

Texas Administrative Code (Last Updated: September 25,2021)

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 16. COASTAL COORDINATION ADVISORY COMMITTEE

CHAPTER 505. PROCEDURES FOR STATE CONSISTENCY WITH COASTAL

MANAGEMENT PROGRAM GOALS AND POLICIES

CHAPTER 505. PROCEDURES FOR STATE CONSISTENCY WITH COASTAL
MANAGEMENT PROGRAM GOALS AND POLICIES _

SUBCHAPTER A. PURPOSE AND SCOPE

§ 505.10. Purpose and Policy

§ 505.11. Actions and Rules Subject to the Coastal Management Program

§ 505.12. Definitions

SUBCHAPTER B. COMMISSIONER REVIEW AND CERTIFICATION OF AGENCY RULES

§ 505.20. Commissioner Review and Certification of Agency Rules and Rule Amendments

§ 505.21. Effect of Commissioner Certification of Agency Rules and Rule Amendments

§ 505.22. Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management

§ 505.23. Expedited Certification of Rules and Rule Amendments

§ 505.24. Pre-Certification Review of Draft Rules and Draft Rule Amendments

§ 505.25. Revocation of Certification

§ 505.26. Approval of Thresholds for Referral

SUBCHAPTER C. CONSISTENCY AND COMMISSIONER REVIEW OF PROPOSED STATE AGEN

§ 505.30. Agency Consistency Determination

§ 505.31. Preliminary Consistency Review of a Proposed Agency Action

§ 505.32. Requirements for Referral of a Proposed Agency Action

§ 505.33. Filing of Request for Referral

§ 505.34. Referral of a Proposed Agency Action to the Commissioner for Consistency Review

§ 505.35. Procedures for Commissioner Review of a Proposed Agency Action

§ 505.36. Standard of Commissioner Review of a Proposed Agency Action

§ 505.37. Activities Pending Commissioner Review of a Proposed Agency Action

§ 505.38. Commissioner Determination on Review of a Proposed Agency Action

§ 505.39. Agency Action after Commissioner Protest

§ 505.42. Enforcement after Commissioner Protest of a Proposed Agency Action

SUBCHAPTER D. COMMISSIONER ADVISORY OPINIONS ON GENERAL PLANS

§ 505.50. General Plans

§ 505.51. Request for a Non-Binding Advisory Opinion and Commissioner Action

§ 505.52. Request for Commissioner Participation in the Development of General Plans

§ 505.53. Purpose and Effect of an Advisory Opinion

SUBCHAPTER E. CONSISTENCY AND COMMISSIONER REVIEW OF LOCAL GOVERNMENT ACTIONS

§ 505.60. Subdivision Actions Subject to the Coastal Management Program

§ 505.62. Subdivision Consistency Determinations

§ 505.63. Preliminary Consistency Review of a Proposed Subdivision Action

§ 505.64. Requirements for Referral of a Proposed Subdivision Action

§ 505.65. Filing of Request for Referral

§ 505.66. Referral of a Proposed Subdivision Action to the Commissioner for Review

§ 505.67. Procedures for Commissioner Review of a Proposed Subdivision Action

§ 505.68. Standard of Commissioner Review of a Proposed Subdivision Action

§ 505.69. Activities Pending Commissioner Review of a Proposed Subdivision Action

§ 505.70. Commissioner Action on Review of a Proposed Subdivision Action

§ 505.71. Subdivision Action after Commissioner Protest

§ 505.74. Enforcement after Commissioner Protest of a Proposed Subdivision Action

SUBCHAPTER A. PURPOSE AND SCOPE

SECTION 505.10. Purpose and Policy

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Latest version.

- (a) The purpose of this chapter is to ensure that state agency actions, subdivision actions and general plans subject to the Texas Coastal Management Program (CMP) are consistent with the CMP goals and policies. The commissioner of the General Land Office (commissioner) intends to use the consistency process to:
 - (1) adequately identify, address, and resolve consistency issues to the maximum extent practicable prior to final agency action;

(2) minimize the number of actions referred to the commissioner for review or study by ensuring adequate review at the agency level and by referring to the commissioner only those actions that present unique or significant consistency issues;

(3) avoid the creation of an additional layer of bureaucracy;

(4) avoid subjecting to regulation actions not currently subject to regulation; and

(5) provide procedural safeguards to ensure proper notice, opportunity for hearing, and fairness in decision-making.

(b) Accordingly, it is the intent of the commissioner that consistency be achieved primarily through individual agency rules that will reflect the CMP goals and policies.

Source Note: The provisions of this §505.10 adopted to be effective June 15, 1995, 19 TexReg 7670; amended to be effective November 3, 1995, 20 TexReg 8664; amended to be effective October 7, 2018, 43 TexReg 6452

SECTION 505.11. Actions and Rules Subject to the Coastal Management Program

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Latest version.

- (a) For purposes of this chapter and 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) for the General Land Office (GLO), the School Land Board, or a board for lease of state-owned lands when issuing or approving:

(A) a mineral lease plan of operations;

(B) a geophysical or geochemical permit;

(C) a miscellaneous easement;

(D) a surface lease;

(E) a structure registration;

(F) a coastal easement;

(G) a coastal lease;

(H) a cabin permit;

(I) a navigation district lease;

(J) certification of a subdivision beach access or dune protection plan or plan amendments; or

(K) an agency or subdivision wetlands mitigation bank.

(2) for the Public Utility Commission of Texas (PUC) when issuing a certificate of convenience and necessity.

(3) for the Railroad Commission of Texas (RRC) when issuing:

(A) a wastewater discharge permit;

(B) a waste disposal storage pit permit; or

(C) a certification of a federal permit for the discharge of dredge or fill material.

(4) for the Texas Transportation Commission when approving:

(A) an acquisition of a site for the placement or disposal of dredge material from, or the expansion, relocation, or alteration of, the Gulf Intracoastal Waterway; or

(B) an environmental document for a transportation construction project or maintenance program.

(5) for the Texas Historical Commission (THC) when issuing:

(A) a permit for destruction, alteration, or taking of a coastal historic area; or

(B) a review of a federal undertaking affecting a coastal historic area.

(6) for the Texas Commission on Environmental Quality (TCEQ) when issuing or approving:

(A) a wastewater discharge permit;

(B) a permit for a new concentrated animal feeding operation located one mile or less from a critical area or coastal waters;

(C) a permit for solid or hazardous waste treatment, storage, or disposal;

(D) creation of a special purpose district or approval of bonds to construct infrastructure on coastal barriers;

(E) levee improvement or flood control projects;

(F) a certification of a federal permit for the discharge of dredge or fill material;

(G) a declaration of an emergency and request for an emergency release of water;

(H) a new permit for an annual appropriation of:

(i) 5,000 or more acre-feet of water within the program boundary; or

(ii) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast;

(I) an amendment to a water permit for an increase in the annual appropriation of:

(i) 5,000 or more acre-feet of water within the program boundary; or

(ii) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast;

(J) a change in the purpose of use of an annual appropriation of water to a more consumptive use of:

(i) 5,000 or more acre-feet of water within the program boundary; or

(ii) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast.

(7) for the Texas Parks and Wildlife Department (TPWD) when issuing or approving:

(A) an oyster lease;

(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 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) An agency's promulgation of rules governing or authorizing actions listed in subsection (a) or (b) of this section constitutes an action subject to the CMP as provided in Subchapter B of this chapter (relating to Commissioner Review and Certification of Agency Rules).

(d) An action to renew, amend, or modify an existing permit, certificate, lease, easement, approval or other action is not an action under this section if the action is taken pursuant to rules that the commissioner has certified as consistent under Subchapter B of this chapter (relating to Commissioner Review and Certification of Agency Rules) and:

(1) for a wastewater discharge permit, if the action is not a major permit modification that would increase pollutant loads to coastal waters or would result in relocation of an outfall to a critical area;

(2) for solid and hazardous waste permits, if the action is not a Class III modification as defined in TCEQ rules; or

(3) for any other action, if the action only extends the time period of the existing authorization without authorizing new or additional work or activities or is not directly relevant to the CMP goals and policies.

(e) Whenever more than one state agency is involved in issuing a consistency determination for a single project, consideration should be given to the preparation of one consistency determination for all state agencies involved.

(1) Where multiple state consistency determinations are required, state agencies should consider coordinated preparation of the consistency determinations or designation of a lead agency for development of a single consistency determination. In the case where a single consistency determination will be prepared, such determination must be completed before final action is taken on any permit or authorization listed in subsection (a) of this section and required for the project. The single consistency determination must indicate whether each of the proposed actions listed in subsection (a) of this section and required for the project is consistent with the CMP goals and policies and must include information on each proposed action sufficient to support the consistency determination.

(2) An applicant, project sponsor, or other entity undertaking a project which requires more than one action listed in subsection (a) of this section may request in writing to the CMP coordinator either coordinated preparation of the consistency determinations or designation of a lead agency for development of a single consistency determination.

(3) To avoid duplication and time delays, it is the intent of the commissioner, whenever possible, to provide for coordinated consistency determinations where multiple determinations are required. The commissioner may direct the CMP coordinator to respond to the request and facilitate coordinated consistency determinations or preparation of a single determination by a lead agency, under guidance issued by the commissioner.

Source Note: The provisions of this §505.11 adopted to be effective June 15, 1995, 19 TexReg 7670; amended to be effective November 3, 1995, 20 TexReg 8664; amended to be effective July 8, 2002, 27 TexReg 6040; amended to be effective October 6, 2004, 29 TexReg 9410; amended to be effective October 29, 2006, 31 TexReg 8842; amended to be effective October 7, 2018, 43 TexReg 6452

SECTION 505.12. Definitions

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Latest version.

- (a) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.
 - (1) Agency--Any state agency, department, board, or commission of the state.
 - (2) Coastal natural resource area (CNRA)--Any area defined in Texas Natural Resources Code, §33.203(1) that is located with the coastal zone.
 - (3) Commissioner--Commissioner of the GLO.
 - (4) Committee--Coastal Coordination Advisory Committee.
 - (5) CMP coordinator--The GLO staff member designated by the commissioner.
 - (6) CMP goals and policies--The goals and policies set forth in Chapter 501 of this title.
 - (7) Program boundary--The CMP boundary established in §503.1 of this title.
 - (8) Subdivision--A local government or any political subdivision of the state.

(b) To the extent that reference is made to statutory or regulatory terms or phrases which are not defined in this chapter, such terms and phrases shall retain the meaning provided in the pertinent agency or political subdivision policies or regulations.

Source Note: The provisions of this §505.12 adopted to be effective October 7, 2018, 43 TexReg 6452

SUBCHAPTER B. COMMISSIONER REVIEW AND CERTIFICATION OF AGENCY RULES _

SECTION 505.20. Commissioner Review and Certification of Agency Rules and Rule Amendments _

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Latest version.

- (a) Upon adoption of a rule or amendment to a rule listed in §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) The CMP coordinator shall distribute copies of the Request for Certification, including all supporting information, to all committee members. The CMP coordinator shall publish in the *Texas Register* a notice of availability and request public comment on the Request for Certification.
- (c) The commissioner shall make a determination as to whether the rule or rule amendment should be certified as consistent with the CMP goals and policies on or before the 90th day after the CMP coordinator received the Request for Certification.
- (d) If the commissioner finds that the rule or rule amendment incorporates or otherwise requires the agency to comply with all applicable goals and policies of the program, the commissioner shall issue a written certification of the rule.
- (e) If the commissioner finds that the rule does not incorporate or otherwise require the agency to comply with all applicable goals and policies of the program, the commissioner shall issue a written statement denying certification of the rule. The denial shall explain the basis for such denial, and recommend rule revisions necessary to obtain certification. The agency may amend the rule and resubmit it for certification.

Source Note: The provisions of this §505.20 adopted to be effective June 15, 1995, 19 TexReg 7670; amended to be effective November 3, 1995, 20 TexReg 8664; amended to be effective October 7, 2018, 43 TexReg 6452

SECTION 505.21. Effect of Commissioner Certification of Agency Rules and Rule Amendments

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Latest version.

- (a) Upon the commissioner's certification of an agency's rules or rule amendments pursuant to §505.20 of this chapter (relating to Commissioner Review and Certification of Agency Rules and Rule Amendments) or §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 §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 §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 §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 §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 §505.11(a) of this chapter 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.

Source Note: The provisions of this §505.21 adopted to be effective June 15, 1995, 19 TexReg 7670; amended to be effective November 3, 1995, 20 TexReg 8664; amended to be effective October 29, 2006, 31 TexReg 8842; amended to be effective October 7, 2018, 43 TexReg 6452

SECTION 505.22. Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program

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Latest version.

- (a) When proposing to adopt or amend a rule listed in §505.11(b) of this chapter 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) Simultaneously with the filing of a proposed rule or rule amendment with the *Texas Register*, the agency shall submit a copy of the proposed rule or rule amendment to the CMP coordinator, who shall distribute it to all committee members.
- (c) During the comment period provided by the agency, committee members should comment on the consistency of the proposed rule or rule amendment. As provided in the Administrative Procedure Act, the agency shall consider and respond to the comments of the public and committee members on the consistency of the proposed rule or rule amendment.
- (d) Upon adoption of the rule or rule amendment, an agency shall affirm that it has taken into account the goals and policies of the CMP by issuing a reasoned determination that the rule or rule amendment is consistent with the CMP goals and policies.

Source Note: The provisions of this §505.22 adopted to be effective June 15, 1995, 19 TexReg 7670; amended to be effective November 3, 1995, 20 TexReg 8664; amended to be effective October 29, 2006, 31 TexReg 8842; amended to be effective March 29, 2010, 35 TexReg 2603; amended to be effective October 7, 2018, 43 TexReg 6452

SECTION 505.23. Expedited Certification of Rules and Rule Amendments

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Latest version.

- (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 §505.24 of this chapter (relating to Pre-Certification Review of Draft Rules or Draft Rule Amendments).

(b) When an agency requests an expedited certification in accordance with this section, the commissioner shall make a determination as to whether the rule or rule amendment should be certified as consistent with the CMP goals and policies within 26 days of the date the rule or rule amendment was adopted, or before the effective date of the rule or rule amendment, whichever is later.

(c) If the commissioner finds that the rule or rule amendment incorporates or otherwise requires the agency to comply with all applicable goals and policies of the program, the commissioner shall issue a written certification of the rule.

(d) If the commissioner finds that the rule does not incorporate or otherwise require the agency to comply with all applicable goals and policies of the program, the commissioner shall issue a written statement denying certification of the rule. The denial shall explain the basis for such denial, and recommend rule revisions necessary to obtain certification. The agency may amend the rule and resubmit it for certification.

Source Note: The provisions of this §505.23 adopted to be effective December 29, 1995, 20 TexReg 10789; amended to be effective October 29, 2006, 31 TexReg 8842; amended to be effective March 29, 2010, 35 TexReg 2603; amended to be effective October 7, 2018, 43 TexReg 6452

SECTION 505.24. Pre-Certification Review of Draft Rules and Draft Rule Amendments _

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Latest version.

- (a) Prior to the publication in the *Texas Register* of a proposed rule or amendment to a rule listed in §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) The CMP coordinator shall distribute copies of the Request for Pre-certification Review, including all supporting information, to all committee members.

- (c) The commissioner may review and comment in writing within 30 days of the date the request was received by the CMP coordinator, unless a longer time is provided in the agency's request. The commissioner's comments should identify applicable CMP goals and policies and potential inconsistencies with such goals and policies in the draft rule or rule amendment. The commissioner may make recommendations to the agency on how to correct any inconsistencies. The agency shall consider the commissioner's comments and any comments from the committee members.

- (d) Agencies are encouraged to seek pre-certification review to maximize opportunities to coordinate agency rules, facilitate effective and efficient implementation of the CMP, and to identify and correct possible inconsistencies in the draft rule or draft rule amendment prior to publication of the proposal in the *Texas Register*.

Source Note: The provisions of this §505.24 adopted to be effective December 29, 1995, 20 TexReg 10789; amended to be effective October 29, 2006, 31 TexReg 8842; amended to be effective March 29, 2010, 35 TexReg 2603; amended to be effective October 7, 2018, 43 TexReg 6452

SECTION 505.25. Revocation of Certification _

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Latest version.

- 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, §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.

Source Note: The provisions of this §505.25 adopted to be effective December 29, 1995, 20 TexReg 10789; amended to be effective October 7, 2018, 43 TexReg 6452

SECTION 505.26. Approval of Thresholds for Referral

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Latest version.

- As applicable, the provisions of §505.20 of this chapter (relating to Commissioner Review and Certification of Agency Rules and Rule Amendments) or §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 §505.20 or §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 §501.13(b) of this title (relating to Administrative Policies

Source Note: The provisions of this §505.26 adopted to be effective June 15, 1995, 19 TexReg 7670; amended to be effective November 3, 1995, 20 TexReg 8664; amended to be effective October 7, 2018, 43 TexReg 6452

[CHAPTER 505. PROCEDURES FOR STATE CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND POLICIES, PART 16. COASTAL COORDINATION ADVISORY COMMITTEE, TITLE 31. NATURAL RESOURCES AND CONSERVATION, Texas Administrative Code \(elaws.us\)](#)