TEXAS REGISTER

IN THIS ISSUE

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Texas Register

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Office of the
Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

Secretary of State
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Open Meetings Clerk
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How to Use the Texas Register

Information Available: The 10 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 19 (1994) is cited as follows: 19 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Texas Administrative Code

The ***Texas Administrative Code*** (***TAC***) is the official compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***. West Publishing Company, the official publisher of the ***TAC***, releases cumulative supplements to each printed volume of the ***TAC*** twice each year.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The ***Official TAC*** also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the ***TAC*** or to inquire about WESTLAW access to the ***TAC*** call West: **1-800-328-9352.**

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected.*** The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 12, and October 11, 1994). In its second issue each month the ***Texas Register*** contains a cumulative ***Table of TAC Titles Affected*** for the preceding month. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

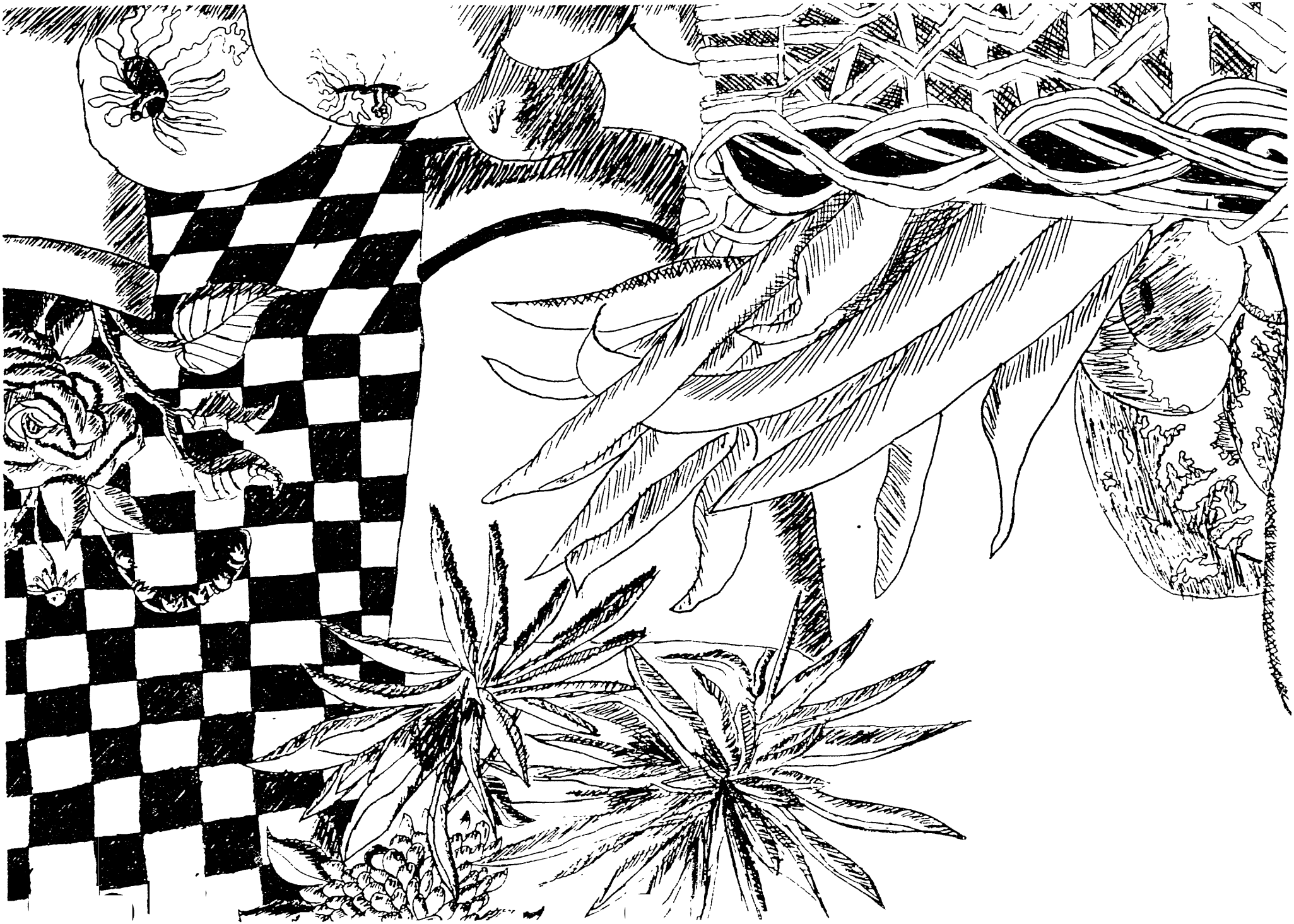
TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

Update by FAX: An up-to-date ***Table of TAC Titles Affected*** is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to ***Texas Register*** subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of $2.00 per page (VISA, MasterCard). (512) 463-5561.

In Addition Sections

Coastal Sections



THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the ***Texas Register*** publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments Made June 20, 1994

To be **District Attorney of the 156th Judicial District, Bee, Live Oak and McMullen Counties,** until the next General Election and until his successor shall be duly elected and qualified: George P. Morrill II, P.O. Box 729, Beeville, Texas 78014. Mr. Morrill will be replacing C. F. Moore, Jr. of Beeville, who resigned.

To be a member of the **State Independent Living Council** for a term to expire October 24, 1996: Lonnie Vernon Dement, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Austin, Texas 78751 Mr. Dement is being appointed as an ex officio member of the council pursuant to the Rehabilitation Act of 1973 as amended, Public Law 102-569.

To be a member of the **Board of Vocational Nurse Examiners** for a term to expire September 6, 1999: Maria Olivia Rivas, Ed.D., Texas Southmost College, 80 Fort Brown, Brownsville, Texas 78250. Dr. Rivas will be replacing Virginia M. Bauman of South Padre Island, whose term expired.

To be a member of the **Board of Vocational Nurse Examiners** for a term to expire September 6, 1997: Albert H. Fairweather, 6210 John Chisum Lane, Austin, Texas 78749. Mr. Fairweather is being appointed to a new position pursuant to Texas Civil Statutes, Article 4528c.

Appointments Made June 21, 1994

To be a member of the **Texas Historical Records Advisory Board** for a term to expire January 23, 1997: Gleniece A. Robinson, Ph.D., 2424 South Boulevard, Dallas, Texas 75215. Dr. Robinson is being reappointed.

To be a member of the **Texas Historical Records Advisory Board** for a term to expire January 23, 1997: Christopher LaPlante, P.O. Box 12927, Austin, Texas 78711. Mr. LaPlante is being reappointed.

To be a member of the **Texas Historical Records Advisory Board** for a term to expire January 23, 1997: Diana Bravo Gonzalez, 7714 Dashwood, San Antonio, Texas 78240. Ms. Gonzalez is being reappointed.

Appointments Made June 22, 1994

To be a member of the **Pilot Commission for the Sabine Bar, Pass and Tributaries** for a term to expire August 22, 1995: Roy Lee Dunn, 965 Norbert, Bridge City, Texas 77611. Mr. Dunn will be filling the unexpired term of William Rodney Price, Jr. of Vidor, who resigned.

Appointments Made June 23, 1994

To be a member of the **Juvenile Justice and Delinquency Prevention Advisory Board** for a term at the pleasure of the Governor: Ryan Hess, 16905 Whitebrush Loop, Austin, Texas 78717. Mr. Hess will be replacing Christopher Hoelter of Austin, whose term expired

To be a member of the **Radiation Advisory Board** for a term to expire April 16, 1997 Frederick J. Bonte, M.D., 11138 Wonderland Trail, Dallas, Texas 75229. Dr. Bonte is being reappointed.

To be a member of the **Radiation Advisory Board** for a term to expire April 16, 1999 Jack S. Krohmer, Ph.D., 117 Highview Road, Georgetown, Texas 78628. Dr Krohmer is being reappointed.

Issued in Austin, Texas on June 23, 1994

TRD-9443051 Ann W Richards
Governor of Texas

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EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the use of **bold text.** [Brackets] indicate deletion of existing material within a section.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 98. HIV and STD Control

Subchapter C. Texas HIV Medication Program

- **25 TAC §98.104, §98.105**

The Texas Department of Health (department) adopts on an emergency basis amendments to §98.104 and §98.105, concerning the Texas HIV Medication Program.

The sections implement the provisions of the "Communicable Disease Prevention and Control Act," Health and Safety Code, Chapter 85.063, Subchapter C, concerning the Texas HIV Medication Program. The program assists hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV infected individuals in the purchase of medications approved by the board that have been shown to be effective in reducing hospitalizations due to HIV related conditions. Generally, the sections cover eligibility for participation and medication coverage.

The amendments expand the coverage of the program to include Dapsone for eligible participants and amends the eligibility criteria for Didanosine, Zalcitabine, SMZ-TMP, Fluconazole, and Itraconazole, and Zidovudine to include pregnant women.

The amendments are adopted on an emergency basis in order to expeditiously provide medications to HIV infected individuals. It is imperative to address this serious and imminent health condition by providing approved medications as soon as possible. These emergency actions are proposed for permanent adoption in this issue of the *Texas Register*.

The amendments are adopted under the Health and Safety Code, §85.063, which provides the Texas Board of Health with the authority to adopt rules concerning a Texas HIV Medication Program, and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health; and Texas Civil Statutes, Article 6252-13a, §5, which provides The Board with the authority to adopt rules on an emergency basis.

§98.104. Medication Coverage. The following medications will be provided to each eligible participant.

(1) Zidovudine capsules must be provided in increments of 100 not to exceed 400 capsules per month. Zidovudine syrup must be provided in eight ounce bottles. **IV Zidovudine must be provided intrapartum in 10mg/ml-2 ml vials.**

(2)-(15) (No change.)

(16) Dapsone must be provided in increments of 100 not to exceed 100 tablets per month.

§98.105. Drug Specific Eligibility Criteria. A person is eligible for

(1) Zidovudine, **Didanosine, and Zalcitabine** if he or she is younger than 18 years of age and has a diagnosis of HIV infection, or, has a positive HIV antibody test and is classified in [Group III or IV] **Category B or C** according to the Centers for Disease Control **1993 Revised** Classification System **for HIV Infection;** [,] **or,** pending available funding, is classified in [Group I or II with a CD4 cell count of 500 or less;] **Category A2 or A3 according to the Centers for Disease Control 1993 Revised Classification System for HIV Infection;**

(2) Zidovudine if she has a positive HIV antibody test and is a female in the second trimester or later of pregnancy, regardless of classification according to the Centers for Disease Control 1993 Revised Classification System for HIV Infection; or, is the biological newborn infant of a female with a diagnosis of HIV infection;

(3) Pentamidine for inhalation solution, sulfamethoxazole- trimethoprim (DS) tablets, dapsone, and sulfamethoxazole-trimethoprim suspension if he or she is diagnosed with HIV infection and has a CD4 cell count of 200 or less; or constitutional symptoms such as thrush or unexplained fever greater than 100 degrees Fahrenheit for greater than two weeks; and, children under the age of 13 with the following clinical indicators:

(A) [all children who have had a] previous episode of Pneumocystis carinii Pneumonia (PCP),

(B) [all children less than 13 years of age who] meet the Centers for Disease Control (CDC) definitions of HIV infection in children and who have CD4 counts less than 400/mm3,

(C) all children less than 15 months of age who have HIV isolated from blood, cerebrospinal fluid (CSF), or tissues, or P24 antigen detected in blood/plasma or CSF, regardless of CD4 count;

(D) all children less than 15 months of age who are HIV-seropositive and have symptoms as defined by CDC class P2, regardless of CD4 count. Children will qualify in class P2a if they have one symptom and persistent hypergammaglobulinemia (two measurements, one month apart),

[(3) Didanosine if he or she has advanced HIV infection and is intolerant of zidovudine therapy of who have demonstrated significant clinical or immunological deterioration during zidovudine therapy.]

(4)-(5) (No change.)

(6) Fluconazole if he or she has [an] established cryptococcal [infection] **meningitis or candida esophagitis** and for prophylaxis after diagnosis. **The total amount to be expended on this drug is up to $350,000, then pending available funding;**

(7) (No change.)

[(8) Zalcitabine in combination with zidovudine is indicated for the treatment of adult patients with advanced HIV

infection (CD4 cell count less than or equal to 300) who have demonstrated significant clinical or immunologic deterioration;]

(8)[(9)] IV Pentamidine for children 13 years of age or younger for the treatment of PCP and prophylaxis against PCP in HIV infected children;

(9)[(10)] Interferon-Alpha for the treatment of disseminated Kaposi's sarcoma in HIV infected persons with T-cell counts over 200. The total amount to be expended on this drug is up to $122,600. The requesting physician must complete a form to be returned to the program which will allow the program to evaluate the benefits of providing this medication;

(10)[(11)] Amphotericin-B for the treatment of patients with progressive and potentially fatal disseminated fungal infections. The total amount to be expended on this drug is up to $46,200. The requesting physician must complete a form to be returned to the program which will allow the program to evaluate the benefits of providing this medication;

(11)[(12)] Atovaquone for the oral treatment of acute mild to moderate Pneumocystis carinii Pneumonia (PCP) in patients who are intolerant to trimethoprim-sulfamethoxazole (TMP-SMZ);

(12)[(13)] Rifabutin for the prevention of disseminated mycobacterium avium complex disease in patients with a CD4 cell count of 100 or less. The total amount to be expended on this drug is up to $100,000, then pending available funding; and[.]

(13)[(14)] Itraconazole for the treatment of Blastomycosis and Histoplasmosis.

Issued in Austin, Texas, on June 28, 1994.

TRD-9443143 Susan K. Steeg
General Counsel, Office of the General Counsel
Texas Department of Health

Effective date: June 28, 1994

Expiration date: October 27, 1994

For further information, please call: (512) 458-7500

PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of **bold text.** [Brackets] indicate deletion of existing material within a section.

TITLE 1. ADMINISTRATION

Part XV. Health and Human Services Commission

Chapter 351. Coordinated Planning and Delivery of Health and Human Services

• 1 TAC §351.5

The Health and Human Services Commission (HHSC) proposes new §351.5 to adopt by reference the rules of the General Services Commission concerning charges for public records. The new rule implements the provisions of House Bill 1009, Acts, 73rd Legislature with respect to the cost of providing records to the public and the charges that the HHSC may set to recover up to the full costs of providing public records.

David Knight, Associate Commissioner for Budget and Support, has concluded that the first five-year period the proposed sections are in effect there should be positive fiscal implications for HHSC as a result of implementing this rule. The exact amount of the fiscal impact is not subject to determination.

Mr. Knight also has determined that for each year of the first five years the sections are in effect the public benefit anticipated will be clearer guidelines for providing access to, and copies of, public records and in determining the charges to be set by HHSC. The adoption of consistent and reasonable charges should result in better service to the public and in fees that are not so high as to bar access to public information.

Comments on the proposed rule may be submitted by Debby Gardner, General Counsel, Health and Human Services Commission, P.O. Box 13247, Austin, Texas 78711-3247. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*

The new section is proposed under Texas Government Code, Chapter 552, §552.261 and §552.262, which provide HHSC with the authority to promulgate rules for charges for public records.

§351.5. Charges for Public Records. The HHSC adopts by reference General Services Commission rules for charges for public records, 1 TAC §§111.61-111.69, adopted to be effective April 22, 1994. The rules were published in the April 8, 1994, issue of the *Texas Register* (19 TexReg 2482).

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

Issued in Austin, Texas, on June 29, 1994.

TRD-9443187 Debby Gardner
General Counsel
Health and Human Services Commission

Earliest possible date of adoption: August 5, 1994

For further information, please call. (512) 502-3200

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TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 9. Plant Quality

Citrus Fruit Maturity Standards

• 4 TAC §9.30

The Texas Department of Agriculture (the department) proposes new §9.30, concerning citrus fruit maturity standards. The Texas Agriculture Code (the Code), §94.025, prohibits the sale of citrus fruit that is immature, unripe, overripe, frozen, or otherwise unfit for consumption. The marketing of unfit citrus fruit cheats the consumer and adversely affects demand for, and the orderly distribution of, citrus fruit. The department, in accordance with the Code, §94.003, may adopt rules relating to seasonal requirements of citrus fruit for fitness for human consumption. The new section is proposed in order to establish minimum juice content requirements for citrus fruit offered for sale in the state, and is intended to establish such minimum standards of fitness and quality for citrus fruit as will be in the public interest.

Waldo Morgan, assistant commissioner for cooperative inspections, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Morgan also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an improvement in the quality and fitness of citrus fruit marketed in the state. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed

Comments on the proposal may be submitted to Waldo Morgan, Assistant Commissioner for Cooperative Inspections, Texas Department of Agriculture, P.O Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new section is proposed under the Texas Agriculture Code, §94.003, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the administration of Texas Agriculture Code, Chapter 94, concerning the seasonal requirements of citrus fruit for fitness for human consumption.

The code chapter affected by this proposal is the Texas Agriculture Code, Chapter 94

§9.30. Citrus Fruit Juice Content Requirements. The following tables contain the minimum juice content requirements to establish the fitness for consumption of citrus fruit that is to be prepared, received or delivered for sale or transportation, transported, sold or offered for sale in Texas.

(1) Grapefruit Sizes and Juice Requirements in Cubic Centimeters.

Seedless:

Size	Diam.	1 Frt.	2 Frt.	3 Frt.	4 Frt.	5 Frt.
126	3-1/2	150	300	450	600	750
96	3-3/4	180	360	540	720	900
80	4	195	390	585	780	975
70	4-1/8	200	400	600	800	1000
64	4-1/4	205	410	615	820	1025
54	4-1/2	220	440	660	880	1100
46	4-3/4	235	470	705	940	1175
36	5	250	500	750	1000	1250
28	5-1/4	265	530	795	1060	1325

Seeded:

126	3-1/2	140	280	420	560	700
96	3-3/4	165	330	495	660	825
80	4	175	350	525	700	875
70	4-1/8	180	360	540	720	900
64	4-1/4	200	400	600	800	1000
54	4-1/2	220	440	660	880	1100
46	4-3/4	235	470	705	940	1175
36	5	250	500	750	1000	1250
28	5-1/4	265	530	795	1060	1325

(2) Orange Sizes and Juice Requirements in Cubic Centimeters.

Size	Diam. Min.	Diam. Max.	1 Frt.	2 Frt.	3 Frt.	4 Frt.	5 Frt.
96's	3-6/16	3-11/16	177.4	354.8	532.2	709.6	887.0
126's	3-3/16	3-8/16	135.2	270.4	405.6	540.8	676.00
150's	3	3-4/16	113.6	227.2	340.8	454.4	568.00
176's	2-14/16	3-2/16	96.8	193.6	290.4	387.2	484.00
200's	2-12/16	3	85.2	170.4	255.6	340.8	426.0
216's	2-10/16	2-14/16	78.9	157.8	236.7	315.6	394.5
250's	2-8/16	2-12/16	68.1	136.2	204.3	272.4	340.5
288's	2-6/16	2-10/16	59.1	118.2	177.3	236.4	295.5
324's	2-4/16	2-8/16	52.6	105.2	157.8	210.4	263.0

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

Issued in Austin, Texas, on June 27, 1994.

TRD-9443116

Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Earliest possible date of adoption. August 5, 1994

For further information, please call. (512) 463-7583

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 11. Surface Mining and Reclamation Division

Subchapter D. Coal Mining

• 16 TAC §11.221

The Railroad Commission of Texas proposes an amendment to §11.221, concerning ownership and control provisions of permit processing requirements. The proposed amendment corresponds to approved provisions of a coal program amendment announced in the March 21, 1994 *Federal Register*. The proposed amendment changes the date of the latest adoption of rules from January 11, 1993, to the date of the new adoption, which is not yet known.

Ron Reeves, assistant director, Legal Division-Surface Mining, has determined that for each of the first five years the section as proposed is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering this section.

Mr. Reeves also has determined that for each year of the first five years the section as proposed is in effect the public benefit will be continued compliance with federal requirements for coal programs, thereby allowing federal funding There will be no economic effect on small businesses. There is no anticipated economic cost to persons required to comply with the rules as proposed.

Comments on the proposal may be submitted to Ron Reeves, Assistant Director, Legal Division-Surface Mining, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 5920-11, §6, which authorize the commission to promulgate rules pertaining to surface coal mining operations.

The proposed amendment affects Texas Civil Statutes, Article 5920-11, §6

§11.221. State Program Regulations.

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

(c) The Railroad Commission of Texas has published the state program regulations, as amended [January 11, 1993], in booklet form titled "Coal Mining Regulations." Copies may be obtained from the Surface Mining and Reclamation Division, P.O. Box 12967, Austin, Texas 78711-2967

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

Issued in Austin, Texas, on June 27, 1994.

TRD-9443099 Mary Ross McDonald
Assistant Director, Legal Division-Gas Division/LP Gas
Railroad Commission of Texas

Earliest possible date of adoption: August 5, 1994

For further information, please call: (512) 463-6841

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TITLE 22. EXAMINING BOARDS

Part XIV. Texas Optometry Board

Chapter 272. Administration

• 22 TAC §272.1

The Texas Optometry Board proposes new §272.1, concerning procedural administrative rules regarding the charges for public records, implementing the provisions of House Bill 1009, passed by the 73rd Legislature, which amended the Texas Open Records Act.

This rule is required in order for the agency to comply with House Bill 1009. The rule will inform the public of the charges the agency will make for copies of public records.

Lois Ewald, executive director, has determined that there will be minimal fiscal implications for state or local government as a result of enforcing or administering the rule. During the first five-year period the proposed section is in effect there will be minimal fiscal implications for state government as a result of implementing and administering this section, but the exact amount of the fiscal impact cannot be determined since it would depend upon the number of open records requests processed by the agency and the amount of data requested. There will be no effect on local government.

Mrs Ewald also has determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule will be clear and defined access to, and copies of, public records. The adoption of consistent and reasonable charges should result in better services to the public and in fees that are not so high as to impede access to public information. There will be no effect on small businesses The anticipated economic cost to persons required to comply with the section as proposed will be according to the schedule of fees and charges for copies of public records

The new rule affects the Texas Optometry Act, Texas Civil Statutes, Article 4552.

Comments on the proposal may be submitted to Lois Ewald, Executive Director, Texas Optometry Board, 9101 Burnet Road, Suite 214, Austin, Texas 78758, (512) 835-1938

The new rule is proposed under the authority of Texas Civil Statutes, Article 4552, §2.14, which provide the Texas Optometry Board with the authority to promulgate procedural and substantive rules.

§272.1. Open Records.

(a) Open records requests. The following guidelines apply to requests for records under the Open Records Act, Government Code, Chapter 552·

(1) Requests must be in writing and reasonably identify the records requested.

(2) Records access will be by appointment only.

(3) Records access is available only during the regular business ours of the agency.

(4) Generally, unless confidential information is involved, review may be by physical access or by duplication at the requester's option. Any person, however, whose request would be unduly disruptive to the ongoing business of the office may be denied physical access and will only be provided the option of receiving copies.

(5) When the safety of any public record is at issue, physical access may be denied, and the records will be provided by duplication as previously described.

(6) Confidential files will not be made available for inspection or for duplication except under certain circumstances, e g., court order.

(7) All open records request appointments will be referred to the executive director before complying with a request.

(8) The open records coordinator for the agency is the executive director.

(b) Charges for public records. In accordance with Chapter 428, Acts, 73rd Legislature, Regular Session (1993), the following specifies the charges the Texas Optometry Board will make for copies of public records. These charges are based on the full cost to the agency for providing the copies.

(1) Definitions: The following words and terms, when used in the section, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Standard-size copy. A printed impression on one side of a piece of paper that measures up to 8-1/2 x 14 inches. Each side of the paper on which an impression is made is counted as a single copy. A piece of paper printed on both sides is counted as two copies

(B) Copy charge. A charge for costs incurred in copying standard-size

paper copies reproduced by an office machine copier or a computer printer.

(C) Postage and shipping charge. A charge for costs incurred in sending information to a requester, such as cost of postage, envelope, or long-distance phone call for facsimile transmission.

(D) Personnel charge. A charge imposed for costs incurred for personnel time expended in processing a request for public information. This charge may include the time any employee spends reading/reviewing the initial request for records, making copies of records, conducting a file search, conducting a computer search, preparing and reviewing the response to the records request (administrative oversight/review), and any other type of personnel time necessary to respond to the request.

(E) Overhead charge. A charge for direct and indirect costs incurred in addition to the personnel charge. This charge covers such costs as depreciation of capital assets, rent, maintenance and repair, and utilities.

(F) Microfiche and microfilm charge. A charge for costs incurred for making a copy of microfiche or microfilm

(G) Remote document retrieval charge. A charge for costs incurred in obtaining information not in current use in remote storage locations

(H) Computer resource charge. A charge for costs incurred in obtaining information on computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources. This charge may also include programming time if a request requires a programmer to enter data in order to execute an existing program or create a new program so that requested information may be accessed

(I) Not readily available information Information that is not readily available includes information that requires personnel to locate and retrieve a specific file, review the file to locate the record, and replace the file after the record has been located. Information that is not readily available also includes information that requires personnel review to determine if the records contain information confidential by law. Information that is not readily available includes, but is not limited to:

(i) information in optometrist licensing files;

(ii) information in complaint files;

(iii) information in investigation files;

(iv) information in personnel files; and

(v) information in the agency's computerized data base system

(2) Charges.

(A) For 1-50 standard-size copies of readily available information, the charge shall be $0.10 per page.

(B) For 51 pages or more of readily available information, or any quantity of not readily available information, the charge shall be the sum of the following:

(i) $0.10 per page;

(ii) personnel charge in an amount reflecting the average hourly cost for classified state employees as determined from time to time by the General Services Commission;

(iii) overhead charge in an amount to be determined in accordance with the guidelines of the General Services Commission;

(iv) microfiche and microfilm charge (if applicable) in an amount equal to the actual cost to the agency of the reproduction, or in accordance with General services Commission Guidelines;

(v) remote document retrieval charge (if applicable) in an amount equal to the actual cost to the agency of the retrieval or in accordance with General Services Commission Guidelines;

(vi) computer resource charge (if applicable) including any programming time, in an amount equal to the cost to the agency, or in accordance with General Services Commission Guidelines; and

(vii) actual cost of miscellaneous supplies (if applicable) in an amount equal to the actual cost to the agency.

(C) If, in the opinion of the executive director, a request for information may result in substantial cost to the agency, the executive director may require the requester to make a deposit in the anticipated approximate amount of the charges, which may be applied to the costs incurred in responding to the request.

(D) If a particular request may involve considerable time and resources to process, the agency may advise the requesting party of what may be involved and provide an estimate of date of completion and the charges that may result.

(E) The agency has the discretion to furnish public records without charge or at a reduced charge if the agency determines that a waiver or reduction is in the public interest. The executive director is authorized to determine whether a public interest/benefit exists on a case-by-case basis.

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

Issued in Austin, Texas, on June 27, 1994.

TRD-9443108 Lois Ewald
Executive Director
Texas Optometry Board

Earliest possible date of adoption: August 5, 1994

For further information, please call: (512) 835-1938

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Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Licensed Real Estate Inspectors

- **22 TAC §§535.205, 535.208, 535.212-535.216, 535.218, 535.226**

The Texas Real Estate Commission proposes amendments to §§535.205, 535. 208, 535.212, 535.214, 535.216, 535.218, and 535.226, and new §535.213 and §535.215, concerning licensed real estate inspectors. The amendments and new sections primarily address the education, experience and examination requirements for apprentice inspectors, real estate inspectors and professional inspectors licensed by the Texas Real Estate Commission. The proposed amendments and new sections were developed by the Texas Real Estate Inspector Committee, an advisory committee of nine inspectors.

The amendment to §535 205 deletes obsolete provisions of that section which relate to transitional licensing and renewals of inspector licenses under the prior law in 1991. The amendment to §535.208 adopts a series of revised license application and inspection log forms which are being recaptioned to track the current law, Texas Civil Statutes, Article 6573a, §23, and to make the forms consistent with the other application forms used by the agency. The amendment to §535.212 relates to the education and experience requirements for a real estate inspector or professional inspector license. Applicants would not be given credit for more than 30 cumulative hours of inspection-related business, legal, report writing or ethics courses; this change

would ensure that applicants have completed the bulk of their required coursework in core courses more directly related to the performance of inspections. The amendment would clarify that correspondence courses and courses offered by nationally recognized building, electrical, plumbing, mechanical or fire code organizations would be acceptable for licensing. Daily course segments must be at least two hours long but not longer than 10 hours. Applicants must also have attended the entire course. The amendment would permit a person to satisfy up to 50% of the experience requirement for licensing by documenting experience in other licensed or registered occupations that involve the equipment and systems found in improvements to real property. Applicants also would be able to receive credit by documenting experience which the commission determines is substantially similar to experience in another occupation, or by demonstrating teaching experience. Limits would be imposed, however, on the number of inspections for which the same applicant could receive credit and on the period of time in which the same property may be inspected for credit Inactive periods of licensure also would not count towards any period of time in which the applicant must have held a lower level of license

New §535.213 addresses the accreditation of inspector educational programs. The section requires an entity applying for accreditation to submit at least 90 hours of core real estate inspection courses. The approval of courses and instructors would be done in the same manner as for the schools accredited to offer real estate courses. Daily course segments must be at least two hours long but not longer than 10 hours. Make-up work would not be accepted for course credit, and the courses relating to inspection subjects could be submitted to the Texas Real Estate Inspector Committee for review and possible recommendation.

The amendment to §535 214 clarifies licensing examinations for inspectors will generally be conducted by the commission in the same way as the examinations for real estate brokers and salesmen. Because of the smaller number of inspector applicants; however, the amendment clarifies that the commission will schedule inspector applicants to sit for examinations.

New §535.215 concerns inactive status of inspectors. Texas Civil Statutes, Article 6573a, §23(p), authorizes the commission by rule to adopt terms and conditions for an inactive status inspector license. The new section generally treats an inactive inspector as inactive real estate licensees are treated Inactive inspector licensees would not be permitted to practice, although they would not be required to complete continuing education courses until they desired to return to active status. Licenses could be renewed on inactive status if the applicable renewal fees are paid. Apprentice inspectors and real estate inspectors would have to be sponsored by a professional inspector in order to return to active status.

The amendment to §535 216 concerns license renewals by inactive inspectors Under the proposed section, the commission would send a renewal notice to the inactive licensee's last known residence address. In order to renew a license in an active status, an apprentice inspector or a real estate inspector would have to be sponsored by a professional inspector. The amendment also would clarify that the active inspector may continue to practice prior to receiving a new license certificate if the licensee has timely filed a renewal application, paid the appropriate fee, and completed any required continuing education courses. If the previous license has expired, however, the proposed section would require the inspector to wait until the inspector has received the new license certificate prior to returning to practice.

The amendment to §535 218 concerns continuing education for inspectors. The proposed amendment clarifies that except for correspondence courses, a final examination is not required continuing education course credit. The amendment also lists additional subjects, such as wood-destroying insects, radon, or asbestos that would be acceptable for continuing education Continuing education would not, however, be required for renewal of a license in an inactive status

The amendment to §535 226 addresses sponsorship of apprentice inspectors and real estate inspectors by professional inspectors The amendment clarifies that an active apprentice or active real estate inspector may work for a new sponsor once the written notice of change of sponsorship has been mailed to the commission. If the sponsored person is on inactive status, however, the proposed amendment would require the new sponsor to request the change of status and the sponsored person to have completed any required continuing education prior to being returned to active status

Mark A. Moseley, general counsel, has determined that for the first five year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr Moseley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section as proposed will be clarification of the licensing requirements for inspectors. There will be no effect on small businesses There is no anticipated economic cost to persons required to comply with the section as proposed. There is no anticipated impact on local employment

Comments on the proposal may be submitted to Mark A Moseley, General Counsel, Texas Real Estate Commission, P O. Box 12188, Austin, Texas 78711

The amendments and new sections are proposed under Texas Civil Statutes, Article 6573a, §23, which authorize the Texas Real Estate Commission to make and enforce rules and regulations necessary for the performance of its duties

§535 205 Inspectors Licensed Under Prior Law

(a) [A person licensed as a real estate inspector on the effective date of Texas Civil Statutes, Article 6573a, §23 (the Act), may continue to act as a real estate inspector until the person's license expires or is suspended or revoked by the commission. The person is eligible to obtain an inspector license under the Act if the person does the following:

[(1) applies to the commission for issuance of an inspector license prior to the expiration of the current license;

[(2) pays a license renewal fee of $50 if the application is filed in connection with a renewal of the current license;

[(3) provides proof on a form approved by the commission that the person has completed 75 real estate inspections in the 12 months before filing the application, and

[(4) provides evidence satisfactory to the commission that the person has successfully completed 38 classroom hours of core real estate inspection courses as defined by the Act in addition to any courses required for an original license prior to the effective date of the Act.

(b)] The commission adopts by reference Inspection Log REI 1-1 approved by the commission in 1991. This form is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

[(c) If a person licensed as an inspector on the effective date of the Act applies for a license more than 30 days prior to the expiration of an existing license and meets all requirements for issuance of an inspector license under this section and the Act, the commission shall issue a license valid until the expiration date of the current license. If the application is filed in connection with a renewal of a license and all requirements have been met for issuance of a license under the Act, the commission shall issue a license valid for one year.

[(d) If an applicant fails to satisfy a requirement under this section for issuance of a license in connection with a renewal of a current license, the commission shall issue a transitional license valid for 12 months. A transitional license may not be renewed A person holding a transitional license is eligible to receive an inspector license under the Act if the person completes 75 inspections during the 24 month period prior to the expiration of the transitional license and satisfies educational requirements set by the Act]

(b)[(e)] A person licensed as an inspector on the effective date of the Act may not sponsor an apprentice inspector or a **real estate inspector** [an inspector-in-training] until the person has certified to the commission that the person has performed at least 200 real estate inspections [, has performed inspections as a real estate inspector for at least 15 months and has successfully completed 38 classroom hours of

core real estate courses as provided in this section]

(c)[(f)] Inspections required to obtain a license or to sponsor apprentices or real estate inspectors shall be measured in accordance with the provisions of §535 212 of this title (relating to Education and Experience Requirements for a License)

§535 208 Application for a License

(a) A person desiring to be licensed shall file an application using forms prescribed by the commission The commission may not accept an application for filing if the application is materially incomplete or the application is not accompanied by the appropriate fee The commission may not issue a license unless the applicant

(1) (No change)

(2) satisfies any experience or education requirements established by the Real Estate License Act (the Act), §23, or by these sections, **providing written proof from the course provider that successful completion of a final course examination or other form of final evaluation was required for course credit;**

(3)-(4) (No change.)

(b) The Texas Real Estate Commission adopts by reference the following forms approved by the commission in 1991 **or 1994** These forms are published by and available from the Texas Real Estate Commission, P.O Box 12188, Austin, Texas 78711-2188

(1) Application for a **License** [Registration] as an Apprentice [Real Estate] Inspector, Form REI 2-2 [2-1],

(2) (No change)

(3) Application for a License as a Real Estate **Inspector** [Inspector-in-Training], Form REI 4-2 [4-1],

(4) **Inspector** [Inspector-in-Training] Inspection Log, Form REI 5-2 [5-1], and

(5) Application for a License as a **Professional Inspector** [Real Estate Inspector], Form REI 6-2 [6-1]

(c)-(e) (No change)

§535 212 Education and Experience Requirements for a License

(a) (No change)

(b) The commission may approve courses to be submitted by applicants for a real estate inspector or a professional inspector license upon a determination **by** [of] the commission that

(1) the course was devoted to a subject or subjects named in the Real Estate License Act (the Act), §23(a)(3), **provided however, that no more than 30 cumulative classroom hours in course credit may be accepted by the commission for inspection-related business, legal, report writing or ethics courses submitted by an applicant for a professional inspector license or for a real estate inspector license;** and

(2) the course was offered by an accredited college or university, by a school accredited by the commission or by a real estate or inspector regulatory agency of an other state, by a unit of federal, state or local government, **by a nationally recognized building, electrical, plumbing, mechanical or fire code organization** or the course was approved and regulated by an agency of this state

(c) **A** [After November 1, 1991, a] course must also meet the following requirements

(1) The applicant must have received in a classroom presentation the hours of instruction for which credit was given, **unless the course was offered by correspondence in accordance with the provisions of this section**

(2) The applicant must have successfully completed a final examination for course credit [and]

(3) Daily course segments must be at least two hours long but no longer than 10 hours.

(4) The applicant must have attended the entire course.

(5)[(3)] If the course was offered by a trade association, the course must have been approved and regulated by an agency of this state.

(d)-(h) (No change)

(i) **Provided documentation is provided by the applicant as the commission finds reasonably necessary to support the experience claimed, the commission may accept the following in satisfaction of no more than 50% of the number of inspections required to obtain a professional inspector license.**

(1) One year of experience as a builder, licensed architect or engineer, electrician, plumber, or in another licensed or registered occupation involving the installation, service, repair or maintenance of the equipment or systems found in improvements to real property may count as 25 inspections

(2) One year of such other experience, such as teaching, which the commission determines is substantially similar to that described in paragraph (1) of this subsection may be substituted for the equivalent number of inspections permitted under the provisions of this section

(j)[(i)] For the purpose of measuring the number of inspections required to receive a license or to sponsor apprentice inspectors or real estate inspectors, the commission shall consider an improvement to real property to be any unit which is capable of being separately rented, leased or sold Applicants who claim experience for oral inspection reports must be able to verify that an inspection was performed by file memoranda or other documentation Subject to the following restrictions, an inspection of an improvement to real property which includes the structural and equipment/systems of the unit shall constitute a single inspection

(1)-(4) (No change)

(5) The commission may not give experience credit to the same applicant or professional inspector for more than three complete or six partial inspections per day. No more than three applicants may receive credit for the inspection of the same unit within a 30-day period, and no more than three apprentice inspectors may receive credit for an inspection of the same unit on the same day.

(6) For the purpose of satisfying any requirement that a license be held for a period of time prior to an applicant's being eligible for a license as a real estate inspector or professional inspector, the commission may not give credit for periods in which a license was in inactive status. An applicant for a real estate inspector license must have been licensed in active status for a total of at least three months within the 12-month period prior to the filing of the application. An applicant for a professional license must have been licensed in active status for a total of at least 12 months within the 24-month period prior to the filing of the application.

§535 213 Schools and Courses of Study in Real Estate Inspection

(a) Except as provided by this section, the accreditation and regulation of schools and courses of study in real estate inspection shall be conducted as required for real estate schools by §535 66 of this title (relating to Educational Programs Accreditation)

(b) An entity applying for accreditation of a real estate inspection school shall submit course material for no less than 90 hours of core real estate inspection courses Additional courses may be submitted for approval by the commission

(c) To be eligible to apply for approval as an instructor in a core real estate inspection course, a person shall be

(1) a professional inspector licensed in Texas with a minimum of three years' active practice in the areas of study for which approval is sought;

(2) a person holding a degree from an accredited college or university with a minimum of 13 semester credits of course work in the area of study for which approval is sought; or

(3) a person found by the commission to possess a background substantially equivalent to paragraph (1) or (2) of this subsection by means of professional or instructional experience

(d) Daily course segments must be at least two hours long but not longer than 10 hours.

(e) The provisions of §535.66(kk) of this title (relating to Educational Programs: Accreditation) do not apply to a real estate inspection course for which less than 30 hours of credit is given.

(f) The commission may submit proposed courses to the Texas Real Estate Inspector Committee for review and recommendation

§535.214. Examinations

(a) There shall be an examination for a real estate inspector license and for a professional inspector license. Questions shall be used which will measure competency in the subject areas required for a license [licensure] by Texas Civil Statutes, Article 6573a, §23, (the Act) and which will demonstrate an awareness of its provisions relating to inspectors. Each applicant must achieve a score of at least 75% on the examination The examination for a professional inspector license shall measure a higher level of competency than that required of a real estate inspector.

(b) Except as otherwise required by the Act or this section, examinations shall be conducted as provided by §535.61 of this title (relating to Examinations).

(c) The commission shall schedule an applicant to sit for the examination. Examinations may be rescheduled at the request of the applicant unless to do so would extend the time for satisfying the examination requirement beyond the time permitted by the Act.

§535.215. Inactive Inspector Status.

(a) For the purposes of this section, an inactive inspector is a licensed professional inspector, real estate inspector, or apprentice inspector who does not engage in the business of performing real estate inspections as defined by Texas Civil Statutes, Article 6573a, §23, (the Act), and who has been placed on inactive status by the commission either at the inspector's request, or as otherwise provided by this section.

(b) To be placed on inactive status by request, an inspector must do the following:

(1) apply to the commission on a form approved by the commission for that purpose, or by a letter containing the inspector's name, license number and current mailing address;

(2) if the inspector is a licensed professional inspector, confirm in writing that the inspector has given any real estate inspectors or apprentice real estate inspectors sponsored by the inspector written notice that the inspector will no longer be their sponsor at least 30 days prior to filing the request for inactive status; and

(3) return the inspector's license certificate to the commission.

(c) A professional inspector who has been placed on inactive status may apply to the commission for return to active status on a form approved by the commission. A professional inspector may apply on a form approved by the commission to sponsor an apprentice inspector or real estate inspector who has been on inactive status. The commission may not return an inspector to active status or issue a license certificate to the inspector unless the inspector has completed within one year prior to the filing the request for return to active status any applicable continuing education courses required for renewal of the type of license held by the inspector or satisfied the continuing education requirements in order to obtain the current license

(d) An inspector who applies to renew a license and pays the applicable fee but who fails to complete any continuing education required by the Act as a condition of license renewal shall be placed on inactive status by the commission. The inspector must comply with the requirements of this section in order to return to active status.

(e) If a professional inspector terminates the sponsorship of an apprentice real estate inspector or real estate inspector, the license of the apprentice inspector or real estate inspector becomes inactive. The apprentice real estate inspector or real estate inspector must be sponsored by a professional inspector in order to return to active status.

(f) A professional inspector who has been placed on inactive status may not return to practice or sponsor apprentices or inspectors until the professional inspector has received a new license certificate from the commission. An apprentice inspector or real estate inspector who has been placed on inactive status may return to practice if the inspector has completed applicable continuing education requirements, and the inspector's sponsoring professional inspector has requested that the apprentice inspector or real estate inspector be returned to active status under the professional inspector's sponsorship in accordance with the provisions of this section

§535.216 Renewal of License or Registration

(a) (No change.)

(b) The commission shall mail the prescribed renewal application form to the last known business address of the licensee at least **90** [30] days prior to the expiration of the license **If the license is in inactive status, the form will be mailed to the licensee's last known residence address. The commission shall have no obligation to mail a form to a licensee on inactive status who fails to furnish the commission with a residence address.** An apprentice inspector or a real estate inspector must be sponsored by a licensed professional inspector in order to renew a license **in an active status** It is the responsibility of the licensee to apply for renewal, and failure to receive a renewal application form does not relieve the licensee of the responsibility of applying for renewal

(c)-(d) (No change.)

(e) **An inspector licensed in an active status** [A licensee] who timely files a renewal application **together with the applicable fee and evidence of completion of any required continuing education courses** may continue to practice prior to receiving a new license certificate from the commission **If the license has expired and the licensee files an application to renew the license, the** [A] licensee [whose license expires before the renewal application is filed] may not practice until the new certificate is received

§535.218 Continuing Education

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

(c) **Other than for correspondence courses, completion of a final examination is not required for a licensee to obtain continuing education credit for a course** [An inspector licensed under the prior law is subject to the continuing education requirements of the Act once the inspector has completed the core real estate inspection courses required to receive a new license under this Act]

(d) (No change.)

(e) In addition to the core real estate inspection courses defined in the Act, a course related to wood-destroying insects, radon, asbestos, lead, or other

hazardous substances may also be taken to satisfy continuing education requirements.

(f) Licensed professional inspectors, real estate inspectors and apprentice inspectors may renew a license on inactive status. Professional inspectors and real estate inspectors are not required to complete continuing education courses as a condition of renewing a license on inactive status. Continuing education requirements for return to active status must be satisfied as provided by §535.215 of this title (relating to Inactive Inspector Status).

§535.226. Sponsorship of Apprentice Inspectors and Real Estate Inspectors

(a) (No change)

(b) A change in sponsorship shall be reported to the commission immediately An apprentice inspector or real estate inspector **who is on active status** may act for the new sponsoring professional inspector once the written notice has been placed in the mail to the commission along with the fee for reporting any change of address **If the apprentice or real estate inspector is on inactive status, the return to active status shall be subject to the requirements of §535. 215 of this title** (relating to **Inactive Inspector Status**).

(c)-(e) (No change)

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

Issued in Austin, Texas, on June 24, 1994

TRD-9443110 Mark A Moseley
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption August 5, 1994

For further information, please call (512) 465-3900

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 37. Maternal and Child Health Services

Special Senses and Communication Disorders

The Texas Department of Health (department) proposes repeal of §37 47 and new §37.47, concerning the Children's Speech-Language and Hearing Advisory Committee The proposed new section covers applicable law, purpose, tasks, abolishment, terms of office, officers, meetings, attendance, staff, procedures, subcommittees, statements by members, reports to the board, reimbursement of members' expenses, and the section's effective date.

In accordance with Texas Civil Statutes, Article 6252-33, the department must evaluate each of its advisory committees to determine whether the committee should be continued, modified, consolidated with other committees, or abolished. The present advisory committee, the Children's Speech-Language and Hearing Advisory Committee, was established in 1983. Upon review by the department, the committee's name and structure have been revised to create a better balance between professional and public members.

Linda G. Prentice, M.D., Director of Clinical Operations, Division of Women's Health, Bureau of Women and Children, has determined that for the first five-year period the section will be in effect, there will be no fiscal implications for state or local government as a result of administering the section as proposed.

Dr Prentice also has determined that for each of the first five years the section is in effect, the public benefit anticipated are the department's continuing compliance with Texas Civil Statutes, Article 6252-33, concerning state agency advisory committees, and the department's continuing access the committee's advice concerning screening children's hearing and speech/language capabilities and improvement of referral systems for children to providers of diagnostic and remedial services. There are no anticipated economic costs to small or large businesses or individuals who are required to comply with the section as proposed, and no effect on local employment is anticipated.

Written comments on the proposed addition may be submitted to Martha McGlothlin, Speech-Language Services, Bureau of Women and Children, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Telephone inquiries also may be made to Martha McGlothlin at (512) 458-7700. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

• **25 TAC §37.47**

(Editor's note The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 6252-33, which sets standards for the evaluation of advisory committees by the agencies for which they function, and under the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health The new section will affect Health and Safety Code, Chapter 36

§37 47 Children's Speech-language and Hearing Advisory Committee.

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

Issued in Austin, Texas, on June 27, 1994.

TRD-9443182 Susan K. Steeg
General Counsel, Office of the General Counsel
Texas Department of Health

Proposed date of adoption: September 23, 1994

For further information, please call: (512) 458-7700

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The new is proposed under Texas Civil Statutes, Article 6252-33, which sets standards for the evaluation of advisory committees by the agencies for which they function, and under the Health and Safety Code, §12 001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health. The new section will affect Health and Safety Code, Chapter 36.

§37.47. Children's Speech-language and Hearing Advisory Committee.

(a) The committee. The Children's Speech-Language and Hearing Advisory Committee shall be appointed under and governed by this section.

(b) Applicable law The committee is subject to Texas Civil Statutes, Article 6252-33, relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board concerning appropriate techniques, tools, and training for screening hearing and speech/language in schools, child care and Head Start settings, and public health clinics; improvement of systems for early identification of hearing or speech/language delayed children; and improvement of systems to connect children who fail screening with diagnostic and remedial services

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to age groups mandated to be screened, periodicity of screening, qualifications and training of screeners, appropriate screening techniques and equipment, reporting requirements for screening, maintenance of records of screening, and operation of the Program for Amplification for Children of Texas

(2) The committee shall also review proposed legislation and rules to determine their impact on the quality of screening and access of identified children to quality diagnostic and remedial services, and shall advise staff of the department's Bureau of Women and Children in matters

pertaining to the identification and care of children with hearing or speech-language disorders.

(3) The committee shall carry out any other tasks given to the committee by the board.

(e) Committee abolished. The committee shall be automatically abolished on January 1, 1999.

(f) Composition. The committee shall be composed of 11 members appointed by the board as follows:

(1) five consumer members; and

(2) six nonconsumer members, which shall include:

(A) two audiologists, one from private practice and one from the public sector;

(B) two speech-language pathologists, one from private practice and one from the public sector;

(C) one school nurse; and

(D) one physician with expertise in caring for hearing and speech-language impaired children.

(g) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members will expire on December 31 of each even-numbered year, beginning in 1996.

(A) The following members shall be appointed initially for two-year terms:

(i) audiologist in the private sector;

(ii) speech-language pathologist in the public sector; and

(iii) consumer.

(B) The following members shall be appointed initially for four-year terms:

(i) audiologist in the public sector;

(ii) physician;

(iii) consumer; and

(iv) consumer.

(C) The following members shall be appointed for six-year terms:

(i) speech-language pathologist in the private sector;

(ii) school nurse;

(iii) consumer; and

(iv) consumer.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of each year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in either the office of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(7) The agenda for each committee meeting shall include an opportunity for any person to address the committee on matters relating to committee business. The presiding officer may establish procedures for such public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the members are assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. *Roberts Rules of Order, Newly Revised*, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once a quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, sex, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediately preceding 12 months and shall be filed with the board each January. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

(q) Effective date. This section shall become effective on January 1, 1995.

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

Issued in Austin, Texas, on June 27, 1994.

TRD-9443122 Susan K. Steeg
General Counsel, Office of the General Counsel
Texas Department of Health

Proposed date of adoption: September 23, 1994

For further information, please call: (512) 458-7700

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Midwives

• 25 TAC §37.175

The Texas Department of Health (department) proposes an amendment to §37.175, concerning fees for midwives. The amendment is necessary to comply with the Texas Midwifery Act (Act), Article 4512i, Texas Civil Statutes, as amended by Chapter 337, Acts of the 73rd Legislature, Regular Session, 1993, which requires the Midwifery Board to establish reasonable and necessary fees so that the fees, in aggregate, produce sufficient revenue to cover the costs of administering the Act. Documentation fees for midwives have not increased in over five years.

J. Scott Simpson, M.D., Division Director for Women's Health, Bureau of Women and Children, has determined that for the first five year period the section as proposed is in effect, there will be fiscal implications as a result of enforcing or administering the section as proposed. The effect on state government will be an estimated increase in revenue of approximately $45,134 each year. The fee increase sought to be implemented by the amendment to §37.175 will generate sufficient revenue to cover the costs of administering the Act for at least the first five fiscal years the section is in effect.

Dr. Simpson also has determined that for each of the first five years the section as proposed is in effect the public benefit anticipated is the continued efficient administration of the Act. Each individual who is required to comply with the section will incur an additional $150 per year in fees for initial documentation or renewal of documentation as a midwife, and an additional $50 fee for late documentation. No additional costs to small or large businesses to comply with the proposed amendment are anticipated. There is no anticipated effect on local employment.

Written comments on the proposal may be submitted to Cecilia P. Nobles, Midwifery Program Coordinator, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Telephone inquiries may also be made to Mrs. Nobles at (512) 458-7700. Comments will be accepted for 30 days following the date of publication in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 4512i, §8A(a) and (d), concerning the practice of midwifery; Health and Safety Code, §12.001(b), which provides the Texas Board of Health with authority to adopt rules for the performance of each duty imposed upon it by law. The proposed amendment affects Texas Civil Statutes, Article 4512i.

§37.175. Annual Documentation.

(a) (No change.)

(b) Application for initial documentation by an individual may take place at any time during the year, and must be accompanied by a **$200** [$50] nonrefundable fee (cashiers check or money order required). This application must be made and completed before an individual may begin to practice in Texas. Practicing midwifery in Texas without documentation is subject to criminal and civil penalties under the Texas Midwifery Act. The documentation extends through December 31 of each year.

(c) Application for annual redocumentation by a midwife shall take place in the month of December with the Midwifery Program. A nonrefundable application fee of **$200** [$50] (cashiers check or money order required) must accompany the application. The documentation period is from January 1 through December 31 of the same year.

(d) Application for renewal of documentation by a midwife submitted after January 1 of each year will carry a nonrefundable late filing fee of **$75** [$25] in addition to the **$200** [$50] application fee (cashiers check or money order required). There will be a grace period of 10 days for

late filing. After January 10 of each year, the midwife will have to reapply for documentation. The midwife is not authorized to practice midwifery during this time until the documentation has been completed.

(e)-(i) (No change.)

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

Issued in Austin, Texas, on June 27, 1994

TRD-9443119 Susan K Steeg
General Counsel, Office of the General Counsel
Texas Department of Health

Proposed date of adoption September 23, 1994

For further information, please call (512) 458-7700

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The Texas Department of Health proposes the repeal of §37 178 and new §37 178, concerning complaint procedures. The proposed new section covers the scope of the complaint procedures, filing and processing of complaints, investigation of complaints, and grievance committee and board actions.

The proposed new section is necessary to comply with the Texas Midwifery Act, Texas Civil Statutes, Article 4512i, §8A(b)(5), which require the board, subject to the approval of the Texas Board of Health, to adopt rules prescribing a procedure for reporting and processing complaints relating to the practice of midwifery in this state The new section provide for a more efficient, thorough, and fair complaint resolution process in the public interest in conjunction with the board's proposed rules on standards of practice for midwives

J. Scott Simpson, M.D., Division Director for Women's Health, Bureau of Women and Children, has determined that for the first five-year period the section as proposed is in effect, there will be no fiscal implications for state or local government as a result of administering the section.

Dr Simpson has determined that for each of the first five years the section is in effect, the public benefit anticipated is an improvement in the quality of midwifery practice and the continued efficient administration of the Texas Midwifery Act There will be no additional costs to small or large businesses or persons to comply with the new section, nor is any effect on local employment anticipated

Written comments on the proposal may be submitted to Cecilia P Nobles, Midwifery Program Coordinator, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199 Telephone inquiries may also be made to Ms Nobles at (512) 458-7700 Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*

Midwives

• 25 TAC §37.178

(Editor's note The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 4512i, §8A(b) (5), which require the board to adopt rules, subject to the approval of the Texas Board of Health, prescribing a procedure for reporting and processing complaints, and §18D, which requires the board to adopt rules concerning investigation of complaints filed with the board

The repeal will affect Texas Civil Statutes, Article 4512i

§37.178 Complaint Procedure.

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

Issued in Austin, Texas, on June 29, 1994

TRD-9443181 Susan K Steeg
General Counsel, Office of the General Counsel
Texas Department of Health

Proposed date of adoption September 23, 1994

For further information, please call (512) 458-7700

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The new section is proposed under Texas Civil Statutes, Article 4512i, §8A(b)(5), which requires the board to adopt rules, subject to the approval of the Texas Board of Health, prescribing a procedure for reporting and processing complaints; and §18D, which requires the board to adopt rules concerning investigation of complaints filed with the board.

The new §37.178 will affect Texas Civil Statutes, Article 4512i

§37.178. Complaint Procedure

(a) Scope. This section covers the procedure to be used by the Midwifery Program and the Midwifery Board in processing complaints about midwives

(b) Filing and processing of complaints

(1) Any person may complain to the Midwifery Program that a midwife has violated the Texas Midwifery Act or any other law relating to the practice of midwifery in Texas

(2) A complaint may be initiated by any person in writing, by telephone, or by a personal visit to the Midwifery Program office

(3) Upon receipt of a complaint, the program coordinator shall send or give to the complainant an acknowledgement letter and the Midwifery Board's complaint form, which the complainant must complete and return before further action can be taken Complaint forms shall document the name and address of the person making the complaint, the names and addresses of witnesses to the alleged violation, and sufficient details to adequately describe the alleged violation Anonymous complaints, while not encouraged, will be accepted

(4) Within ten working days of the date a complaint is filed with the Midwifery Program, the program coordinator shall notify the alleged violator of receipt of the complaint and request a written response within 45 days The notification shall solicit a written narrative and documentation from client files, if applicable

(5) The program coordinator shall keep an information file about each complaint which shall include the following

(A) all persons contacted in relation to the complaint,

(B) a summary of findings made at each step of the complaint process, and

(C) other relevant information

(6) The program coordinator shall notify the complainant and the alleged violator of the status of the complaint on a quarterly basis until the complaint is resolved

(7) Complaints will be handled confidentially to the extent authorized by Government Code, Title 5, Chapters 551 and 552

(c) Grievance Committee A Grievance Committee shall be appointed by the Chair of the Midwifery Board and shall consist of two midwives, the certified nurse-midwife or a physician, and a public member The chair of the Midwifery Board shall appoint one of the midwives as chair of the Grievance Committee

(d) Investigation of complaints

(1) Complaint investigations will be handled by the program coordinator and a Grievance Committee of the Midwifery Board A summary of all complaints received will be reviewed by the Midwifery Board at each regular meeting The summary will include any complaints referred to other agencies, and/or any complaints received from other agencies A summary of the status of all ongoing investigations will also be reviewed by the Midwifery Board at each regular meeting

(2) The program coordinator shall conduct an initial investigation of each complaint and report the findings to the Grievance Committee

(A) If the program coordinator determines that the complaint alleges a violation of a law other than the Texas Midwifery Act, the Program Coordinator shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency.

(B) If the program coordinator determines that the complaint alleges a violation of the Texas Midwifery Act, the program coordinator shall forward all information collected to the chair of the Grievance Committee for review by the committee to determine if there is sufficient evidence to support the complaint or to warrant further investigation

(3) The following categories will be used for evaluation of complaints by the Grievance Committee

(A) violations of procedural rules;

(B) violations of ethical standards, and/or

(C) violations of safe midwifery.

(4) The Grievance Committee shall determine by majority vote if there is sufficient evidence to support a complaint. The Midwifery Board Chair shall vote to break ties

(5) If the Grievance Committee determines that there is sufficient evidence to support a complaint, and that additional investigation is warranted, the Grievance Committee may request that an investigation be conducted by an investigator available from the department The investigator shall submit a written report to the Grievance Committee Chair setting forth all facts obtained during the investigation

(6) At any time during the investigation of a complaint, the Grievance Committee may hold an informal conference on its own motion or at the request of the complainant or the accused midwife to discuss the investigation and any proposed action Such a meeting shall be considered part of the Midwifery Board's investigation process and shall not be open to the public

(e) Grievance Committee and Midwifery Board actions

(1) The Grievance Committee will review the findings of each completed complaint investigation and recommend a course of action by the Midwifery Board to resolve the complaint as follows:

(A) the Grievance Committee may recommend that the Midwifery Board close the complaint file on the basis of insufficient evidence to support the complaint; or

(B) the Grievance Committee may find that there is sufficient evidence to support the complaint and may attempt to resolve the complaint by agreement between the midwife and the Midwifery Board If the midwife agrees to comply, the Grievance Committee may recommend that the Midwifery Board close the complaint file Compliance with an agreed resolution will be monitored by the Program Coordinator, who may reopen a complaint if a violation of the agreement is suspected; or

(C) the Grievance Committee may recommend that the Midwifery Board refer the matter to the Attorney General and/or to a district, county, or city attorney for possible legal action

(2) The Midwifery Board then shall vote either to close the complaint file on the basis of insufficient evidence, or will find that there is sufficient evidence to support the complaint. If the Midwifery Board finds that there is sufficient evidence to support the complaint, it shall then vote either to accept a voluntary resolution agreement developed by the Grievance Committee and the alleged violator or to refer the matter to the Attorney General and/or a district, county, or city attorney for possible legal action.

(3) A summary statement of the findings of the Midwifery Board will be issued to the midwife by the program coordinator. A copy of the summary statement shall be kept in the permanent record of the complaint proceeding.

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

Issued in Austin, Texas, on June 27, 1994.

TRD-9443121 Susan K Steeg
General Counsel, Office of the General Counsel
Texas Department of Health

Proposed date of adoption: September 23, 1994

For further information, please call: (512) 458-7700

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Surveillance and Control of Birth Defects

• 25 TAC §§37.301-37.306

The Texas Department of Health (department) proposes new §§37.301-37. 306, concerning surveillance and control of birth defects. Specifically, the new sections cover purpose, policy, definitions, confidentiality of information provided to the department, surveillance of birth defects, central registry, and access to information in the central registry. The new sections implement the Health and Safety Code, §§87.001-87.064, which requires the department to establish rules to facilitate identification of clusters of birth defects and establish a central registry of birth defect cases.

Dennis Perrotta, Ph.D., Bureau Chief, Bureau of Epidemiology, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Dr. Perrotta also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be an expanded ability to detect clusters of birth defects that are likely to have common causes that can be identified and to further establish a birth defects registry. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the sections as proposed. There will be no impact on local employment.

Comments on the proposal may be submitted to Dennis M. Perrotta, Ph.D., Bureau of Epidemiology, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3180, (512) 458-7268. Comments will be accepted for 30 days from the date of publication of the proposed rules in the *Texas Register*.

The sections are proposed under the Health and Safety Code, §§87.001-87. 064, which requires the department to establish rules to investigate and register birth defects; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§37.301. Purpose. These sections implement the provisions of Senate Bill 89, 73rd Legislature, adding Chapter 87 to the Health and Safety Code. Chapter 87 provides the Texas Board of Health (department) with the authority to adopt rules relating to the surveillance and control of birth defects. The legislation directs the department to develop a statewide surveillance program, but permits the department to implement a pilot program limited to part of the state, depending on resources available to the department.

§37.302. Policy.

(a) The Texas Department of Health (department), recognizing the sensitive and confidential nature of information collected regarding birth defects and their possible causes, shall expect all staff to carry out all duties in a professional, compassionate, and culturally sensitive manner.

(b) It is the policy of the Texas Birth Defects Monitoring Division to limit medical researcher contact with individuals and families identified by the central registry to only those studies with high scientific merit with no feasible alternate means of conducting the study.

(c) It is also the policy of the Texas Birth Defects Monitoring Division to protect patient information from disclosure through the legal process.

§37.303. Definitions. The following words and terms, when used in these sections, shall have the following meanings unless the context clearly indicates otherwise.

Birth defect-A physical or mental functional deficit or impairment in a human embryo, fetus, or newborn resulting from one or more genetic or environmental causes.

Birthing center-A place, facility, or institution at which a woman is scheduled to give birth following a normal, uncomplicated pregnancy, but does not include a hospital or the residence of the woman giving birth.

Case finding-The process used to identify potential cases for inclusion in the central registry of the Texas Department of Health's, Texas Birth Defects Monitoring Division. Potential cases are obtained through review of logs, indices, appointment rosters and other records.

Central registry-Cases of birth defects obtained through the surveillance activity of the Texas Birth Defects Monitoring Division.

Commissioner-The Commissioner of the Texas Department of Health.

Communicable disease-An illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, a vector, or the inanimate environment.

Department-The Texas Department of Health.

Director-The executive director of the department who is the Commissioner of the Texas Department of Health

Environmental cause-The sum total of all the conditions and elements that make up the surroundings and influence the development of an individual.

Harmful physical agent-A physical phenomenon, other than a toxic substance, that has or may have carcinogenic, mutagenic, teratogenic, or other harmful effects on humans, and includes ionizing radiation, X-rays, gamma rays, ultraviolet light, or other electromagnetic radiation; and acoustical, thermal, or mechanical vibration.

Health professional-An individual whose:

(A) vocation or profession is directly or indirectly related to the maintenance of health in another individual; and

(B) duties require a specified amount of formal education or training and may require a special examination, certificate, or license or membership in a regional or national association

Health facility-A facility which includes.

(A) a general or special hospital licensed by the department under Health and Safety Code, Chapter 241,

(B) a physician-owned or physician-operated clinic,

(C) a publicly or privately funded medical school,

(D) a state hospital or state school maintained and managed by the Texas Department of Mental Health and Mental Retardation,

(E) a genetic evaluation and counseling center;

(F) a public health clinic conducted by a local health unit, health department, or public health district organized and recognized under Health and Safety Code, Chapter 121;

(G) a physician peer review organization, and

(H) a birthing center

Midwife-A person who practices midwifery and has met the requirements of the standards of the midwifery board

Local health unit-A division of municipal or county government that provides public health services but does not provide each service required of a local health department under Health and Safety Code, §121.032(a), or of a public health district under Health and Safety Code, §121.043(a)

Pilot program-The birth defects surveillance program with coverage limited to the counties of Health and Human Services Regions 6 and 11

Toxic substance-A substance that has or may have toxic, carcinogenic, mutagenic, teratogenic, or other harmful effects on humans, and includes a product that contains a toxic substance that poses or may pose a substantial hazard to human health.

§37.304. Confidentiality of Information Provided to the Department

(a) Reports, records, and other information collected by, or provided to the Texas Department of Health (department) relating to persons known to have, or suspected of having a birth defect are confidential records and not public information and may not be released except as described in subsection (b) of this section The confidential records include medical and other information obtained as part of epidemiologic or other investigations and the records and information gathered as part of the operation of the central registry

(b) The department may release medical, epidemiological, or toxicological information

(1) for statistical purposes, if released in a manner that prevents the identification of any person,

(2) to the case management program of the department for guidance in applying for financial or medical assistance available through existing state and federal programs, if appropriate,

(3) with the consent of each person identified in the information or, if the person is unable to consent or is a minor, the minor's parents, managing conservator, guardian, or other person who is legally authorized to consent,

(4) to medical personnel, appropriate state agencies, health authorities, regional directors, and public officers of counties and municipalities relating to the identification, monitoring, and referral of children with birth defects,

(5) to appropriate federal agencies such as the Centers for Disease Control and Prevention of the United States Public Health Service,

(6) to medical personnel to the extent necessary to protect the health or life of the child identified in the information, or

(7) to medical researchers conducting bona fide medical research under the conditions described in §37.306 of this title (relating to Access to Information in the Central Registry)

§37.305. Surveillance of Birth Defects Central Registry

(a) The central registry shall use a birth defects coding scheme used by the Centers for Disease Control and Prevention

(CDC) of the United States Public Health Service in their birth defects monitoring programs, which is titled "Birth Defects and Genetic Branch 6-Digit Code for Reportable Congenital Anomalies" dated June 1993.

(b) The central registry will cover only the pilot project area until resources necessary to expand statewide are allocated

(c) In order for information related to a child to be included in the central registry, the following conditions must be met

(1) The mother's residence at the time of birth must have been in a Texas county covered by the central registry

(2) The child must have a structural or genetic birth defect or other specified outcome that can adversely affect his or her health and development as defined in subsection (a) of this section

(3) The defect must be diagnosed or its signs and symptoms must be recognized within the first year of life

(4) A case must be abstracted by the child's sixth birthday

(d) A reportable defect as defined in subsection (a) of this section occurring in a fetal death or pregnancy termination shall be included in the central registry

(e) Each health care facility or midwife's office in a county covered by the registry shall receive an introductory letter from the Texas Department of Health's director of the Texas Birth Defects Monitoring Division providing materials about the Health and Safety Code, Chapter 87, relating to birth defects and the rules in this section relating to their participation in the surveillance system Additional information shall be available upon request

(1) The chief operating officer of each facility or office shall appoint one staff member as the contact person for the central registry surveillance activities. That staff member will coordinate scheduled visits by central registry staff to review logs, discharge indices and other case-finding sources, and will be responsible for arranging medical records review visits and record management

(2) Potential cases are obtained through review of logs, indices, appointment rosters, and other records.

(3) Central registry staff and the contact individual shall establish a general schedule of case-finding and record review visits This schedule shall take into account the capabilities of the health care facility in responding to requests, as well as the expected needs of the central registry workload

(f) The medical records and other materials provided by the health care facility shall not be removed from that facility. If copies are made, central registry staff must abide by procedures regarding copier use agreed upon with each health care facility. All information, either on paper or in electronic form, which is removed from the health care facility shall be transported by secure means at all times. Forms, notes, and other information will be carried in locked brief cases and will be stored in locked offices or lockable file cabinets.

(g) The following general skills and qualifications shall be required for employment in the Texas Birth Defects Monitoring Division.

(1) The Director of the Texas Birth Defects Monitoring Division shall possess doctoral-level training in the medical or public health sciences and experience in public health surveillance or birth defects He/she shall conduct himself/herself in a professional manner and shall have signed an agreement to actively protect the confidentiality of patient information

(2) Persons who will conduct case-finding and data abstraction shall possess knowledge of basic medical terminology, be able to interpret complex medical record information, conduct themselves in a professional manner, and shall have signed an agreement to actively protect the confidentiality of the patient information they collect and process

(3) All other employees shall conduct themselves in a professional manner, and shall have signed an agreement to actively protect the confidentiality of all patient information.

§37.306. Access to Information in the Central Registry

(a) An application for access to any confidential data elements for individual patients identified as part of the operation of the central registry must contain a protocol and be submitted to the Texas Department of Health's (department) director of the Texas Birth Defects Monitoring Division. The protocol shall explain the applicant's "valid scientific interest" by describing, at length·

(1) the name and qualifications of the principal investigator, professional staff, and every person who will review, analyze, or access the data;

(2) the background justification for the study,

(3) the goals and aims of the proposed study,

(4) the health outcomes of interest,

(5) the methodology for measuring exposures,

(6) the methodology for measuring and adjusting for confounding variables;

(7) the precise statistical techniques to be used in the analysis of data, including power and methods to address biases inherent in the study design and data;

(8) the time tables and feasibility for completion of the study;

(9) the level and sources of funding for the study;

(10) an explanation of the potential benefits and disadvantages involving human subjects;

(11) the plans to maintain the confidentiality of the information provided by the department; and

(12) a discussion of the project's pertinence to the fields of medical research, medical care, public health, epidemiology, biostatistics, or maternal and child health.

(b) After the director of the Texas Birth Defects Monitoring Division receives the completed request for information, the protocol will be reviewed by a divisional review panel The panel shall consist of the director of the Texas Birth Defects Monitoring Program, the chief of the Bureau of Epidemiology, and a senior departmental epidemiologist. Upon approval by the divisional panel, the protocol shall be evaluated and judged by the department's institutional review board. Final approval of the protocol shall require the approval of both the divisional panel and the institutional review board and shall be based on an evaluation of the criteria listed in subsection (c) of this section.

(c) The evaluation criteria for approval shall include the following.

(1) The key investigators shall have significant training and experience in biomedical research as demonstrated by a history of prior research and publication of results in peer-reviewed journals

(2) The background reasons for conduct of the proposed study shall be compelling, as judged by the importance of the scientific question being asked, relative to the fields of epidemiology, medicine, public health or other medical research.

(3) The goals and aims shall be clearly stated, consistent with the scientific question, and relevant to the field.

(4) If appropriate, the methods for measuring or estimating exposure shall be scientifically valid.

(5) The roles of other factors (that might be related to both the exposures and the birth defects studied) shall be considered, and the methods for measuring and adjusting for these factors shall be clear and scientifically valid.

(6) If appropriate, power calculations shall indicate a reasonable chance of identifying expected differences between groups.

(7) The statistical techniques to be used in data analysis, including methods to address biases in the study design shall be clear and appropriately used.

(8) The potential benefits and disadvantages of working with human subjects must be clearly described.

(9) Plans of how the investigators propose to maintain the confidentiality and integrity of the information provided by the department shall be clearly detailed.

(d) Modification to the protocol or other terms and conditions may be required before releasing any data.

(e) If the applicant intends to contact individuals whose names were provided by the Texas Birth Defects Monitoring Division, the protocol must contain strong methodologic support for the need for such contact.

(f) If the protocol is approved by both the divisional panel and the institutional review board, then the researcher shall be considered to have established a valid scientific interest as required. The Director of the Texas Birth Defects Monitoring Division shall so advise the Commissioner of the Texas Department of Health (Commissioner). The researcher will be required to comply with the conditions of subsections (g) and (h) of this section before any data will be released.

(g) If permission is granted, the applicant shall be responsible for all reasonable and necessary costs incurred by the Texas Birth Defects Division in making the data available. The applicant shall incur the cost of the Texas Birth Defects Monitoring Division to monitor all contact with human subjects. The date of delivery of data shall be determined by the Director of the Texas Birth Defects Monitoring Division based on workload and the nature of the request.

(h) Prior to release of any data, the director of the Texas Birth Defects Monitoring Division shall receive from all applicants, including the principal investigators, staff, and consultants who will receive access to any confidential central registry data, a signed written statement guaranteeing that:

(1) the applicant shall not allow any person other than those identified in the protocol, to access, use, or otherwise review the data supplied by the Texas Birth Defects Monitoring Division;

(2) there shall be no deviation from the protocol without explicit advance review and approval by the Texas Birth Defects Monitoring Division panel, the department's institutional review board, and the Commissioner;

(3) information obtained in the course of activities undertaken or supported using the data from the Texas Birth Defects Monitoring Program shall not be used for any purpose other than the exact purpose for which it was supplied;

(4) all data tapes and disks, hard-copy output, interview questionnaires or other materials provided by the Texas Birth Defects Monitoring Division are considered the property of the Texas Department of Health and shall be returned to the department at the completion of the study. Any confidential information which is copied or otherwise transferred, electronically or through other means, shall be destroyed at the completion of the research unless otherwise stated in the research protocol;

(5) the Texas Birth Defects Monitoring Division, Texas Department of Health shall be acknowledged as a source of birth defects or other data in all written reports, data tabulations or publications that are produced by use of these data;

(6) the applicant agrees to notify the director of the Texas Birth Defects Monitoring Division immediately upon receiving any request for access to data in the applicant's possession;

(7) the applicant shall notify the director of the Texas Birth Defects Monitoring Division on receiving notice of any legal action that might affect disclosure of the data, either by subpoena, discovery, or other means; and

(8) the applicant must agree to reimburse the Texas Birth Defects Monitoring Division for reasonable costs it incurs in protecting patient information from legal disclosure.

(i) While the Texas Birth Defects Monitoring Division utilizes vital records information, that information is the responsibility and property of the department's Bureau of Vital Statistics (bureau). Investigators who request vital records information from the bureau must obtain approval according to the policies of the bureau.

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

Issued in Austin, Texas, on June 28, 1994

TRD-9443118 Susan K. Steeg
General Counsel, Office of the General Counsel
Texas Department of Health

Proposed date of adoption September 23, 1994

For further information, please call. (512) 458-7268

Chapter 56. Family Planning

Subchapter A. Program Information

• 25 TAC §56.104

The Texas Department of Health (department) proposes new §56 104, concerning the Family Planning Advisory Council The proposed new section covers applicable law, purpose, tasks, abolishment, terms of office, officers, meetings, attendance, staff, procedures, subcommittees, statements by members, reports to the board, reimbursement of members' expenses, and the section's effective date

In accordance with Texas Civil Statutes, Article 6252-33, the department must evaluate each of its advisory committees to determine whether the committee should be continued, modified, consolidated with other committees, or abolished. The present advisory committee, the TDH/DHS Family Planning Interagency Advisory Council, was established in 1990 Upon review by the department, the council's name and structure have been revised to create a better balance between consumer and nonconsumer representatives, and the council's size has been reduced

J Scott Simpson, M D , Director, Division of Women's Health, Bureau of Women and Children, has determined that for the first five year period the section will be in effect, there will be no fiscal implications for state or local government as a result of administering the section as proposed

Dr Simpson also has determined that for each of the first five years the section is in effect, the public benefits anticipated are the department's continued compliance with federal regulations concerning such an advisory committee, and the department's continued access to the council's advice concerning the family planning program's operation and delivery of services There are no anticipated economic costs to small or large businesses or individuals who are required to comply with the section as proposed, and no effect on local employment is anticipated

Written comments on the proposed addition may be submitted to Carol Pavlica, R N , Director, Family Planning Program, Bureau of Women and Children, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3168 Telephone inquiries also may be made to Carol Pavlica, R N , at (512) 458-7700. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*

The new section is proposed under the Texas Civil Statutes, Article 6252-33, which sets standards for the evaluation of advisory committees by the agencies for which they function; and under the Health and Safety Code, §12 001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health The new section will affect Health and Safety Code, Chapters 31, 32, and 61

§56.104. Family Planning Advisory Council.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be Family Planning Advisory Council.

(2) The committee meets the intent of 42 United States Code 300, et seq, 42 Code of Federal Regulations, §59.6, and the Title X Program Guidelines for Project Grants for Family Planning Services

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33, relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board in the area of family planning and to advise family planning staff.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to the family planning program under Titles V, X, XIX, and XX

(2) The committee shall evaluate, on an ongoing basis, the family planning needs of the state and the family planning program; make recommendations for the program's improvement; and review the program's proposed policy revisions and developments.

(3) The committee shall carry out any other tasks given to the committee by the board.

(e) Committee abolished. The committee shall be automatically abolished on January 1, 1999.

(f) Composition. The committee shall be composed of 12 members.

(1) The composition of the committee shall include four consumer representatives and eight nonconsumer representatives.

(2) The members of the committee shall be appointed by the board as follows:

(A) four consumers; and

(B) eight nonconsumer members, including the following:

(i) one obstetrician/gynecologist, licensed by the Texas State Board of Medical Examiners and certified by the American College of Obstetricians and Gynecologists;

(ii) one registered nurse, licensed by the Board of Nurse Examiners for the State of Texas;

(iii) one physician, practicing in Adolescent Medicine, licensed by the Texas State Board of Medical Examiners;

(iv) one education representative;

(v) one family planning educator;

(vi) one family planning agency board of directors representative;

(vii) one Regional Coordinating Committee Chairperson; and

(viii) one Department of Human Services Client Self- support Services worker .

(g) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms so that the terms of four members shall expire on December 31 of each even-numbered year, beginning in 1996.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of each year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet at least semiannually to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(7) The agenda for each committee meeting shall include an opportunity for any person to address the committee on matters relating to committee business. The presiding officer may establish procedures for such public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the members are assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of

parliamentary decisions except where otherwise provided by law or rule.

(l) Any action taken by the committee must be approved by a majority vote of the members present once a quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, sex, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(4) The committee shall have a standing subcommittee called the Subcommittee of Regional Coordinating Committee Chairpersons (SRCCC). The SRCCC shall be comprised of chairpersons of the eleven Regional Coordinating Committees (RCC). The regional committees shall be comprised of representatives from the family planning agencies in the region.

(n) Statement by members. The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediately preceding 12 months and shall be filed with the board each January. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

(q) Effective date. This section shall become effective on January 1, 1995.

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

Issued in Austin, Texas, on June 29, 1994

TRD-9443159 Susan K. Steeg
General Counsel, Office of the General Counsel
Texas Department of Health

Proposed date of adoption. September 23, 1994

For further information, please call: (512) 458-7700

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Chapter 98. HIV and STD Control

Subchapter C. Texas HIV Medication Program General Provisions

- **25 TAC §98.104, §98.105**

(Editor's Note. The Texas Department of Health proposes for permanent adoption the amended sections it adopts on an emergency basis in this issue The text of the amended sections is in the Emergency Rules section of this issue.)

The Texas Department of Health (department) proposes amendments to §98 104 and §98 105, concerning the Texas HIV Medication Program. The sections implement the provisions of the "Communicable Disease Prevention and Control Act," Health and Safety Code, Chapter 85 063, Subchapter C, concerning the Texas HIV Medication Program The program assists hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV infected individuals in the purchase of medications approved by the board that have been shown to be effective in reducing hospitalizations due to HIV related conditions. Generally, the sections cover eligibility for participation and medication coverage. The amendments expand the coverage of the program to include Dapsone, and has expanded the coverage for Didanosine, Zalcitabine, SMZ-TMP, Fluconazole, and Itraconazole for eligible participants and amends the eligibility criteria for Zidovudine to include pregnant women

In addition, these amendments are adopted on an emergency basis in order to expeditiously provide medications to HIV infected individuals in this issue of the *Texas Register*

Anita Martinez, Chief of Staff Services for the Disease Control and Prevention Associateship, Texas Department of Health, has determined that for the first five-year period the section will be in effect, there will be no fiscal implications for state government or local government as a result of enforcing or administering the section as proposed.

Ms. Martinez also has determined that for each year of the first five-year period the section is in effect, the public benefit anticipated as a result of enforcing the section will be to include Dapsone and expand Zidovudine, Didanosine, Zalcitabine, SMZ-TMP, Fluconazole, and Itraconazole eligibility. There is no anticipated economic cost to small or large businesses to comply with the sections as proposed; no anticipated cost for persons affected by this proposal; and no effect on local employment.

Comments on the proposal may be submitted to Charles E Bell, M.D., Chief, Bureau of HIV & STD Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 Comments will be accepted for 30

days after publication of the proposal in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, §85.063, which provides the Texas Board of Health with the authority to adopt rules concerning a Texas HIV Medication Program, and Health and Safety Code, §12. 001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health

This action affects Health and Safety Code, §85 063

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

Issued in Austin, Texas, on June 28, 1994

TRD-9443142 Susan K Steeg
General Counsel, Office of the General Counsel
Texas Department of Health

Proposed date of adoption September 23, 1994

For further information, please call (512) 458-7500

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 69. Contracted Services

The Texas Department of Human Services (DHS) proposes the repeal of §§69.201-69 207, §§69 209-69 263, §§69 265, §§69 267-69 274, §69 280, §69 282, §69 284, §69.286, §69.288, §69.290, and §§69 301-69.305, and proposes new §§69 201-69 211, concerning contract administration, in its Contracted Services chapter. The purpose of the repeals and new sections is to delete program-specific rules which are no longer of general applicability Some of the repealed rules may be reproposed as rules of the affected program

Burton F Raiford, commissioner, has determined that for the first five- year period the proposal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposal

Mr Raiford also has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of enforcing the proposal will be a rulebase free of obsolete rules There will be no effect on small businesses There is no anticipated economic cost to persons who are required to comply with the proposal

Questions about the content of this proposal may be directed to Glenn Scott at (512) 450-3098 in DHS's Legal Services Department. Written comments on the proposal may be submitted to Nancy Murphy, Media and Policy Services-331, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter L. Contract Administration

- **40 TAC §§69. 201-69.207, 69.209-69.263, 69.265, 69.267-69.274, 69.280, 69.282, 69.284, 69. 286, 69.288, 69.290**

(Editor's note The text of the following sections proposed for repeal will not be published The sections may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The repeals implement the Human Resources Code, §§22 001-22 024

§69 201. Scope and Limitations.

§69 202 Contractors' Records.

§69 203 Methods of Purchase.

§69 204. Duration and Renewal of Contracts.

§69.205. Extent of Competition.

§69.206. Competitive Sealed Bids.

§69 207. Competitive Negotiation.

§69.209 Noncompetitive Negotiation.

§69 210 Cancellation or Suspension of a Solicitation

§69.211. Development of the Procurement Package.

§69 212. Financial Ability to Perform.

§69 213 Affirmative Action.

§69 214. Advertisement of Solicitation.

§69 215. Procurement Clarifications.

§69.216 Confidentiality of Information

§69.217. Receipt of Inadequate Number of Offers.

§69.218. Modification or Withdrawals of Offers before the Solicitation Closing Date.

§69.219. Debriefing.

§69.220. Receipt of Offers.

§69.221. Apparent Clerical Mistakes.

§69.222. Minor Irregularities.

§69.223. Mistakes Other than Minor Informalities/Irregularities and Clerical Mistakes.

§69.224. Withdrawal of Offers Due to Mistakes.

§69 225. Evaluation of Offers.

§69.226. Elements of Evaluation.

§69.227. Screening.

§69.228. Validation.

§69.229. Determining the Competitive Range.

§69.230. Negotiation.

§69.231. Notification of the Unsuccessful Offeror.

§69.232. Proposal Changes During Negotiation.

§69.233. Approval of Subcontracts.

§69.234. Requirements of the Competitive Sealed Bid Method.

§69.235. Equal Low Bids.

§69.236. Public Inspection.

§69.237. Certified Local Resources.

§69.238. Advance Payment for Contracted Social Services.

§69.239. Budget Changes.

§69.240. Allowable Costs.

§69.241. Allowable Costs for Cost Reimbursement Contracts and For Developing Unit Rates

§69.242. Start-up Costs.

§69.243. Employee Compensation.

§69.244. Consumable Supplies.

§69.245. Food Expenses.

§69.246. Equipment.

§69.247. Depreciation and Use Allowances.

§69.248. Transportation of Clients.

§69.249. Insurance.

§69.250. Rental Costs.

§69.251. Space Rental.

§69.252. Renovations and Remodeling.

§69.253. Janitorial Services.

§69.254. Telephone.

§69.255. Professional Fees.

§69.256 Unallowable Costs.

§69.257 Unit Rates.

§69.258. Financial Interest by Officer/Employee of DHS.

§69.259 Previous State Employment.

§69.260. Consultant Contract Amendments.

§69.261. Application for Enrollment.

§69.262. Records Kept by Contractors

§69.263. Response to Inquiries.

§69.265. Contract Modifications

§69.267. Status of Payments to Contractor During Disputes.

§69.268. Notice of Termination.

§69.269. Contract Terminations.

§69.270. Fiscal and Financial Settlement Review.

§69.271. Settlement of Subcontract Claims.

§69.272. Notice to Contractor of Determination.

§69.273. Submission of Evidence.

§69.274. Termination for Cause.

§69.280. Audit Identification Number.

§69.282. Sanctions for Administrative Errors.

§69.284. Time Limit and Options for Responding to DHS.

§69.286. Computing Interest on Unpaid Audit Charges.

§69.288. Audit Appeals Process.

§69.290. Criteria for Installment Payments.

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

Issued in Austin, Texas, on June 29, 1994.

TRD-9443185 Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Proposed date of adoption: September 1, 1994

For further information, please call: (512) 450-3765

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• 40 TAC §§69.201-69.211

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.001-22.024.

§69.201. Scope. Contract administration deals with the purchase of services based on federal regulations and laws, and state laws. The Texas Department of Human Services may implement additional requirements to meet the particular needs of certain areas if those requirements do not conflict with the provisions of this chapter.

§69.202. Procurement.

(a) Extent of Competition.

(1) Procurements are conducted so that they provide maximum open and free competition. The Texas Department of Human Services (DHS) develops enrollment and procurement packages based on clear and accurate descriptions of the services to be purchased. The package includes all requirements the offeror(s) must fulfill for proposals and/or enrollments to be evaluated.

(2) Service requirements should not unduly restrict competition by eliminating or limiting potential contractors' participation. DHS acts affirmatively to ensure that small and historically underutilized businesses (HUBs) have an equal opportunity to compete for and/or to be selected for the award of contracts and subcontracts.

(b) Exemptions to Competition.

(1) Noncompetitive procurement methods may be used if authorized by law, rule, or regulations and if:

(A) all qualified providers are allowed to enroll if they accept the established unit rate(s) for services;

(B) no acceptable offers using a competitive method are received;

(C) services are available from only one source; or

(D) in an emergency, it is necessary to provide uninterrupted services to clients.

(2) DHS has the right to reject all offers submitted in response to a solicitation.

§69.203. Subcontracts. Contractors must obtain the Texas Department of Human Services' (DHS's) approval of subcontracts and require its subcontractor(s) to accept and abide by each of the appropriate provisions of the contract with DHS.

§69.204. Required Disclosure of Current or Previous Employment at the Texas Department of Human Services (DHS). A person who offers to perform a service for DHS and who is or has been employed by DHS must disclose the information listed on the Nongovernmental Contractor's Certification.

§69.205. Contractor's Records.

(a) Contractors must allow the Texas Department of Human Services

(DHS) and all appropriate federal and state agencies or their representatives to inspect, monitor, or evaluate client records, books, and supporting documents pertaining to services provided. Contractors and subcontractors must make documents available at reasonable times and for reasonable periods.

(b) Contractors must keep financial and supporting documents, statistical records, and any other records pertinent to the services for which a claim or cost report is submitted to DHS or its agent. The records and documents must be kept for a minimum of three years and 90 days after the end of the contract period. If any litigation, claims, or audit involving these records begins before the three-year period expires, the contractor must keep the records and documents for not less than three years and 90 days or until all litigation, claims, or audit findings are resolved. All medical records must be kept for five years from their creation.

(c) If a contractor is terminating business operations, the contractor must ensure that:

(1) records are stored and accessible; and

(2) that someone is responsible for adequately maintaining the records.

§69.206 Contract Renewal and Termination.

(a) Renewal of a contract is not automatic A contract may be renewed at the Texas Department of Human Services' (DHS's) option, when authorized, and when it is in DHS's best interests.

(b) When a contract is terminated, a review is conducted to determine any overpayment or underpayment. Disposition of equipment purchased under the contract is subject to disposition as determined by DHS.

(c) Upon termination of a prime contract, the contractor and each subcontractor are responsible for the prompt settlement of the termination claims, including claims from employees, vendors, and subcontractors.

§69.207. Disputes. The Texas Department of Human Services may withhold payment and referrals and/or remove clients on all or a portion of a contract pending a dispute resolution or an appeal decision. The contract manager attempts to resolve disputes when possible.

§69.208. Methods for Auditing Contracts.

(a) All services for which the Texas Department of Human Services (DHS) is charged are subject to review and audit During a review or audit, the contractor must give DHS or its authorized representative information about his claims for payment. The contractor is responsible for proving he is entitled to payments. The contractor must make restitution if a review or audit reveals that improper payments were made or that the contractor's records do not support the payments according to federal, state, and local laws and rules, DHS procedures, and the contract provisions.

(b) DHS procedures for contract reviews or audits may include the use of sampling and extrapolation. In this procedure, DHS selects a representative sample of the cases or claims for which the contractor received payment for the time under review and examines records for those cases or claims. All improper payments or units of service in the sample are then totaled and extrapolated to all of the cases or claims for which the contractor has been paid during the audit period. After being notified and given the opportunity for a hearing according to the hearing requirements, the contractor is required to pay DHS 93% of the total extrapolated amount of the improper payments.

§69 209. Recoupment of Improper Payments.

(a) The Texas Department of Human Services (DHS) recovers improper payments when it is verified that contractors have been overpaid because of improper billing or accounting practices or failure to comply with the contract terms. The determination of impropriety is based on federal, state, and local laws and rules; DHS procedures; contract provisions; or statistical data on program use compiled from paid claims.

(b) DHS notifies the contractor in writing of the types of discrepancies, the method of computing the reasonable dollar amount to be refunded, and any other actions DHS may take.

(c) The contractor may request that DHS conduct an audit of 100% of the records or conduct an additional audit of the records by sampling. The contractor may also request a presentation of the audit results at an appeal hearing with DHS. When a contractor requests additional audit work, he must agree to pay the cost of performing the work at current DHS costs. DHS absorbs the cost for additional audit work if the work reduces the exception by more than 15%.

§69 210. Computing Interest on Unpaid Audit Charges.

(a) The department charges interest on all unpaid debts related to audits. Interest is computed pursuant to Texas Civil Statutes, Article 5069-1.05 on the unpaid balance due on a simple interest basis.

(b) If the recoupment amount is not paid in full within 30 days of receiving the demand letter, interest begins to accrue on the thirty-first day and continues to accrue during any appeal process.

(c) Interest accrues during any administrative appeal process that extends beyond the thirty-first day of receiving the demand letter. If the appeal is found in the appellant's favor, the interest that accrued against the portion of the exception found in his favor is dismissed. The department collects the interest on any other exception still owed.

(d) The department charges and collects interest on installment payments.

§69.211. Prior Approval. Contractors must obtain the Texas Department of Human Services' (DHS's) approval before procuring an audit performed according to the Single Audit Act of 1984, if DHS is expected to participate in the cost of the audit. DHS notifies contractors if they are subject to the Single Audit.

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

Issued in Austin, Texas, on June 29, 1994.

TRD-9443184

Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Proposed date of adoption: September 1, 1994

For further information, please call: (512) 450-3765

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Subchapter M. Auditing

• 40 TAC §§69.301-69. 305

(Editor's note The text of the following sections proposed for repeal will not be published The sections may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin)

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The repeals implement the Human Resources Code, §§22 001-22.024.

§69.301. Methods for Auditing Contracts.

§69.302. Contract Compliance Audit Costs.

§69.303. Recoupment of Improper Payments.

§69.304. Secondary Documentation.

§69.305. Prior Approval.

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

Issued in Austin, Texas, on June 29, 1994.

TRD-9443183

Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Proposed date of adoption: September 1, 1994

For further information, please call: (512) 450-3765

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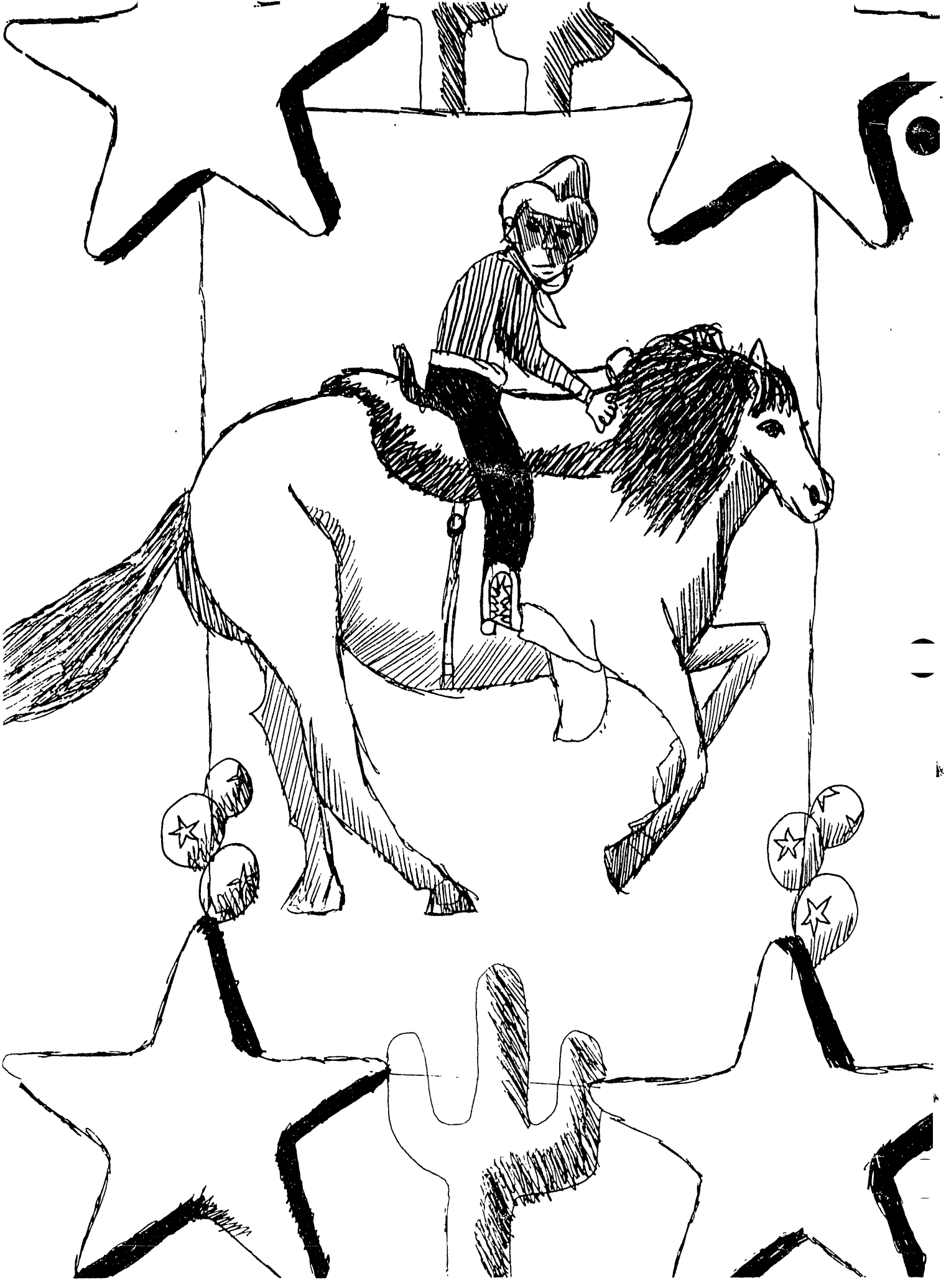

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register***.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 98. HIV and STD Control

Subchapter C. Texas HIV Medication Program

• 25 TAC §98.105

The Texas Department of Health has withdrawn the emergency effectiveness of new §98 105, concerning the Texas HIV Medication Program The text of the emergency new §98 105 appeared in the April 8, 1994, issue of the *Texas Register* (19 TexReg 2453) The effective date of this withdrawal is June 28, 1994

Issued in Austin, Texas, on June 28, 1994.

TRD-9443140 Susan K Steeg
General Counsel
Texas Department of Health

Effective date. June 28, 1994

For further information, please call (512) 458-7236

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General Provisions

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed amendment §98.105, which appeared in the April 26, 1994, issue of the *Texas Register* (19 TexReg 3130). The effective date of this withdrawal is June 28, 1994

Issued in Austin, Texas, on June 28, 1994

TRD-9443141 Susan K Steeg
General Counsel
Texas Department of Health

Effective date June 28, 1994

For further information, please call (512) 458-7236

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

Part V. State Seed and Plant Board

Chapter 82. Administrative Procedures

Subchapter A. Procedures for Meeting by Telephone Conference Call

• 4 TAC §§82.1-82.5

The State Seed and Plant Board (the board) adopts new §§82 1-82.5, concerning telephone conference calls, without changes to the proposed text as published in the May 10, 1994, issue of the *Texas Register* (19 TexReg 3537).

The new sections are adopted in order to provide procedures to implement Texas Agriculture Code, §62.0021 (Vernon Supplement 1994), which was enacted during the 73rd Legislative Session (1993).

The new sections as adopted provide for the board to conduct telephone conference calls for meetings requiring immediate action when it is otherwise difficult or impossible to convene a quorum and provide procedures to ensure compliance with the Texas Open Meetings Act

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Agriculture Code, §62.0021, which provides the State Seed and Plant Board with the authority to conduct meetings by telephone conference call, and Texas Government Code, §2001 004 (Vernon Supplement 1994), which authorizes agencies to adopt rules of practice and procedures

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 27, 1994

TRD-9443076 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date. July 18, 1994

Proposal publication date. May 10, 1994

For further information, please call. (512) 463-7583

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 15. Alternative Fuels Research and Education Division

• 16 TAC §15.30

The Railroad Commission of Texas adopts new §15 30, relating to the propane alternative fuels advisory committee, with changes to the proposed text published in the February 8, 1994, issue of the *Texas Register* (19 TexReg 857). The new section creates the propane alternative fuels advisory committee of the commission, establishes its duration; sets forth the purpose and duties of the committee; prescribes the composition of the committee, the nomination and appointment process, and the membership terms of the committee, and sets forth the mechanisms by which the committee meets, performs its work, and is evaluated The commission adopts the new section in response to Senate Bill 383, 73rd legislature, 1993, which requires that state agency advisory committees be established by rule and conform to specific requirements •set forth in the Act The adopted rule governs the operations of the Propane Alternative Fuels Advisory Committee, which the commission initially established without formal rulemaking in March of 1992 New §15 30 establishes the committee effective September 1, 1994, and abolishes it on September 1, 1998, unless the commission amends the rule to establish a different date

Comments opposing the proposed section were submitted by the Texas Chemical Council Comments generally in favor of the section were submitted by the Texas Propane Gas Association Public Citizen of Texas submitted comments suggesting changes in the proposed rule Public Citizen of Texas and the Texas Chemical Council both requested a public hearing. The commission gave notice of a public hearing on the proposed rule individually to Public Citizen of Texas and the Texas Chemical Council and to the general public by notice published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 3020) The commission held the public hearing on the proposed rule on April 28, 1994, in room 10-117 of the William B Travis Building in Austin. Six persons submitted oral or written comments at the hearing

With regard to proposed §15 30(d), the Texas Chemical Council stated that the general public and other users of propane were not represented on the committee, and proposed changing the committee's makeup to include four members from each of the following groups. "industry representatives," "industrial propane user representatives," "consumer representatives," and "representatives of the general public "

The commission does not agree that the general public is not represented on the committee. Senate Bill 383 clearly intends for representation of the public interest to be achieved through "balanced representation" of consumer and industry members on state agency advisory committees The Act requires balanced representation between industries or occupations regulated or directly affected by the advised state agency and consumers of services provided either by the advised state agency or by industries or occupations regulated by the agency The commission believes its definition of "consumer representative" as an end-user of odorized propane fuel for residential, commercial, automotive, agricultural, industrial or other purposes is sufficiently inclusive to ensure compliance with the Act

The commission does not agree that the committee should include industrial propane user representatives, e g , chemical companies or others who use unodorized propane as a raw material in manufacturing processes Texas Natural Resources Code, Chapter 113, Subchapter I, authorizes the commission to establish the committee and to regulate the odorized propane industry by collecting from it fees to pay for propane research, education and marketing programs Other industries, including chemical manufacturers and other nonfuel users of unodorized propane, pay no fees and are therefore not regulated by the commission under Texas Natural Resources Code, Chapter 113, Subchapter I Accordingly, these industries are not required to be represented on the committee

Dow Chemical Company opposed the state's legislated alternative fuels mandates and in-

centives, as well as the programs that seek to increase demand for propane. The company also requested that the chemical industry be represented on the committee. The commission disagrees with this comment and request for the same reasons given in response to the Texas Chemical Council's comments

Public Citizen of Texas suggested broadening the definition of "consumer representative" to include potential as well as actual consumers, designating that one consumer representative be an environmentalist and one industry representative be a specialist in end-user efficiencies; clarifying that the president of the Texas Propane Gas Association is an industry member and whether he or she is a voting member, changing the due date for nominations to 30 days after final adoption of the rules, at least for the first year; and requiring the committee to recommend to the commission rules prohibiting or limiting propane resellers' ability to pass loading-rack fees through to their customers Public Citizen's oral comments at the public hearing included an additional request that the commission explain why the committee's work concerns only propane and not other alternative fuels

The commission does not adopt Public Citizen's first suggestion because the commission interprets Senate Bill 383 as requiring that consumer members be actual consumers, not potential consumers Regarding Public Citizen's second comment, the commission has no objection to environmentalists' or energy efficiency experts' serving on the committee, and in fact has appointed persons affiliated with environmental, health, consumer and energy-research organizations to be members of the informal committee since its inception in March 1992 However, the commission believes that environmental and efficiency interests can continue to be represented on the advisory committee without further narrowing of the membership requirements set out in Senate Bill 383

The commission agrees with Public Citizen's third comment, and has amended §15 30(d) to clarify that the TPGA president serves ex officio as a voting industry member of the committee during his or her tenure as president Also, the commission agrees with Public Citizen's fourth suggestion, and has amended §15 30(b) and §15.30(e) so that the nomination and appointment dates reflect the adoption date of this rule

The commission disagrees with Public Citizen's fifth suggestion because the commission believes such a charge to the committee would be inappropriate in view of the commission's lack of statutory authority to regulate feepayers' ability to pass through or absorb all or part of loading-rack fees paid

In response to Public Citizen's oral request, the commission responds that the committee advises the commission on propane and not on other alternative fuels because of the "no pay, no play" provision in Texas Natural Resources Code, §113 243(c) The commission may use money in the Alternative Fuels Research and Education Fund only for activities relating to the specific fuel from which the fee was derived Propane is the only fuel currently contributing fees to the fund, therefore, the commission's alternative fuels activities and its need for advice on those activities relate only to propane.

The Texas Propane Gas Association suggested expanding the committee to 25 members The commission believes 17 members is a more workable number and notes that §2(a) of Senate Bill 383 caps state agency advisory committees at 24 members.

The new section is adopted under Texas Natural Resources Code, §113.241, which authorizes the commission to adopt all necessary rules relating to conducting research and educating the public regarding the use of propane; and Texas Natural Resources Code, §113 242, which authorizes the commission to appoint one or more advisory committees composed of members representing the propane industry, consumers, and other interests to consult with and advise the commission on opportunities and methods to expend the use of propane

§15.30. Propane Alternative Fuels Advisory Committee

(a) Definitions The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise

(1) Commission–The Railroad Commission of Texas.

(2) Committee–The Propane Alternative Fuels Advisory Committee of the Railroad Commission of Texas.

(3) Consumer representative–A member of the committee who is not engaged in the business of producing, distributing or retailing propane and who is not engaged in the business of designing, manufacturing, distributing or retailing propane equipment or performing propane-related research services or other services, but who is an end-user of odorized propane fuel, including but not limited to a consumer of odorized propane as a residential or commercial heating or water-heating fuel, as an automotive or other transportation fuel, or as an agricultural or industrial fuel

(4) Division–The Alternative Fuels Research and Education Division of the Railroad Commission of Texas

(5) Fiscal year–September 1 of a year through August 31 of the following year

(6) Industry representative–A member of the committee who is engaged in the business of producing, distributing or retailing propane or who is engaged in the business of designing, manufacturing, distributing or retailing propane equipment or performing propane-related research or other services

(7) Member–An industry representative, a consumer representative, or the president of the Texas Propane Gas Association, who serves on the Propane Alternative Fuels Advisory Committee of the Railroad Commission of Texas.

(8) Presiding officer–The chairman of the Propane Alternative Fuels Advisory Committee of the Railroad Commission of Texas

(9) Propane–Liquefied petroleum gas (LPG), as that term is defined in Texas Natural Resources Code, Chapter 113.

(10) Subcommittee–A panel of no fewer than five members of the committee assigned to handle issues relating to research, marketing, or public education

(b) Establishment, duration Effective September 1, 1994, the committee is hereby established The committee is abolished on September 1, 1998, unless the commission amends this subsection to establish a different date

(c) Purpose and duties The purpose of the committee is to give the commission the benefit of the members' collective business, environmental, and technical expertise and experience to help the commission increase the use of propane, improve air quality, and develop the economy of this state The committee's sole duty is to advise the commission The committee has no executive or administrative powers or duties with respect to the operation of the division All such powers and duties rest solely with the commission

(d) Composition of committee, membership terms The committee shall be composed of 17 voting members, which shall include eight industry representatives, eight consumer representatives, and the president of the Texas Propane Gas Association (TPGA) as an ex officio industry member, all of whom serve at the pleasure of the commission The membership terms of the 16 industry and consumer representatives shall be overlapping, two-year terms. The membership term of the TPGA president shall coincide with his or her service as president of TPGA

(e) Nominations for committee membership Any person may nominate a candidate or candidates for membership on the committee Nominations must be in writing and may be submitted by August 1 of each year to the commission, a commissioner, or the director of the division for transmission to the commission

(f) Appointment of members All 17 members of the committee are appointed by and serve at the pleasure of the commission The commission shall appoint eight new members by September 1 each year, such that the composition of the committee meets the requirements of subsection (d) of this section If a member resigns or otherwise vacates his or her position prior to the end of his or her two-year term, the commission shall appoint a replacement who shall serve the remainder of the unexpired term

(g) Reimbursement of members' expenses. The commission shall not reimburse members for travel or other expenses related to service on the committee.

(h) Presiding officer; other officers. The committee shall elect from its members a presiding officer who shall report the committee's advice and attendance in writing to the commission. The committee may elect other officers at its pleasure.

(i) Subcommittees. The committee shall be organized into three subcommittees of no fewer than five members each for research, marketing, and public education. One member of each subcommittee shall serve as the chair of that subcommittee. The subcommittee chairs shall make written reports regarding their subcommittee's work to the presiding officer.

(j) Meetings. The committee shall meet at the call of the presiding officer or the commission. Committee and subcommittee meetings are open to the public.

(k) Committee records. The division staff shall record and maintain the originals of the minutes of each committee and subcommittee meeting. The division shall maintain a record of actions taken by the committee and shall distribute copies of approved minutes and other committee documents to the commission and the committee members.

(l) Evaluation of committee costs and benefits. By October 1 of each year, the division director shall evaluate for the previous fiscal year and report to the commission

(1) the committee's work,

(2) the committee's usefulness, and

(3) the costs related to the committee's existence, including the cost of commission staff time spent in support of the committee's activities

(m) Report to Legislative Budget Board The commission shall biennially report to the Legislative Budget Board the information developed under subsection (l) of this section in evaluating the committee's costs and benefits

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on June 27, 1994

TRD-9443100 Mary Ross McDonald
Assistant Director, Legal Division, Gas Utilities/LP Gas
Railroad Commission of Texas

Effective date July 18, 1994

Proposal publication date February 8, 1994

For further information, please call: (512) 463-7291

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TITLE 22. EXAMINING BOARDS

Part VI. Texas State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

Application for Registration

• 22 TAC §131.54

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.54, concerning general application information, with changes to the proposed text as published in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3620). Subsection (e) is adopted without the proposed change to the last sentence.

The section clarifies which supplemental documents must be submitted with an application for registration and also provides for the acceptance of an incomplete application pending receipt of documents from third-party sources over which the applicant has no control

No comments were received regarding adoption of the amendment

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties

§131 54 General Application Information.

(a)-(c) (No change.)

(d) Certain items must be submitted for an application to be considered complete The executive director may accept an incomplete application pending receipt of documents from third-party sources over which the applicant has no control. Such documents may include transcripts and verifications from other states. Reference statements must be included with the application. For an application to be considered complete, it must include the following

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

(3) official transcript(s) of degree(s) in accordance with §131.93 of this title (relating to Transcripts),

(4) (No change.)

(5) official documentation from the appropriate examining board verifying that the applicant has passed the fundamentals of engineering examinations,

(6)-(7) (No change)

(e) The board may request additional information or the executive director may recommend the applicant provide additional information. If an applicant declines to provide additional information for an accepted application as recommended by the executive director, the application will be referred for board consideration with documentation of such declination. If, after notification in writing, the applicant fails to provide any part of the required information for a complete application within the time specified by the executive director, the application will be referred to the board to be not approved as an incomplete application. Withholding information, misrepresentation, or untrue statements on the application for registration or supplemental experience documents will be cause for rejection of the application.

(f)-(g) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 27, 1994

TRD-9443068 Charles E. Nemir, P E.
Executive Director
Texas State Board of Registration for Professional Engineers

Effective date: July 18, 1994

Proposal publication date: May 13, 1994

For further information, please call (512) 440-7723

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Engineering Experience

• 22 TAC §131.81

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.81, concerning experience evaluation, without changes to the proposed text as published in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3621)

The section as amended eliminates erroneous language

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 27, 1994

TRD-9443069 Charles E Nemir, P E
Executive Director
Texas State Board of Registration for Professional Engineers

Effective date: July 18, 1994

Proposal publication date May 13, 1994

For further information, please call: (512) 440-7723

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Education

• 22 TAC §131.91

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.91, concerning educational requirements for registration, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3414)

The section clarifies that a bachelor's degree in an engineering technology curriculum will be required for registration as a professional engineer.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 27, 1994.

TRD-9443070 Charles E. Nemir, P E
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date July 18, 1994

Proposal publication date. May 6, 1994

For further information, please call: (512) 440-7723

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• 22 TAC §131.93

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.93, concerning transcripts, without changes to the proposed text as published in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3621).

The section specifies that a transcript must be provided to the board from each school from which an engineering degree or 15 or more semester hours of credit in engineering science or mathematics are claimed on an application for registration.

No comments were received regarding adoption of the amendment

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 27, 1994.

TRD-9443071 Charles E. Nemir, P.E
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: July 18, 1994

Proposal publication date: May 13, 1994

For further information, please call: (512) 440-7723

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Board Review of Application

• 22 TAC §131.112

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.112, concerning approved applications, without changes to the proposed text as published in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3622).

The section as amended includes the Texas Engineering Practice Act, §21 under which an application for registration will be reviewed.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 27, 1994.

TRD-9443072 Charles E. Nemir, P.E
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: July 18, 1994

Proposal publication date: May 13, 1994

For further information, please call: (512) 440-7723

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Registration

• 22 TAC §131.138

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.138, concerning engineers' seals, without changes to the proposed text as published in the May 10, 1994, issue of the *Texas Register* (19 TexReg 3538).

The section as amended permits the use of a reduced size computer-aided design/drafting seal (CADDSEAL), as long as the engineer's name and registration number is clearly legible on all copies and also requires that the initial sheet, title sheet, or table of contents of a bound volume of engineering drawings shall contain the seal conforming to the standard sizes stipulated in the section.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 27, 1994.

TRD-9443073 Charles E Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: July 18, 1994

Proposal publication date: May 10, 1994

For further information, please call: (512) 440-7723

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Professional Conduct and Ethics

• 22 TAC §131.156

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.156, concerning responsibility to the engineering profession, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3414).

The section clarifies the professional engineer's responsibility to reveal circumstances that create public safety endangerment.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 27, 1994.

TRD-9443074 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: July 18, 1994

Proposal publication date: May 6, 1994

For further information, please call: (512) 440-7723

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Complaints

• 22 TAC §131.171

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.171, concerning complaints, without changes to the proposed text as published in the May 10, 1994, issue of the *Texas Register* (19 TexReg 3538).

The section as amended clarifies that the executive director has the authority to determine the completeness of a complaint and also to dismiss the allegation if probable cause cannot be established.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 27, 1994.

TRD-9443075 Charles E. Nemir, P E.
Executive Director
Texas State Board of Registration for Professional Engineers

Effective date: July 18, 1994

Proposal publication date: May 10, 1994

For further information, please call: (512) 440-7723

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Part XIV. Texas Optometry Board

Chapter 275. Continuing Education

• 22 TAC §275.1

The Texas Optometry Board adopts an amendment to §275.1, concerning Continuing Education without changes to the proposed text as published in the April 26, 1994, issue of the *Texas Register* (19 TexReg 3129).

Section 275.1 is necessary to offer an alternative for continuing education to an individual with a serious or disabling illness or physical disability in lieu of claiming an exemption from continuing education. The rule will allow the individual to obtain the required number of continuing education hours by correspondence or multimedia courses.

No comments were received regarding adoption of the rule.

The amendment is adopted under the provisions of Texas Civil Statutes, Article 4552, §2.14, which provide the Texas Optometry Board with the authority to promulgate procedural and substantive rules.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 27, 1994.

TRD-9443109 Lois Ewald
Executive Director
Texas Optometry Board

Effective date: August 9, 1994

Proposal publication date. April 26, 1994

For further information, please call: (512) 835-1938

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 1. Texas Board of Health

Clinical Health Services

• 25 TAC §1.91

The Texas Department of Health (department) adopts an amendment to §1. 91, without changes to the proposed text as published in the April 22, 1994, issue of the *Texas Register* (19 TexReg 3331) and will not be republished.

The amendment concerns fees for clinical health services provided at public health clinics. Section 1.91(b) provides that the department shall base the calculation of fees in the schedule of fees upon the current federal poverty income guidelines. The amendments implement changes in poverty income levels at which clients will be charged fees depending on family size and income. The amendment adds that Medicaid eligible clients or recipients are not subject to the fee schedule, and lists two additional conditions under which patients or clients whose incomes exceed 200% of the poverty level may continue to receive services at public health clinics. An adjusted guideline for income and a schedule of charges will be published in the *Texas Register* upon approval and by order of the commissioner of health.

The amendment is adopted for the following reasons. The Omnibus Budget Reconciliation Act of 1981 requires all states to charge fees for clinical services based on the federal poverty income guidelines. Under authority of 42 U.S.C A., §9902(2), poverty income guidelines shall be revised annually. The most recent revisions of the guidelines became effective upon their publication in the *Federal Register* on February 10, 1994.

No comments were received regarding adoption of the rule

The amendment is adopted under Texas Health and Safety Code, §12.001, which provides the board with the authority to implement by rule each duty imposed by law upon the board, the department, or the commissioner, and §12. 032, which authorizes the board to charge fees for public health services Under this authority, the board has adopted a schedule of fees in §1.91.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority

Issued in Austin, Texas, on June 27, 1994

TRD-9443120 Susan K Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Effective date: July 19, 1994

Proposal publication date: May 3, 1994

For further information, please call: (512) 458-7773

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Standards for Conduct Governing the Relationship Between the Texas Department of Health and Private Donors and Private Organizations

• 25 TAC §§1.221-1.227

The Texas Department of Health (department) adopts new §§1.221-1.227. Section 1.222 and §1.224 are adopted with changes to the proposed text as published in the May 3, 1994, issue of the *Texas Register* (19 TexReg 3332). Sections 1.221, 1.223, and 1.225-1.227 are adopted without changes and will not be republished.

The purpose of the new sections will be to establish the criteria, procedures, and standards of conduct to implement the provisions of the Health and Safety Code, §12.011, concerning the acceptance by the department of donations and contributions to be spent for public health purposes, and the provisions of the Government Code, §2255.001, concerning the relationship between the department and private donors and private organizations. The new sections cover purpose; definitions; donations by private donors to the department; donations by private donors to private organizations which exist for the department's benefit; organizing a private organization which exists for the department's benefit; the relationship between a private organization and the department; standards of conduct between department employees and private donors; and miscellaneous provisions.

No public comments were received regarding adoption of the new rules; however, department staff has clarified the term "private organization" in §1.222 and §1 224, and the term "private donor" in §1.222.

The new rules are adopted under the Health and Safety Code, §12.011, which provides the department with authority to accept donations and contributions to be spent in the interest of public health; Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health; and the Government Code, §2255.001, which provides the department with authority to adopt rules governing the relationship between the department and private donors and private organizations which exist to further the department's duties and purposes

§1.222. Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Commissioner-The commissioner of the Texas Department of Health.

Department-The Texas Department of Health.

Donation–A contribution of anything of value (financial or in-kind gifts such as goods or services) given to the department for public health purposes or to a private organization which exists to further the duties or functions of the department. The department may not accept donations of real property (real estate) without the express permission and authorization of the legislature.

Employee–A regular, acting, exempt, full-time or part-time employee of the department

Private donor–One or more persons or private organizations which give a donation to the department for public health purposes or to a private organization which exists to further the duties and purposes of the department.

§1.224. Donations by a Private Donor to a Private Organization which exists to Further the Purposes and Duties of the Texas Department of Health.

(a) A private donor may make donations to a private organization which exists to further the purposes and duties of the Texas Department of Health (department).

(b) The private organization shall administer and use the donation in accordance with the provisions in the memorandum of understanding between the private organization and the department, as described in §1.226(c) of this title (relating to Relationship Between a Private Organization and the Texas Department of Health).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on June 27, 1994.

TRD-9443124 Susan K Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Effective date: July 19, 1994

Proposal publication date. May 3, 1994

For further information, please call: (512) 458-7236

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Chapter 181. Vital Statistics

Vital Records

• 25 TAC §181.27

The Texas Department of Health (department) adopts new §181 27, without changes to the proposed text as published in the May 3, 1994, issue of the *Texas Register* (19 TexReg 3334).

The new section concerns a memorandum of understanding (MOU) between the department and the Texas Funeral Service Commission (TFSC) and will implement provisions of Senate Bill 284, 72nd Legislature, Regular Session, 1991, which requires the department and the TFSC to enter into a MOU to facilitate cooperation between the two agencies by describing the duties of each agency under authority of Health and Safety Code, Chapter 193 and Chapter 195, and Texas Civil Statutes, Article 4582b. The new section covers the joint procedures to be used by the two agencies for the referral, investigation and resolution of complaints affecting the administration and enforcement of state laws relating to vital statistics and the licensing of funeral directors and funeral establishments.

No comments were received regarding adoption of the new section

The new section is adopted under the provisions of Senate Bill 284, 72nd Legislature, Regular Session, 1991, which provides the Board of Health (board) with the authority to adopt by rule a memorandum of understanding with the Texas Funeral Service Commission (TFSC); and the Health and Safety Code, and §12.001, which provides the board with the authority to adopt by rule each duty imposed by law on the board, the department and the Commissioner of Health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority

Issued in Austin, Texas, on June 27, 1994.

TRD-9443123 Susan K. Steeg
General Counsel, Office of the General Counsel
Texas Department of Health

Effective date: August 1, 1994

Proposal publication date: May 3, 1994

For further information, please call. (512) 458-7692

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 7. Corporate and Financial

Subchapter A. Examination and Corporate Custodian and Tax

• 28 TAC §7.36

The Texas Department of Insurance adopts the repeal of §7.36 concerning the preparation and filing of a report of the audit of an insurer's workers' compensation reserves by all insurers which transact workers' compensation business in Texas. The repeal of this section will eliminate Form WCR-1. The repeal of §7 36 is simultaneous with the adoption of a new §7.36. The proposed repeal was published in the April 29, 1994, issue of the *Texas Register* (19 TexReg 3226).

Section 7 36 implements Insurance Code, Article 5.61, which requires an audit of data relating to an insurer's Texas workers' compensation reserves. The repeal of this section is necessary to streamline reporting requirements for insurers which transact workers' compensation business in Texas and to enable the Texas Department of Insurance simultaneously to adopt a new §7 36, which replaces the repealed section with other provisions concerning preparation and filing of a report of the audit of an insurer's workers' compensation reserves. Notification of the new section which replaces this repealed section appears elsewhere in this issue of the Texas Register.

The repeal of this section will eliminate Form WCR-1 and provide for a more efficient administration of Insurance Code, Article 5 61, with the adoption of the new §7 36

No comments were received regarding the repeal of this section

The repeal is adopted under the Insurance Code, Articles 5 61 and 1 03A. Article 5 61 requires each workers' compensation insurer transacting business in Texas to maintain reserves in an amount estimated to provide for the payment of all losses and to file a report with the Department showing its year-end loss, expense, and unearned premium reserves for workers' compensation insurance results in Texas and that the report must be audited by an independent certified public accountant Article 1.03A authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department only as authorized by statute for general and uniform application

The Insurance Code, Article 5.61, is affected by this rule.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 27, 1994

TRD-9443063 D J Powers
Legal Counsel to Commissioner
Texas Department of Insurance

Effective date. July 18, 1994

Proposal publication date April 29, 1994

For further information, please call· (512) 463-6327

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The Texas Department of Insurance adopts new §7.36 concerning the preparation and filing of a report of the audit of an insurer's workers' compensation reserves by all insurers which transact workers' compensation business in Texas. The adoption of new §7.36 is simultaneous with the repeal of the existing §7 36. New §7.36 is adopted with changes to the proposed text as published in the April 29, 1994, issue of the *Texas Register* (19 TexReg 3227)

Section 7.36 implements Insurance Code, Article 5.61, which requires an audit of data relating to an insurer's Texas workers' compensation reserves. The adoption includes several changes to the proposed text as pub-

lished. Section 7.36(b)(1)-(4) are amended by adding a reference to the call report which contains the information specified in the paragraph. In §7.36(b)(3)-(4) , the reference to page 4 is changed to page 1 to correct an error. In §7. 36(c), paragraph (4) is deleted to avoid requiring the performance of an additional audit procedure and an additional audit report.

The rule requires insurers, which have issued new or have renewal workers' compensation insurance policies in this state in the most recent calendar year, to have the data, specified in the proposed rule, audited. This is a reduction in the scope of the existing regulation, which required any insurer which had written workers' compensation insurance in the past five years to have this information audited. The section eliminates Form WCR-1 and streamlines reporting requirements of workers' compensation data submitted to the Texas Department of Insurance by consolidating some of the data in call reports and the data that was required under the repealed §7.36

A commenter expressed concern that the use of the word "review" in §7. 36(c)(4) could be construed as having the specific meaning given to it in the accounting profession and suggested its usage could make the rule confusing. The commenter also suggested the procedures to be performed by auditors be specified in the rule. The department acknowledges the confusion that could be caused and has deleted the entire paragraph. Section 7.36(c)(4) proposed an additional audit procedure that is not required by the existing rule. The Insurance Code, Article 5.61, requires any audit procedure to be performed in accordance with generally accepted auditing standards. The department did not intend to create a new audit report by requiring a review of the Reconciliation Report for Compensation Experience. Such a report would be required if the Reconciliation Report were audited in accordance with generally accepted auditing standards, therefore the department deletes the entire paragraph to avoid increasing the costs of the audit required by Insurance Code, Article 5.61

A commenter also suggested the filing deadline for the reports required by this section be established at a date later than June 30th for this year since the rule is being adopted after the due date. The due date of the report is established by Insurance Code, Article 5.61, and cannot be waived or extended by regulation.

A commenter pointed out the reference to page numbers in the call reports was wrong The department has corrected the page number in the adopted rule. The department also amends §7.36(b)(1)-(4) for clarity by adding the name of the call reports to the reference of the data.

A commenter recommended an exemption for insurers that do not meet certain minimum standards since the costs of the audit are burdensome and the data from such insurers immaterial in the statistical process The Insurance Code, Article 5.61, requires each workers' compensation insurer to provide a report on its workers' compensation reserves. The statute does not authorize the commissioner to exempt any class of workers' compensation insurer.

A comment was received from the American Institute of Certified Public Accountants, Insurance Companies Committee.

The new rule is adopted by the Commissioner of Insurance under the authority of the Insurance Code, Articles 5.61, 5.62, and 1.03A. Article 5.61 requires each workers' compensation insurer transacting business in Texas to maintain reserves in an amount estimated to provide for the payment of all losses and to file a report with the Department showing its year-end loss, expense, and unearned premium reserves for workers' compensation insurance results in Texas and that the report must be audited by an independent certified public accountant in accordance with generally accepted auditing standards and the rules of the department Article 5.62 authorizes the commissioner to make and enforce rules necessary to carry out the provisions of the Insurance Code, Chapter 5, Subchapter D, concerning the regulation of workers' compensation insurance Article 1.03A authorizes the commissioner to adopt rules for the conduct and execution of the duties and functions of the department only as authorized by statute for general and uniform application.

§7.36. Report on Audit of Workers' Compensation Reserves

(a) Applicability This section applies to all insurers which are authorized to write and which have issued new or renewal workers' compensation insurance policies in this state in the most recent calendar year.

(b) Scope of Audit. The workers' compensation data which is to be audited is contained in Texas Workers' Compensation Financial Call Plan, Calls 5, 5(supplement), 5A, 5A(supplement), required by the department. The data to be audited in these forms shall be audited by the same accountant that performs the annual audit of the insurer under the Insurance Code, Article 1 15A, if such an audit is performed, and such data is described in paragraphs (1)-(4) of this subsection as follows.

(1) from Calls 5 and 5A, page 2, column 11, Accident Year Outstanding Losses Excluding IBNR-Indemnity-Case and Bulk-last five accident years only,

(2) from Calls 5 and 5A, page 2, column 12, Accident Year Outstanding Losses Excluding IBNR-Medical-Case and Bulk-last five accident years only,

(3) from Calls 5(supplement) and 5A(supplement), page 1, column 19, Accident Year Unearned Premium-last accident year only; and

(4) from Calls 5(supplement) and 5A(supplement), page 1, column 21, Accident Year Allocated Loss Adjustment Expense Outstanding-last five accident years only.

(c) Audit Coverage The report of the audit of the workers' compensation reserves described in subsection (b) of this section shall address the items described in paragraphs (1)-(3) of this subsection.

(1) the opinion of the accountant, which should address the validity of data reported and not the adequacy of reserves,

(2) a statement of the amount of Texas workers' compensation reserves as prescribed by subsection (b)(1)-(4) of this section,

(3) any notes to the statement required in paragraph (2) of this subsection

(d) Filing Requirements for Audit Reports of Workers' Compensation Data The audit report required by this section shall be filed with the Financial Program, 333 Guadalupe, Mail Code 303-1A, P O. Box 149099, Austin, Texas 78714-9099, on or before June 30 of the year following the year audited If the insurer is required to file an annual audit report under Insurance Code, Article 1 15A, then the audit report required under this section shall be filed as a supplement to the annual audit report

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on June 27, 1994

TRD-9443062 D J Powers
Legal Counsel to
Commissioner
Texas Department of
Insurance

Effective date July 18, 1994

Proposal publication date April 29, 1994

For further information, please call (512) 463-6327

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VI. Texas Department of Criminal Justice

Chapter 152. General Allocation Provisions

Subchapter C. Maximum System Capacity of the Institutional Division

- 37 TAC §152.12

The Texas Department of Criminal Justice adopts an amendment to §152 12, with changes to the proposed text as published in the January 28, 1994, issue of the *Texas Register* (19 TexReg 585)

The new subsection is adopted to comply with the orderly process under state law for

increasing capacity of prison units or of the system as a whole. This process requires multiple levels of review and recommendation to ensure that an increase will still allow the staff to provide inmates with an enumerated list of services, functions, and staffing The adopted version of the subsection is changed in response to the comment from Eric Drummond, who suggested that the proposed language limiting the paragraph's applicability to a fixed number of beds was too restrictive The new wording also acknowledges the nine units listed in the Final Judgment where population cannot be increased by additions or renovations In addition, the subchapter and rule titles were changed to clarify that both unit and system capacity are governed by the subchapter and §152.12 in particular.

The staff of the institutional division finds and recommends that the additions to capacity at the units set out as follows may be made without limiting the ability of the division to operate the affected units with the additional capacity and provide for the matters listed in the Government Code, §499.102(a).

Pursuant to the Government Code, §499.104, these staff findings have been independently reviewed and concurred in by the following officials: James A. Collins, Executive Director, Texas Department of Criminal Justice; Wayne Scott, Director, Institutional Division/Acting Director for Operations, Institutional Division, William C. McCray, Deputy Director for Administration, Texas Department of Criminal Justice; Carl Jeffries, Deputy Director for Program Services, Texas Department of Criminal Justice; James E. Riley, Deputy Director for Health Services, Institutional Division; and Charles Smith, Assistant Director for Classification and Treatment, Institutional Division.

Pursuant to the Texas Government Code §499.102(b), these staff findings have also been forwarded to the Legislative Budget Board for an estimate of the initial cost of implementing the increase and the increase in operating costs for the units for the five years immediately following the increase in capacity. The LBB's response is as follows:

Fiscal Year	G.O. Bond Construction Cost	G.O. Bond Financed Start-up Capitol	Increase in Operating Costs	Reduction in Jail Backlog Payments	Net Cost to the General Revenue Fund
1994	$166,320,000	$9,118,000	$17,870,000	$13,616,000	$4,254,000
1995	N/A	3,689,000	88,987,000	82,834,000	6,153,000
1996	N/A	N/A	95,887,000	N/A	95,887,000
1997	N/A	N/A	95,887,000	N/A	95,887,000
1998	N/A	N/A	95,887,000	N/A	95,887,000
1999	N/A	N/A	95,887,000	N/A	95,887,000

Pursuant to the Government Code, §§499 105-499.107, these staff findings have also been reviewed and concurred in by the Texas Board of Criminal Justice, Governor Ann Richards, and Attorney General Dan Morales

The effect of the amendment is to allow the Institutional Division to increase unit capacities at numerous prison units by constructing permanent additions to the units as set out in Section XIII.D.5. of the Final Judgment. Section XIII.D.5. is referenced in the existing rule, §152.12(b), but that reference would only allow increases in the population at the units

listed in the subsection. The proposed amendment will allow increases primarily at newer, "prototype" facilities, in compliance with Chapter 499, Subchapter E, Government Code, and to the extent permitted by the Final Judgment, by adding a new subsection (h) to §152.12.

The Board of Criminal Justice has delegated to Andy Collins, TDCJ Executive Director, the authority to finally establish the maximum capacities of the affected facilities. By formal notification to the Board, signed contemporaneously with the publication of this final adoption, those capacities are established as follows:

Unit	Location	Maximum Capacity
Boyd	Teague	1,330
Briscoe	Dilley	1,342
Clements	Amarillo	3,198*
Coffield	Palestine	4,032*
Daniel	Snyder	1,342
Hightower	Dayton	1,342
Hilltop	Gatesville	799
Hobby	Marlin	1,342
Hughes	Gatesville	2,900
Lewis	Woodville	1,342
Lynaugh	Ft. Stockton	1,342
McConnell	Beeville	2,900
Michael	Palestine	3,114
Pack I	Navasota	1,419
Ramsey III	Rosharon	1,603
Roach	Childress	1,342
Robertson	Abilene	2,804
Smith	Lamesa	1,342
Stevenson	Cuero	1,342
Stiles	Beaumont	2,900
Terrell	Livingston	2,900
Torres	Hondo	1,342
Wallace	Colorado City	1,342

*Capacity includes 500 bed boot camp.

Inmate comments were solicited and received as directed by the Government Code, §499.103, and are summarized as follows: two inmates in the Daniels unit commented, one suggesting more paroles to save money and the other alleging inadequate space for several services, four inmates in the Michael unit commented, with one concerned about space for crafts, one concerned that the absence of certain buildings on the expansion blueprints violates the Final Judgment, one generalizing that expansion would impede safe and daily access to all facilities, and one requesting additional information on showers and recreational facilities, one inmate in the Terrell unit commented, requesting a transfer; one inmate in the Hughes unit commented that the plans do not provide for additional support facilities; one inmate in the Coffield unit had no meaningful comment; one inmate in the Boyd unit alleged inadequate space for all support facilities; two inmates from the Robertson unit commented, with one concerned over inadequate education and library privileges, and the other alleging inadequate storage and stock in the commissary, thirty-three inmates in the Hobby unit commented, most utilizing a form letter to allege inadequate services and space in many areas, one inmate in the McConnell unit commented on inadequacies in commissary storage, sewage, nutrition, emergency water supply, sanitizing, and the law library, and forwarded his letter to the U.S. District Court in the Southern District of Texas; and one inmate in the Clements unit commented on inadequate recreation time, dining time, and staff, and alleged a negative impact on mentally retarded and psychiatric inmates. In addition, one inmate in the Clements unit successfully sought intervention from the U.S. District Court in the Southern District of Texas, but did not provide a comment letter under this process.

Finally, a non-inmate comment was received to the effect that the amendment as proposed was "far too restrictive" in its wording.

The following inmates made comments: R. Kuykendall, R. Stephens, F. Durrough, T. Irby, K. Watson, R. Greenman, A. Sasser, C French, D. Morris, W. Montgomery, P. Smith, E. Davis, J. Logan, D. Tharp, T. Stibbens, H. Ortega, L. Beasley, K. Scott, T. Harris, A

Shaw, C Reese, F Keller, Y Jackson, A Miles, J Hoffman, E Wilson, C Hampton, K. Freeman, B Andrews, C. Ogler, B Lopez, T. Batiste, P Ware, L Barnes, W Gonzales, L Sheperd, J Ridley, C White, A Gelabert, L Royal, J Balawadjer, M Doyou, D Jones, S Tucker, T Franks, C Roddy, T. Hazel.

The following non-inmate made a comment Eric H Drummond

The board disagrees with the comments of inmates due to the persuasive detail provided by the staff of the agency regarding the ability of the institutional division to operate the affected units with the additional capacity and provide for the matters listed in the Government Code, §499 102(a)

The board agrees with the comment that the wording of the original proposal was too restrictive, and the adopted version reflects this change

The new subsection is adopted under Chapter 499, Subchapter E, Government Code, and is further authorized by the Final Judgment in Ruiz *v* Collins CN H-78-987 (Southern District of Texas, Houston Division), which appeared in Volume 17, *Texas Register*, page 8269 (November 27, 1992) The authority of the Board of Criminal Justice to adopt rules generally is found in the Government Code, §492 013

§152 12 Methodology for Changing the Maximum Unit and System Population

(a)-(g) (No change)

(h) Increases in the population of units under construction and existing units, including those listed in subsection (b) of this section, may be accomplished in conformity with Section XIII D 5 of the Final Judgment, and in compliance with the review and recommendation process in the Government Code, §§499 102 et seq Increases in population may not be accomplished through additions or renovations to the units listed in Section XIII D 5 of the Final Judgment

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on June 23, 1994

TRD 9443082 Carl Reynolds
General Counsel
Texas Board of Criminal Justice

Effective date July 18, 1994

Proposal publication date January 28 1994

For further information, please call (512) 463 9693

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Part XI. Texas Juvenile Probation Commission

Chapter 341. Memorandum of Understanding for Abused and Neglected Children

- 37 TAC §341.22

The Texas Juvenile Probation Commission adopts new §341.22, concerning memorandum of understanding, without changes to the proposed text as published in the February 25, 1994, issue of the *Texas Register* (19 TexReg 1371).

The new section enhances coordination of service delivery at the local level.

The new section will enhance service delivery to mutual clients of DPRS, TJPC, and TYC.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Human Resource Code, §§141.001, 141.041, and 141.042, which provides the Texas Juvenile Probation Commission with the authority to improve the effectiveness of juvenile probation services by enhancing coordination service delivery at the local level.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on June 22, 1994.

TRD-9443137 Bernard Licarione, Ph.D.
Executive Director
Texas Juvenile Probation Commission

Effective date: July 19, 1994

Proposal publication date February 25, 1994

For further information, please call: (512) 443-2001

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 27. Intermediate Care Facilities for the Mentally Retarded (ICFs-MR)

Subchapter E. Eligibility and Review

- **40 TAC §§27.503, 27.505, 27.507, 27.509, 27.511, 27.513, 27. 515**

The Texas Department of Human Services (DHS) adopts amendments to §§27. 503, 27 505, 27 507, 27.509, 27 511, 27.513, and 27 515, concerning definitions for level-of-care criteria, eligibility for level-of-care assignment, level-of-care determination, ICF-MR I level-of-care criteria, ICF-MR V level-of-care criteria, ICF-MR VI level-of-care criteria, and ICF-MR/RC VIII level-of-care criteria, in its Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) rule chapter. The amendment to §27 507 is adopted with changes to the proposed text as published in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3643) The amendments to §§27 503, 27 505, 27.509, 27.511, 27.513, and 27 515 are adopted without changes to the proposed text, and will not be republished.

The justification for the amendments is to add Americans with Disabilities Act requirements, level-of-care assignments according to special needs, and Adaptive Behavioral Level changes to reflect the American Association on Mental Deficiency definitions.

The amendments will function by adding to the ICF-MR rules requirements of the Americans with Disabilities Act.

During the public comment period, DHS received comments from New Avenues of Hope, Inc. Following is a summary of the comments and DHS's responses.

Comment: The commenter observed that the proposal to amend §27.503 did not include the definitions of several terms.

Response: The definitions cited by the commenter have not been deleted from the rule. The format for amendments to rules consisting of definitions requires agencies only to include the text of repealed and amended definitions.

Comment: The commenter identified several brackets indicating deletions in the proposal to amend §27.507(g) that were confusing.

Response: DHS is adopting §27.507(g) with changes that clarify the language to be retained and deleted.

Comment: The commenter asked whether §27.507(i) addresses individuals who meet more than one level of care or individuals who are excluded from any level of care because of one criteria.

Response: DHS is addressing individuals who do not meet all the criteria for one level of care. When this occurs, DHS may ask for additional information. DHS is adopting §27.507(i) with changes that substitute DHS for references to the Texas Department of Health (TDH). The activities are now conducted by DHS.

Comment: The commenter proposes eliminating references to IQ scores in §§27.509, 27.511, and 27 513, and substituting subtypes of mental retardation on the basis that the diagnosis of any subtype of mental retardation would have used an IQ level standardized for that test.

Response: DHS is not eliminating references to IQ scores at this time.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provide the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds

The amendments implement the Human Resources Code, §§32 001-32 042

§27.507. Level-of-Care Determination.

(a) The level-of-care determination is performed by the Texas Department of Human Services DHS according to the

level-of-care criteria in this subchapter. Information submitted to DHS must be based on current data obtained from standardized evaluations and formal assessments which include physical, emotional, social, and cognitive factors.

(b) (No change.)

(c) The ICF-MR Program has four levels of care: ICF-MR I, ICF-MR V, ICF-MR VI, and ICF-MR/RC VIII. Level-of-care determinations for the ICF-MR I, ICF-MR V, and ICF-MR VI levels of care are based on the individual's intellectual functioning. Level-of-care determinations are based on the following variables regarding the developmental needs of each individual.

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

(3) primary diagnosis.

(d) (No change.)

(e) If an I.Q. score cannot be obtained for a person with severe or profound deficits in intellectual functioning, a social composite score (S.C.) obtained on the Vineland Adaptive Behavior Scale or other professionally accepted scale must be submitted. Documentation must be available that an assessment of intelligence with a standardized instrument was attempted.

(f) (No change.)

(g) Some individuals may have special health care needs that necessitate placement in a facility which meets provisions of the National Fire Protection Association's Life Safety Code, 1985 edition, for accommodating special needs. When this occurs, placement in a facility that meets appropriate Life Safety Code requirements takes precedence over placement in a facility that matches the individual's level of care. Regardless of his level-of-care assignment, an individual who requires a medical care plan is eligible for residence only in a facility that meets the provisions of either Chapter 12 or Chapter 13 of the 1985 Life Safety Code.

(h) If DHS determines that information submitted for a level of care was not correct, the level-of-care assignment is re-evaluated. If information originally submitted has changed, the level-of-care assignment is also re-evaluated.

(i) If an individual's IQ, adaptive behavior level, and/or health status are such that he does not meet all the criteria for any one level of care, TDH conducts a special review of his application for a level of care. TDH may ask him to submit current psychological, social, medical, and/or other evaluations.

(j) The criteria for each level of care include a profile of typical developmental needs for that level of care. Based on I.Q., adaptive behavior level, and health status, an individual may meet the criteria for two levels of care. In this situation, application is made for the level of care that best meets the individual's developmental needs. This determination is based on the profile that most closely describes the individual. A single deficit in any of the categories of skills noted in a profile does not necessarily make the individual ineligible for that level of care.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 28, 1994.

TRD-9443136 Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Effective date: August 15, 1994.

Proposal publication date: May 13, 1994.

For further information, please call: (512) 450-3765.

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Part IV. Texas Commission for the Blind

Chapter 163. Vocational Rehabilitation Program

• 40 TAC §163.30

The Texas Commission for the Blind adopts the repeal of §163.30, concerning the order of selection for payment of services, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3912).

The section has been repealed and replaced to institute a new order of selection that is necessary for the systematic approach to assuring, in times of limited funding, that persons with the most severe visual disabilities are given priority in receiving services that result in employment and the ability to live independently. The repeal is also necessary to conform with the federal state plan. The agency is eliminating the category within the rule that refers to payment for services to persons who are in imminent danger of blindness.

No comments were received regarding repeal of the section.

The repeal is adopted under the Human Resources Code, Title 5, Chapter 91, §91.011, which provides the Texas Commission for the Blind with the authority to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs, §91.053, which requires the agency to comply with federal requirements in the delivery of vocational rehabilitation services to secure the full benefits of the federal laws, and 29 United States Code, §701 et seq., the Rehabilitation Act of 1973, §101(a)(5)(A), as amended, which authorizes the agency to operate with an order of selection in the event that vocational rehabilitation services cannot be provided to all eligible individuals who apply for such services.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 24, 1994.

TRD-9443066 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Effective date: July 31, 1994.

Proposal publication date: May 20, 1994.

For further information, please call: (512) 459-2611.

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The Texas Commission for the Blind adopts new §163.30, concerning the order of selection for payment of services, with changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3912).

The rule is being adopted to institute a new order of selection that is necessary for the systematic approach to assuring, in times of limited funding, that persons with the most severe visual disabilities are given priority in receiving services that result in employment and the ability to live independently. The rule is also adopted to conform with the federal state plan for the provision of vocational rehabilitation services.

The rule defines the expenditure categories by priority that will be used in paying for services.

No comments were received regarding adoption of the rule.

The text in subsection (a) has been rewritten and adopted with changes to correct a typographical error and to use "people-first" language that has been overlooked in the proposed rule. The word "extend" has been changed to "extent," and the phrase "most severely visually disabled persons" has been changed to "persons with the most severe visual disabilities."

The new section is adopted under the Human Resources Code, Title 5, Chapter 91, §91.011, which provides the Texas Commission for the Blind with the authority to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs, §91.053, which requires the agency to comply with federal requirements in the delivery of vocational rehabilitation services to secure the full benefits of the federal laws, and 29 United States Code, §701 et seq., the Rehabilitation Act of 1973, §101(a)(5)(A), as amended, which authorizes the agency to operate with an order of selection in the event that vocational rehabilitation services cannot be provided to all eligible individuals who apply for such services.

§163.30 Order of Selection for Payment of Services

(a) An order of selection is the priority assigned to categories of visual disability for payment of services and is instituted during periods of limited funding to assure that persons with the most severe visual disabilities received all services, or as many as possible, toward accomplishment of their vocational goals Priority categories are determined by the extent of visual loss and its impact on the individual's ability to work and live independently

(b) Eligibility for services is determined before applying the order of selection

(c) A service that can be paid from alternative resources will be provided to the consumer regardless of the order of selection

(d) A public safety officer whose visually disabling condition arises from a disability sustained in the line of duty will receive special consideration. Public safety officers who are eligible for services may have them purchased even though they are not permanently totally or legally blind.

(e) The expenditure level is established by the executive director and approved by the board based on the amount of funds available for purchase of services.

(f) Expenditure categories, by priority from most restrictive to least restrictive, are contained in this subsection as follows:

CATEGORY	EXPENDITURE	
A	No expenditure of case funds	
B	Expenditure of case service funds only for preliminary diagnostic studies	
C	Expenditure of case service funds only for thorough diagnostic studies	
D	Expenditure of case service funds authorized for any planned, necessary vocational rehabilitation service, according to specified sublevel by disability category with best corrected vision:	
	Priority	Disability Group
	1 - most severely disabled	Totally and legally blind with or without secondary disabilities or functional limitations
	2 -severely disabled	Blind in one eye, visually impaired other eye (between 20/70 and 20/200 or visual field of 30 degrees or less, but greater than 20 degrees)
	3 -severely disabled	Visually impaired in both eyes (between 20/70 and 20/200 in both eyes or visual field of 30 degrees or less, but greater than 20 degrees)
	4 - non-severely disabled	Blind in one eye, other eye good (better than 20/70)
	5 - non-severely disabled	Both eyes good (better than 20/70 in both eyes)

(g) Information on the order of selection and the expenditure level at which the agency is operating is available by writing the Texas Commission for the Blind, P O Box 12866, Austin, Texas 78711, or by calling its toll-free line, 1-800-252-5204 (TDD and voice) between the hours of 8.00 a m and 5 00 p m

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on June 24, 1994.

TRD-9443065 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

For further information, please call: (512) 459-2611

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MP

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas State Board of Public Accountancy

Thursday, July 14, 1994, 9:00 a.m.

333 Guadalupe, Tower III, Suite 900

Austin

According to the complete agenda, the Texas State Board of Public Accountancy will consider discussion of pending litigation (executive session); committee reports from the Technical Standards Review Committee, Behavioral Enforcement Committee, Qualifications Committee, Licensing Committee, Rules Committee, Major Case Enforcement Committee, Ad Hoc Expert Witness and Consulting Services Committee, consideration of the adoption of the following board rules §501.2 (Definition of Solicitation), §515.1 (License), §521. 1 (License Fees), agreed consent orders and proposals for decision.

Contact: J. Randel (Jerry) Hill, 333 Guadalupe, Tower III, Room 900, Austin, Texas 78701-3942, (512) 505-5542.

Filed: June 29, 1994, 3:40 p m.

TRD-9443251

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Texas Department on Aging

Thursday, July 7, 1994, 9:30 a.m.

Texas Department on Aging, IH-35, Third Floor Large Conference Room

Austin

According to the agenda summary, the Texas Board on Aging will consider and possibly act on: call to order, April 14, 1994 minutes; public testimony, executive director's report; nominations to fill unexpired terms on Citizens Advisory Council (CAC); board committee reports including Planning-1996-1997 Legislative Appropria tions Request; Area Agency on Aging (AAA) Operations-Final adoption of new, revised, re-located and repealed administrative rules; recommendation from the CAC relative to compliance with Senate Bill 383, Audit and Finance-internal audit of TDoA Nutrition Services Programs, amendment/s to fiscal year 1994 internal audit plan, proposed fiscal year 1995 internal audit plan; possible budget amendment/s, various reports, Networking/Advocacy/Legislation-White House Conference on Aging/Texas activities; other business to include. method used by the Administration on Aging to allocate funds to states; board member travel; general announcements, and adjourn.

Contact: Mary Sapp, P O. Box 12786, Austin, Texas 78711, (512) 444-2727

Filed: June 29, 1994, 9.13 a m.

TRD-9443161

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Texas Commission on Alcohol and Drug Abuse

Friday, July 8, 1994, 1:00 p.m.

710 Brazos, Perry Brooks Building, Eighth Floor, Conference Room

Austin

According to the complete agenda, the Grant and Contract Review Committee will call to order, approval of minutes from May 6, 1994, May 17, 1994, and June 8, 1994, fiscal year 1995 award criteria for gambling prevention and treatment, HIV outreach request for proposals, prevention services request for proposals, fiscal year 1994 treatment contracts, new business, next meeting, and adjourn

Contact: Steve Casillas or Lynn Brunn-Shank, 710 Brazos, Austin, Texas 78701-2576, (512) 867-8265

Filed: June 30, 1994, 3 14 p m

TRD-9443236

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Texas Commission on Children and Youth

Thursday, July 7, 1994, 9:15 a.m.

1600 West 38th Street, Suite 200, The Arc of Texas

Austin

According to the agenda summary, the Prevention/Intervention Commission Members' Work Group will hold a work group meeting.

Contact: Kay Ghahremani, P O Box 13106, Austin, Texas 78711, (512) 305-9056

Filed: June 29, 1994, 3:40 p m.

TRD-9443250

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Texas Cosmetology Commission

Sunday, July 10, 1994, 9:00 a.m.

Doubletree Hotel-Austin, 6505 IH-35 North

Austin

According to the agenda summary, the Commission will call to order, instructions; recognition of guests; minutes, staff reports, discussion of FY 1996-1997 LAR; employee oversight and advisory committee report, new commission committee assignments, Rosa Barragan out-of-country reciprocity, presentation of requests for approval of hours accrued over 48 months ago (17), Kay Daniel on behalf of Cuong Nguyen facial instructor exam commission report, manicure instructor exam commission report, Samuel Henry, mobile beauty-n-massage using student volunteers, Cindy McDonald, High School student taking manicure exam, Emma Meehan, continuing education, Nikki Schwartz, July 1, Federal Relations DOE, Larry Perkins-Yslatta Square Footage, agreed orders, discussion of townhall meetings, discussion of potential rule proposals, executive session-litigation and personnel; open meeting for vote on executive session, and adjourn

Contact: Alicia C Ayers, 5717 Balcones Drive, Austin, Texas 78755-0700, (512) 454-4674

Filed: June 29, 1994, 10 20 a m

TRD-9443193

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Texas Department of Criminal Justice-CJAD

Thursday, July 7, 1994, 9:00 a.m.

8100 Cameron Road, Building B, Conference Room A and B

Austin

According to the agenda summary, the Judicial Advisory Council-Executive Committee will consider Judicial Advisory Council travel discussion, action on Fannin/Lamar counties' separation, action on non-participating counties, and miscellaneous business

Contact: Elizabeth Colvin, 209 West 14th, Suite 400, Austin, Texas, 78701, (512) 305-8584

Filed: June 28, 1994, 4 12 p m

TRD-9443154

Friday, July 8, 1994, 9:00 a.m.

8100 Cameron Road, Building B, Conference Room A and B

Austin

According to the agenda summary, the Judicial Advisory Council will discuss greeting; introduction of guests/staff; approval of minutes; PAC report; committee reports: Legislative/Budget, Executive, Funding and Fiscal Management/Planning and Program Development, Joint Committee on Community Justice Development, division director report; miscellaneous business, next meeting; and adjournment.

Contact: Elizabeth Colvin, 209 West 14th, Suite 400, Austin, Texas 78701, (512) 305-8584.

Filed: June 28, 1994, 4 12 p m

TRD-9443157

Thursday, July 7, 1994, 10:00 a.m.

8100 Cameron Road, Building B, Conference Room A and B

Austin

According to the agenda summary, the Judicial Advisory Council-Legislative and Budget Committee will discuss review of fiscal year 1995 administrative budget reports; fiscal year 1996-1997 community corrections budget request, review of proposed legislative changes, and miscellaneous business

Contact: Elizabeth Colvin, 209 West 14th, Suite 400, Austin, Texas 78701, (512) 305-8584

Filed: June 28, 1994, 4·12 p m

TRD-9443155

Thursday, July 7, 1994, 11:00 a.m.

8100 Cameron Road, Building B, Conference Room A and B

Austin

According to the agenda summary, the Judicial Advisory Council-Funding and Fiscal Management and Planning and Program Development Committee will discuss planning and program development update, funding and fiscal management update; fiscal year 1995 diversion target programs (grant) funding recommendations, and miscellaneous business

Contact: Elizabeth Colvin, 209 West 14th, Suite 400, Austin, Texas 78701, (512) 305-8584

Filed: June 28, 1994, 4 12 p m

TRD-9443156

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Texas Commission for the Deaf and Hearing Impaired

Monday, July 11, 1994, 1:00 p.m.

TCB Administration Building, 4800 North Lamar Boulevard, Room 310

Austin

According to the complete agenda, the Budget Subcommittee will have a work session with agency staff to prepare budget for 1996-1997

Contact: Loyce Kessler, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 451-8494

Filed: June 30, 1994, 4 10 p.m.

TRD-9443253

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Texas Education Agency

Wednesday, July 6, 1994, 1:00 p.m.

Room 1-109, William B Travis Building, 1701 North Congress Avenue

Austin

According to the agenda summary, the State Board of Education (SBOE) Ad Hoc Committee on Communications will consider discussion of State Board of Education policy initiatives presentation at Texas Association of School Boards/Texas Association of School Administrators Joint Conference; discussion and review of issues pertaining to the Champion for Children Award, Celebrations of Excellence, and the National Association of State Boards of Education Conference

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: June 28, 1994, 3.53 p.m

TRD-9443149

Wednesday, July 6, 1994, 2:00 p.m.

Room 1-104, William B Travis Building, 1701 North Congress Avenue

Austin

According to the agenda summary, the State Board of Education (SBOE) Committee of the Whole will hold a work session on assessment issues. The work session will focus on the proposed five-year plan for assessment, the significant issues presented to the board in May, and the analysis of the spring 1994 Texas Assessment of Academic Skills results To the extent necessary, the discussion of individual assessment instrument and assessment instrument items is confidential and not open to the public, and the discussion will be held in executive session in accordance with the Texas Education Code, §35 030.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: June 28, 1994, 3:53 p.m.

TRD-9443150

Wednesday, July 6, 1994, 7:00 p.m.

Houston II Room, Guest Quarters Hotel, 303 West 15th Street

Austin

According to the complete agenda, the State Board of Education (SBOE) will meet to conduct an evaluation of the commissioner of education. This evaluation will be held in executive session in accordance with §551.074, Texas Government Code.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: June 28, 1994, 3:53 p.m.

TRD-9443151

Thursday, July 7, 1994, 10:30 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

According to the agenda summary, the State Board of Education (SBOE) Committee of the Whole will discuss public testimony; commissioner's overview of the July 1994 SBOE meeting; membership of advisory committees; adoption of Five-Year Plan for Assessment and next steps for the curriculum; overview of the 1994-1995 accountability systems; discussion of legislative recommendations for the 74th Texas Legislature; and discussion of pending litigation. The discussion of pending litigation will be held in Room 1-103 in executive session in accordance with §551.071(1)(A), Texas Government Code, and will include a discussion of Edgewood ISD et al. v. Meno and related school finance litigation, Angel G. et al. v. Meno, et al., TEA et al. v. Gary W. Leeper et ux., et al. relating to home schooling; and potential litigation against the federal government regarding illegal immigrants.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: June 30, 1994, 3:26 p.m.

TRD-9443239

Thursday, July 7, 1994, 1:30 p.m.

Room 1-111, William B. Travis Building, 1701 North Congress Avenue

Austin

According to the agenda summary, the State Board of Education (SBOE) Committee on Personnel will discuss public testimony; recommendation for appointments to the Lackland Independent School District Board of Trustees; discussion of the on-site peer review process and the proposed framework for multi-year state interventions and sanctions for accredited warned districts and low performing campuses; status report on the accreditation of school districts; alternative rules for certification of superintendents; and request for approval of funds for professional development.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: June 30, 1994, 3:36 p.m.

TRD-9443240

Thursday, July 7, 1994, 1:30 p.m.

Room 1-100, William B. Travis Building, 1701 North Congress Avenue

Austin

According to the agenda summary, the State Board of Education (SBOE) Committee on Students will discuss public testimony, proposed amendments to 19 TAC §89.331, State Parent Advisory Council for Migrant Education; proposed amendments to 19 TAC §75.62, Other Languages; and discussion of issues pertaining to the certificate and assignments of psychologists in the public schools.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: June 29, 1994, 3:36 p.m.

TRD-9443241

Thursday, July 7, 1994, 1:30 p.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

According to the agenda summary, the State Board of Education (SBOE) Committee on School Finance will discuss public testimony; school finance update, proposed repeal and adoption of new 19 TAC Chapter 67, State Adoption and Distribution of Instructional Materials, large type textbooks for the visually impaired; braille materials for the visually impaired; six-year budget projection and options for reduction in projected expenditure for fiscal years 1996 and 1997; request for authorization to apply for federal grant under the Dwight D Eisenhower National Program for Mathematics and Science Education; request for approval of funds for professional development, discussion of proposed system for determining textbook purchase priorities under a six-year budget, review of adult education special projects for fiscal year 1994-1995, and review of annual audit plan for the School Financial Audits Division for 1994-1995, and review of the Preliminary Annual Administrative and Program Strategic Budget for the 1994-1995 fiscal year.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: June 29, 1994, 3:36 p.m.

TRD-9443242

Thursday, July 7, 1994, 7:00 p.m.

Houston II Room, Guest Quarters Hotel, 303 West 15th Street

Austin

According to the complete agenda, the State Board of Education (SBOE) will hold a dinner meeting to review the proceedings of the July State Board of Education meetings and retrospective on the board's work.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: June 29, 1994, 3:37 p.m.

TRD-9443246

Friday, July 8, 1994, 8:30 a.m.

Room 1-104, William B Travis Building, 1701 North Congress Avenue

Austin

According to the agenda summary, the State Board of Education (SBOE) Committee on Long-Range Planning will discuss public testimony; expert speaker-issues related to increasing the representation of minority and female students in engineering, mathematics, and science; development of the State Board of Education Long-Range Plan for Public Education, 1995-1999; proposed plan for a State Board of Education Task Force and development of a policy statement on adult education and literacy; update on the Safe Schools Compact and discussion of future policy directions; discussion of the Goals 2000: Educate America Act, discussion of federal governmental relations activities, and adoption of policy statement from the Task Force on Students with Disabilities

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701

Filed: June 29, 1994, 3:37 p.m.

TRD-9443245

Friday, July 8, 1994, 8:30 a.m.

Room 1-109, William B. Travis Building, 1701 North Congress Avenue

Austin

According to the agenda summary, the State Board of Education (SBOE) Committee on the Permanent School Fund will discuss public testimony, adoption of long-term asset allocation and strategic plan and ancil-

lary recommendations for the Permanent School Fund, recommended Permanent School Fund Investment Program for July and August and the funds available for the program; review of Permanent School Fund securities transactions and the investment portfolio; and report of the Permanent School Fund executive administrator

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701

Filed: June 29, 1994, 3:37 p m

TRD-9443244

Friday, July 8, 1994, 1:00 p.m.

Room 1-104, William B Travis Building, 1701 North Congress Avenue

Austin

According to the agenda summary, the State Board of Education (SBOE) will discuss approval of minutes, June 10, 1994 SBOE meeting; public testimony; SBOE resolutions; approval of consent agenda; membership of advisory committees, adoption of five-year plan for assessment and next steps for the curriculum, 19 TAC §89 331, State Parent Advisory Council for Migrant Education; 19 TAC §75 62, Other Languages (American Sign Language), 19 TAC CHapter 67, State Adoption and Distribution of Instructional Materials, large type textbooks for the visually impaired, Braille materials for the visually impaired, six-year budget projection and options for reduction in projected expenditure for fiscal year 1996 and 1997; authorization to apply for federal grant under Dwight D Eisenhower National Program for Mathematics and Science Education; request approval for funds for professional development, proposed plan for a SBOE task force and development of a policy statement on adult education and literacy, adoption of policy statement from the Task Force on Students with Disabilities; adoption of long-term asset allocation and strategic plan and ancillary recommendations for the Permanent School Fund (PSF), recommended PSF investment program for July and August and funds available for the program; and information on agency administration.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701

Filed: June 29, 1994, 3:37 p m

TRD-9443243

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Advisory Commission on State Emergency Communications

Tuesday, July 5, 1994, 9:00 a.m.

1101 Capital of Texas Highway South, Suite B-100

Austin

Emergency Revised Agenda

According to the agenda summary, the Addressing Committee will call the meeting to order and recognize guests; hear public comment, hear reports and discuss and take commission action on items as necessary, addressing pool funds reallocation, funding for addressing projects, addressing plan amendments, proposed amendments to Rule 251.7, proposed amendments to Rules 251 2-251.4, repeal of Rule 252.2; and adjourn.

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

Reason for emergency: To show proper citation of rules in amended agenda.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78748, (512) 327-1911.

Filed: June 28, 1994, 2:46 p m.

TRD-9443127

Tuesday, July 5, 1994, 10:30 a.m.

1101 Capital of Texas Highway South, Suite B-100

Austin

Emergency Revised Agenda

According to the agenda summary, the Planning and Implementation Committee will call the meeting to order and recognize guests, hear public comment; hear reports and discuss and take commission action on items as necessary, proposed new Rule 251.7, proposed amendments to rules 251.2-251 4, repeal of rule 252.2, and adjourn

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

Reason for emergency To show proper citation of rules in amended agenda.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: June 28, 1994, 2.47 p m.

TRD-9443129

Tuesday, July 5, 1994, 1:30 p.m.

1101 Capital of Texas Highway South, Suite B-100

Austin

Emergency Revised Agenda

According to the agenda summary, the Administration Committee will call the meeting to order and recognize guests, hear public comment; hear reports and discuss and take commission action on items as necessary; 9-1-1 administrative budgets for Councils of Governments; proposed new Rule 251.7, proposed amendments to Rules 251.2-251.4, repeal of Rule 252.2; and adjourn.

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

Reason for emergency: To show proper citation of rules in amended agenda.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: June 28, 1994, 2:47 p.m.

TRD-9443128

Wednesday, July 6, 1994, 9:00 a.m.

1101 Capital of Texas Highway South, Suite B-100

Austin

Revised Agenda

According to the agenda summary, the Advisory Commission on State Emergency Communications will call the meeting to order and recognize guests; hear public comment; discuss and take action on strategic plan implementation allocation and contracts; proposed new Rule 251.7, proposed amendments to Rules 251.2-251.4, repeal of Rule 252.3; hear report and discuss and take action on items: administration, planning and implementation, addressing and poison control; consideration and approval of May and June meeting minutes; and adjourn.

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: June 28, 1994, 2:48 p.m.

TRD-9443130

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State Employee Charitable Campaign

Tuesday, July 12, 1994, 4:00 p.m.

4000 Southpark Drive

Tyler

According to the complete agenda, the Local Employee Committee Tyler will hold an organizational meeting to review and approve budget for local campaign manager.

Contact: John Anderson, P.O. Box 130428, Tyler, Texas 75713, (903) 581-6376.

Filed: June 28, 1994, 4:00 p.m.

TRD-9443152

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Texas Employment Commission

Thursday, July 7, 1994, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

According to the agenda summary, the Texas Employment Commission will discuss prior meeting notes; executive session to consider Bernardino Gonzales, et al. v. James Kaster, et al.; actions, if any, resulting from executive session; staff reports on consideration of proposed new rule for estimating cost for providing copies of public records and of memorandum of understanding with the Texas Department of Commerce and proposal of adoption as a rule, consideration and possible approval of bid for interior and exterior renovations at the San Antonio agency-owned building; consideration and possible approval of bid for parking lot paving at the Victoria agency-owned building; consideration and possible approval of bid for interior and exterior renovations at the Galveston agency-owned building; internal procedures of commission appeals; consideration and action on higher level appeals in unemployment compensation cases listed on Commission Dockets 26 and 27; and set date of new meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: June 29, 1994, 3:24 p.m.

TRD-9443238

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Texas Commission on Fire Protection

Wednesday-Friday, July 13-15, 1994, 9:00 a.m.

12675 North Research

Austin

According to the complete agenda, the Texas Commission on Fire Protection will meet in executive sessions under Government Code, §551.074 and §551. 071. Discussion/possible action on: key rate schedule; advisory committee appointments; matters from the Volunteer Advisory Committee; matters from the Fire Protection Personnel Advisory Committee; practice and procedures rules; certification of persons with criminal background rules; charges for public records rules; matters from the Fire Extinguisher Advisory Council; matters from the Fire Alarm Advisory Council; matters from the Fire Protection (Sprinkler) Advisory Council; and flammable liquids storage at retail service station rules. Report from Firemen's Training School Advisory Board representative. Matters from the executive director. Mew matters from the public. Discussion/possible action regarding TCFP relationship with Texas Forest Service and with Texas A&M Fire School. Evening session re authority, structure, and enforcement policies of TCFP. Discussion/possible action on future meeting dates.

Contact: Carol Menchu, 12675 North Research, Austin, Texas 78759, (512) 918-7100.

Filed: June 30, 1994, 7:12 p.m.

TRD-9443255

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Texas Department of Health

Tuesday, July 12, 1994, 9:00 a.m.

Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Drug Use Review Board will discuss approval of the minutes of the April 19, 1994 meeting, and discuss and possibly act on: antidepressant drugs criteria; antidepressant drug profiles; revision to Drug Use Review (DUR) policies and procedures; oral antidiabetic agents profiles; stadol profiles; provider specific profiles; targeted drug for next profile review; and scheduling of the next meeting.

Contact: Curtis Burch, Jr., R.Ph., 1100 West 49th Street, Austin, Texas 78756-3199, (512) 338-6947. For ADA assistance, call Richard Butler (512) 458-7695 or T D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 29, 1994, 9:56 a.m.

TRD-9443190

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Texas Department of Human Services

Thursday, July 7, 1994, 10:00 a.m.

701 West 51st Street, Fifth Floor, West Tower, Conference Room 5W

Austin

According to the complete agenda, the Client Self-Support Services Advisory Council will call to order; approval of minutes; chairman's comments; deputy commissioner's comments; election of vice-chair; CSSAC fiscal year 1994 annual report; CSSAC bylaws; EBT rules; strategic plan; operating plan for fiscal year 1995; 1996-1997 LAR; assessment fees for the food distribution program; outreach requirements in the food stamp program; budgeting earned income tax credits in the food stamp program; separate household composition for certain recipients in the food stamp program; household status of food stamp recipients who reside in a drug or alcoholic treatment center; prorating benefits in the food stamp program; dependent care deductions in the food stamp program; exclusion of general assistance utility payments in the food stamp program; exclusion of children's earned income in the food stamp program; income reporting requirements in the food stamp program; budgeting vehicles as a resource in the food stamp and medical programs; reporting medical expenses in the food stamp program; next meeting; and adjournment.

Contact: Toni Lemm, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4147.

Filed: June 28, 1994, 9:13 a.m.

TRD-9443163

Friday, July 8, 1994, 9:00 a.m.

8407 Wall Street

Austin

According to the complete agenda, the Advisory Committee for Personal Care Facilities Subcommittee will consider the feasibility of reducing the construction requirements for personal care facilities; identify specific areas of concern in the construction requirements; review current construction requirements; and consider possible alternatives to the construction requirements and the next subcommittee meeting.

Contact: Barbara Crenwelge, P.O. Box 149030, Austin, Texas 78714-9030, (512) 834-6697

Filed: June 30, 1994, 10:14 a.m.

TRD-9443260

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Texas Department of Insurance

Tuesday, July 12, 1994, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Fifth Floor, Suite 502

Austin

According to the complete agenda, the Texas Department of Insurance will consider whether disciplinary action should be taken against Jerry D. Burton, Fort Worth, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's license issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: June 29, 1994, 3:00 p.m.

TRD-9443228

Wednesday, July 13, 1994, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Fifth Floor, Suite 502

Austin

According to the complete agenda, the Texas Department of Insurance will consider whether disciplinary action should be taken against Charles R. Myers, San Antonio, Texas, who holds a Group II, Insurance Agent's license, and a Group V, Local Recording Agent's license, and to consider the application of Charles R. Myers, San Antonio, Texas, for a Group VIII, Managing General Agent's license and a Group IX, Surplus Lines Insurance Agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: June 29, 1994, 3:00 p.m.

TRD-9443229

Wednesday, July 13, 1994, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Fifth Floor, Suite 502

Austin

According to the complete agenda, the Texas Department of Insurance will consider whether disciplinary action should be taken against Jaime E. Gomez, Houston, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's license and a Group II, Insurance Agent's license issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: June 29, 1994, 3:00 p.m.

TRD-9443227

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Legislative Budget Board

Thursday, July 7, 1994, 10:00 a.m.

300 West 15th Street, One Capitol Square, Committee Room One

Austin

According to the agenda summary, the Legislative Budget Board will call to order; approve minutes of April 26, 1994 meeting; consider LBB Budget Execution Proposal to allow the transfer of appropriations to the Texas Education Agency for public school textbook funding; consider LBB Budget Execution Proposal to allow the transfer of appropriations to the Department of Criminal Justice for additional funding to operate authorized prison and jail beds and payment to counties; any other business; and adjourn.

Contact: Jerry Sander, P.O. Box 12068, Austin, Texas 78711, (512) 463-1166.

Filed: June 28, 1994, 2:48 p.m.

TRD-9443131

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Texas Department of Licensing and Regulation

Tuesday, July 12, 1994, 1:00 p.m.

920 Colorado, Tenth Floor, Room 1012

Austin

Revised Agenda

According to the agenda summary, the Auctioneer Education Advisory Board inadvertently put the wrong name of board/committee in previous transmittal. The name of the advisory board that is meeting is the Auctioneer Education Advisory Board.

Contact: Jimmy G. Martin, 920 Colorado, Austin, Texas 78711, (512) 463-7348.

Filed: June 29, 1994, 1:28 p.m.

TRD-9443216

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Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association

Thursday, July 7, 1994, 9:30 a.m.

301 Congress Avenue, Suite 500, Board Room

Austin

According to the agenda summary, the Assessment Committee will discuss consideration and possible action on: approval of minutes; 1994 assessments (Class A, B, and Executive Life Insurance Company); premium data development/collection; late payment of assessments; unpaid assessments, proof of claim filings, and write-off unpaid assessments; appeals/protests by member insurers; payment of assessments by promissory note; and next meeting.

Contact: C. S. LaShelle, 301 Congress Avenue, #500, Austin, Texas 78701, (512) 476-5101.

Filed: June 29, 1994, 3:01 p.m.

TRD-9443235

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Texas Natural Resource Conservation Commission

Wednesday, July 6, 1994, 9:00 a.m.

12124 Park 35 Circle, Building B, Room 201A

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will meet to discuss and consider matters relating to the development of the fiscal year 1995 operating budget and the Legislative Appropriation Request. The commission will also consider adoption of the Texas Alternative Fuel Fleet Program State Implementation Plan revision.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: June 28, 1994, 11:06 a.m.

TRD-9443126

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Texas Optometry Board

Wednesday, July 13, 1994, 9:00 a.m.

Board Office, 9101 Burnet Road, Suite 214

Austin

According to the complete agenda, the Investigation-Enforcement Committee will hold four informal conferences with licensees, respectively, regarding possible violations of the Texas Optometry Act The Investigation-Enforcement Committee will also review complaint and investigation files with the executive director.

Contact: Lois Ewald, 9101 Burnet Road, Suite 214, Austin, Texas 78758, (512) 835-1938.

Filed: June 29, 1994, 3:00 p.m.

TRD-9443224

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Texas Board of Pardons and Paroles

Monday-Friday, July 11-15, 1994, 9:30 a.m.

1212 North Velasco, Suite 201

Angleton

According to the agenda summary, a panel(s) of the Texas Board of Pardons and Paroles composed of three board members will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the impo-

sition of special conditions of parole, and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 29, 1994, 9:13 a.m.

TRD-9443164

Monday-Wednesday, July 11-13, 1994, 1:30 p.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, a panel(s) of the Texas Board of Pardons and Paroles composed of three board members will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole, and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 29, 1994, 10:14 a.m.

TRD-9443167

Monday-Friday, July 11-15, 1994, 1:30 p.m.

2503 Lake Road, Suite #2

Huntsville

According to the agenda summary, a panel(s) of the Texas Board of Pardons and Paroles composed of three board members will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole, and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 28, 1994, 9.14 a.m

TRD-9443166

Thursday-Friday, July 14-15, 1994, 9:30 a.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, a panel(s) of the Texas Board of Pardons and Paroles composed of three board members will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole, and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 29, 1994, 9:14 a.m.

TRD-9443168

Thursday-Friday, July 14-15, 1994, 1:00 p.m. and 9:00 a.m. respectively.

Route 5, Box 258-A

Gatesville

According to the agenda summary, a panel(s) of the Texas Board of Pardons and Paroles composed of three board members will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole, and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 29, 1994, 9.14 a.m

TRD-9443165

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Texas State Board of Pharmacy

Friday, July 29, 1994, 10:00 a.m.

One Capitol Square, 300 West 15th Street, Fifth Floor, Room 502

Austin

According to the complete agenda, the Texas State Board of Pharmacy will conduct a disciplinary hearing in the matter of Texas State Board of Pharmacy vs Adetokunboh Adebamboh Adegbenro, Applicant Case #J-94-024

Contact: Carol Fisher, 8505 Cross Park Drive #110, Austin, Texas 78754-4594, (512) 832-0661.

Filed: June 28, 1994, 10.12 a.m

TRD-9443117

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Executive Council of Physical Therapy and Occupational Therapy Examiners

Monday, July 25, 1994, 9:30 a.m.

3001 South Lamar Boulevard, Suite 101

Austin

According to the complete agenda, the Executive Council of Physical Therapy and Occupational Therapy Examiners will call to order; public comment, approval of minutes of April 25, 1994 council meeting, review and approval of proposed legislative appropriations request for fiscal years 1996 and 1997, review and approval of proposed rules for Texas Occupational Therapy Board; review and approval of proposed council rule concerning fees for occupational therapy, discussion and possible action on travel reimbursement of Occupational Therapy Board members for the Occupational Therapy Board and reimbursement for members of the Executive Council, executive director's report Health Professions Council, co-location of boards, other issues relating to Senate Bill 690, budget, presiding officer's report, and adjournment

Contact: Nina Hurter, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704, (512) 443-8202

Filed: June 28, 1994, 3:38 p.m.

TRD-9443139

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Texas Department of Protective and Regulatory Services

Thursday-Friday, July 7-8, 1994, 2:00 p.m. and 9:00 a.m. respectively.

Texas A&M University, Memorial Student Center, Room 201, Joe Routt Boulevard

College Station

According to the agenda summary, the Texas Board of Protective and Regulatory Services will conduct a workshop to hear presentations about agency-related programs in Region Seven The board will convene to hear public testimony on agency-related issues beginning at 5:00 p.m. and concluding at 7:00 p.m. The board will reconvene at 9:00 a.m. on July 8 to address the following agenda items approval of minutes of May 13, 1994, and June 10, 1994, meetings, continuation of public testimony, chair's comments and announcements, comments and announcements from the board, executive director's report, overview of Region Seven, consideration and approval of draft of fiscal year 1996-1997 LAR, consideration and approval of draft revision of §8000 of the CPS

Handbook; ombudsman office report; update on proposed revisions to minimum standards for licensed day-care centers; report on proposed rules to implement a Medicaid psycho-social treatment program for foster children; and consideration and approval of authority to seek financing for capital equipment purchases through the Texas Public Finance Authority and/or Board Review Board.

Contact: Michael Gee, P O. Box 149030, Mail Code E-554, Austin, Texas 78714-9030, (512) 450-3645.

Filed: June 29, 1994, 3:00 p.m.

TRD-9443223

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Public Utility Commission of Texas

Wednesday, July 6, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the agenda summary, the Public Utility Commission of Texas will hold an open meeting in which the commission will consider the following dockets: P-13123, P-11445, 12176, and 12298.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: June 28, 1994, 2.49 p.m.

TRD-9443133

Thursday, July 7, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the agenda summary, the Administrative Committee will hold an administrative meeting to discuss: reports, discussion and action on comments to FCC re: Caller ID, presentation by Association of Texas Electric Cooperatives, General Counsel's regulatory agenda for electric issues, contract to review the South Texas Project, report from Quality Steering Committee, interaction with Legislative Committees and/or Sunset Commission, budget and fiscal matters, adjournment for executive session to consider litigation and personnel matters, reconvene for discussion and decisions on matters considered in executive session, set time and place for next meeting, and final adjournment.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: June 29, 1994, 3:01 p m.

TRD-9443231

Tuesday, July 12, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 11014-application of Pedernales Electric Cooperative, Inc. to amend certificate of convenience and necessity for proposed transmission line within Hays County.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 29, 1:28 p.m.

TRD-9443217

Tuesday, July 12, 1994, 10:00 a.m. (Rescheduled from July 5, 1994)

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will reschedule a joint prehearing conference in Docket Number 13126-inquiry of the General Counsel into the operation and management of the South Texas Nuclear Project; and Docket Number 12065-complaint of Kenneth D. Williams against Houston Lighting and Power Company, and Docket Number 12820-petition of the General Counsel for an inquiry into the reasonableness of the rates and services of Central Power and Light Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 28, 1994, 11:06 a m.

TRD-9443125

Wednesday, July 27, 1994, 10:00 a.m. (Rescheduled from July 13, 1994)

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will reschedule a hearing on the merits in Docket Number 12900 application of Texas-New Mexico Power Company for authority to change rates

Contact: John M Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: June 29, 1994, 9:39 a m

TRD-9443180

Tuesday, August 23, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 13100-application of Texas Utilities Electric Company for authority to implement economic development service, general service competitive pricing, and environmental technology service.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

TRD-9443218

Tuesday, August 30, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 13109-application of Magic Valley Electric Cooperative, Inc. for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757.

Filed: June 30, 1994, 10:14 a.m.

TRD-9443261

Monday, October 17, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 11027-complaint of the City of McKinney against Southwestern Bell Telephone Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 29, 1994, 3.00 p.m.

TRD-9443226

Tuesday, November 1, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 13058-application of Lufkin-Conroe Telephone Exchange, Inc. for authority to recover lost revenues and cost of implementing expanded local calling service.

Contact: John M Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 29, 1994, 11 45 a.m.

TRD-9443209

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Texas Senate

Monday, July 11, 1994, 10:00 a.m.

211 South Cooper, Building A, Room 109

Arlington

According to the agenda summary, the Interim Committee on Domestic Violence will call to order, roll call and opening remarks; adoption of committee rules; address committee charge invited testimony; public testimony; discussion of future meeting dates; other business; and adjourn

Contact: Allen Horne, P.O. Box 12068, Austin, Texas 78711, (512) 463-0112.

Filed: June 28, 1994, 2 49 p m

TRD-9443132

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Texas Department of Transportation

Thursday, June 30, 1994, 9:00 a.m.

200 East Riverside Drive, Room 101

Austin

Emergency Revised Agenda

According to the agenda summary, the Texas Transportation Commission supplemented to the agenda and added to the tollowing items Contracts Default and/or assignment of contracts (all categories) McLennan County-FM 2063-Project STP 94(45)UM-Default of contract awarded to Garey Construction Company, Inc Minute Order 103776 dated May 24, 1994.

Reasons for Emergency. Immediate action is necessary to accomplish construction critical to public safety and welfare.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630

Filed: June 29, 1994, 10 18 p m.

TRD-9443192

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Texas Workers' Compensation Research Center

Wednesday, July 6, 1994, 10:00 a.m.

300 West 15th Street, Committee Room One, William P. Clements, Jr Building

Austin

According to the complete agenda, the Board of Directors will meet to discuss and act on the following items call to order, approval of minutes of meeting of June 4, 1994, public participation, announcements, acceptance of report A Study of Nonsubscription to the Texas Workers' Compensation System The Employee Perspective, recommendation from subcommittee on workplace health and safety, recommendation from subcommittee on medical costs, research progress report, fiscal year 1995-1997 operating budgets and Request for Legislative Appropriations for fiscal year 1996 and 1997; confirmation of August 3, 1994 meeting; and adjournment.

Individuals who may require auxiliary aids or services for this meeting should contact Lavon Guerrero at (512) 469-7811 at least two days prior to the meeting so that appropriate arrangements can be made

Contact: Lavon Guerrero, 105 West Riverside Drive, Suite 100, Austin, Texas 78704, (512) 469-7811.

Filed: June 28, 1994, 4:00 p.m

TRD-9443153

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Texas Council on Workforce and Economic Competitiveness

Thursday, July 7, 1994, 7:00 a.m.

Higher Education Coordinating Board, 7700 Chevy Chase Drive, Building I, Room 1 100

Austin

According to the complete agenda, the Consolidation Task Force will· 7 00 a. m -call to order, announcements, 7:15 a m -review of problem statement and criteria for evaluation of proposals, 8.00 a m.-staff presentations on material requested by the members of the Task Force; 9 00 a.m -Task Force deliberations on issues presented, 9.30 a m -break, 9 45 a m -presentation of proposals; 11 00 a.m -Task Force deliberations on issues and proposals presented; and Noon-adjourn

Notice Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 305-7007 (or Relay Texas (800) 735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Kevin Faulkner, P.O. Box 2241, Austin, Texas 78769, (512) 305-7000

Filed: June 28, 1994, 2 49 p.m.

TRD-9443134

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Regional Meetings

Meetings Filed June 28, 1994

The Bosque County Central Appraisal District Appraisal Review Board will meet at 202 South Highway 6, Meridian, July 8, 1994, at 9.00 a m Information may be obtained from Billye L McGehee, P'O Box 393, Meridian, Texas 76665-0393, (817) 435-2304 TRD-9443145

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Meetings Filed June 29, 1994

The Andrews Center (Emergency Revised Agenda.) Board of Trustees will meet in the Board Room, 2323 West Front Street, Tyler, June 30, 1994, at 3 00 p.m. (Reason for emergency. Consultant was available at this time only) Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75702, (903) 597-1351. TRD-9443254

The Appraisal District of Jones County Appraisal Review Board will meet at the District's office, 1137 East Court Plaza, Anson, July 6, 1994, at 10:30 a.m. Information may be obtained from Susan Holloway, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422 TRD-9443195

The Bell-Milam-Falls Water Supply Corporation Board of Directors will meet at the WSC Office, FM Road 485 West, Cameron, July 5, 1994, at 8 30 a m. Information may be obtained from Dwayne Jebel, P O Drawer 150, Cameron, Texas 76520, (817) 697-4016 TRD-9443158.

The Brazos Valley Development Council Brazos Valley Regional Advisory Committee on Aging will meet at the Council Offices, 1706 East 29th Street, Bryan, July 5, 1994, at 2 30 p m Information may be obtained from Roberta Lindquist, P O Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9443188

The Cass County Appraisal District (Emergency Meeting.) Board of Review met at the Cass County Appraisal District Office, 502 North Main Street, Linden, July 1, 1994, at 9 00 a m (Reason for emergency: Several taxpayers unable to meet at any other time) Information may be obtained from Janelle Clements, P O Box 1150, Linden, Texas 75563, (903) 756-7545 TRD-9443160

The Central Appraisal District of Taylor County Appraisal Review Board will meet at 1534 South Treadaway, Abilene, July 6-8 and July 11-15, 1994, at 1 30 p m Information may be obtained from Richard Petree, P.O Box 1800, Abilene, Texas 79604, (915) 676-9381 TRD-9443162

The Central Texas Area Consortium Bluebonnet Health and Human Services, Inc will meet at the Hallmark Restaurant, Sixth Street at IH-35, Belton, July 8, 1994, at Noon Information may be obtained from Wynonah Wineman, P O Box 937, Belton, Texas 76513, (817) 933-8663. TRD-9443225

The Dallas Central Appraisal District Board of Directors will meet in the Community Room, Second Floor, 2949 North Stemmons Freeway, Dallas, at 7·30 a m Information may be obtained from Rick L. Kuehler, 2949 North Stemmons, Dallas, Texas 75247, (214) 631-0520 TRD-9443249

The Education Service Center, Region XI Board of Directors will meet at 3001 North Freeway, Fort Worth, July 12, 1994, at Noon Information may be obtained from Dr Ray Chancellor, 3001 North Freeway, Fort Worth, Texas 76106, (817) 625-5311 TRD-9443196

The Gray County Appraisal District Appraisal Review Board will meet at 815 North Sumner, Pampa, July 6, 1994, at 9.00 a m Information may be obtained from Sherri Schaible, P O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791 TRD-9443233

The Hale County Appraisal District Appraisal Review Board will meet at 302 West Eighth Street, Plainview, July 6, 1994, at 9 20 a m Information may be obtained from Linda Jaynes, P O Box 329, Plainview, Texas 79072, (806) 293-4226 TRD-9443230

The Henderson County Appraisal District Appraisal Review Board will meet at 1751 Enterprise Street, Athens, July 5, 1994, at 8 30 a m Information may be obtained from Lori Fetterman, 1751 Enterprise, Athens, Texas (903) 675-9296. TRD-9443234

The Johnson County Rural Water Supply Corporation Special Board will meet at the JCRWSC Office, Highway 171 South, Cleburne, July 5, 1994, at 6.00 p.m Information may be obtained from Peggy Johnson, P.O Box 509, Cleburne, Texas 76033, (817) 645-6646 TRD-9443252

The Lamb County Appraisal District Board of Directors will meet at 331 LFD Drive, Littlefield, July 21, 1994, at 6:00 p m. Information may be obtained from Vaughn E McKee, P.O Box 950, Littlefield, Texas 79339-0950, (806) 385-6474. TRD-9443232.

The Swisher County Appraisal District Appraisal Review Board will meet at 130 North Armstrong, Tulia, July 8, 1994, at 8:15 a.m. Information may be obtained from R. L. Powell, P.O. Box 8, Tulia, 79088, (806) 995-4118. TRD-9443194.

The Texas Regional Planning Commissions' Employee Benefit Plan Agency Board of Trustees will meet in the Sycamore Room, Austin North Hilton Hotel, Austin, July 6, 1994, at 3:00 p.m Information may be obtained from Gary Pitner, P.O. Box 9257, Amarillo, Texas 79105, (806) 372-3381. TRD-9443215.

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Meetings Filed June 30, 1994

The Hunt County Appraisal District Hunt County Appraisal Review Board will meet in the Board Room, 4801 King Street, Greenville, July 5, 1994, at 8 30 a.m. Information may be obtained from Shirley Gregory, 4801 King Street, Greenville, Texas 75403, (903) 454-3510. TRD-9443259.

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IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Council on Workforce and Economic Competitiveness

Consulting Services Contract Awards

The following consulting contract awards are filed under the provision of the Government Code, §2254 030

The request for proposal was published in the January 25, 1994, of the *Texas Register* (19 TexReg 549)

The contracts are:

A) Employer Incentives and Technical Assistance

This project will identify ways to encourage and facilitate the participation of employers in providing sites for work-based learning with the input of employers, business and trade associations, labor representatives and educators through focus groups and field studies, and by researching the issues through literature and already existing work based programs.

Decision Information Resources, Inc., 610 Gray Street, Suite 200, Houston, Texas 77002. The total value of the contract is $74,322 The contract starts April 15, 1994, and ends December 8, 1994.

University of Texas at Austin, P O. Box 7726, Austin, Texas 78713. The total value of the contract is $74,322 The contract starts May 1, 1994, and ends December 8, 1994.

B) Liaison System Between Students and Employers.

This project will determine the most effective ways of linking schools and employers to provide school-based and work-base learning for students It will identify successful local partnerships in Texas and, using telephone interviews, targeted surveys, and site visits of local programs, will develop a plan of action for any local area to establish a school-to-work partnership

North Harris Montgomery Community College District, 250 North Sam Houston Parkway East, Houston, Texas 77060 The total value of the contract is $69,050. The contract starts April 15, 1994, and ends November 30, 1994.

C) Skill Standards and Certification

The purpose of this project is to: document existing methods and systems for developing industry/occupational skill standards; determine the most effective process for validating and adopting skill standards developed at the national level and through trade associations and other systems, recommend a quality assurance mechanism for accrediting, monitoring, and evaluating educational and training programs and services to meet the standards, recommend methods and a structure for assessing and certifying students' skill mastery, and develop a plan for providing technical assistance to local partnerships in the development of a skills assessment and certification system

Dallas County Community College District, 701 Elm Street, Dallas, Texas 75202 The total value of the contract is $72,024 The contract starts April 15, 1994, and ends December 8, 1994

D) Marketing/Outreach

This project will research the level of awareness and perceptions of school-to-work of all stakeholders and methods/incentives for them to participate in a school-to-work system

Special Audience Marketing, Inc , 603 West 18th Street, Austin, Texas 78701 The total value of the contract is $69,875 The contract starts April 15, 1994, and ends December 8, 1994.

E) Integrated Case Management

This project will research the support services to assist students' successful integration of school-and work-based learning The project calls for identifying barriers related to participation in school-to-work opportunities, developing a case management system that emphasizes coordination of existing fiscal and personnel resources, designing an instrument that assesses the need for support services, and developing a model handbook for local partnerships which identifies types of referral services needed

EGS Research and Consulting, 6106 Ledge Mountain, Austin, Texas 78731 The total value of the contract is $49,858. The contract starts June 1, 1994, and ends December 8, 1994

F) Pilot Project Work-Based Training in Machining with Linkages to Tech Prep and Youth Apprenticeship.

This project will develop a work-based training model for youth in manufacturing technology The project will develop a manufacturing technology curriculum and place students in mobile manufacturing technology laboratories under the direction of work site mentors The project is designed to provide one option for work-based learning in rural areas, and in particular, to provide machining training for the growing manufacturing industry in Texas Rio Grande Valley.

Tech Prep of the Rio Grande Valley, Inc , 2424 Boxwood, Harlingen, Texas 78550 The total value of the contract is $76,594 The contract starts June 1, 1994, and ends December 8, 1994

Issued in Austin, Texas, on June 28, 1994

TRD-9443172 Joe H Thrash
General Counsel
Texas Council on Workforce and Economic Competitiveness

Filed June 29, 1994

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Texas Employment Commission

Public Announcement

The Texas Employment Commission (TEC), in partnership with the Texas Council on Workforce and Economic Competitiveness (TCWEC) and the Texas Department of Commerce (TDOC), announces its intent to issue a Request for Information, Qualifications and Proposals (RFIQP) The purpose of this RFIQP is to select a slate of qualified educational specialists to initiate, plan and facilitate the Workplace Scholar program in selected businesses in several areas of Texas Interested parties should contact TEC in writing to request a copy of the RFIQP at the following address Texas Employment Commission, TEC Building, Austin, Texas 78778-0001, JSO Department Room 440T, Attention Don Snow RFIQT

RFIQPs may be requested via Fax at (512) 463-9994 FAX requests should be addressed to the attention of Don Snow RFIQP No telephone inquiries or requests for the RFIQP will be accepted A mandatory bidder's conference will be held on July 15, 1994, at the following address Texas Employment Commission, 1117 Trinity, Austin, Texas 78701, Room 304T

In order to be eligible for consideration, potential bidders must be in attendance at this bidder's conference Potential bidders should take note that parking is limited and plan accordingly Additional copies of this RFIQP will be available at this bidder's conference

Issued in Austin, Texas on June 27, 1994

TRD 9443093 C Ed Davis
Deputy Administrator for Legal Affairs
Texas Employment Commission

Filed June 27, 1994

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 94-20, Amendment Number 449

The amendment utilizes the national preprint from Program Memorandum 94-5 that addresses coverage of nurse-midwife services, in accordance with §13605 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) The amendment is effective June 1, 1994

If additional information is needed, please contact Kay Sterling, Texas Department of Health at (512) 338-6511

Issued in Austin, Texas, on June 23, 1994

TRD-9443064 Tim Graves
Deputy Commissioner
Texas Health and Human Services Commission

Filed: June 27, 1994

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Texas Department of Insurance

Company Licenses

The following applications have been filed with the Texas Department of Insurance and are under consideration

1. Application for name change in Texas for National Pension Life Insurance Company, a foreign life, accident and health company. The proposed new name is American Partners Life Insurance Company The home office is in Minneapolis, Minnesota.

2 Application for name change in Texas for Seguros La Republica Credimex, S A , a foreign Mexican casualty company. The proposed new name is Aseguradora Interacciones, S.A Grupo Financiero Interacciones The home office is in Mexico City, Mexico

3 Application for admission in the State of Texas for Excess Share Insurance Corporation, a foreign property and casualty company The home office is in Dublin, Ohio

4 Application for name change in Texas for The Urbaine Life Reinsurance Company, a foreign life, accident and health company The proposed new name is First ING Life Insurance Company of New York The home office is in New York, New York

5 Application for admission in the State of Texas for The First Reinsurance Company of Hartford, a foreign property and casualty company The home office is in Avon, Connecticut

6 Application for admission in the State of Texas for North West Life Assurance Company of America, a foreign life, accident and health company The home office is in Edmonds, Washington

7 Application for name change in Texas for Seguros La Provincial, S A., a foreign Mexican casualty company The proposed new name is Grupo Nacional Provincial, S.A The home office is in Churubusco, D F Mexico

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701

Issued in Austin, Texas, on June 27, 1994

TRD-9443198 D J Powers
Legal Counsel to the Commissioner
Texas Department of Insurance

Filed June 29, 1994

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration

1. Application for incorporation in Texas for Theresa Ruth Sanderson (doing business under the assumed name of WN Claim Service), a domestic third party administrator. The home office is in El Paso, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 105-6A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on June 27, 1994

TRD-9443199 D J Powers
Legal Counsel to the Commissioner
Texas Department of Insurance

Filed June 29, 1994

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The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration

1 Application for incorporation in Texas for The Alliance Flexible Benefits Group, Inc , a domestic third party administrator. The home office is in Austin, Texas.

2 Application for incorporation in Texas for Specialized Association Services, Ltd , a domestic third party administrator. The home office is in Hurst, Texas

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M Waits, MC 105-6A, 333 Guadalupe, Austin, Texas 78714-9104

Issued in Austin, Texas, on June 27, 1994

TRD-9443197 D J Powers
Legal Counsel to the Commissioner
Texas Department of Insurance

Filed. June 29, 1994

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Texas Juvenile Probation Commission

Request for Proposal

Pursuant to Texas Civil Statutes, Article 664-4, the Texas Juvenile Probation Commission invites proposals to provide internal auditing services described as follows

Description of Work The selected accounting firm will perform internal auditing meeting the requirements of the Texas Internal Auditing Act. The internal auditor shall report directly to the Texas Juvenile Probation Commission's board, prepare audit reports for review by the Texas Juvenile Probation Commission's executive director and board and be free of any operational or management responsibilities

Person to be Contacted Detailed specifications are contained in request for proposal available June 28, 1994 from the Fiscal Services office, First Floor, 2015 South IH-35, Austin, Texas between the hours of 8 00 a m and 5 00 p m , Monday-Friday. For additional information, contact Herb Hays, Financial Officer, (512) 443-2001

Closing Date Responses will be accepted only if actually received in writing in the Fiscal Services office no later than 5 00 p m , July 20, 1994 Proposals should be submitted with an original and three copies Fax submissions will not be accepted The Texas Juvenile Probation Commission reserves the right to reject any or all proposals Procedures for Selection. The Texas Juvenile Probation Commission will consider the approach to providing the required service, knowledge of governmental agencies and experience in providing internal auditing services, reasonableness of fee and work-hour estimate, and other factors such as financial stability of firm The Texas Juvenile Probation Commission has the sole discretion and reserves the right to cancel the request for proposals if it is considered in the best interest of the agency to do so

Issued in Austin, Texas, on June 28, 1994

TRD-9443138 Bernard Licarione, Ph D
Executive Director
Texas Juvenile Probation Commission

Filed June 28, 1994

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Texas Natural Resource Conservation Commission

Notice of Opportunity to Comment on Administrative Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AO's) pursuant to §382.096 of the Texas Clean Air Act, Health and Safety Code Chapter 382. The Act, §382 096, requires that the TNRCC may not approve these AO's unless the public has been provided an opportunity to submit written comments Section 382 096 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the thirtieth day before the date on which the public comment period closes, which in this case is August 3, 1994 Section 382.096 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment indicates the proposed AO is inappropriate, improper, inadequate or inconsistent with the requirements of the Texas Clear, Air Act Additional notice is not required if changes to an AO are made in response to written comments

A copy of each of the proposed AO's is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, Third Floor, Austin, Texas 78753, (512) 239-0600 and at the applicable Regional Office listed as follows Written comments about these AO's should be sent to the Staff Attorney designated for each AO at the TNRCC's Central Office at P O Box 13087, Austin, Texas 78711-3087, and must be received by 5 00 p m. on August 3, 1994 Written comments may also be sent by facsimile machine to the Staff Attorney at (512) 239-0606 or (512) 239-0626 The TNRCC Staff Attorneys are available to discuss the AO's and/or the comment procedure at the listed phone numbers, however, §382.096 provides that comments on the AO's should be submitted to the TNRCC in writing

(1) Company Aluminum Company of America, Location Rockdale, Milam County, Type of Facility aluminum smelting plant, Rule Violated TNRCC Rule 30 TAC §116 116 and §382 085(b) of the Texas Clean Air Act (the Act), and Agreed Board Order Number 89-02(a) by exceeding sulfur dioxide emission rates represented in the application for TNRCC Number Permit Number R-4476, TNRCC Rule 30 TAC §116 115 by exceeding sulfur dioxide emission limits of TNRCC Permit Number R-

7559, Penalty $10,000, Staff Attorney Janis Boyd Hudson, (512) 239-0466, Regional Office 500 Lake Air Drive, Suite One, Waco, Texas 76710-5887, (817) 772-9240

(2) Company: Anderson Manufacturing Company, Location: Tenaha, Shelby County, Type of Facility: lumber mill, Rule Violated: TNRCC Rule 30 TAC §116. 110(a), unauthorized construction of a wood-fired boiler, Penalty: $0 00, Staff Attorney: Rachael Rawlins, (512) 239-0673, Regional Office 3870 Eastex Freeway, Suite 110, Beaumont Texas 77703-1830, (409) 898-3838

(3)Company Ron Carter, Inc , doing business as Mainland Chevy, Olds, Toyota, Location Texas City, Galveston County, Type of Facility motor vehicle sales operation, Rule Violated TNRCC Rule 30 TAC §114 1(c)(1), offering for sale motor vehicles with missing or tampered emission control equipment, Penalty $1,500, Staff Attorney Randall D Terrell, (512) 239-0577, Regional Office 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900

(4) Company Clark-Tech Environmental Systems, Inc , Location Houston, Harris County, Type of Facility renovation took place at an educational facility, Rule Violated: TNRCC RULE 30 TAC §101 20(2) (the asbestos NESHAP), failing to provide written notification of renovation at least ten days prior to the commencement of renovation activity, Penalty $1,000, Staff Attorney Rachael Rawlins, (512) 239-0673, Regional Office 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900

(5) Company The City of Cleburne Resource Recovery Center, Location Cleburne, Johnson County, Type of Facility municipal incinerator facility, Rule Violated: TNRCC Rule 30 TAC §116 115, by exceeding the maximum allowable emission rates of Permit C-9521 for Nitrogen Oxides (NO_x), Sulfur Dioxide (SO_2) and Hydrogen Chloride (HCL), and TNRCC Rule 30 T A.C §111 121(2), by emitting HCL in amounts greater than 1 8 kilograms without the required control device, Penalty $0 00, Staff Attorney Peter T Gregg, (512) 239-0450, Regional Office 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531

(6) Company Dahlstrom Corporation, Location Oglesby, Coryell County, Type of Facility rock crusher, Rule Violated INRCC Rule 30 TAC §116 115, by failing to have operable spraybars installed as required by TNRCC permit R-17410, and failing to have a copy of the permit on site, TNRCC Rule 30 TAC §101 10 by failing to submit the required emissions inventory to the TNRCC, Penalty $5,000, Staff Attorney Walter Ehresman, (512) 239-0573, Regional Office 500 Lake Air Drive, Suite One, Waco, Texas 76710-5887, (817) 772-9240

(7) Company Earl Taylor and David Fincher, formerly doing business as Auto Brokers, Location Lewisville, Denton County, Type of Facility motor vehicle sales operation, Rule Violated TNRCC Rule 30 TAC §114 1(c) by offering for sale in the State of Texas a motor vehicle which was not equipped with operable emission control systems or devices with which the motor vehicle was originally equipped, Penalty $500, Staff Attorney Janis Boyd Hudson, (512) 239-0466, Regional Office 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531

(8) Company GATX Terminals Corporation, Location Galena Park, Harris County, Type of Facility a storage terminal Rule Violated TNRCC Rule 30 TAC §101 20(2) and §382.085(b) of the Act by violating Federal NESHAP regulations: by failing to conduct required annual visual seal inspections of two tanks within 12 months of the previous test; the company loaded a marine vessel with benzene without the necessary vapor tightness; certification; failing to test, immediately prior to flare performance tests on three occasions, all potential sources of vapor leakage in the marine vapor collection system; failing to properly pressurize five barges as required; and conducting required marine flare performance tests with products other than benzene. TNRCC Rule 30 TAC §115.112(a)(2)(A), by failing to equip 23 storage tank floating roofs as required TNRCC Rule 30 TAC §115.112(a)(1) by failing to equip two fixed roof storage tanks as required TNRCC Rule 30 TAC §115. 132(a) by failing to keep a VOC\water separator vapor-tight. TNRCC Rule 30 TAC §115 216(a)(2)(A) by failing to monitor the exhaust gas temperature downstream of the incinerator. TNRCC Rule 30 TAC §116 115 by failing to monitor valves and pumps for fugitive emissions on two tanks since 1991, as required by TNRCC Permit, Penalty: $96,000, Staff Attorney: Walter Ehresman, (512) 239-0576, Regional Office: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(9) Company. Charles Lang Motors, Location: Houston, Harris County, Type of Facility. used vehicle sales operation, Rule Violated: TNRCC Rule 30 TAC §114 1(c)(1), offering for sale a motor vehicle which was not equipped with the emission control systems or devices with which the motor vehicle was originally equipped, Penalty: $0.00, Staff Attorney: Janis Boyd Hudson, (512) 239-0466, Regional Office 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900

(10) Company: Phillips Petroleum Company, Location: Sweeny, Brazoria County, Type of Facility: petroleum refinery, Rule Violated: §382.085(b) of the Act, Texas Air Control Board Order Number 91-02(q), and TNRCC Rule 30 TAC §115. 112(a), by failing to equip a tank storing VOCs with a true vapor pressure greater than 1.5 psia with the required controls, TNRCC Rule 30 TAC §115. 112(a)(2)(A) by failing to equip 16 storage tank floating roofs as required; TNRCC Rule §115 132(a) by failing to keep the API trap system vapor-tight; TNRCC Rule 30 TAC §115 212(a)(1) by failing to control VOC emissions associated with the loading of G.M.R. and "J" Reference gasolines and the unloading of methanol; TNRCC Rule 30 TAC §101.20(1) and federal NSPS regulations by: failing to conduct calibration precision tests on organic vapor analyzers during three quarters of 1991; failing to conduct performance tests on the Ethylene Unit 33 flare; failing to conduct required performance tests on the combuster; and failing to equip a four inch valve on the Ethylene Unit 33 with a cap, blind flange, or second valve TNRCC Rule 30 TAC §101 20(2) and federal NESHAP regulations by: failing to monitor valves on benzene pipeline at proper frequency, failing to repair a valve prior to the end of the next process unit shutdown failing to equip a Unit 22 sample point with a control system or purge line back to the process, and failing to equip four open-ended one inch valves with a cap, blind flange or second valve, Penalty: $96,500, Staff Attorney Walter Ehresman, (512) 239-0573, Regional Office: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(11) Company Republic Industries, Inc , Location: Marshall, Harrison County, Type of Facility Cabinet manufacturing plant, Rule Violated: Texas Air Control Board Agreed Order (AO) 91-03(v) and Texas Health and Safety

Code §382.085(b) (Vernon 1994 Supplement), company failed to submit a completed permit application for the plant's coating booths within 180 days of the entry of the AO, Penalty: $32,500, Staff Attorney: Randall D. Terrell, (512) 239-0577, Regional Office: 1304 South Vine Avenue, Tyler, Texas 75701, (903) 595-2639.

(12) Company: Synthetic Products Company, Location: Fort Worth, Tarrant County, Type of Facility: fatty acid amines manufacturing plant, Rule Violated: TNRCC Rule 30 TAC §116.110(a) unauthorized operation of a 12,000 gallon ammonia storage tank, Penalty: $750, Staff Attorney: Janis Boyd Hudson, (512) 239-0466, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(13) Company: Tarrant County Hospital District, Location: Fort Worth, Tarrant County, Type of Facility: County Hospital, Rule Violated: TNRCC Rule 30 TAC §116.115 and §111.123(3)(A), failing to maintain the secondary chamber at a temperature of 1,800 degrees fahrenheit or higher, Penalty: $0.00, Staff Attorney: Rachael Rawlins, (512) 239-0673, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(14) Company: Volcano Pallets, Location: El Paso, El Paso County, Type of Facility: a pallet manufacturing plant, Rule Violated: TNRCC Rule 30 TAC §111.101 by burning wooden crates and pallets without prior written consent of the Executive Director, Penalty: $500, Staff Attorney: Janis Boyd Hudson, (512) 239-0466, Regional Office: 1200 Golden Key Circle, Suite 369, El Paso, Texas 79925, (915) 591-8128.

(15) Company. Woody's Auto Sales, Location: Houston, Harris County, Type of Facility: used car lot, Rule Violated: TNRCC Rule 30 TAC §114.1(c)(1), by offering for sale a motor vehicle which was not equipped with the emissions control devices that were originally a part of the motor vehicle or motor vehicle engine, or an alternate control system or device as designated by rule, Penalty: $500, Staff Attorney: Walter Ehresman, (512) 239-0573, Regional Office: 4150 Westheimer, Houston, Texas 77017-4417, (713) 625-7900.

(16) Company: Wrangler Boats, Location: Copper Canyon, Denton County, Type of Facility: fiberglass and painting operation, Rule Violated: TNRCC Rule 30 TAC §116.110, unauthorized operation of a fiberglass and paint spraying operation, Penalty: $0.00, Staff Attorney: Janis Boyd Hudson, (512) 239-0466, Regional Office. 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

Issued in Austin, Texas, on June 29, 1994.

TRD-9443173 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Filed: June 29, 1994

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Public Hearing Notice

The Texas Natural Resource Conservation Commission will conduct a public hearing beginning at 4:00 p.m., August 23, 1994, City of Abilene, City Hall-Second Floor, City Council Chambers, 555 Walnut Street, Abilene, Texas.

This hearing is scheduled to receive testimony concerning the waste load evaluation report for Dissolved Oxygen in the Clear Fork Brazos River in the Brazos River Basin (Segment 1232). The public hearing shall be conducted in accordance with the Texas Water Code, §26.011 and §26.037.

The primary purpose of a waste load evaluation is to define treatment levels for wastewater dischargers to a segment and specify other program actions that need to be taken in order to attain and maintain the water quality standards, describe nonpoint source pollution from tributaries to a segment, and identify treatment level alternatives using receiving stream water quality simulations. A section containing recommended treatment levels and other proposed recommended actions is also included.

The public is encouraged to attend the hearing and to present relevant evidence or opinions concerning the waste load evaluation. Written testimony which is submitted prior to or during the public hearing will be included in the record. The Commission would appreciate receiving a copy of all written testimony at least five days before the hearing Copies of written testimony and questions concerning the public hearing should be addressed to Mike Reynolds, TNRCC, Watershed Management Division, P.O. Box 13087, Austin, Texas 78711, or call (512) 463-8470

A limited number of copies of the draft waste load evaluation are available for review in the TNRCC Library, Park 35 Complex, Building A, Room 102, 120100 Park 35 Circle in Austin. A copy of the report may be obtained upon written request from Mike Reynolds at the above post office box address. There are no charges for the prehearing draft copies of the waste load evaluation; however, a fee will be charged for the finalized post-hearing copies.

The date selected for this hearing is intended to comply with deadlines set by statute and regulation. Any publication or receipt of this notice less than 45 calendar days prior to the hearing date is due to the necessity of scheduling the hearing on the date selected.

Issued in Austin, Texas, on June 29, 1994.

TRD-9443186 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed. June 29, 1994

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Texas State Occupational Information Coordinating Committee

Notice of Invitations for Proposals for Employer Follow-Up Survey

The Texas State Occupational Information Coordinating Committee (TSOICC) invites proposals for conducting a survey and analyzing data gathered therefrom commencing July 15, 1994, and ending June 30, 1995.

Anyone wishing to submit a proposal should contact the following for additional information: Richard Froechle, Executive Director, TSOICC, Travis Building, Suite 205, 3520 Executive Center Drive, Austin, Texas 78731, (512) 502-3750 or Marc Anderberg, Project Director, TSOICC, Travis Building, Suite 205, 3520 Executive Center Drive, Austin, Texas 78731, (512) 502-3754.

All proposals must be received at the TSOICC offices in Room 205 of the Travis Building at 3520 Executive Center Drive, Austin, Texas no later than the close of business at 5:00 p.m. on July 14, 1994.

Award of contract will be made based on the analysis of competitive bids. A copy of the proposal evaluation instruments is available from either Mr. Froeschle or Mr. Anderberg at the referenced address. Within ten days after contracting, TSOICC will file with the *Texas Register* a notice of award of contract.

Based on prior experience and expertise, it is our intent to award this contract to Jim Reed's Student Information Systems of Corsicana, Texas, unless another organization can demonstrate superior knowledge and expertise in the field of community college student follow-up.

Issued in Austin, Texas, on June 27, 1994.

TRD-9443097 Marc Anderberg
Planner III
Texas State Occupational Information Coordinating Committee

Filed: June 27, 1994

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Public Utility Commission of Texas

Notices of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23 27 for approval of customer-specific PLEXAR-Custom Service for the General Services Administration, Dallas, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of a New Plexar-Custom Service for the General Services Administration pursuant to Public Utility Commission Substantive Rule 23 27. Docket Number 153.

The Application. Southwestern Bell Telephone Company is requesting approval of a New Plexar-Custom Service for the General Services Administration. The geographic service market for this specific service is the Dallas, Texas area

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on June 28, 1994.

TRD-9443146 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed. June 28, 1994

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for the Texas Natural Resource Conservation Commission, Austin, Texas.

Docket Title and Number Application of Southwestern Bell Telephone Company for Approval of an Optional Feature Addition to the Existing Plexar-Custom Service for the Texas Natural Resource Conservation Commission pursuant to Public Utility Commission Substantive Rule 23.27 Docket Number 154.

The Application. Southwestern Bell Telephone Company is requesting approval of an Optional Feature Addition to the existing Plexar-Custom Service for Texas Natural Resource Conservation Commission. The geographic service market for this specific service is the Austin, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on June 28, 1994

TRD-9443147 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: June 28, 1994

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a customer-specific contract to provide CentraNet service to the City of San Angelo

Tariff Title and Number. Application of GTE Southwest Incorporated for Approval to provide CentraNet Service to the City of San Angelo pursuant to Public Utility Commission Substantive Rule 23 27 Tariff Control Number 158

The Application GTE Southwest Incorporated is requesting approval to provide 600 CentraNet lines to City of San Angelo at its San Angelo business address. The geographic service market for these services is within its San Angelo exchange to the business operations of the City of San Angelo.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on June 28, 1994.

TRD-9443148 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed. June 28, 1994

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THE COASTAL COORIDINATION COUNCIL

NOTE: From its outset, the Texas Coastal Management Program has responded to the real concerns of Texans: controlling erosion, protecting coastal natural resources and balancing environmental protection with economic development, among others. In order to consult with Texans once again before voting to adopt the Plan, the Coastal Coordination Council (council) voted at its June 28, 1994 meeting to extend the time for public review of the Texas Coastal Management Program (CMP) by 60 days, until September 6, 1994.

The council proposed the Coastal Management Program as rules on March 18, 1994, at 19 TexReg 1902. The council held seven public hearings, six of them in population centers along the entire length of the Texas coast. The period for public comment originally expired May 2, 1994. Including both public testimony at hearings and written comments, over 200 commenters offered over 1,000 comments on virtually every portion of the CMP.

In response to these comments, received from representatives of many commercial, industrial, agricultural, professional, governmental, conservation, environmental and civic groups having interests in the Texas coast, council staff has modified many parts of the CMP. In addition to comments about the substance of the CMP, the council received numerous requests for additional review time. Some commenters also wished to review, before the council finally adopts the CMP as rules, revisions to the proposed rules that had been discussed in the seven public hearings.

Ordinarily, members of the public who may be affected by a proposed rule, or have an interest in the rule, have little opportunity to review and comment on proposed staff revisions to a proposed rule before it becomes final. But the council has consistently valued and incorporated public participation in developing the CMP. Rather than satisfying only the minimum requirement for public notice and comment required by state law, the council on June 28 voted to provide the additional step to ensure the widest possible opportunity for meaningful public review and comment before it takes final action on the proposed rules.

Accordingly, this document contains (1) a summary of all public comments the council has received on the CMP, (2) the council's responses to those comments, and the current version of the proposed CMP rules which includes the draft revisions under consideration.

Written comments may be submitted to Ms. Connie Kaderka, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas 78701 1495. FAX: (512) 463-6311. In order to be considered, comments must be received by Ms. Kaderka by 12:00 noon Central Daylight Time on September 6, 1994.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XVI. Coastal Coordination Council

Chapter 501. Coastal Management Program

The Coastal Coordination Council (council) extends the comment period for proposed Chapter 501, concerning the Coastal Management Program (CMP) general provisions and goals and policies. Chapter 501 is republished with changes to the proposed text as published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1895). This chapter is proposed pursuant to the authority provided in the Texas Natural Resources Code, Chapter 33, Subchapter C and Texas Natural Resources Code, Chapter 33, Subchapter F (Coastal Coordination Act), which require the General Land Office (GLO) to develop the CMP and the council to promulgate CMP goals and policies.

General comments were received regarding the "CMP document," which was the subject of the "Notice of Availability" in the March 18, 1994, edition of the Texas Register The CMP document contains descriptions of the enforceable and non-enforceable portions of the CMP. The enforceable portions of the CMP are Chapters 501, 504, 505, and 506 published in the "Proposed Sections" section of the March 18, 1994, edition of the *Texas Register* Chapters 501, 504, 505, and 506 respectively contain the CMP goals and policies, special area management planning, council procedures for state and local consistency with CMP goals and policies, and council procedures for federal consistency with the CMP goals and policies The CMP document is prepared pursuant to federal requirements for approval under the Coastal Zone Management Act (CZMA), 16 United States Code Annotated, §1455(d) While portions of the CMP document describe the provisions of Chapters 501, 504, 505, and 506, the chapters, not the CMP document, are the council's enforceable policies, the chapter preambles, not the Document, may be used to determine the intent of the chapters Based on comments received, the CMP document was reviewed and revised to ensure consistency and resolve any perceived inconsistencies within the chapters To the extent that any conflicts are perceived when reviewing the CMP document and the chapters, or while implementing the chapters, the chapters prevail

Editorial changes that do not alter the content of this chapter have been made to clarify meaning and to correct grammatical errors In order to save space, similar comments and responses have been combined by section. General comments on the proposed chapter and comments on the preamble to the proposed subchapter are combined at the end of the summary of the comments

Section 501 1

Three commenters asked that §501 1(b)(1) be revised to comport with Texas Natural Resources Code, §33 204, by clarifying that the council will *study and* review the principal coastal problems of state concern. Based on this comment, the subsection has been clarified

One commenter expressed concern that although the council meets only four times a year, and receives no compensation, there may be an increased cost to the Texas tax-

payer The commenter stated that implementation of the portion of the program described in §501.1(b)(1)-(3) would increase state budgets as the council does not have the funding to perform these comprehensive duties The subsections cited involve coordination of regulatory efforts of the agencies with jurisdiction over actions which may adversely affect CNRAs. (Such agencies are identified in §501 14; the actions are identified in §§505.11(a), 505.60 and 506 12) The council is composed of representatives of existing agencies (as well as a local government elected official and a coastal citizen) who will use their agencies' existing budgets and resources to exercise their existing authority to implement the CMP, with no increased cost to the citizens of the state of Texas In addition, pursuant to Texas Natural Resources Code, §33.204(d), council members may receive reimbursement from GLO funds for actual and necessary expenses No change was made based on this comment

Regarding §501 1(b)(2), one commenter requested that the phrase "coordinate the performance" be rephrased, as the commenter thought it was ambiguous The phrase "coordinate the performance" is based on Texas Natural Resources Code, §33 202(a)(1), and is included to ensure that the CMP will coordinate the way in which agencies manage the activities which adversely effect CNRAs The CMP will require agencies and applicants to comply with the CMP policies when authorizing or undertaking activities No change was made based on this comment

One commenter wrote that it would be helpful if the assistance referred to in §501 1(c) were financial Section 501 1(c) provides, in part, that the council "may on occasion require or receive assistance from additional agencies or subdivisions that have authority over or expertise relevant to a particular coastal problem that is before the council " The assistance referred to in §501 1(c) is legal and technical, as opposed to financial No change was made based on this comment, however, for purposes of clarification, the word "require" has been replaced with "request "

Concerning §501 1(d), one commenter questioned how the CMP will "help local governments improve their ability and develop additional capacity to manage coastal natural resource areas and human activities affecting those resources," particularly when the council's role (with respect to local governments) is supposed to be limited to Federal Emergency Management Agency (FEMA) requirements and dune permitting As provided in §505 60, the only local government actions subject to the CMP are dune protection permits, and beachfront construction certificates The council is comprised of representatives of state agencies, local governments and citizens Included in the council's responsibilities are coordination of management of Texas' CNRAs, preparation of a biennial report to the legislature outlining the status of coastal problems, issues and programs, and aid in the development of responsible and achievable solutions The council will work closely with local governments to improve management of the coast, and provide a broader forum for local input into the actions taken and authorized by state and federal agencies In addition, local governments will also be eligible for federal funds after federal approval of the CMP. No change was made based on this comment.

One commenter recommended adding language to Chapter 501 outlining the ability of the council to develop special area management plans (SAMPs) as described in Chapter 504 and §501 1(e). Strictly speaking, the council will not be "developing" SAMPs; that function is left to the "SAMP committee," as defined in §504 5(b) Chapter 504 provides the entire process for the development and implementation of a SAMP Because the SAMP provisions are adopted simultaneously with this chapter, and are contained in full in this part, no change was made based on this comment

Section 501 2

One commenter was concerned that §501 2 might be interpreted to mean that economic values of the coast outweigh all others, and that ecological values should be given more emphasis and priority Section 501 2 describes activities occurring in the coastal area and the positive and negative impacts of these activities to the environmental and economic quality of the coast The economic vitality of the coastal area is dependent upon the quality and availability of the coastal natural resources, and neither is treated as superior The CMP is designed to ensure that agencies and subdivisions make consistent decisions which are both economically and environmentally sound No change was made based on this comment

One commenter stated that any attempt by the council to include findings in the CMP, such as those in §501 2(a)-(d), would be under-inclusive, and the findings should be deleted since federal law does not require the council to make findings The commenter noted, however, that federal submission requirements (contained in the Code of Federal Regulations, Title 15, §923 11) include a list of uses, and that the list of actions in §§505 11, 505 60 and 506 12, would meet the requirement The findings are included in response to public comment requesting a factual basis for the CMP, and the findings are not intended to replace the required list of uses The findings constitute broad descriptions of the value of and the activities occurring within the coastal area, and the benefits and adverse effects resulting from those activities No change was made to this section based on this comment

One commenter requested that the term "ecological" be added to §501 2(a). The term "biological," not "ecological," appears in the section, however, because "biology" generally refers to the science of living organisms and "ecology" generally refers to the interrelationships of organisms and their environment, the change suggested by this commenter was adopted

Three commenters requested that oil and gas production, refining and marketing be specifically referenced in §501 2(a) as a significant economic resource of the Texas coast Oil and gas production, refining and marketing are included under "minerals" in §501 2(a) A discussion of the specific economic characteristics of the coast is provided in §501.2(c)(1), and minerals, oil and gas are included. Based on this comment, §501.2(c)(1) has been amended.

Pertaining to §501.2(a), a commenter stated that the statutory significance of "public beaches" should not be extended to "gulf beaches." The definition of "gulf beaches," as provided in §501.3(b)(9), now §501.3(b)(8) , excludes beaches which are not "public beaches," as defined in Texas Natural Resources Code, §61.013(c). Therefore, the statutory significance of "public beaches" has not been extended to "gulf beaches." No change was made based on this comment.

Regarding §501.2(b), one commenter stated that "operating federal facilities and conducting training exercises in support of National Defense" should be added. The change suggested in this comment was not adopted, as §501.2(b) already includes several types of "facilities," "other development, " and "public purpose development." As proposed, §501.2(b) includes federal facilities and training exercises; therefore no change was made based on this comment

Concerning §501.2(b), one commenter questioned why private conservation and preservation efforts are not included in the discussion of uses of the coast. Although use of the coast for preservation and conservation is a concern of many citizens and the council, §501.2(b) is primarily focused on those uses which may adversely affect CNRAs because that is the basis of the council's jurisdiction, pursuant to the Texas Natural Resources Code, §33 205(a) Because conservation and preservation efforts generally do not cause adverse effects, no change was made to this subsection.

One commenter stated that §501 2(b)(1) refers to residential development as one use of the coast without clarifying that much of the residential development is for second homes that do not have the kind of importance that essential, first-home shelters would. The reference to residential development in §501 2(b)(1) does not rank the importance or essentiality of types of the listed "uses" of the coastal area. No change was made based on this comment.

One commenter requested that §501.2(c) be deleted because there are many public benefits associated with oil and gas exploration and production not mentioned in §501 2(c)(1). Based on this comment §501.2(c)(1) was changed to better reflect the public benefits derived from oil and gas exploration and production, as well as mineral extraction.

One commenter requested that §501.2(c)(1) be amended to clarify that the state holds the publicly-owned coastal resources in trust for the public for a variety of purposes, not just as a means of funding public education Based on this comment, the subsection was modified to reflect the change requested by the commenter

Two commenters stated that §501.2 is generally an improvement over earlier informal drafts of the findings as the result of adding the word "may" at the beginning of each finding of adverse effects; however, the

commenters recommended that §501.2(d)(1)-(8) be deleted due to their breadth and failure to be based upon "good science." In the alternative, the commenters requested that the general language of §501.2(d) be amended by clarifying that the adverse effects "may" include those listed. The council has determined that the activities listed in §501.2(d)(1)-(8) "may" cause adverse effects. However, only a few of the identified activities and their associated impacts will be fully subject to the CMP after the application of the other procedural and substantive limitations in the CMP. For example, to be fully subject to the CMP, an action must be listed on the exclusive list of actions (§§505.60, 505.11, 506.12), related to an activity covered by a CMP policy (§501 14), taken or authorized by a listed agency (§§505 60, 505.11, 506 12), sited within the CMP boundary, and determined to adversely affect a CNRA (§501.2(a)). Texas Natural Resources Code, §33.205, requires that ". . all actions taken or authorized by state agencies or subdivisions that *may* (emphasis added) adversely affect coastal natural resource areas... must comply with the CMP goals and policies." To provide certainty and notice to the regulated community, the council has provided findings of the types of activities, and related impacts, that are within the CMP The word "may" was not added to the general language of §501.2(d) because each finding of adverse effects in the subsection is qualified by "may," indicating the list is illustrative, and its addition would be redundant No change was made based on these comments

One commenter recommended that §501 2(d)(2) be revised to include immobile vessels, barges or houseboats because they have the same deleterious effects on the CNRAs as structures on pilings, which are included in §501 2(d)(2). No change was made based on this comment because §501.2(d)(2) addresses "structures," and an immobile vessel may or may not legally be a "structure "

One commenter requested that §501.2(d)(8) be revised to emphasize "means or methods of access" as a cause of adverse effects associated with hunting and fishing. Section 501.2(d)(8) pertains to any activity relating to hunting, fishing, or taking of wildlife that may affect CNRAs, including methods of access to CNRAs Based on this comment, the subsection has been amended

One commenter requested that §501.2(e) be amended to describe the economic liabilities of coastal development. As examples, the commenter stated that the subsection could include National Flood Insurance Program subsidies and disaster relief costs that are borne by taxpayers to underwrite coastal development, and the great cost of providing maintenance dredging and navigation support for the Gulf Intracoastal Waterway, a large portion of which is not self-sustaining and is federally subsidized Section 501 2(a)-(d) describe the uses of and the activities occurring within the coastal area, and the potential adverse effects which may result from those uses and activities Section 501.2(e) provides that these uses and activities require "special management " The commenter's suggested change is not consistent with the intent of §501 2(e), therefore, no change was made based on this comment.

Section 501 3

Three commenters asked that a definition of the term "actions" be provided in §501.3 No change was made based on this comment, as "actions" are specifically and exclusively listed and defined in §§505 11, 505 60, and 506. 12, and the suggested definition would be redundant.

One commenter requested that a definition of "activity" be included in §501 3 The only activities addressed in the CMP are those identified in §501 14, therefore, no change was made based on this comment

A commenter requested addition of a definition of "local government" to §501 3 to clarify scope of council oversight of actions by port authorities This request was not granted, as the Texas Natural Resources Code, §33 205(a) , requires that certain actions by state agencies and political subdivisions comply with the CMP goals and policies. Texas Natural Resources Code, §33. 203(3), defines "agency" or "subdivision" broadly, and includes local governments It is true that the port authorities and navigation districts created under Texas Constitution, Article III, §52, or Texas Constitution, Article XVI, §59, are quasi-governmental political subdivisions that perform duties similar in nature to the duties of a state agency. However, in the CMP, port authorities are not "local governments," because §505 60 is the only section related to "local governments," and only pertains to the counties and municipalities that administer dune protection and beach access plans pursuant to Texas Natural Resources Code, Chapter 61 and Chapter 63 Therefore, port authorities are considered "political subdivisions," but they are not "local governments " No change was made to §501 3 based on this comment; however, Chapter 504 has been revised to specifically provide that port authorities may be a "nominating entity" for SAMPs

Many commenters asked that a definition of "second-tier counties" be included in §501 3, because certain impacts outside the boundaries are subject to the CMP, and the commenter wanted clear identification of the counties subject to the CMP. No change was made to include second-tier counties because, except for certain water rights permitting actions, Chapters 501 and 505 have been revised so that only actions in "first-tier counties" are subject to Chapter 501.

Concerning §501 3, one commenter stated that interpretation of the terms "mitigation, rectification, compensation, adverse effects, and beneficial uses" would result in weakening of the CMP The CMP is based on existing environmental programs which include these terms Because agencies are currently interpreting and applying these terms in administering existing programs, no weakening will occur. No change was made to the section as a result of this comment

Section 501 3 has been revised for clarification by adding language which provides that terms not defined in the CMP rules will be assigned the meaning given in the appropriate statute or rule

One commenter requested that §501 3(a) be amended to state that the applicant has the burden of proving that an action affecting CNRAs is consistent with the CMP goals and policies, and provides the highest level of protection, consistent with accomplishing the project Agencies and political subdivisions, not applicants, have the responsibility of determining whether an action is consistent with the CMP goals and policies The CMP goals and policies do not uniformly require the "highest level of protection," but are generally based on the standards of protection that comport with existing law Only on projects which are "major actions," as identified in §501 15, does the CMP require the selection of an alternative having the least adverse affects on CNRAs No change was made based on this comment

A commenter suggested that §501 3(a)(1) be modified to provide that adverse effects "include" as opposed to "are" the listed effects The word "are" is deliberately used in §501.3(a)(1) to clearly provide the *exclusive* list of adverse effects addressed in the CMP. Adoption of the commenter's suggestion would result in an open-ended list, resulting in less certainty for the public and the regulated community This subsection was not changed

Another commenter recommended that the words "or the public enjoyment" be stricken from §501 3(a)(1)(B) The commenter stated that these words involve a community value assessment as opposed to an environmental assessment (EA) In §501 3(a)(1)(B), the phrase is used to refer to alterations that interfere with public use and enjoyment as determined by the legal rights of the public No change was made based on this comment

The definition of "coastal waters" in §501 3(a)(5), now §501 3(a)(6), has been amended to clarify that "waters under tidal influence" are "waters subject to tidal influence."

One commenter stated that a specific definition was given for "dune areas" and "critical erosion areas," but not "critical areas " The definition of "critical areas" is provided in §501 3(a)(7), now §501 3(a)(8) No change was made based on this comment

Concerning §501 3(a)(8), now §501 3(a)(9), four commenters wrote that the definition of "cumulative adverse effects" should be consistent with both the federal guidelines developed under the Clean Water Act, 33 United States Code Annotated, §1344(b), and the Code of Federal Regulations, Title 33, Part 279 (federal §404(b)(1) guidelines) Another commenter asked that the definition of "cumulative adverse effects" be modified to clearly include "past effects " The CMP definition of "cumulative adverse effects" is based on the federal §404(b)(1) guidelines The difference between the CMP and the federal §404(b)(1) guidelines is that the federal guidelines only apply to dredge and fill activities, and the CMP requires consideration of cumulative adverse effects for dredging and filling in critical areas (§501 13(5)) *and* for "major actions" (§501 15(b)(1)) Regarding "past effects," the definition of "cumulative adverse effects" does not include "past ef-

fects, " but was intended to include consideration of ongoing effects from all activities (e g , the current condition of the resource) No change was made based on this comment

Three commenters strongly urged that the council make no changes to §501 3(a)(10)-(13), now §501 3(a)(11)-(14) Some changes were made to improve this subsection based on other comments

Two commenters suggested that the definition of "secondary adverse effects" in §501 3(a)(12), now §501 3(a)(13), is vague and should be revised to limit the time frames and distances of secondary effects Section 501 3(a)(12), now §501 3(a)(13), was not changed to limit the time frame or distance of secondary adverse effects because permitting agencies should consider such effects that can be anticipated, based on the best available data and information One of the premises of the CMP is to require that the economic and environmental value of the Texas coast is maintained, if not enhanced, for future generations of Texans Consideration of all future secondary adverse effects that can be anticipated will aid the state in providing future Texans with an economically and environmentally valuable coast Based on this comment, however, the subsection was amended to clarify that the consideration of secondary adverse effects is limited to effects on CNRAs

A commenter asked that the definition of "water dependent use or facility," provided in §501 3(a)(13), now §501 3(a)(14), be amended to clarify whether the lists of water-dependent facilities and activities" are exclusive, and another commenter asked for the addition of offshore pipelines Based on these comments, §501 3(a)(13), now §501 3(a)(14) has been amended by clarifying that the list is not exclusive (the words "include, but are not limited to" have been added), adding "offshore pipelines", and clarifying the inclusion of various components of larger development projects

Many commenters requested that the definition of "coastal barriers" provided in §501 3(b)(1) be limited to either washover areas on barrier islands, as provided in the Texas Natural Resources Code, §33 203(1), or Coastal Barrier Resource Act (CBRA), 16 United States Code Annotated, §3503(a), units Based on these comments, the designation of "coastal barriers" as a CNRA in §501 3(b)(1) has been limited to "undeveloped areas on barrier islands and peninsulas, or otherwise protected areas, as mapped by the United States Department of the Interior, Fish and Wildlife Service "

For purposes of clarification, §501 3(b)(2) has been modified to clarify that "coastal historic areas" also include those sites on the National Register of Historic Places on public land, and that the state archeological landmarks are those that are identified by the Texas Historical Commission or the Texas Antiquities Commission

For purposes of clarification, "Texas Parks and Wildlife Department" has been replaced with "Texas Parks and Wildlife Commission" in §501 3(b)(3)

One commenter asked that the council strike the part of §501 3(b)(3), which provides that coastal parks, wildlife areas, and preserves must be designated by the Texas Parks and Wildlife Department (TPWD) as being "coastal in character" to be considered a CNRA. The CMP is a *coastal* management program, therefore, §501.3(b)(3) is necessarily and properly limited to areas which are coastal in character; no change was made to the subsection based on this comment.

Two commenters requested that §501 3(b)(4), designating "coastal public submerged lands" as a CNRA, be amended to exclude fee simple title 8225 lands, which include those coastal submerged lands patented to the ports. All coastal submerged lands, as opposed to only state-owned submerged lands, have been designated as CNRAs, as their economic and environmental value to Texans is not dependent on ownership However, since the CMP does not affect the title or property interests of any kind, it will not affect title to or interests in title 8225 lands Based on this comment, §501 3(b)(4) has been deleted, and "state submerged land" and "private submerged land" have been added to new §501 3(b)(11) and (13)

Three commenters supported §501 3(b)(4)-(16) as written, and strongly urged no changes be made to this subsection Based on other comments received on these subsections, changes were made.

Two commenters recommended deletion of "coastal shore areas" from §501 3(b)(5), now §501 3(b)(4), because special management standards are not identified for these broadly-defined areas, making their designation as a CNRA a source of confusion, rather than clarity Although there are no environmental programs specifically applicable to shore areas, the economic and environmental importance of such areas requires consideration by agencies and subdivisions when determining whether to issue a permit for an activity which may adversely affect such areas The CNRA designation of coastal shore areas is important because it indicates the council's recognition that the economic value of shore areas, for example, in tourist dollars, must be preserved using related management standards established under other environmental programs Based on comments received, §501 3(b)(5), now §501 3(b)(4), has been amended to clarify that the designation of coastal shore areas is intended to address the impacts of erosion

For purposes of clarification, the definition of "coastal wetlands," provided in §501.3(b)(6), now §501 3(b)(5), has been revised to more specifically identify wetlands included in the CMP

Concerning §501 3(b)(6), now §501 3(b)(5), two commenters requested that the CNRA designation of "coastal wetlands" be expanded to include all wetlands within the CMP boundary, or in the alternative, that "wetlands" also be designated as a CNRA Conversely, another commenter stated that, to avoid the imposition of new regulations on wetlands, the CNRA designation of "coastal wetlands" should be reduced from one mile to 100 yards landward of cut banks, as described in §19 2(a)(5)(D) of the GLO Oil Spill Prevention and Response rules, pertaining to the coastal facility designation line (OSPRA line). Regarding the first comment, §501.3(b)(6), now §501 3(b)(5), is necessarily and properly limited to wetlands which are coastal in character. Regarding the second comment, the coastal facility designation line is an appropriate CMP "coastal wetlands" boundary, with the addition of wetlands within one mile of mean high tide of rivers and streams landward of the boundary. For purposes of clarification, the term "cut banks" has been replaced with "mean high tide." The OSPRA line, with the addition of the one mile standard, includes those wetlands which are sufficiently coastal in character to be included in the CMP. The definition was revised to more precisely identify the meaning of "areas of extended tidal influence." By definition, not all wetlands within the first-tier counties are subject to the CMP. No change was made to the CNRA designation of "coastal wetlands" based on these comments

A commenter requested deletion of the terms "discrete" and "contiguous" from the definitions of "hard substrate reefs" and "oyster reefs," respectively provided in §501 3(b)(10) and (11), now §501 3(b)(9) and (10), because the terms are antonyms and, when used together, inconsistent and confusing The commenter also requested that the definition of "hard substrate reefs" be revised to clarify that scattered rock and other non-living formations are not included The terms "discrete" and "contiguous," as used in §501.3(b)(10) and (11), now §501.3(b)(9) and (10), refer to distinct reefs which share a common boundary, scattered reefs and patches of scattered reefs are excluded Rock outcrops and other non-living formations are specifically included in §501.3(b)(10), now §501 3(b)(9), therefore, no change was made based on these comments

For purposes of consistency with the federal §404(b)(1) guidelines, §501.3(b)(14), now §501.3(b)(15), has been amended to clarify that "sand and mud flats" are subject to wind and water induced tides

Section 501.4

One commenter requested that §501 4(e) be stricken. This subsection has not been deleted, as it provides important information regarding council procedures and the number of council members needed to constitute a quorum.

Two commenters supported the provisions in §501 4(e) which require four affirmative votes by council members, and recommended that it be extended to apply to federal actions To provide consistent procedural requirements for reviewing, remanding, or reversing on federal, state and local actions, §501. 4(e) has been amended as the commenter requested and to require an affirmative vote of the majority of all council members However, this amendment does not include federal rule consistency certification, as federal rules are not eligible for such certification

One commenter was concerned that the chairman of the council has unilateral authority to request council action or review without the agreement of any other council member

Texas Natural Resources Code, §33.205(b), authorizes the chairman or any three council members to refer actions to the council for review However, pursuant to §501.4(e), four council members must affirmatively vote to remand an action Therefore, no change was made to this section in response to this comment

Section 501 10

Four commenters supported §501 10 as written, and strongly urged that it not be changed Based on other comments received, §501 10 has been revised

A commenter requested that §501 10 be amended to provide agencies with sufficient time to take corrective action prior to the council's referral of a matter to the Texas Attorney General for enforcement pursuant to §505 42. It is assumed that this comment refers to an agency's schedule for correcting deficiencies in a permit remanded by the council With respect to agencies, the council will exercise discretion in determining whether and when to initiate litigation against an agency With respect to private entities, Chapter 505 has been revised to limit the circumstances under which the council may initiate litigation against a private entity

One commenter requested that §501 10(a) be amended by adding a statement that the goals and policies contained in §§501 12-501 15 are not enforceable, and another commenter requested that §501 10(a) be amended to specifically state that compliance with the siting provisions in §501 14 is required These sections constitute the CMP goals and policies with which agencies and subdivisions, or persons acting under agency or *subdivision* authorizations must comply when taking an action that may adversely affect a CNRA Section 501 12 contains the CMP goals The goals constitute broad statements of what the CMP is designed to accomplish, they are not intended to establish enforceable standards Rather, they are intended to provide guidance in interpreting the policies in proposed §§501 13-501 15, which contain enforceable standards The goals are only enforceable in conjunction with the standards in the policies No change was made based on this comment

One commenter requested deletion of the word "activities" from §501 10(b) to ensure that actions by individuals are excluded from the CMP Conversely, another commenter was opposed to limiting the purview of the council's consistency review to the actions and authorizations of agencies, municipalities and counties "Activities" are included in the CMP pursuant to §501 14, however, only the actions and authorizations of agencies and political subdivisions will be subject to council review "Activities" has not been deleted, as the Texas Natural Resources Code, §33 205, requires that individuals comply with the CMP goals and policies which apply to "activities " Permit violations will be enforced by agencies and political subdivisions, not the council, pursuant to existing enforcement policies and practices No change was made based on these comments

For purposes of clarification, §501 10(c) was added to clarify that compliance with the CMP goals and policies does not supersede or eliminate any legal duty to comply with other applicable statutory and regulatory requirements

One commenter requested that §501.10 be revised to clearly indicate that private parties undertaking activities subject to the networked authorities must comply with the CMP policies and that failure to do so is a violation of the Coastal Coordination Act. Based on this comment, §505 42 and §505 74 have been amended to clarify that private parties must comply with the CMP goals and policies Agencies, not the council, are responsible for ensuring such compliance

Section 501 11

Four commenters requested that §501 11 be stricken from Chapter 501 Section 501 11 is included in the CMP and has been clarified to ensure that the CMP goals and policies will not be applied in a manner which would prohibit any agency from exercising its statutory or constitutional authority, except as provided for in the Coastal Coordination Act (Texas Natural Resources Code, Chapter 33, Subchapter F), the council will not require an agency or political subdivision to take any action or adopt any rule which exceeds or conflicts with their statutory authority, the council will not exceed its statutory authority or usurp the statutory authority of agencies or political subdivisions, the council will not prescribe the content of agency and political subdivision rules, and the council will not apply the CMP goals and policies in a manner which would result in the taking, damage or destruction of private property

A couple of commenters requested that §501 11(a) be amended to require council deference to an agency's interpretation of its statutory authority and regulations Another commenter stated that §505 11(a) implied that an agency would be required to exceed its statutory and constitutional authority or the exercise thereof Section 501 11(a) has been amended to ensure that the CMP goals and policies will not be applied in a manner that would prohibit the exercise by any agency, municipality or county of its constitutional or statutory authority, unless and except to the extent allowed under the Coastal Coordination Act (Texas Natural Resources Code, Chapter 33, Subchapter F)

Many commenters requested that §501 11(b), now §501 11(e), be amended by including a clear statement providing that the CMP goals shall not be interpreted in a manner which would result in an unconstitutional taking of property Three commenters stated that §501 11(b), now §501 11(e), contains gratuitous language because the United States Constitution prohibits takings Based on these comments, §501 11(b) has been replaced by §501 11(e), which provides that "the council shall not apply the goals and policies in this subchapter in a manner which would result in the taking, damage, or destruction of property, without adequate compensation, by the council or by any agency, municipality, or county." This language paraphrases the Texas Constitution and reflects existing law

Concerning §501 11(b), now §501 11(e), one commenter's request that no public compensation be given for the regulation of private property is interpreted to be a request that public funds not be used to compensate a landowner for any taking, damage or destruction of private property resulting from the regulation, restriction or acquisition of such property. The CMP does not provide for, nor shall the council take any action that would result in, an unconstitutional taking of private property; therefore, no change was necessary based on this comment

Section 501 12

One commenter was concerned that the scope of the CMP is too narrow because it appears to be restricted to the coast of Texas In addition, the commenter stated that the Gulf ecosystem does not respect political borders, so the council must be given the mandate to look outside Texas' borders to fully comprehend proposed actions The CMP addresses the principal coastal problems of state wide concern Impacts originating outside the CMP boundary are within the council's jurisdiction when those impacts originate within the Texas borders and result in adverse effects on CNRAs However, the council has narrowly limited the specific actions outside the boundary that are subject to the CMP The federal law on interstate consistency is still being developed No change was made based on this comment

Three commenters requested deletion of §501 12(b), pertaining to sound management of coastal resources The foundation of the CMP is based on a realistic perspective of past, current and foreseeable future uses The economic vitality of the coast is inextricably linked to the protection of coastal natural resources The CMP is designed to accommodate economic development while protecting important coastal natural resources Section 501 12(b) contains the council's goal to allow such uses to continue within the context of the CMP, and ensure that decisions to authorize or undertake such uses are economically and environmentally sound No change was made based on this comment

Concerning §501 12(b), one commenter suggested that this subsection be revised by deleting the word "compatible," and inserting "continued" economic development The goal provided in §501 12(b) is to ensure that development within the coastal area is compatible with the various human uses of the area, and protection of CNRAs Because "compatible development" encompasses "continued development," no change was made based on this comment

One commenter suggested that the language of §501 12(c) be changed to provide that loss of property will be "reasonably" minimized Section 501 12(c) embodies the goal of minimizing loss of lives and property The commenter requests that the council adopt a goal allowing "reasonable" minimization of loss of property due to the impairment and loss of protective features of CNRAs The comments did not define "reasonable" as proposed in the context of §501 12(c), nor did the commenter explain his concerns as to how such minimization would otherwise be unreasonable Because minimization of property loss due to depletion of protective coastal

features is a legitimate goal of the CMP, no change was made based on this comment

Two commenters stated that §501 12(e) implies that the coast can be protected by balancing coastal economic development, natural resource preservation, human life and property protection, and public access assurance The commenter stated that these interests are not of equal rank or type and are not necessarily compatible or balanced, and compared the council's task as "trying to compare economic 'apples' and ecological 'oranges '" To address these concerns, the commenter recommended that only economic development which is "appropriate and compatible" should be considered in the balance Three other commenters requested that §501 12(e) be deleted The use of the term "balance" in §501 12(e) does not mandate that the factors be treated equally Rather, the term is used in the context of an overall balance of the benefits listed in the subsection, because the CMP embodies a reasonable balance between economic development and resource protection No predetermined weight or measurement of the various benefits is provided No change was made based on this comment

Concerning §501 12(h), two commenters commended the council's goal of developing and maintaining maps for the coastal area and CNRAs The commenters stated that these maps will provide certainty to the regulated community, and that the development of the maps should be timed to coincide with federal approval Another commenter requested that the maps be completed by December, 1995 Section 501 12(h) is intended to make agency and subdivision decision-making more informed and reliable through the use of coordinated geographic information These maps will be merely illustrative of CNRAs and will not amend the CNRA definition The development of CNRA maps has begun and is ongoing The rule has been amended to state that the council will provide an opportunity for public comment on the CNRA maps

Two commenters asked that §501 12(j), be amended to include the goal of educating the public about the technology available for protecting CNRAs, in addition to educating the public about the principal problems of state concern In response to this comment, the language of the subsection has been changed to read "to educate the public about the principal coastal problems of state concern and technology available for the protection and improved management of coastal natural resource areas "

Section 501 13

A few commenters supported the language of this section as written, and strongly urged that no changes be made to §501 13 Another commenter stated that the council does not have statutory authority to implement many of the administrative policies contained in the section The administrative policies are implemented pursuant to Texas Natural Resources Code, §33 205 Based on the other comments received on this section, changes were made

A commenter requested that a definition of "local government" be added to §501 13(1) The Texas Natural Resources Code, §33 205(a), requires certain state agency or subdivision actions to comply with CMP goals and policies Texas Natural Resources Code, §33 203(3), broadly defines "agency" or "subdivision," and the definition includes local governments Regarding local governments, however, §505.60 limits the application of the CMP to those counties and municipalities that administer dune protection and beach access plans pursuant to the authority granted by the Texas Natural Resources Code, Chapters 61 and 63. No change was made based on this comment.

Another commenter wrote that §501.13(1), relating to the requirement that applicants submit the information necessary for agencies and subdivisions to make informed decisions, may be used to require substantially more data from permit applicants for all permits, including actions that are routine or even below thresholds The commenter recommended the addition of language in the subsection or in the preamble which makes it clear that the intent of this provision is not to require the permit applicant to submit extensive new information as a result of the CMP Section 501 13(1) requires agencies to obtain from applicants the information "necessary" to make an informed decision to ensure that agencies have adequate information to render accurate consistency determinations Existing permit application requirements should be sufficient to meet this requirement However, the type or amount of information required by the agency is an appropriate subject for council review because the type or amount of information available to an agency effects how CNRAs are managed In addition, the section gives applicants an opportunity to contribute any additional information which may be beneficial to agency consistency determinations This subsection was not amended

Two commenters were concerned that §501 13(3), which requires that agencies identify circumstances in which agencies have the authority to issue variances, showed an intent to place a "heavy hand" on agencies and applicants, substantially increasing the costs of applying for and executing permits Another commenter was concerned that §501 13(3) provided a loophole for agencies, and requested that it be deleted. Yet another commenter supported the proposal in §501 13(3) and stated that it allowed agencies to issue variances under certain circumstances, and that such circumstances should be based upon the environmental and economic factors of each particular project Agencies and political subdivisions currently possess certain authority to grant variances, §501 13(3) merely requires agencies and subdivisions to identify the circumstances under which this authority may be exercised so that the public, the regulated community, and the council are aware of the circumstances under which variances are available Section 501 13(3) will not affect the cost of applying for permits or receiving variances because no substantive requirements are imposed on applicants pursuant to this subsection No change was made based on these comments

One commenter requested that the policy contained in §501 13(4) be amended to be consistent with the CZMA, 16 United States Code Annotated, §1455(d)(8), and associated regulations by clarifying that uses of national and regional interest are preferred over other uses. The Code of Federal Regulations, Title 15, §923.52 and the CZMA, 16 United States Code Annotated, §1455(d)(8), do not require preferential treatment of uses of national or regional interest. Rather, regional interests cannot be unreasonably restricted or excluded (CZMA, §306(d)(12)), and the national interest must be adequately considered (Code of Federal Regulations, Title 15, §923.52(a) and (b)). Because the CMP adequately addresses these federal requirements, no change was made based on this comment

Three commenters stated that §501.13(5) did not adequately reflect the council's vote to require consideration of secondary and cumulative adverse effects only in the case of dredge and fill activities in critical areas The commenter recommended that the subsection be revised accordingly, and revised to add practicability as the standard for avoidance and minimization of direct, as well as secondary and cumulative adverse impacts. Another commenter requested that §501.13(5) be deleted, as the commenter thought it adds requirements to the federal §404(b)(1) guidelines by requiring the avoidance or minimization of cumulative adverse effects. This subsection has been revised to establish a general requirement that, where practicable, secondary and cumulative adverse effects from certain dredging and construction activities in critical areas be avoided and minimized These requirements are consistent with the federal §404(b)(1) guidelines Section 501.13(5) was amended to more clearly reflect the council's intent

Section 501 14.

One commenter suggested that §501.14(a) be amended to clarify that the policies in §501 14(a) are supplemental to any further restrictions or requirements relating to public beach access and use rights, and that the amendment was necessary because this subsection refers to "Gulf beaches" which, as defined in §501.3(b)(9), now §501.3(b)(8), are beaches protected under the Open Beaches Act (Texas Natural Resources Code, Chapter 61) To clarify that the CMP does not affect the public's right to use and have access to and from the public beach, the subsection was modified as requested

One commenter was concerned that the requirements of §501.14(a), relating to the construction of electric generating and transmission facilities, would negatively impact cogeneration facilities by precluding construction of such facilities in areas adjacent to existing facilities, and requested that cogeneration units be specifically exempted from the CMP. The Public Utilities Commission (PUC) does not require Certificates of Convenience and Necessity for such facilities, therefore construction of co-generation facilities is not subject to this policy. However, as a general matter, the provisions of §501.14(a) require persons proposing construction to reasonably plan to the greatest extent practicable for expansion and, where practicable, to cluster development (i.e , ex-

pansion of existing facilities and siting of new facilities near existing facilities). This subsection was not modified.

Concerning §501 14(a)(1)(A), one commenter asked that the requirements relating to electric generating and transmission facilities comport with the requirements of hazardous waste facilities in the 100-year floodplain, as provided in §501.14(d)(1)(A)(i)-(ii), now §501.14(d)(1)(A) and §501 14(d) (1)(B). The commenter was concerned that §501 14(a)(1)(A) would prohibit construction of electric generating and transmission facilities in the coastal zone and wastes generated in this highly industrialized area would have to be transported long distances for disposal Section 501 14(a)(1)(A) requires that new electric generating and transmission facilities be sited at previously developed sites, where practicable, and located to avoid future expansion into certain identified areas, to the greatest extent practicable Because these practicability standards address this commenter's concerns, no change was made based on this comment

One commenter asked that §501 14(a)(1)(A) be revised to discourage use of once-through cooling systems for discharges into areas within the coastal zone such as estuaries, inlets or small coastal embayments The commenter also asked that this subsection require that new electrical generation facilities shall utilize recirculating cooling systems to the greatest extent possible Section 501 14(a)(1)(D) requires that facilities be located to have the least adverse effects practicable In addition, discharges from generating facilities must comply with §501.14(f), relating to discharge of municipal and industrial wastewater to coastal waters. Although the standards provided in §501 14(a) and (f) may be met utilizing recirculating cooling systems, a preference for such systems has not been established in the CMP This subsection was not changed based on this comment

In §501 14(a)(1)(C), one commenter requested that "wildlife" be replaced with "areas" in requirements relating to selection of sites with the least adverse effects. Another commenter stated that the statutory authority cited in the CMP does not confer jurisdiction to the PUC to consider the least adverse effects on aquatic fish and wildlife Based on the first comment, the policy has been modified to clarify that, to the greatest extent practicable, sites selected must have the least amount of adverse effects on recreational uses of CNRAs and *areas used for* spawning, nesting and seasonal migrations of terrestrial and aquatic fish and wildlife species. Regarding the second comment, as the commenter acknowledged, existing law allows the PUC to consider (when issuing a Certificate of Convenience and Necessity) the impact of the project on. recreation, park areas, aesthetic values and environmental integrity, which includes spawning, nesting and seasonal migrations of fish and wildlife species Section 501 14(a) identifies the recreational and environmental values of importance, with respect to CNRAs. No change was made based on the second comment

Regarding §501.14(c)(2)(C), two commenters requested that toxicity, in addition to salinity, be considered by the Railroad Commission (RRC) when deciding whether to issue a new permit for the discharge of produced waters because produced water from oil and gas production facilities may (emphasis added) contain other toxic or harmful constituents in addition to salts, which harm living coastal resources Another commenter requested that Texas Natural Resource Conservation Commission (TNRCC) regulations be included in §501.14(c) No change was made based on these comments, as this subsection requires that all discharges comply with TNRCC's surface water quality standards (identified in §501 14(f)), including toxicity standards

One commenter asked that §501.14(c) be changed to conform with state water quality standards, and specifically referenced the requirement that wastewater outfalls be located where they will not adversely affect critical areas Section 501 14(c) establishes policies which are fully consistent with existing water quality protection law The TNRCC has the authority to identify appropriate locations for wastewater discharge outfalls Section 501 14(c) requires the TNRCC to fully consider the impact of the particular discharge on critical areas when permitting outfall locations Section 501 14(c)(2)(B) has been amended to provide that practicability will be considered in determining outfall locations

Concerning §501 14(d), five commenters stated that the council has no independent statutory authority to regulate the siting of solid waste facilities, and that the provisions in the proposed CMP policies relating to siting of solid waste facilities exceed the siting authority of the TNRCC, as provided in Texas Health and Safety Code, §§361 097-361.104 Another commenter stated that hazardous waste facilities should not be allowed A seventh commenter requested that §501 14(d) be expanded and strengthened Issuance of permits for solid waste facilities is an action that may adversely affect a CNRA and is appropriately subject to the CMP Section 501 14(d) is based on TNRCC regulations, and §501.14(d)(1)(A)(i), now §501.14(d)(1)(A), prohibits construction of new landfills within a 100-year floodplain which receive hazardous waste for a fee Based on these comments, §501 14(d)(1)(A)(i), now §501 14(d)(1)(A), has been modified to comport with existing TNRCC regulations

Concerning §501 14(d)(1)(A), one commenter asked that the definition of "areal," be clarified, and that the CMP incorporate the TNRCC's definition of "new facility " Section 501 14(d)(1) has been modified to reflect TNRCC's current regulations Definitions of these terms are determined according to §501 3(d)

One commenter suggested that the application of §501 14(d)(1)(A)(i), now §501 14(d)(1)(A), should be limited to only those hazardous waste landfills that receive a fee *from (the) general public* Another commenter asked that landfills be considered on a case-by-case basis Section 501 14(d)(1)(A) (i), now §501 14(d)(1)(A), is not limited to hazardous waste landfills used by the general public, because the policy reflects current law, which makes no such distinctions Regarding the second comment, landfills are considered on a case-by-case basis during the permitting process This subsection was not changed based on this comment.

Another commenter asked that §501 14(d)(1)(A)(i), now §501.14(d)(1)(A), be revised to provide that "a landfill at which hazardous waste is received for a fee shall not be located in the 100-year floodplain of the Texas coastal waters," since these areas are subject to tropical storms and hurricanes Because of their potential impacts, §501 14(d)(1)(A)(i), now §501.14(d)(1) (A), prohibits the construction of commercial hazardous waste landfills in critical areas, critical dune areas, and 100-year floodplains of perennial streams One-hundred year floodplains are those floodplains identified by the Federal Emergency Management Agency (after September, 1985), as zones A1-99, V0 or V1-30. No change was made because the Texas Health and Safety Code limits this requirement to perennial streams

One commenter stated that the first and second sentences of §501 14(d)(1) (A)(ii), now §501.14(d)(1)(B), were not consistent, and that the first sentence should be deleted Another commenter asked that the subsection be clarified with respect to the two sentences The first sentence of §501 14(d) (1)(A)(ii), now §501 14(d)(1)(B), limits the siting of hazardous waste landfills in existing hazard areas to those areas with flood depths of less than three feet The second specifies certain requirements for the design, construction, operation and maintenance of a landfill operated within a special hazard area, including such landfills as described in sentence one Because the sentences are consistent, no change was made based on this comment

One commenter requested addition of the phrase "and if such alternative does not create other significant adverse environmental impacts" to §501 14(d)(1)(A)(vi), now §501.14(d)(1)(F) Because the commenter referred to a subsection that did not mention alternatives it is assumed that the commenter meant to refer to §501.14(d)(1)(A)(vii), now §501.14(d)(1)(G) Incorporation of the language suggested by this commenter would not be consistent with TNRCC's regulations (§335 204 of this title (relating to Unsuitable Site Characteristics)) Therefore this language was not added and this subsection was not changed, because the intent of this policy is to reflect current law

One commenter requested deletion of §501 14(d)(1)(A)(vii), now §501. 14(d)(1)(G), because properly operated landfills do not constitute a hazard to the environment and are an essential part of a comprehensive state-wide waste management program Section 501 14(d)(1)(A)(vii), now §501 14(d)(1)(G), prohibits construction of new or areal expansion of existing hazardous waste landfills in certain CNRAs if there is a viable, reasonably available alternative While it is true that proper operation of landfills is a critical element of prevention of environmental hazards, proper siting is equally critical In addition, these policies are comprised of existing law This subsection was not amended based on this comment

One commenter requested that §501.14(d)(1)(B), now §501.14(d)(1)(J), be modified to require the prevention of pollution "where economically feasible." No change was made to this subsection, as there is no requirement for a particular quantitative level of prevention, so the provision necessarily incorporates feasibility and other factors in the determination.

One commenter suggested that §501.14(e) be expanded to include prevention, response and remediation for discharges of hazardous substances as well as oil, because the unauthorized release of hazardous substances represent a significant threat to Texas coastal waters. TNRCC handles prevention, response and remediation for discharges of hazardous substances TNRCC's statutory authority to regulate hazardous substance spill prevention and response is not equivalent to the GLO's authority under Texas Natural Pesources Code, Chapter 40, and therefore, the amendment suggested by this commenter was not adopted However, TNRCC's prevention, response and remediation of hazardous waste discharges is included in the CMP pursuant to §505.50(3), relating to general plans.

A commenter noted that the proposed order of compensation for injury to natural resources, as provided in §501.14(e)(2), may conflict with recent amendments to Texas Natural Resources Code, Chapter 40, relating to natural resource damage assessment. Section 501.14(e)(2) has been revised based on this comment.

One commenter requested that "full compensation" for injured natural resources be changed to "reasonable and rational compensation" in §501.14(e) (2). Based on this comment, this subsection was amended to include the phrase "reasonable and rational procedures."

A commenter requested that the words, "with federal rules and," be deleted from §501.14(e)(2). The commenter noted that recent amendments to Texas Natural Resources Code, Chapter 40, provide a statutory scheme for assessing injury to natural resources that is significantly different from the federal requirements This change has been made, as the Texas Legislature has amended Texas Natural Resources Code, Chapter 40, to provide for distinct state rules for assessing natural resource damages. To require that Texas rules be consistent with federal rules would be inconsistent with the clear language of Texas Natural Resources Code, §40.107.

Concerning §501.14(f), one commenter expressed concern over coordination of land use practices with the United States Department of Agriculture. The CMP's policies on agricultural land use will be those contained in the Texas State Soil and Water Conservation Board's (TSSWCBs) nonpoint source (NPS) pollution program. The council will coordinate with the United States Department of Agriculture through the TSSWCB.

One commenter recommended that the preamble state that undefined terms have the meaning provided in the applicable agency's regulations. Section 501.14(f) incorporates current laws and programs enforced and/or administered by agencies and subdivisions To the extent that this subsection refers to statutory or regulatory terms which are not defined in the CMP, such terms retain the meaning provided in the pertinent agency's or subdivision's regulations This comment has resulted in the addition of §501 3(d), relating to undefined terms.

One commenter stated that the technical issues raised by the policies of §501 14(f) are more properly addressed through an agency's or subdivision's rulemaking procedures Section 501.14(f) requires TNRCC regulations to comply with the policies of §501 14(f) Therefore, many of the technical issues addressed in §501 14(f) will be resolved in the TNRCC's rulemaking process No change was made in response to this comment

Regarding §501 14(f), one commenter noted that coastal communities can be and are at the end of the state's many rivers, and that such communities bear the brunt of regulations which seek to improve river and bay systems. The CMP does not subject such communities to any additional regulations, and these concerns are best addressed within specific permitting programs No change was made to this subsection based on this comment

A commenter stated that §501 14(f) did not properly address wastewater discharges The CMP is a networked program based on existing laws and regulations, including water quality regulations Through the agency rule evaluation process, the council determined that current TNRCC wastewater discharge regulations are fundamentally sound policies for protecting coastal water quality No change was made to the subsection based on this comment

Concerning §501.14(f), one commenter stated that all agricultural operations within the first tier of coastal counties, and many within the second tier, are required to have point-source wastewater discharge permits from the TNRCC or the Environmental Protection Agency (EPA) and that such permits are subject to review by the council Only agricultural operations required to have a wastewater discharge permit under current law are subject to the CMP Some of these permits may conceivably be reviewed by the council However, the CMP does not impose any new or additional regulations on these discharges, rather, the CMP incorporates TNRCC's current regulations Therefore, no change was made in response to this comment.

Concerning §501 14(f)(1)(B)-(D), one commenter strongly supported this subsection and requested that it not be changed Based on other comments, this subsection was amended

Section 501.14(f)(1)(B) has been amended to clarify that the biennial coastal water quality assessment is based on the Texas Water Code, §26 0135(d)

Concerning §501 14(f)(1)(C), one commenter stated that although it may be desirable, it is unrealistic to expect that the TNRCC will logistically be able to establish the same expiration date for all wastewater discharge permits within a given watershed or region, even as qualified with the phrase "to the greatest extent practicable" Section 501 14(f)(1)(C) is based on current law In addition, logistics are specifically taken into account within the definition of "practicable" in §501 3(a)(10) Furthermore, this provision reflects current requirements of the Texas Water Code Therefore, no change was made based on this comment

One commenter asked that "wetlands" be inserted in §501 14(f)(1)(E)(i) -(ii) Adverse effects to wetlands are addressed in §501 14(h), the critical areas policy No change was made based on this comment

One commenter requested that §501 14(f)(2)(A) be modified by adding specific language which would require consideration of human health, environmental impacts and "the cost to attain these discharges " The TNRCC must consider human health when establishing water quality standards The TNRCC is charged with the duty of setting standards and promulgating regulations for water quality pursuant to the Texas Water Code, §26 023, et seq, and the Clean Water Act, 33 United States Code Annotated, §§1221-1387 Although the TNRCC is required to consider human health when establishing effluent standards, the commenter suggests an amendment that would create a potential conflict with the wording of current water quality protection law Based on this comment, §501 14(f)(4) has been added to require the TNRCC to consult with the Department of Health when discharges may adversely affect oyster reefs

One commenter stated that consideration of "important economic or social development" in §501 14(f)(2)(B) creates a loophole for non-compliant discharge permit holders The commenter questioned how the council would determine what "development was necessary for important economic or social development," and suggested deletion of the phrase, as it is not defined This clause provides the council with an appropriate amount of flexibility to consider social and economic needs as part of its decision-making process, and balances economic and ecological concerns pursuant to §501 12 (relating to goals) Further, the terms of §501 14(f)(2)(B) incorporate current TNRCC regulations in Chapter 307 of this title Whether "development is necessary for important economic or social development" is a fact-based determination that will be made on a case-by-case basis No change was made to the subsection in response to this comment

A commenter stated that "significantly degrade," as used in §501 14(f)(2) (B), is vague and may be problematic when applied for restoration purposes The TNRCC will make case-by-case determinations of "significant degradation" pursuant to the policies of this subsection If council guidance is requested, the council will consult with the TNRCC a council member agency, in making this determination No change was made to the subsection as a result of this comment

Three commenters stated that the prohibition on new wastewater discharges adversely affecting critical areas, contained in

§501 14(f)(2)(C), was too stringent, and requested various additional language, such as "to the greatest extent practicable," to provide flexibility The fundamental concept of the CMP is the balance of the economic and ecological benefits of coastal resources, therefore, based on these comments, the subsection has been amended to provide that "to the greatest extent practicable, new waste water outflows shall be located where they will not adversely affect critical areas"

Concerning §501 14(g), one commenter expressed concern over the effects of the CMP on the Trans-Texas Water Program, the Greater Houston Wastewater Program and the City's NPS abatement program The Trans-Texas Water Program is not adversely affected because the CMP reflects only current law on water rights The Houston Wastewater Program and NPS program are not adversely affected, as §501 14(g) does not expand or detract from the existing NPS pollution requirements in the Texas Water Code, Chapter 26, the Texas Health and Safety Code, Chapter 366, and the Texas Agriculture Code, Chapter 201 No change was made based on this comment

Concerning §501 14(g), one commenter strongly supported this section and asked that no changes be made Based on other comments, the subsection was changed

Three commenters requested that §501 14(g) be amended by adding specific language One commenter recommended modifying §501 14(g)(1) by providing that NPS pollution should not be allowed to cause "substantial" degradation, and two commenters recommended limiting §501 14(g) to NPS pollution which "significantly" impairs designated uses of coastal waters The qualifying language is more properly addressed in agency or subdivision regulations regulating NPS pollution because it sets a measurable scientific standard for evaluating the fate and effects of NPS pollutants Section 501 14(g) uses the permissive term, "should," which allows flexibility in the agency decision-making process and addresses one commenter's concern that §501 14(g) is actually a "zero discharge" policy

A commenter recommended limiting §501 14(g) to "proven, site-specific" NPS pollution The language was not added, as the NPS pollution is generally defined as any source of water pollution that is outside the scope of the definition of "point source," as defined in the Clean Water Act, 33 United States Code Annotated, §1362(14) The suggested language is clearly within the scope of the Clean Water Act definition of "point source" Yet another commenter requested limiting §501 14(g) to NPS pollution "problems" "Nonpoint source pollution problems" is redundant Therefore, no change was made to this subsection based on these comments

One commenter stated that §501 14(g) fails to specifically address NPS pollution generally or as caused by agriculture or municipalities, thus leaving the burden of compliance on industries such as oil and gas Another commenter asked why the NPS component of the CMP was so limited The nonpoint component of the CMP is based on existing law, therefore, any limitations in the CMP are a reflection of the limitations in existing law Section 501 14(g) (2) requires that municipal water pollution control and abatement plans comply with the policies of §501 14(g)(2) Section 501 14(g)(3) requires the TSSWCB to comply with the policies of this subsection when promulgating regulations The policies address NPS pollution from industry, agriculture and municipalities Therefore, no change was made to this subsection

Three commenters were concerned that §501 14(g) does not properly address NPS pollution, and another commenter suggested that §501.14(g)(1) be modified by requiring that the NPS pollution program be "based on rational scientific data which establishes at its core a relationship between projected environmental protection and the cost to achieve that protection" One of the commenters stated that there is insufficient research data to determine the true effects of NPS pollution Another commenter requested that §501 14(g)(1) be amended to include Texas Agricultural Experiment Station and Texas Agricultural Extension Service educational and demonstration programs Section 501 14(g) addresses NPS pollution, and consists of a compilation of existing laws and regulations provided in the Texas Water Code, Chapter 26, Texas Health and Safety Code, Chapter 366, Texas Agriculture Code, §201 026, and agency or subdivision regulations implementing the above-referenced laws Therefore, no changes were made because the policy reflects current law and the suggested language would vary from existing statutory requirements

Two commenters expressed concern regarding the impact §501 14(g) would have on TSSWCB's NPS pollution program, and one commenter questioned how §501 14(g) would impact the federal 6217 program (CZMA, 16 United States Code Annotated, §1455(b)) Another commenter asked that the nonpoint program be distributed for public comment One commenter stated that §501 14(g) disregards agricultural and municipal causes of NPS pollution, and other commenters were concerned that §501 14(g) will greatly impact agriculture Another commenter stated that TSSWCB and TNRCC nonpoint plan certifications should be reviewed by the council TNRCC's individual approvals for cities subject to it's NPS rules will be reviewable by the council TSSWCB's individual approvals of each plan it issues will not be subject to council review because the individual plans vary only slightly from producer to producer They are basically uniform Based on these comments, §501 14(g) has been amended to more precisely reflect the existing statutory authority for the TSSWCB's voluntary NPS program, which provides that "in an area that the TSSWCB identifies as having or having the potential to develop agricultural or silvicultural NPS water quality problems or an area within the "coastal zone" designated by the council, the TSSWCB shall establish a water quality management plan certification program that provides, through the local soil and water conservation district, for the development, supervision and monitoring of individual water quality management plans for agricultural and silvicultural lands Each plan must be developed, maintained, and implemented under regulations and criteria adopted by the TSSWCB and comply with state water quality standards established by the TNRCC The TSSWCB shall certify plans that satisfy the TSSWCB regulations and criteria and comply with state water quality standards This policy is not intended, nor shall it be interpreted, to require the TSSWCB to establish nonvoluntary requirements for the development, maintenance, or implementation of individual water quality management plans This amendment clarifies that §501 14(g) is limited to current legal requirements

One commenter suggested that §501 14(g)(1) of the CMP ignores the required development of the coastal NPS plan, the designation of the TNRCC and the TSSWCB as the lead state agencies on NPS planning and the fact that state law may not allow for compliance with the federal requirements for the coastal NPS plan The commenter stated that the CMP should be revised to acknowledge the status of the TNRCC and TSSWCB, making them responsible for developing the coastal NPS plan, and make them eligible for any federal funds made available for its development Section 501 14(g)(1) contains a general statement to encourage agencies and subdivisions administering NPS programs, specifically TNRCC and TSSWCB, to coordinate development and implementation of a NPS pollution program Because it adds nothing in addition to the language of the statute, §501 14(g)(2) recognizes TNRCC's lead role in municipal NPS pollution control and §501 14(g)(3) recognizes TSSWCB's lead role with respect to agriculture and silviculture NPS pollution control The CMP policy does not require the creation or implementation of any additional NPS regulatory measures not authorized by state statute To clarify this point, §501 14(g)(1) has been amended to reflect that the intent of the subsection is to encourage coordination among agencies with responsibilities for such programs, not to create or detract from any new or existing program or program requirement

Three commenters stated that the CMP should be revised to address agricultural concerns in a more realistic manner One stated that NPS pollution is "misused" in agriculture, another stated that agricultural concerns should be addressed through a partnership between the government and landowners, emphasizing education and a voluntary adoption of a NPS pollution plan The third commenter asked what would happen if discharges from the agriculture industry were later found to adversely affect the Gulf coast The CMP is based on existing regulatory programs Section 501 14(g) addresses NPS pollution through incorporation of the TSSWCB and TNRCC's existing programs, which will address these commenters' concerns No change was made based on these comments

One commenter stated that pursuant to §501 14(g)(2), the TNRCC review of NPS water pollution abatement plans are declared exempt from council oversight if the plan is filed by a municipality with less than 5,000 inhabitants Since many of the developments along the coast are unincorporated communi-

ties and/or have less than 5,000 people, council review of NPS controls could be severely limited by this threshold The commenter recommended that the threshold be eliminated or lowered to a more realistic level to allow effective council review Another commenter recommended applying the policy only to communities with 100,000 inhabitants Current law requires municipal water pollution control and abatement plans for municipalities having 5,000 or more inhabitants See Texas Water Code, §25 177 However, the following language has been added to this subsection as §501 14(g)(5) "This policy shall not be interpreted or applied so as to require that either an National Pollution Discharge Elimination System (NPDES) permit for stormwater discharges issued under the Clean Water Act, 33 United States Code Annotated, §1342(p), or an NPDES permit for a confined animal feeding operation, requiring no discharge up to and including a 25-year, 24-hour frequency storm, provide additional NPS pollution control measures in addition to those required by EPA regulations" The intent of this language is to clearly state that the CMP will not require and (consistent with EPA/National Oceanic and Atmospheric Administration (NOAA) guidance, need not require) anything more (including, but not limited to, the Coastal Zone Act Reauthorization and Amendments, §6217, requirements) of an NPDES stormwater permit holder or concentrated animal feeding operations (CAFO) permit holder than what is already required by EPA under the Clean Water Act There was no change made to the requirements related to the number of inhabitants

A commenter suggested that §501 14(g)(2) be amended to require the TNRCC to provide funding and technical assistance, and another commenter stated that funding must be provided if any provision in §501 14(g) imposed additional NPS pollution control requirements No fees or taxes will be levied, and no additional requirements will be imposed on coastal communities or citizens for the specific purpose of funding those requirements The council has no authority to impose fees or fines Therefore, no change was made to the subsection in response to these comments

One commenter asked that the phrase "or potential pollution" be omitted from §501 14(g)(2) because almost anything has the potential to pollute the water This requirement comports with the Texas Water Code, §26 177(b)(5) Therefore, no change was made to this subsection in response to this comment

Two commenters requested that §501 14(g)(3) be modified to clarify that the council will defer to the TSSWCB in development and implementation of a NPS water pollution program No change was made to this subsection based on this comment TSSWCB adopted rules implementing its program in 1993 The only council involvement in agricultural and silvicultural NPS pollution is through future amendments to the TSSWCB program, initiated by TSSWCB

Two commenters recommended that the preamble to Chapter 501 contain a clear statement that §501 14(h), regarding development in critical areas, is intended to be consistent with current federal §404 regulatory standards and is not intended to change the substantive requirements of the federal §404(b)(1) guidelines The commenters suggested that this could be achieved by incorporating into the preamble language similar to that found in the current Memorandum of Agreement (MOA) between the EPA and the Department of the Army, concerning the determination of mitigation under the federal §404(b)(1) guidelines Section 501 14(h) reflects the substance of the federal §404(b)(1) guidelines Therefore, §501 14(h) has been drafted to simply and succinctly provide the substantive requirements of the federal §404(b)(1) guidelines, as currently applied The council intends no change from the substantive policies contained in the federal §404(b)(1) guidelines To ensure the greatest possible degree of consistency among the various agencies that administer the critical areas policy and the federal §404(b)(1) guidelines, the council will rely on several sources to interpret and implement the critical areas policy These sources are those substantive provisions in the Code of Federal Regulations, Title 40, Part 230, that were not repeated in the critical areas policy, the MOA between the EPA and the Department of the Army concerning the determination of mitigation under the federal §404(b)(1) guidelines dated February, 1990, prior United States Army Corps of Engineers regulatory guidance letters and permit elevation decisions, prior EPA §404(c) permit veto decisions, adoption preambles to the federal §404(b)(1) guidelines and subsequent amendments that have been made by the EPA, and other such secondary authorities relevant to interpretation of the substantive requirements of the federal §404(b)(1) guidelines that are published prior to the effective date of the critical areas policy No change was made based on this comment

Two commenters stated that while the preamble to the proposed rules references various sections of the federal §404(b)(1) guidelines, neither the preamble nor the rule itself contain the silviculture exemption provided in federal §404(b)(f) guidelines The commenters requested that the adoption preamble to Chapter 501 and §501 14(h) recognize that silviculture and the other activities described in the Code of Federal Regulations, Title 15, §323 4 are exempted from the critical areas policy Section 501 14(h)(2) has been amended to exempt normal, established farming, silviculture and ranching activities from the critical areas policy The exemption of these activities shall be interpreted and applied consistent with the Code of Federal Regulations, Title 15, §323 4

Two commenters stated that the council lacks the authority to adopt or incorporate the federal §404(b)(1) guidelines Another commenter suggested that the state could not implement federal §404 permitting requirements until the state receives federal delegation of such authority This commenter also suggested that the CMP should not regulate wetlands through the federal §401 water quality certification process Two commenters stated that the critical areas policy is even broader than the federal policy, which only applies to wetlands One commenter recommended that this section be deleted. The Texas Natural Resources Code, §33.204(a), requires the council to adopt the CMP goals and policies, such as the critical areas policy in §501 14(h), by rule The CMP goals and policies must address actions that may adversely affect CNRAs The critical areas policy is based largely on the federal §404(b)(1) guidelines, an existing and well-established process Rather than establishing a policy that is new and untested, the council will apply the critical areas policy in a manner consistent with the application of the federal §404(b)(1) guidelines The council is not seeking delegation of the federal §404 permitting program, and the adoption of the critical areas policy is not dependent on federal delegation of the federal §404 permitting program Pursuant to §501 14(h)(2), the TNRCC and the RRC will apply the critical areas policy when issuing federal §401 water quality certifications. Because all critical areas qualify as waters of the state, it is appropriate that discharges requiring federal §401 certification comply with the critical areas policy The council has determined that there is no lack of authority. No change was made based on these comments

One commenter stated that wetland modification had not been properly addressed in §501 14(h) Another commenter stated that Texas must adopt revised water quality standards and procedures, as existing standards and procedures fail to provide adequate authority to protect all functions and values Regarding the first comment, a modification of a wetland that requires a federal §404 permit or any other action listed in §505 11 or §506 12 must be consistent with the critical areas policy The CMP addresses wetland modification through the adoption of policies that reflect existing law. Regarding the second comment, TNRCC and RRC application of the CMP policies to Clean Water Act, 33 United States Code Annotated, §1341, certifications ensure adequate, consistent wetlands protection. In addition, the council reserves the right to fully apply the policies to a federal §404 permit No change was made based on this comment

One commenter recommended that §501 14(h) be amended to include more coastal preserves. By design, §501.14(h) applies to critical areas, not coastal preserves, however, the critical areas policy applies in any critical area located within the boundary of a coastal preserve. No change was made based on this comment

Two commenters recommended that §501 14 be amended to include "habitat" Because the definition of "critical areas," provided in §501 3(a)(7), now §501 3(a)(8), includes "habitat," no change was made based on this comment

One commenter recommended modifying §501 14(h)(1)(A) to provide that the policies of the subsection will be applied consistent with the goal of achieving no net loss of critical area functions and values "where practical, but to balance this against social and economic needs" Section 501 14(h)(1)(A) has not been changed be-

cause this subparagraph references the *goal* of no net loss of critical areas The policies in §501.14(h) are the means by which the goal may be achieved, and the *policies* provide for the consideration of social and economic needs.

Three commenters suggested that §501.14(h)(1)(B) requires applicants to prove a negative by requiring applicants to demonstrate that there is no practicable alternative with less adverse effects. The commenters suggested that this is an impossible task and recommended that the requirement be deleted Demonstrating that no practicable alternative with less adverse effects exists is not impossible, as applicants are required to do this pursuant to the federal §404(b)(1) guidelines. No change was made based on this comment

One commenter recommended that §501 14(h)(1)(B) be amended to provide that persons proposing development in critical areas demonstrate that "no practical economic alternative" with less adverse effects exists The suggested change is unnecessary, because §501.14(h)(1)(B) requires persons to demonstrate that no "practicable" alternative with less adverse effects exists, and the term "practicable" includes economic considerations See definition of "practicable" in §501 3(a)(10), now §501 3(a)(11). Therefore, no change was made based on this comment.

One commenter recommended amending §501 14(h)(1)(B)(i) to provide that only the immediate facilities and uses that are water-dependent may be located in critical areas and that any secondary facilities or related uses supporting water-dependent structures must be located outside of critical areas Another commenter recommended deleting §501 14(h)(1)(B)(i), stating that it only allowed water-dependent development in critical areas. The policy creates a presumption, not a prohibition, against non water-dependent uses and facilities The recommended language would be inconsistent with current law No change was made based on this comment

One commenter recommended deleting the second sentence of §501.14(h)(1)(B) (i), suggesting that the presumption that "practicable alternatives" with less adverse effects exist for non water-dependent development excludes economic and social considerations Another commenter suggested that such alternatives may pose more serious environmental concerns, and recommended amending §501 14(h)(1)(B)(i) to read, "if the activity is not water-dependent, practicable alternatives are presumed to exist, unless the applicant clearly demonstrates otherwise." Because §501 14(h)(1)(B)(i) requires the identification of "practicable" alternatives, social and economic considerations are included Section 501 14(h)(1)(B)(i) has been amended, as suggested by the second commenter, to be consistent with Code of Federal Regulations, Title 40, §230 10(a)(3), which provides that the presumption exists unless the applicant clearly demonstrates otherwise

One commenter recommended changing the list of possible alternatives in §501 14(h)(1)(B)(iii) to include the consideration of economic feasibility The suggested change is unnecessary, because the practicable alternatives analysis includes economic considerations, pursuant to the definition of "practicable" in §501 3(a)(10) No change was made based on this comment.

One commenter recommended that §501 14(h)(1)(C) be amended to provide that compensatory mitigation "shall not be authorized and appropriate actions begun to legally acquire the area, if significant." The proposed change obligates the state to condemn or acquire property when a person proposing an activity cannot satisfy the requirements of the critical area policy in §501. 14(h) The suggested language is inconsistent with current law. Also, the council has no authority to obligate the state to acquire property Therefore, no change was made based on this comment

One commenter requested deletion of §501.14(h)(1)(C), which provides the sequence for evaluating practicable alternatives to adversely affecting critical areas Subparagraph (C) is based on existing law, and guides applicants and permitting agencies on the proper and uniform evaluation of practicable alternatives required by subparagraph (B) Therefore, no change was made based on this comment

One commenter stated that the reference to §501 14(h)(1)(C)(i) in the proposed preamble was incomplete, as the alternatives analysis includes subclauses (i), (ii), and (iii) of this subsection The commenter also suggested that the reference to Code of Federal Regulations, Title 40, §230 75(d) was incomplete The commenter recommended that the subsection contain a general reference to Code of Federal Regulations, Title 40, §230 10(a) for the alternatives analysis, as well as a reference to Code of Federal Regulations, Title 40, §230 10(d), relating to the Clean Water Act, 33 United States Code Annotated, §1344, exemption The proposed preamble will not be republished and thus will not be amended, however, these comments warrant an explanation The proposed preamble discussion of §501 14(h)(1)(C) (i) identifies the alternatives analysis as a whole The proposed preamble reference to Code of Federal Regulations, Title 40, §230 75(d) is correct because that section describes "compensatory mitigation." The proposed preamble does reference Code of Federal Regulations, Title 40, §230 10(a) The critical areas policy will be applied consistently with the federal §404(b)(1) guidelines

One commenter stated that the mitigation requirements in §501 14(h)(1)(D) -(F) may constitute an unconstitutional "taking" of property, and that acquisitions by governmental entities or voluntary donations are viable alternatives to this problem The mitigation requirements in §501 14(h) are compensatory in nature and reflect the requirements of the federal §404(b)(1) guidelines Mitigation allows projects to proceed, but requires compensation for damage to critical areas, thus balancing economic development and resource protection Section 501 11(b) provides that this and all CMP policies shall not be interpreted or applied in such a manner as to result in an unconstitutional acquisition or taking of property No change was made based on this comment

One commenter suggested that the order of compensatory mitigation provided in §501 14(h)(1)(D) presented a potential conflict with natural resource damage assessments and the use of regional restoration plans The order of compensation in §501 14(h)(1)(D) for impacts to critical areas is based on the federal §404(b)(1) guidelines, and not on the regulations governing natural resource damage assessments or the regional restoration plans No conflicts in these processes have been identified No change was made based on this comment

One commenter asked whether §501 14(h)(1)(D) requires compensation for all impacts to critical areas, regardless of the value of the areas impacted, and whether this policy requires the creation of low value wetlands to compensate for impacts to low value wetlands The critical areas policy does not classify wetlands or other critical areas Compensation is only required to replace lost critical area functions and values using a one-to one ratio The ratio is functional, not areal Since low value wetlands have fewer functions and values than high value wetlands, less compensation is required Therefore the required compensation is commensurate with the impacts However, §501 14(h)(1)(G)(v) and §501 14(h)(1)(G)(v)(IV) were amended based on this and other comments received so that these provisions would more closely reflect how the federal §404(b)(1) guidelines are applied regarding mitigation

Two commenters requested the deletion of §501 14(h)(1)(D), relating to compensatory mitigation Section 501 14(h)(1)(D) is based on existing law, and establishes uniform policies for compensatory mitigation required by §501 14(h)(1)(C) No change was made based on this comment

One commenter requested the deletion of §501 14(h)(1)(E), relating to mitigation banking Section 501 14(h)(1)(E) appropriately recognizes the use of mitigation banks to meet the compensatory mitigation requirements in §501 14(h)(1)(C)(iii) Section 501 14(h)(1)(E) is consistent with current regulatory practice in Texas, as evidenced by the MOA signed by the United States Army Corps of Engineers, Galveston District, and Texas state agencies No change has been made based on this comment

Two commenters requested that §501 14(h)(1)(E) be amended to clarify that the agency authorizing the development may not be the agency approving the mitigation bank Based on this comment, §501 14(h)(1)(E) has been amended to clarify that use of a mitigation bank is not acceptable based on a particular agency's approval of creation of the bank rather, the agency authorizing the activity must approve the use of the mitigation bank as compensation for adverse effects to the critical area

One commenter stated that the mandatory one to one compensation ratio in §501 14(h)(1)(F) conflicts with the statement that "it is not required in individual cases where mitigation is not practicable or would

result in only inconsequential environmental benefits." A second commenter stated that the one-to-one ratio was insufficient. Another commenter recommended that the third sentence of §501.14(h)(1)(F) be deleted, stating that it creates a "loophole" that would allow extensive loss of critical areas. The quoted language provides an exception to the no net loss policy where mitigation is not practicable or would result in only inconsequential environmental benefits. The third sentence of §501.14(h)(1)(F) has not been deleted, as it reflects current practices under the federal §404(b)(1) guidelines and recognizes that no net loss is not achievable in all circumstances. No change was made based on this comment.

One commenter recommended the deletion of §501.14(h)(1)(F), relating to compensatory mitigation requirements. Section 501.14(h)(1)(F) is based on existing law, and establishes criteria for determining compensatory mitigation required by §501.14(h)(1)(C). These reflect current law. No change was made based on this comment.

One commenter recommended that §501.14(h)(1)(F) be amended to require a mitigation ratio greater than one-to-one to avoid net habitat loss. The commenter stated that it is impossible to achieve true replacement of lost functions and values through the use of off-site mitigation, and requested that monitoring and bonds be required for compensatory mitigation. The one-to-one ratio established in §501.14(h)(1)(F) is based on functions and values, not on areal extents. Therefore, as provided in §501.14(h)(1)(F), replacement of *functions and values* on a one-to-one ratio may require restoration or replacement of the *physical area affected* on a ratio higher than one-to-one. The council will rely on the agencies to monitor and ensure compliance with the compensatory mitigation requirements. Section 501.13(2) of this chapter requires agencies to identify the monitoring programs established to ensure that activities such as mitigation are consistent with the CMP goals and policies. The critical areas policy in §501.14(h) does not impose bonding requirements in all cases, because such a categorical requirement would be too onerous. No changes were made based on these comments.

One commenter requested that the consideration of dilution and dispersion be deleted from §501.14(h)(1)(G), suggesting that the recognition of such dilution/dispersion zones amounts to a gift of state waters to permit holders. The commenter recommended, in the alternative, that §501.14(h) be amended to require bonding to ensure restoration of mixing zone sediments and compensation for the use of these waters. The federal Clean Water Act, 33 United States Code Annotated, §§1251-1387, and the Texas Water Code, Chapter 26, permit the discharge of wastewater into state waters and recognize the use of mixing zones. The critical areas policy in §501.14(h) reflects current practices for assessing impacts to water quality, and therefore recognizes the use of mixing zones. The critical areas policy does not require permit holders to secure bonds, because such a requirement would be too onerous and exceed current law. No change has been made based on this comment.

One commenter noted that the term "development," as used in §501.14(h)(1) (G), is undefined and recommended clarification that beneficial use projects are governed only by the policies in §501.14(j)(4). Beneficial uses of dredged material that involve discharge of material to waters of the United States must comply with the dredging policies in §501.14(j), which requires, by cross reference, compliance with the critical areas policy. The dredging and critical areas policies are based on the federal §404(b)(1) guidelines, which contain no exception of the type suggested by the commenter for beneficial use projects. It is therefore inappropriate to add such an exception in the critical areas policy. However, it is important to realize that no such exception is needed to allow for legitimate beneficial use projects to occur. The CMP goals and policies are designed to prohibit only unacceptable adverse effects. A true beneficial use project produces an overall enhancement of the functions and values of CNRAs. Therefore, neither the dredging policy or the critical areas prohibit projects that are truly beneficial. No change was made based on this comment.

One commenter requested that §501.14(h)(1)(G) be amended to include the exception provided in Code of Federal Regulations, Title 40, §230.10(c) (in reference to the Clean Water Act, 33 United States Code Annotated, §1344(b) (2). Dredging and dredged material disposal and placement must comply with all applicable provisions of §501.14(j). Section 501.14(j) contains a provision in paragraph (B) requiring such activities to comply with the critical areas policy in §501.14(h). Since compliance with the critical areas is required for dredging and dredged material disposal and placement, by virtue of the cross reference, the exception in §501.14(j)(1)(D) is an exception from certain provisions of the critical areas policy for dredging and dredged material disposal and placement activities that meet the requirements of paragraph (D). Therefore, the exception recommended by the commenter does need to be added to §501.14(h). However, §501.14 has been revised to address the potential ambiguity identified by the commenter and clarify the scope of the exception.

One commenter suggested deleting §501.14(h)(1)(G)(v)(IV), relating to recreational, aesthetic, and economic values, because the provision is unclear and vague. The provision mirrors Code of Federal Regulations, Title 40, §230.10(c)(4) of the federal §404(b)(1) guidelines. However, §501.14(h)(1)(G)(v) (IV) has been amended to clarify the requirements under the Texas Water Code, Chapter 26, the Texas Natural Resources Code, Chapter 33, and the federal §404(b)(1) guidelines. The policy has been revised to clarify that consideration of adverse effects is limited to adverse effects on a CNRA.

One commenter stated that "private coastal submerged lands" should be added to §501.14(i). Private submerged lands are now defined in §501.3(b)(11) and includes all submerged lands owned by a state agency or political subdivision. No change was made based on this comment.

One commenter requested that all marinas be required to have facilities for collection of waste and trash, and that they be used *as provided in §501.14(i)* (emphasis added). This subsection was not changed, as §501.14(i) provides for waste collection facilities for marinas.

Regarding §501.14(i)(1)(A)-(L), one commenter strongly supported these subsections and asked that no changes be made. Based on other comments received, these subsections were amended.

One commenter objected to the inclusion of artificial reefs in §501.14(i) (1)(F) because such reefs are subject to §505.50(6), relating to the review of the TPWD Artificial Reef Plan, and are distinct in function from the wharves, fishing cabins and the other waterfront structures listed in this subsection. The commenter stated that the requirements of §501.14(i)(1)(F) and (L) that respectively limit artificial reefs to "the minimum size necessary to serve the public purpose," and require "assurances for restoration or facility removal" are inappropriate. Another commenter asked that fishing cabins be prohibited. Artificial reefs are properly included in §501.14(i) because even though they may be distinct in function from the other structures, they can be similar in effect. Section 505.50(6) only covers TPWD's general artificial reef plan, §501.14(i) covers GLO and SLB permitting of artificial reefs, therefore, §501.14(i)(F) and §505.60(6) are not duplicative. Section 501.14(i)(1)(F) does not limit the issuance of permits for artificial reefs, rather, it limits their size to minimize interference with navigation, natural coastal processes, and other adverse effects. This subsection was not amended to prohibit the construction of fishing cabins, as that activity is authorized by Texas Natural Resources Code, Chapter 33, and is regularly authorized by the GLO and the SLB, provided CNRAs are not adversely affected. However, based on this comment, §501.14(i) (1)(L) was amended by deleting the requirement that assurances be given for restoration or facility removal as this may be more of a financial issue than one of resource protection.

A commenter requested that a practicability standard be added to the last sentence of proposed §501.14(i)(1)(J) regarding expansion of waterfront facilities, because it may not be possible in all cases to avoid expansion of facilities into critical areas. Based on this comment, this subsection has been modified.

One commenter requested clarification of §501.14(i)(1)(K) as to the agency responsible for determining which materials are "acceptable" for construction of the identified structures. This commenter also questioned whether there were any materials available which would not cause "any adverse effects." Section 501.14(i) applies to activities authorized by the agency authorizing the structure, therefore, the agency authorizing the construction will interpret and apply §501.14(i)(3) when issuing a consistency determination. The requirements in §501.14(i)(1)(K) apply "where practicable," as stated in this subsec-

tion, therefore, there is not an outright prohibition of the use of materials which may adversely affect coastal waters or critical areas No change was made based on this comment

One commenter asked that §501.14(i)(1)(M) be deleted and replaced with "non-water dependent uses shall not be allowed " It is feasible to have uses within the boundary of the CMP that are not water-dependent Therefore, it is not practicable to disallow these uses This subsection merely gives preference to those uses that are water-dependent being built on waterfront facilities and coastal public submerged lands This subsection was not changed

One commenter asked that §501 14(i)(1)(N), pertaining to the prohibition of filling critical areas be amended because it impacts the oil and gas industry Another commenter was concerned that, as drafted, the scope of §501 14(i)(1)(N) was unclear and the subsection might be misconstrued to include commercially navigable waterways A third commenter requested that "or public uses" be deleted from §501 14(i)(1)(N) Section 501 14(i)(1)(N) has been deleted and the section renumbered accordingly, as the specific policies regarding filling of critical areas are provided in §501 14(h)

Concerning §501 14(i)(1)(O)-(Q), now §501 14(N)-(P), one commenter strongly supported these subsections and asked that they not be changed These subsections were not changed, however, they were renumbered to reflect changes to other subsections

One commenter suggested that under §501 14(i)(3), regarding GLO and SLB management authority, the laws establishing the Beach Park Boards of Trustees should be included These laws were not included, as this subsection only relates to activities authorized pursuant to Texas Natural Resources Code, Chapters 32, 33, and 51-53 and Texas Water Code, Chapter 61

Section 501 14(j)

Two commenters supported §501 14(j) because it does not make placement of dredged material prohibitively expensive Another commenter stated that the cost of maintenance dredging would significantly increase due to the CMP Section 501 14 is based on the requirements contained in existing law, and the CMP does not expand or detract from those requirements No change was made based on this comment

Regarding §501 14(j), one commenter asked for a long-term dredging plan Pursuant to the requirements in Chapter 506, the United States Army Corps of Engineers and state agency staff are negotiating an MOA for phasing in dredging over a five-year period The product of this process will constitute the long-term dredging plan called for by Texas Parks and Wildlife Code, Chapter 14 No change was made based on this comment

Two commenters requested that §501 14(j) identify which portions of §501 14(j) are intended to be consistent with the Clean Water Act, 33 United States Code Annotated, §1344, guidelines, and which portions are additional requirements Another commenter stated that the legislature did not intend for the CMP to establish new laws or regulations, and a fourth commenter questioned how the federal guidelines were being strengthened The dredging and dredged material disposal and placement policy in §501 14(j) simply and succinctly provides the substantive requirements of the federal §404(b)(1) guidelines, as currently applied The council intends no change from the substantive policies contained in the federal §404(b)(1) guidelines As stated in the response to similar comments on the critical areas policy, the council will exercise independent judgment in implementing and interpreting the dredging and dredged material disposal and placement policy and will rely on existing sources of secondary authority relevant to the federal §404(b)(1) guidelines to interpret the policy Those substantive provisions of §501 14(j) that are not based on the federal §404(b)(1) guidelines are §501 14(j)(3)-(8) Of those, §501 14(j)(5) calls for beneficial use of dredged material, which is mentioned in the federal §404(b)(1) guidelines, albeit in much less detail Also, §501 14(j)(7) is based on provisions in current United States Army Corps of Engineers regulations at Code of Federal Regulations, Title 33, Parts 335 and 337 In addition, the council, in consultation with local sponsors of dredging projects, the United States Army Corps of Engineers and the Ports, included §501 14(j)(3)-(5), relating to the beneficial use of dredged materials, and §501 (j)(6), relating to state title to submerged lands No change was made to this subsection

One commenter stated that the statement in the preamble regarding the incorporation of the federal §404(b)(1) guidelines is misleading because it states that §501 15(j) was "based largely on" the federal §404 guidelines when it appears that the entire section is solely based on such guidelines The commenter also asked that language from the MOA between the EPA and the Department of the Army concerning the Determination of Mitigation Under the federal §404(b)(1) guidelines be incorporated The proposed preamble will not be republished and, therefore, no changes will be made to the proposed preamble However, §501 14(j) is not intended to entirely restate the requirements of federal §404(b)(1) No changes were made in response to these comments

One commenter recommended that §501 14(j)(1) be amended to include language that will ensure the continued right of public access to the Gulf beaches pursuant to the Texas Open Beaches Act The commenter recommends the following language "The policies of this section are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public " The council has amended the subsection to include the suggested language

One commenter recommended that the phrase "after consideration of dilution and dispersion," be deleted from §501 14(j)(1)(A) According to this commenter, if the phrase is not deleted, the state should be compensated for private use of these waters Also, the permit holders should be required to hold bonds insuring eventual cleanup of mixing zone sediments Current law requires the TNRCC to consider dilution and dispersion of dredge material prior to assessment of a violation of applicable water quality standards, pursuant to the Clean Water Standards in Chapter 307 of this title Section 501.14(i)(1)(A) has not been amended to require bonds for cleanup of mixing zone sediments because such a requirement would exceed existing law Therefore, no change was made

Regarding §501 14(j)(1)(A) (B), one commenter supported this subsection as written and asked that no changes be made Based on other comments, these subsections have been revised

One commenter was concerned with the cumulative effects of various activities in the coastal zone because of the impact to sea grasses Another commenter stated that CNRAs should not be polluted Sections 501 14(j)(1)(B), (j)(2)(A) and 501 13(5) address the impacts of dredging and filling, which takes into account cumulative effects on these areas No change was made based on this comment

Concerning §501 14(j)(1)(B), several commenters stated that the United States Army Corps of Engineers should not have to mitigate and compensate in order to continue to place dredged material in an existing designated site Another commenter concurred, stating that §501 14(j)(1)(B) should not apply to existing designated sites Also, one commenter stated that existing dredged material disposal sites have become valuable fish and wildlife habitat which indicates that dredged material placement is not as detrimental as some groups believe The commenter noted that this subsection appears to require compensatory mitigation for existing designated placement sites The commenter requested that the only requirement be that the dredge material be placed with due care to ensure continued attraction of this valuable resource The requirement in §501 14(j)(1)(B) is based on federal §404(b)(1) guidelines and does not impose additional requirements In addition, §501 14(j)(3) provides that disposal of dredged material is presumed to be consistent with the CMP No change was made to this subsection in response to this comment

One commenter recommended that the phrase "dredging and disposal of dredge material shall not be authorized," as used in §501 14(j)(1)(C) be amended to read "shall be avoided " The requirements of §501 14(j)(1)(C) are explicitly based on the requirements of the federal §404(b)(1) guidelines regarding permitting dredging See the Code of Federal Regulations, Chapter 40, Part 230, Subpart B §230 10 These guidelines and the CMP prohibit authorization of dredging and disposal of dredged material in certain circumstances No change was made to the subsection in response to this comment

Concerning §501 14(j)(1)(C)(i), one commenter questioned if "practicable" is also defined as economically achievable, and also, what "other significant adverse effects" could occur Another commenter asked that §501 14(j)(1)(C) (i) and (ii) be deleted The term "practicable" includes consideration of

cost, logistics and existing technology, as defined in §501.3(a)(10) The phrase "other significant adverse effect," as used in §501.14(j)(C)(i), refers to adverse impacts which are likely to result from a practicable alternative under consideration The subsection requires evaluation of the adverse effects likely to result from the alternatives No change was made in response to this comment

Two commenters were concerned about the impact that §501 14(j)(1)(D) may have on dredging, and one stated that §501 14(j)(1)(D) could be interpreted to require mitigation for maintenance dredging activities Another commenter questioned how dredging wetlands could ever be both environmentally and economically sound Other commenters stated that dredging was not beneficial, dredging wetlands was unnecessary, and one commenter stated that Texas must take a strong stand against the United States Army Corps of Engineers One commenter stated that §501 14(j)(1)(D) was a loophole for state and federal agencies The effects of dredging are addressed in §501 14(h), the critical areas policy Mitigation may be required pursuant to §501 14(h) to avoid adverse effects on critical areas Section 501 14(j)(1)(D) is based on current law, specifically, the exception in Clean Water Act, 33 United States Code Annotated, §1344 Based on the comments, the provision was revised to clarify its scope and meaning

Several commenters requested that §501 14(j)(2) be stricken because the advisory material of this subsection is not appropriate for inclusion in enforceable sections The commenter recommended that the information be disseminated through guidelines issued by the council The purpose of the CMP is to make "all coastal management processes more visible, accessible, coherent, consistent and accountable to the people of Texas." See Texas Natural Resources Code, §33 202(a)(2) Section 501 14(j)(2) provides guidance on techniques which may be used to satisfy the requirement in §501 14(j)(1) to minimize impacts to certain coastal resources The subsection has been modified to ensure that the subsection is interpreted as illustrative of different techniques that can be employed to minimize adverse effects The circumstances of each case will determine which techniques are appropriate

Two commenters recommended deleting §501 14(j)(2), as proposed, because this subsection is inconsistent with Code of Federal Regulations, Title 40, Part 230, Subpart H The commenter requested that the term "avoid" be deleted from the introductory sentence of §501 14(j)(2) because it is not a part of Code of Federal Regulations, Title 40, Part 230, Subpart H The requirements of this subsection are also required in the federal §404(b)(1) guidelines as methods that may be selected to minimize adverse effects from dredging and dredged materials Based on this comment, a definition of "avoid and otherwise minimize" has been added to §501 3(a), and the phrase "avoid and minimize" has been replaced with "minimize "

Another commenter asked that the word "can" in §501.14(j)(2)(A)-(H) be replaced with "shall " Because the referenced subsections refer to permissible techniques that are not mandatory in all cases, but only in those cases where a particular technique is appropriate The suggested change was not adopted

One commenter asked that §501.14(j)(2)(A)(i) be modified to include "avoid smothering organisms " The proposed subsection currently contains language that requires "locating and confining discharges to minimize smothering organisms." It is not possible to avoid smothering organisms in the placement of all dredge material. The subsection comports with existing law, therefore, no change is made to this subsection

One commenter suggested that §501 14(j)(2)(A)(i) include language discussing the criteria and design selection of designated disposal sites The criteria for site selection included in this subsection is in the following provisions §§501 14(j)(2)(A)(v), (j)(2)(D)(vi), (j)(2)(F)(iii), (j)(2)(G) (iv), (j)(5)(A)-(C) and (6) No change was made to this subsection based on this comment

One commenter requested that the phrase "adverse disruption of water inundation patterns," used in §501 15(j)(2)(A)(ii) be defined The phrase "adverse disruption of water inundation pattern" includes such alterations as the rise and fall of water within an area due to groundwater level fluctuations, tidal amplitude fluctuations, rates of discharge of water within a floodplain and/or stream or tributary channel, and the cyclical drying of an inundated area No change was made to this subsection in response to this comment, as a detailed definition would limit the flexibility of this provision.

One commenter recommended that safety be taken into account under §501 14(j)(2)(A)(iv) Safety is one factor among many that may be included in the analysis under §501 14(j)(2)(A)(iv) No change was made to this subsection based on this comment

Regarding §501 14(j)(2)(B), one commenter suggested that not all dredge material can be treated and used for beneficial use, and that these situations should be considered on a case-by-case basis Another commenter expressed concern over the placement of dredged material Section 501 14(j)(4) does not require beneficial use of dredged material Beneficial use is required if the material is "suitable" and the use is approved only after consideration of the anticipated environmental costs and benefits, and the proximity of the beneficial use site to the dredge area No change was made to the subsection based on this comment

A commenter requested that the word "discharge" be changed to "disposal" in §501 14(j)(2)(B)(i) The term "discharge" is used to comport with the federal §404(b)(1) guidelines terminology No change was made in response to this comment

One commenter stated that the requirement that turbidity be minimized while dredging, as required in §501 14(j)(2)(D), imposes an undue restriction on the dredging process This subsection does not require that turbidity be minimized during dredging, §501.14(j)(2) does. Rather, this subsection simply identifies the various techniques that may be used to avoid and otherwise minimize turbidity. These requirements are found in Code of Federal Regulations, Title 40, Part 230, Subpart H, §230 72(f). No change was made in response to this comment

One commenter stated that during negotiations, it was agreed that the siting provisions currently located in §501 14(j)(2)(H) of the dredging section would be moved to §501.15, policy for major actions, to ensure that all of the CMP siting provisions are located in the same section and clarify that the factors and considerations of §501 15 would be considered when the siting of dredging projects are analyzed The commenter requested that since this change was not made in the proposed subsection, it should be incorporated into the final rule. Another commenter stated that the limitations used in §501 14(j)(2)(H) are arbitrary and seem to circumvent the federal §404(b) (1) process for analyzing and handling dredged material. The commenter recommended that sequential project analyses and evaluation techniques be used, not arbitrary limitations Section 501.15 is limited to "major actions" and, due to the potential for adverse impacts to CNRAs that the disposal of dredged material may have, it is appropriate that the council have jurisdiction over such disposal in §501.14(j)(2) even where disposal does not rise to the level of a "major action " Regarding the second comment, these provisions, as revised, simply provide minimization techniques to avoid and minimize The listed techniques are derived from the secondary impact provisions of the federal §404(b)(1) guidelines Based on this comment, §501.15 was revised to clarify the relationship between the alternatives analysis requirements in §505 15 and those in §501 14

One commenter stated that the options listed in §501 14(j)(2)(H) are intended to operate as alternatives to avoid and otherwise minimize the adverse affects of dredging The listed options are derived from the federal §404(b)(1) guidelines. No change was made based on this comment

One commenter expressed concern over §501 14(j)(3), stating that the section should be changed to include environmental assessments (EAs) or environmental impact statements (EISs) The commenter noted that additional review for any "modification in design, size, use, or function," went beyond the criteria of only reviewing actions requiring an EA or an EIS Section 501. 14(j)(3) only applies to existing sites selected on the basis of an EA or EIS All changes in the use of an existing site not included in the applicable EA or EIS should be subject to consistency review because, even if the changes do not require an EA or an EIS, such changes may conflict with the policies of the CMP No change was made to this subsection based on this comment

Concerning §501 14(j)(3) to §501 14(p), one commenter supported these sections as written and asked that no changes be made Based on other comments received, these subsections have been amended

One commenter suggested that "suitable" be defined as it is in §501.14(j) (4). As used in this subsection, the term "suitable" means appropriate to a given purpose or occasion. Because this word is used in accordance with its vernacular meaning, no change was made to this subsection

Five commenters suggested that placement of dredged material in existing confined sites be exempt from §501.14(j)(4). One commenter stated that this subsection is a positive addition and reflects the fact that most of these sites were adequately sited in the beginning. Even material destined for a confined site should be considered for beneficial use because such use of the material would contribute more to the maintenance of a healthy coast than forever confining the material in a disposal site. No changes were made to this subsection.

Concerning §501.14(j)(4)(A), one commenter asked that a new factor, the cost of the proposed beneficial use, be added to this subsection. This subsection states that suitable dredge material "must be used beneficially to the greatest extent practicable." The term practicable includes cost considerations. In addition, the proximity of the beneficial use site to the dredge site must be considered. Thus, costs of transporting dredged material to the beneficial use site are included No change was made to this subsection in response to this comment.

It was suggested by one commenter that a fourth option be added to §501. 14(j)(5) to read "designated ocean disposal sites." The subsection provides no preference for designated ocean disposal sites, but §501.14(j)(5) does not prohibit dredge disposal in designated ocean disposal sites. Notwithstanding the above, §501.14(j)(5)(C) does provide for disposal in "open water areas of relatively low productivity or low biological value." No change was made to this subsection based on this comment.

Concerning §501 14(j)(5), four commenters wrote that they were concerned with the cost of the placement of dredged material and that it not be expensive Because §501.14(j) is not substantially different from the federal §404(b)(1) guidelines, no additional requirements are imposed. Therefore, no additional costs should be incurred in the implementation of this subsection No change was made to this subsection based on this comment.

One commenter asked for a more specific use of "low biological value" and identification of the entity responsible for determining "low biological value, " in §501.14(j)(5)(C) Because the CMP is a networked program, the agency that issues a permit pursuant to §501.14(j)(5)(C) would interpret "low biological value" on a case-by-case basis. Such agencies may include TxDOT, the GLO, and the United States Army Corps of Engineers. No change was made to this subsection in response to this comment.

Regarding §501.14(j)(6), one commenter asked that this section be deleted because an agreement between the affected public owner and the adjoining private owner could be reached every time a new disposal area was needed. Section 501.14(j)(6) is intended to ensure that the state does not inadvertently lose title to state submerged lands as a result of the placement of dredged material. An agreement is needed whenever and wherever the public entity may lose title to land. No change was made based on this comment.

One commenter noted that under §501 14(j)(7)(B) and (C), the provision for 24-hour notice "emergency" dredging in cases of "an immediate threat of significant loss of property" or when "an immediate and unforeseen significant economic hardship is likely" appears to be too elastic and should be eliminated This provision is based on existing law (the Code of Federal Regulations, Title 33, Part 337, §337.7), and recognizes that immediate dredge operations may be required However, consistency with the applicable CMP goals and policies is required after the emergency has passed No change was made to this subsection in response to this comment.

Regarding §501.14(j)(7)(C), one commenter asked that this subsection be revised to reflect that the project sponsor "must" meet with council's designated representatives to ensure consideration and consistency as they apply to emergency dredging. Another commenter requested that "emergency" be defined. Based on these comments, §501.14(j)(7)(C) has been amended to require the United States Army Corps of Engineers "to make all reasonable efforts" to meet with the council's designated representatives. In addition, the subsection has been amended to require the United States Army Corps of Engineers and the applicant to submit a consistency determination within 60 days after the emergency operation is complete. A definition of "emergency" was not added, as this term is defined in the policy

One commenter stated that §501.14(j)(8), requiring an "affirmative showing of no adverse impact on coastal water quality or terrestrial and aquatic wildlife habitat within any CNRA" in order to mine sand, shell, marl, gravel and mudshell is tantamount to a prohibition against mining. A permit may be issued upon a showing of no adverse effect, therefore it is not a prohibition. While the standard is high, it is not intended to prohibit the activity entirely. Therefore, no change was made in response to this comment.

Regarding §501.14(k)(1), one commenter suggested that due to the relatively small area and the widely recognized storm surge buffer value of critical dune areas, construction in these areas should be prohibited. Section 501.14(k)(1)(A) is based on the GLO rules for management of the beach/dune system which prohibit construction in a critical dune area that results in the material weakening of dunes and material damage to dune vegetation. This subsection was not amended.

One commenter wrote that concerning §501.14(k)(1)(C), if construction in critical areas and areas adjacent to the coast must be allowed, replacement of the lost dune volume and vegetative cover must be on a ratio greater than one-to-one because a higher ratio would impose a penalty for such destructive construction and provide a buffer for shortcomings in dune replacement efforts. The language of §501.14(k)(1)(C) provides for "at least" a one-to-one ratio for lost dune volume and vegetative cover. This provision sets a threshold for minimum replacement, but allows the use of a higher replacement ratio. This subsection was not modified

One commenter suggested that the requirement of "enhancement" of beach access be deleted from §501.14(k)(1)(D) because it is unreasonable to ask a party who is attempting to construct a structure in the beach dune system to "enhance" beach access No change was made based on this comment because neither the CMP nor the Open Beaches Act (Texas Natural Resources Code, Chapter 61), and the regulations promulgated thereunder, require an individual to enhance beach access unless the individual is proposing construction which will adversely affect the public beach or public access Local governments, not individuals, are responsible for developing and implementing local beach access plans for the preservation and enhancement of public use of and access to and from the public beach No change was made to this subsection based on this comment

Regarding §501 14(k)(1)(D), one commenter recommended that "the ability of the public...to exercise its rights of use and access to and from public beaches shall be preserved and enhanced," be replaced with "preserve or enhance " No change was made based on this comment, as Texas Natural Resources Code, §61 015(a) includes the phrase, "preserve and enhance "

For purposes of clarification, §501 14(k)(1)(E) has been amended by deleting "where appropriate," and specifically identifying the circumstances under which construction of erosion response structures is limited or prohibited, pursuant to state law

One commenter stated that in regard to §501.14(m), the authority cited in the CMP does not support such a broad assertion over coastal barriers Section 501 14(m) establishes policies which generally govern development of new infrastructure within CBRA, 16 United States Code Annotated, §3501, et seq, units and otherwise protected areas designated under CBRA Under the CBRA, development in these areas is subject to certain restrictions on federal funding and subsidies Based on the same concern that development proceed carefully in these highly vulnerable areas, this policy is intended to provide greater consistency and uniformity between federal law and state policies on use of state funds for such development The policy requires TNRCC rules, and the approval of publicly funded infrastructure projects to be consistent with the general development guidelines in this policy. No change was made to this subsection based on comment

Concerning §501 14(m)(1)(B), one commenter requested that only "reasonably foreseeable" expansion be included The commenter stated that it is impossible to predict where development will occur at some time in the distant future and some reasonable limits on time should therefore be incorporated in this provision This subsection requires forethought in construction planning to avoid future expansion construction into criti-

cal areas and Gulf beaches. Based on this comment, this subsection was amended to clarify that future expansion must be "reasonably foreseeable."

A commenter requested that §501.14(n) be amended to more accurately state that the TPWD is responsible for identifying those coastal parks, wildlife management areas, and preserves which are included in the CMP. Because §501. 3(b)(3), designating the coastal parks, wildlife management areas, and preserves as CNRAs, adequately identifies TPWD as the agency responsible for identifying such areas, no change was made based on this comment.

One commenter stated that §501.14(o) limits the ability of the Texas Antiquities Committee to weigh the public interest and appears to prevent development affecting a coastal historic area. The commenter recommended that this subsection be modified to incorporate specific factors which must be considered by the committee in making its determination, while retaining the committee's ability to issue a permit for a needed public project located in an area impacting a historical site. Section 501.14(o) does not prohibit activities which would adversely affect, damage, or impair designated historical sites Consistent with existing law, the policy requires that alteration and disturbance of these sites be avoided, and otherwise minimized The policy does not and is not intended to contravene the Texas Antiquities Committee's existing statutory authority to issue permits for the discovery, excavation, restoration, demolition, or study, at, in or on historical landmarks pursuant to Texas Natural Resources Code, §191.054. Pursuant to §501.13(3), the Texas Antiquities Committee may identify the circumstances in which they have the authority to issue variances from the standards or requirements on §501.14(o) This subsection was not changed.

Regarding §501.14(p), one commenter requested that TxDOT and the GLO be required to review billboard placement along coastal roads and that such review be subject to council oversight. The commenter was concerned that the lack of consistent coastal regulation of signage on the Texas coast could be easily disturbed by unregulated signs. Sign placement is not an activity which may adversely affect CNRAs, justifying inclusion in the CMP However, where construction of signs would require a federal §404 permit or other action subject to the CMP, compliance with the applicable goals and policies is required The placement of such signs is not included in the CMP by virtue of the exclusive list of actions in §505.11, therefore, this subsection was not changed.

Two commenters stated that §501 14(p) should be clarified to ensure that the term "other transportation projects" does not include transportation of oil and gas by pipelines. The commenters recommended that this phrase be modified to state "other transportation projects (except transportation of oil and gas by pipelines)" Two other commenters requested that "other transportation facilities" be deleted. Private oil and gas pipelines are not "other transportation projects," and are not subject to §501 14(p) This policy could only apply to an oil and gas pipeline constructed by TxDOT. No change was made based on this comment

A commenter suggested that §501 14(p) be amended by adding "[C] onstruction of or improvement of roads and highways for the purpose of hurricane evacuation, may encroach upon, over, and through CNRAs and coastal wetlands when no other practical and safe route can be found for coastal residents to use in emergencies." Section 501.14(p)(1) does not prevent the construction of roads described in the commenter's suggested policy. Therefore, no change was necessary based on this comment

One commenter asked that "contaminated sediments" be added to §501.14(p) (1)(B) Since a direct release of contaminated sediments would adversely impact CNRAs, this subsection was amended to incorporate this term

Concerning §501 14(p)(1)(D), one commenter requested clarification of the application of this section to existing or authorized projects. Another commenter asked that "to the greatest extent practicable" be added to this subsection Based on this comment, the phrases "[W]here practicable" and "except where such construction is determined to be essential for evacuation in the case of a natural disaster" were added to this section

Two commenters requested clarification of §501 14(p)(1)(F) because of a noun missing from the end of the sentence, "terrestrial or aquatic " One commenter asked that the word "wildlife" be inserted after "aquatic " Based on this comment, this subsection was amended

In §501 14(q), the commenter stated that because the council requires TNRCC air rules to comply with federal rules, this subsection should be deleted Air quality permits are intentionally *excluded* from the CMP The CZMA, 16 United States Code Annotated, §§1451-1464, requires that the CMP ensure compliance with the Clean Air Act, 42 United States Code Annotated, §§7401-7671 Although TNRCC's air quality permits are not included in the §505 11 list of actions, the rules will be subject to the CMP This subsection was not amended.

A commenter requested that the health of domestic animals and/or livestock be addressed in §501.14(q) This commenter recommended adding the term domestic animal or livestock to protect live animals and modify the subsection by inserting "and domestic animal (livestock) between "public" and "health " In accordance with the Clean Air Act, 42 United States Code Annotated, §§7401-7671q, §501.14(q) provides for air quality control in the coastal area to protect human health, safety and welfare Therefore this subsection was not amended

Based on the many comments received on §501.14(r), the subsection has been modified by substituting the proposed freshwater inflow policy with the exact language of the Texas Water Code provisions guaranteeing inflows to bays and estuaries

One commenter asked that §501 14(r) be amended to require maximum water conservation and to prohibit expensive water projects. The council's freshwater inflow policy has been modified to be an explicit restatement of existing law. These statutes do not require maximum water conservation or prohibit expensive water projects

Two commenters stated that §501.14(r) allows the council to review new applications for and most amendments to water rights permits outside the CMP boundary, up to 200 stream miles from the coast. The commenter also stated that the council should not review individual permits outside the CMP boundary. With respect to the first comment, the exclusive list of actions outside the CMP boundary subject to the CMP (contained in §505.11(a)) was revised to include only those permits and permit amendments within 200 stream miles of the coast for, respectively, an appropriation of 5,000 acre-feet of water per year or more; an increase of 5,000 acre-feet or more of water per year or an increase in the appropriate amount of the existing permit, and a change in use of 5,000 acre feet of water to a more consumptive use. Based on this comment, §505.11(a)(1)(C) was changed In addition, §505 11(a)(2)(F)(ii)(I) and (II) have been similarly revised to include water rights actions inside the CMP boundary, except the amount of or increase of water appropriated must be 2,500 acre-feet of water per year

According to one commenter, review of water rights permits should be limited to only new appropriations of 5,000 acre feet or more and amendments or renewals of permits not involving new appropriations should not be subject to council review. Another commenter requested deletion or clarification of §501 14(r) Based on this and other comments, §501 14(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows

A general comment on impoundments and diversions of water under §501 14(r) stated that the CMP must balance the needs to protect the bays with the need to provide water to communities and industries in the affected area and recognize that most impoundments of large quantities of water occur upstream, outside coastal areas Based on this and other comments, §501 14(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows

One commenter recommended that §501.14(r)(1)(A) be amended to comport with Texas Water Code, §11 147(a). Based on this and other comments, §501. 14(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows

Regarding §501 14(r)(1)(C), a commenter stated that "stock raising" was excluded from and should be included in the list of beneficial "instream uses " Based on this and other comments, §501 14(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows

Regarding §501 14(r)(1)(C), one commenter requested that "irrigation" be added before the word "navigation" because, according to the Wagstaff Act, irrigation has a higher pref-

erence among beneficial uses than the other uses listed in this subsection. In accordance with this and other commenters requests, §501 14(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows.

In §501.14(r)(1)(D), one commenter requested substitution of "include permit conditions for the protection of" for "reserves from available unappropriated water," to clarify that the protection of bay and estuary inflows are to be accomplished by permit conditions The commenter recommended the amendment to clarify the permit conditions being discussed in the next sentence of the subsection. The commenter suggested amending §501 14(r)(1)(D) to require the TNRCC to "include permit conditions for the protection of instream flows necessary for bays " Another commenter stated that the amount of available unappropriated water may not be sufficient to provide for future projects Based on this and other comments, §501 14(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows

Regarding §501.14(r)(1)(F), one commenter stated that Trans-Texas criteria would prevent development of many projects with no demonstrable evidence that there will be a corresponding environmental gain Another commenter believed that the use of Trans-Texas criteria was ill advised Based on this and other comments, §501 14(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows

Regarding §501 14(r)(1)(G), three commenters asked that this subsection be amended to comport with Texas Water Code, §16 195, and asked for the deletion of "included but not limited to insufficient flows for existing instream uses and beneficial inflows for the maintenance of bays and estuaries " Based on this and other comments, §501 14(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows

One commenter wrote that under §501 14(r)(1)(G), emergency releases for beneficial inflows for the maintenance of bays and estuaries should be allowed to supersede "contractual obligations of the TWDB" Another commenter stated that §501 14(r)(1)(G) added requirements which exceed TNRCC's existing statutory authority Based on this and other comments, §501 14(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows

One commenter asked to change §501 14(r)(1)(G), to add agriculture as a proper use for release of unappropriated water This subsection was not amended, as release of unappropriated water for agriculture is not provided in freshwater inflow laws Section 501 14(r) was amended, but no changes were made based on this comment, as this subsection is consistent with the Texas Water Code, §16 195

Some commenters wrote to support §501.14(s) and to urge that no changes be made to this section. Changes were made to improve the subsection.

A commenter requested that §501.14(s)(1) be revised by deleting "to the greatest extent practicable," in relation to draining of wetlands, and that no draining be allowed. Section 501.14(s)(1) does not include an outright prohibition on the draining of all wetlands. Such a provision would not be in accordance with existing law, therefore no change was made

Under §501 14(s)(1), one commenter wrote that the CMP should recognize that detention and retention proposals are preferable flood control measures and far superior to rectification options The policy does not express a preference for any particular flood control option, rather the policy requires that flood control projects be designed to avoid impoundment and draining of coastal wetlands, a CNRA Utilizing flood control prevention options, such as detention and retention ponds, may be one way to avoid damage to coastal wetlands However, the council expresses no particular preference for this approach No change was made based on this comment

Concerning §501 14(s)(1), two commenters asked that the reference to mitigation for adverse effects to coastal wetlands be deleted. This language was not deleted as mitigation for adverse effects to wetlands is required to implement a "no overall net loss" policy consistent with current law

One commenter requested correction of the citation to TNRCC's statutory authority in §501 14(s)(2) Based on this comment, and for purposes of clarification, this subsection has been modified

For purposes of clarification, the phrase "other taking of fish and wildlife" has been replaced with the phrase "the protection of fish and wildlife" in the heading of §501.14(t)

One commenter asked that §501 14(t) be amended to provide that the TPWD will determine whether fishing and hunting activities will allow for the maintenance and enhancement of wildlife and fishery populations, and that adverse effects on CNRAs are minimized This subsection was changed to reflect the changes requested.

Section 501 15

Four commenters supported §501 15, and recommended that no changes be made. Another commenter supported the use of the terms "cost-effective" and "practical alternative" in §501 15 The March 18, 1994, preamble to the proposed rules contained a statement that the public interest factors contained in §501 15(b)(5) are especially relevant to the determination of cost-effectiveness The statement was not intended to imply that those factors carried any greater weight than any other of the factors identified in §501 15(b)(1)-(6). All factors identified in §501 15(b) are relevant to the determination of cost-effectiveness

Four commenters opposed the requirements of §501 15 because such requirements differ from the federal National Environmental Policy Act (NEPA) (See 42 United States Code Annotated, Chapter 55) in that §501.15(b) requires "agencies and subdivisions taking a major action authorizing an activity" to select "the cost-effective and practicable alternative with less adverse effects." The commenters also questioned whether the council had statutory authority to mandate such a selection of alternatives. The council has a duty and express statutory authority to adopt goals and policies, pursuant to the Coastal Coordination Act (the "Act"), Texas Natural Resources Code, §33 204 The council has discretion to determine which policies serve the purpose of the Act. The council has determined that "major actions" pose the greatest risk of adverse effects on CNRAs, and that therefore an enforceable state policy that parallels and relies on the alternatives analysis required under NEPA is appropriate as a policy for managing CNRAs. This policy will be enforceable against federal agencies under CZMA, 16 United States Code Annotated, §1456, and will give Texas greater control over these highly significant federal decisions affecting the future of the coast Section 501 15 is not intended to mirror the NEPA requirements. NEPA is one of the foundations of §501.15 because NEPA provides a definition of "major action" and requires an analysis of alternatives. Using NEPA as a foundation ensures that no additional administrative costs or burdens are imposed because §501.15 only applies where an EIS is required. Section 501 15 is a reasonable policy which balances the need for resource protection and economic development. Section 501 15 ensures that these actions are conducted in a way that has the least adverse impact on CNRAs taking cost into account. Section 501 15 establishes a policy requiring that the practicable and cost effective alternative with the least adverse effects is selected. This policy furthers the purpose of the Act because it makes more effective and efficient management of CNRAs. No change was made to this section based on this comment.

One commenter questioned whether the state will have authority over federal actions if the CMP is accepted into the federal coastal zone management program After the CMP receives federal approval, the pertinent federal agencies will have to determine whether the federal actions identified in §506 12 are consistent with the CMP goals and policies. The council will either concur with or object to the federal determination. In cases where the council objects to the determination, federal agencies may appeal the council's objection, as provided in Chapter 506 and the Code of Federal Regulations, Title 15, Part 930, Subpart H

One commenter stated that §501.15 should be deleted because it allows the council to veto the issuance of a permit for a major action The consistency review procedures provided in Chapter 505 and Chapter 506 do not include the power to "veto" any agency action The consistency review procedures for agency and subdivision actions provide for an administrative hearing process pursuant to §§505 35, 505 36 and 506 27 If the council finds that a state agency's or subdivision's action is inconsistent with the CMP goals and

policies, the council may remand the action to the state agency or subdivision pursuant to §505.38 If the council determines that a federal action is inconsistent with the CMP goals and policies, the chairman of the council and the governor's office may request mediation pursuant to §506 27. Therefore, the council does not have "veto" power over the individual agency that authorizes a federal activity or a federal agency's action There was no change made to the section in response to this comment

One commenter asked that §501 15 be amended to allow the selection of an alternative "which accomplishes the project purpose" Section 501 3(a)(10) defines "practicable" as "capable of being done after taking into consideration existing technology, cost and logistics in light of the overall purpose of the activity" Therefore, no change was made to this section in response to this comment.

Several commenters suggested that the phrase. "equitable socioeconomic distribution of environmental hazards" in §501 15(b)(5) be deleted because the council has no statutory authority to consider this factor in determining practicable alternatives with the least adverse effects Another commenter suggested that the meaning of the phrase is unclear The CZMA, 42 United States Code Annotated, §1452(D) and (F), require state CMPs to "provide for "priority consideration being given to coastal dependent uses and orderly processes for siting of major facilities relating to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists," and "assistance in the redevelopment of deteriorating urban waterfronts and ports, and sensitive preservation and restoration of historic, cultural, and esthetic (sic) coastal features," respectively The consideration of the "equitable socioeconomic distribution of environmental hazards" is intended to partially address siting and redevelopment considerations as required by the CZMA. No change was made to the section in response to this comment

One commenter characterized and objected to §501 15 as an unfunded mandate imposed on local governments This section does not create an unfunded mandate on local governments or impose undue costs on local governments Section 501 15 only applies if an EIS is already required for the proposed action In preparing the EIS, the pertinent federal agency will necessarily analyze alternatives including the environmental impact and practicability of the alternatives Section 501 15 requires the selection of the alternative only if such alternative is "cost effective" and "practicable" Therefore, no change was made to this section in response to this comment

Regarding §501 15, one commenter requested that the preamble to Chapter 501 be amended to resolve the "conflict" between acknowledgement of the potential for increased costs to local governments and allowing local governments to draw on the resources of other agencies The preamble to the proposed rules will not be republished and, therefore, no changes will be made to the preamble of the proposed rule However, increased costs associated with a determination of a practicable alternative with the least adverse effects on CNRAs is not in conflict with §501 15(c), which allows local governments to draw on the resources of agencies in making such determinations

One commenter recommended amending §501 15(a) to provide that no "EIS-type" requirement shall be instituted for agency actions unless otherwise required by NEPA. Section 501 15(a) defines a major action as an action requiring an EIS pursuant to NEPA Therefore, by definition, §501 15 only applies to those actions which already require a federal agency to prepare an EIS under NEPA Therefore, no change was made to the subsection in response to this comment

One commenter wrote that the preamble to Chapter 501 incorrectly stated that the council "directed" the GLO to submit the CMP to the federal NOAA for approval in June, 1994, because the council never formally "directed" that the CMP be submitted to NOAA. Preambles to the proposed rules are not republished upon adoption of rules, however, clarification of this issue is merited The commenter distinguishes "formal" and "informal" direction For example, the former may be evidenced by a resolution, while the latter may be construed from council determinations and decisions regarding program development deadlines The overwhelming majority of the council members wanted some finality in June, and clearly directed agency staffs as to the desired course of action In addition, the legislature mandated that the CMP be developed over three years ago

General Comments

Many commenters stated that the CMP did not adequately address environmental and economic concerns The most fundamental premise upon which the CMP is based is that the State of Texas can and must place equal emphasis on a productive environment and a healthy economy in managing the natural re sources of the coast This is because the two are related A healthy, diverse economy depends on an environment that is biologically and economically productive This premise is stated in the goals in §501 12

Several commenters stated that the CMP was an Austin-based document which would result in the loss of local control of the coast The CMP does not shift decision-making away from local entities Rather, it enhances local decision-making The CMP does not create new legal requirements designed by agencies in Austin The CMP is best described as a compendium of existing statutes, rules, and regulations Therefore, it does not add new legal requirements that severely impact local governments over their objections For local governments, only issuance of beachfront construction certificates and dune protection permits are subject to the CMP and, of those, few will be reviewable by the council The CMP does not impose any new standards or procedures on local governments for issuance of these certificates or permits Local governments have played an integral part in developing the CMP, helping shape the program as much as any other stakeholder Finally, local governments have permanent representation on the council and, when any action is reviewed, the governor is required to appoint an additional local government official to participate as a non-voting council member

The CMP enhances local control of coastal natural resource management through the SAMP process A SAMP allows local entities, including political subdivisions, to develop a specialized management plan for local areas of special concern Where they overlap, the custom-tailored SAMP replaces the CMP for that area State and federal agency actions must comply with the locally-designed SAMP. Therefore, the CMP significantly strengthens local control

Many commenters stated that the CMP contained unfunded mandates. As the preamble to the March 18, 1994, rule proposal stated, the CMP is based on existing statutory and regulatory requirements. Since the CMP establishes no requirements that either private or public permit applicants cannot satisfy within current funding restraints, it does not create unfunded mandates.

Several commenters expressed concern as to how the CMP would impact the implementation of the state's NPS program. The CMP simply incorporates the NPS pollution programs of the TSSWCB and the TNRCC that have already been mandated by the legislature in 1991 and 1987, respectively. The CMP does not impose any additional requirements While it is true that the CZMA requires states with federally-approved CMPs to develop and implement coastal NPS pollution control programs, the council believes the TSSWCB and TNRCC programs will be sufficient to comply with this requirement.

Many commenters stated that the CMP was duplicative, as state agencies are already managing CNRAs Agencies are doing a good job of managing coastal natural resources, given the basic institutional constraint of having a dozen or more agencies operating under complex and often conflicting statutory mandates The council's legislative mandate under the Coastal Coordination Act is to improve agencies' performance by increasing interagency coordination While current management by agencies is comprehensive in that all activities are regulated, current management can be made more efficient and more effective, if coordinated That is the purpose of the CMP.

Many commenters were concerned about the council's ability to review and remand permits, and that such actions would delay permitting processes In enacting the Coastal Coordination Act, the legislature expressly authorized the council to remand and ultimately reverse an agency or subdivision action that is inconsistent with the CMP. This power is necessary to perform the coordination function that is the council's primary mission The council cannot be an effective coordinator unless it has some ability to ensure compliance with the CMP However, it has been the council's directive throughout development of the CMP that its review and

remand powers be focused so that they will be exercised only in cases of major disputes over projects with significant impacts on CNRAs. The council also directed that the CMP consistency review process be designed to fit into current agency permitting processes and schedules. Chapter 505, as modified, successfully complies with that directive by--among other things--expressly requiring that CMP consistency issues first be raised within the context of an agency's own permitting process, providing an opportunity for early resolution of disagreements through preliminary review of agencies' actions by staff of council members, and harmonizing council review schedules with existing practice under the Texas Administrative Procedures Act, Texas Government Code, Title 10, Subtitle A, Chapter 2001 (Texas APA) In practice, therefore, few permit applicants, if any, will ever face delays in receiving permits because of the CMP

Many commenters requested that the council postpone adoption and implementation of the CMP. The council rules will not be finally adopted until September, 1994, and the CMP will not be implemented until June, 1995 This schedule is designed to allow the public time to review the changes to the council rules prior to final adoption It also gives agencies an opportunity to adopt consistency review thresholds and obtain council certification that their rules are consistent with the CMP before the agencies' actions are ever subject to consistency review Finally, it gives the legislature an opportunity to review the CMP before it is implemented.

Several commenters stated that the CMP consists of new laws and additional requirements. Development of the CMP began with a comprehensive examination of existing laws and regulations The CMP does not impose or create any requirement which is beyond the existing legal authority of an agency or local government to implement The CMP is a compendium of existing statutes, rules, and regulations. The CMP does not create or add new legal requirements except in rare instances where the council, after full consultation with the affected parties, agreed that a refinement or clarification of existing rules was needed

Many commenters were concerned that the provisions of the CMP are beyond the council's statutory authority The CMP does not exceed the legal authority that the legislature has delegated either to the council or to any other agency The CMP is basically cumulative of existing law Where clarifications or refinements to existing law are made, the council and the parties affected by the change have carefully reviewed current legal authority to ensure the provision is within the statutory authority of an agency to implement

Some commenters stated that the CMP is a statewide plan. The CMP is not a statewide plan. Chapter 501 expressly limits its geographic scope to actions within the boundary established in Chapter 503 of this title (relating to Coastal Management Program), with the exception of certain high-volume water rights actions within 200 stream miles of the coast. The latter are included in the CMP because current Texas Water Code provisions recognize the potential impacts on the health of bays and estuaries from withdrawals and diversions of water within 200 river miles of the coast Several agencies have statutory mandates with respect to the health of bays and estuaries as it relates to freshwater inflows from rivers, so the coordination provided by the council is especially appropriate on these issues

Several commenters stated that the CMP should be reviewed by the legislature Implementation of the CMP will be delayed so that the legislature may review it before it is implemented When the legislature created the Coastal Coordination Council in 1991, it gave the council broad authority which the council has narrowed substantially through rule making The council has taken a conservative approach in implementing its responsibilities

Many commenters stated that the scope of the CMP was too narrow In enacting the Coastal Coordination Act, the legislature expressly authorized the council to review certain agency and subdivision actions for consistency with the CMP This authority is essential to enable the council to effectively perform its primary function of coordination The council's directive throughout development of the CMP has been that its review and remand powers should be commensurate with that function The council believes that the CMP achieves that purpose

Several commenters stated that the council was a super-agency and that the CMP represented an additional layer of bureaucracy The Coastal Coordination Act does not authorize the council to hire any staff Rather, the council must rely on the existing staffs of its member agencies Furthermore, since the CMP creates no new permits and is designed to coordinate existing laws and regulations, no additional burden will be placed upon those conducting business with the agencies involved Consequently, the CMP will not create a super-agency or an additional layer of bureaucracy In fact, one of the goals of the CMP is to streamline existing permitting procedures and make it easier, not harder, to obtain state and federal agency permission for actions

Many commenters were concerned about the fiscal implications of adopting the CMP As the preamble to the March 18, 1994, rule proposal stated, the CMP is based on existing statutory and regulatory requirements Since the CMP does not establish requirements that disregard cost, it does not impose unreasonable costs or have negative impacts on land values The fiscal analysis in the March 18, 1994, rule proposal satisfies all legal requirements for proposed rules However, prior to adoption, the council will perform additional fiscal analyses on certain parts of the CMP to further public understanding of the program

Some commenters were concerned that agricultural interests were not represented on the council The governor has requested and the council will recommend that the chair of the Texas Water Development Board and chair of the TSSWCB be added to the council immediately as non-voting members The governor will seek legislation adding them as full voting members in the next legislative session

Some commenters stated that the CMP was too long and confusing The CMP is basically a compendium of existing law These existing statutes, rules, and regulations are much longer and more complicated than the council rules The council has compiled, summarized and simplified these laws as they apply to the coastal area For the first time, agencies and permit applicants can refer to one coordinated program when doing business along the coast

Many commenters stated that, without thresholds, it is hard to comment on the CMP Accordingly, implementation of the CMP will be delayed until June of 1995 so that agencies have time to develop thresholds for council review, and the public has an opportunity to comment on them

The council received many letters of support for their proposed rules and for the CMP Many expressed the view that a comprehensive CMP for Texas is long overdue and objected to any further delay in adoption and implementation of the program Many others cited the open manner in which the council has developed the CMP and the council's willingness to refine the program in response to suggestions as a basis to move forward with adoption

Many commenters asked for clarification of the right to request that the council refer a matter for review The rules require that a person first participate in and raise CMP consistency issues during the line agency process in order to later request referral to the council In cases below the agency-established thresholds, a state agency must object to the consistency determination to make the case eligible for council review

Many commenters stated that the CMP was developed without sufficient public input While it is true that each person potentially interested in the CMP may not have participated in the process to date, literally hundreds of Texans along the coast and representatives of every business, industry, agricultural, civic, conservation and environmental interest group with coastal interests have been involved in a myriad of consensus-building activities undertaken in the last five years In addition, the council formed 15 special focus groups representing diverse interests along the coast to provide direct feedback on the program as it developed These groups have been intimately involved in drafting the CMP rules Finally, the GLO has published a CMP newsletter, with a circulation of more than 4,000, to keep the public informed on each step in the program development

Several commenters stated that there should be an opportunity for the public to have an ongoing review of the CMP The CMP provides regular opportunities for the public to comment on and participate in the implementation of the program The council will meet at least every three months, and interested parties can appear and testify on the CMP The council will also prepare an annual report that will be widely distributed to the public for comment The program will also be subject to review by the legislature every session Finally, the council intends to establish regional citizen advisory committees to provide direct

and regular feedback to the council on implementation of the program.

Several commenters requested that the word "greatest" be deleted from the phrase "to the greatest extent practicable" wherever that phrase is used in Chapters 501, 504, 505, and 506. Other commenters reasoned that if the term "greatest extent practicable" is not synonymous with "practicable" the phrase should be defined by rule, and published for public comment. As used in this chapter, the phrase "to the greatest extent practicable" is intended to have the common vernacular meaning, to the highest degree of measure Where an applicant or agency proposes two alternatives, each practicable according to the definition, Chapter 501 generally requires the selection of the alternative which avoids or minimizes adverse effects to the highest or greatest degree No change was made based on this comment

Several other commenters noted that the phrase "maximum extent practicable" was interchanged with other phrases using the term practicable and recommended that consistent terminology be used throughout the rules. One commenter suggested that the phrase "to the greatest extent practicable" in §501 14(p) (1)(B) and elsewhere be deleted throughout the plan or defined to mean the same as "maximum extent practicable " The rules have been revised to use the term "to the greatest extent practicable" throughout To avoid confusion, the phrase "to the maximum extent practicable" was not chosen as that phrase has special meaning in the CZMA, 16 United States Code Annotated, §§1451-1464, which would be inappropriate in Chapter 501.

Concerning §501 3(a)(10), two commenters stated that the proposed definition of "practicable" should be revised by deleting the last sentence to address situations where expenditures necessary to achieve environmental benefits are grossly disproportionate in comparison to the anticipated environmental benefits. As an alternative to deletion of the last sentence, the commenter suggested revising to require consideration of cost-effectiveness whenever practicability is a consideration. Another commenter stated that the factors should not be weighed "equally and objectively," but with more weight placed on one factor more than the other in certain instances. The definition of "practicability" appears in §501 3(a)(1) (K)(10) and is drawn directly from existing federal regulations Practicability requires an analysis of the cost and the technological and logistical feasibility of the alternative in light of the project purpose The definition provides that all four factors be analyzed in decision-making While the individual circumstances of each case may result in one factor being given more weight in the decision-making process, no factor can be analyzed independently of the others The language is intended to emphasize that determining what is practicable cannot done by analyzing one of the factors alone For example, the practicability of an alternative cannot be determined based solely on an analysis of whether or not the alternative serves the project purpose. It cannot be said that the alternative is not practicable for the sole reason that the project purpose is not fully and completely served Technology, cost and logistics must be fully analyzed and weighed before practicability of the project can be determined. If the project is affordable and technologically and logistically feasible, it is practicable if it fundamentally and substantially serves the project purpose

One commenter stated that the terms "practicable" and "cumulative impacts" are unacceptable as defined in the CMP. The terms defined in the CMP are based on existing law Therefore, no change was made in response to this comment

In a general comment on §501, one commenter requested that the goals of the CMP should focus on coastal public land, not CNRAs, and that there is no indication of legislative intent to grant the GLO and the council the authority to oversee and regulate development and other activities for the entire Texas coastal area The provisions of Texas Natural Resources Code, §33 204, provide the council with the authority to designate CNRAs, promulgate the CMP goals and policies, and to review certain actions to ensure they are consistent with the goals and policies The statute does not limit designation of CNRAs, adoption of goals and policies, or review of actions to only those affecting public land. No change was made based on this comment

List of commenters: Attorney General of Texas; Corpus Christi Board of Realtors; Corpus Christi Chamber of Commerce; Department of the Interior; Department of the Navy; Exxon Chemical Company; Exxon Company, U.S.A.; Freese-Nichols, Inc.; Frontera Audubon Society; Galveston County Beach Park Board of Trustees; Gulf Coast Waste Disposal Authority; Higman Barge Lines; Hollywood Marine, Inc.; Houston-Galveston Area Council; Houston Lighting and Power; City of Lake Jackson; Maryland Marine, Inc.; Matagorda County Navigation District; Mitchell Energy and Development Company; Natural Gas Pipeline Company of America; Nueces County Coastal Management Committee; Oryx Energy Company; Port of Port Lavaca; Pennzoil Company; Railroad Commission of Texas; SpectraOne (Commercial Navigation and Dredging Focus Group); Sportsmen Conservationists of Texas; City of Texas City; Texaco, Inc.; Texas A&M, Department of Agricultural Economics; Texas Center for Policy Studies; Texas Chemical Council; Texas Commission on Natural Resources; Texas Department of Agriculture; Texas Department of Transportation; Texas Ecologists; Texas Farm Bureau; Texas Mid-Continent Oil and Gas Association (TMOGA); Texas Ports Association; Texas Water Conservation Association; Texas Water Development Board; United States Coast Guard; Valero Refining.

Subchapter A. General Provisions

- **31 TAC §§501.1-501.4**

§501 1 Program for Special Management of Coastal Natural Resource Areas

(a) The purpose of the Texas Coastal Management Program (CMP) is to make more effective and efficient use of public funds and to more effectively and efficiently manage coastal natural resource areas (CNRAs) and the activities that may adversely affect them The program is based on goals and policies that set standards to guide the use and development of CNRAs, preserve and protect CNRAs, and improve government processes The Coastal Coordination Council (council) will adopt rules promulgating the goals and policies The Coastal Coordination Act requires agency or subdivision actions to comply with these goals and policies

(b) The council will exercise authority pursuant to the Coastal Coordination Act in the following ways

(1) The council will study and review the principal coastal problems of state concern This review will include examination of the current status and future trends of CNRAs, examination of conflicts between competing uses of CNRAs; and examination of policy issues with respect to local, state, or national interests and concerns related to CNRAs The council will examine alternative regulatory and other management approaches to these problems, identify data collection and research needs, and foster public education and participation

(2) The council will coordinate the performance of agencies, subdivisions, and programs by promulgating goals and policies to guide and serve as the basis for consistency review of agency and subdivision actions Coordination requires that these goals and policies set standards for agencies' and subdivisions' regulation or other management of specific resources or activities The council will examine the goals and policies in this chapter annually to review the effectiveness of the program

(3) The council will coordinate the measures required to resolve identified

coastal problems and make coastal management processes more visible, accessible, coherent, consistent, and accountable by reviewing agency and subdivision actions for consistency with the goals and policies in this chapter. Actions subject to review include adoption of rules and individual actions pursuant to those rules. The council shall employ consistency review of agency and subdivision rules and policies as the primary technique for ensuring that agency and subdivision actions are consistent with the goals and policies in this chapter.

(c) As directed in the Coastal Coordination Act, the General Land Office (GLO) will assist the council in carrying out a program for coastal management, which shall be entitled the Texas CMP. The council may on occasion request or receive assistance from additional agencies or subdivisions that have authority over or expertise relevant to a particular coastal problem that is before the council. The council directs the GLO, in coordination with other agencies and subdivisions, to prepare an annual report reviewing the effectiveness of the program as required by subsection (b)(2) of this section.

(d) The Texas CMP will help local governments improve their ability and develop additional capacity to manage CNRAs and human activities affecting those resources.

(e) The Texas CMP will provide a means of developing and implementing site-specific, local, or regional plans for improving management of CNRAs and the activities that may adversely affect them through the Special Area Management Planning process in Chapter 504 of this title (relating to Special Area Management Planning).

§501.2. Findings

(a) The council finds that the Texas coast comprises land and water features with significant economic, recreational, cultural, geological, and biological and ecological characteristics. Economic characteristics include their functions and values as resources for commercial fisheries, tourism, commercial navigation, water supply, receiving waters for wastewater, revenue for public services, and production of food, fiber, and minerals. Recreational characteristics include their functions and values as resources for hunting, hiking, birding, recreational fishing and navigation, and tourism. Cultural characteristics include their functions and values as resources for education, science, historical preservation, and aesthetics. Geological characteristics include their functions and values as resources for water purification; prevention of shoreline erosion; and protection of natural resources, human life, and property from wind, waves, and storms. Biological and ecological characteristics include their functions and values as resources including terrestrial and aquatic wildlife habitat; travel corridors, escape routes, resting areas, and cover; food supply and feeding areas; and breeding, spawning, nesting, and nursery areas. The council finds that the continued existence of these functions and values is essential to the economic and ecological vitality of the coast and the health, safety, and welfare of its inhabitants. These important coastal land and water features constitute resources to be specially managed and held in trust for the current and future citizens of the state. Therefore, the following are designated as CNRAs: waters in the open Gulf of Mexico, waters under tidal influence, state submerged lands, private submerged lands, coastal wetlands, submerged aquatic vegetation, tidal sand and mud flats, oyster reefs, hard substrate reefs, coastal barriers, shore areas, Gulf beaches, critical dune areas, special hazard areas, critical erosion areas, coastal historic areas, and coastal parks, wildlife management areas, and preserves.

(b) The council finds that the coast is subject to the following uses:

(1) residential development, which includes siting, construction, and maintenance of single- and multiple-unit dwellings;

(2) commercial development, which includes siting, construction, and maintenance of warehouses, offices, retail stores, hotels, restaurants, marinas, and recreational facilities;

(3) industrial development, which includes siting, construction, operation, and maintenance of oil and gas exploration and development facilities, manufacturing and petrochemical plants, refineries, processing facilities, and ports;

(4) agricultural development, which includes farming, ranching, silviculture, and aquaculture;

(5) other development, which includes public buildings, parks, and other public purpose development;

(6) development of infrastructure, which includes the siting, construction, operation, and maintenance of roads, causeways and bridges, railroads, transmission and communication lines, water and sewer lines and pump stations, oil and gas transportation pipelines, and other linear facilities, airports, electric generating facilities, flood control structures, dams, and other water control structures; water, sewage, and wastewater treatment facilities, and solid waste facilities;

(7) waterfront construction, which includes erosion response projects and shoreline access structures. Erosion response projects include retaining walls, bulkheads, seawalls, rubble mounds, revetments, breakwaters, and groins. Shoreline access structures include piers, docks, wharves, boat ramps, and other structures. Other structures on state submerged land and private submerged land include artificial reefs and fishing cabins;

(8) dredging, which includes excavation and disposal or placement of material from navigation channels and basins for commercial shipping, recreational boating, and oil and gas exploration and production; excavation for water intake structures, wastewater outfalls, or other structures incidental to shoreline development; and sediment mining on submerged lands; and

(9) hunting, fishing, and other taking of terrestrial and aquatic wildlife.

(c) The council finds that continued use of the coast contributes to the maintenance and enhancement of the economic prosperity, culture, health, safety, welfare, and overall quality of life of all the citizens of the state. The public can benefit from continued use of the coast in the following ways.

(1) Residential development provides shelter for coastal inhabitants. Commercial development provides economic opportunity and a higher quality of life. Industrial development generates significant economic benefits for the coastal area, the state, and the nation. Agriculture provides food and fiber. Mineral, oil and gas exploration, development and production, including transportation of crude oil by pipeline, aids in the protection of national economic and security interests by contributing to the domestic energy supply, provides feedstock for petrochemical products and fuel for industrial, residential, commercial, and transportation activities and fuel for manufacturing which provides products and goods for consumers. These types of development create employment opportunities, produce tax and other forms of revenue for public education and other purposes, and help sustain a diversified economic base. Impoundment and diversion of water supports development and other uses of the coast.

(2) Waterfront structures provide access to coastal waters, moorage, and other services for commercial and recreational navigation and provide economic and social benefits to coastal communities. Retaining walls, bulkheads, seawalls, rubble mounds, revetments, breakwaters, and groins protect shoreline development from wave action. Nonstructural methods of erosion response such as beach nourishment, sediment bypassing, dune restoration, nearshore sediment berms, and wetland creation attenuate wave energy and trap sediment or contribute to the local sediment budget. Beach nourishment is essential for recreation and the protection of develop-

ment and CNRAs and may serve as a method of flood control Dune restoration protects the public beach by supplying sediment to the eroded beach

(3) Dredging and dredged material disposal and placement are necessary to coastal commerce, industry, and recreation because they are the primary means of providing navigational access to the coast, especially in the shallow bays and estuaries Dredged channels may improve water circulation Dredged materials can be used to enhance terrestrial and aquatic wildlife habitat, minimize shoreline erosion and flooding, and create recreational areas. Sedimentary mineral mining provides building materials and generates public revenues

(4) Hunting and fishing are valuable to citizens of the state as both recreational and commercial activities. Both provide opportunities for quality outdoor recreational experiences and contribute to the economic prosperity of the citizens of the state

(d) The council finds that these uses, individually and cumulatively, have adverse effects on CNRAs and are therefore subject to the goals and policies in Subchapter B of this title (relating to Goals and Policies) as provided in §501.10 These adverse effects include the following.

(1) Construction may require land clearing, grading, slope stabilization, filling of coastal wetlands or submerged lands, increased impervious cover, or other alterations of CNRAs that may reduce water percolation and groundwater recharge, alter surface water flow and sedimentation patterns, exacerbate erosion and flood hazards, degrade water quality, degrade or destroy terrestrial and aquatic wildlife habitat, segment wildlife corridors, and otherwise adversely alter coastal ecosystem dynamics Construction on barriers and shores and in hazard areas may increase risks of loss of life and property and become subject to frequent maintenance and repair because of its vulnerability to high-velocity wind, waves, and storms Construction in dunes and on or near beach areas may disrupt beach/dune system dynamics, degrade or destroy vegetation so as to impair the dunes' effectiveness as storm and erosion buffers, and conflict with public uses of beaches Development within historical sites and parks may degrade or destroy these culturally, educationally, and scientifically valuable recreation areas Extraction of groundwater and oil and gas may cause or exacerbate subsidence Disturbances from mining activities, burial and discharge of explosives, and tracks from seismic vehicles may impact sand/mud flats, coastal wetlands, and submerged aquatic vegetation and may disturb terrestrial and aquatic wildlife migration, spawning, breeding, and nesting

(2) Waterfront construction may cause or exacerbate erosion by altering hydrology, bathymetry, and littoral sediment transport and deposition systems. This may decrease or deplete the amount of sediment available to downdrift areas, including wetlands dependent on sediments and organic materials for survival. Resulting erosion may degrade water quality by increasing turbidity. Unless properly designed, waterfront structures may be destroyed by wave action and litter submerged lands or adjacent shores. Shading from structures on pilings may destroy underlying submerged aquatic vegetation or coastal wetlands. Boat traffic to and from structures in shallow, vegetated areas of bays and estuaries may cause propwashing and scarring of coastal wetlands and submerged aquatic vegetation.

(3) Dredging and dredged material disposal, especially open water disposal, may degrade or destroy tidal flats, submerged aquatic vegetation, coastal wetlands, oyster reefs, and aquatic organisms by direct removal, burial, and siltation, and by altering hydrology and sediment and nutrient supplies. CNRAs may be adversely affected by disposal-site construction and by escape of dredged materials from contained sites. Dredging may cause water quality problems such as turbidity, poor circulation, anoxia, salinity changes, and suspension or resuspension of contaminated sediments in the water column. Altered hydrology and wakes from vessels navigating in improperly located or designed channels or basins may increase turbidity and shoreline erosion.

(4) Residential, commercial, industrial, agricultural and other activities generate point and nonpoint source (NPS) water pollution. Point and NPS water pollution from municipal, industrial, agricultural, and other sources may adversely affect CNRAs Spills of oil and hazardous substances from shoreline facilities, offshore platforms, and collisions of vessels may also adversely affect CNRAs. Spills and effluent and stormwater discharge may degrade surface and ground water quality by increasing toxicity, dissolved solids, bacteria, or temperature. They may lower oxygen levels, increase nutrients, affect the appearance, odor, and taste of waters, and degrade both the water column and sediments, where pollutants become available for bioaccumulation into the food web. Hazardous substance spills may have acute toxic effects on living resources. Spills of oil may both increase pollutants and smother aquatic organisms. Spill response and remediation may further degrade CNRAs Septic systems that are improperly located, designed, maintained, or constructed, and sanitary sewer bypasses and overflows into storm sewers during storms may contribute pathogens and other pollutants that make coastal waters unsafe for human contact and otherwise degrade coastal waters. Urban NPS pollution may contribute dirt, oil, grease, refuse, pesticides, herbicides, fertilizer, and fecal coliform to coastal waters. Agricultural and silvicultural NPS pollution may contribute crop residue, sediment, pesticides, herbicides, fertilizers, and fecal coliform to coastal waters.

(5) Residential, commercial, industrial, agricultural, and other activities generate solid waste Improper treatment, storage, and disposal of solid waste may degrade water quality and have other adverse effects on CNRAs. Improper location, design, and construction may also adversely affect CNRAs.

(6) Impoundment and diversion of water can affect instream flow and the timing and volume of freshwater inflow into coastal waters and may degrade water quality and adversely alter salinity regimes and the supply of sediments and nutrients. This may cause loss of aquatic species habitat or adequate spawning periods and adversely alter the character of CNRAs. Reservoirs or impoundments may result in the inundation of areas of special geological, biological, or archeological importance or historic interest.

(7) Residential, commercial, industrial and other activities emit pollutants to the air. Deposition of air pollutants may degrade water quality and have harmful effects on CNRAs and living resources.

(8) Hunting, fishing, and taking of wildlife, including means or methods of access to areas used for those purposes, may adversely affect CNRAs by causing the loss or degradation of aquatic habitat by altering the stability and diversity of terrestrial and aquatic wildlife populations.

(e) Because they may adversely affect CNRAs, the council finds that special management of these uses of the coast is necessary for continued balanced development of the coast.

§501.3. Definitions and Abbreviations.

(a) As used in this chapter, the following terms shall have the meaning assigned in this subsection.

(1) Adverse effects or adversely affect-effects that result in the physical destruction or detrimental alteration of a CNRA. Such detrimental alterations are:

(A) construction in critical dune areas and coastal hazard areas that increase risks to human safety or the potential for damage to property or CNRAs from floods, hurricanes, or other storms;

(B) alterations that interfere with public use and enjoyment of, or access

to and from, those CNRAs to which the public has a right of use, enjoyment, or access;

(C) alterations that damage or destroy coastal historic areas;

(D) alterations that impair the functions and values of CNRAs as habitat for terrestrial and aquatic wildlife;

(E) alterations that disrupt wildlife corridors or fish or bird migratory routes;

(F) discharges of pathogens, radioactive materials, dissolved minerals or solids, toxic substances, or suspended solids at levels harmful to humans or terrestrial or aquatic life or that significantly impair the aesthetic qualities of CNRAs;

(G) alterations of salinity regimes, nutrient supply, oxygen concentration, or temperature regimes in coastal waters that are harmful to terrestrial or aquatic life;

(H) alterations of hydrology, water flow, circulation patterns, water level, or surface drainage that are harmful to humans or terrestrial or aquatic life, impair the aesthetic qualities of CNRAs, or exacerbate erosion of shorelines or river deltas;

(I) alterations of littoral and sediment transport processes that reduce the supply of sediments available to those processes or would otherwise exacerbate erosion of shorelines or river deltas;

(J) alterations that increase losses of shore areas or other CNRAs from a rise in sea level with respect to the surface of the land, whether caused by actual sea-level rise or land surface subsidence; and

(K) emission of air pollutants at levels that are harmful to humans or terrestrial or aquatic life or that significantly impair the aesthetic qualities of CNRAs.

(2) Avoid and otherwise minimize-to avoid adverse effects to the greatest extent practicable. Adverse effects that cannot be avoided must then be minimized to the greatest extent practicable.

(3) Coastal area-the area within the boundary established in §503.1 of this title (relating to Coastal Management Program Boundary).

(4) Coastal hazard areas-special hazard areas and critical erosion areas.

(5) Coastal natural resource area (CNRA)-any area designated in §501.2(a) of this title (relating to Findings) and defined in subsection (b) of this section that is located within the coastal area.

(6) Coastal waters-waters in the open Gulf of Mexico and waters subject to tidal influence.

(7) Council-the Coastal Coordination Council.

(8) Critical areas-CNRAs possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values that contribute significantly to the general overall environmental health or vitality of the coastal ecosystem. Critical areas are coastal wetlands, areas of submerged aquatic vegetation, tidal sand and mud flats, oyster reefs, and hard substrate reefs.

(9) Cumulative adverse effects-the collective adverse effects on CNRAs that, based on best available data and information, can be anticipated to result from present, proposed, and reasonably foreseeable activities.

(10) Pollutant-any constituent that contaminates or alters the physical, thermal, chemical, or biological quality of any CNRA so as to be harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to the public health, safety, or welfare or that impairs the usefulness or the public enjoyment of CNRAs for any lawful purpose.

(11) Practicable-available and capable of being done after taking into consideration existing technology, cost, and logistics in light of the overall purpose of the activity. No one of these factors shall be the sole deciding factor in determining whether an alternative is practicable.

(12) Public beach-any "public beach" as defined in Texas Natural Resources Code, §61.013(c).

(13) Secondary adverse effects-adverse effects on CNRAs from an activity that, based on best available data and information, can be anticipated to occur at some later point in time or outside or beyond the site of the activity

(14) Water-dependent use or facility-an activity or facility that must be located in coastal waters or on state submerged lands or private submerged lands or that must have direct access to coastal waters in order to serve its basic purpose and function. Facilities that are water-dependent include, but are not limited to, public beach use and access facilities, boat slips, docks, breakwaters, marinas, wharves and other vessel loading or off-loading facilities, utility easements, boat ramps, navigation channels and basins, bridges and bridge approaches, revetments, shoreline protection structures, culverts, groins, saltwater barriers, navigational aids, mooring pilings, simple access channels, fish processing plants, boat construction and repair facilities, offshore pipelines and constructed wetlands below mean high water. Activities that are water-dependent include, but are not limited to, marine recreation (fishing, swimming, boating, wildlife viewing), industrial uses dependent on marine transportation or requiring large volumes of water that cannot be obtained at inland sites, mariculture, exploration for and production of oil and gas under coastal waters or submerged lands, and certain meteorological and oceanographic activities. If a specific water-dependent work or project is an essential component of a larger development, that development is considered water dependent.

(b) In this chapter, the following definitions shall apply to the CNRAs designated in §501.2(a) of this title (relating to Findings).

(1) Coastal barriers-undeveloped areas on barrier islands and peninsulas or otherwise protected areas, as mapped by the United States Department of the Interior, Fish and Wildlife Service (Coastal Barrier Resource System Units).

(2) Coastal historic areas-sites on the National Register of Historic Places on public land and state archaeological landmarks as defined in Texas Natural Resources Code, Chapter 191, that are identified by the Texas Historical Commission or the Texas Antiquities Committee as being coastal in character.

(3) Coastal parks, wildlife management areas, and preserves-any land owned by the state that is subject to Parks and Wildlife Code, Chapter 26, by virtue of its designation and use as a park, recreation area, scientific area, wildlife refuge, or historic site and that is designated by the Texas Parks and Wildlife Commission as being coastal in character.

(4) Coastal shore areas-all areas within 100 feet landward of the high water mark on state submerged land and private submerged land. Designation of coastal shore areas as a CNRA is exclusively intended to address erosion impacts within coastal shore areas that result from activities under §501.14.

(5) Coastal wetlands-wetlands as defined in Texas Water Code, Chapter 11, Subchapter J, that:

(A) lie seaward of the Coastal Facility Designation Line established in §19.2(a)(5)(D) of this title (relating to Oil Spill Prevention and Response)

pursuant to the Oil Spill Prevention and Response Act of 1991, or

(B) lie within rivers and streams to the inland extent of tidal influence, as follows

(i) Arroyo Colorado from south of Highway 106 to the Port of Harlingen,

(ii) Nueces River to the Highway 666 river crossing,

(iii) Guadalupe River to the Guadalupe-Blanco River Authority Salt Water Barrier at 4 0 miles downstream of the confluence with the San Antonio River,

(iv) Victoria Barge Canal and associated riverine environment;

(v) Lavaca River to the Palmetto Bend Dam,

(vi) Tres Palacios River to 4 miles above the Highway 521 crossing;

(vii) Colorado River above the Port of Bay City to 1.3 miles south of the Missouri Pacific Railroad,

(viii) San Bernard River to 2 miles, above the Highway 35 crossing,

(ix) Chocolate Bayou to 2.6 miles below Highway 35,

(x) Buffalo Bayou (Houston Ship Channel) to 6 5 miles west of the turning basin;

(xi) San Jacinto River to the Lake Houston dam,

(xii) Trinity River to 1.9 miles south of Highway 90 in Liberty County,

(xiii) Neches River to 7 miles upstream of Interstate Highway 10;

(xiv) Sabine River to Morgan Bluff, or

(C) within one mile from the mean high tide line of those rivers and streams, except for the Trinity and Neches rivers On the Trinity River, the geographic scope includes wetlands between the mean high tide line on the western shoreline to FM Road 565 and FM Road 1409 and between the mean high tide line on the eastern shoreline to FM Road 563. On the Neches River, the geographic scope includes wetlands within one mile from the mean high tide line on the western shoreline and between the mean high tide line on the eastern shoreline and FM Road 105.

(6) Critical dune areas-protected sand dune complexes on the Gulf shoreline within 1000 feet of mean high tide as designated by the land commissioner under Texas Natural Resources Code, Chapter 63, Subchapter E.

(7) Critical erosion areas-areas designated by the commissioner of the GLO under Texas Natural Resources Code, §33.601(b).

(8) Gulf beaches-beaches bordering on the Gulf of Mexico that extend inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, or such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial.

(9) Hard substrate reefs-naturally occurring hard substrate formations, such as rock outcrops or serpulid worm reefs (living or dead), in intertidal or subtidal areas that are discrete and contiguous.

(10) Oyster reefs-natural or artificial formations in intertidal or subtidal areas that are composed of oyster shell, live oysters, and other organisms that are discrete, contiguous, and clearly distinguishable from scattered oysters

(11) Private submerged lands-land underlying waters under tidal influence or waters of the open Gulf of Mexico that is owned by a person other than the state

(12) Special hazard areas-areas designated by the administrator of the Federal Insurance Administration under the National Flood Insurance Act, 42 United States Code Annotated, §4001 et seq., as having special flood, mudslide (i e., mudflow) and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, V, M, or E.

(13) State submerged lands-land underlying waters under tidal influence or waters of the open Gulf of Mexico that is owned by the state.

(14) Submerged aquatic vegetation-rooted aquatic vegetation growing in permanently inundated areas in estuarine and marine systems.

(15) Tidal sand and mud flats-silt, clay, or sand substrates, unvegetated or vegetated by algal mats, that occur in the intertidal zone and that are regularly or intermittently exposed and flooded by wind and water induced tides.

(16) Waters of the open Gulf of Mexico-waters in the state as defined in Texas Water Code, §26.001(5), that are part of the open waters of the Gulf of Mexico inside the territorial limits of the state

(17) Waters under tidal influence-waters in the state as defined in Texas Water Code, §26.001(5), that are subject to tidal influence according to the Texas Natural Resource Conservation Commission's Stream Segment Maps, including coastal wetlands

(c) In this chapter, the following abbreviations shall have the meaning assigned in this subsection.

(1) GLO-General Land Office;

(2) PUC-Public Utility Commission;

(3) RRC-Railroad Commission of Texas,

(4) SLB-School Land Board,

(5) THC-Texas Historical Commission,

(6) TNRCC-Texas Natural Resource Conservation Commission;

(7) TPWD-Texas Parks and Wildlife Department;

(8) TSSWCB-Texas State Soil and Water Conservation Board,

(9) TWDB-Texas Water Development Board; and

(10) TxDOT-Texas Department of Transportation

(d) To the extent that Chapter 501 refers to statutory or regulatory terms or phrases which are not defined in Chapter 501, such terms and phrases retain the meaning provided in the pertinent agency or political subdivision policies or regulations.

§501 4. General Procedures.

(a) The commissioner of the Texas GLO chairs the council and conducts all meetings. The council may select a vice chair who shall serve in the chair's absence.

(b) The council shall meet at least four times a year, once in each calendar quarter Council meetings shall be scheduled for the first Thursday of February, May, August, and November. The chair, at his or her discretion or at the request of any council member, may call special meetings by posting notice in accordance with the Texas Open Meetings Act and sending a copy to all council members.

(c) The chair shall appoint a council secretary. The secretary shall record the minutes of the meetings and perform other duties required by the council or this chapter.

(d) Council members may set items for the agenda by submitting them in writing to the secretary at least 14 days before a meeting. The secretary shall notify all council members of the agenda by certified or

overnight mail, hand-delivery, or telefax at least 10 days before each meeting. The secretary shall notify the public of meetings as required by the Texas Open Meetings Act.

(e) Four voting council members or their statutorily authorized representatives shall constitute a quorum. Except for review of agency and local government actions and adoption of council rules, the council will take action only when a quorum exists and a majority of the members present and voting agree to the action. To protest, remand, or reverse an agency, local government or federal action, certify agency rules or local government ordinances, or adopt council rules, an affirmative vote of the majority of all council members shall be required.

(f) Time periods in this chapter do not include the day of the act or event that activates the time period. If the last day of the time period is a Saturday, Sunday, or legal holiday, the time period is considered to end the next day subsequent that is not a Saturday, Sunday, or legal holiday.

Issued in Austin, Texas, on June 29, 1994.

TRD-9443201 Garry Mauro
Chairman
Coastal Coordination Council

For further information, please call (512) 305-9129

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Subchapter B. Goals and Policies

• 31 TAC §§501.10-501.15

§501.10. Compliance with Goals and Policies.

(a) State agencies, municipalities, and counties identified in this subchapter shall comply with the goals and policies in §§501.12-501.15 of this title (relating to Goals, Administrative Policies, and Policies for Specific Activities and Coastal Natural Resource Areas) when taking an action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program).

(b) The goals and policies in this subchapter apply only to those agencies, municipalities, counties, activities, and actions expressly identified in this subchapter.

(c) Compliance with the goals and policies of this subchapter does not supersede or eliminate any legal duty to comply with other applicable statutory and regulatory requirements.

§501.11. Statutory and Constitutional Limits.

(a) The Coastal Coordination Council (council) shall not apply the goals and policies in this subchapter in a manner which would prohibit the exercise by any agency, municipality, or county of its constitutional or statutory authority, unless and except to the extent specifically provided by the Coastal Coordination Act.

(b) The council shall not require an agency, municipality, or county to adopt any rule, take any action, or engage in any activity not within the constitutional or statutory authority of the agency, municipality, or county.

(c) The council shall exercise only the authority granted or reserved to it under the Constitution and the Coastal Coordination Act and shall not exercise the constitutional or statutory authority granted or reserved to any other agency, municipality, or county, including adopting any rules, taking any actions, or engaging in any activities the responsibility for which is granted or reserved to any other agency, municipality, or county.

(d) The council shall not prescribe the content of any rule, permit, or ordinance proposed or adopted by any agency, municipality, or county, except to the extent specifically authorized by the Coastal Coordination Act.

(e) The council shall not apply the goals and policies in this subchapter in a manner which would result in the taking, damage, or destruction of property, without adequate compensation, by the council or by any agency, municipality, or county.

§501.12. Goals. The goals of the Texas Coastal Management Program (CMP) are:

(1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs);

(2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal area;

(3) to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs;

(4) to ensure and enhance planned public access to and enjoyment of the coastal area in a manner that is compatible with private property rights and other uses of the coastal area;

(5) to balance the benefits from economic development and multiple human uses of the coastal area, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal area;

(6) to coordinate agency and subdivision decision-making affecting CNRAs by establishing clear, objective policies for the management of CNRAs,

(7) to make agency and subdivision decision-making affecting CNRAs efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs,

(8) to make agency and subdivision decision-making affecting CNRAs more effective by employing the most comprehensive, accurate, and reliable information and scientific data available and by developing, distributing for public comment, and maintaining a coordinated, publicly accessible geographic information system of maps of the coastal area and CNRAs at the earliest possible date,

(9) to make coastal management processes visible, coherent, accessible, and accountable to the people of Texas by providing for public participation in the ongoing development and implementation of the Texas CMP; and

(10) to educate the public about the principal coastal problems of state concern and technology available for the protection and improved management of CNRAs.

§501.13. Administrative Policies Agency and subdivision rules and ordinances subject to §501.10 of this title (relating to Compliance with Goals and Policies) shall.

(1) require applicants to provide information necessary for an agency or subdivision to make an informed decision on a proposed action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program),

(2) identify the monitoring established to ensure that activities authorized by actions listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program) comply with all applicable requirements;

(3) identify circumstances in which agencies and subdivisions have the authority to issue variances from standards or requirements for the protection of CNRAs, including the grounds for granting variances;

(4) take into account the na-

tional interest as defined in Chapter 10 of the Texas CMP Document; and

(5) require persons engaging in activities which require dredging or discharge of dredged or fill material into critical areas, to the extent practicable, avoid and otherwise minimize cumulative and secondary adverse effects.

§501.14. Policies for Specific Activities and Coastal Natural Resource Areas.

(a) Construction of Electric Generating and Transmission Facilities.

(1) Construction of electric generating facilities and electric transmission lines in the coastal area shall comply with the policies in this subsection.

(A) New electric generating facilities shall, where practicable, be located at previously developed sites. New electric generating facilities at undeveloped sites shall be located so that future expansion will avoid construction in critical areas, Gulf beaches, critical dunes, and washovers to the greatest extent practicable. To the extent applicable to the public beach, the policies in this subsection are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public.

(B) Facilities using once-through cooling systems shall be located and designed to have the least adverse effects practicable, including impingement or entrainment of estuarine organisms.

(C) Facilities shall be constructed at sites selected to have the least adverse effects practicable on recreational uses of CNRAs and on areas used for spawning, nesting, and seasonal migrations of terrestrial and aquatic fish and wildlife species.

(D) Electric transmission lines to or on Coastal Barrier Resource System Units and Otherwise Protected Areas designated on maps dated October 24, 1990, under the Coastal Barrier Resources Act, 16 United States Code Annotated, §3503(a), on coastal barriers shall:

(i) be located, where practicable, in existing rights-of-way or previously disturbed areas if necessary to avoid or minimize adverse effects, and

(ii) be located at sites at which future expansion shall avoid construction in critical areas, Gulf beaches, critical dunes, and washovers to the greatest extent practicable.

(2) The PUC shall comply with the policies in this subsection when issuing certificates of convenience and necessity and adopting rules under Texas Civil Statutes, Public Utilities Regulatory Act, Article 1446c, governing construction of electric generating facilities, electric transmission lines, and associated facilities in the coastal area.

(b) Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities.

(1) Oil and gas exploration and production on state submerged lands and private submerged lands shall comply with the policies in this subsection.

(A) In or near critical areas, facilities shall be located and operated and geophysical and other operations shall be located and conducted in such a manner as to avoid and otherwise minimize adverse effects, including those from the disposal of solid waste and disturbance resulting from the operation of vessels and wheeled or tracked vehicles, whether on areas under lease, easement, or permit or on or across access routes thereto. Where practicable, buffer zones for critical areas shall be established and directional drilling or other methods to avoid disturbance, such as pooling or unitization, shall be employed.

(B) Lessees, easement holders, and permittees shall construct facilities in a manner that avoids impoundment or draining of coastal wetlands, if practicable, and shall mitigate any adverse effects on coastal wetlands impounded or drained in accordance with the sequencing requirements in this subsection.

(C) Upon completion or cessation of operations, lessees, easement holders, and permittees shall remove facilities and restore any significantly degraded areas to pre-project conditions as closely as practicable, unless facilities can be used for maintenance or enhancement of CNRAs or unless restoration activities would further degrade CNRAs.

(2) To the extent applicable to the public beach, the policies in this subsection are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public.

(3) The GLO and SLB shall comply with the policies in this subsection when approving oil, gas, and other mineral lease plans of operation and granting surface leases, easements, and permits and adopting rules under Texas Natural Resources Code, Chapters 32, 33 and 51-53, governing oil and gas exploration and production on state submerged lands and private submerged lands.

(c) Discharge of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities.

(1) Disposal of oil and gas waste in the coastal area shall comply with the policies in this subsection.

(A) No new commercial oil and gas waste disposal pit shall be located in any CNRA.

(B) Oil and gas waste disposal pits shall be designed to prevent releases of pollutants that adversely affect coastal waters or critical areas.

(2) Discharge of oil and gas exploration and production wastewater in the coastal area shall comply with the following policies.

(A) All discharges shall comply with all provisions of surface water quality standards established by the TNRCC under subsection (f) of this section.

(B) To the greatest extent practicable, new wastewater outfalls shall be located where the discharge will not adversely affect critical areas. Existing wastewater outfalls that adversely affect critical areas shall be either discontinued or relocated so as not to adversely affect critical areas within two years of the effective date of this section.

(C) The RRC shall notify the TNRCC and the TPWD upon receipt of an application for a new permit to discharge produced waters to waters under tidal influence. In determining compliance with the policies in this subsection, the RRC shall consider the effects of salinity from the discharge.

(3) The RRC shall comply with the policies in this subsection when issuing permits and adopting rules under Texas Natural Resources Code, Chapter 91, for oil and gas waste and under Texas Water Code, Chapter 26, and Texas Natural Resources Code, Chapter 91, for oil and gas wastewater discharges.

(d) Construction and Operation of Solid Waste Treatment, Storage, and Disposal Facilities.

(1) Construction and operation of solid waste facilities in the coastal area shall comply with the policies in this subsection. This subsection applies to both new facilities and areal expansion of existing facilities.

(A) A landfill at which hazardous waste is received for a fee shall not

be located in a critical area, critical dune area, critical erosion area, or a 100-year floodplain of a perennial stream, delineated on a flood map adopted by the federal Emergency Management Agency after September 1, 1985, as zone A1-99, VO, or V1-30. This provision shall not apply to any facility for which a notice of intent to file an application, or an application, has been filed with the TNRCC as of September 1, 1985.

(B) Except as provided in clauses (i) and (ii) of this subparagraph, a hazardous waste landfill shall not be located in a special hazard area existing before site development except in an area with a flood depth of less than three feet. Any hazardous waste landfill within a special hazard area must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(i) The areal expansion of a landfill in a special hazard area may be allowed if the applicant demonstrates that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(ii) A new commercial hazardous waste management facility landfill unit may not be located in a special hazard area, unless the applicant demonstrates that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(C) Hazardous waste storage or processing facilities, land treatment facilities, waste piles, and storage surface impoundments shall not be located in special hazard areas unless they are designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(D) Hazardous waste land treatment facilities, waste piles, storage surface impoundments, and landfills shall not be located within 1,000 feet of an area subject to active coastal shoreline erosion, if the area is protected by a barrier island or peninsula, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. On coastal shorelines which are subject to active shoreline erosion and which are unprotected by a barrier island or peninsula, a separation distance from the shoreline to the facility must be at least 5,000 feet, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water.

(E) Hazardous waste storage or processing facilities, land treatment facilities, waste piles, storage surface impoundments, and landfills shall not be located in coastal wetlands, or in any CNRA that is the critical habitat of an endangered species of plant or animal unless the design, construction, and operation features of the facility will prevent adverse effects on the critical habitat of the endangered species.

(F) Hazardous waste land treatment facilities, waste piles, storage surface impoundments, and landfills shall not be located on coastal barriers.

(G) Hazardous waste landfills are prohibited if there is a practical, economic, and feasible alternative to such a landfill that is reasonably available to manage the types and classes of hazardous waste which might be disposed at the landfill.

(H) The TNRCC shall not issue a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste facility unless it finds that the proposed site, when evaluated in light of proposed design, construction, and operational features, reasonably minimizes possible contamination of coastal waters.

(I) Nothing in this subsection shall be construed to require issuance of a permit notwithstanding a finding that the proposed facility would satisfy the requirements of subparagraph (H) and notwithstanding the absence of site characteristics which would disqualify the site from permitting pursuant to subparagraphs (A)-(G) of this paragraph.

(J) New solid waste facilities and areal expansion of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §6901, et seq.

(2) The TNRCC shall comply with the policies in this subsection when issuing permits and adopting rules under Texas Health and Safety Code, Chapter 361.

(e) Prevention, Response and Remediation of Oil Spills.

(1) The GLO regulations governing prevention of, response to and remediation of coastal oil spills shall provide for measures to prevent coastal oil spills and to ensure adequate response and removal actions. The GLO regulations for certification of vessels and facilities that handle oil shall be designed to ensure that vessels and facilities are capable of prompt response and adequate removal of unauthorized discharges of oil. The GLO regulations adopted pursuant to the Oil Spill Prevention and Response Act (OSPRA), Texas Natural Resources Code, Chapter 40, shall be consistent with the State Coastal Discharge Contingency Plan adopted pursuant to OSPRA; and the National Contingency Plan, adopted pursuant to the Federal Water Pollution Control Act, 33 United States Code Annotated, §1321.

(2) Natural Resource Damage Assessment. GLO rules under OSPRA governing the assessment of damages to natural resources injured as the result of an unauthorized discharge of oil into coastal waters shall provide for reasonable and rational procedures for assessing damages and shall take into account the unique circumstances of the spill incident. The costs of assessing the damages shall not be disproportionate to the value of the injured resources. Plans for the restoration, rehabilitation, replacement or acquisition of equivalent resources shall provide for participation by the public and shall be designed to promote the restoration of the injured resources with all deliberate speed. The GLO rules shall be consistent with other state rules and policies and with the CMP goals and policies.

(f) Discharge of Municipal and Industrial Wastewater to Coastal Waters.

(1) TNRCC rules shall

(A) comply with the requirements of the Clean Water Act, 33 United States Code Annotated, §1251, et seq, and implementing regulations at Code of Federal Regulations, Title 40, which include establishing surface water quality standards in order to protect designated uses of coastal waters, including the protection of uses for water supply, recreational purposes, and aquatic life habitat, and establishing water-quality-based effluent limits, including toxicity limits, as necessary to protect designated uses of coastal waters;

(B) provide for the assessment of coastal water quality on a watershed basis once every two years, as required by the Texas Water Code, §26.0135(d),

(C) to the greatest extent practicable, provide that all permits for the discharge of wastewater within a given watershed or region of a single watershed contain the same expiration date in order to evaluate the combined effects of permitted discharges on water quality within that watershed or region;

(D) identify and rank waters that are not attaining designated uses and establish total maximum daily pollutant loads in accordance with those rankings; and

(E) require that increases in pollutant loads to coastal waters shall not:

(i) impair designated uses of coastal waters; or

(ii) result in degradation of coastal waters that exceed fishable/swimmable quality except in cases where lowering coastal water quality is necessary for important economic or social development.

(2) Discharge of municipal and industrial wastewater in the coastal area shall comply with the following policies.

(A) Discharges shall comply with water-quality-based effluent limits.

(B) Discharges that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development.

(C) To the greatest extent practicable, new wastewater outfalls shall be located where they will not adversely affect critical areas.

(3) The TNRCC shall comply with the policies in this subsection when adopting rules and authorizing wastewater discharges under Texas Water Code, Chapter 26

(4) The TNRCC shall consult with the Texas Department of Health when reviewing permit applications for wastewater discharges that may significantly adversely affect oyster reefs

(g) Nonpoint Source (NPS) Water Pollution

(1) Pollutants from NPSs should not be allowed to cause the degradation of water quality or impair designated uses of coastal waters State agencies and subdivisions with authority to manage NPS pollution shall cooperate in the development and implementation of a coordinated program to reduce NPS pollution in order to restore and protect coastal waters.

(2) The TNRCC shall comply with the policies in this subsection when approving municipal water pollution control and abatement plans for municipalities within the coastal area having 5,000 or more inhabitants and when adopting rules governing those plans under Texas Water Code, Chapter 26. The TNRCC shall establish criteria for controlling and abating pollution or potential pollution resulting from generalized discharges of waste which are not traceable to a specific source, such as storm sewer discharges and urban runoff from rainwater.

(3) In an area that the TSSWCB identifies as having or having the potential to develop agricultural or silvicultural NPS water quality problems or an area within the "coastal zone" designated by the council, the TSSWCB shall establish a water quality management plan certification program that provides, through the local soil and water conservation district, for the development, supervision, and monitoring of individual water quality management plans for agricultural and silvicultural lands. Each plan must be developed, maintained, and implemented under rules and criteria adopted by the TSSWCB and comply with state water quality standards established by the TNRCC. The TSSWCB's rules shall certify a plan that satisfies the TSSWCB rules and criteria and complies with state water quality standards established by the TNRCC. This policy is not intended, nor shall it be interpreted, to require the TSSWCB to establish non-voluntary requirements for the development, maintenance, or implementation of individual water quality management plans."

(4) TNRCC rules under Texas Health and Safety Code, Chapter 366, governing on-site sewage disposal systems, and TNRCC rules under Texas Water Code, Chapter 26, governing underground storage tanks, shall require that on-site disposal systems and underground storage tanks be located, designed, operated, inspected, and maintained so as to prevent releases of pollutants that may adversely affect coastal waters.

(5) This policy shall not be interpreted or applied so as to require that either a National Pollution Discharge Elimination System (NPDES) permit for storm water discharges issued under the Clean Water Act, §402(p), or an NPDES permit for a concentrated animal feeding operation, requiring no discharge up to and including a 25-year, 24-hour frequency storm, provide additional NPS pollution control measures in addition to those required in the permit

(h) Development in Critical Areas

(1) Dredging and construction of structures in, or the discharge of dredged or fill material into, critical areas shall comply with the policies in this subsection

(A) The policies in this subsection shall be applied in a manner consistent with the goal of achieving no net loss of critical area functions and values

(B) Persons proposing development in critical areas shall demonstrate that no practicable alternative with less adverse effects is available

(i) The person proposing the activity shall demonstrate that the activity is water-dependent. If the activity is not water-dependent, practicable alternatives with less adverse effects are presumed to exist, unless the person clearly demonstrates otherwise.

(ii) The analysis of alternatives shall be conducted in light of the activity's overall purpose

(iii) Alternatives may include different operation or maintenance techniques or practices or a different location, design, configuration, or size.

(C) In evaluating practicable alternatives, the following sequence shall be applied:

(i) Adverse effects on critical areas shall be avoided to the greatest extent practicable.

(ii) Unavoidable adverse effects shall be minimized by limiting the degree or magnitude of the activity and its implementation

(iii) Appropriate and practicable compensatory mitigation shall be required for all adverse effects that cannot be avoided or minimized

(D) Compensatory mitigation includes restoring adversely affected critical areas or replacing adversely affected critical areas by creating new critical areas. Compensatory mitigation should be undertaken, when practicable, in areas adjacent or contiguous to the affected critical areas (on-site) If on-site compensatory mitigation is not practicable, compensatory mitigation should be undertaken in close physical proximity to the affected critical areas if practicable and in the same watershed if possible (off-site) Compensatory mitigation should also attempt to replace affected critical areas with critical areas with characteristics identical to or closely approximating those of the affected critical areas (in-kind). The preferred order of compensatory mitigation is:

(i) on-site, in-kind;

(ii) off-site, in-kind,

(iii) on-site, out-of-kind; and

(iv) off-site, out-of-kind.

(E) Mitigation banking is acceptable compensatory mitigation if use of the mitigation bank has been approved by the agency authorizing the development

(pursuant to Texas Civil Statutes, Article 5421u), and mitigation credits are available for withdrawal. Preservation through acquisition for public ownership of unique critical areas or other ecologically important areas may be acceptable compensatory mitigation in exceptional circumstances. Examples of this include areas of high priority for preservation or restoration, areas whose functions and values are difficult to replicate, or areas not adequately protected by regulatory programs Acquisition will normally be allowed only in conjunction with preferred forms of compensatory mitigation

(F) In determining compensatory mitigation requirements, the impaired functions and values of the affected critical area shall be replaced on a one-to-one ratio. Replacement of functions and values on a one-to-one ratio may require restoration or replacement of the physical area affected on a ratio higher than one-to-one. While no net loss of critical area functions and values is the goal, it is not required in individual cases where mitigation is not practicable or would result in only inconsequential environmental benefits. It is also important to recognize that there are circumstances where the adverse effects of the activity are so significant that, even if alternatives are not available, the activity may not be permitted regardless of the compensatory mitigation proposed.

(G) Development in critical areas shall not be authorized if significant degradation of critical areas will occur. Significant degradation occurs if:

(i) the activity will jeopardize the continued existence of species listed as endangered or threatened, or will result in likelihood of the destruction or adverse modification of a habitat determined to be a critical habitat under the Endangered Species Act, 16 United States Code Annotated, §§1531-1544;

(ii) the activity will cause or contribute, after consideration of dilution and dispersion, to violation of any applicable surface water quality standards established under subsection (f) of this section;

(iii) the activity violates any applicable toxic effluent standard or prohibition established under subsection (f) of this section,

(iv) the activity violates any requirement imposed to protect a marine sanctuary designated under the Marine Protection, Research, and Sanctuaries Act of 1972, Title III, or

(v) taking into account the nature and degree of all identifiable adverse effects, including their persistence, permanence, areal extent, and the degree to which these effects will have been mitigated pursuant to subparagraphs (C) and (D) of this subsection, the activity will, individually or collectively, cause or contribute to significant adverse effects on:

(I) human health and welfare, including effects on water supplies, plankton, benthos, fish, shellfish, wildlife, and consumption of fish and wildlife;

(II) the life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, or spread of pollutants or their byproducts beyond the site, or their introduction into an ecosystem, through biological, physical, or chemical processes;

(III) ecosystem diversity, productivity, and stability, including loss of fish and wildlife habitat or loss of the capacity of a coastal wetland to assimilate nutrients, purify water, or reduce wave energy; or

(IV) generally accepted recreational, aesthetic or economic values of the critical area which are of exceptional character and importance.

(2) The TNRCC and the RRC shall comply with the policies in this subsection when issuing certifications and adopting rules under Texas Water Code, Chapter 26, and Texas Natural Resources Code, Chapter 91, governing certification of compliance with surface water quality standards for federal actions and permits authorizing development affecting critical areas; provided that activities exempted from the requirement for a permit for the discharge of dredged or fill material, described in Code of Federal Regulations, Title 15, §323.4 and/or 40 Code of Federal Regulations §232.3, including but not limited to normal farming, silviculture, and ranching activities, such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, shall not be considered activities for which a certification is required. The GLO and SLB shall comply with the policies in this subsection when approving oil, gas, or other mineral lease plans of operation or granting surface leases, easements, and permits and adopting rules under Texas Natural Resources Code, Chapters 32, 33 and 51-53, and Texas Water Code, Chapter 61, governing development affecting critical areas on state submerged lands and private submerged lands, and when issuing approvals and adopting rules under Texas Civil Statutes, Article 5421u, for mitigation banks operated by subdivisions of the state.

(3) Agencies required to comply with this subsection will coordinate with one another and with federal agencies when evaluating alternatives, determining appropriate and practicable mitigation, and assessing significant degradation. Those agencies' rules governing authorizations for development in critical areas shall require a demonstration that the requirements of paragraph (1)(A)-(G) of this subsection have been satisfied.

(i) Construction of Waterfront Facilities and Other Structures on State Submerged Lands and Private Submerged Lands.

(1) Development on state submerged lands and private submerged lands shall comply with the policies in this subsection.

(A) Marinas shall be designed and, to the greatest extent practicable, sited so that tides and currents will aid in flushing of the site or renew its water regularly.

(B) Marinas designed for anchorage of private vessels shall provide facilities for the collection of waste, refuse, trash, and debris.

(C) Marinas with the capacity for long-term anchorage of more than ten vessels shall provide pump-out facilities for marine toilets, or other such measures or facilities that provide an equal or better level of water quality protection.

(D) Marinas, docks, piers, wharves and other structures shall be designed and, to the greatest extent practicable, sited to avoid and otherwise minimize adverse effects on critical areas from boat traffic to and from those structures.

(E) Construction of docks, piers, wharves, and other structures shall be preferred instead of authorizing dredging of channels or basins or filling of submerged lands to provide access to coastal waters if such construction is practicable, environmentally preferable, and will not interfere with commercial navigation.

(F) Piers, docks, wharves, bulkheads, jetties, groins, fishing cabins, and artificial reefs (including artificial reefs for compensatory mitigation) shall be limited to the minimum size necessary to serve the project purpose and shall be constructed in a manner that:

(i) does not significantly interfere with public navigation;

(ii) does not significantly

interfere with the natural coastal processes which supply sediments to shore areas or otherwise exacerbate erosion of shore areas; and

(iii) avoids, where practicable, and minimizes shading of critical areas and other adverse effects.

(G) Facilities shall be located at sites or designed and constructed to the greatest extent practicable to avoid and otherwise minimize the potential for adverse effects from:

(i) construction and maintenance of other development associated with the facility;

(ii) direct release to coastal waters and critical areas of pollutants from oil or hazardous substance spills or stormwater runoff; and

(iii) deposition of airborne pollutants in coastal waters and critical areas.

(H) Where practicable, pipelines, transmission lines, cables, roads, causeways, and bridges shall be located in existing rights-of-way or previously disturbed areas if necessary to avoid or minimize adverse effects and if it does not result in unreasonable risks to human health, safety, and welfare.

(I) To the extent practicable, construction of facilities shall occur at sites and times selected to have the least adverse effects on recreational uses of CNRAs and on spawning or nesting seasons or seasonal migrations of terrestrial and aquatic wildlife.

(J) Facilities shall be located at sites which avoid the impoundment and draining of coastal wetlands. If impoundment or draining cannot be avoided, adverse effects to the impounded or drained wetlands shall be mitigated in accordance with the sequencing requirements of subsection (h) of this section. To the greatest extent practicable, facilities shall be located at sites at which expansion will not result in development in critical areas.

(K) Where practicable, piers, docks, wharves, bulkheads, jetties, groins, fishing cabins, and artificial reefs shall be constructed with materials that will not cause any adverse effects on coastal waters or critical areas.

(L) Developed sites shall be returned as closely as practicable to preproject conditions upon completion or cessation of operations by the removal of facilities and restoration of any significantly degraded areas, unless:

(i) the facilities can be used for public purposes or contribute to the maintenance or enhancement of coastal water quality, critical areas, beaches, state submerged lands, private submerged lands, or shore areas; or

(ii) restoration activities would further degrade CNRAs.

(M) Water-dependent uses and facilities shall receive preference over those uses and facilities that are not water-dependent.

(N) Nonstructural erosion response methods such as beach nourishment, sediment bypassing, nearshore sediment berms, and planting of vegetation shall be preferred instead of structural erosion response methods.

(O) Major residential and recreational waterfront facilities shall to the greatest extent practicable accommodate public access to coastal waters and preserve the public's ability to enjoy the natural aesthetic values of coastal submerged lands.

(P) Activities on state submerged land and private submerged land shall avoid and otherwise minimize any significant interference with the public's use of and access to such lands.

(2) To the extent applicable to the public beach, the policies in this subsection are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public.

(3) The GLO and SLB shall comply with the policies in this subsection when approving oil, gas, and other mineral lease plans of operation and granting surface leases, easements, and permits and adopting rules under Texas Natural Resources Code, Chapters 32, 33 and 51-53, and Texas Water Code, Chapter 61, governing development on state submerged lands.

(j) Dredging and Dredged Material Disposal and Placement.

(1) Dredging and the disposal and placement of dredged material shall avoid and otherwise minimize adverse effects to coastal waters, state submerged lands, private submerged lands, critical areas, coastal shore areas, and Gulf beaches to the greatest extent practicable. The policies of this subsection are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public. In implementing this subsection, the unique characteristics of affected sites shall be considered.

(A) Dredging and dredged material disposal and placement shall not cause or contribute, after consideration of dilution and dispersion, to violation of any applicable surface water quality standards established under subsection (f) of this section.

(B) Except as otherwise provided in subparagraph (D) of this paragraph, adverse effects on critical areas from dredging and dredged material disposal or placement shall be avoided and minimized, and appropriate and practicable compensatory mitigation shall be required, in accordance with subsection (h) of this section.

(C) Except as provided in subparagraph (D) of this paragraph, dredging and the disposal and placement of dredged material shall not be authorized if:

(i) there is a practicable alternative that would have less adverse effects on coastal waters, state submerged lands, private submerged lands, critical areas, coastal shore areas, and Gulf beaches, so long as that alternative does not have other significant adverse effects;

(ii) all appropriate and practicable steps have not been taken to minimize adverse effects on coastal waters, state submerged lands, private submerged lands, critical areas, coastal shore areas, and Gulf beaches, or

(iii) significant degradation of critical areas under subsection (h)(1)(G)(v) of this section would result.

(D) A dredging or dredged material disposal or placement project that would be prohibited solely by application of subparagraph (iii) of this paragraph may be allowed if it is determined to be of overriding importance to the public and national interest in light of economic impacts on navigation and maintenance of commercially navigable waterways. A project allowed by this provision shall comply with the requirements of subparagraphs (B) and (C) of this paragraph only to the extent it is feasible to do so and still allow the project to be completed.

(2) Adverse effects from dredging and dredged material disposal and placement shall be minimized as required in paragraph (1) of this subsection. Adverse effects can be minimized by employing the techniques in this paragraph where appropriate and practicable

(A) Adverse effects from dredging and dredged material disposal and placement can be minimized by controlling

the location and dimensions of the activity. Some of the ways to accomplish this include, but are not limited to:

(i) locating and confining discharges to minimize smothering of organisms;

(ii) locating and designing projects to avoid adverse disruption of water inundation patterns, water circulation, erosion and accretion processes, and other hydrodynamic processes;

(iii) using existing or natural channels and basins instead of dredging new channels or basins, and discharging materials in areas that have been previously disturbed or used for disposal or placement of dredged material;

(iv) limiting the dimensions of channels, basins, and disposal and placement sites to the minimum reasonably required to serve the project purpose, including allowing for reasonable overdredging of channels and basins, and taking into account the need for capacity to accommodate future expansion without causing additional adverse effects;

(v) discharging materials at sites where the substrate is composed of material similar to that being discharged;

(vi) locating and designing discharges to minimize the extent of any plume and otherwise control dispersion of material; and

(vii) avoiding the impoundment or drainage of critical areas.

(B) Dredging and disposal and placement of material to be dredged shall comply with applicable standards for sediment toxicity. Adverse effects from constituents contained in materials discharged can be minimized by treatment of or limitations on the material itself. Some ways to accomplish this include:

(i) disposal or placement of dredged material in a manner that maintains physiochemical conditions at discharge sites and limits or reduces the potency and availability of pollutants;

(ii) limiting the solid, liquid, and gaseous components of material discharged;

(iii) adding treatment substances to the discharged material; and

(iv) adding chemical flocculants to enhance the deposition of suspended particulates in confined disposal areas.

(C) Adverse effects from dredging and dredged material disposal or placement can be minimized through control of the materials discharged. Some ways of accomplishing this include:

(i) use of containment levees and sediment basins designed, constructed, and maintained to resist breaches, erosion, slumping, or leaching;

(ii) use of lined containment areas to reduce leaching where leaching of chemical constituents from the material is expected to be a problem;

(iii) capping in-place contaminated material or, selectively discharging the most contaminated material first and then capping it with the remaining material;

(iv) properly containing discharged material and maintaining discharge sites to prevent point and nonpoint pollution; and

(v) timing the discharge to minimize adverse effects from unusually high water flows, wind, wave, and tidal actions.

(D) Adverse effects from dredging and dredged material disposal or placement can be minimized by controlling the manner in which material is dispersed. Some ways of accomplishing this include:

(i) where environmentally desirable, distributing the material in a thin layer;

(ii) orienting material to minimize undesirable obstruction of the water current or circulation patterns;

(iii) using silt screens or other appropriate methods to confine suspended particulates or turbidity to a small area where settling or removal can occur;

(iv) using currents and circulation patterns to mix, disperse, dilute, or otherwise control the discharge;

(v) minimizing turbidity by using a diffuser system or releasing material near the bottom;

(vi) selecting sites or managing discharges to confine and minimize the release of suspended particulates and turbidity and maintain light penetration for organisms, and

(vii) setting limits on the amount of material to be discharged per unit of time or volume of receiving waters.

(E) Adverse effects from dredging and dredged material disposal or placement operations can be minimized by adapting technology to the needs of each site. Some ways of accomplishing this include:

(i) using appropriate equipment, machinery, and operating techniques for access to sites and transport of material, including those designed to reduce damage to critical areas;

(ii) having personnel on site adequately trained in avoidance and minimization techniques and requirements; and

(iii) designing temporary and permanent access roads and channel spanning structures using culverts, open channels, and diversions that will pass both low and high water flows, accommodate fluctuating water levels, and maintain circulation and faunal movement.

(F) Adverse effects on plant and animal populations from dredging and dredged material disposal or placement can be minimized by:

(i) avoiding changes in water current and circulation patterns that would interfere with the movement of animals;

(ii) selecting sites or managing discharges to prevent or avoid creating habitat conducive to the development of undesirable predators or species that have a competitive edge ecologically over indigenous plants or animals;

(iii) avoiding sites having unique habitat or other value, including habitat of endangered species;

(iv) using planning and construction practices to institute habitat development and restoration to produce a new or modified environmental state of higher ecological value by displacement of some or all of the existing environmental characteristics;

(v) using techniques that have been demonstrated to be effective in circumstances similar to those under consideration whenever possible and, when proposed development and restoration techniques have not yet advanced to the pilot demonstration stage, initiating their use on a small scale to allow corrective action if unanticipated adverse effects occur;

(vi) timing dredging and dredged material disposal or placement activities to avoid spawning or migration seasons and other biologically critical time periods; and

(vii) avoiding the destruction of remnant natural sites within areas already affected by development.

(G) Adverse effects on human use potential from dredging and dredged material disposal or placement can be minimized by:

(i) selecting sites and fol-

lowing procedures to prevent or minimize any potential damage to the aesthetically pleasing features of the site, particularly with respect to water quality;

(ii) selecting sites which are not valuable as natural aquatic areas;

(iii) timing dredging and dredged material disposal or placement activities to avoid the seasons or periods when human recreational activity associated with the site is most important; and

(iv) selecting sites that will not increase incompatible human activity or require frequent dredge or fill maintenance activity in remote fish and wildlife areas.

(H) Adverse effects from new channels and basins can be minimized by locating them at sites:

(i) that ensure adequate flushing and avoid stagnant pockets;

(ii) that will create the fewest practicable adverse affects on CNRAs from additional infrastructure such as roads, bridges, causeways, piers, docks, wharves, transmission line crossings, and ancillary channels reasonably likely to be constructed as a result of the project; and

(iii) with the least practicable risk that increased vessel traffic could result in navigation hazards, spills, or other forms of contamination which could adversely affect CNRAs.

(3) Disposal or placement of dredged material in existing contained dredge disposal sites identified and actively used as described in an environmental assessment or environmental impact statement issued prior to the effective date of this chapter shall be presumed to comply with the requirements of paragraph (1) of this subsection unless modified in design, size, use, or function.

(4) All suitable dredged material from commercially navigable waterways is a potentially reusable resource and must be used beneficially to the greatest extent practicable. Other dredged material should be considered a potentially reusable resource to be used beneficially.

(A) Factors that shall be considered in determining whether a beneficial use project is appropriate include:

(i) the environmental gains and losses that will result;

(ii) the proximity of the beneficial use site to the dredge site; and

(iii) the quality of the dredged material and its suitability for beneficial use.

(B) Examples of the beneficial use of dredged material include, but are not limited to:

(i) projects designed to reduce or minimize erosion or provide shoreline protection;

(ii) projects designed to create or enhance public beaches or recreational areas;

(iii) projects designed to benefit the sediment budget or littoral system;

(iv) projects designed to improve or maintain terrestrial or aquatic wildlife habitat;

(v) projects designed to create new terrestrial or aquatic wildlife habitat, including the construction of marshlands, coastal wetlands, or other critical areas;

(vi) projects designed and demonstrated to benefit benthic communities or aquatic vegetation;

(vii) projects designed to create wildlife management areas, parks, airports, or other public facilities;

(viii) projects designed to cap landfills or other waste disposal areas; and

(ix) projects designed to fill private property or upgrade agricultural land, if cost-effective public beneficial uses are not available.

(5) If dredged material cannot be used beneficially as provided in paragraph (4) of this subsection, to avoid and otherwise minimize adverse effects as required in paragraph (1) of this subsection preference will be given to the greatest extent practicable to disposal in:

(A) contained upland sites;

(B) other contained sites; and

(C) open water areas of relatively low productivity or low biological value.

(6) For new sites, dredged materials shall not be disposed of or placed directly on the boundaries of state submerged lands or at such location so as to slump or migrate across the boundaries of state submerged lands in the absence of an agreement between the affected public owner and the adjoining private owner or owners that defines the location of the boundary or boundaries affected by the deposition of the dredged material.

(7) Emergency dredging shall be allowed without a prior consistency determination as required in the applicable consistency rule when:

(A) there is an unacceptable hazard to life or navigation;

(B) there is an immediate threat of significant loss of property; or

(C) an immediate and unforeseen significant economic hardship is likely if corrective action is not taken within a time period less than the normal time needed under standard procedures. The council secretary shall be notified at least 24 hours prior to commencement of any emergency dredging operation by the agency or entity responding to the emergency. The notice shall include a statement demonstrating the need for emergency action. Prior to initiation of the dredging operations the project sponsor or permit-issuing agency shall, if possible, make all reasonable efforts to meet with council's designated representatives to ensure consideration of and consistency with applicable policies in this section. Compliance with all applicable policies in this section shall be required at the earliest possible date. The permit-issuing agency and the applicant shall submit a consistency determination within 60 days after the emergency operation is complete.

(8) Mining of sand, shell, marl, gravel, and mudshell on state submerged lands and private submerged lands is prohibited unless there is an affirmative showing of no significant impact on erosion within the coastal area and no significant adverse effect on coastal water quality or terrestrial and aquatic wildlife habitat within any CNRA.

(9) The GLO and SLB shall comply with the policies in this subsection when approving oil, gas, and other mineral lease plans of operation and granting surface leases, easements, and permits and adopting rules under Texas Natural Resources Code, Chapters 32, 33, and 51-53, and Texas Water Code, Chapter 61, for dredging and dredged material disposal and placement. TxDOT shall comply with the policies in this section when adopting rules and taking actions as local sponsor of the Gulf Intracoastal Waterway under Texas Civil Statutes, Article 5415e-2. The TNRCC and the RRC shall comply with the policies in this subsection when issuing certifications and adopting rules under Texas Water Code, Chapter 26, and Texas Natural Resources Code, Chapter 91, governing certification of compliance with surface water quality standards for federal actions and permits authorizing dredging or the discharge or placement of dredged material

The TPWD shall comply with the policies in this subsection when adopting rules at Chapter 57 of this title (relating to Fisheries) governing dredging and dredged material disposal and placement. The TPWD shall comply with the policies in paragraph (8) of this subsection when adopting rules and issuing permits under Texas Parks and Wildlife Code, Chapter 86, governing the mining of sand, shell, marl, gravel, and mudshell.

(k) Construction in the Beach/Dune System.

(1) Construction in critical dune areas and adjacent to Gulf beaches shall comply with the policies in this subsection.

(A) Construction within a critical dune area that results in the material weakening of dunes and material damage to dune vegetation shall be prohibited

(B) Construction within critical dune areas that does not materially weaken dunes or materially damage dune vegetation shall be sited, designed, constructed, maintained, and operated so that adverse effects (as defined in 31 TAC, Chapter 15 of this title (relating to Coastal Area Planning)) on the sediment budget and critical dune areas are avoided to the greatest extent practicable. For purposes of this subsection, practicability shall be determined by considering the effectiveness, scientific feasibility, and commercial availability of the technology or technique Cost of the technology or technique shall also be considered. Adverse effects (as defined in 31 TAC, Chapter 15 of this title (relating to Coastal Area Planning)) that cannot be avoided are.

(i) minimized by limiting the degree or magnitude of the activity and its implementation;

(ii) rectified by repairing, rehabilitating, or restoring the adversely affected dunes and dune vegetation, and

(iii) compensated for on-site or off-site by replacing the resources lost or damaged seaward of the dune protection line

(C) Rectification and compensation for adverse effects that cannot be avoided or minimized shall provide at least a one-to-one replacement of the dune volume and vegetative cover, and preference shall be given to stabilization of blowouts and breaches and on-site compensation

(D) The ability of the public, individually and collectively, to exercise its rights of use of and access to and from public beaches shall be preserved and enhanced.

(E) Non-structural erosion response methods such as beach nourishment, sediment bypassing, nearshore sediment berms, and planting of vegetation shall be preferred instead of structural erosion response methods. Local governments shall not authorize the construction of a new erosion response structure within the beach/dune system, except for a retaining wall located more than 200 feet landward of the line of vegetation. Local governments shall not authorize the repair or maintenance of existing erosion response structures on the public beach; neither shall local governments authorize the repair or maintenance of existing erosion response structures within 200 feet landward of the line of vegetation, except for erosion response structures which are more than 50% damaged, and failure to repair the damaged structure will cause an unreasonable flood hazard to public facilities or will cause damage to habitable structures due to floodwaters channeled through adjacent erosion response structures

(2) The GLO shall comply with the policies in this subsection when certifying local government dune protection and beach access plans and adopting rules under Texas Natural Resources Code, Chapters 61 and 63 Local governments required by Texas Natural Resources Code, Chapters 61 and 63, to adopt dune protection and beach access plans shall comply with the applicable policies in this subsection when issuing beachfront construction certificates and dune protection permits.

(l) Development in Coastal Hazard Areas

(1) Local governments participating in the National Flood Insurance Program shall adopt ordinances or orders governing development in special hazard areas under Texas Water Code, Chapter 16, Subchapter I, and Texas Local Government Code, Chapter 240, Subchapter Z, that comply with construction standards in regulations at Code of Federal Regulations, Title 44, Parts 59-60, adopted pursuant to the National Flood Insurance Act, 42 United States Code Annotated, §4001, et seq

(2) Pursuant to the standards and procedures under Texas Natural Resources Code, Chapter 33, Subchapter H, the GLO shall adopt or issue rules, recommendations, standards, and guidelines for erosion avoidance and remediation and for prioritizing critical erosion areas

(m) Development Within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers.

(1) Development of new infrastructure or major repair of existing infrastructure within or supporting development within Coastal Barrier Resource System Units and Otherwise Protected Areas designated on maps dated October 24, 1990, under the Coastal Barrier Resources Act, 16 United States Code Annotated, §3503(a), shall comply with the policies in this subsection.

(A) Development of publicly funded infrastructure shall be authorized only if it is essential for public health, safety, and welfare, enhances public use, or is required by law.

(B) Infrastructure shall be located at sites at which reasonably foreseeable future expansion will not require development in critical areas, critical dunes, Gulf beaches, and washover areas

(C) Infrastructure shall be located at sites that to the greatest extent practicable avoid and otherwise minimize the potential for adverse effects on critical areas, critical dunes, Gulf beaches, and washover areas from

(i) construction and maintenance of roads, bridges, and causeways, and

(ii) direct release to coastal waters, critical areas, critical dunes, Gulf beaches, and washover areas of oil, hazardous substances, or stormwater runoff

(D) Where practicable, infrastructure shall be located in existing rights-of-way or previously disturbed areas to avoid or minimize adverse effects

(E) Development of infrastructure shall occur at sites and times selected to have the least practicable adverse effects on critical areas, critical dunes, Gulf beaches, and washover areas and on spawning or nesting areas or seasonal migrations of commercial, recreational, threatened, or endangered terrestrial or aquatic wildlife

(2) TNRCC rules and approvals for the creation of special districts and for infrastructure projects funded by issuance of bonds by water, sanitary sewer, and wastewater drainage districts under Texas Water Code, Chapter 50, water control and improvement districts under Texas Water Code, Chapter 50, municipal utility districts under Texas Water Code, Chapter 54, regional plan implementation agencies under Texas Water Code, Chapter 54, special utility districts under Texas Water Code, Chapter 65, storm water control districts under Texas Water Code, Chapter 66, and all other general and special law districts subject to and within the jurisdiction of the TNRCC, shall comply with the policies in

this subsection. TxDOT rules and approvals under Texas Civil Statutes, Article 6663 et seq, governing planning, design, construction, and maintenance of transportation projects, shall comply with the policies in this subsection

(n) Development in Coastal Parks, Wildlife Management Areas, and Preserves. Agencies authorizing development in coastal parks and refuges shall comply with Texas Parks and Wildlife Code, Chapter 26.

(o) Alteration of Coastal Historic Areas

(1) Development affecting a coastal historic area shall avoid and otherwise minimize alteration or disturbance of the site unless the site's excavation will promote historical, archaeological, educational, or scientific understanding.

(2) The THC shall comply with the policies in this subsection when adopting rules and issuing permits under Texas Natural Resources Code, Chapter 191, governing alteration of coastal historic areas. The THC shall comply with the policies in this subsection when issuing reviews under §106 of the National Historic Preservation Act, 16 United States Code Annotated, §470, et seq.

(p) Transportation Projects.

(1) Planning, design, construction, and maintenance of roads, highways, causeways, bridges, airports, and other transportation projects and associated facilities within the coastal area shall comply with the policies in this subsection.

(A) Pollution prevention procedures shall be incorporated into the design, construction, and maintenance of transportation projects to reduce pollutant loading to coastal waters from erosion and sedimentation, use of pesticides and herbicides for maintenance of rights-of-way, and other pollutants from stormwater runoff.

(B) Transportation projects shall be located at sites that to the greatest extent practicable avoid and otherwise minimize the potential for adverse effects from (1) construction and maintenance of additional roads, bridges, causeways, and other development associated with the project, and (2) direct release to CNRAs of pollutants from oil or hazardous substance spills, contaminated sediments or stormwater runoff

(C) Where practicable, transportation projects shall be located in existing rights-of-way or previously disturbed areas if necessary to avoid or minimize adverse effects

(D) Where practicable, transportation projects shall be located at sites at which future expansion will not require development in coastal wetlands except where such construction is determined to be essential for evacuation in the case of a natural disaster.

(E) Design, construction, and maintenance of transportation projects shall avoid the impoundment and draining of coastal wetlands. If impoundment or draining cannot be avoided, adverse effects to the impounded or drained wetlands shall be mitigated in accordance with the sequencing requirements of subsection (h) of this section.

(F) Construction of transportation projects shall occur at sites and times selected to have the least practicable adverse effects on recreational uses of CNRAs and on spawning or nesting seasons or seasonal migrations of terrestrial or aquatic species.

(G) Beach-quality sand from maintenance of roadways adjacent to Gulf beaches shall be beneficially used by placement on Gulf beaches where practicable. Where placement on Gulf beaches is not practicable, the material shall be placed in critical dune areas

(2) TxDOT rules and project approvals under Texas Civil Statutes, Article 6663 et seq, governing transportation projects within the coastal area, shall comply with the policies in this subsection.

(q) Emission of Air Pollutants. TNRCC rules under Texas Health and Safety Code, Chapter 382, governing emissions of air pollutants, shall comply with regulations at Code of Federal Regulations, Title 40, adopted pursuant to the Clean Air Act, 42 United States Code Annotated, §7401, et seq, to protect and enhance air quality in the coastal area so as to protect CNRAs and promote the public health, safety, and welfare

(r) Instream Flows and Freshwater Inflows to Waters Under Tidal Influence.

(1) Impoundments and diversion of state water within 200 stream miles of the coast, to commence from the mouth of the river thence inland, shall comply with the policies in this subsection

(A) The TNRCC shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state. It is the public policy of the state to provide for the conservation and development of the state's natural resources, including

(i) the control, storage, preservation, and distribution of the state's storm and floodwaters and the waters of its rivers and streams for irrigation, power, and other useful purposes;

(ii) the reclamation and irrigation of the state's arid, semiarid, and other land needing irrigation;

(iii) the reclamation and drainage of the state's overflowed land and other land needing drainage;

(iv) the conservation and development of its forest, water, and hydroelectric power;

(v) the navigation of the state's inland and coastal waters; and

(vi) the maintenance of a proper ecological environment of the bays and estuaries of Texas and the health of related living marine resources.

(B) In this subsection, "beneficial inflows" means a salinity, nutrient, and sediment loading regime adequate to maintain an ecologically sound environment in the receiving bay and estuary system that is necessary for the maintenance of productivity of economically important and ecologically characteristic sport or commercial fish and shellfish species and estuarine life upon which such fish and shellfish are dependent.

(C) In its consideration of an application for a permit to store, take, or divert water, the TNRCC shall assess the affects, if any, of the issuance of the permit on the bays and estuaries of Texas. For permits issued within an area that is 200 river miles of the coast, to commence from the mouth of the river thence inland, the TNRCC shall include in the permit, to the extent practicable when considering all public interests, those conditions considered necessary to maintain beneficial inflows to any affected bay and estuary system.

(D) For the purposes of making a determination under subparagraph (C) of this paragraph, the TNRCC shall consider among other factors:

(i) the need for periodic freshwater inflows to supply nutrients and modify salinity to preserve the sound environment of the bay or estuary, using any available information, including studies and plans specified in and other studies considered by the TNRCC to be reliable; together with existing circumstances, natural or otherwise, that might prevent the conditions imposed from producing benefits;

(ii) the ecology and productivity of the affected bay and estuary system;

(iii) the expected effects on the public welfare of not including in the permit some or all of the conditions considered necessary to maintain the beneficial inflows to the affected bay or estuary;

(iv) the quantity of water requested and the proposed use of water by the applicant, as well as the needs of those who would be served by the applicant;

(v) the expected effects on the public welfare of the failure to issue all or part of the permit being considered; and

(vi) for the purposes of this subsection, the declarations as to preferences for competing uses of water as found in Texas Water Code, §11. 024 and §11.033, as well as the public policy statement in subparagraph (A) of this paragraph.

(E) In its consideration of an application to store, take, or divert water, the TNRCC shall consider the effect, if any, of the issuance of the permit on existing instream uses and water quality of the stream or river to which the application applies. The TNRCC shall also consider the effect, if any, of the issuance of the permit on fish and wildlife habitats.

(F) On receipt of an application for a permit to store, take, or divert water, the TNRCC shall send a copy of the permit application and any subsequent amendments to the TPWD. In making a final decision on any application for a permit, the TNRCC, in addition to other information, evidence, and testimony presented, shall consider all information, evidence, or testimony presented by the TPWD and the TWDB.

(G) Permit conditions relating to beneficial inflows to affected bays and estuaries and instream uses may be suspended by the TNRCC if the TNRCC finds that an emergency exists and cannot practically be resolved in other ways. Before the TNRCC suspends a permit under this subparagraph, it must give written notice to the TPWD of the proposed suspension. The TNRCC shall give the TPWD an opportunity to submit comments on the proposed suspension within 72 hours from such time and the TNRCC shall consider those comments before issuing its order imposing the suspension.

(H) In its consideration of an application for a permit under this section, the TNRCC shall assess the effects, if any, of the issuance of the permit on water quality in coastal waters. In its consideration of an application for a permit to store, take, or divert water in excess of 5,000 acre feet per year, the commission shall assess the effects, if any, on the issuance of the permit on fish and wildlife habitats and may require the applicant to take reasonable actions to mitigate adverse effects on such habitat. In determining whether to require an applicant to mitigate adverse effects on a habitat, the TNRCC may consider any net benefit to habitat produced by the project The TNRCC shall offset against any mitigation required by the United States Fish and Wildlife Service pursuant to Code of Federal Regulations, Title 33, §§320-330, any mitigation authorized by this section.

(I) Unappropriated water and other water of the state stored in any facility acquired by and under the control of the TWDB may be released without charge to relieve any emergency condition arising from drought, severe water shortage, or other calamity, if the TNRCC first determines the existence of the emergency and requests the TWDB to release the water

(J) Five percent of the annual firm yield of water in any reservoir. and associated works constructed with state financial participation within 200 river miles of the coast, to commence from the mouth of the river thence inland, is appropriated to the TPWD for use to make releases to bays and estuaries and for instream uses, and the TNRCC shall issue permits for this water to the TPWD under procedures adopted by the TNRCC. This subparagraph applies only to reservoirs and associated works on which construction begins on or after September 1, 1985. This subsection does not limit or repeal any other authority of or law relating to the TPWD or the TNRCC.

(K) The TWDB, in coordination with the TNRCC and TPWD, shall identify ways to assist in providing flows to meet instream needs, including protection of water quality, protection of terrestrial or aquatic wildlife habitat, and bay and estuary inflow needs, in the implementation of the Texas Water Bank, Texas Water Code, §15.701, et seq. This may include, but not be limited to, the purchase by the TPWD and/or the TWDB of water rights deposited in the Texas Water Bank in order to provide for existing instream uses and beneficial inflows to bays and estuaries if funds are available and such purchase is not prohibited by law. The TNRCC shall facilitate the approval of any necessary permit amendments to achieve this purpose.

(L) An applicant for a new or amended water right permit shall submit a water conservation plan in accordance with 30 TAC §295 9 (relating to Conservation Plan) The TNRCC shall consider the information contained in the conservation plan in determining whether any feasible alternative to the proposed appropriation exists, whether the proposed amount to be appropriated as measured at the point of diversion is reasonable and necessary for the proposed use, the term and other conditions of the water right and to ensure that reasonable diligence will be used to avoid waste and achieve water conservation Based upon its review, the TNRCC may deny or grant, in whole or in part, the requested appropriation

(2) The TNRCC rules and authorizations under Texas Water Code, Chapter 11, governing review and action on applications for new permits or amendments proposing changes to existing permits for diversions or impoundments of state water within 200 stream miles of the coast, and TNRCC rules and approvals governing creation of districts and issuance of district bonds for levee and flood control projects within the coastal area, shall comply with the policies in this subsection

(s) Levee and Flood Control Projects.

(1) Drainage, reclamation, channelization, levee construction or modification, or flood or floodwater control infrastructure projects shall be designed, constructed, and maintained to avoid the impoundment and draining of coastal wetlands to the greatest extent practicable. If impoundment or draining of coastal wetlands cannot be avoided, adverse effects to the wetlands shall be mitigated in accordance with the sequencing requirements in subsection (h) of this section.

(2) TNRCC rules and approvals for the levee construction, modification, drainage, reclamation, channelization, or flood or flood water control projects, pursuant to the Texas Water Code, §16 236, shall comply with the policies in this subsection.

(t) Fishing, Hunting, and the Protection of Fish and Wildlife TPWD rules under Texas Parks and Wildlife Code, Subtitles A and B, governing hunting and recreational fishing, and rules and permits governing commercial fishing and the protection of endangered or threatened species, within the coastal area shall provide, as determined by the Texas Parks and Wildlife Commission, that biologically diverse wildlife and fishery populations be maintained and enhanced and that other adverse effects on CNRAs be minimized to the extent practicable

§501.15 Policy for Major Actions

(a) For purposes of this section, "major action" means an individual agency or subdivision action authorizing an activity involving a federal action for which a fede

ral environmental impact statement under the National Environmental Policy Act, 42 United States Code Annotated, §4321, et seq, is required.

(b) Agencies and subdivisions shall not take a major action authorizing an activity if there is a cost-effective and practicable alternative with less adverse effects. In determining the cost-effective and practicable alternative with the least adverse effects, agencies and subdivisions shall consider:

(1) the activity's adverse effects, including its cumulative and secondary adverse effects and their significance;

(2) adverse effects from any other activity that is an interdependent part of the activity under review, or that cannot or will not proceed unless the agency or subdivision authorizes or undertakes the activity under review,

(3) any irreversible and irretrievable commitment, severe adverse effects, or destruction of CNRAs that will result if the activity is authorized,

(4) the relationship between short-term activities affecting CNRAs and the long-term maintenance and enhancement of the functions of CNRAs as components of coastal ecosystems;

(5) the relationship between the relative public value of those functions and the relative public and private need for the activity, including economic needs, general environmental concerns, compatibility with existing and future land use, public safety, equitable socioeconomic distribution of environmental hazards, navigation needs, mineral and energy needs, food and fiber production needs, consideration of property ownership, the general needs and welfare of the people of Texas and the nation, and the goals in §501 12 of this title (relating to Goals), and

(6) the practicability of alternatives including no action, different operation or maintenance techniques or practices (including recycling and waste reduction practices), or a different location, design, configuration, or size of the project than proposed

(c) If an agency's or subdivision's ability to consider any of the factors in subsection (b) of this section is limited (e g., by legal restrictions or by lack of technical expertise), the agency or subdivision shall coordinate with any other agency or subdivision with management responsibility relevant to the activity under review to ensure that their actions do not infringe on or limit one another's ability to manage the activity. The agency or subdivision shall incorporate the recommendations of other agencies and subdivisions to the greatest extent practicable

(d) If, in the course of considering whether to authorize a major action, an agency or subdivision produces and evaluates data and information on secondary adverse effects pursuant to §501.14(j)(2)(H) of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas), or data and information on adverse effects to critical areas pursuant to §501.14(h)(1)(B) of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas), then additional data and information on the same effects need not be produced and evaluated to comply with the equivalent requirements of this section.

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TRD-9443200 Garry Mauro
Chairman
Coastal Coordination Council

For further information, please call. (512) 305-9129

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Chapter 504. Special Area Management Planning

• 31 TAC §§504.1-504.8

The Coastal Coordination Council (council) extends the comment period for proposed Chapter 504, §§504.1-504.8, concerning the establishment of procedural requirements for the development of Special Area Management Plans (SAMPs) for the Texas Coastal Management Program (CMP) Chapter 504 is republished with changes to the proposed text as published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1916). This chapter was proposed pursuant to the authority provided in the Texas Natural Resources Code, Chapter 33, Subchapter C, and Texas Natural Resources Code, Subchapter F (Coastal Coordination Act), which require the General Land Office (GLO) to develop the CMP and the council to promulgate the CMP goals and policies.

General comments were received regarding the "CMP document," which was the subject of the "Notice of Availability" in the March 18, 1994, edition of the *Texas Register*. The CMP document contains descriptions of the enforceable and non-enforceable portions of the CMP. The enforceable portions of the CMP are Chapters 501, 504, 505, and 506 published in the "Proposed Sections" section of the March 18, 1994, edition of the *Texas Register*. Chapters 501, 504, 505, and 506 respectively contain: the CMP goals and policies; special area management planning, council procedures for state and local consistency with CMP goals and policies; and council procedures for federal consistency with the CMP goals and policies. The CMP document is prepared pursuant to federal requirements for approval under the Coastal Zone Management Act (CZMA), 16 United States Code Annotated, §1455(d). While portions of the CMP document describe the provisions of Chapters 501, 504, 505, and 506, the chapters, not the CMP document, are the council's enforceable policies; the chapter preambles, not the CMP document, may be used to determine the intent of the chapters. Based on comments received, the CMP Document was reviewed and revised to ensure consistency and resolve any perceived inconsistencies within the Chapters 501, 504, 505 and 506. To the extent that any conflicts are perceived when reviewing the CMP document and Chapters 501, 504, 505 and 506, or while implementing the chapters, the chapters prevail.

Editorial changes that do not alter the content of this chapter have been made to clarify meaning and to correct grammatical errors. In order to save space, similar comments and responses have been combined by section. General comments on the proposed chapter and comments on the preamble to the proposed chapter are combined at the end of the summary of the comments.

Section 504 1.

One commenter requested addition of a definition of "coastal areas for intensive use" to §504 1 "Coastal areas for intensive use" is not a term of art and may include, for example, coastal areas of intensive use for high density or "clustered" development, as well as commercial or recreational harvesting of natural resources. Defining "coastal areas for intensive use" may have the unintended consequence of limiting this type of SAMP. Therefore, no change was made in response to this comment.

One commenter stated that guidelines described in §504 1(a)(2) needed to be clarified and provided. The guidelines will be developed after adoption of Chapter 504, and will be clarified during the guideline development process. No change was made based on this comment.

Regarding §504 1(a)(2) and "coastal areas for multiple use," one commenter stated that there must be a balance between the existing development and development projected for the future in an area with important coastal natural resources. The commenter stated that a large amount of development in an area does not necessarily mean that a sensitive area should be sacrificed. The SAMP process does not prescribe the type of SAMP which may be developed; that decision is left to nominating entities Therefore, the SAMP process does not contemplate the "sacrifice" of sensitive areas or place a preference on development. No change was made based on this comment

One commenter asked that "program guidelines" be clarified in §504.1(a)(2) . Section 504.1(a)(2) *defines* "approved program guidelines", these guidelines will be developed to provide more specific criteria and standards necessary to develop SAMPs. Because the guidelines will be developed using a process specific to SAMPs, SAMPs cannot be approved prior to the establishment of guidelines No change was made based on this comment.

One commenter requested that the definition of geographic area of particular concern (GAPC), provided in §504.1(a)(4), be amended only to include areas requiring pre-

servation or restoration, to reflect the minimum federal requirements in the Code of Federal Regulations, Title 15, Part 923, Subpart C, §923 22 To provide the greatest protection to the ecological and economic resources of the Texas coast, Chapter 504 provides a procedure for designation of a variety of GAPCs, including GAPCs designated for the purpose of preservation or restoration The Code of Federal Regulations, Title 15, Part 923, Subpart C, §923 22 (pertaining to designations of GAPCs for preservation and restoration) provides minimum federal requirements that states must follow in order to receive federal approval of a coastal management program The CZMA, 16 United States Code Annotated, §1452(2)(E) -(F), §1453(17), and associated regulations provide that states may designate GAPCs for other purposes, such as waterfront redevelopment, ports, public access and reasonable coastal-dependent economic growth The definition of GAPCs as provided in §504 1(a)(4) has been revised to clarify that a proposed GAPC must be the minimum size necessary to achieve the purpose of the GAPC nomination, and to better reflect the various purposes and requirements of GAPCs

One commenter requested inclusion of "port authorities" in the definition of "nominating entities" in §504 1(a)(6), and two commenters requested the deletion of "nonprofit" or "public citizen group" from the definition, noting that such nominations involve improper delegation of traditional governmental functions Regarding the first comment, port authorities and navigation districts created under Texas Constitution, Article III, §52, or Texas Constitution, Article XVI, §59, are political subdivisions authorized to perform duties similar in nature to the duties of a state agency. Based on the quasi-governmental nature of port authorities and navigation districts, §504. 1(a)(6) and §504 2(a) were amended to specifically include "political subdivisions" Regarding the second comment, nonprofit and public citizen groups have not been deleted from §504 1(a)(6) as no unlawful delegation of authority is granted to the nominating entity pursuant to the SAMP nomination process. Only the council has the power to act on the SAMP nomination

Another commenter stated that "nominating entity," as defined in §504 1(a) (6), should include individuals, and not be limited to specific groups Another asked that private landowners be included as a "nominating entity" The Code of Federal Regulations, Title 15, Part 923, Subpart C, §923 22(b) (ii) specifically requires the council to provide opportunity for public participation in the designation of GAPCs and SAMPs The section states, in pertinent part, "[w]here states will involve the public in the process of designating areas of particular concern, states must provide guidelines to those who will be involved in the designation process" Based on this comment, and to provide guidance in accordance with the Code of Federal Regulations, Title 15, Part 923, Subpart C, §923 22(b)(ii), §504 1(a)(6) has been amended to require that the membership of each nongovernmental nominating entity must include at least one person owning land located within the boundaries of the GAPC.

One commenter asked that §504 1(b)(3), identifying the meaning of the acronym "CNRA," be revised to provide for protection and restoration Because §504 1(b)(3) does not address substantive considerations, no change was made based on this comment. However, it should be noted that SAMPs may be developed to provide for protection and restoration of CNRAs, as Chapter 504 allows for the development of SAMPs for economic, as well as ecological purposes Development of SAMPs, including choice of the type of GAPC, is within the discretion of the nominating entity and the SAMP committee, as respectively defined in §504 1(a)(6) and §504 5(b).

Section 504 2

One commenter stated that the SAMP process may affect a local tax base by imposing additional restrictions. One commenter stated that the SAMP nomination process provided in §504 2 fails to provide any meaningful participation by affected parties or individuals opposed to the creation of a SAMP. The commenter stated that the council's ability to designate and/or accept a SAMP over the objections of persons most directly affected contravenes the notion of a voluntary program Another commenter suggested that only a property owner or subdivision owning or encompassing the CNRA should be allowed to volunteer the property for inclusion in a SAMP. Two commenters questioned whether the SAMP process was "voluntary," and one commenter recommended adding policies that govern the nomination and management of private third-party property nominated or included in a SAMP. Meaningful participation by affected parties is essential to the development of a SAMP. As proposed, the chapter could be interpreted to allow a nominating entity to create a SAMP encompassing private property, without giving property owners and other affected parties personal notice or a meaningful opportunity to be heard. Many property owners along the Texas coast purchase property for a variety of uses, ranging from construction and use of vacation homes to construction and operation of industrial facilities. The SAMP program can be used to develop management plans individually suited for these various uses To clarify what, if any, property may be eligible for inclusion in a SAMP, the definition of GAPCs, as provided in §504.1(a)(4), has been modified. Drawing on the current practice in the municipal zoning context, new §504.2(d) has been added to require that notice of a GAPC nomination be given to. adjacent landowners within 500 feet from the outward-most boundary of a nominated GAPC, and landowners within the nominated GAPC via first class mail Section 504.2(b)(5) has been amended to require that the nomination include a demonstration of the level of support for and a description of the opposition to the SAMP, as well as any relevant resolutions passed by cities and counties with jurisdiction over the nominated area. In addition, §504 2(c) requires the nominating entity to publish notice of the nomination in a regional or local newspaper Section 504 5 has been changed to require the participation of the local community members in the SAMP committee Section 504.7(d) requires the executive committee of the council to hold public hearings in the city nearest to the nominated GAPC during the preliminary evaluation period identified in §504.3. Further, §504 1(a)(8) has been amended so that the definition of a SAMP no longer includes the word "voluntary" Further, a property owner will not be included in a SAMP if such property owner notifies the nominating entity of any objections to inclusion of the property pursuant to new §504. 2(d)(5) Finally, the written consent of the property owners within the GAPC is now required in §504 5(d)(8) The increased opportunity for public input gives the public adequate opportunity to address any effects on the tax base which may result from a SAMP

One commenter requested that §504 2 be amended to identify GAPCs on a generic and/or site-specific basis, and recommended that such amendments describe the nature of the concern for these areas, describe how the concerns are resolved and provide guidelines for priorities of uses in these areas. Regarding §504 2(b), one commenter stated that promoting the use of GAPCs conflicts with designating and specially managing these areas to protect their resources. The commenter stated that nominations of GAPCs should include a method of designating areas of preservation and restoration, and recommended adding the following areas of local concern to the CMP: Galveston Seawall and East Beach (dunes); San Luis Pass Flats (rookery), San Jacinto River, and Bermuda Beach subdivision on West Galveston and other subdivisions on Bolivar Peninsula. Another commenter supported the use of SAMPs for coastal areas for intensive use, and stated that the Houston Ship Channel may qualify as a GAPC. Based on these comments, the definition of GAPC, as provided in §504.1(a)(4), has been revised to more clearly identify the areas that may be subject to Chapter 504 The revised definition of GAPC is intended to provide notice to persons owning an interest in coastal property that such property is eligible for nomination for a SAMP The commenters' suggestions regarding specific GAPCs and SAMPs were not incorporated, as specific GAPC nomination and SAMP adoption may only occur pursuant to the procedures relating to GAPC nominations and SAMP adoptions, respectively provided in §504 2 and §504 7 No change was made regarding the identification of GAPCs as the chapter already addresses this issue in §504.1(a)(4).

Concerning §504 2(a), one commenter expressed concern that citizens are not able to nominate GAPCs While it is true that individual citizens cannot nominate GAPCs, citizen groups can, pursuant to §504 1(a)(6). Because an opportunity for meaningful citizen input is provided, no change was made based on this comment.

One commenter stated that §504 2(c) should require notice by mail in addition to publication in the *Texas Register*, and that there should also be a 30-day comment period. Based on this and other comments received regarding public notice and notice to affected property owners, §504 2(c) and §504 2(d), now §504 2(e), have been amended to clarify

the required timing of public notice.

One commenter asked that §504.2(d), now §504.2(e), be incorporated into the state and federal consistency review process Because state and federal consistency involves council review of agency and subdivision actions, and SAMPs may frequently be created by non-governmental entities, SAMPs are not subject to consistency review. However, based on this and other comments received, §504.6(a)(8) has been amended to clarify that SAMPs must be in compliance with the CMP goals and policies

One commenter stated that §504.2(c) fails to provide sufficient opportunity for public comment and, therefore, support for a nominated SAMP cannot be properly evaluated during the preliminary evaluation of a SAMP nomination, as required by §504 3. To address these concerns, the commenter suggested amendments to §504.2(c) which would allow the GLO staff a period of at least 60 days, as opposed to 30 days, to adequately solicit, receive and consider public comment during the preliminary evaluation of a SAMP nomination. Based on these comments, §504 3 was amended to allow for an extension of the 30-day time period to 60 days In addition, based on this comment, §504 3 has been amended to clarify the nature of the GLO's recommendations to the executive committee of the council and the committee's role in approving or disapproving the recommendation, and §504 2(c) has been amended to require that nominating entities include a request for public comment in the notice of acceptance of consideration of a SAMP nomination which is published in a regional or local newspaper. Section 504.2(d) has been added and requires the council secretary to give notice to owners of property within the GAPC and within 500 feet of the GAPC (Previous §504 2(d) is now §504 2(e)) Also based on this comment, §504.5(a) has been amended to require identification of conflicts and recommendations to address the conflicts as part of the scoping process

Section 504.3.

Regarding §504.3, one commenter asked for amendments which would require the GLO staff to determine whether National Estuary Programs (NEPs) can be nominated as SAMPs on a case-by-case basis. Another commenter expressed concern regarding the "exemption" of NEPs from the SAMP nomination process. Because §504 3 provides that nominations of NEPs are automatically accepted by the council, it is not necessary to require the GLO staff to make such a determination. The intent of §504.3 is to avoid state duplication of the rigorous federal NEP development process, which addresses many of the same concerns as the SAMP development process. No change was made based on this comment.

Section 504 4

One commenter asked for the addition of "coastal preserves approved by the GLO" to §504.4, relating to automatic acceptance of the nomination of a NEP as a SAMP Unlike coastal preserves, NEPs are required to develop a comprehensive conservation management plan (CCMP), which takes approximately five years to develop Much of the information required for a SAMP nomination will have been gathered during the process of developing the CCMP. Coastal preserves do not require the same rigorous development process as NEPs. Coastal preserves may properly be nominated as a SAMP; however §504 4 was not amended to provide automatic acceptance of coastal preserves as a SAMP.

One commenter asked if there was a memorandum of agreement (MOA) between the GLO and the Texas Natural Resource Conservation Commission (TNRCC) on NEPs and the CMP, as provided for in §504.4. The commenter requested public review and comment regarding this issue. Section 504.4 provides for the automatic acceptance of the nomination of an NEP as a SAMP. Provisions relating to an MOA are not included; however, MOAs could be developed on an as-needed basis, and the parties to the MOA would not necessarily be the GLO and TNRCC No change was made based on this comment

Section 504.5

One commenter asked that §504 5 be amended to provide for an expedited SAMP approval process for areas which are relatively small and in which a majority of the affected parties are in agreement as to the SAMP. The suggested process would allow development of a SAMP without the detailed workplan required by §504.6, and the scoping process required in §504 5(a) would be used to write the SAMP The commenter also suggested that the executive committee of the council should approve a SAMP through the expedited approval process. The SAMP committee is required to submit a workplan no later than six months after the date of approval of the nomination by the executive committee of the council; therefore, the SAMP committee may expedite the process by submitting the workplan sooner. The scoping process consists of the preliminary phase of information gathering for the workplan, and may be used to develop the workplan. Pursuant to §504 7, only the council can approve a SAMP, therefore, the suggestion that §504.5 be amended to allow the executive committee of the council to approve a SAMP was not incorporated

One commenter stated that the language in §504 5(b) should be changed to require the participation of affected parties in the SAMP committee The council will not compel participation in a SAMP committee; however, based on this comment, §504 5(b) has been revised to require that a nominating entity must invite the participation of affected parties, other interested parties and persons or groups with scientific expertise. The nominating entity must provide to the secretary of the executive committee of the council notice of the participants of the SAMP committee. In addition, §504 5(d)(3) has been amended to require that the workplan include a delineation of the boundaries of the property within the GAPC that is not included in the SAMP (pursuant to the landowner's request)

One commenter stated that the council should review the SAMPs to avoid wasting time on plans that will not be approved by the council. The council meets quarterly, and to require preliminary review of SAMPs by the council might result in undue delay of the SAMP process. The executive committee of the council is comprised of representatives of council members and is required to conduct a review of the SAMP prior to submission to the council in §504.7. However, the council will preview a proposed SAMP upon the request of the SAMP committee pursuant to §504.7(f).

Section 504.6.

Many commenters asked that no changes be made to §504.6(a)(1)-(7) Based on other comments received on this subsection, changes were made.

One commenter asked that §504.6(b) and §504.7(a) be amended to require that the executive committee of the council set a specific schedule for revisions and the review of the revised plan by the executive committee of the council, and to include a time limit of no more than three months to accomplish these tasks. Based on this and other comments received, Chapter 504 now includes §504.7(g)-(i), relating to amendments to SAMPs and withdrawal of council approval of SAMPs.

One commenter suggested that one of the required elements of the SAMP should be "a discussion of current state, regional and local plans and/or regulations which may impact the development of the SAMP." The suggestion to include a discussion of current state, regional and local regulations which may impact the development of the SAMP would better define the legal parameters of the SAMP; however, requiring a discussion of current state, regional and local plans is not practical because the nominating entity may not have access to all plans. Based on this comment, §504.6(a)(9) has been added to require a description of current land management plans relevant to the SAMP.

As requested by one commenter, and to be consistent with the language of §504.7(a), §504.6(a)(8) has been amended to require inclusion of a discussion of the SAMP's proposed *compliance* with the CMP goals and policies

Section 504.7.

Regarding §504.7(d), one commenter stated that it is as important to solicit public input from citizens residing throughout the state as it is to solicit input from coastal citizens because the coast belongs to all Texans. The commenter asked that the entire SAMP be subject to public review and comment. All Texas citizens will have an opportunity to review and comment on a SAMP, because a SAMP's enforceable policies will be published as proposed rules in the *Texas Register*, and SAMPs will be published in their entirety in the "In Addition" section of the *Texas Register*. The commenter also stated that the SAMP program is not fully thought out. Regarding this statement, Chapter 504 provides the minimum elements of the SAMP program More specific information will be provided through the approved SAMP program guidelines identified in §504.1(a)(2) and through each SAMP The public will have the opportu-

nity to review and comment on the guidelines and individual SAMPs. No changes were made based on these comments.

One commenter requested that §504.7 be amended to provide standards for council approval and withdrawal of a SAMP nomination. Another commenter asked who would coordinate the SAMPs. The standards for approval of a SAMP are provided in §501.12 (relating to CMP Goals). The council has the authority to review the proposed SAMP for consistency with the CMP goals and policies, and thereby coordinate the SAMP. Therefore, there is no need to impose additional standards on the council for reviewing SAMPs However, §504.7(a) was amended to clarify the time frame for approval. Based on this and other comments, §504.7(g)-(i) have been added to provide procedures for withdrawal or amendment of a SAMP.

One commenter recommended that a seven member vote for approval of a SAMP should be required or, at a minimum, four votes. Based on this comment, §504. 7(e) now requires the vote of at least four council members to adopt a SAMP, and §504.7(b) now requires the vote of at least four council members to approve a SAMP

One commenter requested that §504.7(e) be amended to allow the council to adopt new enforceable policies for only those portions of the SAMP which are enforceable. Section 504.7(e) refers to the council's ability to incorporate the *enforceable* policies of a SAMP into the CMP. Therefore, such policies will not be "new," as they are incorporated from the SAMP, and only enforceable policies can be adopted However, this subsection was amended to clarify that only the enforceable policies of a SAMP will be incorporated into the CMP

Section 504 8

Concerning §504 8, one commenter asked for clarification of the schedule for the various steps that must be taken to adopt a NEP CCMP as a SAMP. Section 504.8 requires that such adoption must occur pursuant to §504.7(b) -(e). The schedule is dependent upon factors such as the timing of the submission of the CCMP to the council relative to the next regularly scheduled council meeting, publication of the enforceable policies as proposed rules in the *Texas Register*, publication of the SAMP in its entirety in the "In Addition" section of the *Texas Register*, and the schedule for public hearings and comment on the proposed SAMP. The length of time needed to complete these tasks may vary from NEP to NEP No change was requested by this commenter, and no change was made to §504.8 based on this comment

One commenter strongly supported §504 8 as written and asked that this section not be changed. Section 504.8 was not changed.

General Comments. Regarding Chapter 504, one commenter asked what regulatory authority SAMPs would have Another commenter was concerned SAMPs would supersede the CMP. SAMPs are a voluntary part of the CMP and, therefore, may not supersede the CMP. The SAMP will not have any regulatory authority. No change was made to the chapter in response to this comment.

Regarding Chapter 504, one commenter asked that the protection of the coast be the main focus of this chapter, rather than economics. The CMP embodies a balanced and reasonable approach to management of coastal resources, and the CMP's primary focus is on the economic< hi>and ecological value of the coast However, in Chapter 504, the focus of the various SAMPs is within the discretion of the pertinent nominating entities and the SAMP committees; this chapter does not mandate a preference. Therefore, no change was made based on this comment

Two commenters were pleased to see that high intensity use is recognized as a basis for developing a SAMP. Three commenters generally supported the SAMP program and hoped that Galveston Bay and the Laguna Madre/Rio Grande would soon be included in the SAMP program. This commenter recommended that the specific reference to high intensity use SAMPs should also be provided in other sections. Another commenter concurred and recommended that §501.12 and §501.14 be modified to clarify that the CMP goals and policies that apply within a SAMP are a function of the SAMP's specific use designation. The SAMP process established in Chapter 504 recognizes that SAMPs may have policies which are unique to the property within the GAPC; however, the determination as to the applicability of specific CMP goals and policies to a particular SAMP will be made pursuant to the development of a SAMP workplan and the council adoption of a SAMP No change was made based on these comments

Regarding Chapter 504, one commenter inquired as to which entity would be responsible for developing the approved program guidelines The guidelines will be developed by the council, aided by state agency staff

One commenter stated that Chapter 504 will not require consistency of local government projects The commenter asked why the CMP should allow increased local management of the coast Local governments provide the frontline protection of the economic and environmental benefits of the coast, and have a direct and continuing interest in protecting those benefits However, Chapter 504 balances increased local management of the coast with state and federal oversight Under §504.1(a)(5), many entities will have a greater degree of involvement in managing the coast through the SAMP process, which provides a system for individualized management of areas, based on the specific requirements and uses of those areas No change was made based on this comment

One commenter suggested that SAMPs should be managed by a governmental entity with accountability to the public. The council will oversee the management of all SAMPs after council adoption of a SAMP The council is the governmental entity responsible for managing SAMPs, and the council is accountable to the public However, §504 6(a)(4) has been revised to require identification of the entity responsible for coordinating and tracking the SAMP This revision does not affect the council's authority because the entity identified pursuant to the amendment to §504 6(a)(4) will be responsible for the SAMP on an administrative, as opposed to managerial, level In addition, §504.7(j) has been added to provide the public with information and clarify the role of the council after a SAMP has been approved Section 504.7(j) requires that every four years the GLO will provide the council with a report on existing approved SAMPs as part of the GLO's biennial report to the legislature in alternating biennia

Another commenter expressed general approval of Chapter 504 and encouraged the council to create a TNRCC office on the mainland of Galveston County, designated as the Central Office for Galveston Bay, to manage SAMPs in Galveston Bay The creation of a TNRCC office remains within the TNRCC's discretion, therefore, no change was made based on this comment

List of commenters Department of the Navy, Galveston County Beach Park Board of Trustees, Gulf Coast Waste Disposal Authority, Houston Audubon Society, Houston Galveston Area Council, Houston Lighting and Power Company, Nueces County Coastal Management Committee, Railroad Commission of Texas, Texas Chemical Council, City of Texas City, Texas Department of Agriculture, Texas Ports Association, Texas Water Conservation Association

§504.1. Definitions

(a) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise

(1) Affected parties Persons owning land in and adjacent to a geographic area of particular concern and those federal state, and local governments with jurisdiction over the geographic area of particular concern

(2) Approved program guidelines–Special area management planning guidelines that describe program standards and criteria for nomination of a geographic area of particular concern, the evaluation and approval of workplans, and contents of special area management plans as required by this chapter Guidelines shall be approved by the council

(3) Council The Coastal Coordination Council

(4) Geographic area of particular concern–An area within the coastal management boundary (as identified in §503 1 of this title, relating to Coastal Management Program Boundary) which is designated by the council as requiring special area management planning due to the area's ecological, geological, physical, scientific, recreational, aesthetic, historical or cultural values, or the area's potential for significant economic benefits, such as ports, harbors, and waterfront areas Geographic areas of particular concern shall be at least the mini

mum size necessary to achieve the purpose of the geographic areas of particular concern nomination.

(5) National Estuary Program-A program established for nationally significant estuaries designated under the Clean Water Act, §320, 33 United States Code Annotated, §1251, et seq, in order to convene a management conference whose primary objective is to develop a Comprehensive Conservation and Management Plan to protect an estuary's water quality and natural resources.

(6) Nominating entity-The governor or any nonprofit or public citizen group, local government, political subdivision or federal or state agency that submits a nomination of a geographic area of particular concern for consideration by the council, provided, however, any nominating entity comprised solely of a nonprofit or public citizen group must have at least one member who owns land located within the boundaries of the geographic area of particular concern nominated as a special area management plan.

(7) Scoping process-The organization of a special area management planning committee that identifies and assigns priority to information and issues to be addressed by the proposed special area management plan.

(8) Special Area Management Plan-A plan that includes in words, maps, or illustrations a detailed and comprehensive statement of policies providing for protection of coastal natural resource areas, other relevant coastal resources, and relevant economic growth and a statement of the mechanisms for timely implementation of the policies in a specific geographic area within the coastal area boundary

(b) These abbreviations, when used in this subchapter, shall have the following meanings

(1) CCMP-Comprehensive Conservation and Management Plan.

(2) CMP-Texas Coastal Management Program.

(3) CNRAs-Coastal natural resource areas, as defined in §501.3(a)(4) of this title (relating to Definitions and Abbreviations).

(4) GAPC-Geographic area of particular concern.

(5) GLO-General Land Office

(6) NEP-National Estuary Program.

(7) SAMP-Special area management plan

§504.2 Nomination of a Geographic Area of Particular Concern.

(a) Nominating Entity. Any nonprofit or public citizen group, local government, political subdivision, federal or state agency, or the governor may nominate a GAPC for consideration by the council. Nominations shall be submitted on a standard form to the GLO staff. Nomination forms are available upon request from the GLO staff.

(b) Standard Nomination. The nominating entity shall demonstrate that the proposed GAPC meets the approved program guidelines and shall include the following information relevant to the specific area:

(1) the type of GAPC as defined in the approved program guidelines;

(2) a delineation of the boundaries of the nominated GAPC;

(3) a description of the CNRAs and other significant resource(s), if any, within the nominated GAPC by location and size, and an identification of the entities having jurisdiction, ownership, management, trusteeship, and/or control over the specified natural resource(s);

(4) a discussion of the current management of the nominated GAPC;

(5) a demonstration of the level of support for and a description of the opposition to the nomination, including resolutions addressing the proposed nomination from all counties and municipalities with jurisdiction over the nominated area,

(6) a discussion of potential and/or existing conflicts and/or issues affecting the nominated GAPC that warrant a SAMP;

(7) a description of the possible special area management goals and objectives that would apply to the nominated GAPC;

(8) names and addresses of affected parties, including affected local governments, and

(9) a discussion of coordination with existing state or regional studies and/or programs occurring within the nominated GAPC that may provide sources of information or funds.

(c) Determination of Administratively Complete Nomination. Upon receipt of a nomination, the GLO staff will, within 15 working days, determine if the nomination form is administratively complete. After the GLO staff determines that a nomination form is administratively complete, notification of preliminary evaluation according to §504.3 of this title (relating to Preliminary Evaluation of a Nominated Geographic Area of Particular Concern) will be sent to the nominating entity The GLO staff shall also publish the acceptance of the nomination in the Texas Register's "In Addition Section" and request public comment. Upon receipt of the notification, the nominating entity shall publish in a regional or local newspaper (with the largest circulation in the pertinent county), at the earliest possible publication date, notice of the nomination for designating a GAPC at least two times during the preliminary review period.

(d) The council secretary shall provide notice to all landowners within the GAPC and to all owners of property within 500 feet of the outward most boundary of the GAPC by United States Postal Service, first class mail, adequate postage prepaid, on or before the expiration of 15 days following the nominating entity's receipt of notice of an administratively complete nomination. Such notice shall include:

(1) a description of the boundaries of the nominated GAPC, using commonly known landmarks, such as roads, streets, and highways (if such landmarks cannot be used, a legal description may be required);

(2) identification of the type of GAPC proposed;

(3) a list of the names and addresses of members of the nominating entity, including a designated contact to receive more information, unless such information is protected from disclosure by law, in which case the name and address of the entity, not its members, shall be identified,

(4) citations of the laws authorizing the nomination of the area as a GAPC; and

(5) a statement that any landowner may opt out of the GAPC by sending a certified letter requesting that its property not be included in the GAPC boundary, and that such letter be mailed to the nominating entity within 90 days after publication of the notice of an administratively complete nomination in the Texas Register pursuant to subsection (c) of this section

(e) Determination of Administratively Incomplete Nomination. If the nomination form is not deemed complete, then the nominating entity will be notified in writing of those sections not found to be complete, and the nominating entity must then complete the form in accordance with the GLO's request within 30 days and prior to taking any action

§504.3 Preliminary Evaluation of a Nominated Geographic Area of Particular Concern. GLO staff will complete a preliminary evaluation of the nominated GAPC within 30 days after receipt of an administratively complete nomination form During the preliminary evaluation period, GLO staff will determine whether the nomi-

nated GAPC complies with the approved program guidelines. The GLO staff may request from the executive committee of the council an extension to conduct the preliminary evaluation. The executive committee of the council may grant the request for an extension not to exceed 30 days. Upon completion of the preliminary evaluation, the GLO staff shall make its recommendation to the executive committee of the council. The GLO staff shall recommend to the executive committee of the council that the nomination either: be rejected, in which case, specific objections will be provided; or be accepted. The executive committee of the council shall either: approve; or disapprove of the GLO staff recommendation. The executive committee of the council shall inform the nominating entity of its reasons for disapproval of a nomination.

§504.4 National Estuary Program. If a nominated GAPC is an estuary designated within the NEP, the nominated GAPC will be automatically accepted by the council. The council will coordinate and cooperate in the development of the CCMP. The council will evaluate the NEP's CCMP pursuant to §504.8 of this title (relating to Council Adoption of a Comprehensive Conservation and Management Plan).

§504.5. Submission of a Workplan for Development of a Special Area Management Plan

(a) Scoping Process. Upon receipt of approval from the executive committee of the council to develop a workplan, the nominating entity, or its designee, will begin the scoping process Scoping is the process of identifying and assigning priority to information, conflicts, and issues associated with the proposed SAMP and making recommendations to resolve identified conflicts and issues as outlined in the approved program guidelines.

(b) SAMP Committee The SAMP committee's primary objective is to draft a workplan for the development of a SAMP, including recommendations to resolve identified conflicts and issues. The SAMP committee will be established by the nominating entity and shall include a balanced and representative cross-section of the local community. The SAMP committee shall notify the secretary of the executive committee of the council in writing of all SAMP committee members and their affiliations. The committee shall be chaired by a member of the nominating entity and include at a minimum

(1) a representative of local business or industry located within the GAPC,

(2) a representative from both a national and local conservation organization;

(3) a scientist unaffiliated with any other member listed in this subsection with expertise in coastal and marine issues;

(4) a local elected official with jurisdiction over the GAPC; and

(5) a property owner who owns property inside the GAPC.

(6) In all events the nominating committee shall invite, in writing, all affected parties and landowners within the nominated GAPC to participate as SAMP committee members The nominating entity will conduct meetings with the affected parties to discuss the scoping for the SAMP. The nominating entity must notify the secretary of the executive committee of the council in writing of all SAMP committee participants and their affiliations as early as practicable, but in no event later than 10 days prior to the first SAMP committee meeting.

(c) Timeline for Development of a Workplan. The SAMP committee must present a workplan to the executive committee of the council requesting its endorsement within six months of the date of approval of the GAPC nomination by the executive committee of the council If the SAMP committee has not produced a workplan within six months, then the nomination will be withdrawn from consideration by the executive committee of the council The executive committee of the council may consider requests for extensions of time. Criteria for a SAMP committee to receive an extension of time include a showing of due diligence in preparation of a plan to date and a showing of cause for the extension in accordance with approved SAMP program guidelines.

(d) Minimum Criteria for Development of a Workplan. The workplan shall meet the approved SAMP program guidelines and shall at a minimum include the following information:

(1) the type of GAPC, as defined in the approved SAMP program guidelines, and a description of how the site meets the approved SAMP program guidelines,

(2) a list of persons on the SAMP committee;

(3) delineation of the boundaries, (including the delineation of properties within the boundaries of the SAMP which will not be included in the SAMP because the owners have elected not to participate), an inventory of CNRAs and, if appropriate, other resources in the GAPC;

(4) a discussion of the priority issues and conflicts within the GAPC to be addressed in the development of the SAMP;

(5) a list of potential goals and/or objectives of the SAMP;

(6) a discussion of existing information and data that will be used in the development of the SAMP;

(7) a description of the support resources (e.g., technical, administrative, etc.) that are necessary to develop the SAMP;

(8) the written consent of all landowners to have their property included within the nominated GAPC, unless the landowner has elected to opt out;

(9) a timeline for developing the SAMP, and

(10) an estimate of the entire cost of developing the SAMP and any known and potential sources of funding for development of the SAMP.

(e) Evaluation of the Workplan. A workplan must be approved by the executive committee of the council before development of a SAMP may occur. The executive committee of the council shall review the workplan to determine if it complies with the approved SAMP program guidelines. The executive committee of the council may ask the SAMP committee to revise the workplan as necessary or may approve the workplan without revision. The executive committee of the council must issue its recommendation within 60 days of receiving the workplan for review. If the workplan is approved by the executive committee of the council, then development of the SAMP may begin in accordance with the approved workplan.

§504.6. Detailed Plan Development.

(a) Elements of the SAMP The SAMP shall meet the approved program guidelines and shall include, at a minimum, the following information:

(1) a discussion of the biological, physical, economic, and/or cultural values of the GAPC;

(2) appropriate management strategies and goals to address the priority issues of the SAMP;

(3) specific enforceable policies and/or nonregulatory policies that implement the goals of the SAMP,

(4) implementation strategy, including the identification of the entity designated to lead in coordinating and tracking the SAMP, and the commitment of local, state, or federal agencies and the actions necessary to implement the SAMP;

(5) funding strategies;

(6) records of SAMP committee meetings and public participation at those meetings,

(7) a description of the potential economic effects of SAMP adoption;

(8) a discussion of the SAMP's compliance with the goals and policies of the CMP; and

(9) a description of any comprehensive land or resource management plans relevant to the SAMP which have been proposed or adopted by a government entity and any relevant laws and regulations applicable to the proposed SAMP policies.

(b) Evaluation of the Proposed SAMP by the Executive Committee of the Council. The SAMP shall be submitted to the executive committee of the council for its review and approval The executive committee of the council shall have 60 days to review and comment on the proposed SAMP The executive committee of the council may recommend that the proposed SAMP be revised and modified to meet the approved program guidelines The executive committee of the council may approve the proposed SAMP for the council evaluation according to §504 7 of this title (relating to Council Evaluation, Adoption, Amendment and Withdrawal of the Special Area Management Plan)

§504 7 Council Evaluation, Adoption, Amendment and Withdrawal of the Special Area Management Plan

(a) Evaluation of the Proposed SAMP by the Council The council shall review the proposed SAMP within 90 days of the date that the proposed SAMP has been approved by the executive committee of the council according to §504. 6(b) of this title (relating to Evaluation of the Proposed SAMP by the Executive Committee of the Council) The council may request that the SAMP committee revise the proposed SAMP to comply with the goals and policies of the CMP and the approved SAMP program guidelines The proposed SAMP must be modified pursuant to the council's specifications before further action may be taken

(b) Approval of the Proposed SAMP by the Council The council shall approve the proposed SAMP by a quorum vote, and may propose rules for those provisions of the SAMP that are enforceable policies within Chapter 501 of this title (relating to the Coastal Management Program)

(c) Publication of Enforceable Policies. The council will publish the enforceable policies of the SAMP as proposed rules in the Texas Register prior to adoption by the council The council will publish the proposed SAMP in its entirety for adoption as an amendment to the CMP as a miscellaneous document in the Texas Register

(d) Public Hearings on the Proposed SAMP. Prior to council adoption of the SAMP, public hearings shall be held by representatives of the council at a location accessible to all Texans in the city closest to the GAPC, and notice of such hearings shall be provided in accordance with the Open Meetings Act, Texas Government Code, §551.001, et seq. Copies of the site description and any proposed rule shall be made available for public review at the public library in each affected county and at the GLO in Austin

(e) Council Adoption of the SAMP After consideration of all comments received in response to Texas Register publications and the public hearings, the council may adopt the SAMP as an amendment to the CMP, provided at least four council members vote to adopt the SAMP. The council may adopt by rule only the enforceable policies of the SAMP as an amendment to §501 12 of this title (relating to Goals) and §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas). Once the enforceable policies of the SAMP are adopted by the council, then those portions of the SAMP are enforceable, subject to the CMP.

(f) Notwithstanding any other provisions of this subsection, the council may preview a SAMP upon the written request of the nominating entity. The nominating entity shall follow the procedures in §§505.50-505 53 of this title (relating to Council Advisory Opinions on General Plans)

(g) Minor Amendment of a SAMP. This section only applies to SAMPs approved by the council

(1) Identification of Minor Amendments to a SAMP The amendments identified in this subsection are considered minor amendments that do not require council review.

(A) Editorial changes.

(B) Amendments to the non-enforceable policies of the SAMP

(C) Amendments to a public outreach strategy provided in a SAMP insofar as they increase, rather than reduce, public participation in a SAMP

(D) Amendments to the funding strategies of a SAMP

(2) Notification of Minor Amendments The entity required to be identified, pursuant to §504 6(a)(4) of this title (relating to Detailed Plan Development), as the lead in coordinating and tracking the implementation of the SAMP will notify the GLO staff and the executive committee of the council of any minor amendments to the SAMP.

(h) Major Amendment of a SAMP. This section only applies to SAMPs approved by the council.

(1) Identification of Major Amendments. The amendments identified in this subsection are considered major amendments that require council review.

(A) Amendments to the GAPC boundaries.

(B) Amendments to the enforceable policies of the SAMP.

(C) Amendments to any memoranda of agreement adopted by federal agencies and state agencies and political subdivisions in reliance on the development and continued existence of the SAMP.

(D) Amendments to the implementation strategy of the SAMP.

(E) Amendments to the definition of a GAPC's natural resources.

(F) Amendments to the management strategies of the SAMP.

(2) Council Review of Major Amendments. Before the council may approve a major amendment to the SAMP, the entity required to be identified, pursuant to §504.6(a)(4) of this title (relating to Detailed Plan Development), as the lead in coordinating and tracking the implementation of the SAMP must submit a written request to the council secretary for council review of the major SAMP amendments at the next regularly scheduled council meeting. The following items must be provided with the written request:

(A) an executive summary of the current SAMP;

(B) a description of reason(s) for the major amendment; and

(C) a description of the proposed major amendment.

(3) The council shall review any proposed major amendment of a SAMP to determine whether such amendment is inconsistent with the council's initial evaluation and approval of the SAMP, pursuant to this section. If the council determines that a proposed amendment is not consistent with the council's initial approval of the SAMP, the council shall use the procedure established in clause (i) of this section to with-

draw approval of the SAMP.

(i) Withdrawal of Council Approval of a SAMP.

(1) The council shall consider withdrawing approval of a SAMP if:

(A) a request to withdraw such approval is submitted by all members of the SAMP committee as identified by §504.5(d)(2) of this title (relating to Submission of a Workplan for Development of a Special Area Management Plan) or persons owning a majority of the area within the boundaries of the SAMP, or

(B) the council determines that a major amendment is inconsistent with the council's initial evaluation and approval of the SAMP pursuant to clause (h) of this section.

(2) Prior to submission of a request for withdrawal of SAMP approval, the SAMP committee shall consult with all appropriate federal, state and local government entities and other persons identified as affected persons under §504 2(b)(8) of this title (relating to Nomination of a Geographic Area of Particular Concern) The SAMP committee shall also hold no fewer than two public meetings to inform the public of the proposal for withdrawal and solicit public comment. Along with the request for withdrawal, the SAMP committee shall include a summary of public comments received, a statement summarizing the support for and opposition to the withdrawal, and the resolutions addressing the proposed withdrawal from all counties and municipalities with jurisdiction over the GAPC.

(3) If the council has adopted rules incorporating the enforceable policies of the SAMP, withdrawal of the SAMP approval shall only be effective upon repeal or amendment of the provisions adopting the SAMP policies. The council shall hold at least one public hearing within the boundaries of the GAPC to solicit comment prior to the repeal or amendment of these provisions In all cases, a majority of all council members must affirmatively vote to withdraw approval of a SAMP.

(j) Council Evaluation of Approved SAMP. The GLO will prepare and provide the council with a report on existing approved SAMPs at least every four years, in conjunction with the preparation of the GLO's biennial report to the legislature in alternating biennia, as required pursuant to the Texas Natural Resources Code, §33.052(g).

§504.8 Council Adoption of a Comprehensive Conservation and Management Plan Subject to approval of a CCMP under the Clean Water Act, 33 United States Code Annotated, §1330, the council shall consider adopting all or part of the CCMP as a SAMP pursuant to the provisions of §504.7(b)-(e) of this title (relating to Council Evaluation, Adoption, Amendment and Withdrawal of the Special Area Management Plan).

Issued in Austin, Texas, on June 29, 1994.

TRD-9443207 Garry Mauro
Chairman
Coastal Coordination Council

For further information, please call: (512) 305-9129

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Chapter 505. Council Procedures for State Consistency with Coastal Management Program Goals and Policies

The Coastal Coordination Council (council) extends the comment period for proposed Chapter 505, concerning the establishment of council procedures to ensure that actions taken or authorized by state agencies and political subdivisions that may adversely affect coastal natural resource areas (CNRAs) comply with the coastal management program (CMP) goals and policies Chapter 505 is republished with changes to the proposed text as published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1920). This chapter is proposed pursuant to the authority provided in Texas Natural Resources Code, Chapter 33, Subchapter C, and Texas Natural Resources Code, Subchapter F (Coastal Coordination Act), which require the General Land Office (GLO) to develop the CMP and the council to promulgate the CMP goals and policies.

General comments were received regarding the "CMP Document," which was the subject of the "Notice of Availability" in the March 18, 1994, edition of the *Texas Register*. The CMP document contains descriptions of the enforceable and non-enforceable portions of the CMP. The enforceable portions of the CMP are Chapters 501, 504, 505, and 506 published in the "Proposed Sections" section of the March 18, 1994, edition of the *Texas Register*. Chapters 501, 504, 505, and 506 respectively contain. the CMP goals and policies, special area management planning; council procedures for state and local consistency with CMP goals and policies, and council procedures for federal consistency with the CMP goals and policies. The CMP document is prepared pursuant to federal requirements for approval under the Coastal Zone Management Act (CZMA), 16 United States Code (U.S C.), §1455(d). While portions of the CMP document describe the provisions of Chapters 501, 504, 505, and 506, the chapters, not the CMP document, are the council's enforceable policies, the chapter preambles, not the CMP document, may be used to determine the intent of the chapters Based on comments received, the CMP document was reviewed and revised to ensure consistency and resolve any perceived inconsistencies within Chapters 501, 504, 505 and 506. To the extent that any conflicts are perceived when reviewing the CMP document and Chapters 501, 504, 505 and 506, or while implementing the chapters, the chapters prevail.

Editorial changes that do not alter the content of this chapter have been made to clarify meaning and to correct grammatical errors In order to save space, similar comments and responses have been combined by section. General comments on the proposed chapter and comments on the preamble to the proposed chapter are combined at the end of the summary of the comments.

Section 505 10.

One commenter stated that Chapter 505 should be amended to allow the council to review a state agency's failure to issue a permit. The Texas Natural Resources Code, §33 205(a), states, in pertinent part, "All actions taken .. must comply with the goals and policies of the coastal management plan" The council's jurisdiction is based on actions, not failure to take action, if an agency fails to issue a permit, there is no "action." No change was made as a result of this comment

One commenter supported Chapter 505, Subchapter A, in its entirety, and recommended that no changes be made No change was made based on this comment, however, based on other comments received on this subchapter, changes were made

One commenter strongly supported Chapters 505 and 506 in their entirety as written and asked that no changes be made No changes were made based on this comment, however, changes were made based on other comments to improve the chapters

Four commenters recommended deleting §505 10 in its entirety and three of the commenters requested that no changes be made to the remaining sections of the chapter Section 505 10 was not deleted as it describes the purpose and policy of Chapter 505, as well as the council's intent in adopting the chapter

Regarding §505.10, one commenter asked for more regulations regarding agency rules. Agency rules are addressed in Chapter 505, Subchapter B; therefore, no change was made based on this comment

Section 505 11.

Regarding §505.11, one commenter requested clarification as to the council's influence on local government platting of infrastructure, such as streets and other facilities Another commenter requested exclusion of municipal zoning ordinances from the exclusive list of actions in §505 11(a) (2) Another commenter objected to §505.11 on the grounds that too few local actions are included, and requested a consistency determination for such actions Pursuant to Chapter 505, Subchapter E, the only local government actions which are included in the CMP are dune protection permits issued pursuant to the Texas Natural Resources Code, Chapter

63, and beachfront construction certificates issued pursuant to the Texas Natural Resources Code, Chapter 61. Therefore, local government platting will not be directly affected, and municipal zoning ordinances unrelated to dunes or public beaches are not included. No change was made based on this comment

Another commenter asked whether local elected officials would be consulted or selected when the council is contemplating new regulations for a particular area, pursuant to §505 11. The council is not contemplating proposing new regulations pursuant to §505 11 However, prior to adoption of any new CMP regulations, including special area management plans (SAMPs), the council will provide an adequate opportunity for public notice and comment, including hearings, as provided in Texas Natural Resources Code, §33 055(b) No change was made based on this comment

One commenter questioned why permits for above-ground storage tanks and stormwater runoff are not included in §505 11 Section 505 11 provides the exclusive list of state agency actions and rules that may adversely affect a CNRA, and that therefore must be consistent with the CMP Above-ground storage tanks and stormwater runoff are not included in the list of state actions, because the CMP addresses the impacts of these activities by incorporating TNRCC rules governing these activities, pursuant to §501 14(g) of this title (relating to Nonpoint Source Water Pollution) No change was made based on this comment

One commenter suggested that representatives from affected industries should participate in the review process Industries applying for permits listed in §505 11(a) will be able to participate in the review process Agencies will make initial consistency determinations as part of their existing permitting processes, and applicants may participate Applicants may also initiate and participate in the preliminary review process established in §505 31

Concerning §505 11(a), one commenter requested exclusion of the Trans-Texas Water Program (T-TWP), because it is an integrated process for addressing environmental, coastal protection and economic concerns associated with the management of water resources Based on this comment, new §505 11(a) (1)(B)(iii) provides that actions taken to implement the T-TWP are not subject to the CMP if, a majority of the members of the T-TWP Policy Management Committee vote to approve the T-TWP and find that the T-TWP is consistent with the CMP goals and policies, the T-TWP Policy Management Committee includes at least three members of the council, and a majority of the council members on the T-TWP Policy Management Committee find the T-TWP consistent with the CMP goals and policies

One commenter was concerned that §505 11(a) exempted piers smaller than 2, 500 square feet, and another commenter questioned why larger piers were exempt from the subsection Pursuant to §505 11(a)(2)(A)(v), the registration of piers less than 2,500 square feet is included in the exclusive list of state agency actions that must be consistent with the CMP. Pursuant to §505.11(a) (2)(A)(vi), GLO coastal easements are also included in the list (a coastal easement is required for piers larger than 2,500 square feet). No change was made based on this comment.

Regarding §505.11(a)(1)(A), several commenters stated that wastewater discharge permits outside the CMP boundary, as defined in §503 1, should not be subject to council review because existing agency procedures address impacts to CNRAs caused by wastewater discharges from projects located outside the CMP boundary Based on these comments, §505 11(a) has been amended to delete the permits for wastewater discharges outside the boundary which are included in the CMP

Several commenters stated that §505 11(a)(1)(B) and (C), now §505 11(a) (1)(A) and (B), should be amended to delete water appropriation rights outside the boundary and, absent the deletion, several commenters recommended various mechanisms for limiting the scope of reviewable water rights permits in §505 11(a)(1)(B), now §505 11(a)(1)(A), and water rights permit amendments in §505.11(a)(1)(C)(i)-(iv), now §505 11(a)(1)(B)(i)-(iv) Conversely, another commenter stated that all water rights appropriation permits should be included in the CMP No change was made to §505 11(a)(1)(B), now §505 11(a) (1)(A), however, based on these comments, §505 11(a)(1)(C)(i) and (ii), now §505 11(a)(1)(B)(i) and (ii), have been amended, and §505 11(a)(1)(C)(iii) and (iv) have been deleted to include only the absolute minimum water rights appropriations permits and permit amendments necessary to protect CNRAs

One commenter requested deletion of the Public Utility Commission (PUC) issuance of a Certificate of Convenience and Necessity (CCN) from §505 11(a) (2)(B), because not all electric generating facilities and electric transmission lines require a PUC CCN Inclusion of the PUC issuance of a CNN provides the best avenue for application of the CMP goals and policies to such activities because the PUC can address a broad range of potential impacts caused by the project not covered by other existing agency permits or regulatory approvals No change was made in response to this comment.

One commenter asked whether §505 11(a)(2)(B), relating to PUC CCNs, included nuclear facilities and other energy facilities Section 505.11(a)(2) (B) limits council review of PUC actions to the issuance of CCNs for the construction of electric generating facilities and electric transmission lines Nuclear generating facilities may be electric generating facilities and would therefore be subject to the CMP In addition, Chapter 506 provides the requirements relating to consistency of federal actions subject to the CMP, pursuant to §506 12(a)(2)(F), Nuclear Regulatory Commission licenses are a listed federal action which must be consistent with the CMP No change was made as a result of this comment

One commenter requested that §505.11(a)(2)(D)(i) be modified by incorporating specific language from Texas Civil Statutes, Article 5415e-2, to better reflect the Texas Department of Transportation's (TxDOT) role regarding the Gulf Intracoastal Waterway (GIWW). The language suggested by the commenter has been added to §505.11(a)(2)(D)(i).

Concerning §505 11(a)(2)(D)(i), four commenters expressed concern regarding the viability of the GIWW, and one of the commenters stated that the GIWW must be kept open and maintained Two other commenters were opposed to the GIWW, and one requested relocation of the GIWW, because it should have been constructed in the "lake path" and it was constructed in a manner which caused wetlands loss due to diversions and reduction of water supply The CMP will not affect the viability of the GIWW, except to ensure that it is maintained in a manner which will protect its economic and environmental value The CMP policies affecting the GIWW are based on existing law applicable to GIWW activities The CMP does not authorize the council or any other agency to relocate or close the GIWW No changes were made based on these comments

One commenter stated that §505 11(a)(2)(E)(i) should be amended to include phased survey permits, in addition to permits authorizing the destruction, alteration or taking of state archeological landmarks A phased survey permit does not authorize site excavation, rather, it allows a cursory inspection of an area as a prelude to a more involved excavation Such cursory inspections do not adversely effect CNRAs. Therefore, §505 11(a)(2)(E) was not amended to add phased survey permits

One commenter requested that §505 11(a)(2)(F) be amended to clarify and properly cite the TNRCC's statutory authority to approve levee improvements or other flood control projects Based on this comment, §505.11(a)(2)(F)(v) has been amended

Concerning §505 11(a)(2)(F)(i), several commenters stated that the inclusion of permits for discharges from concentrated animal feeding operations (CAFOs) should be limited to permits for new facilities within one mile of a CNRA Other commenters requested exclusion of CAFOs Given the location and limited number of CAFOs seaward of the CMP boundary, §505 11(a) (2)(F)(i) has been amended to include only those new CAFOs located within one mile of a CNRA

Concerning §505 11(a)(2)(F)(ii), several commenters stated that Texas Natural Resource Conservation Commission (TNRCC) permits for water rights appropriations inside the boundary should be limited, and some suggested various means of establishing such limitations In addition, several commenters stated that such permits should be grandfathered into the CMP Section 505 11(a)(2)(F)(ii) only applies to new permits or amendments to existing permits This subsection was not amended to limit the identified permits, as such appropriations of water may adversely affect CNRAs However, §505.11(d)(4) and (5) were added to clarify that the council shall not review actions listed in §505 11 if an application for such action

was filed prior to the effective date of Chapter 505, Subchapter A; or such actions are taken pursuant to an enforcement order issued prior to the effective date of Chapter 505, Subchapter A.

Regarding §505 11(b), one commenter inquired as to the schedule for certification of state agency rules. There are two processes for council certification of state agency rules. The first, described in §505 20, provides for certification of rules adopted prior to the effective date of Chapter 505 The second, described in §505.22, provides for certification of new rules and rule amendments adopted after the effective date of Chapter 505 The first process is voluntary. State agencies are not required to have existing rules certified; however, the incentive to do so is that a state agency's thresholds become effective only after council certification of its rules. (Pursuant to §505.21, thresholds limit the council's ability to review the actions of state agencies.) The second process is mandatory, however, it is only required if and when a state agency adopts rules or rule amendments after the effective date of Chapter 505. An exact schedule for rule certification cannot be provided, as the two processes for rule certification are dependent on actions of the various state agencies, the timing of which cannot be predicted No change was made in response to this comment

Several commenters stated that the council should limit the review of agency actions in §505 11(c) to cases where an agency fails to submit its rules for a council consistency determination, and suggested various mechanisms to implement such limitations Suggestions ranged from exemptions of certain types of actions to merely clarifying the meaning of certain words Until the council certifies a state agency's rules as consistent with the CMP goals and policies, the actions and rules identified in §505 11(a)-(c) and §505 60 are statutorily within the council's consistency review purview Section 505 11(c) was not amended as requested, because the council may not necessarily find all rules submitted by agencies as consistent, and even after agency rules are certified as consistent, there may be limited situations where it is necessary for the council to review actions authorized by those rules

Concerning §505 11(c), two commenters stated that the CMP goals and policies will not be furthered by the exclusion of renewals, amendments or modifications of certificates, leases, easements, approvals or other forms of state agency authorizations The commenters stated that all such actions should be made fully consistent with the CMP Section 505.11(c) only excludes such authorizations if the council has certified the pertinent state agency's rules as consistent with the CMP, or the authorization consists of a minor amendment or an extension of time Council certification of state agency rules will generally ensure that renewals, amendments, and other actions taken pursuant to those rules will be consistent Routine amendments or extensions of time will not adversely affect CNRAs Therefore, no change was made based on this comment

Regarding §505 11(c)(1), which excludes permits "if the action is not a major permit modification as defined in the applicable rules of the Railroad Commission," one commenter stated that the Railroad Commission (RRC) does not define "major permit modification." The commenter requested that §505 11(c) (1) be amended to ensure that no additional requirements are imposed on actions authorized by RRC regulations based on the use of that term In response to this comment, the reference to the RRC has been deleted from §505.11(c)(1), however, the RRC may propose a definition of "major permit modification" as part of the rule certification process.

One commenter requested deletion of the term "project sponsor" from §505 11(d)(2), as it is not defined. The term "project sponsor" refers to entities such as the TxDOT in its capacity as the nonfederal local sponsor in the Gulf Intracoastal Waterway Act, Texas Civil Statutes, Articles 5415e-2, §2 and §4. Section 505 11(d)(2) imposes no requirements, in fact, it allows "an applicant, project sponsor, or other entity" to request a coordinated council consistency determination, or designation of a lead agency, in circumstances where a project involves more than one listed action Deletion of the term "project sponsor" would result in Texas being unable to request a coordinated consistency review or a lead agency Therefore no change was made based on this comment

Section 505 20

To comport with §505 11(b), §§505 20(a), 505 22 and 505 25 have been amended to provide that agencies may seek council review and certification of rules identified in §501 14 of this title (relating to policies for specific activities and CNRAs), in addition to the rules identified in §505 11

One commenter requested that §505 20 be amended to allow public interest groups to request council review of agency rules Section 505 20 provides a voluntary process that agencies may use to obtain council certification of existing rules If the section were amended to allow anyone other than an agency to request council review of agency rules, the process would not be voluntary. In addition, §505 20 requires agencies requesting rule certification to provide the council with a reasoned justification explaining how the rules are consistent with the CMP goals and policies Because the justification will involve some analysis and preparation on the part of agencies, the process should only be initiated by agencies No change was made based on this comment

Regarding §505 20, a commenter asked whether the state agency rule certification process could be used to certify federal agency rules Chapter 505, Subchapter B, containing §505 20, only applies to state agency rules governing actions listed in §505 11(a) or identified in §501 14, §505 20 does not apply to federal rules No change was requested by this commenter, and no change was made

One commenter asked whether all permitting agencies will be certified pursuant to §505 20 (and §505 11(b)) by February, 1995 Another commenter supported the CMP and requested that there be an opportunity for agencies to have rules certified and thresholds approved prior to implementation of the CMP. Section 505.20 and §505.26, respectively, provide voluntary processes by which agencies obtain council certification of existing rules and limit the council's authority to review individual agency actions. While state agencies have expressed interest in these processes, an exact schedule for completion of rule certification and threshold approval cannot be provided, as participation in these processes is completely up to the various state agencies Regarding the second comment, Chapter 505, Subchapter C, governing council review of individual agency actions, will not be effective until June, 1995, to provide agencies with sufficient time for rule certification and threshold approval. No change was made based on this comment, because it would be inappropriate to make program implementation contingent on these two voluntary processes.

One commenter requested clarification of §505.20(c), relating to the council's authority to issue interim certification of state agency rules Section 505.20(c) requires the council to determine the consistency of existing rules within 120 days of receipt of a request for rule certification The provision for interim certification in §505 20(c) has been deleted in response to this comment, because the effect of interim certification was unclear

Six commenters requested deletion of §505 20(e), concerning council revocation of agency rule certification, because the subsection appears to violate the intent of the Coastal Coordination Act, Texas Natural Resources Code, Chapter 33, Subchapter F, that the council be a coordinating body Another commenter requested that the standards and procedures for revocation of rule certification be improved The rule certification process was established to limit council consistency review to those actions with significant impacts The council has voluntarily limited its jurisdiction over activities authorized under certified rules, if an agency fails to implement or enforce the provisions in the rules, or if the agency fails to comply with the CMP goals and policies when implementing the rules, it is appropriate that the council have the authority to remove the limitation on its authority The rule certification process is linked to thresholds, another voluntary limitation the council has imposed on its jurisdiction over activities (After an agency's rules are certified by the council, any thresholds established by the agency, and approved by the council, limit the council's ability to review individual actions) Therefore, it is entirely appropriate that the council maintain the right to reevaluate the self-imposed limitations on its jurisdiction that result from rule certification. No change was made based on this comment, however §505 20(e) has been amended to clarify the procedures the council will use when considering revocation of rule certification

Section 505 22.

Five commenters questioned the council's authority to review agency rules, and argued that agency rule adoption is not an agency "action" subject to council review because "actions" and "rules" are distinguished in

Texas Natural Resources Code, §33.205(a). This commenter requested that §505.22 and §505.23 be deleted and that new rules and rule amendments be covered by the voluntary process established in §505.20 and §505.21. Texas Natural Resources Code, §33.205(a), addresses both actions and rules, without indicating legislative intent to exclude agency rules from the requirement to comply with the CMP goals and policies. Because agency rules establish the framework for agency authorization of activities which may adversely affect a CNRA, it makes sense to ensure that the framework is consistent with the CMP goals and policies. The mandatory certification process for rules and rule amendments, as provided in §505.22, was developed to limit the actions that may be reviewed by the council to those with significant impacts. In addition, many agencies authorize activities by rule (e.g., general permits and exemptions), the council would have no jurisdiction over those activities if the commenter's suggestion was adopted, because they do not involve individual agency authorizations, and the council has agreed to limit the exercise of enforcement authority to agencies, excluding individuals from §505.42 and §505.74. No change was made based on this comment.

One commenter recommended that §505.22 be amended to require the council to provide an opportunity for public comment prior to issuing an agency rule consistency determination. Another commenter recommended additional language to ensure greater public notice. Based on the first comment, §505.20(b) has been amended to require the council secretary to publish a Notice of Availability in the Texas Register of the request for council review of agency rules and all supporting information, accompanied by a request for public comment. In addition, pursuant to the Open Meetings Act, Texas Government Code, Title 5, Subtitle A, Chapter 551, the public will be notified of the location and schedule of the council meeting at which such rules are considered, and the public may submit testimony regarding the certification. Changes were made based on this comment. Based on the second comment, §505.22(a) has been amended to require that agencies proposing new rules or rule amendments (subject to the CMP) include in the preamble a reasoned statement that such rules or rule amendments are consistent with the CMP goals and policies. Also in response to the second comment, §505.30(c) has been amended to require that when agencies publish notice of receipt of an application or request for agency action, the notice must include a statement that the application or requested action is subject to the CMP and must be consistent with the CMP goals and policies.

One commenter recommended that §505.22(e) be amended to clarify the ramifications of a conditional certification, and another opposed the concept of conditional certification. Section 505.22(d) and (e) provide the council with the flexibility to respectively certify only a portion of an agency's rules, or issue conditional certification of agency rules. As proposed, the §505.22 certification process only applies to proposed rules. Based on this comment, §505.23(c) has been added to allow agencies to request council certification that the rule, as adopted, is consistent with the CMP goals and policies.

Section 505.23

One commenter recommended that §505.23(a)(2), relating to the requirement that agencies amend or adopt rules "substantially in accordance with council recommendations" to effectuate thresholds, be amended to require that agencies include in each rule adoption and amendment preamble a statement that the rules are adopted or amended "substantially in accordance with" the council's recommendations, and to provide that the statement would be a final determination of the issue of "substantial accordance" with the council's recommendations. While agencies should make this determination as part of the rulemaking process, only the council has the authority to make a final determination as to whether the rule adoption or amendment is "substantially in accordance" with council recommendations. Because §505.23(a)(2) provides that the operation of thresholds is contingent upon an agency adopting or amending its rules substantially in accordance with council recommendations, and, as proposed, the subsection did not provide a process for a final determination of the issue of substantial accordance, §505.23(c) has been added to allow agencies to request a final determination from the council.

One commenter recommended that §505.23(b)(1), requiring that agencies amend or adopt rules in substantial compliance with the council's recommendations (for example, when the council conditionally certifies an agencies rules and provides recommendations to address inconsistencies), be amended to limit the substantial accordance requirement to substantive changes that are inconsistent with the CMP goals and policies. Based on this comment, §505.23(b)(1) and (2) have been amended to conform with §505.23(a)(1), which is limited to "substantive changes regarding consistency with the goals and policies" of the CMP.

One commenter questioned whether §505.24(b)(3), providing that agency decisions to issue a permit identified in §505.11(a) are not final and appealable until after the council's jurisdiction has lapsed, requires agencies to issue contingent or conditional permits, and recommended deleting this subparagraph to avoid permits being "consigned to a circular bureaucratic hell." The provisions of §505.24(b) are permissive, not mandatory; therefore, agencies are not required to issue contingent or conditional permits. In addition, the 30-day period in which an agency action may be referred to the council and the period for filing a motion for rehearing at the agency begin simultaneously. No change was made based on this comment.

Section 505.26.

Regarding §505.26, a commenter requested amendments that would suspend the council's authority to review state agency and local government actions under Chapter 505, Subchapters C and E, if the thresholds are determined to be inconsistent with or unauthorized by Texas Natural Resources Code, Chapter 33. The commenter also suggested that the CMP is unintelligible without the thresholds. Subchapters C and E of this chapter are effective regardless of whether agencies avail themselves of the voluntary process allowing the establishment of thresholds. Council approval of thresholds is an appropriate exercise of the council's discretionary authority to determine which actions are properly subject to council review. Even if screening mechanisms such as thresholds are deemed improper, the council's authority to review agency and local government actions are not affected. No change was made based on this comment.

Twelve commenters noted the difficulty in commenting fully on the subchapters before the agencies develop thresholds. The procedure had to be developed prior to implementation. However, §505.26 has been amended to require the council to provide an opportunity for public notice and comment on thresholds. In addition, the effective date of Chapter 505, Subchapters C and E, is June, 1995, to provide agencies with the opportunity to establish, and the council to review and approve, thresholds prior to implementation of the CMP. No change was made as a result of this comment.

Regarding §505.26, five commenters opposed the concept of thresholds. One requested that §505.26 be revised to allow the council to review actions below the thresholds, when appropriate; three viewed thresholds as a mechanism to exempt a wide variety of actions from the CMP, and one noted that it seemed presumptuous to declare "generic categories as significant or insignificant." Six commenters supported the use of thresholds to reduce the number of actions potentially subject to council review. Six commenters stated that, to comply with §505.11(a), relating to the purpose and policy of Chapter 505, very high thresholds should be established and applied to any action subject to council review; another commenter stated that any action above the thresholds should be automatically reviewed by the council. Regardless of thresholds, listed actions must comply with the CMP goals and policies ("Listed actions" are the actions identified in §§505.11, 505.60, and 506.12.) Thresholds are a screening mechanism which may be voluntarily established by agencies to focus council attention on actions causing the most significant impacts on CNRAs. Thresholds alone do not exempt actions from council review, as the council may review actions below thresholds in limited circumstances (see §505.32(3)). It is anticipated that agencies will establish thresholds high enough to place most agency actions below the thresholds. No change was made based on this comment.

One commenter requested that §505.26, relating to council review and approval of thresholds, be revised by requiring adoption of thresholds by rule and by deleting the provision allowing adoption of thresholds by "other enforceable means." The commenter also requested that §505.26 be amended to provide that council review of such rules will occur after adoption, pursuant to the procedures in §505.22, relating to council certification of agency rules. The commenter was

concerned that §505 26, requiring agencies to obtain council approval of thresholds prior to rule proposal, might foreclose public input, as agencies would hesitate to revise the proposed rule in a manner which might affect council approval. The commenter requested that, at a minimum, §505.26(d) be revised to provide that agencies "may" adopt approved thresholds by rule and noted that §505.26(d) is inconsistent with §505.21 because the latter subsection only limits the council's authority pursuant to thresholds adopted by rule, not by "other enforceable means." Based on this comment, §505.26(d) has been amended by deleting the requirement that agencies adopt the thresholds by rule, and providing that agencies "should" make the thresholds "readily available" to the public

One commenter stated that all agency actions apparently will be subject to council review until agencies adopt rules governing thresholds for council review, and that council review of agency-developed thresholds was excessive. Agencies have until June, 1995, (the effective date of Chapter 505, Subchapter C), to adopt thresholds; after that date, the actions listed in §505 11 will be potentially subject to council review only if the various state agencies have not adopted and the council has not approved thresholds for those actions The council can limit its authority under Texas Natural Resources Code, Chapter 33; state agencies may only do so pursuant to council approval No change has been made based on this comment.

Five commenters stated that the council has not identified the criteria by which agencies' thresholds will be evaluated and approved pursuant to §505. 26. The council will consider several factors in evaluating thresholds, including: the council's resources, the frequency of regular council meetings, impacts to CNRAs; the number of actions which would rise above or fall below the thresholds in any given year; and thresholds approved by other agencies The council has indicated that it would prefer that thresholds limit council review to only those actions with the most significant impacts on the coast No change was made based on this comment

Four commenters recommended that the council publish the agencies' proposed thresholds to provide the opportunity for public comment prior to council approval. Based on these comments, §505 26(b) has been amended to require that the council secretary publish in the *Texas Register* a notice of availability of the proposed thresholds and associated documents, and a request for public comment.

A commenter insisted that agencies adopt thresholds by rule prior to CMP implementation, and recommended that the thresholds be incorporated into the §505.11 list of actions to bar council review of actions below thresholds. As provided in §505 21, thresholds limit the council's authority to review individual actions only after the council certifies the agency's rules and approves the thresholds. The requirement that agencies adopt thresholds by rule after council approval has been deleted from §505.26(d), which now provides that agencies "should" make the thresholds "readily available to the public." However, agencies are not prevented from submitting to the council existing rules (pursuant to §505 20) or proposed rules and rule amendments (pursuant to §505 22) simultaneously with proposed thresholds (pursuant to §505 26) However, it is not appropriate to include the list of thresholds in the §505 11 exclusive list of state agency actions, as thresholds do not completely bar council review.

One commenter requested that Chapter 505, Subchapter B, provide that agency rules certified by the council must be incorporated into the CMP goals and policies. Section 505 21 and §505 23 have been amended, as suggested by this commenter Incorporating agency rules into the CMP goals and policies will enhance the CMP by providing greater specificity to the goals and policies thereby ensuring greater uniformity in the application of the CMP goals and policies

Section 505 30

Regarding Chapter 505, Subchapter C, one commenter stated that the council was not comprised of a sufficient number of local government representatives The membership of the council is governed by Texas Natural Resources Code, §33 203(2), which provides that one local government representative shall be appointed to the council by the governor In addition, Texas Natural Resources Code, §33 204(b), provides that the governor will designate a local elected official from a county directly affected by a matter under review as a non-voting participant on the council No change was made based on this comment

One commenter requested deletion of §505 30 on the grounds that the council lacks the authority to require agencies to prepare consistency determinations Another commenter stated that only the council is authorized to issue consistency determinations Pursuant to Texas Natural Resources Code, §33 204(a), the council is required to promulgate rules adopting the goals and policies of the CMP, and, as required by Texas Natural Resources Code, §33 205(a), all actions taken or authorized by state agencies must comply with the CMP goals and policies. The requirement that agencies prepare consistency determinations during the permitting process is designed to fulfill the statutory mandate that actions comply with the CMP goals and policies In addition, the agency determination will further the CMP policies in §505.10(1) and (2), relating to identifying, addressing, and resolving consistency issues at the earliest possible point in the agency permit process, and ensuring adequate consistency review at the agency level However, only the council has the authority to review, remand, and reverse a consistency determination. In addition, it should be noted that §505 30 was developed in response to state agencies' requests, and none of the state agencies required to prepare the consistency determinations have objected to the requirement No change was made based on this comment.

One commenter objected to §505 30 on the grounds that it requires agencies to certify that an action is consistent with the goals and policies and that the action will not adversely affect a CNRA The commenter's concerns arise from a misreading of the requirements in §505.30 This section requires either a consistency determination or a determination of no adverse impact, not both. No change was made based on this comment.

Two commenters expressed interest in a process that would include consistency review within the state agencies' permitting process. Pursuant to §505 30, agencies are required to assess their proposed actions for consistency with CMP goals and policies and prepare consistency determinations Agencies and applicants may also request preliminary council review, pursuant to §505.31. No change was made based on this comment.

One commenter noted that not all agencies approve all projects as individual actions, and recommended that §505 30 be revised to allow a general consistency determination, or to provide that consistency determinations are only required for projects requiring environmental documentation and individual review Section 505.30 requires agencies to prepare either a consistency determination or a determination of no adverse effect for the actions listed in §505 11(a). If an agency approves or authorizes more than one activity at once, the agency must include in the approval or authorization of the activities either a consistency determination or a determination of no adverse effect for each activity. Alternatively, the agency may provide a statement that the consistency determination applies to all the activities included in the approval or authorization No change was made based on this comment

Six commenters recommended that §505.30 be amended to provide for a presumption of consistency at the agency level, if an agency does not identify consistency issues within 60 days of receipt of the application In addition, these commenters recommended requiring that agencies request any additional information necessary to determine consistency within 15 days of filing of the application. Another commenter recommended a similar change to §505 30 to ensure that agencies identify consistency issues within a reasonable time period after filing of an application and suggested that 60 to 90 days is a sufficient time period to thoroughly review an application Because the permit processing schedules of state agencies vary, requiring all agencies to identify consistency issues within a uniform time frame may impede permitting processes However, an applicant may request preliminary review, as provided in revised §505.31, for expeditious identification of consistency issues No change was made based on this comment.

One commenter requested that any notice of agency actions subject to the CMP include a statement that the agency action is subject to the CMP and must be consistent with the CMP goals and policies Section 505 30(c) has been amended as suggested by the commenter This requirement is based on agencies' existing public notice processes and will not create burdensome new notice requirements

Section 505.31

Regarding Chapter 505, Subchapter C, one

commenter stated that applicants should be given the opportunity to request council review of proposed actions. Based on this and other comments, §505 31, relating to preliminary review of individual agency actions, has been revised to allow applicants to request preliminary review prior to a final decision by the pertinent state agency This revision allows applicants to address any consistency issues at the earliest possible time in the permitting process.

One commenter recommended that the GLO assign a person to an office to be established by the TNRCC in the Galveston Bay area to assist with the preliminary review process established in §505 31 The council cannot require that the TNRCC establish an office in the Galveston Bay area, as the decision to do so is solely within the TNRCC's discretion However, the Galveston Bay National Estuary Program may eventually be incorporated into the CMP through the Special Area Management Planning Program No change was made based on this comment

Three commenters requested that §505 31(a) be amended to expand the "persons" eligible to request preliminary review to include the council, other individuals, and applicants Four commenters recommended that §505 31(a) be amended to provide that agencies may request preliminary review only with the consent of the applicant Another commenter supported agency initiation of preliminary review Section 505 31 has been amended to allow applicants to request preliminary review, but not to require an applicant's consent for agencies to initiate the preliminary review process Pursuant to §505 30, agencies are required to provide consistency determinations as part of their permitting processes Council assistance, requested through the preliminary review process, may be necessary for an agency to provide and accurately explain its consistency determination This subsection has not been amended to require that applicants must consent to an agency request for preliminary review, as the overriding policy concern is to obtain an accurate consistency determination at the earliest possible point in the permitting process This subsection has not been amended to allow the council to require that agencies use the preliminary review process, because agencies are in the best position to determine their need for council assistance in evaluating a proposed activity

Regarding Chapter 505, Subchapter C, one commenter recommended the addition of a mechanism to conduct consistency reviews early in the permitting process, and that applicants be required to identify all permits associated with a project Agencies are required to conduct the initial consistency review as part of their permitting processes (§505 30), and they may seek preliminary council review, pursuant to §505.31 Under revised §505 31, applicants may request preliminary review, and such requests must include a description of all other actions (permits) associated with the pertinent action

Five commenters requested that §505 31(c)(2) be amended to require completion of preliminary reviews within 15 days, and two other commenters recommended a 30-day deadline Pursuant to §505.31(d), an agency and the council may negotiate a memorandum of agreement on the procedure and schedule for preliminary review In response to this comment, §505 31(c)(2) has been amended to require that the Consistency Review Group (CRG) respond to a request for preliminary review within 45 days, recognizing that the quality of the response will depend on the quality of the information made available to the CRG

One commenter recommended that §505.31 be revised to bind the council to preliminary review determinations Binding preliminary consistency review could only be achieved if formally undertaken by the council, because the council cannot completely delegate its authority to conduct reviews and determine consistency The preliminary review process does not involve formal council action, rather, it involves the CRG, which is comprised of representatives of council members While CRG recommendations do not legally bind the council members, the council will rely heavily on these recommendations No change was made based on this comment

A commenter stated that the public-notice provision in proposed §505 31(b) "may be perceived as preferential" At a minimum, public notice provided pursuant to §505 31(b) will be provided in conformance with standard council procedure, and in accordance with the Open Meetings Act, Texas Government Code, Title 5, Subtitle A, Chapter 551, not preferentially No change was made based on this comment

Section 505 32

Three commenters recommended that §505 32(1), now §505.32(a)(1), be amended to include permit denials within the scope of actions subject to council review Texas Natural Resources Code, §33 205(a), provides, in pertinent part, "All actions taken must comply with the goals and policies of the coastal management plan" The council's jurisdiction is based on actions, not failure to take action, if an agency fails to issue a permit to an applicant, there is no "action" No change was made based on this comment

Eight commenters requested that §505 32(3) be revised to modify the number of council members necessary to refer an action to the council for review The Texas Natural Resources Code, §33 205(b), specifically provides that the council shall review any action submitted by the chairman or three council members; therefore no change was made based on this comment Section 505 32(3) has been deleted, and the section renumbered, because the section establishes the prerequisites for referral of an action to the council. The process for referral previously provided in §505.32(3) is now provided in §505.34(c)

Concerning §505 32(4), now §505.32(a)(4), a commenter requested clarification as to whether the activities below thresholds will be subject to an "additional review" It is assumed that the commenter was referring to the consistency review process as the "additional review" Pursuant to §505.32, thresholds limit, as opposed to prohibit, the council from conducting consistency reviews of actions below the thresholds. There may be limited situations where council consistency review of an individual action below a threshold is warranted, therefore, no change was made based on this comment

Five commenters generally objected to §505 32, and stated that the section was too restrictive in limiting the council's ability to conduct consistency reviews of individual actions otherwise subject to the CMP. One commenter expressed opposition to any change that makes council review dependent on a council member agency first having contested an agency action as a party in a contested case proceeding before the agency The restrictions on council review of actions have been established to provide certainty to the regulated community and to ensure predictable administration of the CMP However, the limitations in §505 32 do not exempt the actions listed in §505 11 from the CMP, as such actions must nevertheless be consistent with the CMP goals and policies The success of the CMP will depend in large measure on agencies ensuring that their actions are consistent with the CMP goals and policies Pursuant to §505 30, agencies are required to provide the initial consistency determination as part of the permitting process In addition, §505 32, now §505 32(a), has been amended by adding paragraph (2) to require that consistency issues must be raised at the agency level as a prerequisite to council review Therefore, as a general matter, all consistency issues will be identified and fully addressed at the agency level and will not arise for the first time at the council level To preserve the right to request referral of an action to the council, persons concerned about a particular agency action must participate in the agency's consideration of a permit While §505 32 may seem overly restrictive, the overriding policy of such restrictions is to allow agencies to address consistency issues prior to council review

Twenty commenters recommended that proposed §505 32 be amended in accordance with the recommendation of the contested case task force, which was established to determine the best method of addressing general dissatisfaction expressed by state agencies regarding §505 32(4)(B), now §505 32(a)(4)(B) Five commenters supported the task force recommendation, but expressed a preference for deleting §505 32(4), now §505 32(a)(4)(B), entirely One commenter who supported the task force recommendation also suggested an additional change that would require that an action below the thresholds may only be submitted to the council by the chairman and at least two other council members or four other council members Another commenter urged that the council not review any actions below the thresholds Section 505 32(4), now §505.32(a)(4), was amended as suggested by the contested case task force Under §505 32(4), now §505 32(a)(4), where there is no opportunity to formally contest an agency action above the thresholds, §505 32(4)(A), now §505.32(a)(4)(A), provides that the council may review the action Section 505 32(4)(B), now §505.32(a)(4)(B), requires that if there is an opportunity to contest an agency consistency determination, the

determination must be contested Section 505.32(a)(4)(C) provides that the action must affect specific CNRAs, and that the consistency determination must have been contested by another state agency These modifications to §505 32(4), now §505.32(a)(4), ensure that state agencies and applicants have the opportunity to address all consistency issues at the agency level prior to council review. No change was made to the number of council members required to refer an action, as Texas Natural Resources Code, §33 205, specifically provides that the council shall review any action submitted by the chairman or three other council members

One commenter recommended limiting §505 32(4)(A), now §505 32(a)(4)(A), to situations where no formal hearing before the agency is available to contest an agency consistency determination. The amendments to §505 32(4), now §505 32(a)(4), provide that if no opportunity exists at the agency level to formally contest an action above the thresholds, formally contesting the action will not be required Where no opportunity exists at the agency level to formally contest an action below the thresholds, the action is not subject to council review

One commenter stated that, even with approved thresholds, "any action, no matter how inconsequential," could be brought before the council for review if it had been protested at the agency level The council may only review actions listed in §505 11 In theory, the commenter is essentially correct in stating that after an action has been protested the thresholds become inoperative Historically, however, only a fraction of the listed agency actions have been formally protested, therefore, in practice, the thresholds will limit the actions subject to council review in the vast majority of cases Furthermore, the addition of §505 32(a)(4)(C) not only requires that an action below established thresholds be contested to be eligible for council review (and if there is no opportunity to contest actions below the thresholds, council review is barred), but also that the action affect particular CNRAs and be contested by another state agency.

Three commenters raised several issues about the lack of clear guidance on the relationship between the agency action, council review, judicial review and judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, Chapter 2001 (Texas APA) When an agency decides to grant a permit, it will be clear if the action satisfies the requirements of §505 32(1), (2), and (4), now §505 32(a)(1), (3) and (4) Where these requirements have not been satisfied, the action is not subject to council review In cases where the action is not subject to council review, judicial review under the Texas APA will proceed as usual Based on these comments, §505 32(b) and (c) were added

Section 505.33.

Nine commenters objected to allowing "any person" to file a request for referral under §505 33(a) and suggested amending the subsection to include a "standing" requirement One commenter recommended deleting §505 33(a), and another expressed concern regarding the review process being "used by the public to satisfy hidden agendas in the name of the environment." Section 505. 33(a) was amended to require persons, other than council members, to have participated in the permit process before the agency prior to filing a request for referral.

One commenter stated that §505.33, which provides that any person may file a request for referral, implies that persons other than council members can refer actions to the council, contrary to §505.34(f). Section 505 34(c) and Texas Natural Resources Code, §33 205, clearly provide that only council members may place an action on the council's review agenda Section 505.34(f) clarifies that the referral request process is not to be construed as entitling anyone other than council members to council review of an action. While the rule establishes a process for filing requests for council review, it is solely within the council's discretion to grant a request No change was made based on this comment

Regarding §505 33(a), five commenters requested extension of the 10-day deadline for filing requests for referral. One commenter requested 30 days; another asked for 10 "working days" Texas Natural Resources Code, §33 205(c) , requires the council to refer an action no later than 30 days after the agency action Section 505 33(a) requires that requests for referral be filed within 10 days of the agency action, and §5055 33(b) requires that any replies be filed within 20 days of agency action These deadlines are necessary to ensure that council members have sufficient time to consider the merits of a request for referral before expiration of the 30-day period for referring agency actions No change was made based on this comment

Regarding, §505 34(c), one commenter misread the subsection, and thought it provided that the council could review and remand any permit on the "order" of the chairman The chairman does not have the power to order the remand of any permit Under Texas Natural Resources Code, §33 205(b), the chairman may submit an agency action for council review, however, pursuant to §505 38(d), remanding a permit requires the vote of four council members No change was made based on this comment

One commenter stated that §505 34(e) was inappropriate, and requested that the subsection be amended to require compliance with the standards for submission to ensure a level playing field Section 505 34(e) allows the council to accept a procedurally flawed request for referral, but the request must nevertheless be substantively accurate. Texas Natural Resources Code, §33.205(b), requires the council to review any action subject to the CMP that the chairman or three other council members submit for review. For example, the request may lack the required statement (§505.33(a)(3)) that the action is subject to council referral, but the action must in fact be subject to such referral. While the council has provided a formal process whereby persons may request council review of an action, the council does not intend for this process to divert the council's attention from the substantive issues of consistency after an action has been referred for council review. A "level playing field" is ensured through the substantive requirements for referral to the council Therefore, no change was made based on this comment

Concerning §505.34(f), one commenter recommended amendments obligating the council to review all actions identified in a properly filed request for referral to ensure effective enforcement of the CMP goals and policies Texas Natural Resources Code, §33 205, requires only that the council review actions that the chairman or three other council members submit for council review. The statute does not require council members to submit actions for review. Each council member will evaluate the merits of a referral request and independently determine whether it merits council review This does not mean that the CMP is unenforceable The council is not the sole venue for objecting to an agency action on consistency grounds Interested parties, in addition to requesting council review, can present their case to the appropriate agency and, if necessary, to the courts No change was made based on this comment

Section 505 35

One commenter recommended §505 35 be amended to inform agencies and applicants that, while council review is pending, no activities should be conducted that would irreparably damage a CNRA New §505 35(b) provides that the notice to the agency and applicant must include a statement that, pending council review, no person may conduct activities authorized by the agency action that would irreparably alter or damage a CNRA identified in the applicable policy, except as otherwise provided by the Texas APA, §2001 054

One commenter recommended deleting the last part of §505 35(b)(6), now §505 35(c)(6), which allows the council to consider the written or oral arguments of any person regarding any additional information provided by an agency pursuant to §505 35(b)(5), now §505 35(c)(5) The commenter stated that Texas Natural Resources Code, Chapter 33, does not allow council consideration of such information Texas Natural Resources Code, §33 204(c), requires the council to receive and consider the oral or written testimony of any person regarding the CMP goals and policies when conducting consistency reviews Due process considerations require that interested persons be given an opportunity to respond to any additional information submitted by the agency, pursuant to §505.35(b)(5), now §505 35(c)(5), as such information will be related to the CMP goals and policies Therefore, no change was made based on this comment

One commenter requested that §505 35(d), now §505 35(e), be amended to deem an action consistent with the CMP if the council fails to act on a referral within 90 days Another commenter stated that the council should have six months to act on a referral. The council's failure to consider and act on an action within the time allowed is not given the same weight as a formal council decision affirming the consistency of an action, however, in either case the proposed action may

proceed, therefore, no change was necessary to address this comment Texas Natural Resources Code, §33 205(c) requires the council to consider and act on a referral within 90 days; therefore, the suggested amendment of extending the schedule to six months was not adopted. Section 505.35(d), now §505.35(e), has been amended, however, to better coincide with the schedules under the Texas APA, §505 35(d), now §505.35(e) , requires the council to act within 60 days, unless the chairman extends the timeline to 90 days

One commenter requested that §505 35(d), now §505 35(e), be amended to provide that the 90-day deadline for council review and issuance of consistency determinations begin on the date of agency action, as opposed to the date of referral to the council Texas Natural Resources Code, §33.205(c) , requires that the council consider and act on the matter within 90 days of referral, not the date of agency action. Therefore, no change was made based on this comment

Section 505 36

One commenter recommended amending §505 36(b)(1) by deleting the requirement that the person filing the request for referral must demonstrate that the agency action is inconsistent with the CMP goals and policies, the commenter stated that the standards for sufficiency of the demonstration were unclear An agency's record of decision that contains evidence of agency consideration of the action in light of the CMP goals and policies constitutes a sufficient demonstration for the purposes of §505 36(b)(1) For actions above the thresholds, some additional information must exist in the agency's record, as required by §505 30(b) For actions below thresholds, consistency determinations must be contested at the agency to be eligible for council review (§505 32(4)(C), now §505 32(a)(4)(C)), therefore, evidence supporting the determination of the contested action would necessarily appear in the agency record No change was made based on this comment

One commenter asked whether the effect of §505 36(b)(2) is dependent on providing the demonstration required in §505 36(b)(1) Section 505 36(b)(1) -(3), are all contingent on the agency's rules having been certified by the council under Chapter 505, Subchapter B, §505 36(b)(1) (3) are not dependent on one another No change was made based on this comment

One commenter suggested amending §505 36 to require the council, when conducting consistency reviews, to defer to an agency's interpretation of its enabling statutes Following rule certification, the council will presume that the agency's consistency determination is valid, including the agency's interpretation of its enabling statute No change was made based on this comment

Section 505 37

With respect to §505 37, one commenter asked how agencies will know whether an action is subject to council review Agencies will know whether an action is subject to council review by reviewing §505 32, which provides the necessary information to determine whether the council may review an action, such as whether the action is listed, whether the action is above or below the thresholds for referral, and whether the action was contested. No change was made based on this comment.

Regarding §505.37, relating to the ability to undertake activities pending council review of an individual agency action, a commenter inquired as to whether agencies will be required to issue contingent or conditional permits There is no provision in §505.37 or elsewhere in the CMP which requires agencies to issue contingent or conditional permits. No change was made based on this comment.

Section 505 38.

Two commenters questioned the statutory authority of the council to remand agency permits, as provided in §505 38, and one commenter stated that the council must have the authority to "veto" a permit, or else there is no reason to have a CMP The Texas Natural Resources Code, §33 206, provides that if the council determines that an action is inconsistent with the CMP goals and policies, it "shall remand" the action and may ultimately reverse it No change was made based on this comment, as §505.38 is based on statutory language

One commenter objected to §505.38(d) which requires a vote of no less than four council members to protest, remand, or reverse an action, and recommended instead a majority of a quorum Another commenter supported the four vote requirement Section 505 38(d) is consistent with §501 4(e), which requires the affirmative vote of no less than four council members to protest, remand, or reverse an action. A quorum, rather than a majority of a quorum, should be required for decisions of such importance The number of council member votes to protest, remand or reverse an action was amended to require a majority of all council members In addition, §505 38(d), now §505.38(c), has been amended to delete the term "protest" (as a protested action is a remanded action), and to require the same number of votes for a decision to affirm an agency action

Section 505 40.

Two commenters stated that the requirements in §505 40 were overly burdensome, one commenter requested that the section be amended to provide that council review on remand is automatic if an agency fails to respond to council recommendations, and the other suggested that council referral of an agency action on remand should not be subject to the same lengthy procedures as initial referral Texas Natural Resources Code, §33 206(c), provides that the council should refer actions on remand in accordance with the same provisions for referral of actions in the first instance. Section 505.40 streamlines the process for referring agency actions on remand by shortening the statutory referral deadline from 30 days to 15 days and the deadline for the council to act on the referral from 90 days to 60 days Furthermore, there is no requirement that a request for referral be filed prior to the council's referring an agency action on remand No changes were made based on these comments.

One commenter recommended deleting the first sentence of §505.40(e), now §505.40(f), which provides that the council's decision to reverse an action renders the action void, and stated that if the meaning of "void" is the same as "reversed," "void" is superfluous language. The words "void" and "reversed" are not synonymous; a reversal causes an action to be void. No change was made based on this comment.

One commenter recommended amendments to §505.40(e), now §505.40(f), to clarify that only those activities the council has determined to be inconsistent with the CMP goals and policies must cease. Section 505.40(d), now §505.40(e), provides that an agency action on remand is reversed if the council determines that the action is inconsistent with the CMP goals and policies. Upon reversal, the agency action is no longer valid; therefore, all activities authorized by the action must cease. No change was made based on this comment.

One commenter requested that §505.40(e), now §505.40(f), be amended by adding language clarifying that under the Texas APA, §2001.054, a timely filed application for the renewal of a permit extends the effective date of the permit beyond the original term until: the agency has issued a final determination on the application; the expiration of the time period for seeking judicial review of the agency order; or a date established by court order, whichever is later. This commenter also recommended the inclusion of procedures for reversal of an action that parallel the remand procedures Section 505.40(e), now §505.40(f), was amended to provide that, upon remand, the actions authorized must cease, except as otherwise provided by the Texas APA, §2001.054. In addition, §505.40(d), now §505.40(e), was amended to require public notice and a written decision identifying the council's reasons for reversing the action. Section 505.40(c) was added to identify the evidence which may be considered by the council at a hearing to review an action on remand. These new provisions parallel those for council review of an agency action in the first instance.

Section 505.41.

One commenter objected to §505.41, relating to judicial review. Section 505.41 and §505 73 contain the provisions for judicial review of council decisions, and reflect Texas Natural Resources Code, §33.207, which establishes the right of aggrieved persons to judicial review. No change was made based on this comment.

Section 505.42.

One commenter recommended that §505.42 be amended to provide that the council lacks the authority to bring enforcement actions against private parties. Four commenters recommended that §505.42 be amended to clearly provide that agencies, not the council, will enforce permit terms and conditions. One commenter requested that §505.42 clearly provide for enforcement against private parties for violations of the CMP. Pursuant to Texas Natural Resources Code, §33.205(a),

all actions taken or authorized by state agencies must comply with the CMP goals and policies; therefore, any activity not in accordance with the terms of an agency permit or other action that implements the CMP goals and policies is a violation of the CMP. However, the council has chosen to limit its direct enforcement authority to agency actions and authorizations. In response to these comments, §505.42 and §505 74 have been amended to clarify that agencies, not the council, will enforce permit terms and conditions.

Section 505.50.

One commenter stated that §505.50, relating to the plans subject to advisory opinions, should be expanded to include other planning documents that may be approved by state agencies. The §505.50 list of general plans that may be submitted to the council for a non-binding advisory opinion as to consistency is an illustrative, not exclusive, list Therefore, no change was made as a result of this comment

Section 505 51.

One commenter stated that an advisory opinion issued by the council on general plans should only refer to inconsistencies Section 505 51(e) requires that the council's non-binding advisory opinions indicate whether actions taken pursuant to the plan are "likely to be consistent or inconsistent with the goals and policies of the CMP " No change was made in response to this comment

Section 505 60

One commenter stated that local governments actions should be subject to council review under the same criteria as state agencies, rather than exempting so many local government actions Two commenters suggested that the list of local government actions in §505 60 should be expanded, one specifically requested that the list include "septic systems and building density as those issues affect coastal nonpoint source pollution." One commenter expressed support for, and another expressed concern about, council review of local government dune protection and beach access plans Pursuant to §505 60, only two local government actions are included in the CMP· dune protection permits and beachfront construction certificates As a general matter, local governments, state agencies, and federal agencies have jurisdiction over the same activities affecting CNRAs. The CMP is designed to focus on activities, and to avoid duplicative review of the same activities Therefore, the local government actions included in the CMP are those which cannot be otherwise included in the lists of state and federal actions In addition, when the local government undertakes, as opposed to authorizes, an activity listed in §505.11(a), the local government's application for the state permit will be subject to the same review process as any other listed action. Chapter 505, Subchapter E, is modeled on Chapter 505, Subchapter C, governing council review of individual state agency actions, and has been revised to reflect editorial changes in Chapter 505, Subchapter C. The impacts of coastal nonpoint source pollution are addressed in §501 14(g) of this title (relating to NPS Water Pollution) No change was made based on these comments

One commenter requested that the preamble clarify that the term "local government" includes navigation districts and port authorities. The CMP relies primarily on state agencies (listed in §505.11(a) or identified in §501.14 of this title), to implement the CMP goals and policies Only two local government actions are subject to the program, dune protection permits and beachfront construction certificates; only those subdivisions of the state that issue dune protection permits or beachfront construction certificates are subject to the CMP Navigation districts and port authorities do not issue these permits or certificates, or any other permits subject to the CMP. Therefore, no change was made based on this comment

One commenter suggested amending §505 60 to allow the council to review a local government decision to deny a permit Texas Natural Resources Code, §33 205(a), provides, in pertinent part, "All actions taken must comply with the goals and policies of the coastal management plan " The council's jurisdiction is based on actions, not failure to take action, if an agency fails to issue a permit to an applicant, there is no "action " No change was made to this section based on this comment

Section 505 61

One commenter supported the thresholds for council review of dune protection permits and beachfront construction certificates, as provided in §505 61 Three other commenters stated that the thresholds were too high and requested that the thresholds be lowered or deleted These commenters recommended that the threshold in §505 61(1) be deleted or amended to comport with the GLO definition of "large scale construction," as provided in 31 TAC §15 2 (i e , activities causing greater than 5,000 square feet of disturbance of dunes and vegetation) One commenter requested that §505 61(2) be amended to establish the threshold at 500 cubic yards, as opposed to 7,500 cubic yards, of dune material Two commenters requested that §505 61 be lowered, and one of the commenters stated that the threshold in §505 61(2) was surprisingly high and did not relate the volume of disturbance to the areal size of the development and requested that this be rectified The thresholds established in §505 61 do not exempt actions below the thresholds from requirement to comply with the CMP goals and policies, instead, the thresholds focus the council's attention in conducting formal reviews to those actions with the most significant adverse effects No change was made based on these comments.

Section 505 64

One commenter suggested amending §505 64(3) to allow the chairman or two council members to refer an action The Texas Natural Resources Code, §33 205(b), specifically provides that the council shall review any action that the chairman or three council members submitted for review, therefore, no change was made based on this comment However, §505 64(3) has been deleted, and the section renumbered, because the section is intended to establish the prerequisites for referral of an action to the council. The process for referral previously described in §505 64(3) is now provided in 505.66(c).

Section 505.65

Based on comments received, §505 65(a) was modified to more precisely reflect the local government process

Section 505 68

One commenter stated that §505 68(b) "should be more people-friendly." Following GLO certification of a local government's dune protection and beach access plan, §505 68(b) provides that the council shall presume that a local government's consistency determination regarding a particular activity is valid, and the person filing the request for referral has the burden of proving that the local government action is invalid Section 505 68(b) is essentially identical to the provision in Chapter 505, Subchapter C, which provides that, after council certification of a state agency's rules, the state agency's consistency determination is presumed valid The presumption is rebuttable, and persons may successfully challenge the determination if the facts and circumstances do not support the local government's consistency determination No change was made to this subsection based on this comment

Section 505 70

Based on comments received, §505 70(c) was amended to require the affirmative votes of the majority of all council members to protest, remand or reverse an action

Subsection 505 70(d) was added to clarify that the council will not require a local government to undertake an action which is beyond its authority

Section 505 72

One commenter suggested amending proposed §505 72 to provide that the council's only remedy after the council determines that a local government action is inconsistent with the CMP goals and policies is to appeal the local governments' decision to a district court in the county of the local government Section 505 72(d) provides that after a council determination that a local government action on remand is inconsistent with the CMP goals and policies, the local government action is reversed This provision is consistent with Texas Natural Resources Code, §33 204(c), which provides that the only basis for reversal of a local government action is that it is inconsistent with the CMP goals and policies No change has been made to this section based on this comment, however, "agency" has been changed to "local government" to comport with the substance of the chapter Also, §505 72 has been changed to reflect the changes made in §505 40, governing council review of state agency actions on remand

Section 505 72 was amended for clarity and to comport with revision to Chapter 505, Subchapter E These amendments consist of revising §505 72(b) to comport with amendments to §505 40(b), moving the text of §505.72(c) and (d) to §505 72(e), adding text

to §505 72(c), which parallels §505 40(c) and §505 40(d), now §505 40(e), adding text to §505.72(d) which parallels §505.35(e), and renumbering §505 72(e), now §505.72(f).

Section 505 73.

One commenter suggested revising §505.73 to provide that a person or the council could appeal a decision of the district court to a higher court. This suggested change is unnecessary because the CMP does not expand or detract from a person's right and the council's right to appeal district court decisions, as otherwise provided by law.

Section 505 74

One commenter suggested striking §505.74. Section 505 74 is based on Texas Natural Resources Code, §33.208, which establishes the council's enforcement authority. Pursuant to Texas Natural Resources Code, §33.205(a), all actions taken or authorized by political subdivisions must comply with the CMP goals and policies. For public notice purposes, the rules reflect this authority. Therefore, no change has been made based on this comment.

Regarding §505 74, one commenter suggested limiting the venue for enforcement actions to a district court in the county in which the violation occurs Texas Natural Resources Code, §33 208, allows the attorney general, at the request of the council, to file suit to enforce the CMP in a district court of Travis County or in the county in which the violation occurs No change was made based on this comment Another commenter stated that the portions of the preamble to proposed Chapter 505 indicating that the CMP will apply to individuals and that the council will enforce the CMP directly against individuals is inaccurate This comment refers to language contained in the preamble to the proposed rules, which is not republished upon adoption of the rules, however, clarification of this issue is merited Pursuant to Texas Natural Resources Code, §33 205(a), all actions taken or authorized by state agencies and local governments must comply with the CMP goals and policies, therefore, any activity not in accordance with the terms of a local government permit or certificate that implements the CMP goals and policies is a violation of the CMP However, the council has chosen to limit its direct enforcement authority to agency and local government actions and authorizations In response to this comment, §505 74 has been amended to clarify that local governments, not the council, will enforce the terms and conditions of permits and certificates

General Comments

Many commenters stated that the council's authority to review individual agency actions is burdensome, or tantamount to another separate permitting process that is likely to increase regulatory lag and unpredictability, development costs and opportunities for frivolous reviews The CMP is a networked program, designed to rely primarily on state and federal agencies and, to a lesser extent, local governments to implement the program's goals and policies The council is not a permitting agency Texas Natural Resources Code, §33.205, requires the council to review state agency and local government actions subject to the program, if the chairman or three other council members submit them for council review. This subchapter describes how and under what circumstances the council will review individual agency actions However, consistency will be achieved primarily through the council's review and certification of agency rules, as provided in Chapter 505, Subchapter B. Section 505.10 describes the council's approach to the consistency review process established in this chapter, which is designed to identify, address, and resolve consistency issues within the agencies' existing permitting processes. No change was made based on these comments.

One commenter recommended that the GLO review agency regulations and include this review, as well as recommendations to the council, into the CMP. Two commenters stated that the GLO had already spent considerable time and effort reviewing other agencies' policies to ensure consistency with the council's "goals and intentions." The GLO, assisted by other state agencies, conducted an assessment of the agencies' existing statutory and regulatory policies to determine if the policies sufficiently addressed impacts to CNRAs This analysis is the basis for the design of the CMP goals and policies No change was made based on this comment

List of Commenters: American Waterways Operators; Amoco Chemical Company; Bay City Chamber of Commerce; Calhoun County Navigation District; City of Baytown; Champion International Corp.; Chevron U.S.A.; Coastal Bend Sierra Club; Coastal States Management Corporation; Commercial Navigation and Dredging Focus Group; Corpus Christi Board of Realtors; Corpus Christi Chamber of Commerce; Corpus Christi Geological Society; Exxon Chemical Company; Exxon Company; The Fordyce Company; Fort Worth Audubon Society; Freese-Nichols, Inc.; Frontera Audubon Society; Governor of Texas; Gulf Coast Waste Disposal Authority; Hoechst Celanese Chemical Group; Hollywood Marine, Inc.; City of Houston; Houston-Galveston Area Council; Houston Lighting and Power Co.; City of Lake Jackson; Lavaca-Navidad River Authority; Maryland Marine, Inc.; Mitchell Energy and Development Corp.; National Marine Fisheries Service; Matagorda County Navigation District; Mobil Oil; Natural Gas Pipeline Company of America; Nueces County Coastal Management Committee; Nueces County Commissioners Court; Organization for the Preservation of an Unblemished Shoreline; Oryx Energy Company; Pennzoil Company; Phillips Petroleum Company; Port of Brownsville; Port of Corpus Christi; Port of Houston Authority; R.C. Deal and Associates; Railroad Commission of Texas; Real Estate and Development Focus Group; Reynolds Metal Company; Shell Western E&P, Inc.; Society of Independent Earth Scientists; Sportsmen Conservationists of Texas; Texaco, Inc. ; Texas A&M, Department of Agricultural Economics; Texas and Southwestern Cattle Raisers Association; Texas Association of Business; Texas Cattle Feeders Association; Texas Center for Policy Studies; Texas Chapter of the Wildlife Society; Texas Chemical Council; Texas Citrus Mutual; City of Texas City; Texas Commission on Natural Resources; Texas Department of Agriculture; Texas Ecologists; Texas Farm Bureau; Texas Independent Producers and Royalty Owners Association; Texas Mid-Continent Oil and Gas Association; Texas Municipal League; Texas Poultry Federation; Texas Vegetable Association; Texas Water Conservation Association; Texas Water Development Board; Tug Josephine; United States Department of the Interior; United States Navy; Valero Energy Corporation; Valero Refining Company; Waste Management, Inc.

Subchapter A. Purpose and Policy and State Agency Actions Subject to the Coastal Management Program

- **31 TAC §505.10, §505.11**

§505 10 Purpose and Policy

(a) The purpose of this chapter is to ensure that state actions, local government actions and general plans subject to the Coastal Management Program (CMP) are consistent with the goals and policies of the CMP It is the intent of the Coastal Coordi-

nation Council (council) that the consistency process will:

(1) adequately identify, address, and resolve consistency issues to the maximum extent practicable prior to final agency action;

(2) minimize the number of actions referred to the council for review or study by ensuring adequate review at the agency level and by referring to the council only those actions that present unique or significant consistency issues;

(3) avoid the creation of an additional layer of bureaucracy;

(4) avoid subjecting to regulation actions not currently subject to regulation; and

(5) provide procedural safeguards to ensure proper notice, opportunity for hearing, and fairness in decision-making

(b) Accordingly, it is the intent of the council that consistency be achieved primarily through individual agency rules that will reflect the goals and policies of the CMP

§505.11 Actions and Rules Subject to the Coastal Management Program

(a) For purposes of this chapter and Chapter 501 of this title (relating to Coastal Management Program), the following is an exclusive list of actions taken or authorized by a state agency that may adversely affect a coastal natural resource area (CNRA), including discharges and withdrawals that may significantly affect water quality in state waters subject to tidal influence, and that therefore must be consistent with the goals and policies of the CMP

(1) for actions outside the boundary Texas Natural Resource Conservation Commission (TNRCC).

(A) Permit-an application for a new water right located within 200 stream miles of the coast and proposing an appropriation of 5,000 acre-feet of water per year or more.

(B) Permit Amendment-an application to amend a water right located within 200 stream miles of the coast and requesting:

(i) an increase of 5,000 acre-feet or more of water per year;

(ii) a change in the purpose of the use to a more consumptive use of 5,000 acre feet or more of water per year;

(iii) an action under subsection (a)(1)(A) and (B) or (a)(2)(F)(ii) of this section shall not be considered an action subject to the CMP if it is an action taken to implement the Trans-Texas Water Program as approved, and found to be consistent with the goals and policies of Chapter 501 of this title (relating to Coastal Management Program), by the Trans-Texas Water Program Policy Management Committee, provided that the committee includes as voting members at least three members of the council and a majority of those council members vote to approve and find that it is consistent with the goals and policies of Chapter 501 of this title (relating to Coastal Management Program).

(2) for actions inside the boundary.

(A) General Land Office (GLO), School Land Board, Boards for Lease of State-Owned Lands:

(i) Mineral lease plan of operations-plan of operations for mineral and oil and gas exploration and production;

(ii) Permit-geophysical and geochemical exploration for oil, gas, and other minerals on state-owned lands (upland and submerged);

(iii) Miscellaneous easement-construction of pipelines, transmission lines, roads, and other linear facilities on state-owned lands (upland and submerged);

(iv) Surface lease-construction of commercial facilities, artificial reefs, and other non-waterfront structures on state-owned lands (upland and submerged),

(v) Structure registration-construction of piers under 2,500 square feet in area on state-owned submerged land;

(vi) Coastal easement-dredging of basins and channels on state-owned submerged land; construction of piers, docks, marinas, bulkheads, seawalls, and other waterfront structures on state-owned submerged land;

(vii) Coastal leases-construction of public recreational facilities on state-owned submerged land by local governments. Establishment of preserves, refuges, or research areas on state-owned submerged land;

(viii) Cabin permit-construction or use of fishing cabins on state-owned submerged land;

(ix) Navigation district leases-channel dredging or construction of port facilities on state-owned submerged land by navigation districts;

(x) certification of local government plans for dune protection permits and beachfront construction certificates;

(xi) Approval of wetland mitigation banks-establishment and maintenance of a mitigation bank by state agencies or political subdivisions (Texas Civil Statutes, Article 5421(u)).

(B) Public Utility Commission (PUC): Certificate of convenience and necessity-construction of electric generating facilities and electric transmission lines.

(C) Railroad Commission of Texas (RRC):

(i) Permit-discharge of wastewater from oil and gas exploration and production activities;

(ii) Permit-disposal or storage of oil and gas wastes in a pit;

(iii) certification of federal permits for dredging and filling activities associated with oil and gas exploration, production, or pipeline construction;

(D) Texas Department of Transportation (TxDOT):

(i) Approval-Gulf Intracoastal Waterway: acquisition of rights-of-way for dredged material disposal sites and channel expansion, relocation or alteration;

(ii) Approval-transportation project planning, construction, operation, and maintenance;

(E) Texas Historical Commission (THC)/Texas Antiquities Committee:

(i) Permit-destruction, alteration, or taking of state archaeological landmarks;

(ii) Review/Consultation-state review of federal undertakings affecting historic sites (National Historic Preservation Act, 16 U.S.C. §470f);

(F) Texas Natural Resource Conservation Commission:

(i) Permit-point-source wastewater discharges for municipal and industrial sources, and for new concentrated animal feeding operations located within one mile of a CNRA;

(ii) Permit-review and action on an application for:

(I) a new water right proposing an appropriation of 2,500 acre feet of water or more per year; or

(II) an amendment to an existing water right requesting an increase in appropriation of 2,500 acre feet of water per year or more, or a change in purpose of use to a more consumptive use of 2,500 acre feet of water or more per year;

(iii) Permit-treatment, storage, and disposal of solid waste: municipal, industrial, nonhazardous, or hazardous;

(iv) creation of special purpose districts or approval of bonds for infrastructure on coastal barriers;

(v) approval of levee improvements or other flood control projects (Texas Water Code, §16.236, 30 TAC Chapter 301);

(vi) certification of federal permits for dredging and filling activities;

(vii) approval of municipal water pollution abatement programs (Texas Water Code, Chapter 26, §177 and §178);

(viii) declaration of an emergency and request for an emergency release of water (Texas Water Code, §16 195),

(G) Texas Parks and Wildlife Department (TPWD):

(i) Permit/lease-transplanting or harvesting oysters;

(ii) Permit-taking, transporting, or possessing threatened or endangered species,

(iii) Permit-disturbance of marl, sand, shell, or gravel on state-owned lands,

(iv) approval of development in state parks, wildlife management areas and preserves

(b) An agency's promulgation of rules governing or authorizing actions listed in subsection (a) of this section or as identified in §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resources Areas) constitutes an action subject to the CMP as provided in Subchapter B of this chapter (relating to Council Certification of State Agency Rules and Approval of Thresholds for Referral).

(c) An action to renew, amend, or modify an existing permit, certificate, lease, easement, approval or other form of authorization shall not be considered an action subject to the CMP if the action is taken pursuant to rules that the council has certified as consistent with the applicable policies in §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas) and:

(1) for wastewater discharge permits under subsections (a)(1)(i), (a)(2)(C)(i), and (a)(2)(F)(i) of this section, if the action is not a major permit modification as defined in the applicable rules of the TNRCC;

(2) for solid, hazardous, or nonhazardous waste permits under subsection (a)(2)(F)(iii) of this section, if the action is not a Class III modification as defined in TNRCC rules; or

(3) for any other state action, if the action only extends the time period of the existing authorization without authorizing new or additional work or activities or is not otherwise directly relevant to the policies in §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas).

(d) Whenever more than one state agency is involved in issuing a consistency determination for a single project, consideration should be given to the preparation of one consistency determination for all state agencies involved.

(1) Where multiple state consistency determinations are required, state agencies should consider coordinated preparation of the consistency determinations or designation of a lead agency for development of a single consistency determination In the case where a single consistency determination will be prepared, such determination must be completed before final action is taken on any permit or authorization listed in subsection (a) of this section and required for the project. The single consistency determination must indicate whether each of the proposed actions listed in subsection (a) of this section and required for the project is consistent with the goals and policies of the CMP and must include information on each proposed action sufficient to support the consistency determination

(2) An applicant, project sponsor, or other entity undertaking a project which requires more than one action listed in subsection (a) of this section may request in writing from the council either coordinated preparation of the consistency determinations or designation of a lead agency for development of a single consistency determination.

(3) To avoid duplication and time delays, it is the intent of the council, whenever possible, to provide for coordinated consistency determinations where multiple determinations are required The council may direct the Consistency Review Group (as identified in §505.31(c) of this title (relating to Preliminary Review of Individual Agency Actions by the Coastal Coordination Council)) to respond to the request and facilitate coordinated consistency determinations or preparation of a single determination by a lead agency, under guidance issued by the council.

(4) The council shall not review actions listed in this subsection if an application for such action was filed prior to the effective date of this subchapter.

(5) The council shall not review actions listed in this subsection if such actions are taken pursuant to an enforcement order issued prior to the effective date of this subchapter.

Issued in Austin, Texas, on June 29, 1994.

TRD-9443202 Garry Mauro
Chairman
Coastal Coordination Council

For further information, please call: (512) 305-9129

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Subchapter B. Council Certification of State Agency Rules and Approval of Thresholds for Referral

• 31 TAC §§505.20-505.26

§505.20 Council Review and Certification of Existing Agency Rules.

(a) An agency may seek council review and certification of rules governing or authorizing actions listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) or identified in §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas) by filing a Request for Council Review with the secretary of the council. The request shall include a copy of the rules for which the agency seeks council certification and a reasoned justification explaining how the rules are consistent with the goals and policies of the Coastal Management Program (CMP)

(b) The secretary of the council shall distribute copies of the Request for Council Review, including all supporting information, to all council members and shall place the request on the agenda for the next regularly scheduled council meeting. Prior to the council meeting, the council secretary shall publish in the *Texas Register* a notice of availability and a request for public comment on the Request for Council Review.

(c) The council shall determine whether the rules are consistent with the goals and policies of the CMP within 120 days of the receipt of the request.

(1) If the council determines that the rules are consistent with the goals and policies of the CMP, the council shall issue a written statement certifying the rules

as consistent with the goals and policies of the CMP.

(2) If the council determines that the rules are not consistent with the goals and policies of the CMP, the council shall issue a written statement explaining the reasons for its decision and providing recommendations for appropriate rule amendments.

(d) Council review and certification of rule amendments proposed in response to council recommendations are governed by §505.22 of this title (relating to Council Review and Certification of Proposed New Rules and Rule Amendments).

(e) The council may, upon a finding that an agency has failed to implement, enforce, or adhere to the goals and policies of the CMP, issue to the agency a Notice of Program Deficiency. The notice shall set forth the specific findings of deficiency, the basis for such findings, and include recommendations to correct the deficiencies within a reasonable period established in the notice. If the agency fails to correct the deficiencies as provided in the notice and within the time allowed, the council may, after notice and opportunity for public comment, revoke certification of an agency's rules.

§505.21. Effect of Council Certification of Existing Agency Rules. Upon the council's certification of an agency's rules pursuant to §505.20 of this title (relating to Council Review and Certification of Existing Agency Rules), the agency's rules are incorporated into the goals and policies of the CMP, and any threshold for referral approved by the council pursuant to §505.26 of this title (relating to Council Review and Approval of Thresholds for Referral) relating to actions under those rules shall become operative and limit the council's authority to review individual actions of the agency, as provided in §505.32(3) of this title (relating to requirements for Referral of an Individual Agency Action).

§505.22. Council Review and Certification of Proposed New Rules and Rule Amendments.

(a) After the effective date of this subchapter, when an agency files proposed new rules or rule amendments governing or authorizing actions listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) or identified in §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas) with the Texas Register, the agency shall submit a copy of the proposed new rules or rule amendments to the secretary of the council, along with a reasoned justification explaining how the proposed new rules or rule amendments are consistent with the goals and policies of the CMP. The agency shall also include in the preamble to the proposed new rules or rule amendments a reasoned statement that the proposed new rules or rule amendments are consistent with the goals and policies of the CMP.

(b) The secretary of the council shall distribute copies of the proposed new rules or rule amendments, along with the reasoned justification, to all council members and shall place the proposed new rules or rule amendments on the agenda for the next regularly scheduled council meeting.

(c) Council members should comment on the consistency of the proposed new rules or rule amendments during the public comment period provided by the agency. The agency shall consider any comments submitted by the council prior to final adoption of the new rules or rule amendments.

(d) No later than 45 days after an agency's proposed new rules or rule amendments are published in the Texas Register, the council shall issue a reasoned determination that the proposed new rules or rule amendments, in whole or in part, are consistent or inconsistent with the goals and policies of the CMP.

(e) The council may issue a conditional determination that new rules or rule amendments, in whole or in part, are consistent or inconsistent with the goals and policies of the CMP.

(f) Agencies may request, and the council may provide, expedited council consideration of the consistency of new rules or rule amendments.

§505.23. Effect of Council Certification of Proposed New Rules and Rule Amendments.

(a) A threshold for referral, approved by the council pursuant to §505.26 of this title (relating to Council Review and Approval of Thresholds for Referral), shall become operative and limit the council's authority to review individual actions of the agency as provided in §505.32(3) of this title (relating to Requirements for Referral of an Individual Agency Action) only if:

(1) the council has certified the agency's proposed new rules or rule amendments and the agency makes no substantive changes regarding consistency with the goals and policies of the CMP when adopting them; or

(2) the agency changes and adopts the new rules or rule amendments substantially in accordance with the recommendations of the council.

(b) A threshold for referral, approved by the council pursuant to §505.26 of this title (relating to Council Review and Approval of Thresholds for Referral), shall not become operative and shall not limit the council's authority to review individual actions of the agency as provided in §505.32(3) of this title (relating to Requirements for Referral of an Individual Agency Action) if:

(1) the agency makes substantive changes regarding consistency with the goals and policies of the CMP when adopting the new rules or rule amendments; or

(2) the agency does not change and adopt the new rules or rule amendments substantially in accordance with the recommendations of the council.

(c) Following adoption, an agency may request council review and certification of its new rules or rule amendments pursuant to §505.20 of this title (relating to Council Review and Certification of Existing Agency Rules).

(d) Upon the council's certification of an agency's rules pursuant to this section, the agency's rules are incorporated into the goals and policies of the CMP.

§505.24. Basis for Council Certification of Agency Rules.

(a) To determine that an agency's rules are consistent with the goals and policies of the CMP, the council must find that the agency's rules incorporate or otherwise require the agency to comply with all applicable goals and policies of the CMP.

(b) For public notice purposes, the council recommends that agencies amend their rules governing those actions listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) to:

(1) identify those actions that are subject to the CMP;

(2) require the preparation of a consistency determination in accordance with §505.30 of this title (relating to Agency Consistency Determination) when the agency decides to take or authorize an action listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program); and

(3) provide that an agency's decision to take or authorize an action listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) and subject to council review should not be considered final and appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, Chapter 2001 (Texas APA), §2001.171, until the council's jurisdiction over that action has lapsed.

§505.25. Preliminary Council Review of Draft Rules or Rule Amendments.

(a) Prior to an agency's filing proposed new rules or rule amendments with the Texas Register, an agency may seek preliminary council review of draft rules or rule amendments governing actions listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) or relating to rules identified in §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas) by filing a Request for Preliminary Council Review with the secretary of the council. The request shall include a copy of the draft rules or rule amendments and a written request for specific guidance on the consistency of the draft rules or rule amendments with the goals and policies of the CMP.

(b) The secretary of the council shall distribute copies of the request, including all supporting information, to all council members.

(c) Within 45 days of receipt of an agency's request, council members should individually review and submit written comments on the agency's draft rules or rule amendments to the secretary of the council, who shall forward copies of the comments to the agency.

(d) Agencies may request, and the council may provide, expedited preliminary council review of draft rules or rule amendments.

§505.26. Council Review and Approval of Thresholds for Referral.

(a) A state agency may propose thresholds for referral by submitting them to the secretary of the council along with a reasoned justification supporting the thresholds.

(b) The secretary of the council shall distribute copies of the proposed thresholds for referral, along with the reasoned justification, to all council members and shall place the item on the agenda for the next regularly scheduled council meeting. Prior to the council meeting, the council secretary shall publish in the Texas Register a notice of availability and a request for public comment on the proposed thresholds for referral.

(c) After consideration, the council shall issue a written statement either approving or disapproving the agency's proposed thresholds for referral. If the council disapproves an agency's thresholds for referral, the council shall include in its written statement the reasons for its decision and recommendations for appropriate thresholds for referral.

(d) After the council has approved an agency's thresholds for referral, agencies should make them readily available to the public.

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TRD-9443203 Garry Mauro
Chairman
Coastal Coordination Council

For further information, please call: (512) 305-9129

Subchapter C. Consistency and Council Review of Individual State Agency Actions

• **31 TAC §§505.30-505.42**

§505.30. Agency Consistency Determination.

(a) An agency shall include in a permit or other document approving or authorizing an action listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program), either a consistency determination or a determination of no adverse effect as follows:

(1) Consistency Determination. The (State Agency Name) has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP), in accordance with the regulations of the Coastal Coordination Council (council), and has determined that the action is consistent with the applicable goals and policies of the Texas CMP applicable to the action.

(2) Determination of No Adverse Effect. The (State Agency Name) has reviewed this action for consistency with the goals and policies of the Texas CMP, in accordance with the regulations of the council, and has found that the action will not adversely affect the coastal natural resource area (CNRA) identified in the applicable policies.

(b) For actions that exceed the thresholds for referral, the agency shall provide a written explanation supporting the determination made under subsection (a) of this section. The explanation shall describe the basis for the agency's determination, include a description of the action and its probable impacts on CNRAs, identify the CMP goals and policies applied to the action, and explain how the action is consistent with the applicable goals and policies or why the action does not adversely affect any CNRAs.

(c) When publishing notice of receipt of an application or request for agency action, the agency shall include a statement that the application or requested action is subject to the CMP and must be consistent with the goals and policies of the CMP. The agency shall include the secretary of the council on any public notice list maintained by the agency for actions subject to the CMP. Upon issuance of a permit, approval, or authorization of an action listed on §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program), the agency shall provide to the secretary of the council a one-page notice that an action subject to the CMP has been taken or authorized.

(d) Agencies shall maintain a record of all actions taken or authorized that are subject to the CMP and provide such record to the council on a quarterly basis.

§505.31. Preliminary Review of Individual Agency Actions by the Coastal Coordination Council.

(a) An agency or applicant may request preliminary consistency review of any action listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) prior to the agency's final action.

(b) A request for preliminary consistency review shall be submitted in writing to the secretary of the council, the chair of the Consistency Review Group (as identified in subsection (c) of this section), and the agency or applicant. Upon receipt of a request for preliminary consistency review, the secretary of the council shall publish notice of the request in a manner that will inform interested agencies and the affected public. An applicant's request for preliminary consistency review shall identify all other local, state, and federal permits or authorizations, subject to the program, associated with the application.

(c) The council shall create a Consistency Review Group. Each council member shall appoint one person to the Consistency Review Group, which shall be chaired by the representative of the council chairman.

(1) The chair of the Consistency Review Group shall convene the group as directed by the council or as necessary to respond to a request for preliminary consistency review.

(2) Within 45 days of receipt of a request for preliminary consistency review, or within the timelines established in

the appropriate memorandum of agreement (MOA) concluded under subsection (d) of this section, the Consistency Review Group shall:

(A) identify all goals and policies that apply to the action for which preliminary consistency review has been requested;

(B) identify any consistency issues to be resolved by the agency;

(C) issue written recommendations for the resolution of consistency issues identified in subparagraph (B) of this paragraph; and

(D) if requested by the agency or applicant, prepare a recommended consistency determination.

(d) If requested by an agency, the council shall expeditiously negotiate a MOA establishing the procedures and timelines for preliminary consistency review pursuant to this section.

§505.32. Requirements for Referral of an Individual Agency Action.

(a) An action of an agency listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) may be referred to the council for review to determine consistency with the goals and policies of the CMP only if:

(1) the agency has taken or authorized the action for which referral is sought;

(2) consistency issues were raised by the agency, a party or an interested person during agency consideration of the action;

(3) a request for referral has been submitted to the council in accordance with §505.33 of this title (relating to Filing of Request for Referral and Reply); and

(4) the action:

(A) exceeds the thresholds for referral adopted pursuant to §505.26 of this title (relating to Council Review and Approval of Thresholds for Referral) and no formal hearing was available before the agency to contest the consistency determination;

(B) exceeds the thresholds for referral adopted pursuant to §505.26 of this title (relating to Council Review and Approval of Thresholds for Referral) and was subject to a formal hearing before the agency or, in lieu of a formal hearing, if the agency and all parties to the proceeding concur, to an alternative dispute resolution (ADR) process, and the agency's consistency determination was contested in the hearing or ADR process. The agency and all parties may elect to choose an ADR process arranged through the agency, if any, or the council, or

(C) does not exceed the thresholds for referral adopted pursuant to §505.26 of this title (relating to Council Review and Approval of Thresholds for Referral) and adversely affects an outstanding natural resource water (as defined by the Texas Natural Resource Conservation Commission (TNRCC)), a critical area, a critical dune area, a coastal park, wildlife management area, or preserve, or a Gulf beach and was the subject of a formal hearing before the agency in which another state agency participated as a party and contested the agency's consistency determination during the hearing.

(b) For purposes of this subchapter, an agency has taken or authorized an action and the action becomes final for purposes of referral to the council:

(1) if the action is the subject of a formal adjudicative hearing and the agency has notified all parties or their attorneys of record of the final decision or order as provided in Texas Government Code, Chapter 2001;

(2) for actions not subject to a formal adjudicative hearing, when the agency has publicly issued its approval and only ministerial steps remain to be taken before the applicant is vested with the legal authority to proceed with the activity authorized; or

(3) as provided in the terms the MOA entered under §505.31(d) of this title (relating to Preliminary Review of Individual Agency Actions by the Coastal Coordination Council).

(c) For actions subject to subsection (a)(4) of this section, a party filing a request for referral with the council under §505.33 of this title (relating to Filing of Request for Referral and Reply) shall timely file a motion for rehearing with the agency as provided in Texas Government Code, Chapter 2001. The motion for rehearing must state the claimed inconsistencies of the action as grounds for a rehearing. If the request for referral of the action to the council is accepted, as provided in §505.34(c) of this title (relating to Referral of Individual Agency Action to the Council for Consistency Review), the agency shall grant the motion for rehearing.

§505.33. Filing of Request for Referral and Reply.

(a) To seek council review of an action meeting the requirements of §505.32 of this title (relating to Requirements for Referral of an Individual Agency Action), a council member, a party, or other person who participated in a formal adjudicative hearing on an action, or a person who filed written comments with the agency before action was taken, may file a Request for Referral of an agency action listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) with the council secretary. The request must be filed no later than 10 days after the agency has taken or authorized the action for which consistency review is sought. The Request for Referral shall include:

(1) the names, addresses, and signatures of all persons joining in the request;

(2) a certificate of service indicating that copies of the request have been provided by hand delivery or certified mail to:

(A) the agency taking or authorizing the action for which review is sought,

(B) the applicant, if any, before the agency; and

(C) if the action was the subject of a formal adjudicative hearing, all persons who were named as parties to the proceeding or their representatives,

(3) a description of the action for which review is sought indicating the date of the agency decision and a copy of the order, permit, or other official agency decision document;

(4) a statement demonstrating, by reference to the requirements of §505.32(a)(1) and (3) of this title (relating to Requirements for Referral of an Individual Agency Action), that the action is subject to referral; and

(5) a clear and concise statement of the claimed inconsistencies with the goals and policies of the CMP, including specific reference to the applicable goals and policies and to the applicable facts in the agency's decision record.

(b) The agency taking or authorizing the action for which referral is sought and the applicant for such action may file a Reply to the Request for Referral with the council secretary. The reply must be filed with the council secretary no later than 20 days after the agency has taken or authorized the final action for which referral is sought. The reply shall include:

(1) the names, addresses, and

signatures of the persons filing the reply;

(2) a certificate of service indicating that copies of the reply have been provided by personal delivery or certified service to:

(A) the person or persons who filed the Request for Referral;

(B) the applicant, if any, before the agency; and

(C) if the action was the subject of a formal adjudicative hearing, all persons who were named as parties to the proceeding or their representatives.

(3) a clear and concise statement explaining why the action is consistent with the goals and policies of the CMP, including specific reference to the applicable goals and policies and to the applicable facts in the agency's decision record.

§505.34. Referral of an Individual Agency Action to the Council for Consistency Review.

(a) Upon receipt of a timely Request for Referral which satisfies the requirements of §505.33(a) of this title (relating to Filing of Request for Referral and Reply), the council secretary shall provide, by facsimile transmission or overnight courier, a copy to each council member. Upon receipt of a timely Reply to a Request for Referral, the council secretary shall distribute it to the council in the same manner.

(b) Council members shall consider the Request for Referral and the Reply to the Request for Referral, if any.

(c) To accept a Request for Referral, the chairman or at least three other council members must submit the action to the council secretary in writing no later than 30 days after the agency has taken or authorized the action for which referral has been requested.

(d) The council secretary will place the action on the agenda of the earliest council meeting at which consideration of the action is reasonably practicable. If no regularly scheduled council meeting will allow the council to act on the referral within 90 days of the date the council referred the action for review, the council secretary shall notify the chairman, who shall schedule a special meeting to consider the action and any other appropriate matters. Agencies may request, and the council may provide, expedited council consideration of the actions placed on the agenda

(e) The adequacy or inadequacy of a Request for Referral or Reply shall not be a reviewable issue before the council The council may, in its discretion, accept a deficient Request for Referral or Reply.

(f) No right to council review is created by this chapter.

§505.35. Council Procedures for Review of an Individual Agency Action.

(a) The council secretary shall, by certified mail or hand delivery, provide notice of the hearing at which the council will review an action to:

(1) the agency taking or authorizing the action under review;

(2) the applicant, if any, before the agency;

(3) the person(s) filing the Request for Referral;

(4) if the action was the subject of a formal adjudicative hearing before the agency, all persons who were named as parties to the proceeding or their representatives; and

(5) the governor, for the purpose of designating a local elected official to the council pursuant to Texas Natural Resources Code, §33.204(b).

(b) The notice to the applicant and the agency shall include a statement that no person may conduct activities authorized by the agency action that would irreparably alter or damage the CNRA identified in the applicable policy, except as otherwise provided by the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, Chapter 2001 (Texas APA), §2001.054.

(c) In conducting reviews, the council shall consider only:

(1) the record before the agency taking or authorizing the action under review;

(2) the agency's consistency determination;

(3) applicable laws and rules;

(4) the CMP,

(5) any additional information provided by the agency relating to the determination made pursuant to §505.30(1)(a) or (2) of this title (relating to Agency Consistency Determination); and

(6) the written and oral argument of any person regarding the goals and policies of the CMP or the additional information provided by the agency

(d) If the agency did not hold a hearing make a record, or make findings, the council may hold a hearing and make findings necessary for a complete and thorough review.

(e) The council shall review and determine whether an action is consistent with the goals and policies of the CMP no later than 90 days of the date the council referred the action for review. Failure by the council to make this determination within 60 days of the date the council referred the action precludes the council from remanding action, unless the chairman has extended the deadline for council action to 90 days.

§505.36. Standard of Council Review for an Individual Agency Action.

(a) The only basis on which the council may remand a decision of an agency is that the action is inconsistent with the goals and policies of the CMP.

(b) Following council certification of an agency's rules as consistent with the goals and policies of the CMP pursuant to subchapter B of this chapter:

(1) the council shall presume that the agency's consistency determination is valid, if such determination is documented by the underlying agency record;

(2) the burden shall be on the person filing the request for referral to demonstrate that the agency action is inconsistent with the goals and policies of the CMP; and

(3) any thresholds for referral approved by the council pursuant to §505.26 of this title (relating to Council Review and Approval of Thresholds for Referral) shall become operative and limit the council's authority to review individual actions of an agency as provided in §505.32(a)(4) of this title (relating to Requirements for Referral of an Individual Agency Action).

§505.37. Activities Pending Council Review of an Individual Agency Action. Pending council review of an individual agency action, no person may conduct activities authorized by the agency action that would irreparably alter or damage the CNRA identified in the applicable policy, except as otherwise provided by the Texas APA, §2001.054.

§505.38. Council Action on Review of an Individual Agency Action.

(a) The council may affirm an agency's consistency determination or remand the matter to the agency. The affirmation or remand must be in writing. The remand must include:

(1) specific findings stating why the action is inconsistent with the goals and policies of the CMP; and

(2) recommendations on how to

modify the action to make it consistent.

(b) The council may recommend that an agency undertake only such actions as are within the authority of the agency.

(c) The council shall take action only when a quorum exists. To affirm, remand, or reverse an action requires an affirmative vote of the majority of all council members.

§505.39. Agency Action on Remand.

(a) On remand, the agency shall modify or amend the action to make it consistent with the goals and policies of the CMP.

(b) If the agency decides not to amend or modify its action as recommended by the council, the agency shall notify the council of that decision in writing immediately. The notification shall contain the reasons for the agency's decision.

§505.40. Council Review of an Agency Action on Remand.

(a) To review an action on remand, the chairman or at least three other council members must submit the action to the council secretary in writing no later than 15 days after the agency has taken or authorized the action on remand.

(b) The council secretary will place the action on remand on the agenda of the earliest council meeting at which consideration of the item is reasonably practicable. If no regularly scheduled council meeting will allow the council to act on the agency action on remand within 60 days of the date the council referred that action for review, the council secretary shall notify the chairman, who shall schedule a special meeting to consider the action and any other appropriate matters.

(c) The council secretary shall provide notice of the hearing at which the council will review the action in accordance with §505.35(a) (relating to Council Procedures for Review of Individual Agency Actions). The council shall consider only those items listed in §505 35(c) (relating to Council Procedures for Review of Individual Agency Actions).

(d) The council shall determine whether an action is consistent with the goals and policies of the CMP within 60 days of the date the council referred the action for review. Failure by the council to make this determination within 60 days of the date the council referred the action precludes the council from reversing the action, unless the chairman has extended the deadline for council action to 90 days.

(e) If the council determines that the agency action on remand is consistent with the goals and policies of the CMP, the action is affirmed. If the council determines that the agency action on remand is inconsistent with the goals and policies of the CMP, the action is reversed. The only basis on which the council may reverse an action is that the action is inconsistent with the goals and policies of the CMP. The council decision to affirm or reverse an agency action must be in writing. A decision to reverse an agency action shall include findings and recommendations in accordance with §505. 38(a) (relating to Council Action on Review of an Individual Agency Action).

(f) The council's decision to reverse an action renders the action void. The specific activities authorized by the agency reversed by the council shall cease, except as otherwise provided by the Texas APA, §2001.054.

§505.41. Judicial Review. A person aggrieved by a final action of the council may appeal to a district court under the Texas APA, §2001.171.

§505.42. Enforcement.

(a) The attorney general, at the request of the council, shall file in a district court of Travis County, or in the county in which the violation occurs, a suit to enforce the Coastal Coordination Act or the rules adopted pursuant thereto

(b) The council shall not request that the attorney general pursue legal action against any individual for any violation of, or failure to comply with, this chapter, Chapter 501 of this title (relating to Coastal Management Program), Chapter 504 of this title (relating to Special Area Management Planning), or Chapter 506 of this title (relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies).

Issued in Austin, Texas, on June 29, 1994.

TRD-9443204 Garry Mauro
Chairman
Coastal Coordination Council

For further information, please call (512) 305-9129

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Subchapter D. Council Advisory Opinions on General Plans

• 31 TAC §§505.50-505.53

§505.50. General Plans.

General plans include any comprehensive statement in words, maps, illustrations, or other media issued by a state agency or political subdivision that recommends, proposes, evaluates, or formulates policies or future courses of action involving activities affecting coastal natural resource areas. For purposes of this section, general plans include, but are not limited to, the following:

(1) State Emergency Management Plan (Texas Government Code, §418 042);

(2) State Coastal Discharge Contingency Plan (Texas Natural Resources Code, §40.053);

(3) State Oil and Hazardous Substance Spill Contingency Plan (Texas Water Code, Chapter 26, Subchapter 26);

(4) State-Owned Coastal Wetlands Conservation Plan (Texas Parks and Wildlife Code, §14.002(a));

(5) State Water Quality Management Plan (Texas Water Code, §26 012),

(6) Artificial Reef Plan (Texas Parks and Wildlife Code, §89 021);

(7) State Water Plan (Texas Water Code, §16 051),

(8) Long-Range Dredging and Disposal Plan (Texas Parks and Wildlife Code, §14.002(b)(8)), and

(9) Regional Solid Waste Management Plans (Texas Health and Safety Code, §363 062)

§505 51. Request for a Non-Binding Advisory Opinion and Council Action

(a) An agency or political subdivision may request a non-binding advisory opinion on the consistency of a general plan described or listed in §505 50 of this title (relating to General Plans).

(b) A request for an advisory opinion shall be submitted in writing to the council secretary. The council secretary shall forward copies of the request to all council members. At the request of any council member, the council shall consider the general plan at the first reasonable opportunity

(c) Prior to council issuance of an advisory opinion, the chairman of the council may direct the Consistency Review Group, as identified in §503 31(c), to review the general plan and make a recommendation to the council regarding the consistency of the plan.

(d) The council may, after considering the general plan, issue an advisory opinion on the consistency of the general plan The council shall issue the advisory opinion within 60 days of receiving the request from the agency or political subdivision.

(e) The advisory opinion shall indicate whether actions taken pursuant to the plan are likely to be consistent or inconsistent with the goals and policies of the Coastal Management Program (CMP). The advisory opinion shall also:

(1) identify all goals and policies that apply to the general plan;

(2) identify any consistency issues of concern to the council;

(3) identify portions or provisions of the plan that are likely to lead to future inconsistent actions; and

(4) include recommendations for the resolution of consistency issues identified in paragraphs (2) and (3) of this subsection.

(f) The council may, on its own motion, issue a non-binding advisory opinion on a general plan.

§505.52. Request for Council Participation in the Development of General Plans.

(a) An agency or subdivision may request council participation in the development of a plan by submitting a written request to the council secretary. The council shall participate in the plan development according to the schedule of the agency developing the plan

(b) The council may direct the Consistency Review Group, or a subcommittee of the group, to participate in the development of the plan and make regular reports to the council.

(c) Following development of the plan, the council may issue an advisory opinion as to whether the plan will lead to future inconsistent actions only if the council determines that:

(1) actions implementing the policy directions or courses of action recommended, proposed, evaluated, or established in the plan are likely to lead to actions inconsistent with the goals and policies of the CMP; and

(2) the plan does not adequately address alternatives for resolving the potential inconsistency of those actions

(d) At the request of an agency or subdivision, the council may enter into a memorandum of agreement establishing the manner of council participation in plan development, the criteria to be used in evaluating the plan, criteria to determine the adequacy of alternatives for resolving potential inconsistencies in the plan with the goals and policies of the CMP, and such other matters as are deemed appropriate by the parties to the agreement.

§505.53 Purpose and Effect of an Advisory Opinion.

(a) The purpose of the advisory opinion is to notify the public and the agency or subdivision adopting or approving the plan whether actions taken pursuant to the plan are likely to be consistent with the goals and policies of the CMP.

(b) The advisory opinion does not ensure that any action taken pursuant to the general plan will or will not be consistent with the goals and policies of the CMP.

(c) The council's issuance of an advisory opinion does not obviate the requirement that state agencies and political subdivisions prepare consistency determinations in accordance with the requirements of this chapter or preclude council review of those actions.

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TRD-9443205 Garry Mauro
Chairman
Coastal Coordination Council

For further information, please call: (512) 305-9129

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Subchapter E. Consistency and Counsel Review of Local Government Actions

• 31 TAC §§505.60-505.74

§505.60. Local Government Actions Subject to the Coastal Management Program. For purposes of Chapters 501 and 505 of this title, the following is an exclusive list of actions taken or authorized by a local government that may adversely affect a coastal natural resource area and that therefore must be consistent with the goals and policies of the Coastal Management Program (CMP):

(1) Dune Protection Permits issued pursuant to Texas Natural Resources Code, Chapter 63;

(2) Beachfront Construction Certificates issued pursuant to Texas Natural Resources Code, Chapter 61.

§505.61. Thresholds for Referral. For purposes of limiting the Coastal Coordination Council's (council's) authority to review individual local government actions as provided in §505.64 of this title (relating to Requirements for Referral of Local Government Actions), the council hereby adopts the following thresholds for referral for those actions listed in §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program):

(1) any construction activity located within the first 200 feet landward of the line of vegetation and which results in the disturbance of more than 7,000 square feet of dunes or dune vegetation;

(2) any construction activity which results in disturbance of more than 7,500 cubic yards of dunes;

(3) any coastal shore protection project undertaken pursuant to §15.7(e) of this title (relating to Local Government Management of the Public Beach) or within 200 feet landward of the line of vegetation affecting more than 500 linear feet of Gulf beach, or

(4) a certificate or permit which results in a non-temporary closure, relocation, or reduction in existing beach access or access designated in an approved local plan.

§505.62 Local Government Consistency Determinations.

(a) Prior to the issuance of a permit or a certificate identified in §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program), a local government shall determine that the permit or certificate is consistent with the goals and policies of the CMP.

(1) For dune protection permits, the local government determination made pursuant to §15.4 of this title (relating to Dune Protection Standards) that the proposed activity will not materially weaken any dune, or materially damage any dune vegetation, or reduce the effectiveness of any dune as a means of protection against erosion and high wind and water, shall constitute a determination that such permit is consistent with CMP goals and policies.

(2) For beachfront construction certificates, the local government determination made pursuant to §15.5 of this title (relating to Beachfront Construction Standards) that the proposed activity is consistent with the beach access portion of its approved dune protection and beach access plan and does not interfere with, or otherwise restrict, the public's right to use and have access to and from the public beach shall constitute a determination that such permit is consistent with CMP goals and policies.

(b) For actions that exceed the thresholds for referral established in §505.61 of this title (relating to Thresholds for Referral), the record developed by the local government under §15.3(u)(1) of this title (relating to Administration) shall constitute the record necessary to support the consistency determinations required in subsection (a) of this section.

§505.63. Preliminary Review of a Local Government Action by the Coastal Coordi-

nation Council

(a) Prior to final action, a local government may request preliminary consistency review for any action listed in §505 60 of this title (relating to Local Government Actions Subject to the Coastal Management Program).

(b) A request for preliminary consistency review shall be submitted in writing to the secretary of the council, the chair of the Consistency Review Group (as identified in §503.31(c)), and the applicant Upon receipt of a request for preliminary consistency review, the secretary of the council shall publish notice of the request in a place and manner that will inform interested agencies and the affected public

(c) The Consistency Review Group shall convene and respond to a request for preliminary consistency review in accordance with the pertinent provisions of §505 31 of this title (relating to Preliminary Review of Individual Agency Actions by the Coastal Coordination Council)

(d) If requested by a local government, the council shall expeditiously negotiate a Memorandum of Agreement (MOA) establishing the procedures and timelines by which a local government may request and obtain a preliminary consistency review pursuant to this section

§505 64 Requirements for Referral of Local Government Actions. A local government action listed in §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program) may be referred to the council for review to determine consistency with the goals and policies of the CMP only when

(1) the local government has taken or authorized the action for which referral is sought,

(2) a request for referral has been submitted to the council in accordance with §505 65 of this title (relating to Filing of Request for Referral and Reply), and

(3) the action exceeds the thresholds for referral established in §505 61 of this title (relating to Thresholds for Referral)

§505 65 Filing of Request for Referral and Reply.

(a) To seek council review of an action identified in §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program), a council member or any person who participated in the local government permit and/or certificate process may file a Request for Referral of the action with the council secretary

(1) The Request for Referral shall:

(A) contain the names, addresses, and signatures of all persons joining in the request;

(B) contain a certificate of service indicating that copies of the request have been provided by personal delivery or certified service to:

(i) the local government taking or authorizing the action for which review is sought; and

(ii) the applicant, if other than the local government;

(C) describe the action for which review is sought, indicate the date of the local government decision, and include a copy of the order, permit, or other official local government decision document;

(D) demonstrate, by reference to the requirements of §505.64(1) and (3) of this title (relating to Requirement for Referral of Local Government Actions), that the action is one subject to referral; and

(E) include a clear and concise statement of the claimed inconsistencies with the goals and policies of the CMP, including specific reference to the applicable goals and policies and to the applicable facts in the local government's decision record

(2) The Request for Referral must be filed with the council secretary no later than 10 days after the local government has taken or authorized the action for which referral is sought

(b) The local government taking or authorizing the action for which referral is sought may file a Reply to the Request for Referral with the secretary of the council.

(1) If filed, the Reply to a Request for Referral shall:

(A) contain the names, addresses, and signatures of all persons filing the reply,

(B) contain a certificate of service indicating that copies of the reply have been provided by personal delivery or certified service to:

(i) the person or persons who filed the Request for Referral; and

(ii) the applicant, if other than the local government; and

(C) include a clear and concise statement explaining why the action is consistent with the goals and policies of the CMP, including specific references to the applicable goals and policies and to the applicable facts in the local government's decision record.

(2) The Reply to the Request for Referral must be filed with the council secretary no later than 20 days after the local government has taken or authorized the final action for which referral is sought.

§505.66 Referral of Local Government Actions to the Council for Consistency Review.

(a) Upon receipt of a Request for Referral which on its face meets the requirements of §505.65 of this title (relating to Filing of Request for Referral and Reply), the council secretary shall provide, by facsimile transmission or overnight courier, a copy to each council member.

(b) Council members shall consider the Request for Referral and the Reply to the Request for Referral, if any.

(c) To accept a Request for Referral, the chairman or at least three other council members must submit the action to the council secretary in writing no later than 30 days after the local government has taken or authorized the action for which referral has been requested.

(d) The council secretary shall add the action to the agenda of the earliest council meeting. If no regularly scheduled council meeting will allow the council to act on the referral within 90 days of the date the council referred the action for review, the council secretary shall notify the chairman, who shall schedule a special meeting to consider the action and any other appropriate matters

(e) The adequacy or inadequacy of a Request for Referral or Reply shall not be a reviewable issue before the council The council may, at its discretion, accept a deficient Request for Referral or Reply

(f) No right to council review is created by this chapter.

§505.67. Council Procedures for Review of Local Government Actions.

(a) The council secretary shall, by certified mail or hand delivery, provide notice of any hearing at which the council will review an action to:

(1) the local government taking or authorizing the action;

(2) the applicant, if other than the local government;

(3) the person(s) filing the Request for Referral; and

(4) the governor, for the purposes of designating a local elected official to the council pursuant to Texas Natural Resources Code, §33.204(b).

(b) In conducting reviews, the council shall consider only:

(1) the record of the local government taking or authorizing the action under review;

(2) the local government's consistency determination;

(3) applicable laws and rules;

(4) the CMP;

(5) any additional information provided by the local government relating to its consistency determination; and

(6) the written and oral argument of any person regarding the goals and policies of the CMP or the additional information provided by the local government.

(c) If the local government did not hold a hearing, make a record, or make findings, the council may hold a hearing and make findings necessary for a complete and thorough review.

(d) The council shall determine whether an action is consistent with the goals and policies of the CMP no later than 90 days of the date the council referred the action for review. Failure by the council to make this determination within 60 days of the date the council referred the action precludes the council from remanding or reversing the action, unless the chairman has extended the deadline for council action to 90 days.

§505.68. Standard of Council Review for Local Government Actions.

(a) The only basis on which the council may remand a decision of a local government is that the action is inconsistent with the goals and policies of the CMP.

(b) Following the General Land Office's certification of a local government's dune protection and beach access plan under §15.3 of this title (relating to Administration) as consistent with the goals and policies of the CMP:

(1) the council shall presume that the local government's consistency determination is valid, if such determination is documented by the underlying record; and

(2) the burden shall be on the person filing the Request for Referral to demonstrate that the local government action is inconsistent with the goals and policies of the CMP.

§505.69. Activities Pending Council Review. Pending council review of a local government action which is referred to the council, no person may conduct activities authorized by the local government action that would irreparably alter or damage critical dunes or dune vegetation or interfere with or restrict the public's right to use and have access to and from the public beach.

§505.70. Council Action on Review of Local Government Action.

(a) The council may affirm the local government's consistency determination or remand the matter to the local government. The affirmation or remand must be in writing. The remand shall include:

(1) specific findings stating why the action is inconsistent with the goals and policies of the CMP; and

(2) recommendations on how to modify the action to make it consistent.

(b) The council may not remand a local government action unless it determines that the action is inconsistent with the goals and policies of the CMP.

(c) The council shall take action only when a quorum exists. To affirm, remand, or reverse an action requires an affirmative vote of a majority of all council members.

(d) The council may recommend that a local government undertake only such actions as are within the authority of the local government.

§505.71. Local Government Action on Remand.

(a) The local government shall modify or amend the action on remand to make it consistent with the goals and policies of the CMP.

(b) If the local government decides not to amend or modify its action as recommended by the council, the local government shall notify the council of that decision in writing immediately. The notification shall contain the reasons for the local government's decision

§505 72. Council Review of Local Government Action on Remand

(a) To review an action on remand, the chairman or at least three other council members must submit the action to the council secretary in writing no later than 15 days after the local government has taken or authorized the action on remand.

(b) The council secretary will place the local government action on remand on the agenda of the earliest council meeting at which consideration of the item is reasonably practicable. If no regularly scheduled council meeting will allow the council to act on the local government action on remand within 60 days of the date the council referred the action for review, the council secretary shall notify the chairman, who shall schedule a special meeting to consider the action and any other appropriate matters.

(c) The council secretary shall provide notice of the hearing at which the council will review the action in accordance with §505.67(a) of this title (relating to Council Procedures for Review of Local Government Actions). The council shall consider only those items listed in §505.67(b) of this title (relating to Council Procedures for Review of Local Government Actions).

(d) The council shall determine whether an action is consistent with the goals and policies of the CMP within 90 days of the date the council referred the action for review. Failure by the council to make this determination within 60 days of the date the council referred the action precludes the council from reversing the action, unless the chairman has extended the deadline for council action to 90 days.

(e) If the council determines that the local government action on remand is consistent with the goals and policies of the CMP, the action is affirmed. If the council determines that the local government action on remand is inconsistent with the goals and policies of the CMP, the action is reversed. The only basis on which the council may reverse an action is that the action is inconsistent with the goals and policies of the CMP. The council decision to affirm or reverse a local government action must be in writing. A decision to reverse a local government action shall include findings and recommendations in accordance with §505.70(a) of this title (relating to Council Action on Review of Local Government Action).

(f) The council's decision to reverse an action renders the action void. The specific activities authorized by the local government action reversed by the council shall cease, except as otherwise provided by the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, Chapter 2001 (Texas APA), §2001.054.

§505.73. Judicial Review. A person aggrieved by a final action of the council may appeal to a district court under the APA, §2001. 171.

§505.74 Enforcement.

(a) The attorney general, at the request of the council, shall file in a district court of Travis County, or in the county in which the violation occurs, a suit to enforce the Coastal Coordination Act or the rules

adopted pursuant thereto.

(b) The council shall not request that the attorney general pursue legal action against any individual for any violation of, or failure to comply with, this chapter, Chapter 501 of this title (relating to Coastal Management Program), Chapter 504 of this title (relating to Special Area Management Planning), or Chapter 506 of this title (relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies).

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Chairman
Coastal Coordination Council

For further information, please call: (512) 305-9129

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Chapter 506. Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies

- **31 TAC §§506.11, 506.12, 506.20-506.28, 506.30-506.35, 506.40-506.44, 506.50-506.52**

The Coastal Coordination Council (council) extends the comment period for proposed Chapter 506, §§506.11, 506.12, 506.20-506.28, 506.30-506.35, 506.40-506.44, and 506.50-506.52, concerning the establishment of council procedures to ensure that actions taken or authorized by federal agencies that may adversely affect coastal natural resource areas (CNRAs) comply with the coastal management program (CMP) goals and policies. Chapter 506 is republished with changes to the proposed text as published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1932). This chapter is proposed pursuant to the authority provided in Texas Natural Resources Code, Chapter 33, Subchapter C and Texas Natural Resources Code, Subchapter F (Coastal Coordination Act), which require the General Land Office (GLO) to develop the CMP and the council to promulgate the CMP goals and policies.

General comments were received regarding the "CMP document," which was the subject of the "Notice of Availability" in the March 18, 1994, edition of the *Texas Register*. The CMP document contains descriptions of the enforceable and non-enforceable portions of the CMP. The enforceable portions of the CMP are Chapters 501, 504, 505, and 506 published in the "Proposed Sections" section of the March 18, 1994, edition of the *Texas Register*. Chapters 501, 504, 505, and 506 respectively contain: the CMP goals and policies, special area management planning; council procedures for state and local consistency with CMP goals and policies; and council procedures for federal consistency with the CMP goals and policies. The CMP document is prepared pursuant to federal requirements for approval under the Coastal Zone Management Act (CZMA), 16 United States Code Annotated, §1455(d). While portions of the CMP document describe the provisions of Chapters 501, 504, 505, and 506, the chapters, not the CMP document, are the council's enforceable policies; the chapter preambles, not the Document, may be used to determine the intent of the chapters. Based on comments received, the CMP document was reviewed and revised to ensure consistency and resolve any perceived inconsistencies within the chapters. To the extent that any conflicts are perceived when reviewing the CMP document and the chapters, or while implementing the chapters, the chapters prevail.

Editorial changes that do not alter the content of this chapter have been made to clarify meaning and to correct grammatical errors. In order to save space, similar comments and responses have been combined by section. General comments on the proposed chapter and comments on the preamble to the proposed chapter are combined at the end of the summary of comments.

Section 506.11

Reference to, and the definition of, "coastal zone" have been deleted from Chapter 506. A definition of "coastal area" has been added in §506.11, which follows the definition in Texas Natural Resources Code, §33.004(5). The reference to "coastal zone" in §506.12(a) has been replaced with "CMP boundary," as these terms cover the same geographic area. The difference between the geographic areas covered under the definitions of "coastal area" and "CMP boundary" is that the former includes the entire area within the coastal counties, while the latter specifically excludes federal lands located within the coastal counties.

Regarding the definition of "second-tier counties," as provided in §506.11, one commenter stated that Polk and San Jacinto counties should not be classified as second-tier counties, and asked whether the official list of second-tier counties is the list provided in the CMP document or the list in §506.11. Subsection 506.12(b) was amended by deleting the activities occurring in second-tier counties from the list of federal actions. (See the discussion of this revision in the response to comments on §506.12(b).) Therefore, the definition of "second-tier counties" in §506.11 has been deleted.

One commenter supported the definition of "interagency coordination group" in §506.11. No change was made based on this comment.

One commenter was opposed to the definition of "consistent to the maximum extent practicable," as provided in §506.11, and stated that federal agencies are required to comply completely, as opposed to the "maximum extent practicable." The definition of this phrase is based on the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.32. Federal activities, including federal development projects, are required to be consistent with the CMP to the "maximum extent practicable." No change was made based on this comment.

Section 506.12

One commenter requested that §506.12 be amended to include only those federal actions which may be subject to the CMP policies in Chapter 501. Section 506.12 identifies the federal actions which may adversely affect CNRAs, all of the federal actions listed in §506.12 may implicate the policies established in Chapter 501. Therefore, all federal actions identified in §506.12 must comply with the CMP goals and policies. No change was made based on this comment.

Many comments were received regarding the list of federal actions in §506.12. Seven commenters recommended various mechanisms for limiting the list, two requested that the list be expanded. One expressed general support for the list, and requested that the council not limit its review authority any further because important issues must reach the council to resolve policy. The last commenter also stated that it is often difficult to obtain federal compliance for actions not specifically listed, and recommended that the list of actions be as inclusive as possible, noting that seeking review of unlisted federal actions has often proven bureaucratic and time consuming. The Code of Federal Regulations, Title 15, Part 930, requires federal agencies to comply with a state's federally approved coastal management program and prepare consistency determinations on actions affecting CNRAs, regardless of whether their actions have been listed by the state. Therefore, the list of federal actions in §506.12 remains open-ended. However, the council will continue working with the federal agencies to identify actions for which a general concurrence or general agreement may be appropriate, thereby narrowing the number of individual federal actions subject to council review. The list of federal actions was developed with the aid and support of the federal agencies participating in a Federal Agency Task Force (FATF), created to aid in the CMP development process. The FATF did not indicate that the list was too broad. However, §505.12(b) was revised to include only those actions occurring within outer continental shelf (OCS) waters or an excluded federal land within the coastal area. The revisions were made to eliminate any duplication of activities on the state list of actions (§505.11) and the federal actions listed in §506.12(b). Based on these comments, subsection 506.12(b) has been amended by deleting §506.12(b)(1)(A)(i)-(iv), and combining §506.12(b)(1) and §506.12(b)(1)(B). Section 506.12(b)(2)(D) and §506.12(b)(2)(D)(i) have also been combined. Sections 506.12(b)(2)(D)(ii) and (iii) and §506.12(b)(2)(E)(i)-(iii) have been deleted. The list of actions within the CMP boundary remains as proposed.

One commenter stated that the CMP does not adequately address activities in coastal hazard areas. In response to this comment, §506.12(a)(1)(D) has been amended to include under the actions of the Federal Emergency Management Agency the approval or suspension of community eligibility to sell

flood insurance

Three commenters supported changes to earlier, informal draft versions of Chapter 506, reflected in §506.12(c) and (d), which eliminate duplication of the potential for council consistency reviews on National Pollution Discharge Elimination System (NPDES) permits (33 United States Code Annotated, §1342) and similar federal/state permits No change was made based on this comment

One commenter stated that the terms "minor" and "small," as used in §506 12(a)(1)(A) and (a)(1)(C)(i) and (iii), are unclear The terms "small" and "minor" are statutory terms defined in the federal statutes cited in §506 12(a)(1)(A) and (a)(1)(C)(i) and (iii) No change was made based on this comment

One commenter requested that §506 12(a)(1)(F) be amended to mention excluded federal lands, even as a cross-reference. Section 506 12(a) lists the federal activities, development projects, licenses, and permits within the CMP boundary that may adversely affect CNRAs The CMP boundary, as defined in §503.1 of this title (relating to Coastal Management Program), specifically excludes federal lands Therefore, this subsection does not include any federal actions located on federal lands However, §505 12(b)(1) includes federal activities on federal lands No change was made based on this comment

Two commenters stated that §506 12(a)(2)(A)(v), identifying the Environmental Protection Agency's (EPA) pesticide registration requirements as a federal action included within the CMP, impacted the practices of the agriculture industry which had not been properly addressed in the CMP. Because the registration of pesticides is not site-specific (e g , the registration applies throughout Texas, regardless of the application site(s)), and any adverse effects resulting from pesticide application is covered by §501.14(g) , relating to the CMP policy for nonpoint source pollution, §506 12(a)(2)(A)(v) has been deleted

One commenter requested deletion of §506 12(a)(2)(F), which identifies certain Nuclear Regulatory Commission (NRC) licenses as federal actions which may adversely affect CNRAs, because the council has not adopted enforceable policies applicable to such actions There is no CMP policy which specifically pertains to such NRC actions, however, those actions will have to be undertaken in compliance with the CMP goals and policies which are applicable (e g , a NRC license issued for an activity located in a critical area must be consistent with the critical areas policy, provided in §501 14(h)) No change was made based on this comment

One commenter asked whether all Texas Department of Transportation projects receiving federal funding will be subject to the consistency review process Pursuant to §506 12(a)(3)(C), only federally funded highway projects requiring preparation of an environmental impact statement (EIS) or an environmental assessment (EA), pursuant to the National Environmental Policy Act (NEPA), 42 United States Code Annotated, §§4321-4370c, will be subject to consistency review. No change was made based on this comment.

One commenter requested that §506 12(b), relating to federal actions included in the CMP, be amended to distinguish federal actions occurring in the second-tier counties from federal actions occurring in OCS waters Section 506 12(b) has been amended to include only those federal actions within OCS waters or on excluded federal lands within the coastal area Therefore, the commenter's requested revision was not included

One commenter requested identification of impacts to farms and ranches resulting from §506 12(b)(1) and (2), which identifies the federal activities, development projects, licenses and permits occurring outside the CMP boundary which are included in the CMP Because §506 12(b) does not list any activities landward of the CMP boundary, farms and ranches should not be impacted by the provisions in §506 12(b)(1) and (2) No change was made in response to this comment

One commenter stated that §506 12(b)(1)(B), which provides that activities occurring "within federal lands excluded from the CMP boundary but which affect coastal natural resource areas" are included in the CMP, appears to include all federal lands located in Texas, and recommended that §506 12(b)(1)(B) should be limited to the CMP area Pursuant to revisions of §506 12(b), the council has limited its jurisdiction over federal actions occurring outside the CMP boundary to federal actions occurring within OCS waters or on excluded federal land located within the coastal area The coastal area is comprised of those counties included in the CMP boundary Federal lands within the coastal area are expressly excluded from the boundaries of the CMP However, federal law specifically authorizes the inclusion of federal actions occurring outside the CMP boundary The CZMA, 16 United States Code Annotated, §1456(c)(1)(A), provides that each "federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable" with the enforceable CMP goals and policies In addition, CZMA, 16 United States Code Annotated §1456(c)(1) (C), requires federal agencies to prepare consistency determinations for federal activities occurring on federal lands outside the coastal area that affect CNRAs

Concerning §506 12(c), five commenters stated that the Texas Natural Resource Conservation Commission (TNRCC) wastewater discharge permit thresholds should apply to EPA NPDES permits to ensure that EPA and TNRCC permits authorizing the same actions are subject to the same procedural limitations for council consistency review. A commenter asked how the council would handle review of NPDES permits Another commenter requested specific thresholds for industrial and municipal discharges (excluding stormwater discharges), and yet another commenter recommended that the council waive its jurisdiction over all NPDES permits Regarding the first comment, §506 12(c) provides that federal consistency certification requirements are waived for those NPDES permits authorizing discharges requiring equivalent TNRCC permits Regarding the second comment, it is within the TNRCC's discretion to adopt appropriate thresholds for consistency review, therefore, any suggestions regarding specific thresholds should be directly addressed to the TNRCC Section 506 12(c) has not been amended to exclude all NPDES permits from the federal consistency certification requirements because such permits authorize discharges which may adversely affect CNRAs, and are therefore properly included in the CMP, pursuant to Texas Natural Resources Code, §33 205(a) No changes were made based on these comments

One commenter requested that §506 12(d) be amended to waive the council's jurisdiction to review federal actions below thresholds approved for equivalent state agency actions Pursuant to §505 27, state agencies are authorized to adopt thresholds which, after council approval, will limit the actions below the threshold that may be referred to the council for consistency review, as provided in §505 33 Thresholds must be adopted by state agencies and approved by the council, therefore, it would be inappropriate to allow state thresholds to limit the council's ability to refer and review federal agency actions However, general consistency agreements and general concurrences, respectively provided in §506 28 and §506 35, may be used to limit the council's ability to refer and review individual federal agency actions No change was made based on these comments

One commenter requested clarification of §506 12(d), which provides the procedure for applicants to request that the council designate either the state or the federal permit, but not both, as potentially subject to consistency review when equivalent state and federal permits are required The commenter recommended that §506.12(d) be amended to include a schedule for council designation of either the federal or state permit as "the consistency permit" to avoid undue delay in the permitting process The schedule by which state and federal agencies consider permit applications and decide whether to issue permits varies, therefore, a uniform schedule for council designation of "the consistency permit" would not easily mesh with the existing processes of the state and federal agencies However, the council may issue general direction on the process, as provided in §506 12(d) No change was made based on this comment

Section 506 20

One commenter stated that consistency of federal actions should not be contingent on "adequate consideration" of CMP policies which are in the nature of recommendations, and requested that the language to that effect be deleted from §§506 20(2), 506 30(b)(5) and 506 40(b)(4) Most of the provisions in Chapter 506 are based on the federal regulations governing federal agency compliance with federally approved coastal management programs, the language to which this commenter refers is based on the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930 39(c) Deleting this language, as suggested by the commenter,

would not affect federal agencies' obligation to adequately consider the CMP's nonenforceable policies. Retaining the language provides more effective public notice of the federal requirements with which federal agencies must comply, therefore, this provision has not been deleted.

Section 506.21.

One commenter recommended that §506.21(a) be amended to provide for a finding of no adverse effect instead of a "negative determination" to avoid confusing the concepts of adverse effects on CNRAs and consistency with the CMP goals and policies. The commenter noted that §505.30(a)(2) does not require a consistency determination if the pertinent state agency determines that an activity will not adversely affect a CNRA. The federal agency negative determination required by §506.21(a) essentially has the same substantive effect as the state agency finding of no adverse effects on CNRAs required by §505.30(a)(2). The terminology differs because §506.21(a) is based on the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.35(d), which uses the phrase "negative determination." No change was made based on this comment.

One commenter recommended that §506.21 be amended to clarify that it applies to all federal actions, not just federal activities or development projects. The Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.35(d) provides that federal agencies may submit negative determinations for federal "activities" (to states with federally approved coastal management programs). The Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.31 provides that a federal activity "does not include the issuance of a federal license or permit to an applicant or person or the granting of federal assistance to an applicant agency." Therefore, no change was made to this subsection based on this comment.

Section 506.22.

One commenter questioned the basis for general consistency determinations under §506.22. General consistency determinations are authorized by the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.37(b), which provides that such determinations "may only be used in situations where the incremental actions are repetitive or periodic, substantially similar in nature, and do not directly affect the coastal zone when performed separately." Provided that these requirements are met, federal agencies may issue a general consistency determination. It is anticipated that federal agencies will utilize the general consistency determination option to avoid case-by-case consistency review of minor actions. No change was made based on this comment.

One commenter requested that §506.22(b) be revised to require that federal agencies consult with the council at the council's request because "periodic" consultations (on incremental actions authorized pursuant to a general consistency determination) are too open-ended. Section 506.22(b) reflects the requirement imposed by the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.37(b), which provides, "if a Federal agency issues a general consistency determination, it must thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken." Therefore, no change was made based on this comment.

Section 506.23.

Regarding §506.23, one commenter stated that the experience of other states with phased consistency determinations has been "tricky," and that the process can be a slippery slope after issuance of a first approval because of the inevitable political and financial pressures that develop in support of a project. The commenter recommended that the council approach phased consistency conservatively, and use cautionary and conditional language with all early statements regarding determinations made under this section. The council will consider consistency determinations on development projects carefully. No change was made to this section based on this comment.

Concerning §506.23, one commenter stated that draft EISs that are not finalized prior to federal approval of the CMP are subject to the full consistency review process and expressed concern that the potential for consistency review would adversely impact the relocation of the Navy's Mine Warfare Center of Excellence in Corpus Christi, Texas. As provided in §506.24(b), consistency determinations are required for phased development projects described in §506.23(b). Phased development project decisions which were specifically described, considered and approved prior to management program approval (e.g., in a final EIS issued pursuant to the NEPA) are specifically exempted from the consistency determination requirement, pursuant to the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.38(b). The commenter correctly noted that this exemption does not include draft EISs, however, the purpose of federal consistency review is to ensure greater coordination and cooperation between the federal agencies and the state to allow for the protection of CNRAs. The council will coordinate with the federal agencies prior to federal approval to ensure an efficient federal consistency review process. No change was made based on this comment.

Section 506.24.

One commenter supported §506.24(a), and suggested that it would be helpful to determine the number of projects where the pertinent federal agency retains discretion to reassess and modify an ongoing activity (and therefore require a federal consistency determination), in terms of the demands on staff subsequent to federal approval of the CMP. The council will rely on General Land Office (GLO) staff to assess the number of ongoing activities requiring consistency determinations pursuant to §506.24(a). No change was made to this subsection based on this comment.

Regarding §506.24(c), nine commenters suggested a phased-in approach to maintenance dredging of commercially navigable channels. Two of the nine commenters stated that such projects should be phased in over a period of no less than five years. The other commenters suggested a three to five year phase-in period. The council will consider entering into an agreement with the United States Army Corps of Engineers to phase in council review of maintenance dredging activities. No change was made based on this comment.

Two commenters supported §506.24(c), relating to ongoing maintenance of commercially navigable channels, for projects initiated prior to CMP approval. One of the commenters suggested that §506.24(c) should be amended to clarify that "CMP approval" means approval by the United States Department of Commerce. Section 506.24(b) and (c) has been amended to clarify that "approval" refers to federal approval.

Section 506.25. One commenter requested identification of the state entity that will receive federal consistency determinations and certifications. The public notice provisions (§§506.25, 506.32 and 506.41), include a new subsection (d), which requires that, after the comment period closes, the chairman must issue a written decision to refer the matter to the council or not to refer the matter to the council. This new subsection also provides that upon issuance of the chairman's decision, the council secretary will immediately notify the council members, the applicant, the federal agency, and any other affected parties.

Four commenters recommended that Chapter 506 be amended to provide for public notice and comment in only one section, as opposed to three sections (§§506.25, 506.32, and 506.41). The rule has not been amended to consolidate the public notice and comment requirements in §§506.25, 506.32 and 506.41, because these subsections apply to substantively different portions of the chapter.

Section 506.26.

Two commenters stated that the schedule for council review of federal activities, provided in §506.26, appeared excessive. Another commenter objected to the presumption of council agreement, as provided in §506.26(c). The schedule for council response to federal consistency determinations and the presumption of agreement is provided in the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.34 and §930.35. Because §506.26 is based on federal requirements, no change was made to this section based on this comment.

Section 506.27.

Regarding §§506.27(b), 506.34(b), 506.43(b) and 506.52, one commenter recommended that the council establish hearings procedures for admitting evidence, providing opportunity for public comment, and standards of review. The commenter also questioned the effect of a council decision to disagree with a consistency determination, pursuant to §506.27. For review of federal and state actions, the council will develop procedures governing receipt of evidence, public participation, and general practice before the council. A council decision to disagree with a federal consistency determination does not prohibit the federal agency from proceeding

with a proposed action The CZMA, 16 United States Code Annotated, §1456, requires federal agencies to comply with the CMP to the maximum extent practicable, however it does not require federal agencies to cease all actions pursuant to a council decision to disagree The council may, in cases of "serious disagreements," seek secretarial mediation as provided in §506 27(e) or may seek an injunction against the federal agency in court No change was made based on this comment

One commenter requested the addition of a definition of the term "assistant administrator," as used in §§506 27(c), 506 34(c), 506 43(b) and (c), and 506 52(b) Based on this comment, a definition of "assistant administrator" has been added to §506 11

One commenter asked for clarification of the effect of council disagreement on the grounds of insufficient information to make a consistency determination, as provided in §§506 27(d)(3), 506 34(d)(3), 506 43(d)(3), and 506 52(c)(3), and asked whether the federal agency applicant may submit additional information and request a new hearing As provided in §506 27(d)(3), the council may disagree with a federal agency's consistency determination if the council finds that the federal agency failed to submit sufficient information to support the determination As previously discussed in response to a comment on §506 27(b), the effect of a council decision to disagree with a federal agency's consistency determination does not prevent the federal agency from proceeding with the action If the council disagrees with a federal consistency determination on the basis of failure to submit insufficient information, the federal agency may submit the requested information and may request that the council reconsider its decision, however, in cases where the council objects to a consistency determination on the grounds of insufficient information the federal agency is prohibited from issuing the federal license or permit or approving the application for federal assistance No change was made based on this comment

Section 506 28

One commenter asked whether the interagency coordination group (ICG) referenced in §506 28(b) will be a standing committee included in the CMP organizational structure, or an ad hoc committee organized around specific development projects The ICG, defined in §506 11, is anticipated to be an ad hoc committee established to facilitate review of particular projects The membership of the ICG will vary depending on the location of the project and other factors No change was made based on this comment

Regarding §506 28, one commenter supported the mechanisms to avoid duplicative consistency reviews of projects subject to an ICG comprehensive review The commenter recommended revisions to subsection (b) of this section to include federal activities, as well as development projects Section 506 28(a) describes the council's authority to issue general consistency agreements with respect to both federal activities and development projects The general consistency agreement provisions in §506 28(b) govern federal development projects, but use of a similar process for federal activities is not precluded. No change was made based on this comment

Section 506 30

Five commenters stated that too much information is required in §506 30. Four commenters suggested that a copy of the federal license or permit application or OCS plan with a one-page description of the project and its location would suffice The information requirements in §506 30(b)(2), (4), and (5), now §506.30(b)(1), (3), and (4), are based on the federal requirements provided in the Code of Federal Regulations, Title 15, Part 930, Subpart D, §930 58 Section 506 30(b)(3), now §506 30(b)(2), is designed to coordinate the review of all permits associated with one project Based on these comments, §506 30(b)(1) has been deleted, and §506 30(b)(2), now §506 30(b)(1), has been amended to provide that applicants may submit the federal application and supporting materials to meet the requirements for information in §506 30(b)(2), now §506 30(b)(1)

One commenter stated that applicants should be required to identify and address each specific relevant policy in the consistency certification to avoid a generalized statement or the submission of a general EA Applicants must identify all relevant policies in the findings required under §506 30(b) (5), now §506 30(b)(4), and the findings should be supported in the consistency certification Failure to fully analyze applicable policies may impede council consideration or, if information is insufficient, result in a council objection to a consistency certification No change has been made to this section based on this comment

Regarding §506 30, one commenter requested a definition of an administratively complete consistency certification Another commenter requested that the federal consistency review process be revised to incorporate the language regarding administrative completeness, as provided in §504 2(c) Section 506.30(b) establishes the information requirements for an administratively complete consistency certification In addition, §506 30(d) provides that if the council has not informed the applicant of the need for additional information within 15 days of receipt of the consistency certification, then the consistency certification is considered administratively complete Thus, a consistency certification is considered administratively complete 15 days after the date of receipt by the council secretary, unless the council notifies the applicant of the need for additional information within the 15-day period No change was made based on this comment

Regarding §506 30(c), one commenter asked how state and federal permits required for the same activity will be consolidated for purposes of consistency review Two commenters requested that §506 30(c) be amended to allow a single review for projects requiring multiple federal or state actions To facilitate and streamline council review, §506 30(c) requires that, to the extent practicable, applicants provide the council with consistency certifications on all federal permits associated with a project at the same time Pursuant to §506 30(b)(3), applicants are required to provide a list of any federal, state, and local permits (subject to the CMP) which are associated with an action that received a consistency certification Subsection 506 30(c) establishes a general process to allow for some flexibility. The council will publish a "manual of operations" detailing each step of the consistency review process, and the council will refine the manual as its experience with the process increases Consequently, no changes were made in this section

One commenter supported the language of §506 30(b)(5) which provides that advisory policies are to be adequately considered and requested the addition of stronger language, such as "fully" or "strongly" considered Section 506 30(b)(5) is identical to the federal provisions in the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930 58(a)(4) No change was made based on this comment

Section 506 32

One commenter requested deletion of the provision allowing an extension of the public comment period in §506 32(c), and stated that the extension was unnecessary Generally, the public comment period provided pursuant to §506 32(c) will be no more than 30 days An extended comment period may be appropriate for large projects involving several federal permits Therefore, no change has been made to this subsection based on this comment

Section 506 33

Nine commenters objected to the length of the schedule for consistency review of federal licenses and permits and OCS plans, and recommended reducing the schedule by one-half One commenter stated that the schedule should be shortened for minor federal actions, such as nationwide 404 permits issued pursuant to the Federal Clean Water Act, 33 United States Code Annotated, §1344 Section 506 33(e) and §506 42(e) provide for the conclusive presumption of the council's concurrence with consistency certifications for federal licenses and permits, if the license or permit has not been referred to the council within 90 days of submission of the consistency certification to the council secretary Section 506 34(a) and §506.43(a) require the council to concur with or object to a consistency certification within 180 days of submission of the consistency certification to the council secretary These schedules were not changed for the following reasons First, these schedules are established in the Code of Federal Regulations, Title 15, Part 930. Second, the schedule relates back to the filing of the consistency certification, which must be filed at the same time the applicant files the application with the federal agency Finally, shortening the schedule may result in the referral of more federal actions than would otherwise be the case, because there would be less time for the applicant to resolve any differences with the council Therefore, no change was made based on these comments

One commenter requested amendments to §§506 33, 506 34, 506 42 and 506 43, which would limit the council's review to the applicant's consistency certification, excluding review of the federal license or permit Section 506. 34 and §506.43 have been amended to clarify that it is the applicant's consistency certification that is the subject matter of the council's objection or concurrence However, §506 33 and §506 42 were not amended These sections continue to reference federal licenses and permits, because the actions the council will refer include federal licenses and permits, listed in §506 12(a)(2) and (b)(2)

One commenter stated that §506 33(a) appears to allow the chairman to initiate council review of any federal license or permit, whether or not the project is located seaward of the CMP boundary, and recommended that council review be limited to federal licenses and permits for projects located seaward of the boundary To be eligible for referral to the council, a federal action must be identified in §506 12(a) or (b), and must adversely affect a CNRA No change was made based on this comment

Section 506 35

A commenter stated that one way to address inconsistency between state and federal consistency requirements is to develop "general concurrences." The commenter recommended that the GLO identify the federal activities and permits for projects eligible for general concurrences in the council's final rules The commenter further stated that general concurrences should be used to adopt "federal thresholds" identical to state thresholds Section 506 35 provides for council development of general concurrences, which may be used to exempt a class of minor actions from the requirements that applicants prepare consistency certifications and from the procedures for council review of individual consistency certifications, in accordance with the Code of Federal Regulations, Title 15, Part 93, Subpart D, §930 53(c) The GLO will identify those actions suitable for general concurrences and submit recommendations regarding those actions to the council No change has been made based on this comment

Regarding §506 35, one commenter asked whether general concurrences provide an opportunity to develop a Memorandum of Agreement (MOA), or if they are only appropriate for a certain level of activities A general concurrence is only appropriate for a class of actions having relatively minor impacts on CNRAs A general concurrence is similar to a general permit, and will include an identification of actions covered and the conditions that must be met when performing such actions Persons filing applications for actions covered by a general concurrence will not have to submit consistency certifications to the council No change has been made based on this comment

A commenter stated that tailoring general concurrences around geographic areas is a sound idea that reflects some of the latest thinking about integrated ecosystem management Identifying the geographic area subject to the general concurrence, issued pursuant to §506 35, may be appropriate on a case-by-case basis, however, no change has been made based on this comment

Section 506 40

One commenter recommended that §506 40 be amended to require applicants to provide consistency certifications to the secretary of the interior, as opposed to the council secretary, and rely on the secretary of the interior to forward a copy of the certification to the council The CZMA, 16 United States Code Annotated, §1456(c)(3)(B), requires applicants to attach consistency certifications for all licenses and permits described in detail in plans submitted to the secretary of the interior However, the CZMA, 16 United States Code Annotated, §1456(c)(3)(B), requires all applicants for federal licenses and permits to submit consistency certifications to the council Routing consistency certifications through the secretary of the interior to the council is contrary to federal law and might unnecessarily delay council consideration Therefore, no change was made based on this comment

Section 506 41

One commenter recommended that §506 41 be amended to require that the "applicant" provide public notice of consistency certifications on OCS plans To ensure uniform public notice, the council will publish notice of consistency certifications No change has been made based on this comment

Section 506 42

Concerning §506 42(c), one commenter stated that confusion may result from the requirement that the council secretary shall place the action on the agenda of the earliest council meeting at which consideration of the action is "reasonably practicable," and recommended that the subsection be amended to provide a minimum time limit or standardized schedule The second sentence of §506 41(c) provides that if no regularly scheduled meeting will allow the council to consider the action within 90 days, the chairman shall schedule a special meeting to consider the action This provision clarifies that "reasonably practicable" means no later than 90 days after receipt of the consistency certification Therefore, no change has been made based on this comment

Section 506 50

Regarding §506 50, one commenter questioned the need for council review of applications for federal assistance because, in virtually all situations, the project will require at least one state or federal permit The commenter stated that consistency issues should not be raised in the context of funding Consistency review of federal assistance to state and local governments is required by the Code of Federal Regulations, Title 15, Part 930. Subpart F Throughout the CMP development process, many people expressed a preference for early resolution of consistency issues The review of federal assistance projects involves the council at the earliest stages of project development, prior to commitment of significant resources to the project No change has been made to this section based on this comment

Concerning §506 50, one commenter requested a definition of "the state single point of contact for the Texas Review and Comment System" Section 506 11 has been amended to include a definition of "state single point of contact, " as suggested by this commenter.

General Comments

One commenter stated that the optimum regulatory structure for a CZMA program would provide the TNRCC with authority over all federal consistency matters, and suggested that the GLO be designated to represent the council as a statutory party at any permitting agency upon a majority vote of the council Texas Natural Resources Code, §33 206(d), provides that the council shall review federal actions for consistency with the CMP goals and policies Using separate entities to conduct federal and state consistency review may result in different application and/or interpretation of the CMP goals and policies No change was made based on this comment

A commenter supported the language on federal consistency No change was made based on this comment

One commenter questioned whether the United States Navy's regulations are eligible for rule consistency certification, as are state agency rules, pursuant to §505 20 The Code of Federal Regulations, Title 15, Part 930, upon which Chapter 506 is based, does not provide for rule certification for federal agencies No change was made based on this comment

One commenter stated that consistency reviews will frustrate the state goal of coordinating and streamlining the environmental permitting process, and that the council's authority to review agency actions for consistency with the CMP is tantamount to another separate permitting process that may double regulatory lag, add considerably to development costs, and amplify opportunities for frivolous reviews The consistency review process is not intended to be, nor is it, a separate permitting process Moreover, the consistency review process includes mechanisms to coordinate and streamline permitting processes The consistency review process will evolve to accomplish the long-term goals of coordinating and streamlining these processes No change was made based on this comment

One commenter disagreed with the conclusion in the preamble that the CMP will have minimal fiscal impact An additional cost/benefit analysis will be prepared prior to federal approval of the program No change was made based on this comment

One commenter stated that the efficient and continuous implementation of a federal consistency process for the CMP depends, in part, on institutionalizing the agreements and procedures with each federal agency The commenter also stated that the spirit, intent, role, and importance of these procedures can be reinforced for existing and future agency staff via MOAs signed by each agency with the proper formality at the highest level The GLO and the United States Army Corps of Engineers have discussed development of an MOA regarding federal consistency review of

maintenance dredging activities Other federal agencies have also expressed interest in developing MOAs to ensure an easier transition. The council will coordinate with federal agencies to develop MOAs No change was made based on this comment.

A commenter recommended addition of a specific statement that the CMP will not delay processing or issuance of agency permits to municipalities The council has worked diligently to ensure that the CMP does not unreasonably delay the processing or issuance of agency permits to any applicant However, a statement promising no delay for a class of applicants is inappropriate and may not be true in isolated cases Both the federal and state consistency review processes include deadlines for council action If the council does not meet these deadlines, the council is prohibited from exercising its review authority Therefore, no change was made based on this comment

Five commenters requested that the votes of at least three council members be required to initiate council review of a federal action Two other commenters stated that §§506 26(a), 506 33(a) and 506 51(a) should be revised to require council review of federal activities or development projects upon referral by any council member, rather than exclusively limiting this authority to the chairman Texas Natural Resources Code, §33.206(d), provides that the council shall review a federal action submitted to the council by the council chairman The statute does not allow council members to submit a federal action to the council for review No change was made based on these comments

One commenter requested that the CMP provide specific means to review and veto United States Army Corps of Engineers projects, when necessary Another commenter asked for clarification of the council's authority to prohibit federal actions after federal approval of the CMP The CZMA does not provide for a state "veto" of federal agency actions (e g , United States Army Corps of Engineers projects) Instead, the council will review federal development projects, when submitted by the chairman, and either agree or disagree with the federal agency's consistency determination A council decision to disagree with a federal consistency determination does not prohibit the federal agency from proceeding with the development project The council will coordinate with the United States Army Corps of Engineers and other federal agencies to ensure that their actions comply with the CMP goals and policies to the maximum extent practicable No change was made based on this comment

A commenter requested that the council designate someone to address items such as "pre-consistency review" or to assist sponsors of local activities under the CMP The staff of the GLO will be available to consult with local sponsors and to provide technical assistance on federal projects, as provided in Texas Natural Resources Code, §33 204(d) No change was made based on this comment

Three commenters requested that federal agencies be allowed to establish threshold levels for federal actions Another commenter requested the establishment of the federal thresholds prior to rule adoption. State agencies and local governments may establish thresholds for referral of their actions to the council. As a product of state law, thresholds are inappropriate in the federal consistency process. However, general consistency agreements and general concurrences, respectively provided in §506.28 and §506.35, may be used to limit council review of individual federal agency actions No change was made based on these comments

A commenter stated that the federal consistency provisions do not parallel the state consistency provisions The federal consistency process is necessarily different from the state consistency process, due to the requirements of the Code of Federal Regulations, Title 15, Part 930 No changes were made based on this comment.

One commenter stated that one good aspect of the CMP is the requirement that federal agencies must meet the state requirements for consistency. No change was made based on this comment

One commenter stated that affected industries should be included in the consistency review process The Coastal Coordination Act, Texas Natural Resources Code, Subchapter F, establishes the council as the governmental body responsible for conducting state and federal consistency reviews This chapter and Chapter 505, governing council review of state agency and local government actions, provide for public participation in the review process. No change was made based on this comment

One commenter stated that the language contained in the preamble to proposed Chapter 506 limits national security considerations to national emergencies The preamble to proposed Chapter 506 does not narrow scope of national security considerations "National security" is identified in Chapter 10 of the CMP document as "in the national interest," and §501 13 of this title requires state agencies to consider the national interest when making decisions No change was made based on this comment

A commenter supported the language in the preamble to proposed Chapter 506 regarding the reasons why Texas is promulgating regulations on federal consistency. No change was made based on this comment

One commenter stated that the phrase "state's rights," as used in the preamble to proposed Chapter 506, is an inflammatory statement that may polarize support for and/or opposition to the CMP The commenter stated that characterizing federal consistency as an opportunity for coordination, cooperation, and partnerships may be more advantageous The statement was not intended to polarize support for and/or opposition to the program Rather, it was intended to recognize one of the prime benefits of federal approval, namely federal agency compliance with CMP policies No change was made based on this comment.

List of commenters Calhoun County Navigation District, Champion International Corp , Coastal Bend Sierra Club, Corpus Christi Chamber of Commerce; Exxon Chemical Company, Freese-Nichols, Inc ; Friendswood Development Company; Gulf Coast Waste Disposal Authority; Higman Barge Lines; Hollywood Marine, Inc., Houston Lighting and Power; Maryland Marine, Inc.; Matagorda County Navigation District Number 1; Mitchell Energy and Development Corp ; Offshore Operators Committee; Organization for the Preservation of an Unblemished Shoreline; Oryx Energy Co.; Port of Brownsville; Port of Corpus Christi, R C. Deal and Associates, Railroad Commission of Texas, Shell Western E&P, Inc.; SpectraOne; Sportsmen Conservationists of Texas, Texaco, Inc , Texas Chemical Council, Texas Committee on Natural Resources; Texas Department of Agriculture; Texas Ecologists; Texas Mid-Continent Oil and Gas Association, Texas Municipal League; Texas Ports Association, Texas Poultry Federation, Texas Water Conservation Association, United States Army Corps of Engineers, United States Coast Guard, United States Department of the Interior, Minerals Management Service, United States Fish and Wildlife Service, United States Naval Air Station, Corpus Christi, Valero Refining Co ; Waste Management, Inc

§506 11. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise

Applicant–Any individual, public or private corporation, partnership, association, or other entity organized or existing under the laws of any state, or any state, regional, or local government that, following management program approval, files an application for a federal license or permit to conduct an activity affecting the Coastal Management Program (CMP) area.

Applicant agency–Any unit of state or local government or any related public entity such as a special purpose district, which, following federal CMP approval, submits an application for federal assistance

Assistant administrator–The assistant administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, United States Department of Commerce

Associated facilities–All proposed facilities

(A) which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a federal action (e g , activity, development project, license, permit, or assistance), and

(B) without which the federal action, as proposed, could not be conducted

CMP boundary–The CMP boundary established in §503 1 of this title (relating to the Coastal Management Program Bound-

ary)

Coastal area-The geographic area comprising all the counties in Texas which have any tidewater shoreline, including that portion of the bed and water of the Gulf of Mexico within the jurisdiction of the State of Texas.

Consistency certification-The statement submitted by an applicant for a federal license or permit subject to federal consistency review certifying that the proposed activity complies with the goals and policies of the CMP.

Consistency determination-The statement and supporting documentation submitted by a federal agency undertaking or planning an activity subject to federal consistency review certifying that the activity is consistent with the CMP, to the maximum extent practicable.

Consistent to the maximum extent practicable Being fully consistent with the CMP unless compliance is prohibited based upon the requirements of existing law.

Federal action-A federal activity, federal license or permit, or federal assistance as defined in this section.

Federal activity-Any function performed by or on behalf of a federal agency in the exercise of its statutory responsibilities including federal development projects but not issuance of a federal license or permit

Federal assistance Assistance provided under a federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other forms of financial aid.

Federal license or permit-Any authorization, certification, approval, or other form of permission which any federal agency is empowered to issue to an applicant, including renewals and major amendments of federal license and permit activities not previously reviewed by the state, renewals and major amendments of federal license and permit activities previously reviewed by the state which are filed after, and are subject to, amendments not in existence at the time of original state review, and renewals and major amendments of federal license and permit activities previously reviewed by the state which will cause effects within the CMP area substantially different from those originally reviewed by the state

Interagency coordination group-For purposes of the general agreement in §506.28 of this title (relating to General Consistency Agreements), a group established to review proposed federal development projects and whose duties include, among other things, advising on the consistency determination. Voting members of the group shall include, at a minimum, representatives of the local project sponsor and federal and state natural resource and regulatory agencies with jurisdiction over the project The group shall seek and promote broad participation by local governments and coastal citizen groups

Outer continental shelf (OCS) plan-any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 United States Code Annotated, §§1331-1356) and the regulations promulgated thereunder, which is submitted to the secretary of the interior or a designee following CMP approval and which describes in detail federal license or permit activities.

State single point of contact-the state single point of contact for the Texas Review and Comment System (1 TAC §5.194, relating to Definitions).

§506.12. Federal Actions Subject to the Coastal Management Program.

(a) For purposes of this section, the following federal actions within the CMP boundary may adversely affect coastal natural resource areas (CNRAs):

(1) Federal Activities and Development Projects:

(A) United States Department of the Interior. Minor and technical modifications to the boundaries of the Coastal Barrier Resource System under 16 United States Code Annotated, §3503;

(B) United States Environmental Protection Agency. Selection of remedial actions under 42 United States Code Annotated, §9604;

(C) United States Army Corps of Engineers

(i) small river and harbor improvement projects under 33 United States Code Annotated, §577;

(ii) water resources development projects under 42 United States Code Annotated, §1962-d,

(iii) small flood control projects under 33 United States Code Annotated, §701s,

(iv) small beach erosion control projects under 33 United States Code Annotated, §426g,

(v) operation and maintenance of civil works projects under the Code of Federal Regulations, Title 33, Parts 335 and 338; and

(vi) dredging projects under the Code of Federal Regulations, Title 33, Part 336,

(D) Federal Emergency Management Agency:

(i) model floodplain ordinances;

(ii) promulgation of floodplain rules; and

(iii) approval or suspension of a community's eligibility to sell flood insurance under the Code of Federal Regulations, Title 44, Part 59;

(E) General Services Administration:

(i) acquisitions under 40 United States Code Annotated, §602 and §603; and

(ii) construction under 40 United States Code Annotated, §605;

(F) All federal agencies. All other development projects.

(2) Federal License and Permit Activities:

(A) Environmental Protection Agency:

(i) National Pollution Discharge Elimination System (NPDES) permits under 33 United States Code Annotated, §1342;

(ii) ocean dumping permits under 33 United States Code Annotated, §1412;

(iii) approvals under 42 United States Code Annotated, §6924(d); and

(iv) approval of National Estuary Program Comprehensive Conservation Management Plans under 33 United States Code Annotated, §1330f;

(B) United States Army Corps of Engineers:

(i) ocean dumping permits under 33 United States Code Annotated, §1413;

(ii) dredge and fill permits under 33 United States Code Annotated, §1344,

(iii) permits under 33 United States Code Annotated, §401;

(iv) permits under 33 United States Code Annotated, §403; and

(v) Memoranda of Agreement for mitigation banking;

(C) United States Department of Transportation:

(i) approvals under 23 United States Code Annotated, §106; and

(ii) approvals under 33 United States Code Annotated, §525;

(D) Federal Aviation Administration Certificates under 49 United States Code Annotated, §1432;

(E) Federal Energy Regulatory Commission:

(i) certificates under 15 United States Code Annotated, §717f;

(ii) licenses under 16 United States Code Annotated, §797; and

(iii) exemptions under 16 United States Code Annotated, §2705;

(F) Nuclear Regulatory Commission Licenses under 42 United States Code Annotated, §2133

(3) State and Local Government Applications for Federal Assistance.

(A) United States Environmental Protection Agency. Funding for nonpoint source (NPS) abatement to cities with populations exceeding 100,000 under 33 United States Code Annotated, §1329.

(B) United States Army Corps of Engineers Federal assistance for flood control, water supply, and hazard mitigation projects.

(C) United States Department of Transportation Federal assistance for construction of roads or rights-of-way for which an environmental impact statement (EIS) or environmental assessment (EA) is prepared

(b) For purposes of this section, the following are federal actions outside the CMP boundary but within OCS waters, or on excluded federal land located within the coastal area, that may adversely affect CNRAs

(1) Federal Activities and Development Projects All federal agencies. Activities in OCS waters or within the coastal area occurring within federal lands excluded from the CMP boundary but which may adversely affect CNRAs.

(2) Federal License and Permit Activities

(A) United States Department of the Interior:

(i) permits under 43 United States Code Annotated, §1340, in OCS waters, and

(ii) rights-of-way under 43 United States Code Annotated, §1334, in OCS waters;

(B) Environmental Protection Agency:

(i) NPDES permits under 33 United States Code Annotated, §1342, in OCS waters;

(ii) ocean dumping permits 33 United States Code Annotated, §1412, in OCS waters;

(C) United States Army Corps of Engineers. Ocean dumping permits under 33 United States Code Annotated, §1413, in OCS waters;

(D) United States Department of Transportation: Deep water port licenses under 33 United States Code Annotated, §1503, in OCS waters.

(3) OCS Exploration, Development, and Production Activities. United States Department of the Interior:

(A) OCS activities described in detail in OCS plans, including pipeline activities, that may adversely affect CNRAs;

(B) OCS lease sales within the western and central Gulf of Mexico under 43 United States Code Annotated, §1337.

(c) In the event that a consistency certification is required for an NPDES permit pursuant to subsection (a)(2)(B)(i) of this section or subsection (b)(2)(B)(i) of this section and a consistency determination is required for a state wastewater discharge permit pursuant to §505.11(a)(1)(i) or (2)(G)(i) of this title (relating to Actions and Rules Subject to the Coastal Management Program), the requirement for a federal consistency certification on the NPDES permit is waived.

(d) In the event that a consistency determination is required for both a federal permit, authorization, or action pursuant to this section and an equivalent state permit, action, or authorization pursuant to §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program), the council shall, upon the request of an applicant, direct that either a federal consistency certification or a state consistency determination be issued, but not both. The council may issue general direction on this matter by rule, guidance, or order, rather than on a case-by-case basis.

§506.20. Consistency Determinations for Federal Activities and Development Projects. At the earliest practicable time, but in no event later than 90 days prior to final approval, a federal agency considering the approval of a federal activity or development project listed in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) shall provide the council secretary with a consistency determination that includes the following information:

(1) a brief statement, based upon an evaluation of the relevant CMP provisions, indicating whether or not the proposed activity or development project will be undertaken in a manner consistent with the CMP, to the maximum extent practicable; and

(2) a detailed description of the proposed activity or development project and its associated facilities which is adequate to permit an assessment of their probable effects on CNRAs, and comprehensive data and information sufficient to support the federal agency's consistency statement The amount of detail in the statement evaluation, activity description, and supporting information shall be commensurate with the expected effects of the activity or development project on CNRAs. While federal agencies must be consistent to the maximum extent practicable with the enforceable, mandatory policies of the CMP, the agencies need only demonstrate adequate consideration of policies which are in the nature of recommendations. Federal agencies need not evaluate effects for which the CMP does not contain mandatory or recommended policies.

§506.21. Notification of Negative Determinations.

(a) If a federal agency determines that a proposed activity or development project listed in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) will not adversely affect any CNRA, the federal agency shall at the earliest practicable time, but in no event later than 90 days prior to final approval, provide the chairman of the council with a notification briefly providing the reasons for the federal agency's negative determination.

(b) The chairman of the council, in coordination with the governor's office, may seek secretarial mediation (as provided in the Code of Federal Regulations, Title 15, Part 930, Subpart G, §930.110 et seq) whenever a serious disagreement arises over a negative determination.

§506.22. General Consistency Determinations for Proposed Activities.

(a) Federal agencies may provide a general consistency determination, in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C,

§930.37(b), for repeated activities other than development projects which cumulatively may adversely affect CNRAs.

(b) If a federal agency issues a general consistency determination, the federal agency shall periodically consult with the council to discuss the manner in which the incremental actions are being undertaken.

§506.23. Consistency Determinations for Development Projects.

(a) Federal agencies may provide a single consistency determination for a proposed development project, in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.37(c), where the agency has sufficient information to determine consistency from planning to completion.

(b) In cases where decisions related to a proposed development project will be made in phases based upon developing information, and the federal agency retains the discretion to implement alternative decisions on the basis of such information, a consistency determination shall be required for each decision in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.37(c)

§506.24. Consistency Determinations for Activities Initiated Prior to Federal Approval of the Coastal Management Program.

(a) Federal agencies shall provide a consistency determination for ongoing activities listed in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program), other than development projects, initiated prior to federal approval of the CMP where the agency retains discretion to reassess and modify the activity. In accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.38(a), federal agencies shall provide the council with a consistency determination for such ongoing activities no later than 120 days after program approval.

(b) Federal agencies shall provide a consistency determination, in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.38(b), for phased development projects described in §506.23(b) of this title (relating to Consistency Determinations for Development Projects) and initiated prior to federal approval of the CMP, for those phases of the project for which the agency retains discretion to reassess and modify the activity following CMP approval.

(c) Notwithstanding the requirements of §506.26 of this title (relating to Referral of Federal Activities and Development Projects), the council does not intend to refer a consistency determination for ongoing maintenance of commercially navigable channels for projects initiated prior to federal approval of the CMP, if the council and the United States Army Corps of Engineers agree to an extension of the deadline for council response to the consistency determination, as provided in the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.41(b).

§506.25. Public Notice and Comment

(a) Upon receipt of a consistency determination, the council secretary shall publish public notice of the consistency determination in the Texas Register.

(b) The public notice shall provide a summary of the proposed activity, announce the availability of the consistency determination for inspection, and request that comments be submitted to the council secretary within 30 days of publication in the Texas Register.

(c) When appropriate, the chairman may extend the public comment period or schedule a public hearing on:

(1) the consistency determination; and

(2) whether referral to the council is appropriate.

(d) After the close of the public comment period, the chairman shall issue a written decision to refer the matter to the council or not to refer the matter to the council for action. Upon issuance of the chairman's decision, the council secretary shall immediately notify the council members, applicant, federal agency, and other affected parties, if any.

§506.26. Referral of Federal Activities and Development Projects.

(a) The council shall review any federal activity or development project that the chairman refers to the council for review.

(b) To refer a federal activity or development project to the council, the chairman must submit the action to the council secretary in writing.

(c) The council secretary shall place the action on the agenda of the earliest council meeting at which consideration of the federal activity or development project is reasonably practicable.

(d) If the council does not issue a final decision, either agreeing with or disagreeing with a federal agency's consistency determination, within 45 days of the date the council secretary receives a consistency determination with all required information, then the chairman shall notify the federal agency of the status of the review and the basis for further delay.

(e) The federal agency may presume council agreement with the federal agency's consistency determination 45 days after the date the council secretary receives a consistency determination with all required information, unless the chairman requests an extension of time to review the matter. Federal agencies shall approve the first request for an extension of 15 days or less. In considering whether a longer or additional extension period is appropriate, federal agencies should consider the magnitude and complexity of, or the information contained in, the consistency determination.

(f) A federal agency shall not grant final approval for an activity or development project identified in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) until after the expiration of 90 days from the date the federal agency provides the council secretary with its consistency determination, unless the federal agency and the council agree to an alternative period of time.

§506.27 Council Hearing to Review Federal Activities and Development Projects.

(a) Following referral of a federal activity or development project, the council shall review and either agree with or disagree with the consistency determination within 90 days of the date the council secretary received the consistency determination.

(b) The council secretary shall, by certified mail or hand delivery, provide notice of the hearing at which the council will review the federal activity or development project to the federal agency.

(c) If the council decides to disagree with a consistency determination, the council shall notify the federal agency and the assistant administrator of its decision to disagree with the consistency determination.

(d) The council's decision to disagree with the consistency determination shall include:

(1) a description of how the proposed activity is inconsistent with specific goals and policies of the CMP;

(2) a description of any available alternative measures that would permit the proposed activity to be conducted in a manner consistent to the maximum extent practicable with the CMP; and

(3) in cases where the council's decision to disagree is based upon a finding that the federal agency failed to supply sufficient information, the council shall include a description of the nature of the information requested and the necessity of having such information to determine the consistency of the federal activity with the CMP.

(e) The chairman of the council, in coordination with the governor's office, may seek secretarial mediation (as provided in Code of Federal Regulations, Title 15, Part 930, Subpart G, §930 110 et seq) whenever a serious disagreement arises over a consistency determination.

§506.28. General Consistency Agreements.

(a) The council may issue a general consistency agreement with respect to a federal activity or development project If the conditions of a general consistency agreement are satisfied, the federal activity or development project is deemed consistent, to the maximum extent practicable, with the goals and policies of the CMP and will not be subject to council review under §505 26 of this title (relating to Referral of Federal Activities and Development Projects).

(b) The council shall issue a general consistency agreement for a federal development project for which:

(1) the federal agency has elected to establish an interagency coordination group whose duties include advising the federal agency on the consistency of the project;

(2) the interagency coordination group includes among its voting members a minimum of three council members from natural resource agencies or their representatives;

(3) the interagency coordination group, including a majority of the council members or their representatives on the interagency coordination group, finds that the federal development project is consistent, to the maximum extent practicable, with the goals and policies of the CMP; and

(4) the federal agency adopts the finding of the interagency coordination group and submits it to the council as its consistency determination for the project

§506 30. Consistency Certifications for Federal License and Permit Activities.

(a) Upon filing an application for a federal license or permit listed under §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program), the applicant shall provide to the council secretary a consistency certification that reads as follows: The proposed activity complies with Texas' approved CMP and will be conducted in a manner consistent with such program.

(b) The applicant shall include with the consistency certification all of the following information:

(1) a detailed description of the proposed activity and its associated facilities which is adequate to permit an assessment of their probable effects on CNRAs Maps, diagrams, technical data, and other relevant material must be submitted when a written description will not adequately describe the proposed activity. The applicant may submit the federal application and all supporting material provided to the federal agency to meet the requirements of this paragraph, if the application and supporting material contain the required material,

(2) a list identifying all federal, state, and local permits or authorizations subject to the CMP and required for the proposed activity and its associated facilities;

(3) a brief assessment relating to the relevant elements of the CMP and the probable effects of the proposed activity and its associated facilities on CNRAs; and

(4) a brief set of findings, derived from the assessment, indicating that the proposed activity, its associated facilities, and their effects are all consistent with the provisions of the CMP. While federal license and permit activities must be consistent with the enforceable, mandatory policies of the CMP, applicants need only demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to effects for which the CMP does not contain mandatory or recommended policies.

(c) Applicants shall, to the extent practicable, consolidate related federal licenses and permits identified in §506 12 of this title (relating to Federal Actions Subject to the Coastal Management Program) to assist the council in minimizing duplication of effort and unnecessary delays by reviewing all licenses and permits relating to a project at the same time.

(d) If the council has not notified the applicant within 15 days that additional information is required, the certification shall be considered complete for purposes of activating the time periods within which the council must act on the certification.

§506.31 Council Assistance. Upon request of the applicant, the council shall provide assistance for development of the assessment and findings required by §506.30(b)(4) and (5) of this title (relating to Consistency Certifications for Federal License and Permit Activities).

§506.32. Public Notice and Comment.

(a) Upon receipt of a consistency certification, the council secretary shall publish public notice of the consistency certification in the Texas Register

(b) The public notice shall provide a summary of the proposed activity, announce the availability of the consistency certification for inspection, and request that comments be submitted to the council secretary within 30 days of publication in the Texas Register

(c) When appropriate, the chairman may extend the public comment period or schedule a public hearing on

(1) the consistency certification, and

(2) whether referral to the council is appropriate

(d) After the close of the public comment period, the chairman shall issue a written decision to refer the matter to the council or not to refer the matter to the council for action. Upon issuance of the chairman's decision, the council secretary shall immediately notify the council members, applicant, federal agency, and other affected parties, if any

§506 33. Referral of Federal License or Permit.

(a) The council shall review any federal license or permit that the chairman refers to the council for review

(b) To refer a federal license or permit to the council, the chairman must submit the request for referral to the council secretary in writing

(c) The council secretary shall add the action to the agenda of the earliest council meeting at which consideration of the action is reasonably practicable If no regularly scheduled council meeting will allow the council to complete a review of the action within 90 days of receipt of the consistency certification, the council secretary shall notify the chairman, who shall schedule a special meeting to consider the action and any other appropriate matters

(d) If the council has not issued a decision with respect to a federal license or permit within 90 days of the date when the council secretary receives a consistency certification with all required information, then the chairman shall notify the applicant and the federal agency of the status of the review and the basis for further delay

(e) If the chairman does not refer a federal license or permit to the council within 90 days of the date when the council secretary receives a consistency certification with all required information, then that action is conclusively presumed to be consistent with the CMP

§506 34 Council Hearing to Review Federal License or Permit

(a) Following referral of a federal license or permit, the council shall review and either concur with or object to the

consistency certification within 180 days of the date when the council secretary received the consistency certification.

(b) The council secretary shall, by certified mail or hand delivery, provide notice of the hearing at which the council will review the federal license or permit to the federal agency and the applicant

(c) If the council decides to object to a consistency certification, the council shall notify the applicant, the federal agency, and the assistant administrator.

(d) The council's objection shall include:

(1) a description of how the proposed activity is inconsistent with specific goals and policies of the CMP;

(2) a description of any available alternative measures that would permit the proposed activity to be conducted in a manner consistent with the CMP;

(3) in cases where the council objects on the grounds of insufficient information, a description of the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the CMP; and

(4) a statement informing the applicant of a right of appeal to the secretary of commerce on the grounds that the proposed activity is consistent with the objectives or purposes of the federal Coastal Zone Management Act (CZMA), 16 United States Code Annotated, §§1451-1464, or is necessary in the interest of national security as provided in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §930 120 et seq

(e) If the council objects to a consistency certification related to a federal license or permit, the federal agency shall not issue the federal license or permit, except as provided in the appeals process established in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §930 120 et seq.

§506 35 General Concurrence The council may develop general concurrences in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart D, §930.53(c).

§506 40 Consistency Certifications for Outer Continental Shelf Exploration, Development, and Production Activities

(a) Upon submission to the secretary of the interior or designee of an OCS plan, which must include a detailed description of the federal license or permit activities listed in §506.12(b)(3) of this title (relating to Federal Actions Subject to the Coastal Management Program), the person submitting the plan shall provide the council secretary with a copy of the plan along with a consistency certification that reads as follows: The proposed activities described in detail in this plan comply with Texas' approved CMP and will be conducted in a manner consistent with such program.

(b) The person submitting the plan shall include all of the following information in support of the consistency certification:

(1) a detailed description of the proposed activities and their associated facilities which is adequate to permit an assessment of their probable effects on CNRAs. Maps, diagrams, technical data, and other relevant material must be submitted when a written description will not adequately describe the proposed activities;

(2) a list identifying all federal, state, and local permits or authorizations subject to the CMP and required for the proposed activities and their associated facilities;

(3) a brief assessment relating the probable effects of the activities and their associated facilities on CNRAs to the relevant elements of the CMP; and

(4) a brief set of findings, derived from the assessment, indicating that each of the proposed activities, their associated facilities, and their effects are all consistent with the provisions of the CMP. While those activities listed in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) must be consistent with the enforceable, mandatory policies of the CMP, the person submitting the plan need only demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to effects for which the CMP does not contain mandatory or recommended policies.

(c) The council strongly encourages persons submitting plans to consolidate those related federal licenses and permits which are not required to be described in detail in the plan but which are subject to council review to assist the council in minimizing duplication of effort and unnecessary delays by reviewing all licenses and permits relating to a project at the same time.

(d) If the council has not notified the person submitting the plan within 15 days that additional information is required, the certification shall be considered complete for purposes of activating the time periods within which the council must act on the certification.

§506.41. Public Notice and Comment.

(a) Upon receipt of a consistency certification, the council secretary shall publish public notice of the consistency certification in the Texas Register.

(b) The public notice shall provide a summary of the proposed activity, announce the availability of the consistency certification for inspection, and request that comments be submitted to the council secretary within 30 days of publication in the Texas Register.

(c) When appropriate, the chairman may extend the public comment period or schedule a public hearing on:

(1) the consistency certification, and

(2) whether referral to the council is appropriate

(d) After the close of the public comment period, the chairman shall issue a written decision to refer the matter to the council or not to refer the matter to the council for action Upon issuance of the chairman's decision, the council secretary shall immediately notify the council members, applicant, federal agency, and other affected parties, if any

§506.42. Referral of Federal License or Permit Described in Outer Continental Shelf Plan.

(a) The council shall review any federal license or permit described in detail in an OCS plan that the chairman refers to the council for review.

(b) To refer a federal license or permit to the council, the chairman must submit the request for referral to the council secretary in writing.

(c) The council secretary shall place the action on the agenda of the earliest council meeting at which consideration of the action is reasonably practicable If no regularly scheduled council meeting will allow the council to act on the action within 90 days of receipt of the consistency certification, the council secretary shall notify the chairman, who shall schedule a special meeting to consider the action and any other appropriate matters.

(d) If the council has not issued a decision with respect to a federal license or permit within 90 days of the date the council secretary received the consistency certification with all required information, then the chairman shall notify the person submitting the plan, the secretary of the interior, and the assistant administrator of the status of the review and the basis for further delay. If written notice is not postmarked within the 90 days provided for in this subsection, then the council's concurrence with the consistency certification shall be conclusively presumed.

(e) If the chairman does not refer a federal license or permit to the council within 90 days of the date the council secretary receives a consistency certification with all required information, then the council's concurrence with the consistency certification shall be conclusively presumed.

(f) If the council has not issued a decision with respect to a federal license or permit within 180 days of the date the council secretary of the council receives a consistency certification with all required information, then the council's concurrence with the consistency certification shall be conclusively presumed

§506.43. Council Hearing to Review Federal License or Permit Described in Outer Continental Shelf Plan.

(a) Following referral of a federal license or permit, the council shall review and either concur with or object to the consistency certification within 180 days of the date the council secretary received the consistency certification

(b) The council secretary shall, by certified mail or hand delivery, provide notice of the hearing at which the council will review the federal license or permit to the person submitting the plan, the secretary of the interior, and the assistant administrator

(c) If the council decides to object to a consistency certification, the council shall notify the person submitting the plan, the secretary of the interior, and the assistant administrator

(d) The council's objection shall include for each license or permit activity objected to

(1) a description of how the proposed activity is inconsistent with specific goals and policies of the CMP;

(2) a description of any available alternative measures that would permit the proposed activity to be conducted in a manner consistent with the CMP,

(3) in cases where the council objects on the grounds of insufficient information, a description of the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the CMP, and

(4) a statement informing the person submitting the plan of a right of appeal to the secretary of commerce on the grounds that the proposed activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security as provided in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §930.120 et seq

(e) If the council objects to a consistency certification related to a federal license or permit described in detail in a plan, the federal agency shall not issue the federal license or permit, except as provided in the appeals process established in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §930.120 et seq.

§506.44. Effect of Council Concurrence.

(a) If the council either issues a concurrence or is conclusively presumed to concur with the consistency certification of a person submitting a plan, then the person submitting the plan shall not be required to submit additional consistency certifications to the council secretary for the federal licenses and permits to which the concurrence applies.

(b) To allow the council to monitor those license and permit activities described in detail in a plan whose consistency certification has received council concurrence, the person submitting the plan shall provide the council secretary with copies of applications for those license and permit activities.

§506.50 Notice to the Council of Applications for Federal Assistance

(a) The state single point of contact shall provide the council secretary with copies of all applications for federal assistance listed in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program).

(b) The council secretary shall distribute copies of the applications to all council members

§506.51 Referral of Applications for Federal Assistance.

(a) The council shall review any application for federal assistance that the chairman refers to the council for review.

(b) To refer an application for federal assistance to the council, the chairman must submit the request for referral to the council secretary in writing.

(c) The council secretary shall add the application to the agenda of the earliest council meeting at which consideration of the action is reasonably practicable

(d) If the chairman does not refer an application to the council within 30 days of the date the council secretary receives a copy of the application, then the application is conclusively presumed to be consistent with the CMP.

§506.52 Council Hearing to Review Applications for Federal Assistance.

(a) Following referral of an application for federal assistance, the council shall review and either concur with or object to the application for federal assistance within the schedule established in the regulations governing the Texas Review and Comment System (1 TAC §5.191 et seq, relating to Introduction and General Provisions of Texas Review and Comment System).

(b) The council secretary shall, by certified mail or hand delivery, provide notice of the hearing at which the council will review the application for federal assistance to the applicant, the federal agency, and the assistant administrator.

(c) The council's objection shall include:

(1) a description of how the proposed activity is inconsistent with specific goals and policies of the CMP;

(2) a description of any available alternative measures that would permit the proposed activity to be conducted in a manner consistent with the CMP;

(3) in cases where the council objects on the grounds of insufficient information, a description of the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the CMP; and

(4) a statement informing the applicant of a right of appeal to the secretary of commerce on the grounds that the proposed activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security as provided in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §930.120 et seq.

(d) If the council objects to an application for federal assistance, the federal agency shall not approve assistance for the activity, except as provided in the appeals process established in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §930.120 et seq.

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Garry Mauro
Chairman
Coastal Coordination Council

For further information, please call. (512) 305-9129

Dissenting Statement of Commissioner Barry Williamson: Re: Coastal Management Program Rules

Once again, I find myself in the position of having to formally register my concerns about actions taken by the Coastal Coordination Council (CCC). My concerns relate to revised proposed coastal management program (CMP) rules (Title 31, Chapters 501 and 504-506) that the CCC voted on June 28th, 1994, to publish as a "Miscellaneous Document" in the *Texas Register*.

My first concern is that the public will be potentially misled and confused about the current status of the proposed CMP rules. At the June 28th meeting, the CCC approved a revised set of proposed CMP rules (the "June 28th version"). This revised set of rules reflects more than 100 changes that have been made in response to comments on the version of the proposed rules published in the *Texas Register* on March 18th, 1994 (the "March 18th version").

Over my objections, the CCC elected to deviate from normal rulemaking procedures by publishing these revised proposed CMP rules as a "Miscellaneous Document" instead of withdrawing the March 18th version and formally substituting the June 28th version as new proposed rules. By approving the June 28th version, the CCC has in effect superseded the March 18th version.

I fail to understand why the CCC would not pursue the clearly mandated rulemaking procedures and choose, instead, a highly irregular course of action. The CCC's deviation from normal procedures could open this rulemaking process to challenges for procedural irregularities.

Further, I do not understand why the CCC would elect to create further confusion about the impact of these extraordinarily complex rules by having two proposed versions out for public comment at the same time.

Nevertheless, the extended comment period on the proposed rules provides an opportunity for you to assist in my efforts to address ambiguities in the rules and to ensure that the impacts of the plan are fully assessed before the final rules are adopted. You can help me in these efforts by commenting on two important issues: the definition of "practicable" in the proposed CMP rules; and the lack of accurate information regarding the fiscal impacts of the CMP on the state and the costs that the program will impose on businesses and individuals.

(1) "Practicable." The proposed CMP rules (both the March 18th and June 28th versions) define the word "practicable" as "available and capable of being done after taking into consideration existing technology, cost, and logistics in light of the overall purpose of the activity No one of these factors shall be the sole deciding factor in determining whether an alternative is practicable."

As you can see, this definition is ambiguous. It is contradictory to require that all three factors-technology, cost, and logistics-be considered, but then provide that only two of the three factors carry any weight. In my opinion the second sentence is either redundant or, if it has any meaning, it limits the first sentence

Further, it remains unclear whether cost-effectiveness is a factor to be considered in determining if an alternative is practicable. The draft preamble to the revised proposed rules (June 28th version) provided to me on June 13th indicated that cost-effectiveness was not a consideration in determining what was "practicable." Railroad Commission staff expressed concerns about this language, to no avail, on at least three occasions. Until as late as 4.00 p.m on June 27th, staff of the General Land Office steadfastly maintained that something could be "practicable" yet not cost-effective under the rules as written. Surprisingly, at the June 28th meeting, Chairman Mauro announced that the June 13th draft preamble language was a "mistake" and that cost-effectiveness was a factor in determining what was "practicable " In light of the General Land Office's vacillation on this question, it is obvious that this issue merits clarification.

Failure to resolve the question of whether cost-effectiveness is a factor in determining if an alternative action is "practicable" may have severe consequences. Under the current definition, the CMP rules could be interpreted as requiring that an alternative action be undertaken, even if that alternative costs millions of dollars more than the next best alternative yet has only small environmental benefits in comparison to the next best alternative. Such a result would not be cost-effective, nor would it contribute to balanced management of coastal resources. Please let the CCC know if you share my concerns about this issue so that any necessary corrective measures can be taken before the rules are finally adopted, possibly as early as September.

(2) Fiscal Impacts I am also concerned that the public has been given inconsistent and/or incorrect information regarding costs of administering the CMP For instance, the preamble to the proposed rules (the June 28th version) indicates that the CMP will not create additional bureaucracy, but will streamline governmental decision-making.

However, at the June 28th CCC meeting, Chairman Mauro indicated that 10% of the federal grant funds received by the state upon federal approval of the CMP will be used to offset state government costs of administering the CMP. I agree with the Chairman that additional funds will be needed by state agencies to meet their obligations under the CMP; it is misleading, however, to suggest that the CMP will not create additional bureaucracy while planning to fund that very bureaucracy with CMP grant money.

Chairman Mauro's statement that CMP grant funds will be used to offset administrative costs also contradicts comments he made at the April 21, 1994, public hearing on the CMP rules held in Corpus Christi. At that public hearing, Chairman Mauro indicated that all the federal CMP grant funds would be used for local projects; the grant money would not be used to fund a bureaucracy.

Although my attempts to correct this misinformation concerning costs of administering the CMP have to date been unsuccessful, I hope that you will continue to demand that the fiscal impacts of the CMP on the state be fully assessed and considered by the CCC prior to adoption of the CMP rules And I will continue to strive to ensure that you are provided with a comprehensive analysis of the costs and benefits of the CMP on individuals and businesses

Issued in Austin, Texas, on June 29, 1994

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Barry Williamson
Commissioner
Railroad Commission of Texas

1994 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1994 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on March 11, July 22, November 11, and November 29. A asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
47 Friday, June 24	Monday, June 20	Tuesday, June 21
48 Tuesday, June 28	Wednesday, June 22	Thursday, June 23
49 Friday, July 1	Monday, June 27	Tuesday, June 28
50 Tuesday, July 5	Wednesday, June 29	Thursday, June 30
51 *Friday, July 8	Friday, July 1	Tuesday, July 5
Tuesday, July 12	SECOND QUARTERLY INDEX	
52 Friday, July 15	Monday, July 11	Tuesday, July 12
53 Tuesday, July 19	Wednesday, July 13	Thursday, July 14
Friday, July 22	NO ISSUE PUBLISHED	
54 Tuesday, July 26	Wednesday, July 20	Thursday, July 21
55 Friday, July 29	Monday, July 25	Tuesday, July 26
56 Tuesday, August 2	Wednesday, July 27	Thursday, July 28
57 Friday, August 5	Monday, August 1	Tuesday, August 2
58 Tuesday, August 9	Wednesday, August 3	Thursday, August 4
59 Friday, August 12	Monday, August 8	Tuesday, August 9
60 Tuesday, August 16	Wednesday, August 10	Thursday, August 11
61 Friday, August 19	Monday, August 15	Tuesday, August 16
62 Tuesday, August 23	Wednesday, August 17	Thursday, August 18
63 Friday, August 26	Monday, August 22	Tuesday, August 23
64 Tuesday, August 30	Wednesday, August 24	Thursday, August 25
65 Friday, September 2	Monday, August 29	Tuesday, August 30
66 Tuesday, September 6	Wednesday, August 31	Thursday, September 1
67 *Friday, September 9	Friday, September 2	Tuesday, September 6
68 Tuesday, September 13	Wednesday, September 7	Thursday, September 8
69 Friday, September 16	Monday, September 12	Tuesday, September 13
70 Tuesday, September 20	Wednesday, September 14	Thursday, September 15
71 Friday, September 23	Monday, September 19	Tuesday, September 20
72 Tuesday, September 27	Wednesday, September 21	Thursday, September 22
73 Friday, September 30	Monday, September 26	Tuesday, September 27
74 Tuesday, October 4	Wednesday, September 28	Thursday, September 29