*** *Add to the end of §3.15(h)(4)(B)(iii): "For an operator with more than one 15/25 well, the evidence may be provided on an aggregate or representative basis, including by reference to the full cost calculation established by the Commission for the district in which the wells are located." Add a new subparagraph §3.15(h)(4)(B)(iv)(VI): "(VI) evidence specific to an inactive well showing that its plugging cost is unusually high relative to typical costs for similarly situated wells because of an unusual site condition, a temporary shortage of available contractors, or a comparable well-level factor. An extension granted on this basis applies only to that well."*
>
> *Add a new clause to §3.15(i)(1)(B): "(vi) the full cost calculation for plugging an individual 15/25 well, supported by documented well-specific factors, is unusually high relative to the cost for similarly situated wells in the district, in which case approval under this clause applies only to that well;"*

***Applies to:*** *Proposed §3.15(i)(1)(B)*

The hardship criteria are technical and will be applied to many operators for the first time. TIPRO recommends that the Commission publish a worksheet and worked examples for each criterion with the application forms.

**Compliance Plan Standard**

***Applies to:*** *Proposed §3.15(h)(4)(C)(i)(III); §3.15(i)(1)(C)(i) through (iii) and (v)*

Section 89.023(c)(2) requires a compliance plan in which the operator "commits to plugging or bringing the inactive well into production or operation as an injection well or other type of operation by September 1, 2042." The statute does not prescribe annual minimums, and it directs the Commission to consider "current economic conditions" and the operator's plan of action when approving a plan (§89.023(f)(2) and (4)). TIPRO supports the proposal's use of a number of wells per year rather than a well-by-well calendar and accepts that the Commission will require a schedule that reaches compliance by 2042. TIPRO asks that the number be allowed to change from year to year at the operator's discretion, based on market conditions, so long as the operator remains on track to achieve compliance by September 1, 2042.

As drafted, proposed §3.15(h)(4)(C)(i)(III) and (i)(1)(C)(ii) require the number of wells in each year to be "not less than the amount the operator would need to plug or return to active operation year-over-year," and §3.15(i)(1)(C)(iii) requires a minimum each year that is not less than "the operator's total number of 15/25 wells divided by the remaining number of years." Plugging and reactivation activity does not occur evenly. Contractor and equipment availability, commodity prices, and costs vary from year to year, and an operator that falls short in one year because of them, or that plugs more in another, should be evaluated on whether it remains on track.

Several terms also need clarification. The formula in (iii) refers to "the operator's total number of 15/25 wells," but an operator may include only some of its 15/25 wells in a plan, and (C)(i) refers to "all 15/25 wells." The formula should apply to the wells included in the plan and should be recalculated at each renewal using the wells that remain. "Year" should mean an organization report year. Wells that become 15/25 wells after a plan is approved should be addable at renewal without being counted against earlier years. TIPRO also recommends a procedure to modify a schedule between renewals for documented circumstances outside the operator's control. Finally, under proposed §3.15(i)(1)(C)(v) the Commission "may consider" wells plugged or restored above the minimum, while proposed §3.15(r) provides that the Commission "will count" wells plugged above 10 percent toward the next cycle for other extensions. Excess wells should be credited in full toward later years.

> ***Proposed language:*** *Amend §3.15(h)(4)(C)(i)(III) to read: "(III) provide a schedule for plugging or restoring to active operation all inactive wells included in the compliance plan, specifying a number of wells to be plugged or returned to active operation in each organization report year, which number may be revised at each renewal, so that all wells included in the plan are plugged or restored to active operation by September 1, 2042;"*
>
> *Amend §3.15(i)(1)(C)(i), (ii), (iii), and (v) to read: "(i) the compliance plan specifies a number of wells to be plugged or restored to active operation each organization report year, such that the operator will achieve compliance for all wells included in the plan by September 1, 2042; (ii) at each renewal, the schedule in the plan, as submitted or revised, provides for plugging or restoring all wells included in the plan that remain unplugged and unrestored by September 1, 2042; (iii) the minimum number of wells to be plugged or restored in a year*

*is not less than the number of wells included in the plan that remain unplugged and unrestored at the beginning of that year, divided by the number of years remaining until September 1, 2042, except that the operator may plug or restore fewer wells in a year based on market conditions, contractor or equipment availability, or other documented circumstances, and the Commission shall approve the plan or renewal if the revised schedule provides for compliance by September 1, 2042; (v) the Commission shall credit wells that the operator plugged or restored above the minimum number required in clause (iii) toward the number required in later years."*

*Add a new subparagraph §3.15(h)(4)(C)(iv): "(iv) A compliance plan may be revised at any renewal. A well that becomes a 15/25 well after the plan is approved may be added at renewal, and the schedule will be adjusted prospectively. An operator may also request modification of its schedule between renewals on a showing of documented circumstances outside the operator's reasonable control, including a shortage of qualified plugging contractors or equipment, a material change in commodity prices, a default by a nonoperator responsible for a share of plugging costs, or an acquisition or divestiture that materially changes the operator's inventory. Approval of a modification adjusts the timing of the operator's schedule and does not extend the September 1, 2042, deadline. In this subparagraph and in subsection (i)(1)(C) of this section, 'year' means an organization report year."*

***Applies to:*** *Proposed §3.15(h)(4)(C)(i)(II) (second paragraph so designated); §3.15(i)(1)(C)(iv)*

Proposed §3.15(h)(4)(C)(i) requires a plan to "specify whether the included inactive well will be plugged or restored to active operation, and how the well will be restored," and proposed §3.15(i)(1)(C)(iv) requires an operator to "reasonably prioritize[]" the wells to be addressed each year based on the age and length of inactivity of the well and potential hazards. TIPRO supports a rule that requires reasonable prioritization on those factors. The preamble's description of the plan contents, §3.15(h)(4)(C)(i)(I) through (VI), lists six items and does not include the designation of plugging or restoration, so the requirement may not be intended. TIPRO recommends that it be deleted or, if retained, be treated as the operator's current intention. The rule should also state that the operator selects which wells satisfy the annual number, and that a change in the wells selected, or in the method designated for a well, is not a deviation from the plan so long as the required number is met. The designation of plugging or restoration will change as operators learn the condition and economics of a well, including its potential as a replacement producer or an injection well within a waterflood pattern, and an operator should not be treated as departing from its plan for acting on that information. Section 89.023(f) also directs the Commission to consider more than age and hazards, including economic conditions and the operator's plan of action, and the rule should say that an operator may take those considerations into account in sequencing wells.

***Proposed language:*** *Amend §3.15(i)(1)(C)(iv) to read: "(iv) the operator reasonably prioritizes the inactive wells to be plugged or restored to active operation each year based on the considerations listed at Texas Natural Resources Code §89.023(f), including the age and length of inactivity of the well, potential hazards to the health and safety of the public or the environment, and current economic conditions, and may also consider the potential future utility of the well. The operator selects the wells that satisfy the number required for*

*a year, subject to the Commission's authority to require that an individual well that poses an imminent threat to public health, safety, or the environment be addressed first. A change in the wells selected for a year, or in the method designated for a well under subsection (h)(4)(C)(i) of this section, is not a deviation from the approved plan if the number required for the year is met; and"*

*If the Commission retains the designation in §3.15(h)(4)(C)(i), amend the second item designated "(II)" to read: "specify whether the operator presently intends the included inactive well to be plugged or restored to active operation;"*

***Applies to:*** *Proposed §3.15(h)(4)(C)(ii)*

Section 89.023(f) directs the Commission to consider eight factors in approving a compliance plan. Proposed §3.15(h)(4)(C)(ii) lets an operator include information on three of them, current economic conditions, the operator's record of compliance, and additional financial assurance, and §3.15(i)(1)(C)(iv) refers to two others, age and length of inactivity and hazards. The rule does not provide for the remaining three: the operator's percentage of inactive wells compared to its total well count (§89.023(f)(3)), the plan of action submitted with the organization report (§89.023(f)(4)), and the good faith demonstrated by the operator (§89.023(f)(8)). TIPRO recommends that the rule provide for all eight. Section 89.023(f) provides that the Commission "shall consider" those factors in approving a compliance plan. They are factors the Commission weighs in deciding whether to approve a plan, and the rule should say so.

***Proposed language:*** *Amend §3.15(h)(4)(C)(ii) to add after item (III): "(IV) the operator's percentage of inactive wells compared to its total well count; (V) any plan of action for plugging or bringing its inactive wells into production or operation as an injection well or other type of operation that the operator has submitted with its organization report; (VI) any good faith demonstrated by the operator; and (VII) any other information the operator believes is relevant."*

***Proposed language:*** *Add to §3.15(i)(1)(C): "In determining whether to approve a compliance plan, the Commission shall consider the factors listed in Texas Natural Resources Code §89.023(f)."*

***Applies to:*** *Proposed §3.15(h)(4)(C)(i) and (ii)*

Section 89.023(c)(2) refers to a compliance plan in which the operator "commits to plugging or bringing the inactive well into production or operation as an injection well or other type of operation by September 1, 2042." Proposed §3.15(h)(4)(C)(i) describes the plan in terms of plugging a well or restoring it to active operation. TIPRO asks the Commission to confirm that a commitment to return a well to permitted injection service, including in a project approved by the Commission, is a qualifying commitment under §89.023(c)(2). TIPRO also asks the Commission to state that an operator may submit documentation of a well's role in an approved recovery project, and a certification by a licensed professional engineer or geoscientist of the well's expected future use, as information the Commission considers under §89.023(f) in approving a plan.

***Proposed language:*** *Add a new subparagraph §3.15(h)(4)(C)(vii): "(vii) A commitment in a compliance plan to bring an inactive well into operation as an injection well or other type of operation, including in a project approved by the Commission, is a commitment to bring the well into operation for purposes of Texas Natural Resources Code §89.023(c)(2) and this subparagraph. The operator may include with the plan documentation of the well's role in an approved recovery project and a certification by a licensed professional engineer or geoscientist of the well's expected future use."*

***Applies to:*** *Proposed §3.15(h)(4)(C)(i)(V) and (VI); §3.15(i)(2)(B)*

Proposed §3.15(h)(4)(C)(i)(V) requires "the full cost calculation of plugging or restoring to active operation" all included wells. The full cost calculation is defined only for plugging, and the rule has no definition for the cost of restoring a well. TIPRO recommends that the requirement be limited to plugging, using the figures established by the Commission for the district.

Proposed §3.15(h)(4)(C)(i)(VI) requires an attestation "confirming the operator's ability to adhere to its compliance plan," and proposed §3.15(i)(2)(B) requires denial if the operator has been penalized for false filings under §91.143. An attestation of future ability depends on market conditions the operator does not control. The rule should make clear that an attestation made in good faith on the basis of information available when it is made is not a false filing because circumstances later change.

***Proposed language:*** *Amend §3.15(h)(4)(C)(i)(V) and (VI) to read: "(V) include the full cost calculation for plugging each inactive well included in the compliance plan, which the operator may determine using the amounts established by the Commission under subsection (a)(6) of this section for the district in which the well is located; and (VI) contain an attestation by the operator's authorized representative that, based on information available at the time of filing, the operator has the ability to adhere to its compliance plan." Add to §3.15(i)(2)(B): "An attestation made in good faith under subsection (h)(4)(C)(i)(VI) of this section is not a violation under this subparagraph because the operator later does not achieve the schedule in its plan."*

***Applies to:*** *Proposed §3.15(h)(4)(C); §3.15(n)*

The proposal contains no separate testing requirement for wells in a compliance plan, and TIPRO supports that approach. TIPRO asks the Commission to confirm that testing for those wells is governed by §3.15(n), including the five-year validity of a hydraulic pressure test and the option of a fluid level test, and that the status report in §3.15(h)(4)(C)(iii) does not impose a different testing requirement.

***Proposed language:*** *Add a new subparagraph §3.15(h)(4)(C)(vi): "(vi) Testing and reporting for a well included in a compliance plan are governed by subsection (n) of this section, and this subparagraph does not impose a separate or additional testing requirement."*

***Applies to:*** *Proposed §3.15(a)(2) and (a)(8); §3.15(h)(4)(C)*

A well that an operator returns to active operation under a compliance plan should count toward the plan's number for the year in which it is restored. TIPRO also asks the Commission to confirm what happens if a restored well later becomes inactive again. Under proposed §3.15(a)(2) and (a)(8), a well that satisfies the definition of active operation is no longer inactive, and its period of inactivity would begin again if it later has no reported activity for more than 12 months. The rule should say so, so that an operator that restores a well and later has to shut it in is not treated as though the well had never been restored. Without that confirmation, an operator has less reason to spend money returning marginal wells to service.

> ***Proposed language:*** *Add a new subparagraph §3.15(h)(4)(C)(v): "(v) A well restored to active operation, or converted to another authorized operation, under a compliance plan is credited in full toward the number required for the year in which it was restored. A well that has satisfied the definition of active operation and later becomes an inactive well is a newly inactive well. Its period of inactivity begins on the date it again meets the definition of inactive well, and any period of inactivity before its restoration is not counted toward the 15-year period in the definition of 15/25 well."*

**Individual Performance Bond**

***Applies to:*** *Proposed §3.15(i)(1)(D)(iii); §3.15(i)(2)(G)*

Proposed §3.15(i)(1)(D)(iii) requires that a bond be "issued by and drawn on by a third-party bank authorized under state or federal law to do business in Texas," and §3.15(i)(2)(G) requires denial if it is not. Section 89.023(c)(3) requires only that the operator file "an individual performance bond" in the required amount and does not specify the issuer. The Commission's own instructions for performance bonds filed with the organization report state that "[b]onds must be issued by a surety company registered in the State of Texas with the Texas Department of Insurance," while letters of credit are issued by financial institutions. The phrase "issued by and drawn on by" is also unclear, because a bond is issued by a surety and drawn on by the obligee. As written, the requirement could exclude the surety bonds that the Commission accepts for other financial assurance. TIPRO recommends that the rule allow a bond issued by a surety company registered in Texas with the Texas Department of Insurance, in addition to the letter of credit and cash deposit discussed below. TIPRO also asks the Commission to make room for a category of financial assurance that specialty insurance markets already provide and that other state regulators and major operators accept in place of conventional security: a non-cancellable instrument that continues until the well is plugged. The Legislature has recognized a related concept in Natural Resources Code §91.104(c), which allows a well-specific plugging insurance policy that is approved by the Texas Department of Insurance, is fully prepaid, cannot be canceled or surrendered, and continues in effect until the well bore has been plugged. A policy under §91.104(c) pays benefits only after the well bore has been plugged, so an instrument that serves this rule must also be one the Commission can draw on if the operator fails to plug. A letter of credit, by comparison, is typically an annual instrument that the issuing bank may decline to renew, and an operator may be required to cash collateralize it, which ties up funds that could be used to plug wells and adds fees. TIPRO recommends that the rule recognize a non-cancellable financial assurance instrument that

continues until the well is plugged, is available to the Commission on the operator's failure to plug, and is issued or fully insured by an insurer rated A- or higher by a nationally recognized rating organization.

> ***Proposed language:*** *Amend §3.15(i)(1)(D)(iii) to read: "(iii) it is issued by a surety company registered in Texas with the Texas Department of Insurance, by a financial institution authorized under state or federal law to do business in Texas, or is a non-cancellable financial assurance instrument that continues until the well is plugged and is issued or fully insured by an insurer rated A- or higher by a nationally recognized rating organization, and the Commission may draw on it." Amend §3.15(i)(2)(G) to read: "(G) the performance bond is not issued by a surety company registered in Texas with the Texas Department of Insurance or by a financial institution authorized under state or federal law to do business in Texas, and is not a non-cancellable financial assurance instrument that continues until the well is plugged and is issued or fully insured by an insurer rated A- or higher by a nationally recognized rating organization."*

***Applies to:*** *Proposed §3.15(h)(4)(D); §3.15(i)(1)(D)*

Section 89.023(c)(3) requires a bond that "runs with and covers the lifetime of the well, regardless of a change in the operator," and TIPRO recognizes that this is a statutory requirement. TIPRO understands that sureties do not ordinarily write a single non-cancellable instrument for an indefinite term of decades. The Commission's instructions for bonds and letters of credit filed with the organization report already provide for instruments that expire annually, 150 days after the organization report expiration date for a bond and 90 days for a letter of credit, and that are renewed by notice from the surety or financial institution. TIPRO recommends that the rule allow the bond to be issued for a defined term and renewed, for example concurrent with the organization report renewal, with the obligation continuing until the well is plugged, so that the statutory requirement can be met with an instrument the market can provide. TIPRO also asks that the rule provide that a non-cancellable instrument that by its terms does not expire and continues until the well is plugged satisfies this requirement without renewal.

The statute refers only to a bond, but the Commission treats a bond, a letter of credit, and a cash deposit as alternative forms of financial assurance in other parts of the rule, and the statute itself refers to a "commission-approved bond, letter of credit, or cash deposit" in §89.002(a)(2)(C). Proposed §3.15(p)(1) refers to "a supplemental bond, letter of credit, or cash deposit" filed with an extension application, and proposed §3.15(h)(4)(C)(ii)(III) refers to financial assurance under §89.023(a)(3) and §89.027. TIPRO recommends that the Commission accept a letter of credit or cash deposit, or the non-cancellable financial assurance instrument described above, in an amount equal to the full cost calculation as alternatives to a bond for this pathway. The rule should also state when the instrument is released, which should occur when the well is plugged or when a transferee files equivalent financial assurance, and should use the same standard for the amount in both places. Proposed §3.15(h)(4)(D) requires an amount "not less than" the full cost calculation, and §3.15(i)(1)(D)(i) requires an amount "equal to" it.

> ***Proposed language:*** *Amend §3.15(h)(4)(D) to read: "(D) an individual performance bond, letter of credit, cash deposit, or non-cancellable financial assurance instrument described in*

*subsection (i)(1)(D)(iii) of this section that is in an amount not less than the full cost calculation for plugging the inactive well, and that runs with and covers the lifetime of the inactive well, regardless of a change in the operator. The instrument may be issued for a defined term and renewed concurrent with the operator's organization report renewal, provided the obligation continues until the well is plugged. An instrument that by its terms does not expire and continues until the well is plugged satisfies this requirement without renewal. On transfer of the well, the instrument continues with the transferee unless the transferee files equivalent financial assurance. The Commission will release the instrument within 30 days after the well is plugged or after a transferee of the well files equivalent financial assurance for the well."*

*Amend §3.15(i)(1)(D)(i) and (ii) to read: "(i) it is in an amount not less than the full cost calculation of plugging the inactive well; (ii) it runs with and covers the lifetime of the well, regardless of a change in operator, which may be satisfied by renewal on a defined term as provided in subsection (h)(4)(D) of this section; and"*

**Grounds for Denial, Hearing, and Revocation**

Section 89.023(c) provides that the Commission "may grant" an extension if one of the listed bases is established. The statute does not itself establish the seven grounds in proposed §3.15(i)(2) on which the Commission "shall deny." Because a denial exposes the operator to the plugging obligation for every affected well, each ground should rest on an objective, verifiable standard and should give the operator an opportunity to cure where cure is possible. TIPRO's specific recommendations follow.

***Applies to:*** *Proposed §3.15(i)(2)(A)*

Proposed §3.15(i)(2)(A) requires denial if the inactive well is owned, in whole or in part, by a nonoperator who was a previous operator of record, or an officer, director, general partner, owner of more than 25 percent, or trustee of an operator of record, and who is currently barred from being on an organization report under §91.114(2). This provision has no knowledge standard. Proposed §3.15(h)(3) recognizes that an operator may be unable to identify every nonoperator after good faith and reasonable effort, and the rule should not deny an extension because of a circumstance the operator could not have identified. This provision also denies the entire application, including the interests of every other owner, because of one owner's status. TIPRO recommends a knowledge standard tied to the effort required by subsection (h)(3) and an opportunity of 90 days to cure, for example by showing that the person has divested its interest. If the Commission eliminates the nonoperator documentation requirement in subsection (h)(3) as TIPRO recommends above, the knowledge standard should be tied to what the operator actually knew.

***Proposed language:*** *Amend §3.15(i)(2)(A) to read: "(A) the operator knew, or after the good faith and reasonable effort required by subsection (h)(3) of this section should have known, that the inactive well is owned, in whole or in part, by a nonoperator who was a previous operator of record, or officer, director, general partner, owner of more than 25% ownership interest, or trustee, of an operator of record, for the inactive well, and currently is barred*

*from being on an organization report under Texas Natural Resources Code §91.114(2), and the operator does not cure the condition within 90 days after notice from the Commission;"*

***Applies to:*** *Proposed §3.15(i)(2)(B) and (E)*

Proposed §3.15(i)(2)(B) and (E) require denial based on a prior penalty, without limit in time. An operator that was penalized for a false filing or for a safety or pollution violation many years ago, and has since remediated and maintained a clean record, would be barred from every pathway. TIPRO recommends a five-year look-back for both grounds and, for (E), that the ground apply only if the violation remains unremediated. Five years matches the period proposed above for a prudent operator.

***Proposed language:*** *Amend §3.15(i)(2)(B) to read: "(B) the operator has been penalized within the preceding five years for a violation due to false filings under Texas Natural Resources Code §91.143;" Amend §3.15(i)(2)(E) to insert "within the preceding five years" after "has been previously penalized," and to add at the end, before the semicolon, "and the violation remains unremediated."*

***Applies to:*** *Proposed §3.15(i)(2)(C)*

Proposed §3.15(i)(2)(C) requires denial if "the inactive well poses potential hazards to health and safety of the public or the environment." Nearly any inactive well presents some potential hazard, and the rule gives no standard for deciding when a hazard is sufficient, who decides, or whether the operator may remediate. Section 89.023(f)(7) makes potential hazards a factor the Commission considers in approving a compliance plan. It does not make potential hazards a mandatory ground for denial of every extension. The proposal itself treats a successful test as showing the absence of a threat, since §3.15(c)(4) and (e)(5) refer to a test "establishing that the well does not pose a potential threat of harm to natural resources." TIPRO recommends that the ground be limited to a documented and significant hazard that the operator has not remediated, that a well with a successful test within its period of validity be presumed not to present one, and that the operator have an opportunity to remediate.

***Proposed language:*** *Amend §3.15(i)(2)(C) to read: "(C) the inactive well poses a documented and significant hazard to the health and safety of the public or the environment that the operator has not remediated, or has not committed to remediate under a schedule approved by the Commission, within 90 days after notice from the Commission. A well for which the operator holds a successful fluid level or hydraulic pressure test that is within its period of validity under subsection (n) of this section is presumed not to pose such a hazard;"*

***Applies to:*** *Proposed §3.15(i)(2)(D)*

Proposed §3.15(i)(2)(D) requires denial if "the operator's financial hardship is due to the operator's fault or negligence." The rule defines neither term. Financial hardship in complying with the plugging obligation will often result from commodity prices, rising plugging costs, and limited contractor and equipment availability, which are not the operator's fault. TIPRO

recommends that the rule state that market conditions are not fault or negligence and that a denial on this ground rest on written findings.

> ***Proposed language:*** *Add to §3.15(i)(2)(D): "For purposes of this subparagraph, financial hardship is not due to the operator's fault or negligence solely because of changes in commodity prices, operating or plugging costs, interest rates, or contractor or equipment availability, and a denial under this subparagraph shall be supported by written findings."*

***Applies to:*** *Proposed §3.15(i)(2)(F)*

TIPRO supports the limitation of proposed §3.15(i)(2)(F) to deviation "in bad faith." The rule should say what is not bad faith, so that an operator with a reasonable explanation for a variance is protected, and should require notice and an opportunity to respond before denial on this ground. Section 89.023(f)(8) makes the good faith demonstrated by the operator a factor in the Commission's consideration of a plan.

> ***Proposed language:*** *Add to §3.15(i)(2)(F): "A deviation that the operator explains by market conditions, contractor or equipment availability, a well-specific cost or condition, or another circumstance outside its reasonable control is not a deviation in bad faith. The Commission will provide written notice and 30 days to respond before denying an application under this subparagraph."*

***Applies to:*** *Proposed §3.15(i)(3)*

Proposed §3.15(i)(3) allows 30 days from "the date of the denial letter" to request a hearing. A letter's date and its receipt can differ by days, and an operator should not lose its hearing right to a mailing delay. TIPRO recommends that the 30 days run from the operator's receipt of written notice sent by certified mail or another verifiable method. TIPRO also recommends that the notice state the specific grounds for the denial, that the well not be subject to enforcement while the period to request a hearing is running and while a hearing is pending, and that an operator may cure a deficiency and reapply. TIPRO does not object to placing the burden of proof on the party requesting the hearing.

> ***Proposed language:*** *Amend §3.15(i)(3) to read: "(3) If a plugging extension under this section is denied, the Oil and Gas Division Director will notify the operator in writing of the specific grounds for the denial, sent by certified mail or other verifiable delivery method, and the operator may request a hearing to challenge the denial by submitting a request for hearing within 30 days from the date the operator receives the notice. The party requesting the hearing shall have the burden of proof. A well identified in the application is not subject to enforcement for failure to plug under this section while the period to request a hearing is running and while a hearing is pending. An operator may cure a deficiency identified in the notice and reapply at any time."*

***Applies to:*** *Proposed §3.15(j)*

Proposed §3.15(j) allows revocation of an extension after notice and an opportunity for a hearing if the applicant is "ineligible." For an extension under a compliance plan, a shortfall in a single year may not make an operator ineligible if it remains on track. TIPRO recommends that, before revoking an extension on the basis of a plan shortfall, the Commission give written notice and 90 days to cure.

> ***Proposed language:*** *Add to §3.15(j): "Before revoking an extension on the basis of a shortfall under an approved compliance plan, the Commission will give the operator written notice and not less than 90 days to cure the shortfall or revise the plan."*

**Testing Requirements**

***Applies to:*** *Proposed §3.15(n)(3) and (n)(6)*

TIPRO supports proposed §3.15(n)(3) and (n)(6), under which a hydraulic pressure test is performed once every five years and the results are submitted annually. The two paragraphs are inconsistent in one respect. Paragraph (3) requires an operator to "annually obtain the approval of the Commission or its delegate of the results of said tests," while paragraph (6) requires that results "be submitted annually." Approval of the same test results every year serves no purpose and would add review work for the Commission. TIPRO recommends that approval attach to the test and that the annual filing be a submission of the results on file, which can be made electronically with the organization report.

> ***Proposed language:*** *Amend §3.15(n)(3) to read: "(3) For each inactive well for which 15 years have elapsed from the date on which the relevant well completion report was filed with the Commission, the operator must perform either a fluid level test once every 12 months or a hydraulic pressure test once every five years, and must submit the results to the Commission annually under paragraph (6) of this subsection." Add to the end of §3.15(n)(6): "A test result that has been approved does not require approval again when it is submitted in a later year within its period of validity."*

***Applies to:*** *Proposed §3.15(n)(2)*

Proposed §3.15(n)(2) allows only a fluid level test or a hydraulic pressure test without prior approval. Fluid level measurements are commonly made with acoustic (echometer) instruments, and automated devices can record fluid level and casing pressure continuously. TIPRO recommends that the rule state that a fluid level test includes a measurement by an acoustic or equivalent method and that an automated device that records fluid level may be approved for use statewide, so that operators are not required to seek district-by-district approval of the same technology. Section 89.050 refers to a "successful fluid level test or hydraulic pressure test," and these recommendations are consistent with it.

> ***Proposed language:*** *Amend §3.15(n)(2) to read: "(2) A fluid level test includes a fluid level measurement made by an acoustic (echometer) or equivalent method. No operator may*

*conduct a test other than a fluid level test or hydraulic pressure test without prior approval from the district director or the director's delegate. The Oil and Gas Division Director may approve an automated device that records fluid level for use in all districts, and a measurement from an approved device is a fluid level test."*

***Applies to:*** *Proposed §3.15(n)*

Proposed §3.15(n) applies the annual testing and reporting requirement to every inactive well more than 15 years old and removes the existing condition that the well has been inactive more than 10 years. The number of wells that must be tested on the effective date will be larger than the number of 15/25 wells, which are a subset of those wells, and testing contractors and the Commission's own witnessing and review capacity are limited. Section 89.051(b) directs the Commission to consider risk to public safety or the environment, wellbore and wellhead integrity, and regional risk in adopting rules. TIPRO recommends that, to the extent consistent with §89.050, the Commission stage the due date of the first report over the first two organization report cycles after the effective date and require an earlier report for a well that poses a documented hazard.

***Proposed language:*** *Add a new paragraph §3.15(n)(8): "(8) For a well for which 15 years have elapsed from the date on which the relevant well completion report was filed on or before the effective date of this subsection, the first report under paragraph (6) of this subsection is due not later than the operator's second organization report renewal date after the effective date of this subsection, except that the Commission may require an earlier report for a well that poses a documented hazard."*

***Applies to:*** *Proposed §3.15(n)(3)*

The existing rule requires testing of an inactive well that is more than 25 years old and has been inactive more than 10 years. Proposed §3.15(n)(3) deletes the inactivity condition, so that a well that has been inactive for 13 months is tested on the same cycle as a well that has been inactive for 20 years. A well that has been inactive for a shorter time is more likely to return to service, and a recurring testing and reporting cost bears on whether an operator restores or plugs it. Section 89.050 requires, for each inactive well for which 15 years have elapsed from the date on which the relevant well completion report was filed with the commission, an annual report "with information regarding the results of a successful fluid level test or hydraulic pressure test of the well conducted in accordance with commission rules," and §89.051(b) directs the Commission to consider risk to public safety or the environment, wellbore and wellhead integrity, and regional risk in adopting rules. To the extent consistent with §89.050, TIPRO recommends that the Commission restore the condition that the well has been inactive for more than 10 years.

***Proposed language:*** *Amend §3.15(n)(3), as amended above, by inserting "that has been inactive for more than 10 years and" after "For each inactive well".*

***Applies to:*** *Proposed §3.15(n)*

The proposal does not say what happens when a well fails a test. Section 89.050 refers to the results of a "successful" fluid level test or hydraulic pressure test, and proposed §3.15(n) requires an

operator to file the results of a successful test but does not state the consequence of an unsuccessful one. For a well more than 15 years old, a successful test is a condition of an extension under proposed §3.15(c)(4) and (e)(5), so a failed test means that condition is not met, and the proposal does not say how long the operator has to correct the problem and test again. A failed test should lead to remediation before it leads to a plugging obligation. TIPRO recommends a 180-day period to remediate and obtain a passing result, which is comparable to the six months that §3.15(l)(2), (m)(2), and (p)(2) give a new operator to comply after the Commission approves the change of operator.

> ***Proposed language:*** *Add a new paragraph §3.15(n)(9): "(9) An operator whose well fails a test under this subsection has 180 days from the date of the failed test to remediate the well and obtain a passing result before a plugging obligation is triggered under this section, and the well is not subject to enforcement under this section during that period."*

***Applies to:*** *Proposed §3.15(n)*

Texas Natural Resources Code §89.026(c) provides that documentation of the results of a successful fluid level or hydraulic pressure test "may be transferred to a new operator of an existing inactive well." Proposed §3.15(o)(7) allows transfer of test documentation for wells less than 15 years old, but proposed §3.15(n), which applies to wells more than 15 years old, has no corresponding provision. Because a hydraulic pressure test is valid for five years, a transferee that cannot rely on the transferor's valid test would have to repeat a test that has already been performed, at added cost to the operator and with added demand on testing contractors and Commission review. TIPRO recommends that §3.15(n) provide for transfer of test documentation.

> ***Proposed language:*** *Add a new paragraph §3.15(n)(10): "(10) The Commission will transfer documentation of the results of a fluid level or hydraulic pressure test to a new operator of an existing inactive land well on request, and the results remain valid for the remainder of their period of validity."*

**Well Transfers Under Statewide Rule 58**

Proposed §3.58(a)(5) and (a)(6) implement §89.023(h) and (i). TIPRO's members include operators that acquire mature assets from larger companies, resolve legacy compliance issues, and extend the productive life of those wells. The recommendations below keep the statutory requirements in place and address timing and transition issues that the proposal does not.

***Applies to:*** *Proposed §3.58(a)(5)*

Proposed §3.58(a)(5) requires a Form P-4 and a jointly signed affirmation for every transfer of an inactive well but sets no time for Commission action. Acquisitions of producing properties are often negotiated to close within weeks. A TIPRO member with a regular practice of acquiring producing assets has closed transactions of this kind in 30 to 45 days. A transfer review of indefinite length becomes the constraint on an otherwise routine transaction. TIPRO recommends a 45-day period for the Commission to act, with provisional operating authority for the transferee during the review.

***Proposed language:*** *Add to §3.58(a)(5): "The Commission will act on the form P-4 and accompanying affirmation within 45 days of a complete filing. The transferee has provisional operating authority for the well during the Commission's review."*

***Applies to:*** *Proposed §3.58(a)(5)(A)*

Section 89.023(h)(1) requires the operators to affirm that the well "is in compliance with the requirements of this section," meaning §89.023. Proposed §3.58(a)(5)(A) requires the operators to affirm compliance with "Texas Natural Resources Code §89.023 and §3.15 of this title," which includes every requirement of §3.15, among them the surface equipment, testing, and abeyance provisions, and exposes the signers to potential false filing penalties if any of them is misstated. In addition, an extension based on the transferor's history or hardship does not transfer (§89.023(i)), and the rule does not say how the affirmation can be made for such a well or when the transferee must obtain its own extension. TIPRO recommends that the affirmation be limited to the requirements of §89.023 and the provisions of §3.15 that implement the deadline for plugging, and that the rule state that a well covered by an unexpired extension, an approved compliance plan, an individual performance bond, or a timely and complete pending application is in compliance.

***Proposed language:*** *Amend §3.58(a)(5)(A) to read: "(A) the well is in compliance with the requirements of Texas Natural Resources Code §89.023 and subsections (h) and (i) of §3.15 of this title, and for this purpose a well that is covered by an unexpired plugging extension, an approved compliance plan, an individual performance bond, or a timely and complete pending application is in compliance;"*

***Applies to:*** *Proposed §3.58(a)(5) and (a)(6)*

Because an extension based on history or hardship is not transferable (§89.023(i)), a transferee that acquires a non-compliant well must obtain its own extension or plug the well, and the proposal gives it no transition period specific to 15/25 wells. Proposed §3.15(p)(2) allows a new operator of an inactive land well six months to file new supplemental financial assurance or otherwise comply with that section, but it is written for supplemental financial assurance, and the rule does not say whether it applies to a transferee of a 15/25 well. TIPRO asks the Commission to clarify the relationship between that provision and the one-year grace period recommended here. TIPRO recommends a one-year grace period for the transferee to bring the well into compliance, obtain an extension, or obtain approval of a compliance plan. TIPRO further recommends that the Commission have discretion, on request of the transferee, to extend that period to not more than three annual compliance periods, for example when the transfer includes a significant number of 15/25 wells or of inactive wells that will become 15/25 wells within three years after the transfer, on the condition that the transferee continues to comply with the safety, testing, reporting, and financial assurance requirements applicable to the wells, and any extension must be consistent with §89.023. A longer period allows the transferee time to evaluate the condition of the wells, review records, assess which wells can be returned to operation or converted to injection or another authorized operation, develop lease, field, or asset-specific strategies, forecast the inactive wells that may become 15/25 wells, and prioritize and plan the work. A transition period also supports

the sale of mature assets to operators that will return the wells to production or plug them. The period should not be limited to the time before September 1, 2042, because an operator that acquires a legacy asset after that date faces the same need to evaluate its wells. For a transferee with an approved compliance plan or that intends to submit one, a well acquired by transfer should not be counted in the plan's annual minimum until it is added to the plan, so that the transferee is not required to begin plugging acquired wells before it has evaluated them. The rule should also address the wells that do transfer with their financial assurance or plan. Section 3.58(a)(6) addresses only extensions under §3.15(h)(4)(A) and (B). It does not say what happens to a transferor's compliance plan when a well in the plan is transferred, or to an individual performance bond that "runs with" the well. Removal of a transferred well from the transferor's plan should not count as a deviation from the plan, the transferor's schedule should be adjusted, and the bond should continue to cover the well until the transferee files equivalent financial assurance.

> ***Proposed language:*** *Add new paragraphs §3.58(a)(7) and (a)(8): "(7) A transferee under paragraph (5) of this subsection has one year from the date of transfer to bring an inactive well into compliance with §3.15 of this title, obtain an extension under §3.15(h), or obtain approval of a compliance plan, and the well is not subject to enforcement for failure to plug during that period. The Commission may extend this period, on request of the transferee, to not more than three annual compliance periods, on the condition that the transferee continues to comply with the safety, testing, reporting, and financial assurance requirements applicable to the well. A well acquired by transfer under paragraph (5) of this subsection is not counted in the minimum number of wells to be plugged or restored under §3.15(i)(1)(C)(iii) for a compliance plan until it is added to the plan. This paragraph applies to a transfer made before or after September 1, 2042." "(8) A transferor's compliance plan will be adjusted to remove a transferred well, and the removal is not a deviation from the plan. A transferee may include the well in its own compliance plan. A performance bond that covers a transferred well continues to cover the well until the transferee files equivalent financial assurance, at which time the Commission will release the transferor's bond."*

***Applies to:*** *Proposed §3.58(a)(5)(C)*

The rule should state that a transferring operator's responsibility for a well under §89.023 ends when the Commission accepts the transfer affirmation and the receiving operator assumes the obligations described in the affirmation.

> ***Proposed language:*** *Add to §3.58(a)(5)(C): "Upon the Commission's acceptance of the affirmation, the transferring operator's compliance responsibility for the well under this section terminates."*

***Applies to:*** *Proposed §3.58(a)(6)*

Proposed §3.58(a)(6) provides that an extension under §3.15(h)(4)(A) or (B) "is not transferrable to another operator." Proposed §3.15(l)(3) and (m)(3) allow an abeyance of plugging report and an EOR statement to be transferred "in the event of a change of name of an operator." A change of name is not a transfer to another operator, and §3.58(a)(6) should say so.

***Proposed language:*** *Add to §3.58(a)(6): "A change of name of an operator is not a transfer to another operator for purposes of this paragraph."*

**Coordination With the Organization Report Process**

***Applies to:*** *Proposed §3.15(h)(2) and (h)(4)(C)(iii)*

TIPRO supports tying extension renewal, compliance plan status reporting, and testing reports to the organization report cycle. The proposal uses different terms for the filings. Proposed §3.15(h)(2) refers to the "organization report renewal," while proposed §3.15(h)(4)(C)(iii) requires the status of wells to be provided "with its annual operator report under Texas Natural Resources Code §89.050," and the rule does not define an "annual operator report." TIPRO recommends that the rule identify the filing, that the status update, the §89.050 test report, and the renewal all be submitted together at the organization report renewal date, and that the Commission rely on its own records for the status of 15/25 wells outside the plan.

***Proposed language:*** *Amend §3.15(h)(4)(C)(iii) to read: "(iii) If the Commission approves the compliance plan and grants the plugging extension, the operator shall annually provide the Commission with the status of every inactive well in the approved compliance plan with its organization report renewal, together with the report required by Texas Natural Resources Code §89.050. The Commission will use its own records for the plugging or extension status of all other 15/25 wells that are not included in the compliance plan." Add to the end of §3.15(n)(6): "The annual submission under this paragraph is due concurrent with the operator's organization report renewal."*

***Applies to:*** *Proposed §3.15(h)(2); §3.15(i)(2)(F)*

TIPRO recommends that the rule provide that renewal will not be denied where the operator has met the requirements of the prior year's approved extension or plan, absent a new event described in §3.15(i)(2), and that the annual update function primarily as a status report that adds and removes wells. An operator should also be able to explain any difference between its actual progress and its schedule, including a well that required materially greater cost or effort than typical wells in the plan. This provision is the affirmative counterpart to the bad-faith standard in proposed §3.15(i)(2)(F). It gives operators a clear right to explain a variance rather than relying only on the absence of a finding of bad faith.

***Proposed language:*** *Add a new paragraph §3.15(h)(2A): "(2A) Renewal of an extension or compliance plan under this subsection shall not be denied where the operator has satisfied the requirements of the prior year's approved extension or plan, absent a new event described in subsection (i)(2) of this section. Renewal consists of a status update identifying wells removed from and added to the operator's inventory since the prior renewal. At renewal, an operator may explain any difference between its actual progress and the schedule in its plan, including a well that required materially greater cost or effort than typical wells in the plan. A difference supported by a reasonable explanation is not grounds to deny renewal or to find the operator out of compliance."*

**Comments on the Preamble's Economic Analysis**

***Applies to:*** *Preamble; Texas Government Code §2006.002*

The preamble states that the amendments will not cause "additional economic costs to regulated persons" because plugging extensions "are options available to the operator," and that the Commission has determined there will be "no adverse economic effect on rural communities, small businesses or micro-businesses" and has therefore not prepared the economic impact statement or regulatory flexibility analysis required under Texas Government Code §2006.002. TIPRO respectfully disagrees with those determinations for two reasons.

First, not every cost in the proposal is optional. Proposed §3.15(n) extends the testing and annual reporting requirement to every inactive well more than 15 years old and removes the existing condition that the well has been inactive more than 10 years. That is a mandatory cost for operators of wells that are not subject to the requirement today. Section 89.050 requires the annual report, but the rule determines how the requirement is implemented and what it costs, and the preamble nonetheless states that the amendments cause no additional economic costs. Second, the pathways that the statute provides are not optional in a practical sense for an operator that holds a 15/25 well and does not plan to plug it by the effective date. The cost of the financial statements, compliance plan, and bond required to obtain an extension depends on choices the Commission is making in this rule, including the definition of the full cost calculation, the documentation required, and the annual renewal. Many of the operators that will bear those costs are small businesses.

TIPRO asks the Commission to prepare the analysis described in §2006.002 or to explain the basis for its determination, to estimate the cost of the testing, financial assurance, and documentation requirements for operators by size, and to consider the alternatives recommended in these comments for small and prudent operators, including expedited review and simplified documentation.

The costs described above also bear on the prevention of waste. Section 85.045 of the Natural Resources Code is captioned "Waste Illegal and Prohibited," and §85.046(a)(6) includes in waste "physical waste or loss incident to or resulting from drilling, equipping, locating, spacing, or operating a well or wells in a manner that reduces or tends to reduce the total ultimate recovery of oil or gas from any pool." A cost or procedural requirement that leads an operator to plug a wellbore that has remaining reserves, or that could serve as an injection well, a replacement producer, or a recompletion candidate, earlier than the facts require burdens the operator and also makes the loss of that recovery permanent. TIPRO asks the Commission to consider that effect in adopting the rule.

**Drafting Corrections**

***Applies to:*** *Proposed §3.15(h)(4); §3.15(i)(1); §3.58(a)(6); preamble*

TIPRO identifies the following drafting issues so that they may be corrected before adoption. Proposed §3.15(h)(4)(C)(i) uses the designation "(II)" twice, once for the operator's total number of wells and once for the designation of plugging or restoration, so the numbering that follows is

off by one, and the preamble's description of §3.15(h)(4)(C)(i) lists six items and omits the designation of plugging or restoration that the rule text includes. The preamble describes §3.15(i)(1)(A)(i) as applying to operators with "less than 10" inactive wells, while the rule text says "no more than 10." The preamble describes §3.15(i)(1)(B)(iii) without the reference in the rule text to "three-year" earnings. The preamble describes §3.15(h)(4)(B)(iii)(III) as including "subsurface factors," which do not appear in the rule text. The preamble describes §89.050 as applying to an inactive well "completed at least 15 years ago," while the statute measures from the date the well completion report was filed. Proposed §3.15(h)(4)(D) requires a bond "not less than" the full cost calculation, while §3.15(i)(1)(D)(i) requires an amount "equal to" it. Proposed §3.58(a)(6) uses the spelling "transferrable."

**Conclusion**

TIPRO appreciates the opportunity to comment on the proposal and supports the Commission's objective of reducing the number of wells that become orphaned. The recommendations above are intended to make the rule administrable and consistent with Senate Bill 1150, to give operators that are managing their wells responsibly a clear path to compliance by September 1, 2042, and to limit unnecessary cost and delay for the operators, the Commission, and the State. TIPRO requests an opportunity to meet with Commission staff to discuss these comments before the Commission acts on the proposal. TIPRO can be reached at (512) 477-4452 or by email at info@tipro.org.

Respectfully submitted,



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