Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER B. ACCESSIBILITY AND REASONABLE ACCOMMODATIONS

10 TAC §§1.201 - 1.207

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing Accessibility and Reasonable Accommodations.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for accessibility and accommodation activity.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 27, 2023, to February 27, 2023, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email brooke.boston@td-hca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time February 27, 2023.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed sections affect no other code, article, or statute.

10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations

§1.201. Purpose.

§1.202. Definitions.

§1.203. General Requirements and Effect of Non Compliance.
§1.204. Reasonable Accommodations.
§1.205. Compliance with the Fair Housing Act.
§1.206. Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973.
§1.207. General Requirements for Multifamily Housing Developments.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2023.

TRD-202300142
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: February 26, 2023
For further information, please call: (512) 475-3959

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10 TAC §§1.201 - 1.207

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations. The purpose of the proposed new section is to make changes updating the rule for federal guidance that has been released since the last rulemaking, adding several new programs to the rule that were not previously programs overseen by the Department, bringing the rule up to date and streamlining requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under items (4) and (9) of that section. The rule ensures Department compliance with the Fair Housing Act and other federal civil rights laws. In spite of these exceptions, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule, which makes changes to the rules that govern accessibility and reasonable accommodations.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The proposed new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The new rule does not increase or decrease the number of individuals to whom this rule applies; and

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures in place for properties and subrecipients that have been funded by the Department. Other than in the case of a small or micro-business that participate in such programs, no small or micro-businesses are subject to the rule. If a small or micro-business does participate in the program, the rule provides a clear set of regulations for the handling of reasonable accommodations and accessibility.

3. The Department has determined that because this rule relates only to a revision to a rule subrecipients/owners and tenants of an existing program, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to the processes used in existing multifamily properties and other portfolio subrecipients; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule relates only to the continuation of the rules in place there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the proposed new rule will be a clearer rule for Recipients and assurance of the program having transparent compliant regulations. There will be no economic cost to any individuals required to comply with the proposed new rule because the activities described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the

state or local governments as this rule relates only to a process that already exists and is not being significantly revised.

REQUEST FOR PUBLIC COMMENT. The Department will accept public comment from January 27, 2023, through February 27, 2023. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local time, February 27, 2023.

STATUTORY AUTHORITY. The rule action is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§1.201. Purpose.

(a) The purpose of this subchapter is to establish a framework for informing compliance with the requirements of Tex. Gov't Code §§2306.6722, 2306.6725, and 2306.6730, and the requirements of the Americans with Disabilities Act, Section 504 of the 1973 Rehabilitation Act (Section 504) and the Fair Housing Act for Recipients of awards from the Texas Department of Housing and Community Affairs (the Department) including but not limited to:

(1) Community Services Block Grant;

(2) Low Income Home Energy Assistance Program (LIHEAP) (including the two programs utilizing this funding source: the LIHEAP Weatherization Assistance Program and the Comprehensive Energy Assistance Program);

(3) Emergency Solutions Grant (ESG);

(4) Texas Housing Trust Fund;

(5) Low Income Housing Tax Credit, including Exchange;

(6) Multifamily Bond Programs (Bond);

(7) National Housing Trust Fund (NHTF);

(8) Neighborhood Stabilization Program (NSP);

(9) HOME;

(10) TCAP;

(11) TCAP- Returned Funds (TCAP-RF);

(12) Section 8;

(13) Department of Energy Weatherization Assistance Program;

(14) Homeless Housing and Services Program (HHSP);

(15) Ending Homelessness Fund (EH);

(16) Community Development Block Grant (CDBG);

(17) Community Development Block Grant - CARES Act (CDBG-CV);

(18) 811 Project Rental Assistance (811 PRA);

(19) Emergency Rental Assistance (ERA);

(20) Department of Energy Weatherization Program (DOE WAP); and

(21) HOME American Rescue Plan (HOME-ARP).

(b) Unless otherwise indicated in the applicable notice of funding availability or required by contract, this subchapter does not apply to contracts for the procurement of goods or services by the Department.

§1.202. Definitions.

Capitalized words in this subchapter have the meaning assigned in the specific chapter and rules of the title that govern the program associated with the matter or assigned by federal or state law. In addition, the following terms are used for the purposes of this subchapter:

(1) 2010 ADA Standards--The term 2010 ADA Standards refers to the 2010 ADA Standards for Accessible Design implementing Title II of the Americans with Disabilities Act of 1990, including the ADA Amendments of 2008, found at 28 CFR Part 35. This term includes both the Title II (28 CFR §35.151) and 2004 ADAAG (36 CFR Part 1991). If there is a conflict between 2004 ADAAG and Title II the requirements of Title II prevail.

(2) Accessible Route--A continuous unobstructed path connecting accessible elements and spaces in a facility or building that complies with the space and reach requirements of the applicable accessibility standard.

(3) Alteration--Any physical change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems.

(4) Disability--A physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Nothing in this definition requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. Included in this meaning is the term handicap as defined in the Fair Housing Act, and the term disability as defined in the Americans with Disabilities Act.

(5) Multifamily Housing Development--A project that includes five or more dwelling units. A project may consist of five single family homes, a single building with five or more units, or five or more units in multiple buildings each with one or more units. A project includes the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract or application, or which are treated as a whole for processing purposes, whether or not located on a common site.

(6) Reasonable Accommodation--An accommodation and/or modification that is an alteration, change, exception, or adjustment to a program, policy, service, building, or dwelling unit, that will allow a qualified person with a Disability to:

(A) Participate fully in a program;

(B) Take advantage of a service;

(C) Live in a dwelling; or

(D) Use and enjoy a dwelling.

(7) Recipient--Includes a Subrecipient or Administrator and means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to whom assistance or an award is extended for any program or activity directly or through another Recipient, including any successor, assignee, or transferee of a Recipient, but excluding the ultimate beneficiary of

the assistance. Recipients include private entities in partnership with Recipients to own or operate a program or service. This term includes Development Owner.

§1.203. General Requirements and Effect of Non Compliance.

(a) No individual with a Disability shall, by reason of their Disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any Department awarded program or activity.

(b) There are additional requirements for compliance with Section 504 of the 1973 Rehabilitation Act; Title VI of the Civil Rights Act of 1964; the Fair Housing Act; the Americans with Disabilities Act; and other civil rights laws, regulations and Executive Orders by Recipients of Department program or activities. This subchapter addresses only the requirements relating to physical accessibility, and reasonable accommodations under Section 504, the American with Disabilities Act, and the Fair Housing Act. Other disability-related requirements include, but are not limited to:

(1) Operating housing that is not segregated based upon disability or type of disability, unless authorized by federal statute or executive order;

(2) Providing auxiliary aids and services necessary for effective communication with persons with disabilities; and

(3) Operating programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(c) Compliance with accessibility requirements, as applicable, including compliance with the Fair Housing Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973, other civil rights laws, regulations and Executive Orders; and Chapters 2105 and 2306 of the Tex. Gov't Code is the sole responsibility of the Recipient. By providing guidance and monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Recipient.

(d) Failure to comply with the provisions of this subchapter may result in the assessment of administrative penalties and/or debarment, as further outlined in this title.

§1.204. Reasonable Accommodations.

(a) Applicability. This policy relates to a request for Reasonable Accommodations made by an applicant or participant of a Department program to a Recipient, or made by an applicant or occupant to a property funded by the Department to the property. The policy regarding a request for Reasonable Accommodation by the Department is found at 10 TAC §1.1 of this chapter.

(b) General Considerations in Handling of Reasonable Accommodations. An applicant, participant, or occupant who has a disability may request an accommodation and, depending on the program funding the property or activity and whether the accommodation requested is a reasonable accommodation, their request must be timely addressed.

(1) When the Department monitors a property or activity for how reasonable accommodation requests have been handled, it will consider such things as whether the person working on behalf of the program or property which the Department is monitoring:

(A) Timely received the request and recorded it;

(B) Took into consideration how action on the request would impact the person making the request; and

(C) Engaged in communication with the requestor to understand the nature of their request and whether there was a reasonable way to make an accommodation.

(2) If the person responsible for responding to a request for an accommodation needs assistance or clarification as to how the requirement may apply to their program or property they should contact the Compliance Division immediately to discuss the matter. The Compliance Division cannot provide legal advice or direct the person to respond in any specific manner, but they can, in some instances, point to appropriate federal guidance or other resources such as the Texas Workforce Commission Civil Rights Division. A person who contacts the Compliance Division or anyone else for such reasons should document such contact in their files because the process of obtaining guidance may impact the timeliness of their response.

(3) Unless there is a clear documented need for a lengthier process or there is a controlling federal statute or regulation specifying a different deadline, when a person requests an accommodation they should be given a response as soon as possible but not later than 14 calendar days.

(c) To show that a requested Reasonable Accommodation may be necessary, there must be an identifiable relationship between the requested accommodation and the individual's Disability.

(d) Responses to Reasonable Accommodation requests must be provided within a reasonable amount of time, not to exceed 14 calendar days. The response must either be to grant the request, deny the request, offer alternatives to the request, or request additional information to clarify the Reasonable Accommodation request. Examples when it would not be reasonable to wait 14 calendar days to provide a response include but are not limited to: moving the due date for rent to coincide with the date the requestor receives their social security disability check; allowing a service animal in an emergency shelter in spite of a no pets policy; or assisting an applicant with a Disability that prevents them from writing legibly when they request help filling out an program or project application. Should additional information be required and an interactive process be necessary, this process must also be completed within a reasonable amount of time. An undue delay in responding to a Reasonable Accommodation request may be deemed by the Department to be a failure to provide a Reasonable Accommodation.

(e) When a participant, applicant, or occupant requires an accessible unit, feature, space or element, or a policy modification, or other Reasonable Accommodation to accommodate a Disability, the Recipient must provide and pay for the requested accommodation, unless doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. A fundamental alteration is an accommodation that is so significant that it alters the essential nature of the Recipient's operations. A Recipient that owns a tax credit or Multifamily Bond Development with no federal or state funds awarded before September 1, 2001, must allow but may not need to pay for the Reasonable Accommodation, except if the accommodation requested should have been made as part of the original design and construction requirements under the Fair Housing Act, or is a Reasonable Accommodation identified by the U.S. Department of Justice or the U.S. Department of Housing and Urban Development with a de minimis cost (e.g., assigned existing parking spot and no deposit for service/assistance animals).

(f) A Recipient may not charge a fee, deposit, or place conditions on a participant, occupant, or applicant in exchange for making the accommodation.

(g) A Reasonable Accommodation request of an individual with a Disability that amounts to an Alteration should be made to meet the needs of the individual with a Disability, rather than being limited to compliance with a particular accessible code specification. How-

ever, the Recipient must still follow accessible code specifications, as identified in its Contract or LURA.

(1) Recipients are not required to make structural changes where other methods, which may not cost as much, are effective in making programs or activities readily accessible to and usable by persons with Disabilities.

(2) In choosing among available methods for meeting the requirements of this section, the Recipient must give priority to those methods that offer programs and activities to qualified individuals with Disabilities in the most integrated setting appropriate.

(3) Undue burden.

(A) The determination of undue financial and administrative burden will be made by the Department on a case-by-case basis, involving various factors, such as the cost of the Reasonable Accommodation, the financial resources of the Development, the benefits the accommodation would provide to the requester, and the availability of alternative accommodations that would adequately meet the requester's Disability-related needs.

(B) In considering whether an expense would constitute an undue burden the Department may, as applicable, consider the following items (though it may consider factors not on this list):

(i) payment for Alteration from operating funds, residual receipts accounts, or reserve replacement accounts must be sought using appropriate approval procedures.

(ii) the approved amount must generally be able to be replenished through property rental income within one year without a corresponding raise in rental rates.

(iii) a projected inability to replenish an operating fund account or the reserve for replacement account within one year for funds spent in providing Alterations under this subsection is some evidence that the Alteration would be an undue financial and administrative burden.

(C) If providing accessibility would result in an undue financial and administrative burden, the Recipient must still take other reasonable steps to achieve accessibility.

(D) If a structural change would constitute an undue financial and administrative burden, and the tenant/requestor still wants that particular change to be made, the tenant/requestor must be allowed to make and pay for the accommodation.

(4) Recipients are not required to install an elevator solely for the purpose of making units accessible as a Reasonable Accommodation.

(5) Recipients do not have to make mechanical rooms and similar spaces accessible when, because of their intended use, they do not require accessibility by the public, by tenants, or by employees with physical disabilities.

(6) Recipients are not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member, as a Reasonable Accommodation.

(h) If a Recipient refuses to provide a requested accommodation because it is either an undue financial and administrative burden or would result in a fundamental alteration to the nature of the program, the Recipient must make a reasonable attempt to engage in an interactive dialogue with the requester to determine if there is an alternative accommodation that would adequately address the requester's Disability-related needs. If an alternative accommodation would meet the individual's needs and is reasonable, the Recipient must provide it.

(i) Examples of reasonable accommodations, while not exhaustive, include moving the due date for rent to coincide with the date the requestor receives their social security disability check; providing a designated accessible parking space from existing parking spaces; creating an accessible parking space to accommodate a wheelchair-equipped van; allowing a service or support animal or animals in spite of a no pets policy; modifying door knobs to levers; providing assistance in filling out a program application for the activity or unit; in the case of a service provider providing computer lab classes with laptops, providing a loan of the laptop computer with the training software; in the case of a weatherization provider serving a family with a child with asthma, seeing if an alternative sealant could be used when the sealant typically used may trigger an asthma attack; installing grab bars; providing an accessible entrance to a resident's current unit, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so; and providing a ramp in excess of usual specifications for such alternations to accommodate a scooter type wheelchair, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so.

(j) Recipients must follow federal and state regulations regarding service/assistance animals. A housing provider may not require an applicant, participant, or occupant to pay a pet deposit if the animal is a service/assistance animal.

§1.205. Compliance with the Fair Housing Act.

(a) Generally, housing designed and constructed for first occupancy after March 13, 1991, must comply with the Fair Housing Act. This includes Units, common areas, and amenities added to existing buildings, or on land under common ownership and contiguous with housing otherwise exempt from the Fair Housing Act.

(b) Compliance with the Fair Housing Act makes it unlawful to discriminate based on a person's disability, race, color, religion, sex, familial status, or national origin unless there is an exception in federal law.

(c) The Department requires compliance with HUD's Fair Housing Act Design Manual, including the ability to claim exemptions or exceptions provided for therein.

§1.206. Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973.

(a) The following types of Multifamily Housing Developments must comply with the construction standards of §504 of the Rehabilitation Act of 1973, as further defined through the Uniform Federal Accessibility Standards (UFAS):

(1) New construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction before March 12, 2012;

(2) Rehabilitation HOME and NSP Multifamily Housing Developments that submitted a full application for funding before January 1, 2014; and

(3) All Housing Tax Credit and Tax Exempt Bond Developments that were awarded after September 1, 2001, and submitted a full application before January 1, 2014.

(b) The following types of Multifamily Housing Developments must comply with the construction requirements of 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671 and not otherwise modified in this subchapter:

(1) New construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction after March 12, 2012; and

(2) All Multifamily Housing Developments that submit a full application for funding after January 1, 2014.

(c) Recipients of CDBG, CDBG-CV, ESG, EH, HHSP, and HOME-ARP (for Non-Congregate Shelter) funds must comply with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671 and not otherwise modified in this subchapter.

(d) Effect on LURAs. These rules do not serve to amend contractual undertakings memorialized in a recorded LURA but may, by operation of law, place requirements on a property owner beyond those contained in the LURA.

§1.207. General Requirements for Multifamily Housing Developments.

(a) All Units that are accessible to persons with mobility impairments must be on an Accessible Route.

(b) Recipients must give priority to methods that offer housing in the most integrated setting possible (i.e., a setting that enables qualified persons with Disabilities and persons without Disabilities to interact to the fullest extent possible). This means the distribution will provide individuals requiring accessible units with a choice of location, layout, and price that is substantially equivalent to the choice available to others. Distribution of accessible units may be further described in federal law, regulation, or governing Rules in this Title. To the maximum extent feasible and subject to reasonable health and safety requirements, accessible units must be:

(1) Distributed throughout the Development and site; and

(2) Made available in a sufficient range of sizes and amenities so that the choice of living arrangements of qualified persons with Disabilities is, as a whole, comparable to that of other persons eligible for housing assistance under the same program.

(c) All Multifamily Housing Developments that submit full applications after January 1, 2014, must have a minimum of 5 percent of Units that are accessible to persons with mobility impairments, and a minimum of 2 percent of the Units must be accessible to persons with visual and hearing impairments. In addition, common areas and amenities must also be accessible as identified in the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2023.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER H. INCOME AND RENT LIMITS

10 TAC §§10.1001 - 10.1006

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, adding new multifamily programs to the Income and Rent limits rule.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce workload to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, including the addition of new programs to the Income and Rent limits rule.

7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be the addition of new multifamily programs to the Income and Rent limits rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 27, 2023, to February 27, 2023, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or emailed to wendy.quackenbush@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, FEBRUARY 27, 2023.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§10.1001. Purpose.
§10.1002. Definitions.
§10.1003. Tax Exempt Bond Developments.
§10.1004. Housing Tax Credit Properties, TCAP, Exchange and SHTF.
§10.1005. HOME, TCAP RF, and NSP.
§10.1006. National Housing Trust Fund (NHTF).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2023.

TRD-202300144
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: February 26, 2023
For further information, please call: (512) 475-3959

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10 TAC §§10.1001 - 10.1007

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits. The purpose of the proposed new rule is to provide compliance with Tex. Gov't Code §2306.053 and is to make changes to add two new programs - the HOME American Rescue Plan (HOME-ARP) and Emergency Rental Assistance (ERA) as well as make other non-substantive administrative corrections.

Tex. Gov't Code §2001.0045(b) does not apply to the new rule proposed for action because it was determined that no cost are associated with this action, and therefore no cost warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

The proposed new rule does not create or eliminate a government program, but relates to the readoption of this rule, which makes changes to an existing activity, to ensure all applicable federal requirements relating to income and rent limits are specified.

1. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce workload to a degree that eliminates any existing employee positions.

2. The proposed new rule does not require additional future legislative appropriations.

3. The proposed new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

4. The proposed new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

5. The proposed new rule will not expand, limit, or repeal an existing regulation.

6. The proposed new rule will not increase or decrease the number of individuals subject to the rule's applicability;

7. The proposed new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.053.

1. The Department has evaluated this new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. The Department has determined that this rule provides specific detail on how income and rent limits will be applied for a variety of federal and state programs. Other than, in a case of small or micro-businesses or rural communities that participates in one of these programs, it is anticipated there will be no economic effect on small or micro-businesses or rural communities. If a small or micro-business or rural community does participate

in the program, the rule provides a clear set of regulations for the handling of income and rent limits.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the new rule will be in effect the proposed new rule has no economic effect on local employment because the rule relates only to the establishment of income and rent limits; therefore, no local employment impact statement is required to be prepared for the new rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the new rule on employment in each geographic region affected by this new rule..." Considering that the rule is applicable to all properties statewide, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule will be a clearer rule for properties and assurance that the rules include income and rent limits for all applicable federal and state programs. There will not be any economic cost to any individuals required to comply with the new rule because the activities described by the rule have already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new rule is in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the rule relates to a process that already exists and is not being significantly revised.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 27, 2023, to February 27, 2023, to receive input on the newly proposed rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or by email to wendy.quackenbush@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, February 27, 2023.

STATUTORY AUTHORITY. The new rule(s) is/are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new rules affect no other code, article, or statute.

§10.1001. Purpose.

The purpose of this subchapter is to codify the income and rent limits applicable to the multifamily programs administered by the Texas Department of Housing and Community Affairs (the Department). The Department may, but is not required to, calculate and provide income and rent limits for programs administered by the Department. Income and rent limits will be derived from data released by Federal agencies including the U.S. Department of Housing and Urban Development (HUD).

§10.1002. Definitions.

(a) Unless otherwise defined here, terms have the meaning in §11.1 of this title (relating to Definitions), or federal or state law.

(b) Multifamily Tax Subsidy Program Imputed Income Limit--Using the income limits provided by HUD pursuant to §142(d), the imputed income limit is the income limitation which would apply to individuals occupying the unit if the number of individuals occupying the unit were as described in paragraphs (1) and (2) of this subsection:

(1) in the case of a unit which does not have a separate bedroom, 1 individual; or

(2) in the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

(c) Tax Credit Assistance Program (TCAP)--Funds awarded as part of the American Recovery and Reinvestment Act to assist Low Income Housing Tax Credit projects funded during 2007, 2008, and 2009.

(d) Tax Credit Assistance Program Repayment Funds (TCAP RF)--Multifamily Direct Loan funds made available through income generated from loan repayments from the Tax Credit Assistance Program.

§10.1003. Tax Exempt Bond Developments.

(a) Tax Exempt Bond Developments must use the Multifamily Tax Subsidy Program (MTSP) income limits released by HUD, generally, on an annual basis. The MTSP limit tables include:

(1) The 50% and 60% Area Median Gross Income (AMGI) by household size.

(2) In areas where the income limits did not decrease in 2007 and 2008 because of HUD's hold harmless policy, a HERA Special 50% and HERA Special 60% income limit by household size. These higher limits can only be used if at least one building in the Project was placed in service on or before December 31, 2008.

(b) If HUD releases a 20%, 30%, 40%, 60%, 70% or 80% income limit in the MTSP charts the Department will make that data available without any calculations. Otherwise, the following methodology will be used, without rounding, to determine additional income limits:

(1) To calculate the 20% AMGI, the 50% AMGI limit will be multiplied by .40 or 40%.

(2) To calculate the 30% AMGI, the 50% AMGI limit will be multiplied by .60 or 60%.

(3) To calculate the 40% AMGI, the 50% AMGI limit will be multiplied by .80 or 80%.

(4) To calculate the 60% AMGI, the 50% AMGI limit will be multiplied by 1.2 or 120%.

(5) To calculate the 70% AMGI, the 50% AMGI limit will be multiplied by 1.4 or 140%.

(6) To calculate the 80% AMGI, the 50% AMGI limit will be multiplied by 1.6 or 160%.

(c) The Land Use Restriction Agreement (LURA) for some, but not all, Tax Exempt Bond properties restricts the amount of rent the Development Owner is permitted to charge. If the LURA restricts rents, rent limits will be calculated in accordance with §10.1004(d) of this subchapter (relating to Housing Tax Credit Properties, TCAP, Exchange and HTF).

(d) Tax Exempt Bond LURAs are hereby amended to be consistent with this section.

(e) The Department will make available a memorandum in a recordable form reflecting the applicable rent limits in accordance with this section and the legal description of the affected property. The owner of the property will bear any costs associated with recording such memorandum in the real property records for the county in which the property is located.

(f) Nothing in this section prevents a Development Owner from pursuing a Material Amendment to their LURA in accordance with the procedures found in §10.405 of this chapter (relating to Amendments and Extensions).

§10.1004. Housing Tax Credit Properties, TCAP, Exchange and SHTF.

(a) Except for certain rural properties, Housing Tax Credit, TCAP, Exchange, and SHTF Developments must use the Multifamily Tax Subsidy Program (MTSP) income limits released by HUD, generally, on an annual basis. The MTSP limit tables include:

(1) The 50% and 60% Area Median Gross Income (AMGI) by household size.

(2) In areas where the income limits did not decrease in 2007 and 2008 because of HUD's hold harmless policy, a HERA Special 50% and HERA Special 60% income limit by household size. These higher limits can only be used if at least one building in the Project (as defined on line 8b on Form 8609) was placed in service on or before December 31, 2008.

(b) If HUD releases a 20%, 30%, 40%, 60%, 70% or 80% income limit in the MTSP charts, the Department will use that data. Otherwise, the following calculation will be used, without rounding, to determine additional income limits:

(1) To calculate the 20% AMGI, the 50% AMGI limit will be multiplied by .40 or 40%.

(2) To calculate the 30% AMGI, the 50% AMGI limit will be multiplied by .60 or 60%.

(3) To calculate the 40% AMGI, the 50% AMGI limit will be multiplied by .80 or 80%.

(4) To calculate the 60% AMGI, the 50% AMGI limit will be multiplied by 1.2 or 120%.

(5) To calculate the 70% AMGI, the 50% AMGI limit will be multiplied by 1.4 or 140%.

(6) To calculate the 80% AMGI, the 50% AMGI limit will be multiplied by 1.6 or 160%.

(c) Treatment of Rural Properties. Section 42(i)(8) of the Code permits certain Housing Tax Credit, Exchange, and Tax Credit Assistance properties to use the national non-metropolitan median income limit when the area median gross income limit for a place is less than the national non-metropolitan median income.

(1) The Department will identify rural eligible places in accordance with:

(A) Section 520 of the Housing Act of 1949, as amended from time to time; and

(B) Chapter 2306 of the Texas Government Code, as amended from time to time.

(2) The Department allows the use of rural income limits for SHTF multifamily rental Developments that are considered rural using the process described in this subsection.

(d) Rent limits are a calculation of income limits and cannot exceed 30% of the applicable Imputed Income Limit. Rent limits are published by number of bedrooms and will be rounded down to the nearest dollar.

(1) Example 1004(1): To calculate the 30% 1 bedroom rent limit:

(A) Determine the imputed income limited by multiplying the number of bedrooms by 1.5: 1 bedroom x 1.5 persons = 1.5.

(B) To calculate the 1.5 person income limit, average the 1 person and 2 person income limits: If the 1 person 30% income limit is $12,000 and the 2 person 30% income limit is $19,000, the imputed income limit would be $15,500 ($12,000 + $19,000 = $31,000/2 = $15,500).

(C) To calculate the 30% 1 bedroom rent limit, multiply the imputed income limit of $15,500 by 30%, then divide by 12 months and round down. In this example, the 30% 1 bedroom limit is $387 ($15,500 times 30% divided by 12 = $387.50 per month. Rounded down the limit is $387).

(2) Example 1004(2): to calculate the 50% 2 bedroom rent limit:

(A) Determine the imputed income limited to be calculated by multiplying the number of bedrooms by 1.5: 2 bedrooms x 1.5 persons = 3.

(B) The 3 person income limit is already published; for this example the applicable 3 person 50% income limit is $27,000.

(C) To calculate the 50% 2 bedroom rent limit, multiply $27,000 by 30%, then divide by 12. In this example, the 50% 2 bedroom limit is $675 ($27,000 times 30% divided by 12 = $675. No rounding is needed since the calculation yields a whole number).

(e) The Department releases rent limits assuming that the gross rent floor is set by the date the Housing Tax Credits were allocated.

(1) For a 9% Housing Tax Credit, the allocation date is the date the Carryover Agreement is signed by the Department.

(2) For a 4% Housing Tax Credit, the allocation date is the date of the Determination Notice.

(3) For TCAP, the allocation date is the date the accompanied credit was allocated.

(4) For Exchange, the allocation date is the effective date of the Subaward agreement.

(f) Revenue Procedure 94-57 permits, but does not require, owners to set the gross rent floor to the limits that are in effect at the time the Project (as defined on line 8b on Form 8609) places in service. However, this election must be made prior to the Placed in Service Date. A Gross Rent Floor Election form is available on the Department's website. Unless otherwise elected, the initial date of allocation described in subsection (e) of this section will be used.

(1) In the event an owner elects to set the gross rent floor based on the income limits that are in effect at the time the Project places in service and wishes to revoke such election, prior approval from the Department is required. The request will be treated as non-material amendment, subject to the fee described in §11.901of this title (relating to Fee Schedule) and the process described in §10.405 of this chapter (relating to Amendments and Extensions).

(2) An owner may request to change the election only once during the Compliance Period.

(g) For the SHTF program, the date the LURA is executed is the date that sets the gross rent floor.

(h) Held Harmless Policy.

(1) In accordance with Section 3009 of the Housing and Economic Recovery Act of 2008, once a Project (as defined on line 8b on Form 8609) places in service, the income limits shall not be less than those in effect in the preceding year.

(2) Unless other guidance is received from the U.S. Treasury Department, in the event that a place no longer qualifies as rural, a Project that was placed in service prior to loss of rural designation can continue to use the rural income limits that were in effect before the place lost such designation for the purposes of determining the applicable income and rent limit. However, if in any subsequent year the rural income limits increase, the existing project cannot use the increased rural limits. Example 1004(3): Project A was placed in service in 2010. At that time, the place was classified as Rural. In 2012 that place lost its rural designation. The rural income limits increased in 2013. Project A can continue to use the rural income limits in effect in 2012 but cannot use the higher 2013 rural income limits. For owners that execute a carryover for a Project located in a rural place that loses such designation prior to the placed in service date, unless other guidance is received from the U.S. Treasury Department, the Department will monitor using the rent limits calculated from the rural limits that were in effect at the time of the carryover. However, for the purposes of determining household eligibility, such Project must use the applicable MTSP income limits published by HUD.

§10.1005. HOME, HOME-ARP, TCAP RF, and NSP.

(a) HOME, HOME-ARP and TCAP RF Developments must use the HOME Program Income and Rent Limits that are calculated annually by HUD's Office of Policy Development and Research (PDR). The limits are made available for each Metropolitan Statistical Areas (MSA), Primary Metropolitan Statistical Areas (PMSA) and Area, District or County by State.

(1) Upon publication, the Department will determine which counties are in each MSA, PMSA, Area or District.

(2) Generally, PDR publishes income limits in tables identifying the following Area Median Gross Income (AMGI) by household size:

(A) Extremely Low-Income Limits which are generally 30% of median income, which will be shown as the 30% limit in the Department's income limits;

(B) Very Low-Income Limits which are generally 50% of median income, which will be shown as the 50% limit in the Department's income limits;

(C) 60% Limits;

(D) Low-Income Limits which are generally 80% of the median income, but capped at the national median income with some exceptions which will be shown as the 80% limits in the Department's income limits.

(3) If not published, the Department will use the following methodology to calculate, without rounding, additional income limits from the HOME Program income limits released by PDR:

(A) To calculate the 30% AMGI, the 50% AMGI limit will be multiplied by .60 or 60%.

(B) To calculate the 40% AMGI, the 50% AMGI limit will be multiplied by .80 or 80%.

(C) To calculate the 60% AMGI, the 50% AMGI limit will be multiplied by 1.2 or 120%.

(b) PDR publishes High and Low HOME rent limits by bedroom size.

(c) PDR does not publish a 30% or 40% rent limits that certain HOME, HOME-ARP and TCAP RF Developments are required to use. These limits will be calculated using the same formulas described in §10.1004 of this subchapter (relating to Housing Tax Credit Properties, TCAP, Exchange and SHTF).

(d) In the event that PDR publishes rent limits after the HOME program income limits, the Department permits HOME, HOME-ARP and TCAP RF Developments to delay the implementation of the 30% and 40% rent limits until the High and Low HOME rent limits must be used.

(e) NSP income limits are published annually by HUD for each county with tables identifying the 50% AMGI and 120% AMGI for household size. If not published, the Department will use the following methodology to calculate, without rounding, additional income limits from the HOME Program income limits released by HUD:

(1) To calculate the 30% AMGI, the 50% AMGI limit will be multiplied by .60 or 60%.

(2) To calculate the 40% AMGI, the 50% AMGI limit will be multiplied by .80 or 80%.

(3) To calculate the 60% AMGI, the 50% AMGI limit will be multiplied by 1.2 or 120%.

(4) To calculate the 80% AMGI, the 50% AMGI limit will be multiplied by 1.6 or 160%.

(f) If the LURA for an NSP Development restricts rents, the amount of rent the Development Owner is permitted to charge will be the High or Low HOME rent published by PDR or calculated in the same manner described in §10.1004 of this subchapter using the HOME income limits.

(g) The LURA for HOME-ARP may require the rent and income limit to follow a different Department program during the state affordability period. In that case, rent will be calculated in the manner of the program identified in the LURA and described in this subchapter.

§10.1006. National Housing Trust Fund (NHTF).

(a) The 30% National Housing Trust Fund Income and Rent Limits are calculated annually by HUD's Office of Policy Development and Research (PDR). The limits are made available for each Metropolitan Statistical Areas (MSA), Primary Metropolitan Statistical Areas (PMSA) and Area, District or County by State. Generally, PDR publishes income limits in tables identifying the Area Median Gross Income (AMGI) by household size. The 30% NHTF income limit is the greater of the 30% limit and the federal poverty line. The 15% NHTF income limit will be half of the 30% NHTF income limit.

(b) PDR publishes 30% NHTF Rent Limits by bedroom size. The 30% NHTF rent limit is calculated based on the greater of the 30% AMGI or the federal poverty line. The 15% NHTF rent limit will be half of the 30% NHTF rent limit.

§10.1007. Emergency Rental Assistance (ERA).

(a) The Emergency Rental Assistance Developments (ERA) must use the Section 8 income limits released by HUD, generally, on an annual basis. The Section 8 limit tables include the 30% and 50% by household size.

(b) The Land Use Restriction Agreement (LURA), for Emergency Rental Assistance Developments restricts the amount of rent the Development Owner is permitted to charge.

(1) If ERA is layered with Housing Tax Credit Properties, TCAP, Exchange and SHTF, the LURA restricted rent limits will be calculated in accordance with §10.1004(d) of this subchapter (relating to Housing Tax Credit properties, TCAP, Exchange and SHTF)

(2) If ERA is layered with HOME, HOME-ARP, TCAP RF, and NSP, the LURA restricted rent limits will be calculated in accordance with §10.1005(b) of this subchapter (relating to HOME, HOME-ARP, TCAP RF, and NSP)

(3) If ERA is layered with NHTF, the LURA restricted rent limits will be calculated in accordance with §10.1006(b) of this subchapter (relating to NHTF).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2023.

TRD-202300145
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: February 26, 2023
For further information, please call: (512) 475-3959

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER C. STANDARDS OF CONDUCT

19 TAC §§1.80 - 1.87

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter C, Standards of Conduct, §§1.80 - 1.87. Specifically, the repeal is in anticipation of establishing new Subchapter C rules in Title 19, Chapter 1.

The review of the rules and repeal of existing Subchapter C and, via separate rulemaking, the re-adoption make minor substantive amendments to the rule to set out the parameters of the agency and Board's relationship with its official non-profit partner, the Texas Higher Education Foundation. Additional minor conforming edits will further explain the processes for the acceptance of gifts and donations to the agency that align with Texas law, and re-adopt the ethical boundaries by which the Board and employees govern themselves.

Nichole Bunker-Henderson, General Counsel, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Nichole Bunker-Henderson has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be updating the Board's ethics policies to reflect current practice and demonstrate compliance with state law and best practices. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule but will be replaced by proposed new Subchapter C rules in Title 19, Chapter 1;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules not affect this state's economy.

Comments on the proposal may be submitted to Nichole Bunker-Henderson, General Counsel, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Nichole.Bunker-Henderson@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeal is proposed under Texas Education Code, Section 61.068, which provides the Coordinating Board with the authority to accept gifts and donations. The repeal is further proposed pursuant to the authority of Texas Government Code chapters 575 and 2255.001.

The proposed repeal affects Texas Education Code, Sections 61.089, 61.5361, 61.5391, 61.609, 61.658, 61.707, 61.793, 61.867, 61.885, 61.907, 61.957, 61.9608, 61.9625, 61.9657, 61.9704, 61.9728, 61.9755, 61.9776, 61.9795, 61.9805, 61.9818, 61.9827, 61.9837, 61.9858, and 61.9965.

§1.80. Scope and Purpose.

§1.81. Definitions.

§1.82. Donations by Private Donors to the Board.

§1.83. Donations by a Private Donor to a Private Organization That Exists To Further the Purposes and Duties of the Board.

§1.84. Organizing a Private Organization That Exists To Further the Duties and Purposes of the Board.

§1.85. Relationship between a Private Organization and the Board.

§1.86. Standards of Conduct Between Board Employees and Private Donors.

§1.87. Miscellaneous.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 13, 2023.

TRD-202300154
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: February 26, 2023
For further information, please call: (512) 427-6297

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19 TAC §§1.80 - 1.87

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter C, and new rules in Chapter 1, Subchapter C, Acceptance of Gifts and Donations By Board And Employees, §§1.80-1.87. Specifically, the repeal and new rules provides the opportunity to review and update the Board's ethics policies to reflect current agency practice, demonstrate compliance with current state law, and implement state governance best practices

Rule 1.80 sets out the scope and purpose of the rules, which is to comply with applicable provisions of state law, ensure compliance with ethics best practices, and properly govern the relationship between the Board and its official non-profit partner organization, the Texas Higher Education Foundation, which has supported the Board's mission and initiatives since 2001.

Rule 1.81 sets out the definitions used in the rules, including updating the name of the Texas Higher Education Foundation.

Rule 1.82 governs the relationship of the Texas Higher Education Foundation (Foundation) with the board and designates it as the official nonprofit partner of the Board. This rule implements ethical best practices and specifies the control that each the Foundation and Board may have with one another.

Rule 1.83 specifies how the Board may spend gifts and donations consistent with state law.

Rule 1.84 provides for the donation of gifts to the Board from private donors. Subsection (b) also specifies that the relationship between the Board and Foundation shall be established in a Memorandum of Understanding, consistent with the current relationship.

Rule 1.85 sets out what support the Foundation may offer the Board and the support the Board may use to further the purposes of the Foundation. These limitations are specified in rule to avoid conflicts of interest, create transparency, and ensure that the relationship with the Board's official non-profit support organization remains consistent with state law. The means of support and relationship are set out in the Memorandum of Understanding, as described in the rule.

Rules 1.86 and 1.87 establish the methods by which the Board members will avoid prohibit conflicts of interest consistent with Government Code 575 and best practices.

Nichole Bunker-Henderson, General Counsel, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Nichole Bunker-Henderson has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be updating the Board's ethics policies to reflect current practice and demonstrate compliance with state law and best practices. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will create new rules;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Nichole Bunker-Henderson, General Counsel, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Nichole.Bunker-Henderson@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new section is proposed under Texas Education Code, Section 61.068, which provides the Coordinating Board with the authority to accept gifts and donations. The rule is further proposed pursuant to the authority of Texas Government Code chapters 575 and 2255.001.

The proposed new section affects Texas Education Code, Sections 61.089, 61.5361, 61.5391, 61.609, 61.658, 61.707, 61.793, 61.867, 61.885, 61.907, 61.957, 61.9608, 61.9625, 61.9657, 61.9704, 61.9728, 61.9755, 61.9776, 61.9795, 61.9805, 61.9818, 61.9827, 61.9837, 61.9858, and 61.9965.

§1.80. Scope and Purpose.

(a) This subchapter establishes the criteria, procedures, and standards of conduct governing the relationship between the Texas Higher Education Coordinating Board (Board) and its officers and employees and private donors and private organizations that exist to further the duties and purposes of the Board. This subchapter sets out the Board's process for acceptance of gifts and donations.

(b) The purpose of this subchapter is to comply with the provisions of Texas Government Code chapters 575 and 2255.001 and implement the provisions of chapter 61 of the Texas Education Code authorizing the Board to accept gifts and donations.

§1.81. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of the Texas Higher Education Coordinating Board.

(3) Donation--A contribution of anything of value (including a gift or in-kind gift such as goods or services) given to the Board for public higher education purposes or to the Texas Higher Education Foundation for the benefit of the Board. The Board may not accept donations of real property (real estate) without the express permission and authorization of the legislature.

(4) Employee--A regular, acting, exempt, full-time or part-time employee of the agency.

(5) Gift--A donation of money or property.

(6) Private donor--People or private organizations that make a donation to the Board for higher education purposes, or that make a donation to the Higher Education Foundation to assist in accomplishing the duties of the Board.

(7) The Texas Higher Education Foundation--A 501(c)(3) organized for the purpose of supporting the mission, objectives, and public purpose of the Texas Higher Education Coordinating Board by providing resources obtained primarily from private, non-governmental sources, or its successor organization designated as the official nonprofit partner of the Board.

§1.82. The Texas Higher Education Foundation.

(a) The Texas Higher Education Foundation is designated as the official nonprofit partner of the Board.

(b) The Chair of the Board and the Board of Trustees of the Texas Higher Education Foundation may cooperatively appoint a board of trustees for the organization, subject to the following requirements:

(1) The Commissioner shall serve as an ex officio trustee with no vote;

(2) Board employees may serve as an ex officio, non-voting trustee, provided there is no conflict of interest in accordance with all federal and state laws and Board policies. This provision applies to the employee's spouse and children; and

(3) Members of the Board may serve on the Board of Trustees of the Texas Higher Education Foundation, but such members will not comprise a majority of the Board of Trustees.

(c) The Board shall review its relationship with the Texas Higher Education Foundation on a schedule to be established by the Board, but not less than once every 10 years.

(d) The Texas Higher Education Foundation may not expend funds for the purpose of influencing legislative action, either directly or indirectly.

§1.83. Gifts and Donations to the Board.

(a) A private donor may make a donation to the Board to be used or spent for specified or unspecified public higher education purposes. If the donor specifies the purpose, the Board must use or expend the donation only for that purpose.

(b) The Board shall use or spend all donations in accordance with the provisions of the State Appropriations Act. The Board shall deposit all gifts in the state treasury unless exempted by specific statutory authority.

(c) The Board may not transfer a private donation to a foundation or private/public development fund without specific written permission from the donor and the written approval of the Commissioner.

(d) The Board authorizes the Commissioner to accept donations on its behalf.

(e) The Board will acknowledge the acceptance of a gift or donation at the next Board meeting immediately after the date the Commissioner accepts a gift on the Board's behalf.

(f) The Board will log gifts in its minutes as required by chapter 575 of the Government Code.

§1.84. Donations by a Private Donor to the Texas Higher Education Foundation.

(a) A private donor may make a donation to the Texas Higher Education Foundation to assist in accomplishing the duties of the Board.

(b) The Texas Higher Education Foundation shall administer and use the donation in accordance with the provisions in the memorandum of understanding between the Texas Higher Education Foundation and the Board, as described in §1.85(c) of this title (relating to Relationship between the Texas Higher Education Foundation and the Board).

§1.85. Relationship between the Texas Higher Education Foundation and the Board.

(a) The Board may provide to the Texas Higher Education Foundation:

(1) fundraising and solicitation assistance;

(2) staff services to coordinate activities;

(3) administrative and clerical services;

(4) office and meeting space;

(5) training;

(6) any service or agreement authorized by the legislature; and

(7) other miscellaneous services as needed to further the duties and purposes of the Board.

(b) In addition to gifts and donations authorized by law, the Texas Higher Education Foundation may provide:

(1) postage;

(2) printing, including letterhead and newsletters;

(3) special event insurance;

(4) recognition of donors;

(5) bond and liability insurance for organization officers; and

(6) other miscellaneous services as needed to further the duties and purposes of the Board.

(c) The Texas Higher Education Foundation and the Board shall enter into a memorandum of understanding (MOU) which contains specific provisions regarding:

(1) the relationship between the Board and the Texas Higher Education Foundation and a mechanism for solving any conflicts or disputes;

(2) fundraising and solicitation;

(3) the use of all donations from fundraising or solicitation, less legitimate expenses as described in the MOU, for the benefit of the Board;

(4) the maintenance by the Foundation of receipts and documentation of all funds and other donations received, including furnishing such records to the Board;

(5) the furnishing to the Board of any audit of the Texas Higher Education Foundation by the Internal Revenue Service or a private firm; and

(6) the reasonable use of Board employees, equipment, or property in order to further or support the purposes or programs of the Board, provided such usage is commensurate with the benefit received or to be received by the Board.

§1.86. Standards of Conduct Between Board Employees and Private Donors.

(a) A Board officer or employee shall not accept or solicit any gift, favor, or service from a private donor that might reasonably tend to influence his/her official conduct.

(b) A Board officer or employee shall not accept employment or engage in any business or professional activity with a private donor which the officer or employee might reasonably expect would require or induce him/her to disclose confidential information acquired by reason of his/her official position.

(c) A Board officer or employee shall not accept other employment or compensation from a private donor that would reasonably be expected to impair the officer or employee's independence of judgment in the performance of his/her official position.

(d) A Board officer or employee shall not make personal investments in association with a private donor that could reasonably be expected to create a substantial conflict between the officer or employee's private interest and the interest of the Board.

(e) A Board officer or employee shall not solicit, accept, or agree to accept any benefits for having exercised his/her official powers on behalf of a private donor or performed his official duties in favor of private donor.

(f) A Board officer or employee who has policy direction over the Board and who serves as an officer or director on a board of a private donor shall not vote on any measure, proposal, or decision pending before the private donor if the Board might reasonably be expected to have an interest in such measure, proposal, or decision.

(g) A Board officer or employee shall not authorize a private donor to use property of the Board unless the property is used in accordance with a contract or memorandum of understanding between the Board and the private donor, or the Board is otherwise compensated for the use of the property.

(h) A Board officer affiliated with a private donor or organization shall at all times be mindful of his/her obligations under Texas Government Code chapter 572.

§1.87. Miscellaneous.

The relationship between a private donor, Texas Higher Education Foundation, and the Board, including fundraising and solicitation activities, is subject to all applicable federal and state laws, rules and regulations, and local ordinances governing each entity and its employees.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 13, 2023.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6297

SUBCHAPTER O. LEARNING TECHNOLOGY ADVISORY COMMITTEE

19 TAC §1.188, §1.190

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter O, §1.188 and §1.190, concerning the Learning Technology Advisory Committee. Specifically, this amendment will extend the abolishment date of the Learning Technology Advisory Committee and update the tasks assigned to the Committee.

Texas Education Code, §61.026 authorizes the Coordinating Board to appoint advisory committees as considered necessary. This amendment will extend the abolishment date of the current Learning Technology Advisory Committee and update tasks assigned to the Committee to align with other proposed amendments to the Texas Administrative Code relating to distance education.

Rule 1.188, Duration, contains the abolishment date of the Learning Technology Advisory Committee, which will be extended to April 27, 2028.

Rule 1.190, Tasks Assigned to the Committee, lists the responsibilities of the Learning Technology Advisory Committee. The amendments clarify how those responsibilities will shift to align with proposed changes to distance education program approval processes in Chapter 2, Subchapter J: §1.190(1) removes the responsibility of the Committee to analyze duplication of distance education programs in the state; §1.190(2) amends the Committee's scope for development of policy recommendations to the Board by including the development of affordable learning materials such as open educational resources (§1.190(2)(B)), and the review and update of the Principles of Good Practice for Distance Education (§1.190(2)(C)); and §1.190(3) adds the review and provision of recommendations on Institutional Plans for Distance Education to the responsibilities of the Committee, while removing the task of reviewing and providing recommendations on distance education doctoral programs.

Dr. Michelle Singh, Assistant Commissioner for Digital Learning, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Michelle Singh has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the continuation of work of the Learning Technology Advisory Committee and clarification of the Committee's responsibilities. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Michelle Singh, Assistant Commissioner for Digital Learning, P.O. Box 12788, Austin, Texas 78711-2788, or via email at digitallearning@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under Texas Education Code, Section 61.0512(g), which provides the Coordinating Board with the authority to approve distance learning courses at institutions of higher education.

The proposed amendment affects Texas Education Code Section 61.0512(g).

§1.188. Duration.
The committee shall be abolished no later than April 27, 2028 [~~October 31, 2025~~], in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§1.190. Tasks Assigned the Committee.
Tasks assigned the committee include:

(1) Analysis of the current state of distance education in Texas higher education including the use of various distance education modalities, the cost of distance education, the availability of high need and high demand degree programs through distance education, institutional fee structures associated with distance education, the role of technology in instructional cost effectiveness[, ~~duplication of distance education programs~~], and public/private distance education collaborations;

(2) Development of policy recommendations to the Board on critical issues such as:

(A) The development of distance education institutional collaboratives;

(B) The development of affordable [~~shared~~] electronic course resources and learning materials, including open educational resources, textbooks, and other digital learning objects;

(C) Best practices in the evaluation of distance education, including review and update of the Principles of Good Practice for Distance Education;

(D) The role of online and hybrid education in offering accessible and affordable degree programs;

(E) Partnerships between community colleges and universities that leverage technology to increase the number of degree completion options available to students;

(F) Ways to creatively and innovatively use technology to change the way in which higher education is offered; and

(G) Ways to creatively and innovatively use technology to increase student retention and success through programs such as just-in-time, on-demand academic support services.

(3) Review and provide recommendations on Institutional Plans for Distance Education [~~of all distance education doctoral proposals~~] to promote [~~ensure~~] the development and delivery of high-quality [~~high quality~~] programs.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 2. ACADEMIC AND WORKFORCE EDUCATION

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §2.9

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter A, §2.9, concerning revisions and modifications to an approved program. Specifically, this amendment will clarify how institutions report changes in a program's modality of delivery, specifically stating that institutions should notify the Coordinating Board of intent to offer a program through the distance education modality.

The Coordinating Board has authority to approve courses offered through distance education under Texas Education Code §61.0512(g). Board staff has developed a revised approval process that provides for conferring distance education approval at the institutional level, maintaining the requirement that institutions notify Board staff of intent to implement a new distance education program. The amendments to this rule conform to this new process, and issue further clarification that this process does not apply to changes to a program's physical location or site. These amendments do not change current processes, as institutions must currently notify the Coordinating Board of changes to distance education programs.

Rule 2.9, Revisions and Modifications to an Approved Program, contains the procedures institutions must follow to request a revision or modification to a certificate or degree program that already has Coordinating Board approval. The amendments clarify how the Coordinating Board will process changes to a pro-

gram's modality of delivery: subsection 2.9(a)(1) more clearly states that Assistant Commissioner approval applies to the entire relocation of a program; subsection (c)(3) notes that only requests for off-campus face-to-face programs fall within the non-substantive revisions and modifications category; and section 2.9(e) explains the change categories that qualify for Notification Only approval, including program delivery through distance education. This level of approval aligns Chapter 2, Subsection A, with proposed new changes to distance education program approval processes in Chapter 2, Subsection J.

Michelle Singh, Assistant Commissioner for Digital Learning, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Michelle Singh, Assistant Commissioner for Digital Learning, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the continued maintenance of the Coordinating Board's Distance Education Inventory. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Michelle Singh, Assistant Commissioner for Digital Learning, P.O. Box 12788, Austin, Texas 78711-2788, or via email at digitallearning@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under Texas Education Code, Section 61.0512(g), which provides the Coordinating Board with the authority to approve distance learning courses offered by institutions of higher education.

The proposed amendment affects Texas Education Code §61.0512(g).

§2.9. Revisions and Modifications to an Approved Program.

(a) Substantive revisions and modifications that materially alter the nature of the program, physical location, or modality of delivery, as determined by the Assistant Commissioner, include, but are not limited to:

(1) Closing the program in one location and moving it to a second location [~~Changing the location of the program~~]; and

(2) Changing the funding from self-supported to formula-funded or vice versa.

(b) For a program that initially required Board Approval beginning as of September 1, 2023, and doctoral and professional programs approved by the Board on or before September 1, 2023, any substantive revision or modification to that program will require Board Approval under §2.4 of this subchapter. For all other programs, including programs that initially required Board Approval prior to September 1, 2023, any substantive revision or modification will require Assistant Commissioner Approval under §2.4(a)(2) of this subchapter.

(c) Non-substantive revisions and modifications that do not materially alter the nature of the program, location, or modality of delivery, as determined by the Assistant Commissioner, include, but are not limited to:

(1) Increasing the number of semester credit hours of a program for reasons other than a change in programmatic accreditation requirements;

(2) Consolidating a program with one or more existing programs;

(3) Offering a program in an off-campus face-to-face format [~~Changing the modality of the program~~];

(4) Altering any condition listed in the program approval notification;

(5) Changing the CIP Code of the program;

(6) Increasing the number of semester credit hours if the increase is due to a change in programmatic accreditation requirements;

(7) Reducing the number of semester credit hours, so long as the reduction does not reduce the number of required hours below the minimum requirements of the institutional accreditor, program accreditors, and licensing bodies, if applicable;

(8) Changing the Degree Title or Designation; and

(9) Other non-substantive revisions that do not materially alter the nature of the program, location, or modality of delivery, as determined by the Assistant Commissioner.

(d) The non-substantive revisions and modifications in subsection (c)(1) - (5) of this section are subject to Assistant Commissioner Approval Regular Review under §2.4 of this subchapter. All other non-substantive revisions and modifications are subject to Assistant Commissioner Approval Expedited Review under §2.4(a)(2)(B) of this subchapter.

(e) The following program revisions or modifications require Notification Only under §2.4(1) of this subchapter:

(1) [~~(e)~~] Public universities and public health-related institutions must notify the Coordinating Board of changes to administrative units, including creation, consolidation, or closure of an administrative unit. Coordinating Board Staff will update the institution's Program Inventory pursuant to this notification.

(2) All institutions must notify the Coordinating Board of the intent to offer an approved program through distance education following the procedures in §2.206 of this chapter (relating to Distant Education Degree or Certificate Program Notification).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 13, 2023.

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Nichole Bunker-Henderson
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SUBCHAPTER J. APPROVAL OF DISTANCE EDUCATION FOR PUBLIC INSTITUTIONS

19 TAC §§2.200 - 2.207

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code (TAC), Title 19, Part 1, Chapter 2, Subchapter J, §§2.200-2.207, concerning approval of distance education for public institutions. Specifically, this new section will amend definitions of distance education courses and programs and revise the approval process for public institutions seeking to offer distance education. At a later date, the Coordinating Board intends to repeal existing Distance Education rules located in TAC Chapter 4, Subchapter P, which will be superseded by these rules.

Texas Education Code (TEC), Section 61.0512(g), provides the Coordinating Board with the authority to approve distance learning courses at institutions of higher education.

Rule 2.200, Purpose, states the intention of the subchapter to establish rules for all public institutions of higher education in Texas regarding the delivery of distance education.

Rule 2.201, Authority, established the statutory authority for the subchapter in TEC Section 61.0512(g).

Rule 2.202, Definitions, provides the meanings of terms used in the subchapter, including new definitions for 100-Percent Online Course, Hybrid Course, 100-Percent Online Program, and Hybrid Program. These definitions bring Coordinating Board rules in closer alignment with standard practices in the industry.

Rule 2.203, Applicability of Subchapter, specifies that the subchapter applies to institutions seeking to offer one or more Credit Courses and does not govern course eligibility for funding. While non-credit courses and programs offered through distance education may not be subject to the approval or notification requirements of the chapter, they will still be eligible for formula reimbursement through the proposed TAC Chapter 13, Subchapter O.

Rule 2.204, Distance Education Standards and Criteria; the Principles of Good Practice for Distance Education, explains the Principles of Good Practice for Distance Education and their relevance to distance education delivery, details the contents of the Principles of Good Practice for Distance Education, and describes the process for Board approval of the Principles of Good Practice for Distance Education. This process ensures that the Coordinating Board will use a standard, Board-approved rubric for evaluating institutions' ability to deliver quality distance education.

Rule 2.205, Institutional Plan for Distance Education, explains the purpose of the Institutional Plan for Distance Education and its relation to Board approval for an institution to offer distance education courses. This rule also details the process to review and approve Institutional Plans for Distance Education, which includes Coordinating Board staff and Learning Technology Advisory Committee review and recommendations prior to final approval. This process ensures that each public institution of higher education will have its distance education processes and administration evaluated against the standard Principles of Good Practice for Distance Education, as adopted by the Board, on a regular basis; institutions facing a potential denial from the Commissioner have the opportunity to appeal to the Board. Institutions with an Institutional Plan for Distance Education in good standing or on provisional status with the Coordinating Board have authorization to offer distance education instruction under TEC Section 61.0512(g).

Rule 2.206, Distance Education Degree or Certificate Program Notification, describes the process for institutional notification to Board staff prior to offering an existing program via distance modality or offering a new distance education program. New programs must also follow program approval request rules as detailed in the appropriate subchapter. This provision ensures that the Coordinating Board's existing Distance Education Program Inventory will remain up-to-date, accurately reflecting the distance education program offerings across the state.

Rule 2.207, Effective Date of Rules, establishes the effective date of the subchapter as December 1, 2023, and provides for a pause in the review of distance education doctoral programs by the Learning Technology Advisory Committee.

Dr. Michelle Singh, Assistant Commissioner for Digital Learning, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Michelle Singh has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the rigorous and uniform process for administering approvals to offer distance education that allows for continuous improvement of distance education program offerings in the state. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Michelle Singh, Assistant Commissioner of Digital Learning, P.O. Box 12788, Austin, Texas 78711-2788, or via email at digitallearning@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under Texas Education Code, Section 61.0512(g), which provides the Coordinating Board with the authority to approve distance learning courses at institutions of higher education.

The proposed new section affects Texas Education Code, Section 61.0512(g).

§2.200. Purpose.

This subchapter establishes rules for all public institutions of higher education in Texas regarding the delivery of distance education. The rules are designed to provide Texas residents with access to courses and programs that meet their needs and to promote course and program quality.

§2.201. Authority.

Authority for this subchapter is provided by Texas Education Code §61.0512(g), which provides the Board with the authority to approve distance education offered for credit.

§2.202. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. The definitions in 19 TAC, Chapter 2, Subchapter A, §2.3, apply for this subchapter unless a more specific definition for the same term is indicated in this rule.

(1) Credit course--A college-level course that, if successfully completed, can be applied toward the number of courses required for achieving an academic or workforce degree, diploma, certificate, or other formal award.

(2) Distance Education--The formal educational process that occurs when students and instructors are in separate physical locations for the majority (more than 50 percent) of instruction.

(3) Distance Education Course--A course in which a majority (more than 50 percent) of the instruction occurs when the student(s) and instructor(s) are in separate physical locations. The definition of distance education course does not include courses with 50 percent or less instruction when the student(s) and instructor(s) are in separate physical locations. Two categories of distance education courses are defined:

(A) 100-Percent Online Course--A distance education course in which 100 percent of instructional activity takes place when the student(s) and instructor(s) are in separate physical locations. Requirements for on-campus or in-person orientation, testing, academic support services, internships/fieldwork, or other non-instructional activities do not exclude a course from this category.

(B) Hybrid Course--A distance education course in which more than 50 percent but less than 100 percent of instructional activity takes place when the student(s) and instructor(s) are in separate physical locations.

(4) Distance Education Degree or Certificate Program--A program in which a student may complete a majority (more than 50 percent) of the credit hours required for the program through distance education courses. The definition of a Distance Education Degree or Certificate Program does not include programs in which 50 percent or less of the required credit hours are offered through distance education. Two categories of distance education programs are defined:

(A) 100-Percent Online Program--A degree program in which students complete 100 percent of the credit hours required for the program through 100-Percent Online Courses. Requirements for on-campus or in-person orientation, testing, academic support services, internships/fieldwork, or other non-instructional activities do not exclude a program from this category.

(B) Hybrid Program--A degree program in which students complete 50 percent or more and less than 100 percent of the credit hours required for the program through Distance Education Courses.

(5) Institutional Accreditor--A federally recognized institutional accreditor approved by the Department of Education under 20 U.S.C. §1099b.

(6) Institutional Plan for Distance Education ("Plan" or "IPDE")--A plan that an institution must submit for Coordinating Board approval prior to offering a distance education program for the first time. Each institution shall periodically update its plan on a schedule as specified in §2.205 of this subchapter.

(7) Principles of Good Practice for Distance Education--Standards and criteria for distance education delivered by Texas public institutions. This document is reviewed and adopted by the Board every three years in accordance with §2.204 of this subchapter. This document is also known as "Principles of Good Practice for Academic Degree and Certificate Programs and Credit Courses Offered at a Distance."

§2.203. Applicability of Subchapter.

(a) This subchapter applies to an institution that seeks to offer one or more Credit Courses as defined in §2.202(1) of this subchapter via distance education.

(b) This subchapter does not apply to an institution that seeks to offer non-credit courses, including non-credit continuing education, via distance education. An institution offering only non-credit course(s) via distance education is not required to obtain approval under this subchapter regardless whether the course is otherwise eligible for funding.

(c) This subchapter applies only to determination of whether an institution is authorized to offer course(s) via distance education and does not govern the course eligibility for funding. The agency shall determine whether a course is eligible for funding based on the applicable statutes and rules in the Texas Administrative Code.

§2.204. Distance Education Standards and Criteria; the Principles of Good Practice for Distance Education.

The following provisions apply to all institutions covered under this subchapter, unless otherwise specified:

(1) Principles of Good Practice for Distance Education. The Coordinating Board will adopt standards and criteria for Distance Education in the Principles of Good Practice for Distance Education. An institution's Institutional Plan for Distance Education ("Plan" or "IPDE") shall conform to the Principles of Good Practice for Distance Education in effect at the time the institution submits the Plan, as described in §2.205 of this subchapter.

(A) Content of the Principles of Good Practice for Distance Education. The Principles of Good Practice for Education will

contain a list of criteria necessary for the institution to demonstrate provision of high-quality distance education. These criteria may Include provisions relating to:

(i) Institutional Context and Commitment;

(ii) Curriculum and Instruction;

(iii) Faculty;

(iv) Evaluation and Assessment;

(v) Facilities and Finances; and

(vi) Adherence to Federal Requirements.

(B) Process to Adopt the Principles of Good Practice for Distance Education. Board Staff will present the Principles of Good Practice for Distance Education to the Board for adoption no less than every three years. In revising the Principles of Good Practice, Board Staff may consider input from the Learning Technology Advisory Committee and best practice standards developed by external bodies, including institutional accreditors.

(2) Institutions offering or seeking to offer distance education programs shall comply with:

(A) Principles and policies of their institutional accreditor.

(B) Procedures governing the approval of distance education programs.

(C) Standards outlined in Principles of Good Practice for Distance Education.

(D) Data reporting associated with distance education offerings as required by the Commissioner.

§2.205. Institutional Plan for Distance Education.

(a) Each institution shall submit an Institutional Plan for Distance Education ("IPDE") containing evidence of the institution's compliance with the mandatory Principles of Good Practice for Distance Education to the Coordinating Board prior to delivering any distance education programs for the first time. Board Staff will develop the IPDE form based on the standards and criteria contained in the Principles of Good Practice.

(b) The Coordinating Board authorizes an institution to offer distance education courses under Texas Education Code §61.0512(g) upon approving an institution's IPDE in good standing or if the institution is on provisional status pending final approval of their IPDE. An institution may receive formula funding for distance education courses under Chapter 13, Subchapter O, of this title. An institution shall notify the Coordinating Board of intent to offer new Distance Education Degree or Certificate Programs under §2.206 of this subchapter.

(c) Institutional academic and administrative policies shall reflect a commitment to maintain the quality of distance education courses and programs in accordance with the provisions of this subchapter. An IPDE shall conform to the Principles of Good Practice for Distance Education in effect at the time the institution submits the Plan.

(d) Process to Review and Approve IPDEs.

(1) IPDE Due Dates.

(A) Initial Approval. Each institution of higher education shall assess its distance education in accordance with the Principles of Good Practice for Distance Education. Institutions must report results of that assessment in an IPDE to Board Staff prior to seeking approval to offer distance education programs or certificates.

(B) Renewal. Each public institution of higher education shall assess its distance education on an ongoing basis in accordance with the Principles of Good Practice for Distance Education. Institutions must report results of that assessment in an updated IPDE to Board Staff by the earlier of the following deadlines:

(i) no later than one year after receiving final disposition of the institution's comprehensive renewal of accreditation report from their institutional accreditor as required by 34 CFR §602.19, or

(ii) no later than ten years after the approval of their last IPDE to the Coordinating Board.

(C) An institution may submit a request to the Commissioner for an extension of this due date of no more than two years. The Commissioner may approve this request only if the institution demonstrates good cause, e.g., the institutional accreditor has postponed the institution's renewal of accreditation cycle beyond the ten-year period.

(2) Initial Board Staff Review. Board Staff must review IPDEs for completeness and may request additional information from the institution upon determining the submitted IPDE is incomplete. Upon receipt of a completed IPDE, Board Staff must review the submission and make the following determination:

(A) Institutions Accredited by the Southern Association of Colleges and Schools Commission on Colleges ("SACSCOC"). Board Staff must determine whether the institution's IPDE has met SACSCOC policy and procedure standards related to the delivery of distance education during the prior renewal of accreditation cycle. Board Staff must forward the IPDE for Learning Technology Advisory Committee ("LTAC") review of the IPDE's adherence to the Principles of Good Practice for Distance Education under subsection (d)(3) of this section.

(B) Institutions Accredited by an Institutional Accreditor Other Than SACSCOC. Board Staff must forward the IPDE for LTAC review of the IPDE's adherence to the Principles of Good Standards for Distance Education under subsection (d)(3) of this section.

(C) Resubmitted IPDEs. If the IPDE is a resubmission that was previously denied by the Commissioner under subsection (d)(4)(B) of this section or by the Board under subsection (d)(4)(B)(ii)(II) of this section Board Staff must forward the resubmitted IPDE to LTAC review of the IPDE's adherence to the Principles of Good Standards for Distance Education under subsection (d)(3) of this section.

(3) Learning Technology Advisory Committee Review. LTAC must review and issue a recommendation as to the adherence of an IPDE to the Principles of Good Practice for Distance Education for the Board. LTAC may conduct this review using the following process:

(A) LTAC may assign each IPDE to a subcommittee chaired by LTAC members and comprised of other LTAC members and/or distance education experts who volunteer to serve in this capacity.

(B) The LTAC subcommittee assigned to review updated Institutional Plans shall review those Plans for alignment with the Principles of Good Practice. The LTAC subcommittee may ask questions and consult with the submitting institution to make this determination.

(i) If the LTAC subcommittee reviews and finds an IPDE in alignment with the PGP, the subcommittee shall issue a recommendation to LTAC that the institution be approved to offer distance education.

(ii) If the LTAC subcommittee finds an Institutional Plan is not aligned with the PGP, the subcommittee will identify areas of misalignment, provide feedback for improvement, make suggestions for the content of a remediation letter, and submit these recommendations to LTAC.

(C) LTAC may review and approve the recommendations of the LTAC subcommittee and submit these recommendations to Board Staff. Board Staff will submit these recommendations to the Commissioner for Commissioner Review under subsection (d)(4) of this section.

(4) Commissioner Review and Approval. The Commissioner has discretion to approve or deny an IPDE.

(A) Approval. If the Commissioner approves the IPDE, the institution's IPDE will be filed in good standing with the Coordinating Board. The Commissioner will send a notification to the institution of this decision.

(B) Denial. If the Commissioner denies the IPDE, the Commissioner will send an institution a remediation letter containing a notification of this decision. The remediation letter may contain the recommendations for improvement compiled by the LTAC subcommittee under subsection (d)(3)(B)(ii) of this section. The institution may then take one of two actions:

(i) Resubmission. The institution must resubmit the revised IPDE to Board Staff under subsection (d)(2) of this section no earlier than one year after the date of the letter containing Commissioner's notification of denial. The institution will remain on provisional status until final approval of the IPDE.

(ii) Appeal. The institution may appeal the Commissioner's decision to the Board. The Commissioner may issue a recommendation for approval or denial to the Board. The Board has final authority to appeal or deny the institution's IPDE.

(I) Approval. If the Board approves the IPDE, the institution's IPDE will be filed in good standing with the Coordinating Board.

(II) Denial and Resubmission. If the Board denies the institution's IPDE, the institution must resubmit the revised IPDE to Board Staff under subsection (d)(2) of this section no earlier than one year after the Board's decision. The institution will remain on provisional status until final approval of the IPDE.

§2.206. Distance Education Degree or Certificate Program Notification.

The following provisions apply to all programs covered under this subchapter, unless otherwise specified:

(1) Board Staff must maintain an accurate inventory of Distance Education Degree or Certificate Programs in the Distance Education Program Inventory.

(2) To offer an existing certificate or degree through the Distance Education modality, an institution must notify Board Staff of intent to offer an approved degree or certificate program through the Distance Education modality. To submit this notification, the institution must certify that it has an Institutional Plan for Distance Education in good standing and compliance with §2.204(b) of this subchapter. Board Staff will update the institution's Distance Education Program Inventory.

(3) To offer a new certificate or degree, an institution shall follow the program approval request rules laid out in the appropriate subchapter of this chapter and indicate its intent to deliver the new program through Distance Education on the program request form. To offer a new certificate or degree through Distance Education, the institution must certify that it has an Institutional Plan for Distance Education in good standing and compliance with §2.204(b) of this subchapter. Board Staff will update the institution's Distance Education Program Inventory upon the program's final approval.

(4) If an institution intends to cease offering an approved program via Distance Education modality, the institution must notify Board Staff. If an institution intends to phase out an approved degree or certificate program completely, the institution must follow the process in Chapter 2, Subchapter H of this title (relating to Phasing Out Degree and Certificate Programs). Board Staff will update the institutions Distance Education Program Inventory.

§2.207. Effective Date of Rules.

The effective date of this subchapter is December 1, 2023. Each institution must submit an Institutional Plan for Distance Education ("IPDE") in accordance with this subchapter on or after that date by the due dates set out in §2.205(d)(1) of this subchapter. IPDEs currently on file as of December 1, 2023, will remain filed in good standing until the first due date under §2.205(d)(1). Learning Technology Advisory Committee shall cease conducting reviews and make recommendations regarding distance education doctoral program proposals under 19 TAC §1.190(3) upon final adoption of this subchapter. An institution is not required to submit a request for review under 19 TAC §1.190(3) upon final adoption of this subchapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 13, 2023.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating board
Earliest possible date of adoption: February 26, 2023
For further information, please call: (512) 427-6284

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CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER Q. APPROVAL OF OFF-CAMPUS AND SELF-SUPPORTING COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §4.279

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter Q, §4.279(b), concerning formula funding for out-of-state or out-of-country programs. Specifically, this amendment will create an exception to allow formula funding for courses that are part of a Texas public community college program located in the same Metropolitan Area as the college but across a state line dividing the Metropolitan Area, and at a regional airport that serves Texas residents.

Current Board Rules §4.279(b) prescribes formula funding for courses taught in out-of-state or out-of-country programs. Such programs are presumed to provide no service or benefit to the state or its residents and are generally located in a municipality that is wholly separate from that of the college offering the program. This amendment will provide an exception for courses taught as part of a Texas public community college program offered at a regional airport located no more than five miles across a state line, provided the regional airport is located in the same Metropolitical Area as the Texas college offering the program, serves Texas residents, and supports the Texas region's economy.

Tina M. Jackson, Ph.D., Assistant Commissioner for Workforce Education, has determined that for each of the first five years the sections are in effect there would be a minimal fiscal implication for state or local governments as a result of enforcing or administering the rules due to funding of additional community college contact hours by the Legislature. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses and may later be marginal increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no measurable anticipated impact on local employment.

Tina M. Jackson, Ph.D., Assistant Commissioner for Workforce Education, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is that a Texas community college may provide technical training to aircraft workers at a regional airport serving a Texas city but located a short distance across the Texas state line supporting the regional public facility. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules may benefit this state's economy.

Comments on the proposal may be submitted to Tina M. Jackson, Ph.D., Assistant Commissioner for Workforce Education, P.O. Box 12788, Austin, Texas 78711-2788, or via email at tina.jackson@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under Texas Education Code, Section 61.0512(g), which provides the Coordinating Board with the authority to approve courses for credit and distance education programs, including off-campus programs. The amendment is also proposed under Texas Education Code, Section 130.003 which provides contact hour funding for community colleges.

The proposed amendment affects Texas Education Code § 130.003 and 19 Texas Administrative Code, Chapter 9, Subchapter F.

§4.279. Formula Funding General Provisions.

(a) Institutions shall report off-campus courses submitted for formula funding in accordance with the Board's uniform reporting system and the provisions of this subchapter.

(b) Institutions shall not submit for formula funding courses in out-of-state or out-of-country programs[.], except that a Texas public community college may submit for formula funding courses taught in an approved program offered at a regional airport located no more than five miles across a state line, provided the regional airport:

(1) is located in the same Metropolitical Area or Nonmetropolitan Area as promulgated by the United States Office of Management and Budget as the Texas college offering the program;

(2) serves Texas residents; and

(3) supports the Texas region's economy.

(c) Institutions shall not submit self-supporting courses for formula funding.

(d) Institutions shall not submit non-state funded lower-division credit courses to Regional Councils.

(e) Institutions shall not jeopardize or diminish the status of formula-funded on-campus courses and programs in order to offer self-supporting courses. Self-supporting courses shall not be a substitute for offering a sufficient number of formula-funded on-campus courses.

(f) For courses not submitted for formula funding, institutions shall charge fees that are equal to or greater than Texas resident tuition and applicable fees, and that are sufficient to cover the total cost of instruction and overhead, including administrative costs, benefits, computers and equipment, and other related costs. Institutions shall report fees received for self-supporting and out-of-state/country courses in accordance with general institutional accounting practices.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER N. TEXAS RESKILLING AND UPSKILLING THROUGH EDUCATION (TRUE) GRANT PROGRAM

19 TAC §§13.400 - 13.408

The Texas Higher Education Coordinating Board (THECB) proposes a new subchapter with new rules in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter N, §§13.400 - 13.408, concerning the Texas Reskilling and Upskilling Through Education (TRUE) Grant Program. The proposed new rules establish the TRUE Grant Program to strengthen the Texas workforce and build a stronger Texas economy. The new rules implement SB 1102 (87R) requirements for the operation of the TRUE Grant Program.

The program provides grants to eligible entities for creating, redesigning, or expanding workforce training programs and delivering education and workforce training. There are also provisions for the process of data collection and reporting undertaken by TRUE grantees and THECB, which will gauge the impact of the TRUE Grant Program on student success.

Rule 13.400, Authority, identifies the section of the Texas Education Code that grants the Board authority over the TRUE Grant Program.

Rule 13.401, Purpose, sets out the purpose of the chapter as a whole, to establish processes for the TRUE Grant Program's organization and implementation.

Rule 13.402, Definitions, lists definitions broadly applicable to all sections of Subchapter N. The definitions establish a common understanding of the meaning of key terms used in the rules.

Rule 13.403, Eligibility, identifies eligible entities that may apply for the TRUE grant as specified by statute. The TRUE Grant Program has three categories of eligible entities:

(1) lower-division institution of higher education; (2) consortium of lower-division institutions of higher education; or (3) local chamber of commerce, trade association, or economic development corporation that partners with a lower-division institution of higher education or a consortium of lower-division institutions of higher education.

Rule 13.404, Application Procedures, identifies TRUE grant application procedures so that grant applicants understand high level requirements and refer to the TRUE Grant Program RFA for specifics. Grant application procedures described include the number of applications eligible entities may submit, the process of submitting applications to the THECB, the importance of adhering to grant program requirements, and the requirement for proper authorization and timely submission of applications.

Rule 13.405, Awards, identifies the size and provision of TRUE grant awards. TRUE Grant Program available funding is dependent on the legislative appropriation for the program for each biennial state budget. Consequently, award levels and estimated number of awards will be specified in the program's RFA. This section also provides reference on the establishment of processes for application approval and award sizes.

Rule 13.406, Review Criteria, provides TRUE grant application review procedures. This section describes how the THECB will utilize specific requirements and award criteria described in a TRUE Grant Program RFA to review applications. Award criteria will include, but may not be limited to, consideration of key factors and preferred application attributes described in the RFA.

Rule 13.407, Reporting Criteria, describes TRUE grant reporting requirements. THECB will request data on TRUE Grant Program funded credential programs as well as data on students enrolled in those programs. Student level data will enable THECB to track student enrollment, credential completion, and employment data through state education and workforce databases.

Rule 13.408, General Information, indicates general information concerning the cancellation or suspension of TRUE grant solicitations and the use of the Notice of Grant Award (NOGA).

Tina Jackson, Ph.D., Assistant Commissioner for Workforce Education, has determined that for each of the first five years the new rules are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Jackson has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of administering the rules will be creation of the administrative code necessary for the efficient administration of the TRUE Grant Program, created by Senate Bill 1102 (87R). There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Government Growth Impact Statement

(1) The rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will create new rules;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Sheri Ranis, Director for Workforce Education and Innovation, P.O. Box 12788, Austin, Texas 78711-2788, or via email at reskilling@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new rules are proposed under the Texas Education Code, Chapter 61, Subchapter T-2, §61.882(b), which provides the Coordinating Board with the authority to adopt rules requiring eligible entities awarded a TRUE grant to report necessary information to the THECB.

The proposed new rules affect Texas Education Code, Chapter 61, Subchapter T-2, §§61.881-61.886.

§13.400. Purpose.

The purpose of this subchapter is to establish the Texas Reskilling and Upskilling through Education (TRUE) Program to strengthen the Texas workforce and build a stronger Texas economy. Awards will be made to eligible entities for creating, redesigning, or expanding workforce training programs and delivering education and workforce training.

§13.401. Authority.

The authority for this subchapter is found in Texas Education Code, Chapter 61, Subchapter T-2, §§61.882(b)1-886, which provides the board with the authority to administer the TRUE Program in accordance with the subchapter and rules adopted under the subchapter.

§13.402. Definitions.

The following words and terms when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Board or THECB--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education.

(3) Eligible entity--A lower-division institution of higher education; a consortium of lower-division institutions or higher education; or a local chamber of commerce, trade association, or economic development corporation that partners with a lower-division institution of higher education or a consortium of lower-division institutions of higher education per Texas Education Code §61.881(1).

(4) Lower-Division Institution of Higher Education--A public junior college, public state college, or public technical institute per Texas Education Code §61.881(1).

(5) Necessary information--Data and reporting on student enrollment, credential completion, and employment outcomes for students in TRUE funded programs per Texas Education Code §61.883(a)(6).

(6) Program--The TRUE Grant Program.

(7) Request for Applications (RFA)--A type of solicitation notice in which the THECB announces available grant funding, sets forth the guidelines governing the program, provides evaluation criteria for submitted applications, and provides instructions for eligible entities to submit applications for such funding. The guidelines governing the program may include a Letter of Intent, eligibility requirements, performance expectations, budget guidelines, reporting requirements, and other standards of accountability for this program.

§13.403. Eligibility.

Eligible entities may apply for a grant under the TRUE Grant Program.

§13.404. Grant Application Procedures.

(a) Unless otherwise specified in the RFA, eligible entities may submit a maximum of two applications: one as a single recipient and the other as a member of a consortium.

(b) To qualify for funding consideration, an eligible entity must submit an application to the THECB and each application must:

(1) Be submitted electronically in a format and location specified in the RFA;

(2) Adhere to the grant program requirements contained in the RFA; and

(3) Be submitted with proper authorization on or before the day and time specified by the RFA.

§13.405. Awards.

(a) The amount of funding available to the program is dependent on the legislative appropriation for the program for each biennial state budget. Award levels and estimated number of awards will be specified in the RFA.

(b) TRUE Grant Program awards shall be subject to approval pursuant to 19 Texas Administrative Code §1.16.

(c) The size of award may be adjusted by the Commissioner to best fulfill the purpose of the RFA.

§13.406. Review Criteria.

(a) Applicants shall be selected for funding based on requirements and award criteria provided in the RFA. Award criteria shall at a minimum include consideration of the following key factors:

(1) Projects that lead to postsecondary industry certifications or other workforce credentials required for high-demand occupations;

(2) Projects that are developed and provided in consultation with employers who are hiring in high-demand occupations;

(3) Projects that create pathways to employment for students and learners;

(4) Projects with at least one eligible entity located in each region of the state to the extent practicable;

(5) Projects that ensure that each training program matches regional workforce needs, are supported by a labor market analysis of job postings and employers hiring roles with the skills developed by the program; and do not duplicate existing program offerings except as necessary to accommodate regional demand; and

(6) The evaluation of the application by three or more selected reviewers as determined by THECB staff.

(b) Projects may be given preference that:

(1) Represent a consortium of lower-division institutions of higher education;

(2) Prioritize training to displaced workers;

(3) Offer affordable training programs to students; or

(4) Partner with local chambers of commerce, trade associations, economic development corporations, and local workforce boards to analyze job postings and identify employers hiring roles with the skills developed by the training programs.

§13.407. Reporting Criteria.

(a) Interim and Final Reporting for the TRUE Grant Program. Grantees must file program and expenditure reports and student reports if applicable with THECB during the grant period and at its conclusion as required by the RFA. Grantees shall provide information that includes, but is not limited to, the following:

(1) Characteristics of the credential programs that are being worked on by the project;

(2) Status of the grant project activities;

(3) Budget expenditures by budget category;

(4) Student level data for students receiving financial aid funded by the grant as applicable;

(5) Student enrollment data as applicable; and

(6) Any other information required by the RFA.

(b) Ongoing Data Collection and Reporting for the TRUE Grant Program. Grantees shall submit necessary information concerning student enrollment, credential completion, and employment outcomes for students in TRUE funded programs per Texas Education Code §61.883(a)(6).

(c) THECB will request an updated list of TRUE developed and funded credential programs with required data points from grant holders annually at the end of June of each year following the end of the grant period.

(d) THECB will request a roster with required data points for all students enrolled in the listed credential program or programs funded through TRUE from grant holders annually at the end of June of each year following the end of the grant period.

§13.408. General Information.

(a) Cancellation or Suspension of Grant Solicitations. The Board and Commissioner retain the right to reject all applications and cancel a grant solicitation at any point.

(b) Notice of Grant Award (NOGA). Before release of funds, the successful applicants must sign a NOGA issued by the Board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nichole Bunker-Henderson
Genera Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER O. FORMULA FUNDING FOR DISTANCE EDUCATION

19 TAC §§13.450 - 13.454

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code (TAC), Title 19, Part 1, Chapter 13, Subchapter O, §§13.450 - 13.454, concerning the formula funding rules for distance education. Specifically, this new subchapter will move existing rules related to distance education formula funding from TAC Chapter 4 to Chapter 13 without any substantive changes. The rules are reorganized and recodified without substantive revisions modifying any existing funding policy.

The proposed rules move formula funding rules related to distance education from TAC Chapter 4, Subchapter P, to Chapter 13, Subchapter O, without any substantive changes. This change is part of a larger reorganization and revision of the Coordinating Board's rules related to distance education. The agency is working on moving all funding rules into Chapter 13, Financial Planning, as this chapter of the Texas Administrative Code contains the agency's rules related to formula funding. This change will improve the agency's rule readability and help institutions navigate Title 19, Part 1, of the TAC. The authority for this rule is provided by TEC §61.059, which gives the board the authority to develop policy related to formula funding.

Rule 13.540 sets out the purpose of the subchapter, which is to establish formula funding rules for distance education instruction.

Rule 13.451 contains the statutory authority for this subchapter, which comes from TEC §61.0512(g) establishing Coordinating Board authority to approve distance education courses and §61.059 establishing the Board's role in developing formula funding policies.

Rule 13.452 directs the reader to find the appropriate definitions in Chapter 2, Subchapter J, of this title. The proposed Chapter 13, Subchapter O, uses the same definitions as the proposed subchapter that will govern agency approval of distance education more generally.

Rule 13.453 contains the substantive provisions related to formula funding. These provisions are identical to the formula funding provisions for distance education currently contained in TAC Chapter 4, Subchapter P. These provisions establish in rule several statutory restrictions on formula funding relevant for distance education - for example, requirements to collect sufficient tuition for non-formula-supported programs under TEC §54.545 and special provisions solely applicable to Texas A&M University-Texarkana under §§54.231 and 61.059(n).

Rule 13.454 contains the effective date of the proposed rules, scheduled for December 1, 2023.

Michelle Singh, Assistant Commissioner for Digital Learning, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Michelle Singh, Assistant Commissioner for Digital Learning, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be reducing regulatory burden on public institutions of higher education while allowing the Coordinating Board to conduct appropriate scrutiny and approval of distance education, in fulfillment of the agency's obligation in Texas Education Code §61.0512(g). This rule makes no substantive changes, but rather reorganizes formula funding-related rules in the Coordinating Board's formula funding-specific chapter of the Texas Administrative Code. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Michelle Singh, Assistant Commissioner for Digital Learning, P.O. Box 12788, Austin, Texas 78711-2788, or via email at digitallearning@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under Texas Education Code, Section 61.059, which provides the Coordinating Board with the authority to devise, establish, and periodically review and revise formula funding for public institutions of higher education, and Section 61.0512(g), which provides the Coordinating Board with the authority to approve institutions' distance education offerings.

The proposed new sections affect Texas Education Code §§54.231, 54.545, and 61.059.

§13.450. Purpose and Scope.

The purpose of this subchapter is to establish the methods for issuing formula funding for instruction delivered via distance education.

§13.451. Authority.

Authority for this subchapter is provided by Texas Education Code §61.0512(g), which provides the authority for the Coordinating Board to approve courses for credit and distance education programs, as well as Texas Education Code §61.059, which provides the Coordinating Board the authority to devise formulas to submit as recommendations to the Legislature and the Governor for all institutions of higher education.

§13.452. Definitions.

The definitions in this subchapter are contained in Chapter 2, Subchapter J, §2.202 of this title (relating to Definitions).

§13.453. Formula Funding for Distance Education - General Provisions.

The following provisions apply to distance education courses and programs offered with authorization under Chapter 2, Subchapter J, of this title (relating to Approval of Distance Education for Public Institutions).

(1) Institutions shall report distance education courses submitted for formula funding in accordance with the Board's uniform reporting system and the provisions of this subchapter.

(2) Institutions may submit for formula funding academic credit courses delivered by distance education to any student located in Texas or to Texas residents located out-of-state or out-of-country.

(3) Institutions, with the exception of those outlined in paragraph (5) of this section, shall not submit for formula funding 100-percent online courses taken by non-resident students who are located out-of-state or out-of-country, courses in out-of-state or out-of-country programs taken by any student, or self-supporting courses.

(4) For courses not submitted for formula funding, institutions shall charge fees that are equal to or greater than Texas resident tuition and applicable fees and that are sufficient to cover the total cost of instruction and overhead, including administrative costs, benefits, computers and equipment, and other related costs. Institutions shall report fees received for self-supporting and out-of-state/country courses in accordance with general institutional accounting practices.

(5) Pursuant to Texas Education Code §54.231(a) and (f) and §61.059(n), Texas A&M University-Texarkana may submit distance education courses for formula funding that are taken by students enrolled in the university that reside in a county contiguous to the county in which Texas A&M University-Texarkana is located and who, under Texas Education Code §54.060(a), are eligible to pay resident tuition.

(6) If a non-Texas resident student enrolls in regular, on-campus courses for at least one-half of the normal full-time course load as determined by the institution, the institution may report that student's fully distance education or hybrid/blended courses for formula funding enrollments.

(7) If a non-Texas resident student enrolls in regular, on-campus courses for at least one-half of the normal full-time course load as determined by the institution, the institution may report that student's fully distance education or hybrid/blended courses for formula funding enrollments.

§13.454. Effective Date.

Each rule under this subchapter applies to distance education delivered on or after December 1, 2023.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 13, 2023.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: February 26, 2023
For further information, please call: (512) 427-6284

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CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §22.1

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter A, §22.1, concerning Definitions. Specifically, this amendment will clarify the definition of "expected family contribution" to reflect that the phrase refers to the applicable federal methodology.

The Coordinating Board is authorized to adopt rules to effectuate the provisions of Texas Education Code, Chapter 61, including §61.051(a)(5) regarding the administration of financial aid programs. The phrase "expected family contribution" is referenced in multiple chapters relating to financial aid programs in both the Texas Education Code and Texas Administrative Code. The Coordinating proposes amending Texas Administrative Code §22.1 so that the administration of state financial aid programs is not adversely impacted by changes in the federal government's terminology regarding the federal methodology for financial aid.

Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or

increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the continued operation of the state's student financial aid programs during the federal government's transition of the federal financial aid methodology from "expected family contribution" to "student aid index." There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at charles.contero-puls@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under Texas Education Code (TEC), §61.027, which authorizes the Coordinating Board to adopt rules to effectuate the provisions of TEC Chapter 61, including §61.051(a)(5) regarding the administration of financial aid programs.

The proposed amendment affects Texas Administrative Code, Chapter 22.

§22.1. Definitions.

The following words and terms, when used in Chapter 22, shall have the following meanings, unless otherwise defined in a particular subchapter:

(1) Academic Year--The combination of semesters defined by a public or private institution of higher education to fulfill the federal "academic year" requirement as defined by 34 CFR 668.3.

(2) Attempted Semester Credit Hours--Every course in every semester for which a student has been registered as of the official Census Date, including but not limited to, repeated courses and courses the student drops and from which the student withdraws. For transfer students, transfer hours and hours for optional internship and cooperative education courses are included if they are accepted by the receiving institution towards the student's current program of study.

(3) Awarded--Offered to a student.

(4) Board or Coordinating Board--The Texas Higher Education Coordinating Board.

(5) Board Staff--The staff of the Texas Higher Education Coordinating Board.

(6) Categorical Aid--Gift aid that the institution does not award to the student, but that the student brings to the school from a non-governmental third party.

(7) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(8) Cost of Attendance/Total Cost of Attendance--An institution's estimate of the expenses incurred by a typical financial aid recipient in attending a particular institution of higher education. It includes direct educational costs (tuition and fees) as well as indirect costs (room and board, books and supplies, transportation, personal expenses, and other allowable costs for financial aid purposes).

(9) Degree or certificate program of four years or less--A baccalaureate degree or certificate program other than a program determined by the Board to require four years or less to complete.

(10) Degree or certificate program of more than four years--A baccalaureate degree or certificate program determined by the Board to require more than four years to complete.

(11) Encumber--Program funds that have been officially requested by an institution through procedures developed by the Coordinating Board.

(12) Entering undergraduate--A student enrolled in the first 30 semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and courses for which the student received credit through examination.

(13) Expected Family Contribution (EFC)--A measure that reflects an evaluation of a student's and his or her family's approximate financial resources [~~of how much the student and his or her family can be expected~~] to contribute to the cost of the student's education for the year as determined by the applicable [~~following the~~] federal methodology.

(14) Financial Need--The Cost of Attendance at a particular public or private institution of higher education less the Expected Family Contribution. The Cost of Attendance and Expected Family Contribution are to be determined in accordance with Board guidelines.

(15) Full-Time--For undergraduate students, enrollment or expected enrollment for the equivalent of twelve or more semester credit hours per semester. For graduate students, enrollment or expected enrollment for the normal full-time course load of the student's program of study as defined by the institution.

(16) Gift Aid--Grants, scholarships, exemptions, waivers, and other financial aid provided to a student without a requirement to repay the funding or earn the funding through work.

(17) Graduate student--A student who has been awarded a baccalaureate degree and is enrolled in coursework leading to a graduate or professional degree.

(18) Half-Time--For undergraduates, enrollment or expected enrollment for the equivalent of at least six but fewer than nine semester credit hours per regular semester. For graduate students, enrollment or expected enrollment for the equivalent of 50 percent of the normal full-time course load of the student's program of study as defined by the institution.

(19) Period of enrollment--The semester or semesters within the current state fiscal year (September 1 - August 31) for

which the student was enrolled in an approved institution and met all eligibility requirements for an award through this program.

(20) Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including the determination of student eligibility, selection of recipients, maintenance of all records, and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the institution's chief executive officer, the director of student financial aid shall serve as Program Officer.

(21) Residency Core Questions--A set of questions developed by the Coordinating Board to be used to determine a student's eligibility for classification as a resident of Texas, available for downloading from the Coordinating Board's website, and incorporated into the ApplyTexas application for admission.

(22) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(23) Semester--A payment period, as defined by 34 CFR 668.4(a) or 34 CFR 668.4(b)(1).

(24) Three-Quarter-Time--For undergraduate students, enrollment or expected enrollment for the equivalent of at least nine but fewer than 12 semester credit hours per semester. For graduate students, enrollment or expected enrollment for the equivalent of 75 percent of the normal full-time course load of the student's program of study as defined by the institution.

(25) Timely Distribution of Funds--Activities completed by institutions of higher education related to the receipt and distribution of state financial aid funding from the Board and subsequent distribution to recipients or return to the Board.

(26) Undergraduate student--An individual who has not yet received a baccalaureate degree.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 13, 2023.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: February 26, 2023
For further information, please call: (512) 427-6365

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §§22.22 - 22.24, 22.28, 22.29

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter B, §§22.22 - 22.24, 22.28, and 22.29, concerning the Tuition Equalization Grant program. Specifically, this amendment will provide private and independent institutions with greater flexibility in supporting economically disadvantaged students through funds from the Tuition and Equalization Grant (TEG) program. The amendments also provide clarity for the allocation process and remove unnecessary language.

In §22.22, two redundant definitions are repealed, since the items are explained elsewhere in the subchapter. In §22.23, the timing of data submissions is clarified to ensure that allocation activities can occur in a timely manner. In §22.24(8), eligibility criteria are provided for exceptional TEG need. In §22.28, a clarifying reference to §22.4 is added. In §22.29, outdated language is removed, with appropriate clarifying language. Section 22.29(c) is also removed, since the language is being proposed separately as a new §22.30.

Based on feedback from the financial aid community, the Coordinating Board initiated a review of how exceptional TEG need was defined. Since exceptional TEG need has a direct impact on the allocation methodology for the TEG program, the Coordinating Board convened negotiated rulemaking activities, as required by Texas Education Code, §61.0331, in matters relating to the allocation of funds, including financial aid. The proposed amendments were reached by consensus during negotiated rulemaking activities occurring on November 7, 2022.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be providing private and independent institutions with greater flexibility in supporting economically disadvantaged students through funds from the Tuition and Equalization Grant program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid

Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at charles.contero-puls@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under Texas Education Code, Sections 61.229 and 61.0331, which provides the Coordinating Board with the authority to make reasonable regulations, consistent with the purposes and policies of Texas Education Code, Chapter 61, Subchapter F, relating to the Tuition Equalization Grant Program, and which requires the Coordinating Board to use negotiated rulemaking in matters relating to the allocation of funds, including financial aid.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter B.

§22.22. Definitions.

In addition to the words and terms defined in Texas Administrative Code 22.1 the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Adjusted gross need--An amount equal to a student's financial need less the amount of his or her Federal Pell Grant and any categorical aid the student might have brought to the institution.

~~[(2) Exceptional TEG need--An additional amount of TEG funds for which an undergraduate student may qualify on the basis of having an expected family contribution generated through the use of the federal methodology, less than or equal to $1,000.]~~

(2) [~~(3)~~] First award--The first Tuition Equalization Grant ever awarded to and received by a specific student.

(3) [~~(4)~~] Forecast--The FORECAST function in Microsoft Excel.

(4) [~~(5)~~] Private or independent institution--Any college or university defined as a private or independent institution of higher education by Texas Education Code, §61.003.

(5) [~~(6)~~] Program maximum--The TEG Program award maximum determined by the Board in accordance with Texas Education Code, §61.227 (relating to Payment of Grant; Amount).

(6) [~~(7)~~] Program or TEG--The Tuition Equalization Grant Program.

(7) [~~(8)~~] Religious ministry--Roles serving as clergy, religious leaders, or similar positions within any sect or religious society, as demonstrated through ordination, licensure to preach, or other mechanisms particular to a given sect or society that are used to identify clergy, religious leaders, or such similar positions.

(8) [~~(9)~~] Subsequent award--A TEG grant received in any academic year other than the year in which an individual received his or her first TEG award.

~~[(10) TEG need--The basic amount of TEG funds that an eligible student could receive, subject to the limit in Texas Education Code §61.227(c).]~~

(9) [~~(11)~~] Tuition differential--The difference between the tuition paid at the private or independent institution attended and the tuition the student would have paid to attend a comparable public institution.

§22.23. Eligible Institutions.

(a) Eligibility.

(1) Any private or independent institution of higher education, or a branch campus of a private or independent institution of higher education located in Texas and accredited on its own or with its main campus institution by the Commission on Colleges of the Southern Association of Colleges and Schools, other than theological or religious seminaries, is eligible to participate in the TEG Program.

(2) No participating institution may, on the grounds of race, color, national origin, gender, religion, age, or disability exclude an individual from participation in, or deny the benefits of, the program described in this subchapter.

(3) Each participating institution must follow the Civil Rights Act of 1964, Title VI (Public Law 88-352) in avoiding discrimination in admissions or employment.

(4) A private or independent institution of higher education that previously qualified under paragraph (1) of this subsection but no longer holds the same accreditation as public institutions of higher education may temporarily participate in the TEG Program if it is:

(A) accredited by an accreditor recognized by the Board;

(B) actively working toward the same accreditation as public institutions of higher education;

(C) participating in the federal financial aid program under 20 United States Code (U.S.C.) §1070a; and

(D) a "part B institution" as defined by 20 U.S.C. §1061(2) and listed in 34 Code of Federal Regulations §608.2.

(5) The Board may grant temporary approval to participate in the TEG program to an institution described under paragraph (4) of this subsection for a period of two years. The Board may renew that approval for a given institution twice for a period of two years.

(6) A private or independent institution of higher education that previously qualified under paragraph (1) of this subsection but no longer holds the same accreditation as public institutions of higher education may participate in the TEG Program if it is:

(A) accredited by an accreditor recognized by the Board in accordance with Texas Administrative Code, §7.6;

(B) a work college, as that term is defined by 20 U.S.C. Section 1087-58; and

(C) participating in the federal financial aid program under 20 U.S.C. §1070(a).

(b) Approval.

(1) Agreement. Each approved institution must enter into an agreement with the Board, prior to being approved to participate in the program, the terms of which shall be prescribed by the Commissioner or his/her designee.

(2) Intent to Participate. An eligible institution interested in participating in the Program must indicate this intent by June 1 of each odd-numbered year in order for qualified students enrolled in that institution to be eligible to receive grants in the following fiscal biennium. An eligible institution's data submissions, as required in Section 22.29 (relating to Allocation of Funds), must occur on or before the institution's indication of its intent to participate.

(c) Responsibilities. Participating institutions are required to abide by the General Provisions outlined in Chapter 22, Subchapter A of this title (relating to General Provisions).

§22.24. Eligible Students.

Eligible Students. To receive an award through the TEG Program, a student must:

(1) be enrolled on at least a three-fourths of full-time enrollment;

(2) show financial need;

(3) maintain satisfactory academic progress in his or her program of study as determined by the institution at which the person is enrolled and as required by §22.25 of this title (relating to Satisfactory Academic Progress);

(4) be a resident of Texas as determined based on data collected using the Residency Core Questions and in keeping with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status);

(5) be enrolled in an approved institution in an individual degree plan leading to a first associate degree, first baccalaureate degree, first master's degree, first professional degree, or first doctoral degree, but not in a degree plan that is intended to lead to religious ministry;

(6) be required to pay more tuition than is required at a comparable public college or university and be charged no less than the tuition required of all similarly situated students at the institution;

(7) not be a recipient of any form of athletic scholarship during the semester or semesters he or she receives a TEG; and [.];

(8) demonstrate eligibility for exceptional TEG need, be an undergraduate student, and have an expected family contribution less than or equal to fifty percent of the Federal Pell Grant eligibility cap for the year reported in the institution's Financial Aid Database submission.

§22.28. Award Amounts and Adjustments.

(a) Award Amount. Each academic year, no TEG award shall exceed the least of:

(1) the student's financial need;

(2) the student's tuition differential; or

(3) the maximum award allowed based on the student's EFC, which is:

(A) 150 percent of the program maximum for undergraduate students demonstrating exceptional TEG need, as outlined in §22.24 of this Subchapter (relating to Eligible Students); or

(B) the program maximum for all other eligible students.

(b) Term or Semester Disbursement Limit. The amount of any disbursement in a single term or semester may not exceed the student's financial need or tuition differential for that term or semester or the program maximum for the academic year, whichever is the least.

(c) Award calculations and disbursements are to be completed in accordance with Chapter 22, Subchapter A of this title (relating to General Provisions).

§22.29. Allocation [and Disbursement] of Funds.

[(a) Allocations for Fiscal Year 2019 and prior. Allocations for the TEG Program are to be determined on an annual basis as follows:]

[(1) All eligible institutions will be invited to participate; those choosing not to participate will be left out of the calculations for the relevant year.]

[(2) The allocation base for each institution choosing to participate will be its three-year average share of the total statewide amount of TEG that could be awarded, subject to the limits in Texas Education Code, §61.227(c) and (e).]

[(3) The source of data used for the allocation calculations are the three most recently completed TEG Need Survey Reports submitted to the Board by the institutions. The reports include data for each student identified by the school as eligible to receive a first or subsequent TEG award as described in §22.24 or §22.25 of this title in the fall term in which the report is submitted. The data from the Need Survey used to calculate the amount of TEG an individual could receive includes:]

[(A) Each reported student's TEG need, as defined in §22.22 of this title (relating to Definitions); and]

[(B) The student's exceptional TEG need, as defined in §22.22 of this title.]

[(4) A student's TEG need may not exceed the least of his or her adjusted gross need, tuition differential, or the TEG maximum award as set in accordance with Texas Education Code, §61.227(c).]

[(5) A student's exceptional TEG need plus TEG need may not exceed the least of the student's adjusted gross need, tuition differential, or 150 percent of the current year's statutory TEG maximum award as set in accordance with Texas Education Code, §61.227(c).]

[(6) The maximum amount of need that may be recorded for any single student in the TEG Need Survey may not exceed the sum of his or her TEG need plus his or her exceptional TEG need.]

[(7) The total amount allocated for an institution may not exceed the sum of the individual maximum need for all students included in the most recent TEG Need Survey.]

[(8) Verification of Data.

(A) To provide data needed to confirm a reported need amount does not exceed one of the award limits listed in paragraphs (4) and (5) of this subsection, the Need Survey collects the following data for each student:]

[(i) Cost of attendance;]

[(ii) Expected family contribution;]

[(iii) Pell Grant amount;]

[(iv) Categorical aid amount;]

[(v) Classification (graduate or undergraduate); and]

[(vi) An indication of whether the student's need was limited by his or her tuition differential.]

[(B) The statewide TEG Need Survey summary will be provided to the institutions for review and the institutions will be given 10 working days, beginning the day of the notice's distribution and excluding State holidays, to confirm that the Survey accurately reflects the data they submitted or to advise Board staff of any inaccuracies.]

(a) [(b)] [Allocations for Fiscal Year 2020 and later.] Allocations for the TEG Program are to be determined on an annual basis as follows:

(1) All eligible institutions will be invited to participate; those choosing not to participate will be left out of the calculations for the relevant year.

(2) The allocation base for each institution choosing to participate will be its three-year average share of the total statewide amount of the total amount of TEG funds that eligible students at an approved institution could receive if the program were fully funded,

subject to the limits in Texas Education Code, §61.227(c) and (e), based on the students who met the following criteria:

(A) Enrollment on at least a three-fourths or three-quarters basis;

(B) An Expected Family Contribution, calculated using federal methodology, that results in demonstrated Adjusted Gross Need greater than zero;

(C) Maintain satisfactory academic progress in his or her program of study as required by §22.24(b) of this title (relating to Eligible Students);

(D) Classified as a Resident of Texas;

(E) Be enrolled in an approved institution in an individual degree plan leading to a first associates degree, first baccalaureate degree, first master's degree, first professional degree, or first doctoral degree;

(F) Not be enrolled in a degree plan that is intended to lead to religious ministry;

(G) Be required to pay more tuition than is required at a comparable public college or university and be charged no less than the tuition required of all similarly situated students at the institution; and

(H) Not be a recipient of any form of athletic scholarship.

(3) [~~Sources of data.~~]

[~~(A) For allocations for Fiscal Year 2020. The sources of data used for the allocations are the certified Fiscal Year 2018 Financial Aid Database (FADS) report and the fall 2015 and fall 2016 completed TEG Need Survey reports submitted to the Board by the institutions.~~]

[~~(B) For allocations for Fiscal Year 2021. The sources of data used for the allocations are the certified Fiscal Year 2018 and 2019 FADS reports and the fall 2016 completed TEG Need Survey report submitted to the Board by the institutions.~~]

[~~(C)~~] [~~For allocations for Fiscal Year 2022 and Later.~~] The source of data used for the allocations are the three most recently certified Financial Aid Database (FADS) [~~FADS~~] reports submitted to the Board by the institutions.

(4) A student's TEG need may not exceed the least of his or her adjusted gross need, tuition differential, or the TEG maximum award as set in accordance with Texas Education Code, §61.227(c).

(5) A student's exceptional TEG need plus TEG need may not exceed the least of the student's adjusted gross need, tuition differential or 150 percent of the current year's statutory TEG maximum award as set in accordance with Texas Education Code, §61.227(c).

(6) The maximum amount of need that may be recorded for any single student in the allocation calculation may not exceed the sum of his or her TEG need plus his or her exceptional TEG need.

(7) The total amount allocated for an institution may not exceed the sum of the individual maximum amount of [~~TEG~~] need for all students calculated using the sources of data outlined in paragraph (3) of this subsection.

(8) Verification of Data. The TEG allocation spreadsheet will be provided to the institutions for review and the institutions will be given 10 working days, beginning the day of the notice's distribution and excluding State holidays, to confirm that the spreadsheet accurately reflects the data they submitted or to advise Board staff of any inaccuracies.

(9) Allocations for both years of the state appropriations' biennium will be completed at the same time. For the allocations process of the second year of the state appropriations' biennium, the sources of data outlined in paragraph (3) of this subsection will be utilized to forecast an additional year of data. This additional year of data, in combination with the two most recent years outlined in paragraph (3) of this subsection, will be utilized to calculate the three-year average share outlined in paragraph (2) of this subsection. Institutions will receive notification of their allocations for both years of the biennium at the same time.

[~~(c) Disbursement of Funds to Institutions. As requested by institutions throughout the academic year, the Board shall forward to each participating institution a portion of its allocation of funds for timely disbursement to students. Institutions will have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation. After that date, institutions lose claim to any funds in the current fiscal year not yet drawn down from the Board for timely disbursement to students. Funds released in this manner in the first year of the biennium become available to the institution for use in the second year of the biennium. Funds released in this manner in the second year of the biennium become available to the Board's program for utilization in grant processing. Should these unspent funds result in additional funding available for the next biennium's program, revised allocations, calculated according to the allocation methodology specified in this rule, will be issued to participating institutions during the fall semester.~~]

(b) [~~(d)~~] Reductions in Funding.

(1) If annual funding for the program is reduced after the start of a fiscal year, the Board may take steps to help distribute the impact of reduced funding across all participating institutions by an across-the-board percentage decrease in all institutions' allocations.

(2) If annual funding for the program is reduced prior to the start of a fiscal year, the Board may recalculate the allocations according to the allocation methodology outlined in this rule for the affected fiscal year based on available dollars.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 13, 2023.

TRD-202300158
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: February 26, 2023
For further information, please call: (512) 427-6365

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SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §22.30

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter B, §22.30, concerning the Tuition Equalization Grant (TEG) program. Specifically, this new

section will establish language currently in §22.29 as a separate rule for greater clarity.

Based on feedback from the financial aid community, the Coordinating Board initiated a review of how exceptional TEG need was defined. Since exceptional TEG need has a direct impact on the allocation methodology for the TEG program, the Coordinating Board convened negotiated rulemaking activities, as required by Texas Education Code, §61.0331, in matters relating to the allocation of funds, including financial aid. The proposed new rule was reached by consensus during negotiated rulemaking activities occurring on November 7, 2022.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be providing private and independent institutions with greater flexibility in supporting economically disadvantaged students through funds from the Tuition and Equalization Grant program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at charles.contero-puls@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new section is proposed under Texas Education Code, Sections 61.229 and 61.0331, which provides the Coordinating Board with the authority to make reasonable regulations, consistent with the purposes and policies of Texas Education Code, Chapter 61, Subchapter F, relating to the Tuition Equalization Grant Program, and which requires the Coordinating Board to use negotiated rulemaking in matters relating to the allocation of funds, including financial aid.

The new section affects Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter B.

§22.30. Disbursement of Funds.

As requested by institutions throughout the academic year, the Board shall forward to each participating institution a portion of its allocation of funds for timely disbursement to students. Institutions will have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation. After that date, institutions lose claim to any funds in the current fiscal year not yet drawn down from the Board for timely disbursement to students. Funds released in this manner in the first year of the biennium become available to the institution for use in the second year of the biennium. Funds released in this manner in the second year of the biennium become available to the Board's program for utilization in grant processing. Should these unspent funds result in additional funding available for the next biennium's program, revised allocations, calculated according to the allocation methodology specified in §22.29 of this subchapter (relating to Allocation of Funds), will be issued to participating institutions during the fall semester.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 13, 2023.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: February 26, 2023
For further information, please call: (512) 427-6365

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SUBCHAPTER C. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM

19 TAC §22.49

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter C, §22.49, concerning Hinson-Hazlewood College Student Loan Program. Specifically, this amendment will implement new standards regarding the aggregate and annual loan limits.

The amendments to Texas Administrative Code (TAC) §22.49 are proposed to provide a clearer indication of the alignment between the rule regarding the amount of a loan and the limitations on the loan amount as outlined in Texas Education Code (TEC) §52.33. The proposed language in §22.49(a) aligns the statutory intent regarding what a student may reasonably be expected to pay with the Board's Long-Range Master Plan for Higher Education and the manageable debt guidelines therein. The proposed language in 22.49(b) captures the agency's interpretation of how federal student loan eligibility is considered when calculating the financial resources indicated in TEC §52.33.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first

five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the more manageable student debt levels for individuals participating in the College Access Loan administered by the Coordinating Board under the Hinson-Hazlewood College Student Loan Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at charles.contero-puls@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under Texas Education Code, Section 52.33, which provides the Coordinating Board with the authority to adopt rules regarding the amount of loan a student may borrow, and Section 52.54, which provides the Coordinating Board with the authority to adopt rules regarding the Hinson-Hazlewood College Student Loan Program.

The proposed amendment affects the College Access Loan program, as administered by the Coordinating Board under the Hinson-Hazlewood College Student Loan Program and authorized by Texas Education Code, Chapter 52.

§22.49. Amount of Loan.

(a) Aggregate Loan Limit.

(1) The maximum aggregate loan amount for an eligible undergraduate student shall be limited to an amount of debt defined as "manageable debt" under the Board's Long-Range Master Plan for Higher Education. The maximum amount of student loan debt is based on a reasonable monthly student loan payment, taking into consideration the borrower's area of study, as outlined in Figure 1. The agency may not loan a borrower an amount of College Access Loans that would cause the borrower's aggregate educational loan debt, as reported on the borrower's credit report, to exceed the maximum amount outlined in Figure 1.

(2) The maximum aggregate loan amount for an eligible graduate or professional student is the sum of the student's annual limits.

[(a) ~~Amount of Loan. The amount of loan shall not exceed the amount that the student needs in order to meet reasonable expenses as a student.~~]

(b) Annual [~~and Aggregate~~] Loan Limit. [~~The maximum annual and aggregate loan amounts for any eligible student shall be determined from time to time by the Commissioner.~~] In no case shall the maximum annual loan amount exceed the difference between the cost of attendance and the financial resources available to the applicant, including the applicant's scholarships, gifts, grants, and other financial aid. The student's maximum eligibility for Federal Direct Loans, except for Federal Plus loans, must be considered by the institution as other financial aid, whether or not the student actually receives such assistance [~~be greater than the annual cost of attendance for the student at the eligible institution~~].

Figure: 19 TAC §22.49(b)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 13, 2023.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6365

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 5. ADVISORY COMMITTEES AND GROUPS

SUBCHAPTER B. ADVISORY COMMITTEES

30 TAC §5.3, §5.15

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the amendment to §5.3; and new §5.15.

Background and Summary of the Factual Basis for the Proposed Rules

This proposed rulemaking implements the requirements of Texas Government Code, Chapter 2110 with respect to establishing in rule the date on which an advisory committee is abolished.

During Sunset review, Sunset Commission staff recommended that the agency renew advisory committees created by the

commission through a rulemaking process. Texas Government Code, §2110.008 provides that an advisory committee is automatically abolished on the fourth anniversary date of its creation unless the state agency has established, by rule, a different date on which the advisory committee will automatically be abolished. In consideration of the Sunset review recommendation, the commission determined that seven advisory committees that do not have dates for abolishment currently established in statute or rule should continue in existence because they continue to serve the purpose of providing advice to the agency. This rulemaking proposes to continue the existence of those seven advisory committees: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. The proposed rule specifies December 31, 2032, as the date of abolishment for these advisory committees. Advisory committees that are subject to a statutory duration or excluded from the applicability of Texas Government Code, Chapter 2110 are not included in this proposed rule.

Section by Section Discussion

The commission proposes to amend §5.3 to provide that advisory committees created by the commission are to be automatically abolished according to the requirements of Texas Government Code, §2110.008 unless the advisory committee is required to remain in effect without abolishment under a state or federal law, or a different date for abolishment is established under §5.15. An advisory committee that is subject to a requirement under a state or federal law to remain in effect without abolishment or an advisory committee that is not subject to Texas Government Code, §2110.008 is not subject to abolishment under §5.3 or §5.15.

The commission proposes new §5.15 to establish the duration of advisory committees under subchapter B. New subsection (a) provides that the advisory committees listed in subsection (b) are renewed and continue to exist with the abolishment date established for the listed advisory committee. New subsection (b) establishes an abolishment date of December 31, 2032, for the following advisory committees: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. The commission expects that future rulemaking may add to the list of advisory committees or amend the date of abolishment for any advisory committee.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Deputy Director in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be clear communication with the public on the duration of the advisory committees and improved compliance with the Texas Government Code, Section 2110.008. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does amend an existing regulation by clarifying the abolishment date for certain advisory committees. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis

requirements of the Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking is not a major environmental rule because it is not anticipated to adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state since

the proposed rulemaking addresses procedural requirements for the abolishment of advisory committees. Likewise, there will be no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state from the revisions because the changes are not substantive. The rulemaking addresses procedural requirements for establishing the dates on which listed advisory committees are to be abolished.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225.

First, the rulemaking does not exceed a standard set by federal law because the commission is proposing this rulemaking to continue advisory committees and establish the dates on which the advisory committees will be abolished. There are no standards set by federal law that are exceeded by the proposed rules.

Second, the proposed rulemaking does not exceed a requirement of state law because Texas Government Code Chapter 2110 authorizes a state agency to establish, by rule, the date on which an advisory committee is to be abolished.

Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. There is no applicable delegation agreement or contract addressing the duration requirements for advisory committees.

And fourth, this rulemaking does not seek to adopt a rule solely under the general powers of the agency. Rather, this rulemaking is authorized by Texas Water Code, §5.103 which provides specific authority to adopt rules and §5.107 which authorizes the commission to create advisory committees.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed analysis of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to continue the existence of listed advisory committees and establish the date on which the advisory committees are to be abolished. The proposed rulemaking substantially advances these stated purposes by proposing rules that continue the existence of the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee and establish the date of December 31, 2032, on which these committees will be abolished.

The commission's analysis indicates that the proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in real property because the proposed rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The proposed rules are procedural, addressing the requirements for advisory committees, and do not affect real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hold a hybrid virtual and in-person public hearing on this proposal in Austin on February 27 at 2:00 p.m. in Building D, Room 191, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Thursday, February 23, 2023. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Friday, February 24, 2023, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZmMyZTk0ZTAtM2YwOC00OWZkLWI4NTEtNjVhNjhjZDg5OGY0%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental

Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: https://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Rule Project Number 2023-006-005-LS. The comment period closes on February 28, 2023. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Don Redmond, Environmental Law Division, at (512) 239-0612.

Statutory Authority

The proposed amendment and new rule are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The proposed amendment and new rule implement TWC, §5.107 and Texas Government Code, Chapter 2110.

§5.3. Creation and Duration of Advisory Committees Created by the Commission.

Except as otherwise provided by law, advisory committees created by the commission shall be created by commission resolution. An advisory committee shall be automatically abolished in accordance with Texas Government Code, §2110.008(b), as amended, unless the advisory committee is required to remain in effect without abolishment under state or federal law, or a different date is designated under §5.15 of this chapter (relating to Duration of Advisory Committees).

§5.15. Duration of Advisory Committees.

(a) The advisory committees listed in section (b) are renewed with the expiration dates noted for each advisory committee and continue to be subject to the rules in this subchapter.

(b) List of advisory committees renewed by rule:

(1) Brazos Watermaster Advisory Committee, authorized by Tex. Water Code §11.4531, expires on December 31, 2032.

(2) Concho River Watermaster Advisory Committee, authorized by Tex. Water Code §11.557, expires on December 31, 2032.

(3) Irrigator Advisory Council, authorized by Tex. Occ. Code ch. 1903, Subch. D, expires on December 31, 2032.

(4) Municipal Solid Waste Management and Resource Recovery Advisory Council, authorized by Tex. Health & Safety Code §§363.041-046, expires on December 31, 2032.

(5) Rio Grande Watermaster Advisory Committee, authorized by Tex. Water Code §11.3261, expires on December 31, 2032.

(6) South Texas Watermaster Advisory committee, authorized by Tex. Water Code §11.3261, expires on December 31, 2032.

(7) Water Utility Operating Licensing Advisory Committee, authorized by Tex. Water Code §5.107, expires on December 31, 2032.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2023.

TRD-202300133
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 26, 2023
For further information, please call: (512) 239-6295

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CHAPTER 113. STANDARDS OF PERFORMANCE FOR HAZARDOUS AIR POLLUTANTS AND FOR DESIGNATED FACILITIES AND POLLUTANTS

SUBCHAPTER D. DESIGNATED FACILITIES AND POLLUTANTS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§113.2400, 113.2402, 113.2404, 113.2406, 113.2408, 113.2410, and 113.2412; and amended §113.2069.

The proposed new and amended sections are included in the accompanying proposed revisions to the Federal Clean Air Act (FCAA), §111(d) Texas State Plan for Existing Municipal Solid Waste (MSW) Landfills. If adopted by the commission, the revisions to Chapter 113 and the associated revisions to the state plan will be submitted to the U.S. Environmental Protection Agency (EPA) for review and approval.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed amendments to Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, are necessary to implement emission guidelines in 40 Code of Federal Regulations (CFR) Part 60, Subpart Cf, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills. These emission guidelines (2016 emission guidelines) were promulgated by the EPA on August 29, 2016 (81 FR 59276), and amended on August 26, 2019 (84 FR 44547), and March 26, 2020 (85 FR 17244). The August 26, 2019, amendments to Subpart Cf were vacated on April 5, 2021, by the D.C. Circuit Court of Appeals, and are not included in this proposal. On May 21, 2021, the EPA also published a federal plan (86 FR 27756) to implement the 2016 emission guidelines for MSW landfills located in states where an approved FCAA, §111(d), state plan is not in effect. The federal plan for MSW landfills was adopted under 40 CFR Part 62, Subpart OOO.

The FCAA, §111, requires the EPA to develop performance standards and other requirements for categories of sources which the EPA finds "...causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." Under FCAA, §111, the EPA promulgates New

Source Performance Standards (NSPS) and Emission Guidelines. NSPS regulations promulgated by the EPA apply to new stationary sources for which construction begins after the NSPS is proposed, or that are reconstructed or modified on or after a specified date. Emission Guidelines promulgated by the EPA are similar to NSPS, except that they apply to existing sources which were constructed on or before the date the NSPS is proposed, or that are reconstructed or modified before a specified date. Unlike the NSPS, emission guidelines are not enforceable until the EPA approves a state plan or adopts a federal plan for implementing and enforcing them.

States are required under the FCAA, §111(d), and 40 CFR Part 60, Subpart B, to adopt and submit to the EPA for approval a state plan to implement and enforce emission guidelines promulgated by the EPA. A state plan is required to be at least as protective as the corresponding emission guidelines. The FCAA also requires the EPA to develop, implement, and enforce a federal plan to implement the emission guidelines. The federal plan applies to affected units in states without an approved state plan.

In 1996, the EPA promulgated the original NSPS for MSW landfills under 40 CFR Part 60 Subpart WWW, and corresponding emission guidelines (the 1996 emission guidelines) under 40 CFR Part 60 Subpart Cc. TCEQ adopted rules under Chapter 113, Subchapter D, Division 1, and a corresponding §111(d) state plan, to implement the 1996 emission guidelines on October 7, 1998 (23 TexReg 10874). The EPA approved TCEQ's rules and state plan for existing MSW landfills on June 17, 1999 (64 FR 32427).

On August 29, 2016, the EPA adopted a new NSPS (40 CFR Part 60 Subpart XXX) and new emission guidelines (40 CFR Part 60 Subpart Cf) for MSW landfills, which essentially replaced the 1996 NSPS and emission guidelines. The 2016 emission guidelines lowered the emission threshold at which a landfill gas collection system is required from 50 megagrams (Mg) of nonmethane organic compounds (NMOC) to 34 Mg of NMOC. The EPA's 2016 adoption of NSPS Subpart XXX and the 2016 emission guidelines under Subpart Cf also included changes to monitoring, recordkeeping, and reporting requirements, relative to the original 1996 requirements of Subparts WWW and Cc.

The original deadline for states to submit a state plan to implement the EPA's 2016 emission guidelines for MSW landfills was May 30, 2017. The TCEQ submitted a request for an extension to this deadline as provided under 40 CFR §60.27(a). In June 2017, TCEQ received a response from EPA Region 6 which stated that, as a result of the stay in effect at that time, "...a state plan submittal is not required at this time." The stay expired August 29, 2017. On October 17, 2017, the EPA released a "Desk Statement" concerning the emission guidelines, which stated that "...we do not plan to prioritize the review of these state plans nor are we working to issue a Federal Plan for states that failed to submit a state plan. A number of states have expressed concern that their failure to submit a state plan could subject them to sanctions under the Clean Air Act. As the Agency has previously explained, states that fail to submit state plans are not subject to sanctions (e.g., loss of federal highway funds)." Given that the EPA's Desk Statement indicated that submittal of state plans was not a priority, and considering that the EPA had stated that a reconsideration rulemaking of the NSPS and emission guidelines was impending, TCEQ put state plan development on hiatus to monitor developments in the federal rules. On August 26, 2019, the EPA promulgated rules which established a new deadline of August 29, 2019, for states to submit a §111(d) state plan for the 2016 emission guidelines. However, the August 26, 2019, rules were vacated and remanded on April 5, 2021, effectively restoring the original Subpart B deadline of May 30, 2017. *(Environmental Defense Fund v. EPA,* No. 19-1222 (D.C. Circuit, 2021)).

On March 12, 2020, the EPA published a finding of failure to submit (85 FR 14474) that determined that 42 states and territories, including the State of Texas, had failed to submit the required §111(d) state plans to implement the 2016 emission guidelines for MSW landfills. On May 21, 2021, the EPA published a federal plan under 40 CFR Part 62, Subpart OOO, to implement the 2016 emission guidelines for MSW landfills in states where an approved §111(d) state plan for the 2016 emission guidelines was not in effect. This federal plan became effective on June 21, 2021, and currently applies to MSW landfills in Texas and numerous other states without an approved state plan implementing the 2016 emission guidelines. The overall requirements of the federal plan are similar to the emission guidelines in Subpart Cf, but EPA included certain changes and features in the federal plan to simplify compliance obligations for landfills that are already controlling emissions under prior landfill regulations such as 40 CFR Part 60, Subpart WWW, or state rules adopted as part of a previously approved state plan for the 1996 emission guidelines. Once a state has obtained approval for a §111(d) state plan implementing the 2016 emission guidelines, most requirements of the federal plan no longer apply, as affected sources would instead comply with the requirements of the approved state plan. (Some of the compliance deadlines and increments of progress specified in the federal plan may still apply.)

In order to implement the EPA's 2016 emission guidelines, TCEQ must revise the corresponding Chapter 113 rules and state plan for existing MSW landfills. The proposed changes to Chapter 113 include amendments to §113.2069 in Subchapter D, Division 1, and several new sections under a proposed Division 6. The proposed rules would phase out the requirement to comply with the commission's existing Division 1 rules and phase in new rules corresponding to the EPA's 2016 emission guidelines. The proposed Division 6 rules also incorporate certain elements from the 40 CFR Part 62 Subpart OOO federal plan to facilitate ongoing compliance for MSW landfills in Texas which have been required to comply with the federal plan since it became effective on June 21, 2021. The transition date for the applicability of the proposed Division 6 rules, and non-applicability of the existing Division 1 rules, would be the effective date of the EPA's approval of Texas' revisions to the §111(d) state plan. This is discussed in more detail in the section-by-section discussion for the proposed changes to §113.2069 and proposed new §113.2412.

Interested persons are encouraged to consult the EPA's 2016 emission guidelines under 40 CFR Part 60 Subpart Cf, and the federal plan under 40 CFR Part 62 Subpart OOO, for further information concerning the specific requirements that are the subject of this proposed rulemaking. In a concurrent action, the commission is proposing a state plan revision to implement and enforce the 2016 emission guidelines that are the subject of this proposed rulemaking.

Section by Section Discussion

§113.2069, Compliance Schedule and Transition to 2016 Landfill Emission Guidelines

The commission proposes an amendment to §113.2069. Proposed subsection (c) serves as a transition mechanism for own-

ers or operators of existing MSW landfills to end compliance with the requirements of Chapter 113, Subchapter D, Division 1, and begin compliance with the requirements of Subchapter D, Division 6, based on the implementation date specified in §113.2412. The implementation date is a future date established when the EPA's approval of the revised Texas §111(d) state plan for the 2016 emission guidelines for landfills becomes effective. On and after this date, owners or operators of MSW landfills will no longer be required to comply with the Division 1 rules, but must instead comply with the applicable requirements of Division 6.

The Division 1 rule requirements were created to implement the 1996 emission guidelines contained in 40 CFR Part 60 Subpart Cc, which have been supplanted by the more stringent 2016 emission guidelines contained in 40 CFR Part 60 Subpart Cf. These Division 1 rules will no longer be needed once the EPA approves TCEQ's new Division 6 rules and the corresponding §111(d) state plan to implement the 2016 emission guidelines.

The commission also proposes to revise the title of §113.2069 to reflect that the section now contains provisions for the transition from the Chapter 113, Division 1, requirements to the new Division 6 rules implementing the 2016 emission guidelines.

Division 6: 2016 Emission Guidelines for Existing Municipal Solid Waste Landfills

§113.2400, Applicability

The commission proposes new §113.2400, which contains requirements establishing the applicability of the new Subchapter D, Division 6, rules which implement the 2016 emission guidelines. Proposed subsection (a) specifies that the Division 6 rules apply to existing MSW landfills for which construction, reconstruction, or modification was commenced on or before July 17, 2014, except for certain landfills exempted under the provisions of proposed §113.2406. The applicability of the proposed Division 6 requirements includes MSW landfills which were previously subject to the requirements of Chapter 113, Subchapter D, Division 1; the requirements of 40 CFR Part 60 Subpart WWW; or the requirements of the federal plan adopted by the EPA to implement the 2016 emission guidelines (40 CFR Part 62 Subpart OOO).

Proposed subsection (b) is intended to clarify that physical or operational changes made to an existing landfill solely for purposes of achieving compliance with the Division 6 rules will not cause the landfill to become subject to NSPS under 40 CFR Part 60, Subpart XXX. This proposed subsection corresponds to 40 CFR Part 60, Subpart Cf, §60.31f(b).

Proposed subsection (c) is intended to clarify that MSW landfills which are subject to 40 CFR Part 60 Subpart XXX are not subject to the requirements of proposed Division 6. 40 CFR Part 60 Subpart XXX applies to landfills which have been modified, constructed, or reconstructed after July 17, 2014, whereas the proposed Division 6 requirements apply to MSW landfills which have not been modified, constructed, or reconstructed after July 17, 2014.

Proposed subsection (d) establishes that the requirements of Division 6 do not apply until the implementation date specified in proposed §113.2412(a). This implementation date corresponds to the future date when the EPA's approval of Texas' revised §111(d) state plan for existing MSW landfills becomes effective. Until that date, owners or operators of existing MSW landfills must continue complying with the Chapter 113, Division 1, requirements for existing MSW landfills. The EPA will publish a notice in the *Federal Register* once their review of the revised Texas §111(d) state plan has been completed.

§113.2402, Definitions

The commission proposes new §113.2402, which identifies the definitions that apply for the purposes of Subchapter D, Division 6. Proposed subsection (a) incorporates the definitions in 40 CFR §§60.2 and 60.41f by reference, as amended through May 16, 2007, and March 26, 2020, respectively. Proposed subsections (b) and (c) address certain exceptions or additional definitions relevant to the proposed Division 6 rules.

Proposed subsection (b) establishes that the term "Administrator" as used in 40 CFR Part 60, §§60.30f - 60.41f shall refer to the commission, except for the specific purpose of 40 CFR §60.35f(a)(5), in which case the term "Administrator" shall refer to the Administrator of the EPA. Under 40 CFR §60.30f(c)(1), approval of alternative methods to determine NMOC concentration or a site-specific methane generation rate constant cannot be delegated to States. The federal rule associated with approval of these alternative methods is 40 CFR §60.35f(a)(5), so for purposes of this specific rule the EPA must remain "the Administrator."

Proposed subsection (c) establishes a definition of a "legacy controlled landfill" for use with the proposed Division 6 rules. The proposed definition parallels the definition of "legacy controlled landfill" used by the EPA in the 40 CFR Part 62, Subpart OOO federal plan, with minor changes to align this definition with the Chapter 113 landfill rules. In plain language, a legacy controlled landfill is a landfill which submitted a collection and control system design plan before May 21, 2021, to comply with previous standards for MSW landfills (either 40 CFR Part 60, Subpart WWW, or 30 TAC Chapter 113, Division 1). This includes not only landfills which have already completed construction and installation of the GCCS, but also those that have submitted design plans and are within the 30-month timeline to install and start-up a GCCS according to 40 CFR §60.752(b)(2)(ii) (if subject to NSPS Subpart WWW), or the corresponding requirements of Chapter 113, Division 1.

§113.2404, Standards for existing municipal solid waste landfills

The commission proposes new §113.2404, which contains the technical and administrative requirements for affected MSW landfills under Subchapter D, Division 6.

Proposed subsection (a) specifies the following requirements for MSW landfills subject to Division 6: default emission standards; operational standards; compliance, testing, and monitoring provisions; recordkeeping and reporting provisions; and other technical and administrative requirements. Proposed subsection (a) refers directly to the provisions of 40 CFR Part 60, Subpart Cf, as amended, for the relevant requirement. The various sections of Subpart Cf have been amended at different times, so the most recent amendment date of each rule section is noted in the proposed rule text. Owners or operators of existing MSW landfills subject to Division 6 would be required to comply with the referenced requirements of Subpart Cf, as applicable, unless otherwise specified within the Division 6 rules. Certain landfills, such as legacy controlled landfills, are subject to different (non-Subpart Cf) requirements as addressed in proposed §113.2404(b), (c), and (d), and in §113.2410.

Proposed subsection (b) establishes that landfill gas collection and control systems that are approved by the commission and installed in compliance with 30 TAC §115.152 are deemed to

satisfy certain technical requirements of these emission guidelines. Proposed subsection (b) is intended to reduce potentially duplicative requirements relating to the landfill gas collection and control system. The gas collection and control system requirements in 30 TAC §115.152 are based on the requirements in the proposed version of the original landfill NSPS under 40 CFR Part 60, Subpart WWW (56 FR 24468, May 30, 1991). Proposed subsection (b) is essentially carried over from existing 30 TAC §113.2061(b), but the text of the proposed rule has been rephrased to more clearly state which specific design requirements of 40 CFR Part 60, Subpart Cf are satisfied. A detailed explanation of the 30 TAC §115.152 requirements and how they compare to the corresponding requirements of 40 CFR Part 60, Subpart Cf is provided in Appendix C.5 of the proposed state plan document. The technical requirements of 30 TAC §115.152 are still substantially equivalent to the corresponding Subparts Cc and Cf requirements for landfill gas collection and control systems, so preserving this previously approved aspect of the Texas state plan is still appropriate and would not result in any backsliding of emission standards or control system requirements. Owners or operators of landfills meeting the Chapter 115 requirements must still comply with all other applicable requirements of Division 6 and the associated requirements of 40 CFR Part 60, Subpart Cf, except for 40 CFR §60.33f(b) and (c).

Proposed subsection (c) allows legacy controlled landfills or landfills in the closed landfill subcategory that have already completed initial or subsequent performance tests to comply with prior landfill regulations (such as 40 CFR Part 60 Subpart WWW, or the Chapter 113, Subchapter D, Division 1, rules) to use those performance test results to comply with the proposed Division 6 rules. This proposed subsection parallels similar language in Subpart Cf at 40 CFR §60.33f(c)(2)(iii), but adds legacy controlled landfills as eligible to use this provision. This is consistent with the approach EPA used for the federal plan at 40 CFR §62.16714(c)(2)(iii). The commission believes that expanding the provision to include legacy controlled landfills, as the EPA did with the federal plan, is reasonable and will not reduce the effectiveness of the emission guidelines as implemented by the proposed revisions to the Texas §111(d) state plan for landfills. This provision will minimize the need for costly re-testing when appropriately recent test results are already available as a result of testing for compliance with prior landfill emission standards. Existing landfills in Texas will have been operating under the requirements of the federal plan for some time prior to the EPA's approval of the proposed changes to Chapter 113, and maintaining consistency with the federal plan for purposes of this requirement should reduce the potential for confusion or noncompliance while having no adverse effect on emissions or the environment.

Proposed subsection (d) specifies that legacy controlled landfills shall comply with the requirements of 40 CFR §62.16714(b)(1), as amended through May 21, 2021, in lieu of the requirements of 40 CFR §60.33f(b)(1). This change in requirements (relative to the Subpart Cf requirements) is necessary and reasonable because in the 40 CFR Part 62, Subpart OOO federal plan, 40 CFR §62.16714(b)(1)(ii) addresses the 30-month control deadlines for both legacy controlled landfills and landfills in the closed landfill subcategory, where the corresponding Subpart Cf requirement of 40 CFR §60.33f(b)(1)(ii) only addresses landfills in the closed landfill subcategory. The approach the EPA used in the federal plan to address legacy controlled landfills is an improvement relative to the corresponding provisions of Subpart Cf. Existing landfills in Texas will have been operating under the requirements of the federal plan for some time prior to the EPA's approval of the proposed changes to Chapter 113, and maintaining consistency with the federal plan for purposes of this requirement should reduce the potential for confusion or noncompliance while having no adverse effect on emissions or the environment.

§113.2406, Exemptions, Alternate Emission Standards, and Alternate Compliance Schedules

The commission proposes new §113.2406, which contains exemptions from the proposed Subchapter D, Division 6, requirements.

Proposed subsection (a) would exempt certain MSW landfills from the requirements of Division 6. This proposed exemption is carried over from the Division 1 landfill rules (30 TAC §113.2060(2)(A)) and the previously approved state plan, but has been rephrased as an explicit exemption rather than as a part of the definition of existing MSW landfill. The proposed rule exempts MSW landfills which have not accepted waste since October 9, 1993, and have no remaining waste disposal capacity. This proposed exemption modifies the applicability of the rules relative to the default federal requirements of 40 CFR Part 60, Subparts Cc and Cf, because it excludes MSW landfills which stopped accepting waste between November 8, 1987 (the date specified in the federal guidelines) and October 9, 1993. This proposed exemption is in accordance with 40 CFR §60.24(f) criteria, which allow a state rule to be less stringent for a particular designated class of facilities provided the state can show that factors exist which make application of a less stringent standard significantly more reasonable. When TCEQ adopted the Chapter 113, Division 1, rules for existing MSW landfills in 1998, the commission's analysis found that only one landfill (City of Killeen) which closed within the relevant time period had an estimated emission rate above the control threshold of 50 Mg/yr, and that the Killeen landfill's emissions were projected to fall below the 50 Mg/yr control threshold by 2004. The commission also estimated that, using an alternate calculation method, the emissions from the landfill would be even lower, and would be "borderline" relative to the 50 Mg/yr threshold. The commission further determined that the cost of installing and operating a gas collection and control system for the landfill would be unreasonable based on the short period of time the facility was projected to be above the 50 Mg/yr threshold. (*See* 23 TexReg 10876, October 23, 1999.) In EPA's approval of the TCEQ's original state plan submittal, the EPA acknowledged that no designated landfills which closed between November 8, 1987, and October 9, 1993, would have estimated non-methane organic compounds (NMOC) emissions above the 50 megagram (Mg) control threshold, and that controlling these closed landfills would not result in a significant reduction in NMOC emissions compared to the cost to install gas collection systems. (*See* 64 FR 32428.) As many years have passed since the original Texas state plan was approved in 1999, none of the landfills which stopped accepting waste during the relevant 1987-1993 time period would have current NMOC emissions above the 50 Mg/year threshold. The previous state plan analysis and other supporting material relating to this proposed exemption is included in Appendix C.5 of the proposed state plan document.

Proposed subsection (b) allows an owner or operator of an MSW landfill to apply for less stringent emission standards or longer compliance schedules, provided that the owner or operator demonstrates to the executive director and to the EPA that certain criteria are met. An exemption under subsection (b) may be requested based on unreasonable cost of control, the

physical impossibility of installing control equipment, or other factors specific to the MSW landfill that make application of a less stringent standard or compliance deadline more reasonable. The proposed provisions of subsection (b) are carried over from functionally identical provisions in the EPA-approved Division 1 landfill rules at 30 TAC §113.2067. The proposed exemption is consistent with the federal requirements in 40 CFR §60.24(f) for obtaining a less stringent emission standard or compliance schedule.

Proposed subsection (c) contains language to clarify how an owner or operator of an affected MSW landfill would request an alternate emission standard or alternate compliance schedule. Requests should be submitted to the TCEQ Office of Air, Air Permits Division, and a copy should be provided to the EPA Region 6 office.

§113.2408, Federal Operating Permit requirements

The commission proposes new §113.2408 to address federal operating permit requirements for MSW landfills subject to the proposed Chapter 113, Subchapter D, Division 6, rules. Proposed §113.2408 requires that owners or operators of MSW landfills subject to Division 6 obtain a federal operating permit as required under 40 CFR §60.31f(c) and (d) and applicable requirements of 30 TAC Chapter 122, Federal Operating Permits Program. Under 40 CFR §60.31f(c), a federal operating permit is not required for MSW landfills with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters, unless the landfill is otherwise subject to the requirement to obtain an operating permit under 40 CFR Part 70 or 71. For purposes of submitting a timely application for an operating permit, the owner or operator of an MSW landfill with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on the effective date of EPA approval of the Texas landfill state plan under §111(d) of the CAA, and not otherwise subject to either Part 70 or 71, becomes subject to the requirements of 40 CFR §70.5(a)(1)(i) or §71.5(a)(1)(i), 90 days after the effective date of the §111(d) state plan approval, even if the design capacity report is submitted earlier.

As stated in 40 CFR §60.31f(d), when an MSW landfill subject to the proposed Division 6 rules is closed (as defined in Subpart Cf) the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not otherwise subject to the requirements of either Part 70 or 71 and either of the following conditions are met: (1) The landfill was never subject to the requirement to install and operate a gas collection and control system under 40 CFR §60.33f; or (2) the landfill meets the conditions for control system removal specified in 40 CFR §60.33f(f).

§113.2410, Initial and Annual Reporting, and Modified Reporting Requirements for Legacy Controlled Landfills

The commission proposes new §113.2410 to address certain initial reports and design plans which must be submitted to the executive director and to establish modified reporting requirements for legacy controlled landfills.

Proposed subsection (a) identifies the requirements for initial reports of design capacity, non-methane organic compound (NMOC) emissions, and initial gas collection and control system design plans. These proposed reporting requirements correspond to certain reports required by 40 CFR §60.38f and by the 40 CFR Part 62, Subpart OOO federal plan. The proposed subsection (a) rules do not require an owner or operator that has already submitted the specified reports to comply with the Subpart OOO federal plan to re-submit the reports to TCEQ unless specifically requested.

The commission is proposing an additional reporting requirement in 30 TAC §113.2410(a)(4) that would require owners or operators of existing MSW landfills to provide annual calculations of NMOC emissions. This proposed requirement is necessary to enable TCEQ to maintain current information on NMOC emissions from designated facilities covered by the proposed state plan and provide updated emissions inventory information to the EPA in compliance with federal annual progress report requirements of 40 CFR §60.25(e) and (f). The commission is proposing to exclude landfills with a capacity less than 2.5 million Mg by mass or 2.5 million cubic meters by volume from this annual NMOC inventory reporting requirement, as these small landfills are exempt from most substantive requirements of 40 CFR Part 60, Subpart Cf and 40 CFR Part 62, Subpart OOO, and the NMOC calculation's results would not affect the applicable emission control requirements or monitoring requirements for these small sites. If a small site were to increase capacity above the 2.5 Mg or 2.5 million cubic meter threshold, the applicable control requirements and monitoring requirements for the site would be determined by the NMOC calculation methodology specified in 40 CFR Part 60, Subpart Cf.

For the annual NMOC emission inventory reports required by proposed §113.2410(a)(4), TCEQ is proposing that designated facilities use calculation methods specified in the EPA's *Compilation of Air Pollutant Emissions Factors* (AP-42), as opposed to the calculation methods specified in 40 CFR Part 60, Subpart Cf. The proposed use of AP-42 calculation methods for purposes of the emissions inventory, rather than the methods in 40 CFR Part 60, Subpart Cf, is in accordance with federal guidance for the implementation of §111(d) state plans for MSW landfills (EPA-456R/98-009, *Summary of the Requirements for Section 111(d) State Plans for Implementing the Municipal Solid Waste Landfills Emission Guidelines*). In this guidance, the EPA explains that the calculation methods (AP-42 vs. the emission guideline rule itself) are intentionally different, as the AP-42 methodology for emission inventories is designed to reflect typical or average landfill emissions, while the emission guideline rule methodology is purposefully conservative to protect human health, encompass a wide range of MSW landfills, and encourage the use of site-specific data.

At this time, the commission is not proposing a specific method that affected facilities would use to submit the annual NMOC emission inventory reports. The commission anticipates that an electronic method would facilitate more efficient collection and analysis of the data. The annual reporting might be implemented through modification of the commission's existing Annual Emissions Inventory Report (AEIR) system, the commission's existing e-permitting system, or through a separate portal or interface. The commission invites comment on possible methods for submittal of these annual NMOC inventory reports. Depending on the comments received and other factors, the commission may specify the method of reporting in the final rule, if adopted, or in guidance posted on the commission's website.

It should be noted that proposed 30 TAC §113.2410 does not comprehensively include all reporting requirements, and that owners or operators of MSW landfills subject to Subchapter D, Division 6, must also comply with any additional reporting requirements specified in 40 CFR §60.38f or elsewhere in 40 CFR Part 60, Subpart Cf, even if not specifically identified in §113.2410.

Proposed subsection (b) establishes certain exemptions from reporting requirements for legacy controlled landfills which have already submitted similar reports to comply with prior regulations that applied to MSW landfills. Specifically, the owner or operator of a legacy controlled landfill is not required to submit an initial design capacity report, initial or subsequent NMOC emission rate report, collection and control system design plan, initial performance test report, or the initial annual report, if those report(s) were already provided under the requirements of 40 CFR Part 60, Subpart WWW, or the Chapter 113, Subchapter D, Division 1, rules. This proposed exemption corresponds to the approach EPA used for legacy controlled landfills in the 40 CFR Part 62, Subpart OOO, federal plan (specifically, 40 CFR §62.16711(h)). The commission has included this proposed provision because the approach the EPA used in the federal plan to address reporting for legacy controlled landfills is an improvement relative to the corresponding provisions of Subpart Cf. Existing landfills in Texas will have been operating under the requirements of the federal plan for some time prior to the EPA's approval of the proposed changes to Chapter 113, and maintaining consistency with this aspect of the federal plan should reduce the potential for confusion or noncompliance while having no adverse effect on emissions or the environment.

Proposed subsection (c) establishes that owners or operators of legacy controlled landfills that have already submitted an annual report under 40 CFR Part 60, Subpart WWW, or Chapter 113, Subchapter D, Division 1, are required to submit the following annual report under Division 6 no later than one year after the most recent annual report was submitted, as specified in 40 CFR §62.16724(h). This is a clarification of the timing requirements for the annual reports of legacy controlled landfills transitioning from the prior-effective landfill regulations (40 CFR Part 60 Subpart WWW, or Chapter 113, Subchapter D, Division 1) to the new Division 6 regulations. This proposed subsection corresponds to the approach EPA used for legacy controlled landfills in the 40 CFR Part 62, Subpart OOO, federal plan (specifically, 40 CFR §62.16724(h)). Existing landfills in Texas will have been operating under the requirements of the federal plan for some time prior to the EPA's approval of the proposed changes to Chapter 113 and maintaining consistency with this aspect of the federal plan should reduce the potential for confusion or noncompliance while having no adverse effect on emissions or the environment.

Proposed subsection (d) requires owners or operators of legacy controlled landfills that demonstrate compliance with the emission control requirements of Division 6 using a treatment system (as defined in 40 CFR §60.41f) to comply with 40 CFR §62.16724(d)(7). This requires the preparation of a site-specific treatment system monitoring plan no later than May 23, 2022. Legacy controlled landfills affected by this rule will have been required to prepare this plan by May 23, 2022, to comply with the federal plan, even though the proposed Subchapter D, Division 6, rules were not yet effective or approved by the EPA at that time. This proposed requirement maintains consistency with this aspect of the federal plan and ensures that TCEQ will have continuing authority to enforce this requirement for any legacy controlled landfills which fail to prepare the required treatment system monitoring plan.

§113.2412, Implementation Date and Increments of Progress

The commission proposes new §113.2412 to establish an implementation date and required increments of progress for the proposed Subchapter D, Division 6, rules.

Proposed subsection (a) contains language that requires owners or operators of existing MSWLF to comply with the Division 6 requirements beginning on the effective date of the EPA's approval of Texas' revised §111(d) state plan implementing the 2016 emission guidelines for existing MSW landfills. Prior to this implementation date, owners or operators of existing MSW landfills shall continue to comply with the Chapter 113, Subchapter D, Division 1, rules; 40 CFR Part 60, Subpart WWW; and/or 40 CFR Part 62, Subpart OOO, as applicable. On and after the implementation date specified in this subsection, owners or operators of existing MSW landfills would no longer be required to comply with the Chapter 113, Subchapter D, Division 1, requirements or the federal requirements of Subparts WWW or OOO.

Proposed subsection (b) requires owners or operators of MSW landfills subject to Subchapter D, Division 6, to comply with all applicable requirements of progress specified in 40 CFR Part 62, Subpart OOO, Table 1, as amended through May 21, 2021. These increments of progress set deadlines for certain milestones, such as the submittal of the cover page of the final control plan; the awarding of contracts; the beginning of on-site construction; the completion of on-site construction; and final compliance. The commission is proposing to require the same increments of progress as the 40 CFR Part 62 federal plan because the federal plan is already in effect, and maintaining consistency with the Subpart OOO requirements will minimize confusion and the potential for noncompliance for owners or operators who have already started the process of designing and installing controls to comply with the federal plan. In addition, 40 CFR §62.16712(c)(1), indicates that facilities subject to the federal plan will remain subject to the schedule in Table 1, even if a subsequently approved state or tribal plan contains a less stringent schedule. As stated in footnote 2 of Subpart OOO, Table 1, increments of progress that have already been completed under previous regulations do not have to be completed again.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules. The federal plan adopted under 40 CFR Part 62, Subpart OOO, may have a fiscal impact to units of local government, but the proposed transfer of regulatory authority to the agency does not change that fiscal impact.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit of the proposed transfer anticipated would be a more accessible point of contact (TCEQ) for the public and the regulated community for the regulation of landfill emissions. Because this proposal designates the TCEQ as the implementing agency for federal emission guidelines for landfills, the public may also utilize the Small Business and Local Government Assistance program (TexasEnviroHelp.org), which provides free technical assistance for the agency's regulatory programs.

The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals. The federal plan adopted under 40 CFR Part 62, Subpart OOO, may have a fiscal impact to businesses or individuals, but the proposed transfer of regulatory authority to the agency does not change that fiscal impact.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does create a new regulation in Chapter 113, Subchapter D, Division 6. The proposed rulemaking phases out the requirement to comply with Chapter 113, Subchapter D, Division 1, but does not repeal it. The proposed rulemaking increases the number of individuals subject to landfill regulations under Chapter 113; however, those individuals are regulated under the federal standards and other regulations by the agency. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Tex. Gov't Code Ann., §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis. A "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a "Major environmental rule," which are listed in Tex. Gov't Code Ann., §2001.0225. Tex. Gov't Code Ann., §2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The specific intent of these proposed rules is to comply with federal emission guidelines for existing municipal solid waste landfills mandated by 42 United States Code (U.S.C.), §7411 (Federal Clean Air Act (FCAA), §111); and required to be included in operating permits by 42 U.S.C., §7661a (FCAA, §502) as specified elsewhere in this preamble. These sources are required to comply with the federal emission guidelines whether or not the commission adopts rules to implement the federal emission guidelines. The sources are required to comply with federal plans adopted by EPA if states do not adopt state plans. As discussed in the FISCAL NOTE portion of this preamble, the proposed rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with these federal standards for: the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Under 42 U.S.C., §7661a (FCAA, §502), states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA; including emission guidelines, which are required under 42 U.S.C., §7411 (FCAA, §111). Similar to requirements in 42 U.S.C., §7410 (FCAA, §110) regarding the requirement to adopt and implement plans to attain and maintain the national ambient air quality standards, states are not free to ignore requirements in 42 U.S.C., §7661a (FCAA, §502), and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Additionally, states are required by 42 U.S.C., §7411 (FCAA, §111), to adopt and implement plans to implement and enforce emission guidelines promulgated by the EPA.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. Such rules are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules designed to incorporate or satisfy specific federal requirements. The legislature is presumed

to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission concludes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature.

While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and in fact creates no additional impacts since the proposed rules do not modify the federal emission guidelines in any substantive aspect, but merely provide for minor administrative changes as described elsewhere in this preamble. For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law. The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. -- Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Mosley v. Tex. Health & Human Services Comm'n,* 593 S.W.3d 250 (Tex. 2019); *Tex. Ass'n of Appraisal Districts, Inc. v. Hart,* 382 S.W.3d 587 (Tex. App.--Austin 2012, no pet.); *Tex. Dep't of Protective & Regulatory Services v. Mega Child Care, Inc.,* 145 S.W.3d 170 (Tex. 2004).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance," Tex. Gov't Code Ann., §2001.035. The legislature specifically identified Tex. Gov't Code Ann., §2001.0225, as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Tex. Gov't Code Ann., §2001.0225. The proposed rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble.

The emission guidelines being proposed for incorporation are federal standards that are required by 42 U.S.C., §7411 (FCAA, §111), and are required to be included in permits under 42 U.S.C., §7661a (FCAA, §502). They are proposed with only minor administrative changes and will not exceed any standard set by state or federal law. These proposed rules will not implement an express requirement of state law. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the EPA will delegate implementation and enforcement of the emission guidelines to Texas if this rulemaking is adopted and EPA approves the rules as part of the State Plan required by 42 U.S.C. §7411(d) (FCAA, §111(d)). The proposed rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017. Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Tex. Gov't Code Ann., §2001.0225(b).

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether the requirements of Tex. Gov't Code Ann., Chapter 2007, are applicable. Under Tex. Gov't Code Ann., §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part, or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the proposed rulemaking action as required by Tex. Gov't Code Ann., §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to propose rules to implement the federal emission guidelines for municipal solid waste landfills, mandated by 42 U.S.C., §7411 (FCAA, §111), and required to be included in operating permits by 42 U.S.C., §7661a (FCAA, §502), to facilitate implementation and enforcement of the emission guidelines by the state. States are also required to submit state plans for the implementation and enforcement of the emission guidelines to EPA for its review and approval.

Tex. Gov't Code Ann., §2007.003(b)(4), provides that the requirements of Chapter 2007 of the Texas Government Code do not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law. In addition, the commission's assessment indicates that Texas Government Code Chapter 2007 does not apply to these proposed rules because this action is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that it does not impose a greater burden than is necessary to achieve the health and safety purpose. For the reasons stated above, this action is exempt under Tex. Gov't Code Ann. §2007.003(b)(13).

Any reasonable alternative to the proposed rulemaking would be excluded from a takings analysis required under Chapter 2007

of the Texas Government Code for the same reasons as elaborated in this analysis. As discussed in this preamble, states are not free to ignore the federal requirements to implement and enforce the federal emission guidelines for municipal solid waste landfills, including the requirement to submit state plans for the implementation and enforcement of the emission guidelines to EPA for its review and approval; nor are they free to ignore the federal requirement to include the emission guideline requirements in state issued federal operating permits. If the state does not adopt the proposed rules, the federal rules will continue to apply, and sources must comply with a federal plan that implements those rules. The proposed rules present as narrowly tailored an approach to complying with the federal mandate as possible without unnecessary incursion into possible private real property interests. Consequently, the proposed rules will not create any additional burden on private real property. The proposed rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007; nor does the Texas Government Code, Chapter 2007, apply to the proposed rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed amendments to Chapter 113 would update TCEQ rules to implement federal emission guidelines for existing landfills under 40 CFR Part 60, Subpart Cf. These guidelines require certain landfills to install and operate gas collection systems to capture and control emissions. The CMP policy applicable to the proposed rulemaking is the policy that commission rules comply with federal regulations in 40 CFR to protect and enhance air quality in the coastal areas (31 TAC §501.32). This rulemaking also complies with applicable requirements of 40 CFR Part 60, Subpart B, Adoption and Submittal of State Plans for Designated Facilities.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Sites which would be required to obtain a federal operating permit under proposed §113.2408 are already required to obtain a federal operating permit under existing federal regulations. The proposed Subchapter D, Division 6, rules would be applicable requirements under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed rules are adopted, owners or operators of affected sites subject to the federal operating permit program and these rules must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 113 requirements.

Announcement of Hearing

The commission will hold a hybrid in-person and virtual public hearing on this proposal in Austin on February 23, 2023, at 10:00 a.m. in Building D, Room 191, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Registration

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Tuesday, February 21, 2023. To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing.

Instructions for participating in the hearing will be sent on Wednesday, February 22, 2023, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing virtually may do so at no cost at: https://teams.microsoft.com/l/meetup-join/19%3ameeting_MzRjOGJmNTktODQxNy00MWY2LWE1MTAtODk0ZTY4MTllYTg4%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). The hearing will be conducted in English. Language interpretation services may be requested. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted through the TCEQ Public Comments system at: *https://tceq.commentinput.com/comment/search.* File size restrictions may apply to comments being submitted electronically. All comments should reference Rule Project Number 2017-014-113-AI. The comment period closes on February 28, 2023. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Michael Wilhoit, Air Permits Division, (512) 239-1222.

DIVISION 1. MUNICIPAL SOLID WASTE LANDFILLS

30 TAC §113.2069

Statutory Authority

The amended section is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act. The amended section is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants to or the concentration of air contaminants in the atmosphere; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures; THSC, §382.022, concerning Investigations, which authorizes the commission to make or require the making of investigations; and THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act.

The proposed amended section implements TWC, §§5.102 - 5.103, and 5.105; as well as THSC, §§382.002, 382.011 - 382.017, 382.021 - 382.022, and 382.051.

§113.2069. Compliance Schedule and Transition to 2016 Landfill Emission Guidelines.

(a) An owner or operator subject to the requirements of this division shall submit the initial design capacity report in accordance with 40 Code of Federal Regulations (CFR) Part 60, §60.757(a)(2) to the executive director within 90 days from the date the commission publishes notification in the *Texas Register* [~~Texas Register~~] that the United States Environmental Protection Agency (EPA) has approved this rule.

(b) An owner or operator of a municipal solid waste landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and subject to the requirements of this division shall also submit the initial non-methane organic compound emission rate report in accordance with 40 CFR §60.757(b)(2) to the executive director within 90 days from the date the commission publishes notification in the *Texas Register* [~~Texas Register~~] that EPA has approved this rule.

(c) On and after the implementation date specified in §113.2412 of this title, owners or operators of landfills subject to the requirements of this division shall instead comply with the applicable requirements of Division 6 of this subchapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2023.

TRD-202300135
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 26, 2023
For further information, please call: (512) 239-6295

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DIVISION 6. 2016 EMISSION GUIDELINES FOR EXISTING MUNICIPAL SOLID WASTE LANDFILLS

30 TAC §§113.2400, 113.2402, 113.2404, 113.2406, 113.2408, 113.2410, 113.2412

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants to or the concentration of air contaminants in the atmosphere; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures; THSC, §382.022, concerning Investigations, which authorizes the commission to make or require the making of investigations; and THSC, §382.051, concerning Permitting Authority of Commission; Rules, which au-

thorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act. The new sections are also proposed under TWC, §7.002, Enforcement Authority, which authorizes the commission to institute legal proceedings to compel compliance; TWC, §7.032, Injunctive Relief, which provides that injunctive relief may be sought by the executive director; and TWC, §7.302, Grounds for Revocation or Suspension of Permit, which provides authority to the commission to revoke or suspend any air quality permit.

The proposed new sections implement TWC, §§5.102 - 5.103, and 5.105; as well as THSC, §§382.002, 382.011 - 382.017, 382.021 - 382.022 and 382.051.

§113.2400. Applicability.

(a) The requirements of this division apply to existing municipal solid waste landfills (MSWLFs) for which construction, reconstruction, or modification was commenced on or before July 17, 2014, except for landfills exempted under §113.2406 of this title (relating to Exemptions, Alternate Emission Standards, and Alternate Compliance Schedules).

(b) Physical or operational changes made to an existing MSWLF solely to comply with these emission guidelines are not considered a modification or reconstruction and would not subject an existing MSWLF to the requirements of a standard of performance for new MSWLFs (such as 40 Code of Federal Regulations (CFR) Part 60, Subpart XXX).

(c) The requirements of this division do not apply to landfills which are subject to 40 CFR Part 60, Subpart XXX (Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification after July 17, 2014).

(d) The requirements of this division do not apply until the implementation date specified in §113.2412 of this title (relating to Implementation Date and Increments of Progress).

§113.2402. Definitions.

(a) Except as provided in subsections (b) and (c) of this section, the terms used in this division are defined in 40 CFR §60.2 as amended through May 16, 2007, and 40 CFR §60.41f as amended through March 26, 2020, which are incorporated by reference.

(b) The term "Administrator" wherever it appears in 40 CFR Part 60, §§60.30f - 60.41f, shall refer to the commission, except for purposes of 40 CFR §60.35f(a)(5). For purposes of 40 CFR §60.35f(a)(5), the term "Administrator" means the Administrator of the U.S. Environmental Protection Agency.

(c) Legacy controlled landfill--any municipal solid waste landfill subject to this division that submitted a gas collection and control system (GCCS) design plan prior to May 21, 2021, in compliance with 40 CFR §60.752(b)(2)(i) or 30 TAC §113.2061 of this title (relating to Standards for Air Emissions), depending on which regulation was applicable to the landfill. This definition applies to those landfills that completed construction and began operations of the GCCS and those that are within the 30-month timeline for installation and start-up of a GCCS according to 40 CFR §60.752(b)(2)(ii), or the requirements of 30 TAC Chapter 113, Subchapter D, Division 1.

§113.2404. Standards for Existing Municipal Solid Waste Landfills.

(a) Except as specifically provided otherwise in §§113.2400 - 113.2412 of this title, an owner or operator of an existing municipal solid waste landfill (MSWLF) subject to the requirements of this division shall comply with the applicable provisions specified in 40 CFR Part 60, Subpart Cf, as follows:

(1) 40 CFR §60.31f, relating to Designated Facilities, as amended through August 29, 2016;

(2) 40 CFR §60.32f, relating to Compliance Times, as amended through August 29, 2016;

(3) 40 CFR §60.33f, relating to Emission Guidelines for municipal solid waste landfill emissions, as amended through August 29, 2016;

(4) 40 CFR §60.34f, relating to Operational Standards for collection and control systems, as amended through March 26, 2020;

(5) 40 CFR §60.35f, relating to Test methods and procedures, as amended through August 29, 2016;

(6) 40 CFR §60.36f, relating to Compliance provisions, as amended through March 26, 2020;

(7) 40 CFR §60.37f, relating to Monitoring of operations, as amended through March 26, 2020;

(8) 40 CFR §60.38f, relating to Reporting guidelines, as amended through March 26, 2020;

(9) 40 CFR §60.39f, relating to Recordkeeping guidelines, as amended through March 26, 2020; and

(10) 40 CFR §60.40f, relating to Specifications for active collection systems, as amended through August 29, 2016.

(b) Gas collection and control systems approved by the commission and installed at an MSWLF in compliance with §115.152 of this title (relating to Control Requirements), satisfy the gas collection and control system design requirements of 40 CFR §60.33f(b) and (c) for purposes of this section.

(c) Legacy controlled landfills or landfills in the closed landfill subcategory that have already installed control systems and completed initial or subsequent performance tests may comply with this division using the initial or most recent performance test conducted to comply with 40 CFR Part 60, Subpart WWW, or 30 TAC Chapter 113, Subchapter D, Division 1 of this title.

(d) Legacy controlled landfills shall comply with the requirements of 40 CFR §62.16714(b)(1), as amended through May 21, 2021, in lieu of the requirements of 40 CFR §60.33f(b)(1).

§113.2406. Exemptions, Alternate Emission Standards, and Alternate Compliance Schedules.

(a) A municipal solid waste landfill (MSWLF) meeting the following conditions is not subject to the requirements of this division:

(1) The MSWLF has not accepted waste at any time since October 9, 1993; and

(2) The MSWLF does not have additional design capacity available for future waste deposition, regardless of whether the MSWLF is currently open or closed.

(b) An MSWLF may apply for less stringent emission standards or longer compliance schedules than those otherwise required by this division, provided that the owner or operator demonstrates to the executive director and EPA, the following:

(1) unreasonable cost of control resulting from MSWLF age, location, or basic MSWLF design;

(2) physical impossibility of installing necessary control equipment; or

(3) other factors specific to the MSWLF that make application of a less stringent standard or final compliance time significantly more reasonable.

(c) Owners or operators requesting alternate emission standards or compliance schedules under subsection (b) of this section shall submit requests and supporting documentation to the TCEQ Office of Air, Air Permits Division and provide a copy to the United States Environmental Protection Agency, Region 6.

§113.2408. Federal Operating Permit Requirements.

The owner or operator of an existing municipal solid waste landfill subject to the requirements of this division shall comply with the applicable requirements of 40 CFR §60.31f(c) and (d), and 30 TAC Chapter 122, Federal Operating Permits Program, relating to the requirement to obtain and maintain a federal operating permit.

§113.2410. Initial and Annual Reporting, and Modified Reporting Requirements for Legacy Controlled Landfills.

(a) An owner or operator of a municipal solid waste landfill (MSWLF) subject to the requirements of this division shall comply with the following reporting requirements, except as otherwise specified for legacy controlled landfills in subsections (b) - (d) of this section.

(1) The owner or operator shall submit the initial design capacity report in accordance with 40 CFR Part 60, §60.38f(a), to the executive director within 90 days from the implementation date specified in §113.2412 of this title (relating to Implementation Date and Increments of Progress). Owners or operators that have already submitted an initial design capacity report to EPA to satisfy 40 CFR §62.16724 are not required to submit the report again, unless specifically requested by the executive director.

(2) An owner or operator of an MSWLF with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and subject to the requirements of this division shall also submit the initial non-methane organic compound (NMOC) emission rate report in accordance with 40 CFR §60.38f(c) to the executive director within 90 days from the implementation date specified in §113.2412 of this title. Owners or operators that have already submitted an initial NMOC report to EPA to satisfy 40 CFR §62.16724 are not required to submit the report again, unless specifically requested by the executive director.

(3) An owner or operator of an MSWLF subject to the requirements of this division shall comply with applicable requirements of 40 CFR §60.38f(d) and (e) concerning the submittal of a site-specific gas collection and control system design plan to the executive director. Owners or operators that have already submitted a design plan to EPA to satisfy 40 CFR §62.16724 are not required to submit the design plan again, unless specifically requested by the executive director.

(4) Owners or operators of an MSWLF subject to the requirements of this division shall provide to the executive director an annual emission inventory report of landfill-generated non-methane organic compound (NMOC) emissions. This annual NMOC emission inventory report is not required for an MSWLF with a capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume. This annual NMOC emission inventory report is separate and distinct from any initial or annual NMOC emission rate reports required under 40 CFR §60.38f.

(A) Annual NMOC emission inventory reports required under this paragraph shall include the landfill's uncontrolled and (if equipped with a control system) controlled NMOC emissions in megagrams per year (Mg/yr) for the preceding calendar year. For purposes of these annual emission inventory reports, NMOC emissions will be calculated using the procedures specified in the U.S. EPA's Compilation of Air Pollutant Emissions Factors (AP-42). Note that the use of AP-42 calculations for these annual NMOC emission inventory reports is different from the calculation method that is required for NMOC emission rate reports prepared for purposes of 40 CFR Part 60, Subpart Cf or 40 CFR Part 62, Subpart OOO.

(B) Annual NMOC emission inventory reports required under this paragraph shall be submitted no later than March 31 of each year following the calendar reporting year. These reports shall be submitted using the method designated by the executive director.

(5) This section only addresses certain specific reports for MSWLFs which are subject to this division. Owners or operators of an MSWLF subject to this division shall also comply with any additional reporting requirements specified in 40 CFR §60.38f or elsewhere in 40 CFR Part 60, Subpart Cf, except as otherwise specified for legacy controlled landfills in subsections (b) - (d) of this section.

(b) Owners or operators of legacy controlled landfills are not required to submit the following reports, provided these reports were submitted under 40 CFR Part 60, Subpart WWW, or Chapter 113, §113.2061 (relating to Standard for Air Emissions), on or before June 21, 2021:

(1) Initial design capacity report specified in 40 CFR §60.38f(a);

(2) Initial or subsequent NMOC emission rate report specified in 40 CFR §60.38f(c);

(3) Collection and control system design plan specified in 40 CFR §60.38f(d);

(4) Initial annual report specified in 40 CFR §60.38f(h); and

(5) Initial performance test report specified in 40 CFR §60.38(f)(i).

(c) Owners or operators of legacy controlled landfills that have already submitted an annual report under 40 CFR Part 60, Subpart WWW, or Chapter 113, Division 1, of this title, are required to submit the annual report under this division no later than one year after the most recent annual report was submitted.

(d) Owners or operators of legacy controlled landfills that demonstrate compliance with the emission control requirements of this division using a treatment system as defined in 40 CFR §60.41f must comply with 40 CFR §62.16724(d)(7) as amended through May 21, 2021.

§113.2412. Implementation Date and Increments of Progress.

(a) Upon the effective date of United States Environmental Protection Agency (EPA) approval of the Texas §111(d) state plan for the implementation of 40 Code of Federal Regulations (CFR) Part 60, Subpart Cf (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills), owners or operators of municipal solid waste landfills (MSWLFs) covered by the applicability provisions of §113.2400(a) of this title (relating to Applicability), must comply with the requirements of this division.

(b) Owners or operators of an MSWLF subject to this division shall comply with all applicable increments of progress specified in 40 CFR Part 62, Subpart OOO, Table 1, as amended through May 21, 2021.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2023.

TRD-202300136

Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 26, 2023
For further information, please call: (512) 239-6295

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 26. COASTAL MANAGEMENT PROGRAM

The General Land Office (GLO) proposes amendments to §§26.3, 26.4, 26.10, 26.13, 26.15, 26.18, 26.21, 26.23 - 26.25, 26.31, and 26.34 in 31 TAC Chapter 26, relating to the Coastal Management Program.

The purpose of the proposed amendments is to update cross references that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 501 to 31 TAC Chapter 26, effective on December 1, 2022. This rulemaking is necessary because it further implements amendments to the Coastal Coordination Act by Senate Bill 656, 82nd Texas Legislature, which abolished the Coastal Coordination Council and transferred the Council's powers and duties to the GLO.

The GLO proposes amendments to update cross references within the following sections: §26.3, relating to Definitions and Abbreviations; §26.4, relating to Coastal Coordination Advisory Committee; §26.10, relating to Compliance with CMP Goals and Policies; §26.13, relating to Administrative Policies Review; §26.15, relating to Policy for Major Actions; §26.18, relating to Policies for Discharges of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities; §26.23, relating to Policies for Development in Critical Areas; §26.24, relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands; §26.25, relating to Policies for Dredging and Dredged Material and Placement; §26.31, relating to Policies for Transportation Projects; and §26.34, relating to Policies for Levee and Flood Control Projects.

The proposed amendment to §26.21, relating to Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters, updates the name of a state agency from Texas Department of Health to Texas Department of State Health Services.

FISCAL AND EMPLOYMENT IMPACTS

Melissa Porter, Deputy Director, Coastal Resources, has determined that for each year of the first five years the proposed amended rules are in effect, there will be no fiscal impacts to state government as a result of enforcing or administering the rules. There are no anticipated fiscal implications for local governments as a result of enforcing or administering the rules.

Ms. Porter has also determined that the proposed rulemaking will not have an adverse economic effect on small or large businesses, micro-businesses, rural communities, or individuals for the first five years that the proposed amended rules are in effect.

Ms. Porter has determined that the proposed rulemaking will not affect a local economy, and the rules will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code, §2001.022.

PUBLIC BENEFIT

Ms. Porter has determined that for each year of the first five years the proposed amended rules are in effect, the public will benefit from the proposed amended rules because the amended rules will provide more clarity.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for the proposed rulemaking. During the first five years the amended rules would be in effect, the rules would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation or expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability; or affect the state's economy.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§17 and 19 of the Texas Constitution. Furthermore, the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The proposed rulemaking will not result in a taking of private property, and there are no adverse impacts on private real property interests.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in accordance with Texas Government Code, §2001.0225, and determined that the action does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send written comments to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 475-1859 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §26.3, §26.4

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the GLO

and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; and §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§26.3. Definitions and Abbreviations.

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

(1) - (4) (No change.)

(5) Coastal zone--The area within the boundary established in §27.1 [~~§503.1~~] of this title (relating to Coastal Management Program Boundary).

(6) - (18) (No change.)

(b) - (d) (No change.)

§26.4. Coastal Coordination Advisory Committee.

(a) - (e) (No change.)

(f) In the event that a proposed action subject to consistency with the CMP goals and policies presents a significant unresolved consistency dispute, the committee may refer the matter to the commissioner for review pursuant to Chapter 29 [~~Chapter 505~~] (Procedures for State Consistency with Coastal Management Program Goals and Policies) or Chapter 30 [~~Chapter 506~~] (Procedures for Federal Consistency with Coastal Management Program Goals and Policies) of this title.

(g) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER B. GOALS AND POLICIES

31 TAC §§26.10, 26.13, 26.15, 26.18, 26.21, 26.23 - 26.25, 26.31, 26.34

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; and §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§26.10. Compliance with CMP Goals and Policies.

(a) State agencies, municipalities, and counties identified in this subchapter shall comply with the goals and policies in this subchapter when taking an action listed in §29.11 [~~§505.11~~] of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §29.60 [~~§505.60~~] of this title (relating to Local Government Actions Subject to the Coastal Management Program).

(b) - (c) (No change.)

§26.13. Administrative Policies.

(a) Agency and subdivision rules and ordinances subject to §26.10 [~~§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 §29.11 [~~§505.11~~] of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §29.60 [~~§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 §29.11 [~~§505.11~~] of this title [~~(relating to Actions and Rules Subject to the Coastal Management Program)~~] or §29.60 [~~§505.60~~] of this title [~~(relating to Local Government Actions Subject to the Coastal Management Program)~~] comply with all applicable requirements;

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

(b) A threshold for referral adopted by an agency under the provisions of Chapter 29 [~~Chapter 505~~] of this title (relating to [~~Council~~] Procedures for State Consistency with Coastal Management Program Goals and Policies [~~Reviews~~]) [~~of this title~~] shall be set at a level that is reasonably calculated to ensure that actions that may have unique and significant adverse effects on coastal natural resource areas are above the threshold for referral.

§26.15. Policy for Major Actions.

(a) For purposes of this section, "major action" means an individual agency or subdivision action listed in §29.11 [~~§505.11~~] of this title (relating to Actions and Rules Subject to the Coastal Management Program), §30.12 [~~506.12~~] of this title (relating to Federal Listed Activities Subject to CZMA Review) [~~Federal Actions Subject to the Coastal Management Program~~], or §29.60 [~~§505.60~~] of this title (relating to Local Government Actions Subject to the Coastal Management Program), relating to an activity for which a federal environmental impact statement under the National Environmental Policy Act, 42 United States Code Annotated, §4321, et seq is required.

(b) - (c) (No change.)

§26.18. Policies for Discharges of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities.

(a) (No change.)

(b) Discharge of oil and gas exploration and production wastewater in the coastal zone shall comply with the following policies.

(1) All discharges shall comply with all provisions of surface water quality standards established by the TCEQ under §26.21 [~~§501.21~~] of this title (relating to Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters).

(2) - (3) (No change.)

(c) (No change.)

§26.21. Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters.

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

(d) The TCEQ shall consult with the Texas Department of State Health Services when reviewing permit applications for wastewater discharges that may significantly adversely affect oyster reefs.

§26.23. Policies for Development in Critical Areas.

(a) Dredging and construction of structures in, or the discharge of dredged or fill material into, critical areas shall comply with the policies in this section. In implementing this section, cumulative and secondary adverse effects of these activities will be considered.

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

(7) Development in critical areas shall not be authorized if significant degradation of critical areas will occur. Significant degradation occurs if:

(A) 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;

(B) the activity will cause or contribute, after consideration of dilution and dispersion, to violation of any applicable surface water quality standards established under §26.21 [~~§501.21~~] of this title (relating to Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters);

(C) the activity violates any applicable toxic effluent standard or prohibition established under §26.21 [~~§501.21~~] of this title;

(D) the activity violates any requirement imposed to protect a marine sanctuary designated under the Marine Protection, Research, and Sanctuaries Act of 1972, 33 United States Code Annotated, Chapter 27; or

(E) 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 subsections (c) and (d) of this section, 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.

(b) - (c) (No change.)

(d) For any dredging or construction of structures in, or discharge of dredged or fill material into, critical areas that is subject to the requirements of §26.15 [~~§501.15~~] of this title (relating to Policy for Major Actions), data and information on the cumulative and secondary adverse affects of the project need not be produced or evaluated to comply with this section if such data and information is produced and evaluated in compliance with §26.15(b) - (c) [~~§501.15(b) - (c)~~] of this title.

§26.24. Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands.

(a) Development on submerged lands shall comply with the policies in this section.

(1) - (9) (No change.)

(10) 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 §26.23 [~~§501.23~~] of this title (relating to Policies for Development in Critical Areas). To the greatest extent practicable, facilities shall be located at sites at which expansion will not result in development in critical areas.

(11) - (17) (No change.)

(b) - (c) (No change.)

§26.25. Policies for Dredging and Dredged Material and Placement.

(a) Dredging and the disposal and placement of dredged material shall avoid and otherwise minimize adverse effects to coastal waters, submerged lands, critical areas, coastal shore areas, and Gulf beaches to the greatest extent practicable. The policies of this section are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public. In implementing this section, cumulative and secondary adverse effects of dredging and the disposal and placement of dredged material and the unique characteristics of affected sites shall be considered.

(1) 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 §26.21 [~~§501.21~~] of this title (relating to Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters).

(2) Except as otherwise provided in paragraph (4) of this subsection, adverse effects on critical areas from dredging and dredged material disposal or placement shall be avoided and otherwise minimized, and appropriate and practicable compensatory mitigation shall be required, in accordance with §26.23 [~~§501.23~~] of this title (relating to Policies for Development in Critical Areas).

(3) Except as provided in paragraph (4) of this subsection, dredging and the disposal and placement of dredged material shall not be authorized if:

(A) there is a practicable alternative that would have fewer adverse effects on coastal waters, submerged lands, critical areas, coastal shore areas, and Gulf beaches, so long as that alternative does not have other significant adverse effects;

(B) all appropriate and practicable steps have not been taken to minimize adverse effects on coastal waters, submerged lands, critical areas, coastal shore areas, and Gulf beaches; or

(C) significant degradation of critical areas under §26.23(a)(7)(E) [~~§501.23(a)(7)(E)~~] of this title would result.

(4) A dredging or dredged material disposal or placement project that would be prohibited solely by application of paragraph (3) of this subsection 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.

(b) Adverse effects from dredging and dredged material disposal and placement shall be minimized as required in subsection (a) of this section. Adverse effects can be minimized by employing the techniques in this subsection where appropriate and practicable.

(1) - (7) (No change.)

(8) Adverse effects from new channels and basins can be minimized by locating them at sites:

(A) that ensure adequate flushing and avoid stagnant pockets; or

(B) that will create the fewest practicable adverse effects 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; or

(C) 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;

(D) provided that, for any dredging of new channels or basins subject to the requirements of §26.15 [~~§501.15~~] of this title (relating to Policy for Major Actions), data and information on minimization of secondary adverse effects need not be produced or evaluated to comply with this paragraph if such data and information is produced and evaluated in compliance with §26.15(b)(1) [~~§501.15(b)(1)~~] of this title.

(c) - (k) (No change.)

§26.31. Policies for Transportation Projects.

(a) Transportation construction projects and maintenance programs within the coastal zone shall comply with the policies in this section.

(1) - (4) (No change.)

(5) 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 §26.23 [~~§501.23~~] of this title (relating to Policies for Development in Critical Areas).

(6) - (7) (No change.)

(b) (No change.)

§26.34. Policies for Levee and Flood Control Projects.

(a) 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 §26.23 [~~§501.23~~] of this title (relating to Policies for Development in Critical Areas).

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 27. COASTAL MANAGEMENT PROGRAM BOUNDARY

31 TAC §27.1

The General Land Office (GLO) proposes an amendment to §27.1 in 31 TAC Chapter 27, relating to the Coastal Management Program Boundary.

The purpose of the proposed amendment is to update a rule reference that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 503 to 31 TAC Chapter 27, effective on December 1, 2022. This rulemaking is necessary because it further implements amendments to the Coastal Coordination Act by Senate Bill 656, 82nd Texas Legislature, which abolished the Coastal Coordination Council and transferred the Council's powers and duties to the GLO.

The GLO proposes an amendment to update the rule reference labeling the Attached Graphic in §27.1(a). There are no substantive changes to the map in the Attached Graphic, and there are no proposed changes to the text of §27.1.

FISCAL AND EMPLOYMENT IMPACTS

Melissa Porter, Deputy Director, Coastal Resources, has determined that for each year of the first five years the proposed amended rule is in effect, there will be no fiscal impacts to state government as a result of enforcing or administering the rule. There are no anticipated fiscal implications for local governments as a result of enforcing or administering the rule.

Ms. Porter has also determined that the proposed rulemaking will not have an adverse economic effect on small or large businesses, micro-businesses, rural communities, or individuals for the first five years that the proposed amended rule is in effect.

Ms. Porter has determined that the proposed rulemaking will not affect a local economy, and the rule will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code, §2001.022.

PUBLIC BENEFIT

Ms. Porter has determined that for each year of the first five years the proposed amended rule is in effect, the public will benefit from the proposed amended rule because the amended rule will provide more clarity.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for the proposed rulemaking. During the first five years the amended rule would be in effect, the rule would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation or expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability; or affect the state's economy.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§17 and 19 of the Texas Constitution. Furthermore, the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendment. The proposed rulemaking will not result in a taking of private property, and there are no adverse impacts on private real property interests.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in accordance with Texas Government Code, §2001.0225, and determined that the action does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send written comments to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 475-1859 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendment is proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; and §33.054, which allows the commissioner to review and amend the CMP.

The proposed amendment is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§27.1. Coastal Management Program Boundary.

(a) General Description of the Coastal Management Program Boundary. The coastal management program boundary delineates the coastal zone. The inland part of the boundary is a modification of the coastal facility designation line, which is the line the State of Texas adopted under the Oil Spill Prevention and Response Act of 1991 (Texas Natural Resources Code, Chapter 40) to describe areas where oil spills are likely to enter coastal waters. Generally, the boundary encompasses the area within Texas lying seaward of the coastal facility designation line. It also includes coastal wetlands landward of the coastal facility designation line. The boundary includes areas within the following Texas counties: Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Refugio, Calhoun, Victoria, Jackson, Matagorda, Brazoria, Galveston, Harris, Chambers, Jefferson, and Orange. The seaward reach of the boundary extends into the Gulf of Mexico to the limit of state title and ownership under the Submerged Lands Management Act (43 United States Code, §§1301 et seq), that is, three marine leagues. The following maps outline the coastal management program boundary.

Figure: 31 TAC §27.1(a)

[~~Figure: 31 TAC §27.1~~]

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Mark Havens
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CHAPTER 28. PERMITTING ASSISTANCE AND PRELIMINARY CONSISTENCY REVIEW

The General Land Office (GLO) proposes amendments to §§28.2, 28.3, 28.10, 28.11, and 28.20 in 31 TAC Chapter 28, relating to Permitting Assistance and Preliminary Consistency Review.

The purpose of the proposed amendments is to update cross references that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 504 to 31 TAC Chapter 28, effective on December 1, 2022. The proposed amendments also include minor revisions to ensure that the role of the Permitting Assistance Group conforms with current practice. This proposed rulemaking is necessary because it further implements amendments to the Coastal Coordination Act by Senate Bill 656, 82nd Texas Legislature, which abolished the Coastal Coordination Council and transferred the Council's powers and duties to the GLO.

The GLO proposes amendments to update cross references within the following sections: §28.2, relating to Definitions; §28.11, relating to Permitting Assistance Coordinator; and §28.20, relating to Requests for Preliminary Consistency Review. The proposed amendment to §28.2 includes the alphabetization of the definitions.

The proposed amendment to §28.3, relating to Permitting Assistance Group (PAG), adds a new subsection (d) to conform with current practice by clarifying that the PAG's role may include participation in the planning and development of regional general permits and general permits to support future beach management and nourishment, coastal restoration projects, and the continued development of the Texas Coastal Management Program, as needed.

The proposed amendment to §28.10, relating to Permit Service Center, adds updated terminology, including a clarification that

the Texas Parks and Wildlife Department issues "certificates of location."

FISCAL AND EMPLOYMENT IMPACTS

Melissa Porter, Deputy Director, Coastal Resources, has determined that for each year of the first five years the proposed amended rules are in effect, there will be no fiscal impacts to state government as a result of enforcing or administering the rules. There are no anticipated fiscal implications for local governments as a result of enforcing or administering the rules.

Ms. Porter has also determined that the proposed rulemaking will not have an adverse economic effect on small or large businesses, micro-businesses, rural communities, or individuals for the first five years that the proposed amended rules are in effect.

Ms. Porter has determined that the proposed rulemaking will not affect a local economy, and the rules will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code, §2001.022.

PUBLIC BENEFIT

Ms. Porter has determined that for each year of the first five years the proposed amended rules are in effect, the public will benefit from the proposed amended rules because the amended rules will provide more clarity and better reflect current practice.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for the proposed rulemaking. During the first five years the amended rules would be in effect, the rules would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation or expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability; or affect the state's economy.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§17 and 19 of the Texas Constitution. Furthermore, the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The proposed rulemaking will not result in a taking of private property, and there are no adverse impacts on private real property interests.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in accordance with Texas Government Code, §2001.0225, and determined that the action does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send written comments to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 475-1859, or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §28.2, §28.3

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.205, which authorizes the commissioner to establish by rule processes for preliminary consistency review and permitting assistance.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§28.2. Definitions.

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

(1) Agency of subdivision--Any state agency, department, board, or commission or political subdivision of the state.

(2) Applicant--An individual or small business. In addition, the term includes a city, county, or special district.

(3) ~~(6)~~ CMP goals and policies--The goals and policies set forth in Chapter 26 [~~Chapter 501~~] of this title.

(4) ~~(3)~~ Coastal zone--The area within the CMP boundary established in §27.1 [~~§503.1~~] of this title.

(5) ~~(4)~~ Commissioner--Commissioner of the General Land Office (GLO).

(6) ~~(5)~~ Committee--Coastal Coordination Advisory Committee.

(7) ~~(9)~~ Permit service center (PSC)--The center that administers permitting assistance for activities in the coastal zone. The PSC has an office that serves the Upper Coast and an office that serves the Lower Coast.

(8) ~~(7)~~ Permitting assistance coordinator--The GLO staff member designated by the commissioner.

(9) ~~(8)~~ Permitting assistance group (PAG)--The group composed of representatives of committee member agencies and other interested committee members.

(10) Program boundary--The CMP boundary established in §27.1 [~~§503.1~~] of this title.

(b) (No change.)

§28.3. Permitting Assistance Group.

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

(d) The PAG may be convened to assist with the planning and development of regional general permits and general permits to support future beach management and nourishment, coastal restoration projects, and the continued development of the Coastal Management Program.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER B. PERMITTING ASSISTANCE

31 TAC §28.10, §28.11

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.205, which authorizes the commissioner to establish by rule processes for preliminary consistency review and permitting assistance.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§28.10. Permit Service Center.

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

(c) Agency or subdivision permits and actions:

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

(7) The Texas Parks and Wildlife Department [~~Commission~~] when issuing or approving:

(A) an oyster lease or certificate of location;

(B) a permit for taking, transporting, or possessing threatened or endangered species;

(C) a permit for disturbing marl, sand, shell, or gravel on state-owned land; or

(D) development by a person other than the Texas Parks and Wildlife Department [~~Commission~~] that requires the use or taking of any public land in a state park, wildlife management area, or preserve.

(8) - (10) (No change.)

(d) (No change.)

§28.11. Permitting Assistance Coordinator.

The permitting assistance coordinator will perform the following functions:

(1) Applicant Assistance: Upon the request of an applicant, the permitting assistance coordinator will assist the applicant and monitor the status of the application until the permitting agency or subdivision has all information necessary to decide to issue, condition, or deny the permit. The coordinator will be responsible for providing preapplication assistance, on behalf of the PAG, by performing the services described in §28.12 [~~§504.12~~] of this chapter.

(2) - (5) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Mark Havens
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General Land Office
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For further information, please call: (512) 475-1859

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SUBCHAPTER C. PRELIMINARY CONSISTENCY REVIEW

31 TAC §28.20

STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.205, which authorizes the commissioner to establish by rule processes for preliminary consistency review and permitting assistance.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§28.20. Requests for Preliminary Consistency Review.

(a) An agency, subdivision, or applicant seeking a permit or other proposed action listed in §28.10(c) [~~§504.10(c)~~] of this chapter may request a preliminary consistency review.

(b) - (e) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 29. PROCEDURES FOR STATE CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND POLICIES

The General Land Office (GLO) proposes amendments to §§29.11, 29.12, 29.20 - 29.26, 29.30 - 29.34, 29.36, 29.42, 29.51, 29.52, 29.60, 29.62 - 29.66, 29.68, and 29.74 in 31 TAC Chapter 29, relating to Procedures for State Consistency with Coastal Management Program Goals and Policies.

The purpose of the proposed amendments is to update cross references that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 505 to 31 TAC Chapter 29, effective on December 1, 2022. This rulemaking is necessary because it further implements amendments to the Coastal Coordination Act by Senate Bill 656, 82nd Texas Legislature, which abolished the Coastal Coordination Council and transferred the Council's powers and duties to the GLO.

The GLO proposes amendments to update cross references in the following sections: §29.11, relating to Actions and Rules Subject to the Coastal Management Program; §29.12, relating to Definitions; §29.20, relating to Commissioner Review and Certification of Agency Rules and Rule Amendments; §29.21, relating to Effect of Commissioner Certification of Agency Rules and Rule Amendments; §29.22, relating to Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program; §29.23, relating to Expedited Certification of Rules and Rule Amendments; §29.24, relating to Pre-Certification Review of Draft Rules and Draft Rule Amendments; §29.25, relating to Revocation of Certification; §29.26, relating to Approval of Thresholds for Referral; §29.30, relating to Agency Consistency Determination; §29.31, relating to Preliminary Consistency Review of Proposed Agency Action; §29.32, relating to Requirements for Referral of a Proposed Agency Action; §29.33, relating to Filing of Request for Referral; §29.34, relating to Referral of a Proposed Agency Action to the Commissioner for Consistency Review; §29.36, relating to Standard of Commissioner Review of a Proposed Agency Action; §29.42, relating to Enforcement after Commissioner Protest of a Proposed Agency Action; §29.51 relating to Request for a Non-Binding Advisory Opinion and Commissioner Action; 29.52, relating to Request for Commissioner Participation in the Development of General Plans; §29.60, relating to Subdivisions Actions Subject to the Coastal Management Program; §29.62, relating to Subdivision Consistency Determinations; §29.63, relating to Preliminary Consistency Review of a Proposed Subdivision Action; §29.64, relating to Requirements for a Referral of a Proposed Subdivision Action; §29.65, relating to Filing of Request for Referral; §29.66, relating to Referral of a Proposed Subdivision Action to the Commissioner for Review; §29.68, relating to Standard of Commissioner Review of a Proposed Subdivision Action; and §29.74, relating to Enforcement after Commissioner Protest of a Proposed Subdivision Action.

The proposed amendments to §29.11(a)(7)(A) adds updated terminology, including a clarification that the Texas Parks and Wildlife Department issues "certificates of location."

FISCAL AND EMPLOYMENT IMPACTS

Melissa Porter, Deputy Director, Coastal Resources, has determined that for each year of the first five years the proposed amended rules are in effect, there will be no fiscal impacts to state government as a result of enforcing or administering the rules. There are no anticipated fiscal implications for local governments as a result of enforcing or administering the rules.

Ms. Porter has also determined that the proposed rulemaking will not have an adverse economic effect on small or large businesses, micro-businesses, rural communities, or individuals for the first five years that the proposed amended rules are in effect.

Ms. Porter has determined that the proposed rulemaking will not affect a local economy, and the rules will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code, §2001.022.

PUBLIC BENEFIT

Ms. Porter has determined that for each year of the first five years the proposed amended rules are in effect, the public will benefit from the proposed amended rules because the amended rules will provide more clarity and better reflect current practice.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for the proposed rulemaking. During the first five years the amended rules would be in effect, the rules would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation or expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability; or affect the state's economy.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§17 and 19 of the Texas Constitution. Furthermore, the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The proposed rulemaking will not result in a taking of private property, and there are no adverse impacts on private real property interests.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in accordance with Texas Government Code, §2001.0225, and determined that the action does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector

of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send written comments to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 475-1859 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

SUBCHAPTER A. PURPOSE AND SCOPE

31 TAC §29.11, §29.12

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§29.11. Actions and Rules Subject to the Coastal Management Program.

(a) For purposes of this chapter and Chapter 26 [~~Chapter 501~~] of this title (relating to Coastal Management Program), the following is an exclusive list of proposed individual agency actions that may adversely affect a coastal natural resource area (CNRA) and that therefore must be consistent with the CMP goals and policies:

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

(7) for the Texas Parks and Wildlife Department (TPWD) when issuing or approving:

(A) an oyster lease or certificate of location;

(B) a permit for taking, transporting, or possessing threatened or endangered species;

(C) a permit for disturbing marl, sand, shell, or gravel on state-owned land; or

(D) development by a person other than the TPWD that requires the use or taking of any public land in a state park, wildlife management area or preserve.

(b) For purposes of this chapter and Chapter 26 [~~Chapter 501~~] of this title [~~(relating to Coastal Management Program)~~], the following is an exclusive list of proposed agency rulemaking actions that must be consistent with the CMP goals and policies:

(1) a GLO rule governing the prevention of, response to, or remediation of a coastal oil spill;

(2) TCEQ rules governing air pollutant emissions, on-site sewage disposal systems, or underground storage tanks;

(3) a State Soil and Water Conservation Board rule governing agricultural or silvicultural nonpoint source pollution;

(4) any rule governing an individual action described in subsection (a) of this section, including thresholds for referral.

(c) - (e) (No change.)

§29.12. Definitions.

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

(1) - (5) (No change.)

(6) CMP goals and policies--The goals and policies set forth in Chapter 26 [~~Chapter 501~~] of this title (relating to Coastal Management Program).

(7) Program boundary--The CMP boundary established in §27.1 [~~§503.1~~] of this title (relating to Coastal Management Program Boundary).

(8) Subdivision--A local government or any political subdivision of the state.

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER B. COMMISSIONER REVIEW AND CERTIFICATION OF AGENCY RULES

31 TAC §§29.20 - 29.26

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§29.20 Commissioner Review and Certification of Agency Rules and Rule Amendments

(a) Upon adoption of a rule or amendment to a rule listed in §29.11(b) [~~§505.11(b)~~] of this chapter (relating to Actions and Rules Subject to the Coastal Management Program), an agency may seek

certification from the commissioner that the rule or rule amendment is consistent with the CMP goals and policies by filing a written Request for Certification with the CMP coordinator. The request shall include a copy of the rule or rule amendment for which the agency seeks certification and a reasoned statement supporting the agency's determination that the rule or rule amendment is consistent with the CMP goals and policies.

(b) - (e) (No change.)

§29.21. Effect of Commissioner Certification of Agency Rules and Rule Amendments.

(a) Upon the commissioner's certification of an agency's rules or rule amendments pursuant to §29.20 [~~§505.20~~] of this chapter (relating to Commissioner Review and Certification of Agency Rules and Rule Amendments) or §29.23 [~~§505.23~~] of this chapter (relating to Expedited Certification of Rules and Rule Amendments), the agency's rules are incorporated into the CMP goals and policies, and any threshold for referral approved pursuant to §29.26 [~~§505.26~~] of this chapter (relating to Approval of Thresholds for Referral) that applies to actions under those rules shall become operative and limit the commissioner's authority to review individual actions of the agency, as provided in §29.32 [~~§505.32~~] of this chapter (relating to Requirements for Referral of a Proposed Agency Action).

(b) After an agency's rules are certified and an agency's thresholds are approved, the agency's consistency determination for an action is final and is not subject to referral and review, except as provided by §29.32 [~~§505.32~~] of this chapter [~~(relating to Requirements for Referral of a Proposed Agency Action)~~].

(c) Where commissioner certification of a rule or rule amendment takes place after the effective date of a rule or rule amendment, the provisions of §29.32 [~~§503.32~~] of this chapter [~~(relating to Requirements for Referral of a Proposed Agency Action)~~] will be considered to be in effect to limit commissioner review of an agency action listed in §29.11(a) [~~§505.11(a)~~] of this chapter (relating to Actions and Rules Subject to the Coastal Management Program) provided:

(1) the agency files a request for certification of the rule or rule amendment within seven days of the date of adoption;

(2) the action is undertaken pursuant to the rule or rule amendment for which certification is sought; and

(3) the action was initiated after the rule or rule amendment was adopted and before the commissioner acted on the request for certification.

§29.22. Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program.

(a) When proposing to adopt or amend a rule listed in §29.11(b) [~~§505.11(b)~~] of this chapter (relating to Actions and Rules Subject to the Coastal Management Program) an agency shall include in the preamble to the proposed rule as published in the *Texas Register* the following:

(1) a statement that the proposed rule or rule amendment is subject to the Coastal Management Program and must be consistent with all applicable CMP policies;

(2) a reasoned justification explaining the basis upon which the agency concluded the proposed rule is consistent with each applicable CMP policy; and

(3) a request for public comment on the consistency of the proposed rule or rule amendment.

(b) - (d) (No change.)

§29.23. Expedited Certification of Rules and Rule Amendments.

(a) In accordance with this section, the commissioner may provide expedited certification of a rule or rule amendment. An agency may request and the commissioner may provide expedited certification of an agency's rule or rule amendment only if:

(1) the agency has included in the preamble to the proposed rule or rule amendment published in the *Texas Register* notice that the agency will seek expedited certification upon adoption of the rule;

(2) the agency has filed with the CMP coordinator at the time the rule or rule amendment is proposed a Notice of Intent to Seek Expedited Certification and attached a copy of the proposed rule or rule amendment; and

(3) the agency submitted the draft rule or draft rule amendment to the CMP coordinator for pre-certification review pursuant to §29.24 [~~§505.24~~] of this chapter (relating to Pre-Certification Review of Draft Rules and [~~or~~] Draft Rule Amendments).

(b) - (d) (No change.)

§29.24. Pre-Certification Review of Draft Rules and Draft Rule Amendments.

(a) Prior to the publication in the *Texas Register* of a proposed rule or amendment to a rule listed in §29.11(b) [~~§505.11(b)~~] of this chapter (relating to Actions and Rules Subject to the Coastal Management Program), an agency may seek pre-certification review by filing a Request for Pre-certification Review with the CMP coordinator. The request shall include a copy of the draft rule or draft rule amendment and any information the agency wishes the commissioner to consider. This request shall allow the commissioner a minimum of 30 days to review and comment on the draft rule or rule amendment.

(b) - (d) (No change.)

§29.25. Revocation of Certification.

The commissioner may issue a Notice of Program Deficiency if the commissioner finds that the agency has implemented its rules in a manner that is inconsistent with the CMP goals and policies, or has amended certified rules in a manner inconsistent with the CMP goals and policies. 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 commissioner may, after notice and opportunity for public comment, revoke certification of the agency's rules. Upon revocation of certification, §29.21 [~~§505.21~~] of this chapter (relating to Effect of Commissioner Certification of Agency Rules and Rule Amendments) shall not apply to limit commissioner review of any agency actions.

§29.26. Approval of Thresholds for Referral.

As applicable, the provisions of §29.20 [~~§505.20~~] of this chapter (relating to Commissioner Review and Certification of Agency Rules and Rule Amendments) or §29.23 [~~§505.23~~] of this chapter (relating to Expedited Certification of Rule and Rule Amendments) shall be applied in requesting and responding to a request for approval of thresholds. Notwithstanding any other provision of this section to the contrary, when applying §29.20 [~~§505.20~~] or §29.23 of this chapter [~~§505.23~~] to thresholds, the term "threshold" or "thresholds" shall be substituted for the term "rule" or "rules" and the term "approval" shall be substituted for the term "certified" or "certification." Thresholds for referral shall be set a level consistent with the standard in §26.13(b) [~~§501.13(b)~~] of this title (relating to Administrative Policies).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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General Land Office
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SUBCHAPTER C. CONSISTENCY AND COMMISSIONER REVIEW OF PROPOSED STATE AGENCY ACTIONS

31 TAC §§29.30 - 29.34, 29.36, 29.42

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§29.30. Agency Consistency Determination.

(a) An agency, when proposing an action listed in §29.11(a) [~~§505.11(a)~~] of this chapter (relating to Actions and Rules Subject to the Coastal Management Program) that may adversely affect a coastal natural resource area (CNRA), shall comply with the CMP goals and policies.

(b) - (e) (No change.)

§29.31. Preliminary Consistency Review of a Proposed Agency Action.

(a) An agency or permit applicant may request and receive a preliminary consistency review of any action listed in §29.11(a) [~~§505.11(a)~~] of this chapter (relating to Actions and Rules Subject to the Coastal Management Program) or §29.60 [~~§505.60~~] of this chapter (relating to Subdivision Actions Subject to the Coastal Management Program) prior to the agency's proposed action.

(b) A request for preliminary consistency review shall be submitted and processed pursuant to Chapter 28 [~~Chapter 504~~] of this title (relating to Permitting Assistance and Preliminary Consistency Review).

§29.32. Requirements for Referral of a Proposed Agency Action.

(a) A proposed action of an agency listed in §29.11(a) [~~§505.11(a)~~] of this chapter (relating to Actions and Rules Subject to the Coastal Management Program) may be referred to the commissioner for review to determine consistency with the CMP goals and policies only if:

(1) the agency has proposed the action for which referral is sought;

(2) the consistency determination for the proposed action was contested by:

(A) a committee member or an agency that was a party in a formal hearing under Government Code, Chapter 2001, or in an alternative dispute resolution process; or

(B) a committee member or other person by the filing of written comments with the agency before the action was proposed if the proposed action is one for which a formal hearing under Government Code, Chapter 2001, is not available;

(3) a person described by subsection (a)(2) of this section files a request for referral within ten days of the date the action is proposed alleging a significant unresolved dispute regarding the proposed action's consistency with the CMP goals and policies; and

(4) any three committee members other than the representative of the Texas Sea Grant College Program agree within 13 days of the date the action is proposed that there is a significant unresolved dispute regarding the proposed action's consistency with the CMP goals and policies and the matter is referred to the commissioner for review.

(b) If consistency review thresholds are in effect under §29.26 [~~§505.26~~] of this chapter (relating to Approval of Thresholds for Referral), the commissioner may not review a proposed action for consistency with the CMP goals and policies unless the requirements of subsection (a) of this section are satisfied and:

(1) if the proposed action is one for which a formal hearing under Government Code, Title 10, Subtitle A, Chapter 2001, is available:

(A) the action exceeds the applicable thresholds and the agency's consistency determination was contested in a formal hearing or an alternative dispute resolution process; or

(B) the action does not exceed the applicable thresholds but may directly and adversely affect a critical area, critical dune area, coastal park, wildlife management area or preserve, or Gulf beach and a state agency contested the agency's consistency determination in a formal hearing; or

(2) if the proposed action is one for which a formal hearing under Government Code, Chapter 2001, is not available to contest the agency's determination, the action exceeds the applicable thresholds.

(c) For purposes of this subchapter, an action subject to the contested case provisions of Government Code, Chapter 2001, is proposed when a notice of a decision or order is issued under Government Code, §2001.142.

(d) The commissioner must consider and act on a matter referred under this section before the 26th day after the date the agency or subdivision proposed the action.

§29.33. Filing of Request for Referral.

(a) To seek commissioner review of a proposed agency action listed in §29.11(a) [~~§505.11(a)~~] of this chapter (relating to Actions and Rules Subject to the Coastal Management Program), a person described in §29.32(a)(2) [~~§505.32(a)(2)~~] of this chapter (relating to Requirements for Referral of a Proposed Agency Action) must file a written Request for Referral with the CMP coordinator. The request must be filed no later than ten days after the agency has proposed the action for which consistency review is sought.

(b) 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 proposing the action for which review is sought;

(B) the applicant, if any, before the agency; and

(C) if the proposed action was the subject of a formal hearing under Government Code, Chapter 2001, all persons who were named as parties to the proceeding or their representatives;

(3) a description of the proposed action for which review is sought indicating the date of the agency's proposed action and a copy of the proposed order, permit, or other official agency decision document;

(4) a statement demonstrating, by reference to the requirements of §29.32 [~~§505.32~~] of this chapter [~~(relating to Requirements for Referral of a Proposed Agency Action)~~], that the proposed action is subject to referral; and

(5) a clear and concise statement of the significant unresolved dispute regarding the proposed action's consistency with the CMP goals and policies, including specific reference to the applicable goals and policies and to the applicable facts in the agency's decision record.

§29.34. Referral of a Proposed Agency Action to the Commissioner for Consistency Review.

(a) Upon receipt of a timely Request for Referral which satisfies the requirements of §29.33 [~~§505.33~~] of this chapter (relating to Filing of Request for Referral), the CMP coordinator shall provide a copy to each committee member.

(b) - (e) (No change.)

§29.36. Standard of Commissioner Review of a Proposed Agency Action.

(a) The only basis on which the commissioner may protest a proposed agency action is that the proposed action is inconsistent with the CMP goals and policies.

(b) Following certification of an agency's rules as consistent with the CMP goals and policies pursuant to Subchapter B of this chapter:

(1) the commissioner shall presume that the agency's consistency determination is valid if it is supported by the agency's findings of fact and conclusions of law;

(2) the burden shall be on the person filing the request for referral to demonstrate that the agency's proposed action is inconsistent with the CMP goals and policies; and

(3) any thresholds for referral approved pursuant to §29.26 [~~§505.26~~] of this chapter (relating to Approval of Thresholds for Referral) shall become operative and limit the commissioner's authority to review individual proposed actions of an agency as provided in §29.32 [~~§505.32~~] of this chapter (relating to Requirements for Referral of a Proposed Agency Action).

§29.42. Enforcement after Commissioner Protest of a Proposed Agency Action.

(a) The agency with jurisdiction over a proposed action shall enforce provisions of the CMP.

(b) If the attorney general issues an opinion under §29.39 [~~§505.39~~] of this chapter (relating to Agency Action After Commissioner Protest) that a proposed agency action is inconsistent with the CMP, the attorney general shall file suit in a district court of Travis County unless otherwise directed by the commissioner.

(c) Notwithstanding the request for an opinion from, or the filing of a suit by the attorney general, the commissioner and the agency may enter into a settlement agreement with regard to the proposed action. If the commissioner and the agency enter into a settlement agreement, the commissioner may rescind the commissioner's request for an opinion from the attorney general.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER D. COMMISSIONER ADVISORY OPINIONS ON GENERAL PLANS

31 TAC §29.51, §29.52

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§29.51. Request for a Non-Binding Advisory Opinion and Commissioner Action.

(a) An agency or subdivision which has produced a general plan described or listed in §29.50 [~~§505.50~~] of this chapter (relating to General Plans) may request a non-binding advisory opinion on the consistency of its general plan.

(b) - (e) (No change.)

§29.52. Request for Commissioner Participation in the Development of General Plans.

(a) An agency or subdivision which is producing a general plan described or listed in §29.50 [~~§505.50~~] of this chapter (relating to General Plans) may request commissioner participation in the development of a plan by submitting a written request to the CMP coordinator. The commissioner shall participate in the plan development according to the schedule of the agency developing the plan.

(b) The commissioner may direct the committee to participate in the development of the plan and make regular reports to the commissioner.

(c) At the request of an agency or subdivision which is producing a general plan described or listed in §29.50 [~~§505.50~~] of this

chapter [(~~relating to General Plans~~)], the commissioner may enter into a memorandum of agreement establishing the manner of commissioner 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 CMP goals and policies, and such other matters as are deemed appropriate by the parties to the agreement.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER E. CONSISTENCY AND COMMISSIONER REVIEW OF LOCAL GOVERNMENT ACTIONS

31 TAC §§29.60, 29.62 - 29.66, 29.68, 29.74

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§29.60. Subdivision Actions Subject to the Coastal Management Program.

For purposes of this chapter and Chapter 26 [~~Chapter 501~~] of this title (relating to Coastal Management Program), issuance of a dune protection permit or beachfront construction certificate are the only proposed actions by a subdivision that may adversely affect a coastal natural resource area and that therefore must be consistent with the CMP goals and policies provided such actions authorize:

(1) construction activity that is located 200 feet or less landward of the line of vegetation and that results in the disturbance of more than 7,000 square feet of dunes or dune vegetation;

(2) construction activity that results in the disturbance of more than 7,500 cubic yards of dunes;

(3) a coastal shore protection project undertaken on a Gulf beach or 200 feet or less landward of the line of vegetation and that affects more than 500 linear feet of Gulf beach; or

(4) a closure, relocation, or reduction in existing public beach access or public beach access designated in an approved local government beach access plan, other than for a short term.

§29.62. Subdivision Consistency Determinations.

(a) Prior to a proposed action identified in §29.60 [~~§505.60~~] of this title (relating to Subdivision Actions Subject to the Coastal Management Program), a subdivision shall comply with the CMP goals and policies.

(1) For dune protection permits, the subdivision 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 subdivision 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 Gulf beach shall constitute a determination that such permit is consistent with CMP goals and policies.

(b) A subdivision proposing an action listed in §29.60 [~~§505.60~~] of this title [(~~relating to Subdivision Actions Subject to the Coastal Management Program~~)] shall affirm that it has taken into account the CMP goals and policies by issuing a written determination that the proposed action is consistent with program goals and policies.

§29.63. Preliminary Consistency Review of a Proposed Subdivision Action.

(a) Prior to taking final action, a subdivision may request preliminary consistency review for any proposed action listed in §29.60 [~~§505.60~~] of this chapter (relating to Subdivision Actions Subject to the Coastal Management Program).

(b) A subdivision's request for preliminary consistency review shall be submitted and handled in accordance with the provisions of Chapter 28 [~~Chapter 504~~] of this title (relating to Permitting Assistance and Preliminary Consistency Review).

§29.64. Requirements for Referral of a Proposed Subdivision Action.

A proposed subdivision action listed in §29.60 [~~§505.60~~] of this chapter (relating to Subdivision Actions Subject to the Coastal Management Program) may be referred to the commissioner for review to determine consistency with the CMP goals and policies only if:

(1) the subdivision proposed the action for which referral is sought;

(2) the consistency determination for the proposed action was contested by a member of the committee or other person by the filing of written comments with the subdivision;

(3) a person described in paragraph (2) of this section files a request for referral within ten days of the date the action was proposed alleging a significant unresolved dispute regarding the proposed action's consistency with the CMP goals and policies; and

(4) any three committee members other than the representative of the Texas Sea Grant College Program agree within 13 days of the date the action was proposed that there is a significant unresolved dispute regarding the proposed action's consistency with the CMP goals and policies and the matter is referred to the commissioner for review.

§29.65. Filing of Request for Referral.

(a) To seek commissioner review of an action identified in §29.60 [~~§505.60~~] of this chapter (relating to Subdivision Actions Subject to the Coastal Management Program), a member of the committee or other person must file a written Request for Referral with the CMP coordinator. The request must be filed no later than ten days after the subdivision has proposed the action for which consistency review is sought.

(b) 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 requestor has provided copies of the request by personal delivery or certified service to:

(A) the subdivision proposing the action for which review is sought; and

(B) the applicant, if other than the subdivision;

(3) a description of the proposed action for which review is sought, indicating the date of the proposed subdivision action, including a copy of the order, permit, or other official subdivision proposal;

(4) a statement demonstrating, by reference to the requirements of §29.64 [~~§505.64~~] of this chapter (relating to Requirements for Referral of a Proposed Subdivision Action [~~Actions~~]), that the proposed action is one subject to referral; and

(5) a clear and concise statement of the proposed action's inconsistencies with the CMP goals and policies, including specific reference to the applicable goals and policies and to the applicable facts in the subdivision's proposal.

§29.66. Referral of a Proposed Subdivision Action to the Commissioner for Review.

(a) Upon receipt of a timely Request for Referral which satisfies the requirements of §29.65 [~~§505.65~~] of this chapter (relating to Filing of Request for Referral), the CMP coordinator shall provide a copy to each member of the committee.

(b) - (e) (No change.)

§29.68. Standard of Commissioner Review of a Proposed Subdivision Action.

(a) The only basis on which the commissioner may protest a proposed subdivision action is that the proposed action is inconsistent with the CMP goals and policies.

(b) Following the GLO's certification of a subdivision's dune protection and beach access plan under §15.3(o) of this title (relating to Administration) as consistent with the CMP goals and policies:

(1) the subdivision's consistency determination is final and is not subject to referral and review, except as provided in §29.64 [~~§505.64~~] of this chapter (relating to Requirements for Referral of a Proposed Subdivision Action [~~Actions~~]); and

(2) the commissioner shall presume that the subdivision's consistency determination is valid, if such determination is documented by the underlying record, and the burden shall be on the person filing the Request for Referral to demonstrate that the subdivision's proposed action is inconsistent with the CMP goals and policies.

§29.74. Enforcement after Commissioner Protest of a Proposed Subdivision Action.

(a) The agency or subdivision with jurisdiction over a proposed action shall enforce the CMP provisions.

(b) If the attorney general issues an opinion pursuant to §29.71 [~~§505.71~~] of this chapter (relating to Subdivision Action After Commissioner Protest) finding that a proposed subdivision action is inconsistent with the CMP and the agency or subdivision fails to implement the commissioner's recommendation, the attorney general shall file suit in a district court of Travis County unless otherwise directed by the commissioner.

(c) Notwithstanding the request for an opinion from, or the filing of a suit by the attorney general, the commissioner and the subdivision may enter into a settlement agreement with regard to the proposed action. If the commissioner and the subdivision enter into a settlement agreement, the commissioner may rescind the commissioner's request for an opinion from the attorney general.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
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CHAPTER 30. COUNCIL PROCEDURES FOR FEDERAL CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND PRIORITIES

31 TAC §§30.10 - 30.13, 30.20 - 30.37, 30.40 - 30.45, 30.50 - 30.54

BACKGROUND AND PURPOSE

The General Land Office (GLO) proposes to repeal Chapter 30, Council Procedures for Federal Consistency with Coastal Management Program Goals and Priorities, which includes the repeal of §§30.10 - 30.13, 30.20 - 30.37, 30.40 - 30.45, and 30.50 - 30.54.

The Texas Coastal Management Program (CMP) is based upon the Coastal Coordination Act, Texas Natural Resources Code, Chapter 33, Subchapter F. In 1991, the Coastal Coordination Council (Council) was created for the purpose of developing CMP policy, facilitating interagency coordination, conducting dispute resolution, and overseeing the CMP. The CMP goals and policies are utilized for ensuring state and federal actions are consistent with the CMP. In 2010, the Council was reviewed by the Texas Sunset Advisory Commission. In its review, the Sunset Commission found that the Council had transitioned from developing and implementing the CMP to merely administering it. The Sunset Commission further determined that since the GLO was charged with the primary administrative responsibility for the CMP, the GLO could more efficiently perform the Council's duties. In light of these findings, the Sunset Commission recommended abolishing the Council and transferring the Council's functions to the Commissioner and GLO.

During the 82nd Legislative Session, the Texas Legislature passed Senate Bill 656, abolishing the Council and transferring the duties and powers of the Council to the General Land Office. SB 656 also directed the Commissioner to establish the Coastal Coordination Advisory Committee (Committee). The Committee's membership closely resembles the former Council's membership, as it requires a representative from each of eight state agencies with coastal duties, as well as four public members appointed by the Commissioner to represent coastal priorities.

The purpose of this rulemaking is to repeal and replace the sections in Chapter 30 with proposed new sections, found in a separate rulemaking action, that incorporate changes made by SB 656 and that conform with the Coastal Zone Management Act (CZMA) Federal Consistency regulations in 15 CFR Part 930.

FISCAL AND EMPLOYMENT IMPACTS

Melissa Porter, Deputy Director, Coastal Resources, has determined that for each year of the first five years that the proposed repeals are in effect, there will be no fiscal impacts to state government as a result of enforcing or administering the repeals as proposed. There are no anticipated fiscal implications for local governments as a result of enforcing or administering the repeals as proposed.

Ms. Porter has also determined that the proposed repeals will not have an adverse economic effect on small or large businesses, micro-businesses, rural communities, or individuals for the first five years that the proposed repeals and new section are in effect.

Ms. Porter has determined that the proposed repeals will not affect a local economy, and the repeals as proposed will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code, §2001.022.

PUBLIC BENEFIT

Ms. Porter has determined that for each year of the first five years the proposed repeals are in effect, the public will benefit from the proposed repeals because the proposed new sections will provide necessary updates and clarifications, increase understanding of the process, and improve the overall efficiency and continued implementation of the CMP.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for the proposed repeals. During the first five years the proposed repeals would be in effect, the repeals would: not create or eliminate a government program; not create or eliminate any employee positions; not require an increase or decrease in future legislative appropriations to the agency; not require an increase or decrease in fees paid to the agency; create a new regulation by repealing and replacing existing regulations; not expand or limit an existing regulation but would repeal and replace existing regulations; not increase or decrease the number of individuals subject to the rule's applicability; and not positively or adversely affect the state's economy.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed repeals in accordance with Texas Government Code, §2007.043(b), and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The proposed repeals do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§17 and 19 of the Texas Constitution. Furthermore, the proposed repeals would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rules. The proposed repeals will not result in a taking of private property, and there are no adverse impacts on private real property interests.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed repeals in accordance with Texas Government Code, §2001.0225, and determined that the action does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

PUBLIC COMMENT REQUEST

To comment on the proposed repeals, please send written comments to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 475-1859, or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The repeals are proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; and §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule.

The proposed repeals are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§30.10. Purpose and Policy.

§30.11. Definitions.

§30.12. Federal Agency Actions, Federal Agency Activities and Development Projects, and Outer Continental Shelf Plans Subject to the Coastal Management Program.

§30.13. Conditional Concurrence.

§30.20. Consistency Determinations for Federal Agency Activities and Development Projects.

§30.21. Notification of Negative Determinations.

§30.22. General Consistency Determinations for Proposed Federal Agency Activities.

§30.23. Consistency Determinations for Development Projects.

§30.24. Consistency Determinations for Federal Agency Activities Initiated Prior to Federal Approval of the Coastal Management Program.
§30.25. Public Notice and Comment.
§30.26. Referral of Federal Activities.
§30.27. Council Hearing to Review Federal Agency Activities and Availability of Mediation.
§30.28. General Consistency Agreements for Federal Activities; Interagency Coordination Teams for Federal Development Projects.
§30.29. Supplemental Interagency Coordination for Proposed Federal Agency Activities.
§30.30. Consistency Certifications for Federal Agency Actions.
§30.31. Council Assistance.
§30.32. Public Notice and Comment.
§30.33. Referral of Federal Agency Action.
§30.34. Council Hearing to Review a Federal Agency Action.
§30.35. General Concurrence.
§30.36. Supplemental Coordination for Proposed Federal Agency Actions.
§30.37. Remedial Action for Previously Reviewed Federal Agency Actions.
§30.40. Consistency Certifications for Outer Continental Shelf Plans.
§30.41. Public Notice and Comment.
§30.42. Referral of an Outer Continental Shelf Plan.
§30.43. Council Hearing to Review Outer Continental Shelf Plan.
§30.44. Effect of Council Concurrence.
§30.45. Failure to Comply Substantially with an Approved OCS Plan.
§30.50. Notice to the Council of Applications for Federal Assistance.
§30.51. Referral of Applications for Federal Assistance.
§30.52. Council Hearing to Review Applications for Federal Assistance.
§30.53. Supplemental Coordination for Federal Assistance Activities Rule.
§30.54. Remedial Action for Previously Reviewed Federal Assistance Activities.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2023.

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Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: February 26, 2023
For further information, please call: (512) 475-1859

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31 TAC §§30.10 - 30.12, 30.20, 30.30, 30.40, 30.50, 30.60

BACKGROUND AND PURPOSE

The General Land Office (GLO) proposes new Chapter 30, Procedures for Federal Consistency with Coastal Management Program Goals and Policies, which includes proposed new §§30.10 - 30.12, 30.20, 30.30, 30.40, 30.50, and 30.60.

The Texas Coastal Management Program (CMP) is based upon the Coastal Coordination Act, Texas Natural Resources Code, Chapter 33, Subchapter F. In 1991, the Coastal Coordination Council (Council) was created for the purpose of developing CMP policy, facilitating interagency coordination, conducting dispute resolution, and overseeing the CMP. The CMP goals and policies are utilized for ensuring state and federal actions are consistent with the CMP. In 2010, the Council was reviewed by the Texas Sunset Advisory Commission. In its review, the Sunset Commission found that the Council had transitioned from developing and implementing the CMP to merely administering it. The Sunset Commission further determined that since the GLO was charged with the primary administrative responsibility for the CMP, the GLO could more efficiently perform the Council's duties. In light of these findings, the Sunset Commission recommended abolishing the Council and transferring the Council's functions to the Commissioner and GLO.

During the 82nd Legislative Session, the Texas Legislature passed Senate Bill 656, abolishing the Council and transferring the duties and powers of the Council to the General Land Office. SB 656 also directed the Commissioner to establish the Coastal Coordination Advisory Committee (Committee). The Committee's membership closely resembles the former Council's membership, as it requires a representative from each of eight state agencies with coastal duties, as well as four public members appointed by the Commissioner to represent coastal priorities.

The purpose of this rulemaking is to repeal and replace the sections in Chapter 30 with proposed new sections that incorporate changes made by SB 656 and that conform with the Coastal Zone Management Act (CZMA) Federal Consistency regulations in 15 CFR Part 930. Specifically, the proposed new rules further implement SB 656 by removing all references to the abolished Council, reflecting the transfer of the Council's functions and duties to the Commissioner and the GLO, and adding references to the Committee. Additionally, the GLO's federal consistency procedures are required to be consistent with the Federal Consistency regulations in 15 CFR Part 930, promulgated by the National Oceanic and Administrative Administration (NOAA). The proposed new rules closely adhere to the Federal Consistency regulations and adopt the review timeframes for federal agency actions in 15 CFR Part 930.

The proposed new rules also reorganize, streamline, and clarify the GLO's federal consistency review procedures for federal license or permit activities, activities and development projects, outer continental shelf (OCS) plans, and federal assistance to state and local governments. New federal assistance activities have been identified and added for federal consistency review if they occur within the CMP boundary and may adversely affect coastal natural resource areas (CNRAs). These new federal assistance activities are listed according to their federal CFDA numbers. This rulemaking also updates rule references that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 506 to 31 TAC Chapter 30, effective on December 1, 2022.

The proposed repeals are necessary for the continued implementation of the Coastal Coordination Act, as amended by SB 656, and to ensure the GLO's federal consistency procedures conform to the Federal Consistency regulations in 15 CFR Part 930.

SECTION BY SECTION ANALYSIS

The GLO proposes to repeal §§30.10 - 30.13, 30.20 - 30.37, 30.40 - 30.45, and 30.50 - 30.54, and proposes new sections §§30.10 - 30.12, 30.20, 30.30, 30.40, 30.50, and 30.60, in proposed new Chapter 30 titled "Procedures for Federal Consistency with Coastal Management Program Goals and Policies."

Proposed new §30.10, relating to Purpose and Policy, stipulates that the rules in the Chapter establish a process for federal consistency review, as required by Texas Natural Resources Code, §33.206(d). This new section reflects federal procedures for implementing the federal consistency requirements of the CZMA and provides that federal actions and activities subject to the Texas CMP are consistent with the goals and enforceable policies. The procedures in this Chapter are also intended to allow the Commissioner to identify, address, and resolve federal consistency issues. The new section also stipulates that if any inconsistencies are found between these rules and those of the Federal Consistency regulations in 15 CFR Part 930, the federal regulations control. This new section is necessary to implement SB 656 and to update the rules to conform with the Federal Consistency regulations in 15 CFR Part 930.

Proposed new §30.11, relating to Definitions, sets forth the meanings of key terms used in the Chapter.

Proposed new §30.11(a) adds an interpretive provision clarifying that the defined terms have the meanings set forth in this section unless the context clearly indicates otherwise.

Proposed new §30.11(a)(1) adds a definition for "associated facilities," which means 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." *See* 15 CFR §930.11(d).

Proposed new §30.11(a)(2) adds a definition for "Coastal Coordination Act," which is the short title of Texas Natural Resources Code, Chapter 33, Subchapter F.

Proposed new §30.11(a)(3) adds a definition for "coastal zone," which means the "portion of the coastal area located within the boundaries established by the CMP under Texas Natural Resources Code, §33.2053(k), and described in Chapter 27 of this title (relating to Coastal Management Program Boundary)."

Proposed new §30.11(a)(4) adds a definition for "CMP," which means "Texas Coastal Management Program, which was accepted into the federal Coastal Zone Management Program in 1996 after receiving approval from the federal Office for Coastal Management."

Proposed new §30.11(a)(5) adds a definition for "CMP coordinator," which means the "GLO Coastal Resources staff member designated by the commissioner."

Proposed new §30.11(a)(6) adds a definition for "CMP goals and enforceable policies," which means the "goals and enforceable policies set forth in Chapter 26 of this title."

Proposed new §30.11(a)(7) adds a definition for "Commissioner," which means the "Commissioner of the GLO."

Proposed new §30.11(a)(8) adds a definition for "Committee," which means the "Coastal Coordination Advisory Committee."

Proposed new §30.11(a)(9) adds a definition for "CZMA," which means the "Federal Coastal Zone Management Act of 1972, as amended."

Proposed new §30.11(a)(10) - (16) adds definitions for "development project," "Director," "federal agency," "federal agency activity," "federal assistance," "federal license or permit activity," and "Outer Continental Shelf (OCS) plan," that are consistent with the Federal Consistency Regulations in 15 CFR Part 930.

Proposed new §30.11(a)(17) adds a definition for "program boundary," which means "CMP program boundary established in §27.1 of this title (relating to the Coastal Management Program Boundary)."

Proposed new §30.11(b) adds an interpretive provision clarifying that statutory or regulatory terms or phrases that are not defined in the Chapter retain the meaning provided in the pertinent agency's regulations unless a different meaning is assigned in the applicable regulations under the CZMA.

Proposed new §30.12, relating to Federal Listed Activities Subject to CZMA Review, identifies federal agency actions that are subject to the Federal Consistency regulations set out in 15 CFR Part 930.

Proposed new §30.12(a) states that federal actions within the CMP boundary may adversely affect coastal natural resource areas (CNRAs) within the coastal zone. The list of federal actions that are subject to CZMA federal consistency review by the GLO include federal agency activities, federal license or permit activities, and federal assistance applications.

Proposed new §30.12(a)(1) explains that a consistency determination is required for federal agency activities and development projects by or on behalf of federal agencies that may have reasonably foreseeable effects on CNRAs. The new subsection also states that a consistency determination or negative determination must be submitted to the GLO in accordance with the requirements of the Federal Consistency regulations found at 15 CFR Part 930, subpart C.

Proposed new §30.12(a)(1)(A) - (F) identify federal agencies that must submit consistency determinations or negative determinations to the GLO for specifically listed activities in this section.

Proposed new §30.12(a)(1)(A)(i) and (ii) identify the following United States Department of the Interior activities subject to consistency review: "(i) modifications to the boundaries of the Coastal Barrier Resource System under 16 United States Code Annotated, §3503(c); and (ii) OCS lease sales within the western and central Gulf of Mexico under 43 United States Code Annotated, §1337."

Proposed new §30.12(a)(1)(B) identifies a United States Environmental Protection Agency activity subject to consistency review: "Selection of remedial actions under 42 United States Code Annotated §9604(c)."

Proposed new §30.12(a)(1)(C)(i) - (viii) identify the following United States Army Corps of Engineer activities subject to consistency review: "(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, §1962d-5; (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; (vi) dredging projects under the Code of Federal Regulations, Title 33, Part 336; (vii) approval for projects for the prevention or mitigation of damages to shore areas attributable to federal navigation projects pursuant to 33 United States Code Annotated, §426i; and (viii) approval for projects for the placement on state beaches of beach-quality sand dredged from federal navigation projects pursuant to 33 United States Code Annotated, §426j."

Proposed new §30.12(a)(1)(D)(i) and (ii) identify the following Federal Emergency Management Agency activities subject to consistency review: "(i) model floodplain ordinances; and (ii) approval of a community's participation in the National Flood Insurance Program (NFIP) under the Code of Federal Regulations, Title 44, Part 59, subpart B."

Proposed new §30.12(a)(1)(E)(i) and (ii) identify the following General Services Administration activities subject to consistency review: "(i) acquisitions under 40 United States Code Annotated, §602 and §603; and (ii) construction under 40 United States Code Annotated, §605."

Proposed new §30.12(a)(1)(F)(i) and (ii) identify the following federal agency activities subject to consistency review: "(i) all other development projects; (ii) and natural resource restoration plans developed pursuant to the Oil Pollution Act of 1990 (33 United States Code Annotated §§2701-2761) and the Comprehensive Environmental Response, Compensation and Liability Act (42 United States Code Annotated §§9601-9675)."

Proposed new §30.12(a)(2), relating to Federal License or Permit Activities, explains that for all proposed activities requiring a federal license or permit, a consistency certification must be submitted to GLO pursuant to the requirements of the Federal Consistency regulations in 15 CFR Part 930, subpart D.

Proposed new §30.12(a)(2)(A) - (F) identify federal agencies and associated licenses and permits that have reasonably foreseeable adverse effects upon CNRAs and require applicants to submit a consistency certification to the GLO if the proposed action occurs in the Texas coastal zone.

Proposed new §30.12(a)(2)(A)(i) - (v) identify the following Environmental Protection Agency activities that are subject to consistency review: "(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 of land disposal of wastes under 42 United States Code Annotated, §6924(d); and (iv) development of total maximum daily loads (TMDLs) and associated federally developed TMDL implementation plans under 33 United States Code Annotated, §1313; and (v) approvals of National Estuary Program Comprehensive Conservation Management Plans under 33 United States Code Annotated, §1330f."

Proposed new §30.12(a)(2)(B)(i) - (v) identify the following United States Army Corps of Engineers activities and Memoranda of Agreement that are subject to consistency review: "(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 §9 of the River and Harbor Act of 1899, 33 United States Code Annotated, §401; (iv) permits under §10 of the River and Harbor Act of 1899, 33 United States Code Annotated, §403; and (v) Memoranda of Agreement for mitigation banking."

Proposed new §30.12(a)(2)(C)(i) - (iii) identify the following United States Department of Transportation approvals and licenses that are subject to consistency review: "(i) approvals under §7(a) of the Federal-Aid Highway Amendments Act of 1963, 23 United States Code Annotated, §106; (ii) approvals under §502 of the General Bridge Act of 1946, 33 United States Code Annotated, §525; and (iii) deepwater port licenses under 33 United States Code Annotated, §1503."

Proposed new §30.12(a)(2)(D)(i) identifies airport operating certificates for the Federal Aviation Administration under 49 United States Code Annotated, §44702.

Proposed new §30.12(a)(2)(E)(i) - (iii) identify the following Federal Energy Regulatory Commission authorizations that are subject to consistency review: "(i) certificates under §7 of the Natural Gas Act, 15 United States Code Annotated, §717f; (ii) licenses under §4 of the Federal Power Act, 16 United States Code Annotated, §797(e); and (iii) exemptions under §403 of the Public Utility Regulatory Policies Act of 1978, 16 United States Code Annotated, §2705(d)."

Proposed new §30.12(a)(2)(F) identifies Nuclear Regulatory Commission licenses that are subject to consistency review: "Licenses under §103 of the Atomic Energy Act of 1954, 42 United States Code Annotated, §2133."

Proposed new §30.12(a)(3), relating to State and Local Government Applications for Federal Assistance, identifies certain federal assistance for state and local governments activities occurring within the Texas coastal zone that are set out in Title 2 Code of Federal Regulations §200.10, relating to Catalog of Federal Domestic Assistance (CFDA) activities. The proposed new subsection §30.12(a)(3)(A), adds the following Federal Emergency Management Administration (FEMA) CFDA numbers: 97.008 relating to Non-Profit Security Program; 97.029, relating to Flood Mitigation Assistance; 97.036 relating to Disaster Grants - Public Assistance (Presidentially Declared Disasters); 97.039 Hazard Mitigation Grant; 97.041 relating to National Dam Safety Program - Rehabilitation of High Hazard Potential Dams (HHPD); 97.042 relating to Emergency Management Performance Grants; 97.047 relating to BRIC: Building Resilient Infrastructure and Communities; 97.048, relating to Federal Disaster Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.052 relating to Emergency Operations Center; 97.056 relating to Port Security Grant Program; 97.067 relating to Homeland Security Grant Program; and 97.092, relating to Repetitive Flood Claims. The proposed new subsection §30.12(a)(3)(B), adds CFDA's for Department of Housing and Urban Development (HUD) which include: 14.218, relating to Community Development Block Grants/Entitlement Grants; and 14.239, relating to Home Investment Partnerships Program.

Proposed new §30.12(b), relating to the review of OCS Exploration Plans, and Development and Production Plans, as set out in 43 United States Code, §§1340(c) and 1351, includes "activities that are authorized by the United States Department of the Interior and provides for the review of a federal license or permit activity described in detail in OCS plans, including pipeline activities."

Proposed new §30.12(c), relating to the review of a proposed federal agency activity that is unlisted in subsection (a)(1) of this section, states that the GLO will follow the federal regulations process set out in 15 CFR §930.34(c) and that if the GLO elects to review a proposed federal license or permit activity of a type that is unlisted in subsection (a)(2) of this section the GLO will follow the procedures set out in 15 CFR §930.54.

Proposed new §30.20, relating to Consistency Determinations for Federal Agency Activities and Development Projects, adds a section that details the required information for a consistency determination and the associated federal consistency review process for a federal agency activity or development project.

Proposed new §30.20(a), relating to the Review of a Consistency Determination, sets forth the review standard that the GLO must follow when conducting a consistency review of a federal agency activity or development project as set out in 15 CFR Part 930, subpart C. The new subsection requires a federal agency activity or development project to be consistent with the CMP goals and enforceable policies.

Proposed new §30.20(b), relating to Required Information for a Consistency Determination, identifies the information required for a consistency determination as set out in 15 CFR §930.39. This includes: a detailed description of the activity, its associated facilities, coastal effects, and comprehensive data and information sufficient to support the federal agency's consistency statement. The new subsection also provides that the amount of detail in the evaluation of the enforceable policies, activity description and supporting information is to be commensurate with the expected coastal effects of the activity. Additionally, a federal agency may submit the information to the GLO in any manner that it chooses so long as the requirements in 15 CFR §930.39 are met. The federal agency is also required to provide the consistency determination to the GLO for review no later than ninety (90) days prior to the approval of the activity. The new subsection also requires a statement in the consistency determination indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the Texas CMP. This is in conformance with 15 CFR §930.39(a).

Proposed new §30.20(c), relating to Request for Information, explains how GLO staff may request information from a federal agency if the federal agency provides an incomplete consistency determination, the GLO provides notice of the incomplete submission in accordance with the federal regulations, and it is the type of information identified in 15 CFR §930.39(a).

Proposed new §30.20(d), relating to NEPA or other Project documents, describes the types of documents, a federal agency may provide to GLO to sufficiently support the federal agency's consistency determination in accordance with 15 CFR §930.39(a).

Proposed new §30.20(e), relating to Demonstration of Consistency, describes the type of information a federal agency must provide in support of the federal agency's consistency determination. The information is set out in 15 CFR §930.39(a) and this section notes that the federal agency should demonstrate consistency to the maximum extent practicable with the CMP goals and enforceable policies. The demonstration of consistency may rely upon information contained in NEPA documents or other project documents, but if a consistency determination is embedded within a NEPA document, this should be clearly stated and provided to the GLO. The consistency determination should also meet all of the information requirements of 15 CFR §930.39(a) which can include a reference to the findings of the NEPA document.

Proposed new §30.20(f), relating to Public Participation, provides a description of the public notice and comment period for a consistency determination in accordance with 15 CFR §930.42. The new subsection provides that the GLO may issue joint public notices with federal agencies involved with the respective activity or development project. The GLO may also extend the public notice and comment period or schedule a public meeting. The new subsection also provides that the GLO will consider all comments received during the notice period.

Proposed new §30.20(g), relating to Referral to Commissioner, describes the process for referring a matter to the Commissioner for an elevated consistency review. This new subsection states that to refer an issue, at least three committee members must agree that a significant unresolved issue exists regarding consistency with the CMP goals and enforceable policies. If this requirement is met, then at least three committee members must submit a letter or email addressed to the CMP coordinator with a request that the matter be referred to the Commissioner for an elevated consistency review. Any applicable CMP goals and enforceable policies that are unresolved and potential impacts to CNRAs should be addressed in the letter or email. The referral process tracks the requirements in Texas Natural Resources Code, §33.206(e), as amended by SB 656.

Proposed new §30.20(h), relating to Commissioner Review, describes the factors the Commissioner must consider when conducting an elevated consistency review for a federal agency activity or development project. The new subsection states that the Commissioner will consider: (1) oral or written testimony received during the public comment period; (2) applicable CMP goals and enforceable policies; (3) information submitted by the federal agency or applicant; and (4) other relevant information to determine consistency with CMP goals and enforceable policies. This new subsection conforms to the requirements of Texas Natural Resources Code, §33.204(e), as amended by SB 656.

Proposed new §30.20(i), relating to the Review Period, sets the timeframe in which GLO will provide a decision or status update to the federal agency on the consistency determination. Under the new subsection, the GLO will provide a status update to the federal agency in writing within sixty (60) days from the date the consistency determination was deemed administratively complete. If the GLO has not completed its review during this time, the GLO will explain the basis for delay and follow the procedures set out in 15 CFR §930.36(b)(2) if an additional fifteen (15) days for review is necessary. The new subsection further states that a concurrence may be presumed by the federal agency if the matter has not been acted upon by the GLO after sixty (60) days from the date of administrative completeness and the GLO has not requested additional time for review. The sixty (60) day presumption of concurrence is set out in 15 CFR §930.41.

Proposed new §30.20(j), relating to Commissioner Objection, describes the process in which the Commissioner may object to the consistency determination. The new subsection provides that the federal agency will be notified of the objection prior to the time, including any extensions, that the federal agency is entitled to presume the activity's consistency. The Commissioner's objection will follow the requirements provided in 15 CFR §930.43 which set out the required content for an objection.

Proposed new §30.20(k), relating to Mediation, describes how mediation may be sought if the Commissioner objects to the federal agency's consistency determination because it is deemed inconsistent with the CMP goals and enforceable policies. The mediation process is set out in 15 CFR §§930.110 et seq.

Proposed new §30.20(l), relating to Final Approval, describes the time that must pass before a federal agency may make a decision to undertake a proposed federal agency activity subject to CZMA review in §30.12 of this chapter.

Proposed new §30.30, relating to Consistency Certifications for Federal License or Permit Activities, describes the requirements for a consistency certification and the federal consistency

process associated with the review of federal license or permit activities as provided for in 15 CFR Part 930, subpart D.

Proposed new §30.30(a), relating to Review of a Consistency Certification, describes the consistency certification review process for a non-federal applicant for a federal license or permit activity listed under §30.12 of this chapter. This new subsection provides the applicable review standard that the GLO will follow when conducting a consistency certification review of a federal license or permit activity in accordance with 15 CFR Part 930, subpart D. The new subsection also requires a federal license or permit activity listed under §30.12 of this Chapter to be consistent with the CMP goals and enforceable policies.

Proposed new §30.30(b), relating to Required Information for a Consistency Certification, requires an applicant for a federal license or permit activity to submit a consistency certification to the GLO for a consistency review. The consistency certification must be complete and follow the requirements set out in 15 CFR §930.57. This includes the necessary data and information that is required in 15 CFR §930.58 and §30.30(b)(1), (2), (3), and (4) of this Chapter. The applicant must also provide a statement affirming that the "The proposed activity complies with the enforceable policies of Texas' approved coastal management program and will be conducted in a manner consistent with such program" which is in conformance with 15 CFR §930.57(b).

Proposed new §30.30(c), relating to a Request for Necessary Data and Information, states that GLO staff may request necessary data and information from the applicant when it has received an incomplete submission of information, as required by 15 CFR §§930.57 and 930.58. The GLO will send a notice of incomplete submission and may delay the start of the review period if the request for this information is provided within thirty (30) days from the date the consistency certification is received by the GLO.

Proposed new §30.30(d), relating to the Review Period, provides the GLO up to six (6) months to conduct the consistency review and issue a decision on the consistency certification request. The review period is initiated when the required necessary data and information has been received by the GLO. The required necessary data and information is identified in 15 CFR §930.58 and 31 TAC §30.30(b). The GLO cannot require the issuance of state or local permits to begin the consistency review, but the lack of this information may result in an objection based on lack of information because the GLO is unable to complete the consistency review without the identified information.

Proposed new §30.30(e), relating to Mutual Stay Agreement, allows the GLO and applicant to enter into a mutual written agreement with the applicant to stay the CZMA review period in accordance with 15 CFR §930.60(b). The mutual stay agreement provides additional time for the applicant and GLO to resolve any issues before the consistency review period expires. For a stay to be executed, the mutual stay agreement must be entered into before the consistency review period expires. The remaining day count in the federal consistency review period that is available on the date the mutual stay agreement is signed will be available to the GLO for purposes of completing the consistency review after the stay agreement expires.

Proposed new §30.30(f), relating to Permit Assistance, states that the GLO will provide permit assistance and guidance when requested by the applicant in accordance with 15 CFR §930.56.

Proposed new §30.30(g), relating to Consolidation of Federal License or Permit Activities, encourages applicants to consolidate related federal license or permit activities that are identified in §30.12 of this chapter (relating to Listed Federal Activities Subject to CZMA Review) to maximize efficiency and avoid unnecessary delays by reviewing all federal license or permit activities relating to a project at the same time.

Proposed new §30.30(h), relating to Public Participation, describes the public participation process which is in accordance with 15 CFR §930.61. The new subsection states that the GLO may issue joint public notices with the federal permitting or licensing agency. The new subsection also provides that the GLO may extend the public comment period or schedule a public meeting on the consistency certification. Comments received during the comment period will be considered.

Proposed new §30.30(i), relating to Demonstration of Consistency, explains how an applicant should demonstrate that the federal license or permit activity under review is consistent with the CMP goals and enforceable policies. The new subsection allows required state and local permits that have been issued to the applicant to be used by the applicant as evidence to demonstrate consistency with the CMP goals and enforceable policies.

Proposed new §30.30(j), relating to Referral to Commissioner, explains the process for referring a matter to the Commissioner for an elevated consistency review of the consistency certification. To refer a matter, at least three committee members must agree that a significant unresolved issue exists regarding consistency with the CMP goals and enforceable policies. If this requirement is met, then at least three committee members must submit a letter or email addressed to the CMP coordinator with a request that the issue be referred to the Commissioner for an elevated consistency review. Any applicable CMP goals and enforceable policies that are unresolved and potential impacts should be addressed in the letter or email. The referral process is consistent with the requirements in Texas Natural Resources Code, §33.206(e), as amended by SB 656.

Proposed new §30.30(k), relating to Commissioner Review, describes the factors the Commissioner must consider when conducting an elevated consistency review of a consistency certification. The factors that will be considered include: (1) oral or written testimony received during the public comment period; (2) applicable CMP goals and enforceable policies; (3) information submitted by the federal agency or applicant; and (4) other relevant information to determine consistency with CMP goals and enforceable policies. This new subsection conforms to the requirements of Texas Natural Resource Code, §33.204(e), as amended by SB 656.

Proposed new §30.30(l), relating to Presumption of Concurrence, describes when a concurrence may be presumed. Under the new subsection, the GLO will provide a status update in writing within ninety (90) days to the applicant seeking a federal license or permit. If the GLO has not issued a decision within six (6) months from the date the GLO received the complete consistency certification, the applicant may presume a concurrence.

Proposed new §30.30(m), relating to Commissioner Objection, provides that once a matter has been referred to the Commissioner for an elevated consistency review with the goals and enforceable policies of the CMP, the Commissioner may object to the consistency certification in accordance with the requirements in 15 CFR §930.63.

Proposed new §30.30(n), relating to Right of Appeal, provides that if the Commissioner finds that the proposed federal license or permit activity is inconsistent with the CMP goals and en-

forceable policies and objects to the consistency certification, the GLO shall notify the applicant of its appeal rights to the U.S. Secretary of Commerce, and the federal agency shall not authorize the federal license or permit activity, except as provided through the appeal process established in 15 CFR Part 930, subpart H.

Proposed new §30.40(a), relating to Consistency Review of an Outer Continental Shelf (OCS) Exploration, Development, and Production Activities, requires that an authorization from the U.S. Department of the Interior pursuant to the Outer Continental Shelf Lands Act (43 USC §§1331-1356(a)) be consistent with the goals and enforceable policies of the CMP. The GLO shall conform to the requirements and procedures set out in 15 CFR Part 930, subpart E and 43 U.S.C. §§1331 *et seq*.

Proposed new §30.40(b), relating to Consistency Certification of an OCS Plan, requires that any person, as defined at 15 CFR §930.72, submitting any OCS plan to the Secretary of Interior or designee shall provide a copy of the OCS plan and that the consistency certification include a provision affirming "The proposed activities described in detail in this plan shall comply with Texas' approved coastal management program and will be conducted in a manner consistent with the program." The Secretary of the Interior or designee shall provide the plan and consistency certification to the GLO. *See* 15 CFR §930.76.

Proposed new §30.40(c), relating to Request for Information, states that GLO's six (6) month review period on a consistency certification for an OCS plan begins on the date the GLO receives the information required at 15 CFR §930.76, and all the necessary data and information required at 15 CFR §930.58(a). Pursuant to 15 CFR §930.60(a), within thirty (30) days of an incomplete submission, GLO shall inform the person submitting the OCS plan that the GLO six (6) month review period will commence on the date of receipt of the missing consistency certification or necessary data and information. The GLO may waive the requirement that all necessary data and information described in §930.58(a) be submitted before commencement of the State agency's six (6) month consistency review. In the event of such a waiver, the requirements of 15 CFR §930.58(a) must be satisfied prior to the end of the six (6) month consistency review period or the GLO may object to the consistency certification for insufficient information.

Proposed new §30.40(d), relating to Consolidation of Related Authorizations, encourages persons submitting OCS plans to consolidate related federal licenses and permits that are subject to GLO review. This is not required but would allow for a more efficient review and minimize the duplication of effort and unnecessary delays. *See* 15 CFR §930.81.

Proposed new §30.40(e), relating to Public Participation, describes the public notice and comment period in accordance with 15 CFR §930.77. The new subsection provides that the GLO may issue joint public notices with the federal permitting or licensing agency. The new subsection also provides that the GLO may extend the public comment period or schedule a public meeting on the consistency certification. Comments received during the comment period will be considered by the GLO.

Proposed new §30.40(f), relating to Referral to Commissioner, explains the process for referring a matter to the Commissioner for an elevated consistency review of the OCS plan's consistency certification. To refer an issue, at least three committee members must agree that a significant unresolved issue exists regarding the OCS plan's consistency with the CMP goals and enforceable policies. If this requirement is met, then at least three committee members must submit in writing a letter or email addressed to the CMP coordinator with a request that the issue be referred to the Commissioner for an elevated consistency review. Any applicable CMP goals and enforceable policies that are unresolved and potential impacts should be addressed in the letter or email. The referral process conforms to Texas Natural Resources Code, §33.206(e), as amended.

Proposed new §30.40(g), relating to Commissioner Review, describes the factors the Commissioner must consider when conducting an elevated consistency review of an OCS Plan's consistency certification. The factors that will be considered include: (1) oral or written testimony received during the public comment period; (2) applicable CMP goals and enforceable policies; (3) information submitted by the federal agency or person; and (4) other relevant information to determine consistency with CMP goals and enforceable policies. This new subsection follows the requirements of Texas Natural Resources Code, §33.204(e), as amended by SB 656.

Proposed new §30.40(h), relating to Review Period, states that if the GLO has not issued a decision regarding the OCS plan within three months from the date the GLO received the administratively complete consistency certification, then the GLO shall notify the person submitting the plan, Secretary of the Interior, and the Office for Coastal Management (OCM) Director of the status of the review and basis for further delay. *See* 15 CFR §930.78. The GLO's review period is up to six (6) months but if no action is taken by the GLO, a concurrence may be presumed after three (3) months.

Proposed new §30.40(i), relating to Presumption of Concurrence, provides that if the GLO does not act on an OCS plan within three (3) months of the date from when the GLO receives an administratively complete consistency certification, then the GLO's concurrence with the consistency certification shall be conclusively presumed. If the GLO provides a status of review letter within three (3) months and continues its review, a concurrence may be presumed at six (6) months. Additionally, if the GLO issues a concurrence or the action is presumed concurrent, then the person submitting the OCS plan is not required to submit additional consistency certifications to the GLO for the individual federal authorizations that will be required to authorize the activities described in detail in the OCS plan as set out in 15 CFR §930.79.

Proposed new §30.40(j), relating to Commissioner Objection, provides that once a matter has been referred to the Commissioner for an elevated consistency review with CMP goals and enforceable policies, the Commissioner may object to a federal license or permit activity described in detail in the OCS plan's consistency certification as provided for in 15 CFR §930.79. The GLO will notify the person of its appeal rights to the U.S. Secretary of Commerce.

Proposed new §30.50, relating to Consistency Review of Federal Assistance Applications, explains the federal consistency review process for federal assistance applications.

Proposed new §30.50(a), relating to Consistency Review of Federal Assistance, describes the consistency review process for applications for federal assistance to state and local governments for consistency. The GLO shall conform to the requirements and procedures set out in 15 CFR Part 930, subpart F (subpart F).

Proposed new §30.50(b), relating to Federal Assistance Review Materials, provides that the applicant agency must submit the

materials described in subpart F for the GLO to have the necessary information to conduct the federal consistency review. The application for federal assistance should include a brief evaluation of the proposed projects consistency with the CMP goals and policies in accordance with subpart F.

Proposed new §30.50(c), relating to Request for Additional Information, provides that GLO staff may request information from the applicant within fifteen (15) days of receiving the application if required information for the consistency review is incomplete or missing. This information is set out in subpart F. If GLO staff does not request any additional information within the specified timeframe, the application is deemed administratively complete.

Proposed new §30.50(d), relating to Referral to Commissioner, explains the process for referring a matter to the Commissioner for an elevated consistency review. To refer an issue, at least three committee members must agree that a significant unresolved issue exists regarding consistency with the CMP goals and enforceable policies. If this requirement is met, then at least three committee members must also submit in writing a letter or email addressed to the CMP coordinator with a request that the issue be referred to the Commissioner for an elevated consistency review. Any CMP goals and applicable enforceable policies that are unresolved and potential impacts should be addressed in the letter or email. The referral process tracks the requirements in Texas Natural Resources Code, §33.206(e), as amended by SB 656.

Proposed new §30.50(e), relating to Commissioner Review, describes the factors the Commissioner must consider when conducting an elevated consistency review. The factors that will be considered include: (1) applicable CMP goals and enforceable policies; (2) information submitted by the applicant agency; and (3) other relevant information to determine consistency with CMP goals and enforceable policies.

Proposed new §30.50(f), relating to Review Period, describes the review period in which the GLO will provide a decision. Under the new subsection, the GLO will provide a decision within thirty (30) days from the date the application was deemed administratively complete, unless the matter has been elevated to the Commissioner for consistency review. In this instance of an elevated review, the review period will be extended an additional thirty (30) days. *See* subpart F.

Proposed new §30.50(g), relating to Presumption of Concurrence, explains when a concurrence may be presumed. The new subsection states that a concurrence may be presumed thirty (30) days after the date the GLO receives an administratively complete application unless the matter has been elevated to the Commissioner for consistency review in which case a concurrence may be presumed on day sixty (60) if no action is taken.

Proposed new §30.50(h), relating to Commissioner Objection, provides that once a matter has been elevated to the Commissioner for an elevated consistency review with CMP goals and enforceable policies, the Commissioner may object to the federal assistance application as provided for in subpart F and the GLO will notify the applicant of its appeal rights to the U.S. Secretary of Commerce.

Proposed new §30.60, relating to Equivalent Federal and State Actions, sets out the referral thresholds of a proposed activity for state consistency review, and does not allow a state and federal consistency review to occur for the same action.

Proposed new §30.60(a), relating to Below Thresholds, provides that if a proposed activity requiring a state agency or subdivision action falls below thresholds for referral approved under Chapter 29, Subchapter B of this title (relating to Commissioner Certification of State Agency Rules and Approval of Thresholds for Referral) and requires an equivalent federal permit or license under this chapter, the GLO may only determine the state agency or subdivision action's consistency by using the process provided in Chapter 29 of this title (relating to Procedures for State Consistency with Coastal Management Program Goals and Policies). The GLO's determination regarding the consistency of an action under this subsection constitutes the state's determination regarding consistency of the equivalent federal action.

Proposed new §30.60(b), relating to Above Thresholds, states that if an activity requiring a state agency or subdivision action meets the threshold for referring the matter for an elevated consistency review and requires an equivalent federal permit or license, the GLO may determine the consistency of the state agency or subdivision action or the federal license or permit, but not both. Texas Natural Resource Code, §33.206(f), as amended by SB 656.

Proposed new §30.60(c), relating to Equivalent State Action or Federal Action, explains that an action made by the GLO under §30.60(a) and (b) is the state's determination regarding consistency of the equivalent agency or subdivision action or federal action. Texas Natural Resource Code, §33.206(f), as amended by SB 656.

FISCAL AND EMPLOYMENT IMPACTS

Melissa Porter, Deputy Director, Coastal Resources, has determined that for each year of the first five years that the proposed repeals are in effect, there will be no fiscal impacts to state government as a result of enforcing or administering the rules as proposed. There are no anticipated fiscal implications for local governments as a result of enforcing or administering the rules as proposed.

Ms. Porter has also determined that the proposed repeals will not have an adverse economic effect on small or large businesses, micro-businesses, rural communities, or individuals for the first five years that the proposed repeals are in effect.

Ms. Porter has determined that the proposed repeals will not affect a local economy, and the rules as proposed will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code, §2001.022.

PUBLIC BENEFIT

Ms. Porter has determined that for each year of the first five years the proposed repeals are in effect, the public will benefit from the proposed rules because the proposed new sections will provide necessary updates and clarifications, increase understanding of the process, and improve the overall efficiency and continued implementation of the CMP. Accordingly, the GLO will be able to better administer the CMP for the benefit of all Texans. The proposed new sections significantly streamline the provisions in Chapter 30 by deferring and adopting by reference where possible the CZMA Federal Consistency regulations set out in 15 CFR Part 930. This will enhance the public's understanding of the federal consistency process because the Chapter 30 rules and the CZMA Federal Consistency regulations will be very similar, if not the same, in most instances. This includes adopting the federal consistency review timeframes in 15 CFR Part 930, which will simplify the review process for federal

agency actions and will allow for a better understanding of how the federal consistency process works in relation to coastal issues and the CMP in general.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for the proposed repeals. During the first five years the proposed repeals would be in effect, the rules would: not create or eliminate a government program; not create or eliminate any employee positions; not require an increase or decrease in future legislative appropriations to the agency; not require an increase or decrease in fees paid to the agency; create a new regulation by repealing and replacing existing regulations; not expand or limit an existing regulation but would repeal and replace existing regulations; not increase or decrease the number of individuals subject to the rule's applicability; and not positively or adversely affect the state's economy.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed repeals in accordance with Texas Government Code, §2007.043(b), and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The proposed repeals do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§17 and 19 of the Texas Constitution. Furthermore, the proposed repeals would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rules. The proposed repeals will not result in a taking of private property, and there are no adverse impacts on private real property interests.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed repeals in accordance with Texas Government Code, §2001.0225, and determined that the action does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed repeals are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

PUBLIC COMMENT REQUEST

To comment on the proposed repeals, please send written comments to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 475-1859, or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The new sections are proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; and §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule.

The proposed new sections are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§30.10. Purpose and Policy.

The rules in this Chapter establish a process for federal consistency review, as required by Texas Natural Resources Code, §33.206(d) and federal procedures for implementing the federal consistency requirements of the federal Coastal Zone Management Act of 1972 (CZMA) and provides that federal actions and activities subject to the Texas Coastal Management Program (CMP) are consistent with the goals and enforceable policies of the CMP. The procedures in this Chapter are intended to allow the Commissioner of the General Land Office (GLO) to identify, address, and resolve federal consistency issues and provide guidance that if any inconsistencies are found between these rules and those of the CZMA Federal Consistency regulations provided in 15 Code of Federal Regulations (CFR) Part 930, the federal regulations are controlling.

§30.11. Definitions.

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

(1) 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. See 15 CFR §930.11(d).

(2) Coastal Coordination Act--Texas Natural Resources Code, Chapter 33, Subchapter F.

(3) Coastal Zone--The portion of the coastal area located within the boundaries established by the CMP under Texas Natural Resources Code, §33.2053(k), and described in Chapter 27 of this title (relating to Coastal Management Program Boundary).

(4) CMP--Texas Coastal Management Program, which was accepted into the federal Coastal Zone Management Program in 1996 after receiving approval from the federal Office for Coastal Management. The CMP was implemented on January 10, 1997 and incorporates all federally approved amendments thereafter.

(5) CMP coordinator--The GLO Coastal Resources staff member designated by the commissioner.

(6) CMP goals and enforceable policies--The goals and policies set forth in Chapter 26 of this title.

(7) Commissioner--Commissioner of the GLO.

(8) Committee--Coastal Coordination Advisory Committee.

(9) CZMA--Federal Coastal Zone Management Act of 1972, as amended.

(10) Development project--Federal agency activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and includes the acquisition, use, or disposal of coastal use or resource. See 15 CFR §930.31(b).

(11) Director--Director of the Office for Coastal Management (OCM), National Ocean Service, NOAA.

(12) Federal agency--Any department, agency, board, commission, council, independent office or similar entity within the executive branch of the federal government, or any wholly owned federal government corporation. See 15 CFR §930.11(j).

(13) Federal agency activity--Any functions performed by or on behalf of a federal agency in the exercise of its statutory responsibilities, including a range of activities where a Federal agency makes a proposal for action initiating an activity or series of activities when coastal effects are reasonably foreseeable, e.g., a Federal agency's proposal to physically alter coastal resources, a plan that is used to direct future agency actions, a proposed rulemaking that alters uses of the coastal zone. The term does not include the issuance of a federal license or permit or the granting of federal assistance to an applicant agency. See 15 CFR §930.31(a).

(14) Federal assistance--Assistance provided under a federal program to a state or local government applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid. See 15 CFR §930.91.

(15) Federal license or permit activity--An activity proposed by a non-federal applicant that requires any federal license, permit, or other authorization that an applicant is required by law to obtain in order to conduct activities affecting any land or water use or natural resource of the coastal zone and that any federal agency is empowered to issue to an applicant. See 15 CFR §930.51(a). An action to renew, amend, or modify an existing license or permit is not subject to review under this Chapter if the action only extends the time period of the existing authorization without authorizing new or additional work or activities, would not increase pollutant loads to coastal waters or result in relocation of a wastewater outfall to a critical area, or is not otherwise directly relevant to the CMP enforceable policies in Chapter 26. See also, 15 CFR §930.51(a).

(16) Outer continental shelf (OCS) plan--Any plan for the exploration or development of, or production from, an area which has been leased under the Outer Continental Shelf Lands Act (43 United States Code Annotated, §§1331-1356), and the regulations under that Act, which is submitted to the Secretary of the Interior or designee following management program approval and which describes in detail activities federal license or permit activities. See 15 CFR §930.73.

(17) Program boundary--CMP program boundary established in §27.1 of this title (relating to the Coastal Management Program Boundary).

(b) Any statutory or regulatory terms or phrases that are not defined in the Chapter retain the meaning provided for in the pertinent agency's regulations unless a different meaning is assigned in the applicable regulations under the CZMA.

§30.12. Federal Listed Activities Subject to CZMA Review.

(a) For purposes of this section, the following federal actions within the CMP boundary may adversely affect coastal natural resource areas (CNRAs) within the coastal zone. This list of federal actions includes federal agency activities, federal license or permit activities, and federal assistance applications that are subject to CZMA federal consistency review by the GLO.

(1) Federal Agency Activities and Development Projects. For all actions proposed by or on behalf of federal agencies that may have reasonably foreseeable effects on CNRAs, a consistency determination or negative determination must be submitted to the GLO pursuant to the requirements of the Federal Consistency regulations found at 15 CFR Part 930, subpart C.

(A) United States Department of the Interior:

(i) modifications to the boundaries of the Coastal Barrier Resource System under 16 United States Code Annotated, §3503(c); and

(ii) OCS lease sales within the western and central Gulf of Mexico under 43 United States Code Annotated, §1337;

(B) United States Environmental Protection Agency. Selection of remedial actions under 42 United States Code Annotated, §9604(c);

(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, §1962d-5;

(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;

(vi) dredging projects under the Code of Federal Regulations, Title 33, Part 336;

(vii) approval for projects for the prevention or mitigation of damages to shore areas attributable to federal navigation projects pursuant to 33 United States Code Annotated, §426i; and

(viii) approval for projects for the placement on state beaches of beach-quality sand dredged from federal navigation projects pursuant to 33 United States Code Annotated, §426j;

(D) Federal Emergency Management Agency:

(i) model floodplain ordinances; and

(ii) approval of a community's participation in the National Flood Insurance Program (NFIP) under the Code of Federal Regulations, Title 44, Part 59, subpart B;

(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:

(i) all other development projects; and

(ii) natural resource restoration plans developed pursuant to the Oil Pollution Act of 1990 (33 United States Code Annotated §§2701-2761) and the Comprehensive Environmental Response, Compensation and Liability Act (42 United States Code Annotated §§9601-9675).

(2) Federal license or permit activities. For all actions proposed by an applicant a consistency certification must be submitted to the GLO pursuant to the requirements of the Federal Consistency regulations in 15 CFR Part 930, subpart D.

(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 of land disposal of wastes under 42 United States Code Annotated, §6924(d);

(iv) development of total maximum daily loads (TMDLs) and associated federally developed TMDL implementation plans under 33 United States Code Annotated, §1313; and

(v) approvals 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 §9 of the River and Harbor Act of 1899, 33 United States Code Annotated, §401;

(iv) permits under §10 of the River and Harbor Act of 1899, 33 United States Code Annotated, §403; and

(v) Memoranda of Agreement for mitigation banking;

(C) United States Department of Transportation:

(i) approvals under §7(a) of the Federal-Aid Highway Amendments Act of 1963, 23 United States Code Annotated, §106;

(ii) approvals under §502 of the General Bridge Act of 1946, 33 United States Code Annotated, §525; and

(iii) Deepwater port licenses under 33 United States Code Annotated, §1503;

(D) Federal Aviation Administration: Airport operating certificates under 49 United States Code Annotated, §44702;

(E) Federal Energy Regulatory Commission:

(i) certificates under §7 of the Natural Gas Act, 15 United States Code Annotated, §717f;

(ii) licenses under §4 of the Federal Power Act, 16 United States Code Annotated, §797(e); and

(iii) exemptions under §403 of the Public Utility Regulatory Policies Act of 1978,16 United States Code Annotated, §2705(d);

(F) Nuclear Regulatory Commission. Licenses under §103 of the Atomic Energy Act of 1954, 42 United States Code Annotated, §2133.

(3) State and Local Government Applications for Federal Assistance. Federal assistance for state and local government activities occurring within the Texas coastal zone:

(A) Federal Emergency Management Agency federal assistance grants for:

(i) 97.008 Non-Profit Security Program for physical security enhancements and other security-related activities to nonprofit organizations that are at high risk of a terrorist attack if outside the original footprint;

(ii) 97.029 Flood Mitigation Assistance (FMA) for flood mitigation projects to reduce or eliminate the long-term risk of flood damage to properties insured under the National Flood Insurance Program (NFIP) are eligible for the FMA program;

(iii) 97.036 Disaster Grants - Public Assistance (Presidentially Declared Disasters) for debris removal, emergency protective measures, and the repair, restoration, reconstruction or replacement of public and eligible private nonprofit facilities or infrastructure damaged or destroyed as the result of federally declared disasters or emergencies;

(iv) 97.039 Hazard Mitigation Grant (Presidentially Declared Disasters - earthquakes, hurricanes, tornados, or wildfires) for construction activities, relocation or demolition of structures, major or minor flood reduction projects, elevation of structures if outside the original footprint;

(v) 97.041 National Dam Safety Program relating to Rehabilitation of High Hazard Potential Dams (HPHD) for construction, repair, removal, and rehabilitation activities to address risk and bring the dams into compliance with state dam regulations;

(vi) 97.042 Emergency Management Performance Grants relating to the review of construction, renovation and infrastructure improvement projects if outside original footprint;

(vii) 97.047 BRIC: Building Resilient Infrastructure and Communities to conduct mitigation activities with a focus on critical services and facilities and large-scale infrastructure;

(viii) 97.048 Federal Disaster Assistance to Individuals and Households in Presidential Declared Disaster Areas for repair, replacement, and permanent or semipermanent housing construction;

(ix) 97.052 Emergency Operations Center (EOC) relating to construction or renovation of a State, local or Tribal government's principal EOC;

(x) 97.056 Port Security Grant Program relating to review of construction and infrastructure improvement project is outside original footprint;

(xi) 97.067 Homeland Security Grant Program relating to physical protective measures such as fences and concrete barriers; and

(xii) 97.092 Repetitive Flood Claims for acquisition of insured structures for the purpose of converting flood-prone land to permanent open space use, elevation of existing structures if outside the original footprint; and minor localized flood reduction projects;

(B) Department of Housing and Urban Development federal assistance grants for:

(i) 14.218 Community Development Block Grants/Entitlement Grants; and

(ii) 14.239 Home Investment Partnerships Program.

(b) OCS Exploration Plans and Development and Production Plans. 43 United States Code, §§1340(c) and 1351. United States Department of the Interior. This includes federal agency actions requiring a license or permit described in detail in OCS plans, including pipeline activities.

(c) In the event the GLO elects to review a proposed federal agency activity of a type that is unlisted in subsection (a)(1) of this section the GLO will follow the federal regulations process set out in 15 CFR §930.34(c). If the GLO elects to review a proposed federal license or permit activity of a type that is unlisted in subsection (a)(2) of this section, the GLO will follow the procedures set out in 15 CFR §930.54.

§30.20. Consistency Determinations for Federal Agency Activities and Development Projects.

(a) Review of a Consistency Determination. When reviewing a federal agency activity or development project for consistency with the goals and enforceable policies of the CMP, the GLO shall follow the requirements and procedures provided in 15 CFR Part 930, subpart C.

(b) Required Information for a Consistency Determination. A federal agency considering the approval of a federal agency activity or development project listed in §30.12 of this chapter (relating to Federal Listed Activities Subject to CZMA Review) shall provide the GLO with a consistency determination that incorporates the information described in 15 CFR §930.39 as early as practicable, but no later than 90 days prior to final approval of the activity. The consistency determination shall include a detailed description of the activity, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support the federal agency's consistency statement. The amount of detail in the evaluation of the enforceable policies, activity description and supporting information shall be commensurate with the expected coastal effects of the activity. The federal agency may submit the information in any manner it chooses, so long as the requirements of subpart C are satisfied as set out in 15 CFR in §930.39. Additionally, the consistency determination should include a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the CMP in accordance with 15 CFR §930.39(a).

(c) Request for Information. GLO staff may request information from a federal agency if the federal agency provides an incomplete consistency determination, the GLO notifies the federal applicant in accordance with federal regulations of the incomplete submission, and the requested information is the type of information required for a consistency determination review as identified in 15 CFR §930.39(a).

(d) NEPA or Other Project Documents. A federal agency may provide the GLO with information contained in NEPA documents or other project documents to provide some of the comprehensive data and information sufficient to support the federal agency's consistency determination under 15 CFR §930.39(a).

(e) Demonstration of Consistency. If a federal agency elects to rely on information contained in NEPA documents or other project documents to demonstrate consistency to the maximum extent practicable with the goals and enforceable policies of the CMP, the federal agency should demonstrate how the materials support a finding of consistency of the goals and enforceable policies of the CMP, in accordance with 15 CFR §930.39(a). This section notes that a consistency determination embedded within a NEPA document should meet all of the information requirements of 15 CFR §930.39(a), which can include a reference to the findings of the NEPA document. Federal agencies are not required to file applications for state and local permits and other authorizations, unless required to do so by provisions of federal law other than the CZMA. However, federal agencies are required to demonstrate that the proposed activity is consistent to the maximum extent practicable with the applicable state and local enforceable policies underlying the permits. Where the law authorizes or requires a federal agency to apply for state and local permits and other authorizations, the GLO will consider such applications when determining whether the federal activity or development project is consistent with the enforceable policies underlying the permit or authorization. See 15 CFR §930.39(a).

(f) Public Participation. The GLO shall provide public participation consistent with the provisions of 15 CFR §930.42. The GLO may also issue joint public notices with the federal agency involved. The GLO may extend the public comment period or schedule a public meeting on the consistency determination. Comments received in response to the public notice will be considered.

(g) Referral to Commissioner. To refer a matter to the commissioner for an elevated consistency review, at least three committee members must agree that a significant unresolved issue exists regarding consistency with the CMP goals and enforceable policies. At least three committee members must also submit in writing a letter or email addressed to the CMP coordinator that requests the matter at issue to be referred to the commissioner for an elevated consistency review. The referral letter or email should identify any enforceable policies that are unresolved and address any potential impacts to coastal natural resource areas.

(h) Commissioner Review. Following referral of a federal agency activity or development project to the commissioner for an elevated consistency review, the commissioner shall consider:

(1) oral or written testimony received during the comment period. The commissioner may reasonably limit the length and format of the testimony and the time at which it may be received;

(2) applicable CMP goals and enforceable policies set out in 31 Texas Administrative Code Ch. 26;

(3) information submitted by the federal agency or applicant; and

(4) other relevant information to determine whether the proposed action is consistent with the CMP goals and enforceable policies.

(i) Review Period. The GLO will provide a decision or status update to the federal agency within sixty (60) days from receipt of the administratively complete consistency determination. If the GLO is unable to complete the review of the consistency determination within the initial sixty (60) day review period, the GLO will notify the federal agency in writing of the status of the review, the basis for delay, and the GLO will follow the procedures set out in 15 CFR §930.36(b)(2) if an additional fifteen (15) days for review is necessary. If no action is taken by the GLO after sixty (60) days from the date an administratively complete consistency determination was submitted and additional time is not sought under 15 CFR §930.36(b)(2), the federal agency may presume the GLO's concurrence.

(j) Commissioner Objection. If the commissioner objects to the consistency determination, the federal agency will be notified of the objection by the GLO prior to the time, including any extensions, that the federal agency is entitled to presume the activity's consistency. The content of the commissioner's objection will conform to the requirements set out in 15 CFR §930.43.

(k) Mediation. If the commissioner finds that a proposed activity is inconsistent with the CMP goals and enforceable policies and the federal agency does not modify the activity to achieve consistency with the program, the governor, with the assistance of the commissioner, may seek secretarial mediation or OCM mediation as set out in 15 CFR §§930.110 et seq.

(l) Final Approval. Final federal agency action for a federal agency activity identified in §30.12(a) of this chapter shall not be taken sooner than ninety (90) days from the receipt by the GLO of the consistency determination, unless the federal agency and GLO agree to an alternative period of time or unless the GLO concurs or the concurrence is presumed.

§30.30. Consistency Certifications for Federal License or Permit Activities.

(a) Review of a Consistency Certification. When reviewing a consistency certification submitted by a non-federal applicant for a

federal license or permit activity listed under §30.12 of this chapter (relating to Federal Listed Activities Subject to CZMA Review) the GLO shall conform to the requirements and procedures set out in 15 CFR Part 930, subpart D. The federal license or permit activity must be consistent with the CMP goals and enforceable policies.

(b) Required Information for a Consistency Certification. For review of a federal license or permit activity application, an applicant must submit to the GLO a complete consistency certification in conformance with 15 CFR §930.57 and all necessary data and information described in 15 CFR §930.58 and including the following:

(1) all material relevant to the CMP provided to the federal agency in support of the application;

(2) a detailed description of the proposed activity, its associated facilities, the coastal effects, and any other information relied upon by the applicant to make its certification. Maps, diagrams, and technical data shall be submitted when a written description alone will not adequately describe the proposal. See 15 CFR §930.58;

(3) if a mitigation plan is required, an alternative analysis, habitat characterization, and any required surveys for the license or permit must be submitted; and

(4) the consistency certification must also provide: "The proposed activity complies with enforceable policies of Texas' approved coastal management program and will be conducted in a manner consistent with such program." See 15 CFR §930.57(b).

(c) Request for Necessary Data and Information. If an applicant fails to submit all necessary data and information required by 15 CFR §930.58(a), the GLO shall notify the applicant and the federal agency, within thirty (30) days of receipt of the incomplete submission, that necessary data and information described in 15 CFR §930.58(a) was not received and that the GLO's review period will commence on the date of receipt of the missing necessary data and information, subject to the requirement in paragraph (a) of 15 CFR §930.58 that the applicant has also submitted a consistency certification. The GLO may waive the requirement that all necessary data and information described in 15 CFR §930.58(a) be submitted before commencement of the six (6) month consistency review period. In the event of such a waiver, the requirements of §930.58(a) must be satisfied prior to the end of the six (6) month consistency review period or the GLO may object to the consistency certification for insufficient information. The type of information that may be requested is identified in subsection (b) of this section consistent with the information requirements specified at 15 CFR §930.58(a).

(d) Review Period. To initiate the GLO's six (6) month review period, the necessary data and information that is required by 15 CFR §930.58 and subsection (b) of this section must be provided to the GLO. The GLO cannot require issued state or local permits as necessary data or information to initiate the review period. If at the end of this review period, the applicant has failed to obtain all required state and local permits this may result in a finding by the GLO that it lacks the required information to complete the consistency review and may object for lack of information.

(e) Mutual Stay Agreement. The GLO and the applicant may enter into a mutual written agreement to stay the CZMA review period to allow for resolution of the remaining issues as provided for at 15 CFR §930.60(b).

(f) Permit Assistance. Upon request of the applicant, the GLO will provide guidance and assistance to applicants in conformance with 15 CFR §930.56.

(g) Consolidation of Federal License or Permit Activities. The GLO encourages applicants to consolidate related federal license or permit activities identified in §30.12 of this chapter (relating to Federal Listed Activities Subject to CZMA Review) to assist the GLO in minimizing duplication of effort and unnecessary delays by reviewing all federal license or permit activities relating to a project at the same time.

(h) Public Participation. The GLO shall provide for public participation consistent with the provisions of 15 CFR §930.61. The GLO may issue joint public notices with the federal permitting or licensing agency. The GLO may also extend the public comment period or schedule a public meeting on the consistency certification. Comments received in response to the public notice will be considered.

(i) Demonstration of Consistency. For activities located within the state's jurisdiction that require state or local permits or authorization, the issued permit or authorization is considered evidence that demonstrates consistency with the enforceable policies that the permit or authorization covers. In cases where an applicant relies on draft NEPA documents to satisfy some of the necessary data and information requirements for federal consistency review under subsection C, an applicant should demonstrate how draft NEPA or other project documentation materials support a finding of consistency with the CMP goals and enforceable policies in a written document.

(j) Referral to Commissioner. To refer a matter to the commissioner for an elevated consistency review, at least three committee members must agree that a significant unresolved issue exists regarding consistency with the CMP goals and enforceable policies. At least three committee members must also submit in writing a letter or email addressed to the CMP coordinator that requests the matter at issue to be referred to the commissioner for an elevated consistency review. The referral letter or email should identify any enforceable policies that are unresolved and address any potential impacts.

(k) Commissioner Review. Following referral of a federal activity or development project to the commissioner for an elevated consistency review, the commissioner shall consider:

(1) oral or written testimony received during the comment period and the commissioner may reasonably limit the length and format of the testimony and the time at which it may be received;

(2) applicable CMP goals and enforceable policies;

(3) information submitted by the federal agency or applicant; and

(4) other relevant information to determine whether the proposed action is consistent with the CMP goals and enforceable policies.

(l) Presumption of Concurrence. If the GLO has not issued a decision with respect to a proposed federal license and permit activity within ninety (90) days from the date when the GLO receives an administratively complete consistency certification, then the GLO shall notify the applicant and the federal agency of the status of the review and the basis for further review. If no action is taken by the GLO or the commissioner within six (6) months from the date the GLO received the complete consistency certification, then the action is conclusively presumed to be consistent with the CMP.

(m) Commissioner Objection. Once a matter has been elevated to the commissioner for a consistency review with the CMP goals and enforceable policies, the commissioner may object to the consistency certification as provided for in 15 CFR §930.63(h).

(n) Right of Appeal. If the commissioner finds that the proposed federal license or permit activity is inconsistent with the CMP

enforceable policies and objects to the consistency certification, GLO shall notify the applicant of its appeal rights to the U.S. Secretary of Commerce, and the federal agency shall not authorize the federal license or permit activity, except as provided in the appeals process established in 15 CFR Part 930, subpart H.

§30.40. Consistency Certifications for Outer Continental Shelf (OCS) Exploration, Development, and Production Activities.

(a) Review of a Consistency Certification for an OCS Plan. When reviewing an OCS plan for consistency with the goals and enforceable policies of the CMP, the GLO shall follow the requirements and procedures provided in 15 CFR Part 930, subpart E and 43 USC §§1331-1356(a). The federal regulations, 15 CFR Part 930, subpart E, provide that OCS plans submitted to the U.S. Secretary of the Interior for OCS exploration, development and production, and all associated federal licenses and permits described in detail in such OCS plans, shall be subject to federal consistency review.

(b) Consistency Certification. Any person, as defined at 15 CFR §930.72, submitting any OCS plan to the Secretary of the Interior or designee shall provide a copy of the plan along with a consistency certification that states as follows: "The proposed activities described in detail in this plan comply with Texas' approved coastal management program and will be conducted in a manner consistent with the program." The Secretary of the Interior or designee shall provide the plan and consistency certification to the GLO. See 15 CFR §930.76.

(c) Request for Information. The GLO's six (6) month review period on a consistency certification for an OCS plan begins on the date the GLO receives the information required at 15 CFR §930.76, and all the necessary data and information required at 15 CFR §930.58(a). Pursuant to 15 CFR §930.60(a), within thirty (30) days of an incomplete submission, the GLO shall inform the person submitting the OCS plan that the GLO six (6) month review period will commence on the date of receipt of the missing consistency certification or necessary data and information. The GLO may waive the requirement that all necessary data and information described in 15 CFR §930.58(a) be submitted before commencement of the State agency's six (6) month consistency review. In the event of such a waiver, the requirements of 15 CFR §930.58(a) must be satisfied prior to the end of the six (6) month consistency review period or the GLO may object to the consistency certification for insufficient information.

(d) Consolidation of Related Authorizations. The GLO encourages persons submitting OCS plans to consolidate related federal licenses and permits that are not required to be described in detail in the plan but which are subject to GLO review. This consolidation will minimize duplication of effort and unnecessary delays by providing for review of all licenses and permits relating to an OCS plan at the same time. See 15 CFR §930.81.

(e) Public Participation. The GLO shall provide for public participation consistent with the provisions of 15 CFR §930.77. After the close of the public comment period on the OCS plan's consistency certification, the GLO will consider comments received in response to the public notice. The GLO may extend the public comment period or schedule a public meeting on the consistency certification.

(f) Referral to Commissioner. If three committee members agree there is a significant unresolved issue regarding the OCS Plan's consistency with the CMP goals and enforceable policies relating to any part of the OCS plan, the matter may be referred to the commissioner for an elevated consistency review. To refer the matter to the commissioner, three committee members must submit the request for referral to the CMP coordinator in writing. The CMP coordinator will immediately notify the committee members, applicant, federal agency, and other affected parties that the matter has been elevated for commissioner review. The referral letter or email should identify any enforceable policies that are unresolved and address any potential impacts.

(g) Commissioner Review. The commissioner shall review any part of an OCS plan relating to federal agency actions required to authorize proposed activities described in detail in the OCS plan which any three committee members agree presents a significant unresolved issue regarding consistency with the CMP goals and enforceable policies. Following referral for review, the commissioner shall consider:

(1) oral or written testimony received during the comment period. The commissioner may reasonably limit the length and format of the testimony and the time at which it may be received;

(2) applicable CMP goals and enforceable policies;

(3) information submitted by the federal agency or person; and

(4) other relevant information to determine whether the proposed action is consistent with the CMP goals and enforceable policies.

(h) Review Period. If the GLO has not issued a decision with respect to a matter referred under the provisions of this section, within three (3) months from the date when the GLO received the administratively complete consistency certification, then the GLO staff shall notify the person submitting the plan, the Secretary of the Interior, and the OCM Director of the status of the review and the basis for further delay. See 15 CFR §930.78. The GLO's review period is up to six (6) months but a concurrence may be presumed at three (3) months if GLO has taken no action.

(i) Presumption of Concurrence. If GLO does not act on an OCS plan within three (3) months of the date when the GLO receives an administratively complete consistency certification, then the GLO's concurrence with the consistency certification shall be conclusively presumed. See 15 CFR §930.78. If the GLO provides a status of review letter within three (3) months and continues its review, a concurrence may be presumed at six (6) months. If the GLO issues a concurrence or concurrence is conclusively presumed, then the person submitting the plan shall not be required to submit additional consistency certifications to the GLO for the individual federal authorizations that will be required to authorize the activities described in detail in the OCS plan as set out in 15 CFR §930.79.

(j) Commissioner Objection. If the commissioner objects to a consistency certification related to a federal license or permit activity authorizing an activity described in detail in an OCS plan, the federal agency shall not act on the federal action when it is proposed, except as provided in the appeals process established in the 15 CFR §§930.120 et seq. The contents of the commissioner's objection will conform to the requirements set out in 15 CFR §930.79 and will notify the person of its appeal rights to the U.S. Secretary of Commerce.

§30.50. Consistency Review of Federal Assistance Applications.

(a) Consistency Review of Federal Assistance. When reviewing applications for federal assistance to state and local governments as provided for in §30.12(a)(3) of this chapter for consistency with the enforceable policies of the CMP, the GLO shall conform to the requirements and procedures set out in 15 CFR Part 930, subpart F (subpart F).

(b) Review Materials. For review of federal assistance to state and local governments, the applicant agency must submit to the GLO the materials described in subpart F. The application for federal assistance should include a brief evaluation of the proposed projects consistency with the CMP goals and policies as provided for in subpart F.

(c) Request for Information. If information is needed, the GLO shall request the information within fifteen (15) days from the date the application is received by the GLO. Information that may be requested is identified in subpart F. If information is not requested within the specified timeframe, the application shall be deemed administratively complete.

(d) Referral to Commissioner. To refer a matter to the commissioner for an elevated consistency review, at least three committee members must agree that a significant unresolved issue exists regarding consistency with the CMP goals and enforceable policies. At least three committee members must also submit in writing a letter or email addressed to the CMP coordinator that requests the matter at issue to be referred to the commissioner for an elevated consistency review. The referral letter or email should identify any enforceable policies that are unresolved and address any potential impacts.

(e) Commissioner Review. Following referral of a federal assistance activity to the commissioner for an elevated consistency review, the commissioner shall consider:

(1) applicable CMP goals and enforceable policies set out in 31 TAC Ch. 26;

(2) information submitted by the federal agency or applicant; and

(3) other relevant information to determine whether the proposed action is consistent with the CMP goals and enforceable policies.

(f) Review Period. The GLO will provide a decision to the applicant within thirty (30) days from receipt of the administratively complete federal assistance application unless the matter is referred to the commissioner for an elevated consistency review. If elevated for commissioner review the review period will be extended an additional thirty (30) days. See subpart F.

(g) Presumption of Concurrence. A presumption of concurrence will occur thirty (30) days from the date the GLO deems the federal assistance application is administratively complete unless the matter has been referred to the commissioner for an elevated consistency review, in which case a presumption of concurrence will occur on day sixty (60) if no action is taken.

(h) Commissioner Objection. If the commissioner objects to the federal assistance application, the applicant, federal agency, and Director of the NOAA Office for Coastal Management will be notified of the objection by the GLO. The content of the commissioner's objection will conform to the requirements set out in subpart F and GLO will notify the applicant of its appeal rights to the U.S. Secretary of Commerce.

§30.60. Equivalent Federal and State Actions.

(a) Below Thresholds. If a proposed activity requiring a state agency or subdivision action falls below thresholds for referral approved under Chapter 29, Subchapter B of this title (relating to Commissioner Certification of State Agency Rules and Approval of Thresholds for Referral) and requires an equivalent federal permit or license under this chapter, the GLO may only determine the state agency or subdivision action's consistency by using the process provided in Chapter 29 of this title (relating to Commissioner Procedure for State Consistency with Coastal Management Program Goals and Policies). The GLO's determination regarding the consistency of an action under this subsection constitutes the state's determination regarding consistency of the equivalent federal action.

(b) Above Thresholds. If an activity requiring a state agency or subdivision action is above thresholds and requires an equivalent federal permit or license, the GLO may determine the consistency of the state agency or subdivision action or the federal license or permit but may only conduct either a state or a federal consistency review, not both. Texas Natural Resource Code, §33.206(f), as amended by SB 656.

(c) Equivalent State Action or Federal Action. Determinations regarding the consistency of an action made by the GLO under subsections (a) and (b) of this section constitute the state's determination regarding consistency of the equivalent agency or subdivision action or federal action. Texas Natural Resource Code, §33.206(f), as amended by SB 656.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2023.

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Chief Clerk, Deputy Land Commissioner
General Land Office
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For further information, please call: (512) 475-1859

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER A. GENERAL RULES

34 TAC §3.4

The Comptroller of Public Accounts proposes the repeal of existing §3.4, concerning tax refunds for wages paid to an employee receiving financial assistance.

The comptroller repeals the existing section as the content is out of date and no longer comports with its statutory authority and will propose a new version under the same number and title. The repeal of §3.4 will be effective as of the date the new §3.4 takes effect.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed rule repeal is in effect, the repeal: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed rule repeal would benefit the public by conforming the rule to current statute. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed rule repeal would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic cost to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The comptroller proposed the repeal under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This section implements Tax Code §111.109.

§3.4. Tax Refunds for Wages Paid to an Employee Receiving Financial Assistance.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2023.

TRD-202300146
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Earliest possible date of adoption: February 26, 2023
For further information, please call: (512) 475-2220

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34 TAC §3.4

The Comptroller of Public Accounts proposes new §3.4, concerning tax refunds for wages paid to an employee receiving financial assistance. The new section replaces existing §3.4, which the comptroller is repealing. The comptroller has not updated §3.4 since its original implementation in 1995, and the statutory authority for the section has changed. New §3.4 is intended to bring the section in line with the current statute which provides for a tax refund program that is administered in conjunction with the Texas Workforce Commission (TWC). The intent of the program is to encourage the employment of individuals who are receiving federal Aid to Families with Dependent Children.

Tax Code, §111.109 (Tax Refund for Wages Paid to Employee Receiving Aid to Families With Dependent Children) reads in its entirety: "The comptroller shall issue a refund for a tax paid by a person to this state in the amount of a tax refund voucher issued by the Texas Workforce Commission under Subchapter H, Chapter 301, Labor Code, subject to the provisions of that subchapter."

Based on the limited language in the statute, the comptroller proposes new §3.4 to include only information under the purview of the comptroller. Subsection (a) outlines the basics of the program.

Subsection (b) explains the eligibility requirements and procedure for requesting a refund. The employer must first submit their application to the TWC. TWC will certify eligibility of the employer and the maximum allowable refund based on the requirements in the Labor Code. This refund amount is referred to in the statute as "the amount of a tax refund voucher." The rule refers to this generally as the "certified amount" since there is not a separate voucher provided to the comptroller. If an employer is eligible for the refund, TWC provides the certification of eligibility and refund amount to the comptroller who then processes the refund request.

Subsection (c) discusses the limitation on the amount of the refund. The refund may not exceed the lesser of the amount certified by TWC or the net tax paid to the state. In order to determine the net tax paid to the state, the comptroller reviews the tax payments reflected in its systems. As paragraph (c)(1) explains, if the certified amount exceeds the net tax paid to the state, the comptroller may contact the employer to determine if additional Texas tax was paid by the employer on its purchases. If the employer can prove that it paid Texas tax on purchases during the appropriate calendar year, the comptroller will include those payments in the net tax paid by the employer to the state. Paragraph (c)(2) explains that if the certified amount still exceeds the amount of tax paid to the state, the refund request will be granted in part, up to the amount of tax paid, but will also be denied in part. This limitation enforces the statute which allows a refund only for the amount of tax "paid" by an employer.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed new rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the comptroller; will not require an increase or decrease in fees paid to the comptroller; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed new rule would benefit the public by conforming the rule to current statute. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed new rule would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic cost to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The comptroller proposes the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §111.109 (Tax Refund for Wages Paid to Employee Receiving Aid to Families with Dependent Children).

§3.4. Tax Refunds for Wages Paid to an Employee Receiving Financial Assistance.

(a) Tax refund. A person who employs individuals who receive aid to families with dependent children, referred to as "employer" in this section, may apply for a refund of tax paid by the person to this state if the tax is administered by the comptroller and deposited to the credit of the general revenue fund without dedication, as described in Labor Code, §301.102(b).

(b) Eligibility. To be eligible for this refund, an employer must file Texas Workforce Commission (TWC) Form 1098, or any successor

form, with the TWC. The TWC will determine an employer's eligibility based on the requirements of Labor Code, Chapter 301, Subchapter H. For eligible employers, the TWC will certify the maximum allowable refund to the comptroller. After receipt of the certification, the comptroller will process the refund subject to the limitation in subsection (c) of this section.

(c) Limitation. The refund an employer receives for a calendar year is limited to the lesser of the amount certified by the TWC or the amount of net tax paid to this state by the employer, after any other applicable tax credits, in that calendar year.

(1) If the amount certified by the TWC is more than the tax paid by the employer to this state, the comptroller may contact the employer to obtain records regarding Texas tax paid by the employer on purchases during the calendar year at issue. If the employer can prove the payment of additional Texas tax during the calendar year, the comptroller may increase the refund amount.

(2) If the amount certified by the TWC is still more than the tax paid by the employer to this state, the comptroller will only grant the refund up to the amount of tax paid to this state. This may result in the refund being granted in part and denied in part.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2023.

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Jenny Burleson
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