

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER F. PHARMACY SERVICES DIVISION 5. AUDITS

1 TAC §354.1891

The Texas Health and Human Service Commission (HHSC) adopts amendments to §354.1891, concerning Vendor Drug Providers Subject to Audit, with changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7754). The text of the rule will be republished.

BACKGROUND AND JUSTIFICATION

Amended §354.1891 implements Section 11 of Senate Bill (S.B.) 207, 84th Legislature, Regular Session, 2015. Section 11 of S.B. 207 adds language to the Texas Government Code to clarify that a pharmacy has a right to request an informal hearing before HHSC's Appeals Division to contest the findings of an audit conducted by HHSC's Office of Inspector General (OIG) or an entity that contracts with the federal government to audit Medicaid providers, if the findings of the audit do not include Medicaid fraud. Section 11 also clarifies that in an informal hearing, HHSC Appeals Division staff, assisted by HHSC Vendor Drug Program (VDP) staff, make the final decision on whether the findings of an audit are accurate. The amendments clarify that documentation, rather than data, is audited and may be reviewed in the informal hearing.

Adopted amendments also remove a reference to information provided by regional pharmacists and computerized program management reports. VDP no longer has regional pharmacist staff to run these reports. Formerly, VDP regional pharmacists conducted desk reviews, but desk reviews will no longer be conducted by VDP; thus, any references to VDP regional pharmacists in the rule are deleted.

COMMENTS

Although not requested by a commenter, HHSC revised the rule to make non-substantive changes that clarify subsection (e). Specifically, the rule now clarifies that the administrative law judge (ALJ) is part of HHSC's Appeals Division. Likewise, all references to HHSC's Appeals Division in subsection (e) are changed to "ALJ."

The 30-day comment period ended December 7, 2015. During this period, HHSC received multiple comments regarding the

amended rule from the Texas Pharmacy Business Council and Pharmacy Alternatives. A summary of comments relating to the rule and HHSC's responses follows.

Comment: A commenter stated that HHSC should amend the rule to allow pharmacies at least 30 days, instead of the 15 days currently allowed by rule, to provide notice of the appeal to HHSC. The additional time is needed because it takes more than 15 days for the pharmacy to receive the appeal letter from the auditor and hire legal counsel to advise the pharmacy on the legal rights to appeal.

Response: HHSC disagrees and declines to revise the rule as the commenter suggests. Other Medicaid providers are currently given 15 days to respond to a notice, which makes the 15-day requirement in this rule consistent with other rules and requirements.

Comment: A commenter requested that the current language stating, "...and the audit findings do not indicate fraud..." be changed to "... and the audit findings do not include findings that the pharmacy engaged in fraud..." to match the language used in Section 11 of S.B. 207.

Response: HHSC agrees and revised the rule language to match the language used in Section 11 of S.B. 207.

Comment: A commenter requested that HHSC delete the requirement that only data or documentation provided to the auditors or the agency during the audit process will be considered, and stated that if extrapolation data can only be obtained for the first time after the auditors have completed the audit, then the pharmacy will not be able to use that data and refute it until the auditors are done, meaning the informal hearing panel won't consider the rebuttal of extrapolation.

Response: HHSC disagrees with the comment that extrapolation data can only be obtained for the first time after the auditors have completed the audit. Pharmacists receive the extrapolation methodology in the draft audit report and are allowed to refute the methodology before the final audit report is completed. Pharmacists are also allowed to refute the methodology during the appeal hearing. However, pharmacists are not allowed to bring additional data or documentation to the hearing that was not provided during the audit process. HHSC declines to revise the rule based on this comment.

Comment: A commenter stated that the rule should clarify that the extrapolation methodology should be provided at the time of the audit.

Response: HHSC disagrees and declines to revise the rule as the commenter suggests. The extrapolation methodology is currently provided during the audit process.

Comment: A commenter suggested clarifying in rule that the VDP staff who serve on the decision panel must have "expertise in the law governing participation."

Response: HHSC agrees and revised the rule to clarify that VDP staff who serve on the decision panel will have "expertise in the law governing participation." This aligns the language used in Section 11 of S.B. 207.

Comment: A commenter suggested including information in the rule on how the informal hearing panel will be structured, including the number of members on the panel, and how the hearing will be conducted. The commenter suggested including the written audit findings in the decision.

Response: HHSC disagrees with revising the rule to include the number of VDP staff that will attend each appeal. VDP will determine the number of VDP staff required depending on the complexity and issues related to the case. The rule already stipulates that the hearing will be conducted in an informal manner. Yet, HHSC is revising the rule to clarify the role of VDP staff. Specifically, the rule now clearly states that while VDP staff is available to the ALJ to answer questions, VDP staff will not vote or make the final decision. HHSC already includes the written audit findings in the decision and declines to add this statement to the rule.

Comment: A commenter stated that the pharmacy audit appeals process should be addressed clearly and that pharmacies should have the right to a clearly defined method of appeal "without being subject to subjective interpretation from the VDP."

Response: HHSC agrees that the pharmacy audit appeals process should be addressed clearly. However, it declines to revise the rule as the rule already leads to this outcome. HHSC explained the role of HHSC's Appeals Division and VDP staff. Furthermore, the rule stipulates that hearings under subsection (e) will be conducted in an informal manner. Lastly, the rule even goes into detail as to what data or documentation will be acceptable under HHSC's Appeal Division review.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033 (providing the Executive Commissioner of HHSC with broad rulemaking authority) and §531.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas and to propose and adopt rules governing the determination of Medicaid reimbursements); and Texas Human Resources Code §32.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas).

§354.1891. *Vendor Drug Providers Subject to Audit.*

(a) All providers participating in the Vendor Drug Program (Program) are subject to periodic audits by the Texas Health and Human Services Commission (the Commission) or contractors for the Centers for Medicare & Medicaid Services.

(b) Audits determine provider compliance with all state and federal program policies, procedures, and limitations as well as compliance with the requirements outlined in the provider's contract. Data for transactions selected for audit are compared with data on the corresponding prescriptions. Erroneous payments and overpayments that occur because of noncompliance with Program requirements are considered exceptions subject to restitution to the Commission.

(c) If a provider disagrees with the initial findings of an audit, the provider may present additional documentation to the auditor for review within 15 calendar days of the provider's receipt of the draft

audit report. No additional documentation is accepted after this time. The auditor considers the additional documentation before issuing the Final Audit Report.

(d) If the provider disagrees with the Final Audit Report and wants to appeal, and the findings of the audit do not include findings that the pharmacy engaged in Medicaid fraud, the Commission's Appeals Division, upon receipt of written request, provides an informal hearing. The Commission's Appeals Division must receive the written request for an informal hearing within 15 calendar days of the provider's receipt of the Final Audit Report.

(e) An administrative law judge (ALJ) from the Commission's Appeals Division conducts hearings requested under subsection (d) of this section in an informal manner. Unless specified by the ALJ and at the ALJ's sole discretion, neither the Texas Rules of Civil Procedure nor the Texas Rules of Evidence or any other procedural or evidentiary rules apply. The ALJ only considers data or documentation provided to the auditors on or before the time specified in subsection (c) of this section. The ALJ makes the final decision. Vendor Drug Program staff who have expertise in the law governing pharmacies' participation in Medicaid are available to the ALJ to answer questions.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 5, 2016.

TRD-201600576

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: February 25, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 424-6900



CHAPTER 396. EMPLOYEE TRAINING AND EDUCATION

1 TAC §396.1, §396.2

The Texas Health and Human Service Commission (HHSC) adopts new Chapter 396, concerning Employee Training and Education. Within the new chapter, HHSC adopts §396.1, concerning Purpose and Applicability; and new §396.2, concerning Educational and Training Assistance. The new rules are adopted without changes to the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8423) and will not be republished.

BACKGROUND AND JUSTIFICATION

House Bill 3337, 84th Legislature, Regular Session, 2015, amended the State Employees Training Act, found in Chapter 656, Subchapter C, of the Texas Government Code. The amended law explains that, for a state agency administrator or employee to receive "reimbursement for a training or education program offered by an institution of higher education or private or independent institution of higher education, the agency may only pay the tuition expenses for a program course successfully completed by the administrator or employee at an accredited institution of higher education." In addition, the executive head of the state agency must authorize the tuition reimbursement

payment, each state agency must have a policy regarding tuition reimbursement, and each agency must post the policy on the agency's website.

COMMENTS

The 30-day comment period ended December 21, 2015. During this period, HHSC did not receive any comments regarding the new rules.

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.055, which provides the Executive Commissioner of HHSC with rulemaking authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 5, 2016.

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §113.1

The Texas State Securities Board adopts an amendment to §113.1, concerning qualification of securities, without changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6805).

A reference was added to §114.4, relating to filings and fees for federal covered securities, to the section that discusses Regulation A offerings. Section 114.4(a) operates to require a notice filing, payment of the fee that would have been paid if the securities had been registered, and, if applicable, a consent to service for federal covered securities that are offered and sold pursuant to Tier 2 of Regulation A.

Readers of the rule will be apprised that some Regulation A offerings may involve federal covered securities, rather than registered securities in Texas, and directed to the provisions that relate to filings and fees for federal covered securities.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters

within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Article 581-7.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201600552

John Morgan

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8301



CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §§115.4, 115.8, 115.18

The Texas State Securities Board adopts amendments to §115.4, concerning evidences of registration, §115.8, concerning fee requirements, and §115.18, concerning special provisions relating to military applicants, without changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6806).

Portions of subsection (e) of §115.4 were amended to move the substantive portions relating to registration renewals by military service members to §115.18.

The amendment to subsection (d) of §115.8 removed the reference to the \$200 professional fee in Section 41 of the Texas Securities Act, which was repealed by the 84th Texas Legislature. Subsection (b)(3) of §115.8 was restructured so the fee reduction applies to the second set of Section 35.A fees (relating to registration as an investment adviser or investment adviser representative) resulting in a reduction in fees for a small business registered in multiple capacities.

Amendments to §115.18 incorporated statutory changes passed by the 84th Legislature contained in Senate Bill 1307 and Senate Bill 807 and moved other provisions related to renewals by military service members into §115.18 from §115.4.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 581-28-1 and Chapter 55 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Chapter 55 of the Texas Occupations Code authorizes the agency to adopt rules for licensure or registration of a person who is a military spouse, military service member, or military veteran who meets certain criteria.

The adopted amendments affect Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, and 581-18.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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John Morgan

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8301



CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §§116.4, 116.8, 116.18

The Texas State Securities Board adopts amendments to §116.4, concerning evidences of registration, §116.8, concerning fee requirements, and §116.18, concerning special provisions relating to military applicants, without changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6809).

Portions of subsection (e) of §116.4 were amended to move the substantive portions relating to registration renewals by military service members to §116.18.

The amendment to subsection (d) of §116.8 removed the reference to the \$200 professional fee in Section 41 of the Texas Securities Act, which was repealed by the 84th Texas Legislature. Subsection (b)(3) of §116.8 was restructured so the fee reduction applies to the second set of Section 35.A fees (relating to registration as an investment adviser or investment adviser representative) resulting in a reduction in fees for a small business registered in multiple capacities.

Amendments to §116.18 incorporated statutory changes passed by the 84th Legislature contained in Senate Bill 1307 and Senate Bill 807 and moved other provisions related to renewals by military service members into §116.18 from §116.4.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 581-28-1 and Chapter 55 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Chapter 55 of the Texas Occupations Code authorizes the agency to adopt rules for licensure or registration of a person who is a military spouse, military service member, or military veteran who meets certain criteria.

The adopted amendments affect Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, and 581-18.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 4, 2016.

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John Morgan

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8301



CHAPTER 133. FORMS

7 TAC §133.4

The Texas State Securities Board adopts the repeal of §133.4, which adopts by reference a form concerning request for special consideration of a registration application by a military spouse, military service member, or military veteran, without changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6813).

The repeal allows a new form to be adopted.

An outdated form has been eliminated.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 581-28-1 and Chapter 55 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Chapter 55 of the Texas Occupations Code authorizes the agency to adopt rules for licensure or registration of a person who is a military spouse, military service member, or military veteran who meets certain criteria.

The adopted repeal affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, and 581-18.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201600555

John Morgan

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8301

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7 TAC §133.4

The Texas State Securities Board adopts new §133.4, which adopts by reference a form concerning request for consideration of a registration application by a military applicant, without changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6813).

The form allows a military service member, military spouse, or military veteran (collectively, military applicants) licensed in another jurisdiction or with comparable military service, training, or education to request special consideration or credit for such licensure or experience as well as expedited review of an application for registration pursuant to §115.18 or §116.18, which are being concurrently amended. Also concurrent with this adoption is repeal of existing form §133.4.

A military applicant licensed in another jurisdiction or with comparable military service, training, or education can complete the form to request special consideration or credit for such licensure or experience as well as expedited review of an application for registration pursuant to §115.18 or §116.18.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Article 581-28-1 and Chapter 55 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Chapter 55 of the Texas Occupations Code authorizes the agency to adopt rules for licensure or registration of a person who is a military spouse, military service member, or military veteran who meets certain criteria.

The new rule affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, and 581-18.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 4, 2016.

TRD-201600556

John Morgan

Securities Commissioner

State Securities Board

Effective date: February 24, 2016

Proposal publication date: October 2, 2015

For further information, please call: (512) 305-8301

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7 TAC §133.19

The Texas State Securities Board adopts new §133.19, which adopts by reference a form concerning waiver or refund request by a military applicant, with changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6814). A slight change was made to the explanatory material that appears in italics on the first page below the form title to remove a phrase that mistakenly appeared twice.

The form allows a military service member, military spouse, or military veteran (collectively, military applicants) to request a waiver or refund of the initial registration application fee or the fee to take the Texas Securities Law Examination under the new procedures in §115.18 and §116.18, which are being concurrently amended.

A military applicant eligible for a waiver or refund of the initial application fee or the fee to take the Texas Securities Law Examination can complete the form to obtain the waiver or refund.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Article 581-28-1 and Chapter 55 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Chapter 55 of the Texas Occupations Code authorizes the agency to adopt rules for licensure or registration of a person who is a military spouse, military service member, or military veteran who meets certain criteria.

The new rule affects Texas Civil Statutes, Articles 581-12, 581-13, 581-15, and 581-18.

§133.19. Waiver or Refund Request by a Military Applicant.

The State Securities Board adopts by reference Form 133.19, Waiver or Refund Request by a Military Applicant. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.state.tx.us.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 4, 2016.

TRD-201600557

John Morgan

Securities Commissioner

State Securities Board

Effective date: February 24, 2016

Proposal publication date: October 2, 2015

For further information, please call: (512) 305-8301

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CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.12

The Texas State Securities Board adopts an amendment to §139.12, concerning oil and gas auction exemption, without changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6814).

The rule adds "associate auctioneer," a new type of registration under the Texas Occupations Code added by House Bill 2481, effective September 1, 2015. An "associate auctioneer" is an individual who, for compensation, is employed by and under the direct supervision of a licensed auctioneer to sell or offer to sell property at an auction. The rule also eliminates the reference to

an "auction company" licensed by the Texas Department of Licensing and Regulation since there is no such equivalent license in Chapter 1802 of the Texas Occupations Code.

Licensed persons who may act as an auctioneer for purposes of the exemption will be correctly identified.

No comments were received regarding adoption of the amended rule.

The amendment is adopted under Texas Civil Statutes, Articles 581-5.T and Article 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Articles 581-5, 581-7, and 581-12.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201600558

John Morgan

Securities Commissioner

State Securities Board

Effective date: February 24, 2016

Proposal publication date: October 2, 2015

For further information, please call: (512) 305-8301



TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.16

The Railroad Commission of Texas (Commission) adopts amendments to §3.16, relating to Log and Completion or Plugging Report, without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8710). The amendments reflect changes in Texas statutes relating to confidentiality of well logs.

House Bill 878 (83rd Legislature, Regular Session, 2013) amended Texas Natural Resources Code §§91.552 and §91.553 to streamline the procedures for requesting a period of confidentiality for a well log. The Commission has been complying with the HB 878 procedures for requesting confidentiality, and adopts amendments to §3.16(d) to conform the rule's requirements to the statutory requirements. Amendments are also adopted to subsections (a) and (c) to change the term "basic electric log" to "electric log," which is the term used in the applicable statutes.

The Commission received no comments on the proposed amendments.

The Commission adopts the amendments to §3.16 pursuant to Texas Natural Resources Code §§91.551 - 91.556 (electric logs); specifically §91.552, which requires the Commission to establish criteria for filing electric logs, and §91.553, which contains the requirements for requesting log confidentiality. The Commission also adopts the amendments pursuant to Texas Natural Resources Code §§81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under Commission jurisdiction; Texas Natural Resources Code §§85.201, 85.202, 86.041, and 86.042, which require the Commission to adopt and enforce rules and orders for the conservation and prevention of waste of oil and gas, and specifically for drilling of wells, preserving a record of the drilling of wells, and requiring records to be kept and reports to be made; and Texas Natural Resources Code §141.011 and §141.012, which authorize the Commission to regulate the exploration, development, and production of geothermal energy and associated resources and to make and enforce rules associated therewith.

Texas Natural Resources Code §§81.051, 81.052, 85.201, 85.202, 86.041, 86.042, 91.551 - 91.556, 141.011, and 141.012 are affected by the adopted amendments.

Statutory Authority: §§81.051, 81.052, 85.201, 85.202, 86.041, 86.042, 91.551 - 91.556, 141.011, and 141.012.

Cross-reference to statutes: Texas Natural Resources Code §§81.051, 81.052, 85.201, 85.202, 86.041, 86.042, 91.551 - 91.556, 141.011, and 141.012.

Issued in Austin, Texas, on February 3, 2016.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 3, 2016.

TRD-201600543

Haley Cochran

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Railroad Commission of Texas

Effective date: February 23, 2016

Proposal publication date: December 4, 2015

For further information, please call: (512) 475-1295



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.9

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §1.9, concerning training for members of governing boards and board trustees, without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8714). Changes

to rule were made in accordance with Texas Education Code (TEC), §61.084, as amended by Senate Bill 24, 84th Texas Legislature, which requires the Coordinating Board to adopt rules necessary for the provision of a training program for members of institutional governing boards. As part of the training program, the Coordinating Board now must offer an intensive short orientation course developed under TEC, §61.0841. The orientation course must be offered as an online interactive course and also may be offered in the form of a written document or in a one-on-one or group setting. The orientation course is under development and will be available on or about January 11, 2016, as an online interactive course.

In accordance with TEC, §61.084 and §61.0841, the Coordinating Board's rules require a governing board member of an institution of higher education who holds an appointive position to attend, as part of the training program, the intensive short orientation course developed under TEC, §61.0841 and any available training course sponsored or coordinated by the office of the governor with a curriculum designed for training newly appointed state officers, board members, or high-level executive officials. The rules require the member to attend those courses the first time they are offered following the date the member takes the oath of office, regardless of whether that attendance is required under other law. The rules provide a governing board member with additional time to attend those courses if the member for good cause is unable to attend the courses the first time they are offered. The rules prohibit a member whose first year of service on the governing board begins on or after January 1, 2016, from voting on a budgetary or personnel matter related to system administration or institutions of higher education until the member completes the intensive short orientation course described by TEC, §61.0841. The rules specify that the Coordinating Board is responsible for documenting governing board members' completion of the requirements provided by TEC, §61.084.

There were no comments received regarding these amendments.

The amendments are adopted under Texas Education Code, §61.084, which provides the Coordinating Board with the authority to adopt rules to implement the provisions of Texas Education Code, §61.084 and §61.0841, concerning training for members of governing boards of institutions of higher education.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 2, 2016.

TRD-201600479
Bill Franz
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Effective date: February 22, 2016
Proposal publication date: December 4, 2015
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SUBCHAPTER BB. ARCHITECTURE FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§1.9501 - 1.9507

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§1.9501 - 1.9507, concerning the establishment of an advisory committee to develop an Architecture Field of Study, without changes to the proposed text as published in the October 16, 2015, issue of the *Texas Register* (40 TexReg 7169). The new rules authorize the Board to create an advisory committee to develop an architecture field of study. The newly added rules will affect students when the architecture field of study is adopted by the Board.

There were no comments received regarding these new rules.

The new rules are adopted under Texas Education Code, Chapter 61, §61.823(a) and Texas Government Code, Chapter 2110, §2110.005, which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 2, 2016.

TRD-201600480
Bill Franz
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Effective date: February 22, 2016
Proposal publication date: October 16, 2015
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CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §5.10

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §5.10, pertaining to tracking career information for graduates of Texas medical schools and persons completing medical residency programs in Texas, without changes to the proposed text as published in October 2, 2015, issue of the *Texas Register* (40 TexReg 6817). Specifically, new §5.10 establishes a system to acquire and maintain data regarding the initial residency program choices made by graduates of medical schools in this state and the initial practice choices made by persons completing medical residency programs in this state, as required by Texas Education Code, Chapter 61, Subchapter C, §61.0906.

The following comment was received from the Texas A&M Health Science Center College of Medicine:

Comment: The Texas A&M Health Science Center College of Medicine requested clarification be made in the new §5.10 as to what entity will be reporting practice choices made by a physician upon completion of his or her residency as well as for the two-year period following completion of that program. The Texas

A&M Health Science Center College of Medicine expressed concern that as written, the rules propose using "any data reasonably available...including data maintained or accessible to medical schools or residency programs" without clarifying how this data is to be obtained. The Texas A&M Health Science Center College of Medicine states that medical schools currently do not collect data on what practice choice individuals make upon completing their residency program; and it is unclear how either a medical school or a residency program would obtain data from a person who has completed their residency program and is two years into their medical career or a fellowship.

Response: The Coordinating Board entered into a Memorandum of Understanding with the Texas Medical Board (TMB) in 2014, which allows the TMB to send physician licensure data to the Coordinating Board. The Coordinating Board will match Texas physician licensure data to the existing data collected from the Texas medical schools about the residents pursuing graduate medical education training in Texas. Using these existing data resources, the Coordinating Board intends to collect data on practice choices made by persons completing a medical residency in the state. The Coordinating Board does not anticipate collecting this data from medical schools or residency programs. However, data collection on practice choices made by persons completing a medical residency in the state is one of the requirements of Texas Education Code, Chapter 61, Subchapter C, §61.0906. If data from TMB becomes unavailable to the Coordinating Board or is deemed insufficient, the Coordinating Board will be required to analyze and determine other potential sources for these data. The Coordinating Board will provide medical schools and residency programs in the state reasonable notice of and opportunity to comment on new data reporting requirements, if that is necessary. No changes were made as a result of this comment.

The new section is adopted under the Texas Education Code, §61.061, which provides the Coordinating Board with authority to adopt rules relating to carrying out the duties with respect to public junior colleges placed upon it by the legislature.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AT PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND REVIEW OF EXISTING DEGREE PROGRAMS

19 TAC §5.46

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §5.46 concerning Criteria for New Doctoral Programs without changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6818). The intent of the amendments is to clearly delineate the criteria for approval of new doctoral programs; and clarify the information and documentation that public universities and health-related institutions must submit when requesting a new doctoral program.

The following comment was received from The University of Texas System (UT System):

Comment: The UT System expressed concern with the amendment of Criterion 10, Carefully Programmed Course of Study, which adds the following sentence: "Consideration must also be given to alternative methods of determining mastery of program content, such as competency-based education, prior learning assessment, and other options of reducing student time to degree." UT System does not support this change, and believes that any decision to include competency-based education depends upon the discipline of the degree program and should be made exclusively by the faculty. UT System notes that time-to-degree could be improved among existing doctoral programs, but feels that goal is best accomplished by periodic assessments of program requirements by faculty, early mentoring of doctoral students, and competitive financial support. UT System asks for reconsideration of this change to the Criteria for New Doctoral Programs.

Response: The amendment to Criterion 10 does not require institutions to use competency-based education or other methods of reducing student time to degree. The amendment only requires institutions to give consideration to the use of such methods. Coordinating Board staff agree that faculty should decide if competency-based education is appropriate for a program in their discipline. No changes were made as a result of this comment.

The following comments were received from Texas Tech University (TTU):

Comment: TTU supported changes to criteria one through three, but opposed the amendment to criterion four, saying "at its core, this addition appears predicated on the assumption that only current workforce demands are the target for doctoral graduates and that existing programs are positioned better than new programs to meet current or future workforce needs. This addition does not recognize that viable employment opportunities do/will exist outside of Texas or that research universities such as TTU serve as economic engines that create NEW jobs that add to our workforce demands and economic expansion. Moreover, the examples given may be difficult or impossible to obtain (admission data) or of questionable relevance."

Response: The amendment to criterion four does not alter the workforce demand data requested by the Coordinating Board. The amendment adds a request for evidence of student demand for the proposed program. No changes were made as a result of this comment.

Comment: TTU opposed the changes to criterion 10, which adds a requirement that the institution give consideration to competency-based education and other methods of reducing student time to degree, saying "There are no data connecting alternative methods of demonstrating mastery of content to time to degree for doctoral students, and so this addition may be based on an invalid premise. Moreover, adaptability and/or validity of such

methods to specific fields of study may be unproven and/or impractical to implement. Lastly, the addition may be addressing a non-problem as time to degree varies among fields and may not be at variance with national standards."

Response: Reducing student time to degree can help lower educational costs for students and the state, therefore this provision encourages institutions to consider a variety of methods for achieving this important objective, but does not mandate that institutions use any particular method. No changes were made as a result of this comment.

Comment: TTU supported the portion of the addition to criterion 11 that requires a plan for providing external learning experiences. However, TTU opposed the portion of the addition that requires increasing the number of such opportunities: "First, it may be impractical or impossible to determine the number of opportunities in the state given the dynamic nature of the workforce and economic factors that govern such opportunities at any point in time. Secondly, there is an assumption that existing degree programs are of fixed size and/or are suitably addressing workforce needs that may or may not be correct. Lastly, external learning experiences outside of Texas may be undersubscribed and offer viable alternatives for meeting program demands."

Response: In recent years Texas institutions have had difficulties placing students in some disciplines into internships and other types of external learning experiences. In order to alleviate this shortage, Coordinating Board staff have added this provision to encourage institutions to increase the number of external learning experiences in those disciplines where shortages exist. No changes were made as a result of this comment.

Comment: TTU supported the amendment to criterion 15, Costs and Funding, to provide a budgetary plan for the new program that clearly delineates the anticipated costs and the sources of funding. TTU opposed "the portion of this new provision that prohibits reallocation of resources from existing programs. There is an underlying assumption of this aspect of the provision that existing programs are meeting student demand and workforce needs, which may or may not be correct. Moreover, this aspect of the provision unnecessarily intrudes on the strategic management of institutional resources and hinders the ability of the institution to respond and adapt to changes in internal or external forces."

Response: The amendment does not prohibit the use of reallocated funds for newly proposed doctoral programs. The amendment specifies that "existing programs should not be negatively affected by the reallocation of funds." New doctoral programs should build on the strengths of existing programs, rather than debilitating them. No changes were made as a result of this comment.

The rule is adopted under Texas Education Code, Chapter 61, Subchapter C, §61.0512, which provides the Coordinating Board with the authority to approve new degree programs.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES SUBCHAPTER M. BLOCK SCHEDULING

19 TAC §§9.660 - 9.666

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§9.660 - 9.666 concerning Block Scheduling without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7556). Senate Bill 215, 83rd Texas Legislature, Regular Session, called for the Board to engage institutions of higher education in a negotiated rulemaking process as described in Subchapter 2008, Government Code in the development of such rules. The new Block Scheduling rules proposed for this section were reviewed and approved by the Negotiated Rulemaking Committee on Block Scheduling on October 13, 2015.

The intent of these new rules was to establish the Board's oversight for public junior colleges regarding block scheduling of certain associate degree and certificate programs. House Bill 1583, 84th Texas Legislature, Regular Session requires public junior colleges to adopt at least five associate degree or certificate programs from the allied health, nursing, or career and technology education fields as block scheduled programs.

One comment was received from Blinn College.

Comment: If block scheduling classes do not meet minimum enrollment requirements, as established by the community college, will the college be mandated to offer the class? For example, if the minimum enrollment is 20 students and 3 register, must the block scheduled class still be allowed to continue?

Response: The Block Scheduling rules do not mandate class enrollment minimums. School policies related to enrollment minimums and cost efficiency would apply. No recommended changes to the rules are suggested as a result of this comment.

The rules are adopted under Texas Education Code, Chapter 130, §130.0095, which provides the Coordinating Board with the authority to adopt rules to administer the sections.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 15. NATIONAL RESEARCH
UNIVERSITIES
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §15.10

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §15.10 concerning the Texas Research Incentive Program (TRIP) without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7557). Changes to this section were made in accordance with Senate Bill 44, passed by the 84th Texas Legislature, Regular Session. The TRIP rule amendments proposed for this section were reviewed and approved by the Negotiated Rulemaking Committee on TRIP on October 5, 2015. The report of the Negotiated Rulemaking Committee is available at the offices of the Coordinating Board located at 1200 East Anderson Lane, Austin, Texas. Specifically, this section is amended to explicitly allow donations for restricted undergraduate research to be matched and explicitly disallow donations for undergraduate financial aid grants to be matched.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §62.123. Texas Education Code, §62.124 provides the Coordinating Board with the authority to adopt rules for the administration of the program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER J. THE PHYSICIAN
EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.254, 21.258, 21.260

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§21.254, 21.258, and 21.260 concerning the Physician Education Loan Repayment Program (PELRP) without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7352).

Section 21.254 is amended to add definitions for National Provider Identifier, Program, Texas Medicaid and Healthcare Partnership, and Texas Provider Identifier. The definition of primary care specialty is expanded to include hospitalists practicing in Health Professional Shortage Areas, and language

referring to combined internal medicine and pediatrics is added to clarify the term "medicine-pediatrics."

Section 21.258 currently specifies that, to be eligible for repayment, a loan may not be subject to repayment through another student loan repayment or loan forgiveness program. The amendment adds "or repayment assistance provided by the physician's employer," in addition to the phrase "while the physician is participating in the program."

Section 21.260 regarding limitations is amended to clarify that a physician may not receive loan repayment assistance through any other loan repayment program while participating in the PELRP. Additionally, this section is amended to delete a provision under §21.260(d) that is included in proposed new §21.257 regarding applications based on services to Medicaid or Texas Women's Health Program enrollees.

There were no comments received concerning these amendments.

The amended sections are adopted under the Texas Education Code, §61.537, which gives the Coordinating Board the authority to adopt rules consistent with Texas Education Code, Chapter 61, Subchapter J.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 427-6114

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19 TAC §§21.255 - 21.257

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§21.255 - 21.257 without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7353). Section 21.255 is no longer relevant. Section 21.256 and §21.257 must be repealed and readopted to reflect renumbering and new language.

There were no comments received concerning the repeal of these sections.

The repealed sections are adopted under the Texas Education Code, §61.537, which gives the Coordinating Board the authority to adopt rules consistent with Texas Education Code, Chapter 61, Subchapter J.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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19 TAC §§21.255 - 21.257

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§21.255 - 21.257 concerning the Physician Education Loan Repayment Program (PELRP) without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7354).

Section 21.255 replaces former §21.255 which was repealed because it is no longer applicable. New §21.255, regarding eligibility, adds language to the previous eligibility rule clarifying that physicians practicing in Health Professional Shortage Areas (HPSAs) must serve uninsured persons, persons enrolled in Medicare (except in the case of pediatricians), Medicaid, and CHIP (if the practice includes children), to qualify for loan repayment assistance. Additionally, this section clarifies that only primary care physicians who are not practicing in HPSAs may qualify on the basis of meeting specified service levels for Medicaid and Texas Women's Health Program enrollees.

Section 21.256 was repealed. New §21.256 includes new language regarding priorities of ranking criteria for physicians qualifying strictly on the basis of Medicaid and Texas Women's Health Program service levels, if there are insufficient funds for all applicants who qualify on this basis.

New §21.257 provides additional information about the source of data used in determining Medicaid and Texas Women's Health Program service levels, the basis for required service levels, and requirements relating to verification of physician services data.

There were no comments received concerning these new rules.

The new sections are adopted under the Texas Education Code, §61.537, which gives the Coordinating Board the authority to adopt rules consistent with Texas Education Code, Chapter 61, Subchapter J.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER M. TEXAS COLLEGE WORK-STUDY PROGRAM

19 TAC §21.403, §21.405

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §21.403 and §21.405 concerning the Texas College Work-Study Program without changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6489). The amendment to §21.403 aligns the rules with the current statute and describes the method by which an institution is to establish and publicize a listing of work-study employment opportunities. The amendment to §21.405 is made to indicate the Senate Bill 1750 requirements regarding the percentage of off-campus employment positions (at least 20 percent, but no more than 50 percent) that must be provided by institutions participating in the work-study program.

There were no comments received concerning the amendments to these rules.

The amendments are adopted under the Texas Education Code, §56.077, which gives the Coordinating Board the authority to adopt rules consistent with Texas Education Code, Chapter 56, Subchapter E.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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19 TAC §21.410

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §21.410 concerning the Texas College Work-Study Program without changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6490). The new section adds language to implement legislative changes mandated through the passage of Senate Bill 1750. It outlines new reporting requirements for the Board and specifies the type of data that is to be collected. The report must include the total number of students employed through the program, disaggregated by the positions' location on or off-campus and its status as a for-profit or nonprofit entity. The initial report is due May 1, 2019.

There were no comments received concerning the new rule.

The new section is adopted under the Texas Education Code, §56.077, which gives the Coordinating Board the authority to adopt rules consistent with Texas Education Code, Chapter 56, Subchapter E.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER P. LOAN REPAYMENT PROGRAM FOR MENTAL HEALTH PROFESSIONALS

19 TAC §§21.491, 21.493 - 21.495, 21.497

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§21.491, 21.493 - 21.495 and 21.497 pertaining to the Loan Repayment Program for Mental Health Professionals. Section 21.497 is adopted with changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8715). Sections 21.491 and 21.493 - 21.495 are adopted without changes. In accordance with Texas Education Code, §61.608, rules for the administration of the new program were adopted by the Board on October 23, 2015 and became effective on November 12, 2015.

Although the adopted rules incorporated changes recommended by The University of Texas at Austin during the public comment period, a representative of the Texas Counseling Association and the National Association of Social Workers - Texas Chapter provided testimony to the Board expressing concerns about the definition of full-time service required for a mental health professional to qualify for a full loan repayment award. Staff expressed a desire to work with the representatives and others to develop any appropriate amendments for the Board's consideration at its meeting in January.

On October 28, 2015, staff met with representatives of the organizations mentioned above, in addition to staff of the Senate Health and Human Services Committee and the Texas Department of State Health Services. In addition to addressing the definition of full-time service, the group discussed the need to establish priorities for ranking applications, given the expectation that the amount of appropriated funding will not be sufficient to allow for awards to all eligible applicants. The recommended amendments reflect changes that were agreed upon at the meeting and subsequent communications among the stakeholders and staff.

Section 21.491(3) is amended to define full-time service in a manner that takes into consideration the work that mental health professionals must do in addition to direct client contact.

Section 21.494 regarding selection of eligible applicants and limitations is amended as follows: subsection (a) corrects punctuation, subsection (b) adds the statement that applications from professionals providing services to persons committed to secure correctional facilities will be selected on a first-come-first-served basis, and subsection (d) is added to describe the manner in which applications for each practice specialty will be ranked.

Section 21.495(1) is amended to clarify that, to qualify for a loan repayment disbursement a mental health professional must have completed service in a Mental Health Professional Shortage Area providing direct patient care to Medicaid enrollees and/or CHIP enrollees, if the practice serves children, or persons committed to a secure correctional facility.

Section 21.497 is amended as follows: paragraph (1) corrects a capitalization error, paragraph (3) is added to clarify that a mental health provider whose student loan indebtedness is less than the maximum aggregate amount allowed for the practice specialty is eligible for an annual award amount based on the specified annual percentages of the amount owed at the time of the enrollment application, former paragraph (3) is changed to paragraph (4) and is amended to state that a prorated award is allowed if the provider is employed for a minimum of 20 hours per week, and former paragraph (4) is changed to paragraph (5).

There were no comments received concerning these amendments.

The amendments are adopted under the Texas Education Code (TEC), §61.608, which authorizes the Coordinating Board to adopt rules necessary to administer new Subchapter K of TEC Chapter 61.

§21.497. *Amount of Repayment Assistance.*

Loan repayment awards will be disbursed directly to lenders in behalf of eligible mental health professionals and:

(1) Repayment assistance for each year of full-time service will be in an amount determined by applying the following applicable percentage to the maximum total amount of assistance allowed for the professional:

- (A) for the first year, 10 percent;
- (B) for the second year, 15 percent;
- (C) for the third year, 20 percent;
- (D) for the fourth year, 25 percent; and
- (E) for the fifth year, 30 percent.

(2) The total amount of repayment assistance received by a mental health professional under this subchapter may not exceed:

- (A) \$160,000, for a psychiatrist;
- (B) \$80,000, for:

(i) a psychologist;

(ii) a licensed clinical social worker, if the social worker has received a doctoral degree related to social work; or

(iii) a licensed professional counselor, if the counselor has received a doctoral degree related to counseling;

- (C) \$60,000, for an advanced practice registered nurse;

and

(D) \$40,000, for a licensed clinical social worker or a licensed professional counselor who has not received a doctoral degree related to social work or counseling.

(3) If a mental health provider's total student loan indebtedness is less than the total amount of repayment assistance allowed for the provider's practice specialty, the annual loan repayment award amounts based on full-time service will be the following percentages of the student loan debt owed at the time of application for enrollment in the program: 10% for year one, 15% for year two, 20% for year three, 25% for year four, and 30% for year five.

(4) An eligible professional may receive prorated loan repayment assistance based on the percentage of full-time service provided for each service period, for a minimum of 20 hours per week if employed or contracted by an agency or facility in a mental health professional shortage area for the primary purpose of providing direct mental health services to:

- (A) Medicaid recipients;
- (B) CHIP enrollees;
- (C) persons in facilities operated by or under contract with the Texas Juvenile Justice Department; and/or,
- (D) persons in facilities operated by or under contract with the Texas Department of Criminal Justice.

(5) Failure to meet the program requirements will result in non-payment for the applicable service period(s) and, except under circumstances determined by the Board to constitute good cause, removal from the program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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 Bill Franz
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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS
SUBCHAPTER K. PROVISIONS FOR SCHOLARSHIPS FOR STUDENTS GRADUATING IN THE TOP 10 PERCENT OF THEIR HIGH SCHOOL CLASS

19 TAC §22.197

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §22.197 concerning the Provisions for Scholarships for Students Graduating in the Top 10 Percent of their High School Class without changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6490). The amendments to this section correct the citation referenced in the definition of "Institution of Higher Education", from §61.003(6) to §61.003(8).

There were no comments received concerning these amendments.

The amendments are adopted under the Texas Education Code, §56.493, which gives the Coordinating Board the authority to adopt rules consistent with Texas Education Code, Chapter 56, Subchapter R.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bill Franz
 General Counsel
 Texas Higher Education Coordinating Board
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19 TAC §22.203

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §22.203, concerning the Provisions for Scholarships for Students Graduating in the Top 10 Percent of Their High School Class, without changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6491). The new section adds language to implement legislative changes mandated by the 84th Legislature through the passage of H.B. 1 to address the priority awarding of students if the program is not fully funded.

There were no comments received concerning this new rule.

The new section is adopted under the Texas Education Code, §56.493, which gives the Coordinating Board the authority to adopt rules consistent with Texas Education Code, Chapter 56, Subchapter R.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §22.235

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §22.235 concerning the Towards EXcellence, Access & Success (TEXAS) Grant Program without changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6491). The title to this section is amended to distinguish between awarding a student after the end of his/her period of enrollment instead of during a student's period of enrollment.

There were no comments received concerning this amendment.

The amendment is adopted under the Texas Education Code, §56.303, which gives the Coordinating Board the authority to adopt rules consistent with Texas Education Code, Chapter 56, Subchapter M.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bill Franz

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Texas Higher Education Coordinating Board

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SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §22.261

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §22.261 concerning the Texas Educational Opportunity Grant Program (TEOG) without changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6492). The title to this section is amended to distinguish between awarding a student after the end of his/her period of enrollment instead of during a student's period of enrollment. The amendment to subsection (b) clarifies that funds disbursed after period of enrollment must be used to pay a student's outstanding balance or payment against an outstanding loan.

There were no comments received concerning these amendments.

The amendments are adopted under the Texas Education Code, §56.403, which gives the Coordinating Board the authority to adopt rules consistent with Texas Education Code, Chapter 56, Subchapter P.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 26. PROGRAMS OF STUDY SUBCHAPTER A. AGRICULTURE, FOOD AND NATURAL RESOURCES PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.101 - 26.107

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§26.101 - 26.107, concerning the establishment of an advisory committee to develop programs of study specific to the Agriculture, Food, and Natural Resources Career Cluster, without changes to the proposed text as published in the October 16, 2015, issue of the *Texas Register* (40 TexReg 7171). The new rules authorize the Board to create an advisory committee to develop programs of study specific to the Agriculture, Food, and Natural Resources Career Cluster. The newly added rules will affect students when the programs of study are adopted by the Board.

There were no comments received concerning these new rules.

The new rules are adopted under Texas Education Code, Chapter 61, §61.8235, pursuant to House Bill 2628 enacted by the 84th Texas Legislative Session, and Texas Government Code, Chapter 2110, §2110.005, which provides the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bill Franz

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SUBCHAPTER B. ARCHITECTURE AND CONSTRUCTION PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.121 - 26.127

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§26.121 - 26.127, concerning the establishment of an advisory committee to develop programs of study specific to the Architecture and Construction Career Cluster, without changes to the proposed text as published in the October 16, 2015, issue of the *Texas Register* (40 TexReg 7172). The new rules authorize the Board to create an advisory committee to develop programs of study specific to the Architecture and Construction Career Cluster. The newly added rules will affect students when the programs of study are adopted by the Board.

There were no comments received regarding these new rules.

The new rules are adopted under Texas Education Code, Chapter 61, §61.8235, pursuant to House Bill 2628 enacted by the 84th Texas Legislative Session, and Texas Government Code, Chapter 2110, §2110.005, which provides the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



SUBCHAPTER C. ARTS, AUDIO/VISUAL TECHNOLOGY AND COMMUNICATIONS PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.141 - 26.147

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§26.141 - 26.147, concerning the establishment of an advisory committee to develop programs of study specific to the Arts, Audio/Visual, Technology, and Communications Career Cluster, without changes to the proposed text as published in the October 16, 2015, issue of the *Texas Register* (40 TexReg 7173). The new rules authorize the Board to create an advisory committee to develop programs of study specific to the Arts, Audio/Visual, Technology, and Communications Career Cluster. The newly added rules will affect students when the programs of study are adopted by the Board.

There were no comments received regarding these new rules.

The new rules are adopted under Texas Education Code, Chapter 61, §61.8235, pursuant to House Bill 2628 enacted by the 84th Texas Legislative Session, and Texas Government Code, Chapter 2110, §2110.005, which provides the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. BUSINESS MANAGEMENT AND ADMINISTRATION PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.161 - 26.167

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§26.161 - 26.167, concerning the establishment of an advisory committee to develop programs of study specific to the Business Management and Administration Career Cluster. Section 26.161 is adopted with changes to the proposed text as published in the October 16, 2015, issue of the *Texas Register* (40 TexReg 7174). Sections 26.162 - 26.167 are adopted without changes. The new rules authorize the Board to create an advisory committee to develop programs of study specific to the Business Management and Administration Career Cluster. The newly added rules will affect students when the programs of study are adopted by the Board.

There were no comments received regarding the new rules.

The new rules are adopted under Texas Education Code, Chapter 61, §61.8235, pursuant to House Bill 2628 enacted by the 84th Texas Legislative Session, and Texas Government Code, Chapter 2110, §2110.005, which provides the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

§26.161. Authority and Specific Purposes of the Business Management and Administration Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Business Management and Administration Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. EDUCATION AND TRAINING PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.181 - 26.187

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§26.181 - 26.187, concerning the establishment of an advisory committee to develop programs of study specific to the Education and Training Career Cluster. Section 26.181 is adopted with changes to the proposed text as pub-

lished in the October 16, 2015, issue of the *Texas Register* (40 TexReg 7175). Sections 26.182 - 26.187 are adopted without changes. The new rules authorize the Board to create an advisory committee to develop programs of study specific to the Education and Training Career Cluster. The newly added rules will affect students when the programs of study are adopted by the Board.

There were no comments received regarding the new rules.

The new rules are adopted under Texas Education Code, Chapter 61, §61.8235, pursuant to House Bill 2628 enacted by the 84th Texas Legislative Session, and Texas Government Code, Chapter 2110, §2110.005, which provides the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

§26.181. *Authority and Specific Purposes of the Education and Training Programs of Study Advisory Committee.*

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Education and Training Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. FINANCE PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.201 - 26.207

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§26.201 - 26.207, concerning the establishment of an advisory committee to develop programs of study specific to the Finance Career Cluster. Section 26.201 is adopted with changes to the proposed text as published in the October 16, 2015, issue of the *Texas Register* (40 TexReg 7176). Sections 26.202 - 26.207 are adopted without changes. The new rules authorize the Board to create an advisory committee to develop programs of study specific to the Finance Career Cluster. The newly added rules will affect students when the programs of study are adopted by the Board.

There were no comments received regarding these new rules.

The new rules are adopted under Texas Education Code, Chapter 61, §61.8235, pursuant to House Bill 2628 enacted by the 84th Texas Legislative Session, and Texas Government Code, Chapter 2110, §2110.005, which provides the Coordinating

Board with the authority to develop programs of study curricula with the assistance of advisory committees.

§26.201. *Authority and Specific Purposes of the Finance Programs of Study Advisory Committee.*

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Finance Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bill Franz

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SUBCHAPTER G. GOVERNMENT AND PUBLIC ADMINISTRATION PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.221 - 26.227

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§26.221 - 26.227, concerning the establishment of an advisory committee to develop programs of study specific to the Business Management and Administration Career Cluster. Section 26.221 is adopted with changes to the proposed text as published in the October 16, 2015, issue of the *Texas Register* (40 TexReg 7178). Sections 26.262 - 26.267 are adopted without changes. The new rules authorize the Board to create an advisory committee to develop programs of study specific to the Government and Public Administration Career Cluster. The newly added rules will affect students when the programs of study are adopted by the Board.

There were no comments received regarding these new rules.

The new rules are adopted under Texas Education Code, Chapter 61, §61.8235, pursuant to House Bill 2628 enacted by the 84th Texas Legislative Session, and Texas Government Code, Chapter 2110, §2110.005, which provides the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

§26.221. *Authority and Specific Purposes of the Government and Public Administration Programs of Study Advisory Committee.*

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Government and Public Administration Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bill Franz

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Texas Higher Education Coordinating Board

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SUBCHAPTER H. HEALTH SCIENCE PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.241 - 26.247

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§26.241 - 26.247, concerning the establishment of an advisory committee to develop programs of study specific to the Health Science Career Cluster. Section 26.241 is adopted with changes to the proposed text as published in the October 16, 2015, issue of the *Texas Register* (40 TexReg 7179). Sections 26.242 - 26.247 are adopted without changes. The new rules authorize the Board to create an advisory committee to develop programs of study specific to the Health Science Career Cluster. The newly added rules will affect students when the programs of study are adopted by the Board.

There were no comments received regarding these new rules.

The new rules are adopted under Texas Education Code, Chapter 61, §61.8235, pursuant to House Bill 2628 enacted by the 84th Texas Legislative Session, and Texas Government Code, Chapter 2110, §2110.005, which provides the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

§26.241. Authority and Specific Purposes of the Health Science Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Health Science Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bill Franz

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Texas Higher Education Coordinating Board

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 62. COMMISSIONER'S RULES CONCERNING THE EQUALIZED WEALTH LEVEL

19 TAC §62.1071

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §62.1071(a) is not included in the print version of the Texas Register. The figure is available in the on-line version of the February 19, 2016, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §62.1071, concerning the equalized wealth level. The amendment to §62.1071 is adopted with changes to the proposed text as published in the October 23, 2015 issue of the *Texas Register* (40 TexReg 7355). The section establishes provisions relating to wealth equalization requirements. The amendment adopts as a part of the Texas Administrative Code (TAC) the *Manual for Districts Subject to Wealth Equalization 2015-2016 School Year*. The manual contains the processes and procedures that the TEA uses in the administration of the provisions of the Texas Education Code (TEC), Chapter 41, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 41, must meet.

REASONED JUSTIFICATION. Legal counsel with the TEA has advised that the procedures contained in each yearly manual for districts subject to wealth equalization be adopted as part of the TAC. The intent is to annually update 19 TAC §62.1071 to refer to the most recently published manual. Manuals adopted for previous school years will remain in effect with respect to those school years.

The amendment to 19 TAC §62.1071, Manual for Districts Subject to Wealth Equalization, adopts in rule the official TEA publication *Manual for Districts Subject to Wealth Equalization 2015-2016 School Year* as Figure: 19 TAC §62.1071(a).

Each school year's manual for districts subject to wealth equalization explains how districts subject to wealth equalization are identified; the fiscal, procedural, and administrative requirements those districts must meet; and the consequences for not meeting requirements. The manual also provides information on using the online Foundation School Program (FSP) System to fulfill certain requirements.

Two significant changes to the *Manual for Districts Subject to Wealth Equalization 2015-2016 School Year* from the *Manual for Districts Subject to Wealth Equalization 2014-2015 School Year* are as follows.

Appendix B: Forms. The District Intent and Choice Selection forms are now combined into one form, the District Intent/Choice Selection.

Changes to deadlines noted throughout. The manual includes provisions for the mandatory homestead exemption in Senate Bill 1, 84th Texas Legislature, 2015, which passed voter approval in November 2015. These provisions only apply to districts that would need a Chapter 41 election and that would likely fall below the equalized wealth level once the homestead exemption is incorporated into the property value used to determine the property wealth of the district.

In response to public comment, Appendix E: Glossary of the manual was modified at adoption to revise the definition of *appraisal costs* to be consistent with the current methodology for determining county appraisal district (CAD) costs in the cost of recapture.

The adopted rule action places the specific procedures contained in the *Manual for Districts Subject to Wealth Equalization 2015-2016 School Year* in the TAC. The TEA administers the wealth equalization provisions of the TEC, Chapter 41, according to the procedures specified in each yearly manual for districts subject to wealth equalization. Data reporting requirements are addressed primarily through the online FSP System. The adopted rule action has no locally maintained paperwork requirements.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began October 23, 2015, and ended November 23, 2015. Following is a summary of public comments received and corresponding agency responses regarding the proposed amendment to 19 TAC §62.1071, Manual for Districts Subject to Wealth Equalization.

Comment. The Equity Center proposed a different calculation for the cost of attendance credits as established in the TEC, §41.093(a)(2), for Tier 2, Level 2 only. The Equity Center commented that the TEC, §41.093(a)(2), states, "the cost of each credit is an amount equal to the amount of the statewide district average of maintenance and operations (M&O) tax revenue per student in weighted average daily attendance (WADA)...." The Equity Center stated that the proposed calculation would base the amount for Tier 2, Level 2 only on the product of "the statewide district average tax revenue" for Tier 2, Level 2 per the statewide district average number of Tier 2, Level 2 pennies adopted (5.085) multiplied by the number of Tier 2, Level 2 pennies adopted by a district subject to the provision.

Agency Response. The agency disagrees. A statutory change would be needed to implement the change proposed by the Equity Center. The statutory language in the TEC, §41.093(a)(2), is explicit that the amount be based upon the statewide district average of M&O tax revenue per student in WADA and does not distinguish between Tier 1 and Tier 2 calculations of the statewide district average of M&O tax revenue per student in WADA.

Comment. The Equity Center proposed a change to the definition of the term *appraisal costs* in the glossary to conform to current practice. The Equity Center acknowledged that Chapter 41 districts are eligible for a credit for the portion of the costs resulting from the recaptured excess value of costs associated with the operation of CADs and not the entire amount of these costs as currently defined in the manual proposed for adoption under 19 TAC §62.1071.

Agency Response. The agency agrees and has modified Appendix E: Glossary of the manual at adoption to revise the definition of *appraisal costs* as suggested to be consistent with the

current methodology for determining CAD costs in the cost of recapture.

Comment. The Equity Center proposed a change to the definition of the term *property-wealthy district* in the glossary to include language acknowledging that this term only applies to districts whose recapture exceeds state funding. The Equity Center noted that the manual proposed for adoption under 19 TAC §62.1071 defines a property-wealthy district as a district whose wealth per student exceeds \$319,500, otherwise known as a Chapter 41 district.

Agency Response. The agency disagrees. The term *property-wealthy district* in the manual adopted under 19 TAC §62.1071 exists to identify districts subject to the TEC, Chapter 41, and 19 TAC §62.1071 as those with property wealth greater than the equalized wealth level, and this threshold is set in statute at \$319,500. All districts with property wealth greater than \$319,500 are subject to the TEC, Chapter 41, and 19 TAC §62.1071 regardless of whether state aid exceeds recapture.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §41.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of the TEC, Chapter 41.

CROSS REFERENCE TO STATUTE. The amendment implements the TEC, §41.006.

§62.1071. Manual for Districts Subject to Wealth Equalization.

(a) The processes and procedures that the Texas Education Agency (TEA) uses in the administration of the provisions of the Texas Education Code (TEC), Chapter 41, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 41, must meet are described in the official TEA publication *Manual for Districts Subject to Wealth Equalization 2015-2016 School Year*, provided in this subsection.
Figure: 19 TAC §62.1071(a)

(b) The specific processes, procedures, and requirements used in the manual for districts subject to wealth equalization are established annually by the commissioner of education and communicated to all school districts.

(c) School district actions and inactions in previous school years and data from those school years will continue to be subject to the annual manual for districts subject to wealth equalization with respect to those years.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 5, 2016.

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Cristina De La Fuente-Valadez
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Texas Education Agency
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**PART 7. STATE BOARD FOR
EDUCATOR CERTIFICATION**

CHAPTER 227. PROVISIONS FOR EDUCATOR PREPARATION CANDIDATES

The State Board for Educator Certification (SBEC) adopts amendments to 19 TAC §§227.1, 227.5, 227.10, 227.15, 227.20, 227.103, 227.105, and 227.107 and adopts new 19 TAC §227.17 and §227.19, concerning provisions for educator preparation candidates. The amendments to §§227.1, 227.5, 227.20, 227.103, 227.105, and 227.107 and new 19 TAC §227.19 are adopted without changes to the proposed text as published in the November 6, 2015 issue of the *Texas Register* (40 TexReg 7776) and will not be republished. The amendments to §227.10 and §227.15 and new 19 TAC §227.17 are adopted with changes to the proposed text as published in the November 6, 2015 issue of the *Texas Register* (40 TexReg 7776). The adopted revisions to 19 TAC Chapter 227 include changes as a result of House Bill (HB) 2012, 83rd Texas Legislature, Regular Session, 2013, which required the Texas Education Agency (TEA), the SBEC, and the Texas Higher Education Coordinating Board (THECB) to perform a joint review of the existing standards for preparation and admission that are applicable to educator preparation programs (EPPs). In addition, HBs 1300 and 2205, 84th Texas Legislature, Regular Session, 2015, have been addressed. The adopted revisions update the rules to reflect current law, clarify minimum standards for all EPPs, allow for flexibility, and ensure consistency among EPPs in the state. The adopted amendments to 19 TAC §§227.103, 227.105, and 227.107 reflect conforming technical edits.

REASONED JUSTIFICATION. The SBEC rules in 19 TAC Chapter 227 begin with Subchapter A, Admission to Educator Preparation Programs, which provides for rules that establish requirements for admission to an EPP. Subchapter B, Preliminary Evaluation of Certification Eligibility, provides for rules for the implementation of a preliminary criminal history evaluation, as provided in the Texas Occupations Code, Chapter 53, Subchapter D. The Texas Education Code (TEC), §21.031, states that the SBEC is established to oversee all aspects of the certification and continuing education of public school educators and to ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state. The TEC, §21.049, authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional EPPs.

The adopted revisions include changes as a result of HB 2012, 83rd Texas Legislature, Regular Session, 2013, and HBs 1300 and 2205, 84th Texas Legislature, Regular Session, 2015. The adopted revisions also reflect discussions held during stakeholder meetings with EPPs on January 14, 2014; February 18, 2014; and March 26, 2014, and regional stakeholder meetings held on February 27, 2014, and March 3-4, 2014, with district and regional administrators. The adopted revisions also reflect input received from staff at the THECB and the TEA. Additional stakeholder meetings were held with the Educator Preparation Advisory Committee (EPAC) on December 1, 2014; February 2, 2015; May 4, 2015; June 29, 2015; August 31, 2015; and November 2, 2015.

SBEC Input

At the January 2015 SBEC Work Session, the SBEC members received three presentations on educator quality. The Texas Teaching Commission, the Council for the Accreditation of Educator Preparation, and the National Council on Teacher Qual-

ity provided state and national perspectives on educator quality. SBEC members provided feedback to TEA staff on those presentations. Specifically, as it relates to 19 TAC Chapter 227, the SBEC requested policy options that focus on raising EPP standards, improving teacher preparation programs, and providing solutions to correct current problems in Texas EPPs. The adopted revisions to 19 TAC Chapter 227 address this request.

The following adopted amendments to 19 TAC §§227.1, 227.5, 227.10, 227.15, and 227.20 and adopted new 19 TAC §227.17 and §227.19 are the result of legislation and input from the SBEC, stakeholders, THECB staff, and TEA staff.

General Provisions

The amendment to 19 TAC §227.1 clarifies the responsibility of the EPP to inform applicants of the background check requirement for clinical teaching and teaching; adds language to require EPPs to inform applicants of admission and program completion requirements; and adds language to require EPPs to inform applicants of the performance over time of the EPP and the effect of supply and demand on the educator workforce in the state, in accordance with TEC, §21.044, added by HB 2012, 83rd Texas Legislature, Regular Session, 2013.

Definitions

The amendment to 19 TAC §227.5 adds definitions of *accredited institution of higher education*, *applicant*, *formal admission*, and *post-baccalaureate program* for clarity; clarifies that the bachelor's degree needs to be from an accredited institution of higher education (IHE); clarifies and updates the definitions of *alternative certification program*, *candidate*, *clinical teaching*, and *semester credit hour*; removes a phrase from the definition of *contingency admission* to stay in alignment with the acceptance of accredited IHE; adds the phrase "that must be" to the definition of *educator preparation program* for clarity; adds a definition of *incoming class* in accordance with TEC, §21.0441, added by HB 2205, 84th Texas Legislature, Regular Session, 2015; and removes definitions for words and terms not used in Chapter 227 and renumbers as necessary.

Admission Criteria

The amendment to 19 TAC §227.10 clarifies which requirements are for those who are seeking admission to an EPP for initial certification in each class of certificate; clarifies the admission requirement for a candidate seeking admission to an undergraduate university program; aligns the acceptance of an accredited IHE; clarifies that candidates seeking admission to an EPP for initial certification must have either a 2.5 grade point average (GPA) or a 2.5 in the last 60 semester credit hours in accordance with TEC, §21.0441, added by HB 2205, 84th Texas Legislature, Regular Session, 2015; clarifies that the minimum GPA must be from the current accredited IHE or the IHE from which the most recent bachelor's degree or higher was conferred; and requires that an applicant to an EPP pass a content examination to be eligible for an extraordinary circumstances exception to the minimum GPA requirement, in accordance with TEC, §21.0441, added by HB 1300, 84th Texas Legislature, Regular Session, 2015. The adopted amendment also clarifies that a content examination that is used as part of admission requirement must be passed by the applicant before the applicant is admitted to an EPP; clarifies that an applicant is ineligible to register for a pre-admission content examination (PACT) if the applicant had previously been admitted to an EPP. The phrase "do not meet the minimum GPA requirement and" was inadvertently included in the rule text that was published in the *Texas Register* though

it was not addressed in the preamble as published in the *Texas Register*. An edit to correct the typographical error was made in subsection (a)(4)(D), as published, to remove the phrase "do not meet the minimum GPA requirement and" so that the rule text reflects the discussion at the time this item was proposed at the October 2015 SBEC meeting and the preamble that was included with the rule text in the *Texas Register*. The adopted amendment also clarifies that an applicant who has previously been enrolled in an EPP and does not meet the minimum GPA requirement may request permission to register for a PACT under procedures developed by TEA staff; and clarifies that an applicant who is seeking a career and technical education certificate that does not require a degree from an accredited IHE is exempt from the minimum GPA requirement. The adopted amendment clarifies that a minimum of 12 semester credit hours in the subject-specific content area is required for an applicant who will be seeking an initial certificate in the classroom teacher class of certificate, unless certification is sought for mathematics or science at or above Grade 7; adds a 15 semester credit hour prerequisite for those seeking admission for mathematics or science certification at or above Grade 7, in accordance with the TEC, §21.0441, added by HB 2012, 83rd Texas Legislature, Regular Session, 2013; clarifies that an applicant who has previously enrolled in an EPP may request permission to register for a PACT under procedures developed by TEA staff; and amends the requirement for a basic skills assessment in reading, written communication, and mathematics to reflect current methods of meeting the requirement. In addition, the amendment requires candidates with credentials from outside the United States to meet all of the English language proficiency requirements as specified in 19 TAC §230.11, General Requirements, and clarifies that an applicant who is seeking a career and technical education certificate that does not require a bachelor's degree from an accredited IHE may satisfy the English language proficiency requirement with an associate's degree or high school diploma that was earned at an accredited IHE or an accredited high school in the United States. The adopted amendment also clarifies that an application and either an interview or other screening instrument are required to determine if an applicant's knowledge, experience, skills, and aptitude are appropriate for the certification sought; clarifies that an applicant who has completed a program may enroll in another program for the purpose of receiving approval to take a certification examination; and clarifies that an applicant who has been employed for three years on a probationary certificate or permit may enroll in another program for the purpose of completing a clinical teaching experience.

Contingency Admission

The amendment to 19 TAC §227.15 adds language that requires an EPP to extend an offer of contingency admission in writing and requires an applicant to accept an offer of contingency admission in writing; clarifies the effective date of contingency admission; adds language that, except as allowed in §227.10, prohibits an alternative certification program or post-baccalaureate program from providing coursework, training, and/or examination approval that leads to initial certification in any class of certificate to applicants prior to contingency admission; and clarifies that a semester is based on the common calendar established by the THECB. The adopted amendment also removes the phrase "pre-admission content examination preparation" from 19 TAC §227.15(d), since proposed, because PACT preparation is not included in the EPP requirements in 19 TAC Chapter 228.

Formal Admission

Adopted new 19 TAC §227.17 clarifies and documents when an applicant is considered formally admitted to an EPP; adds language that requires an EPP to extend an offer of formal admission in writing and requires an applicant to accept an offer of formal admission in writing; and adds language that prohibits an alternative certification program or post-baccalaureate program from providing coursework, training, and/or examination approval that leads to initial certification in any class of certificate to applicants prior to formal admission. The adopted amendment also adds the phrase "prior to formal admission" to §227.17(e), since proposed, because it was inadvertently not included in the rule text that was published as proposed in the *Texas Register* though it was addressed in the preamble as published in the *Texas Register*; and removes the phrase "pre-admission content examination preparation" from 19 TAC §227.17(e), since proposed, because PACT preparation is not included in the EPP requirements in 19 TAC Chapter 228.

Incoming Class Grade Point Average

Adopted new 19 TAC §227.19 was added as a result of the TEC, §21.0441, amended by HB 2205, 84th Texas Legislature, Regular Session, 2015. The new section requires the overall GPA of each incoming class admitted by an EPP to be not less than 3.00 on a four-point scale or the equivalent; and clarifies that admitted candidates' GPAs must be from the current accredited IHEs or the IHEs from which the most recent bachelor's degrees or higher were conferred.

Implementation Date

The amendment to 19 TAC §227.20 updates the implementation date to reflect when the rules in Subchapter A, Admission to Educator Preparation Programs, apply to applicants.

Technical Changes

The adopted revisions to 19 TAC Chapter 227, Subchapters A and B, include minor technical edits such as updating cross references and conforming to *Texas Register* style and format requirements.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began November 6, 2015, and ended December 7, 2015. The SBEC also provided an opportunity for registered oral and written comments at the December 11, 2015 meeting in accordance with the SBEC board operating policies and procedures. Following is a summary of the public comments received and corresponding board responses regarding the proposed amendments to 19 TAC §§227.1, 227.5, 227.10, 227.15, 227.20, 227.103, 227.105, and 227.107 and proposed new 19 TAC §227.17 and §227.19.

Comment: Education Career Alternatives Program (ECAP) provided the results of a survey that it distributed to school districts and charter schools in the North Texas region. As a preface to the survey, ECAP stated that EPPs were commissioned to teach pedagogical practices to individuals who already possess content knowledge. ECAP noted that EPPs in Texas are not adequately staffed nor qualified to provide content training and that the proposed 19 TAC §227.15 and §227.17 would prohibit EPPs from admitting candidates who had not already passed the PACT. ECAP further noted that the proposed rules would prohibit an EPP from approving additional areas of certification for admitted candidates because an EPP cannot approve additional certification examinations. In addition, the commenter stated that the proposed revisions would prohibit an EPP from providing PACT preparation prior to admission. Twenty-five indi-

viduals from school districts or charter schools in the North Texas area responded to the survey, and a majority indicated that the proposed rules would be detrimental to staffing and would decrease the percentage of highly qualified teachers. ECAP recommended that proposed §227.15 and §227.17 be tabled.

Board Response: As the comments relate to EPP responsibility for only teaching pedagogical practices to individuals who already possess content knowledge, the SBEC disagreed. The TEC, §21.0443(b), requires that to be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification. With the exception of the Trade and Industrial Education certificates and the Junior Reserve Officer Training Corps certificate, the requirements for an initial classroom teacher certificate require a candidate to pass the appropriate content certification examination(s). Requirements for EPPs are found in 19 TAC Chapter 228. Section 228.20(c) requires EPP accountability for the quality of the candidates the EPP recommends for certification. Section 228.35(a)(1) requires EPP responsibility for ensuring that candidates are effective in the classroom. Section 228.40(a) requires EPP responsibility for preparing candidates for receiving a standard certificate. Most importantly, 19 TAC §228.30(a) requires that the educator standards, which include content knowledge and pedagogical practices, be the curricular basis for all educator preparation.

As the comments relate to the claim that EPPs are not adequately staffed nor qualified to provide content training, the SBEC disagreed. Section 228.20(c) requires the governing body and chief operating officer of an entity approved to deliver educator preparation to provide sufficient support to enable the EPP to meet all standards set by the SBEC. The results of continuous approval reviews by TEA staff have shown that many EPPs are adequately staffed and are qualified to provide content training. If EPP staff feel that they are not adequately staffed or qualified to meet the SBEC standards, the EPP staff should address these issues with their advisory committees, governing bodies, and chief operating officers so that sufficient support can be provided.

As the comments relate to the claim that the proposed amendment to 19 TAC §227.15(d) and proposed new 19 TAC §227.17(e) would prohibit EPPs from admitting candidates who had not already passed the PACT, the SBEC disagreed. Section 227.10(a)(4)(A) and (B) allow an EPP to admit an applicant who has a minimum number of hours of college credit in the subject-specific content area for the certification sought. The proposed rules do not affect this option for demonstrating content knowledge.

As the comments relate to the claim that the proposed amendment to 19 TAC §227.15(d) and proposed new 19 TAC §227.17(e) would prohibit an EPP from approving additional areas of certification for admitted candidates because an EPP cannot approve additional certification examinations, the SBEC disagreed. There is nothing in current rule or the proposed rules that prohibits a candidate from changing from the certification field that the person was originally admitted to a different certification field. TEA staff recommended that an EPP retain documentation in a candidate's file when a candidate requests a change in certification field. The process by which a candidate can change certification fields was discussed as a proposed change to 19 TAC Chapter 228, which was included as a separate item on the December 2015 SBEC agenda.

As the comments relate to prohibiting an EPP from providing PACT preparation prior to admission, the SBEC agreed. Be-

cause PACT preparation is not something that is included in the EPP requirements in 19 TAC Chapter 228, the SBEC took action to remove the phrase "pre-admission content test preparation" from the proposed amendment to 19 TAC §227.15(d) and proposed new §227.17(e).

As the comments relate to tabling the proposed amendment to §227.15 and proposed new §227.17, the SBEC disagreed and took action to adopt the revisions to Chapter 227 with changes.

Comment: One individual and ACT San Antonio commented that the proposed rule actions to 19 TAC §227.15 and §227.17 would prohibit EPPs from providing training or professional development to individuals who are interested in becoming a teacher so that they can decide if teaching is the correct path for them.

Board Response: As the comments relate to an EPP providing coursework and training before contingent admission, the SBEC disagreed. The TEC, §21.0441, requires that the rules of the SBEC must provide that a person is not eligible for admission to an EPP unless the person has met minimum GPA and content knowledge requirements. Therefore, EPPs cannot offer coursework and training that lead to initial certification unless a person is admitted to an EPP. The proposed amendment to 19 TAC §227.15(d) would clarify that EPPs can provide coursework and training after an individual is contingently admitted. As the comments relate to assisting individuals with deciding if teaching is the correct path for them, the proposed amendment to 19 TAC §227.1 would require EPPs to inform all applicants of the admission requirements, the program completion requirements, and the effect of supply and demand on the educator workforce. In addition, the EPP application process that is described in 19 TAC §227.10 should assist individuals with deciding if teaching is the correct path for them.

As the comments relate to an EPP providing coursework and training before formal admission, the SBEC agreed. The phrase "prior to formal admission" was inadvertently not included in proposed new 19 TAC §227.17(e) that was published as proposed in the *Texas Register*. The SBEC took action to add the phrase "prior to formal admission" in proposed new 19 TAC §227.17(e) so that the proposed rule reflects the explanation that was provided at the time the new section was approved for filing as proposed at the October 2015 meeting and the preamble that was published with the rule text in the *Texas Register*. The SBEC also took action to remove the phrase "pre-admission content test preparation" from the proposed amendment to 19 TAC §227.15(d) and proposed new §227.17(e) because PACT preparation is not included in the EPP requirements in 19 TAC Chapter 228.

Comment: Seven individuals and ECAP commented that the proposed rules in 19 TAC §227.15 and §227.17 would make the teaching profession harder to pursue, would increase teacher shortages, and would require schools to employ larger numbers of substitute teachers.

Board Response: As the comments relate to an EPP providing coursework and training before contingent admission, the SBEC disagreed. The TEC, §21.0441, requires that the rules of the SBEC must provide that a person is not eligible for admission to an EPP unless the person has met minimum GPA and content knowledge requirements. Therefore, EPPs cannot offer coursework and training that lead to initial certification unless a person is admitted to an EPP. The proposed amendment to 19 TAC §227.15(d) would clarify that EPPs can provide coursework and training after an individual is contingently admitted. The SBEC

requires in 19 TAC Chapter 228 that EPPs must provide coursework and training for candidates. The SBEC also requires in 19 TAC Chapter 229 that EPPs are accountable for that coursework and training. The SBEC disagreed that adherence to TEC, §21.0441, and current SBEC rules would make the teaching profession harder to pursue, would increase teacher shortages, and would require schools to employ larger numbers of substitute teachers. The proposed rules would not affect an EPP's ability to admit an applicant who meets the minimum content knowledge requirements that include a minimum number of hours of college credit in the subject-specific content area for the certification sought. EPPs will continue to have the ability to grant certification examination approvals after an applicant is admitted to an EPP. EPPs will also continue to have the ability to collaborate with institutions of higher education, education service centers, school districts, and/or businesses to address the content knowledge needs of their candidates.

As the comments relate to an EPP providing coursework and training before formal admission, the SBEC agreed. The phrase "prior to formal admission" was inadvertently not included in proposed new 19 TAC §227.17(e) that was published as proposed in the *Texas Register*. The SBEC took action to add the phrase "prior to formal admission" in proposed new 19 TAC §227.17(e) so that the proposed rule reflects the explanation that was provided at the time the new section was approved for filing as proposed at the October 2015 SBEC meeting and the preamble that was published with the rule text in the *Texas Register*. The SBEC also took action to remove the phrase "pre-admission content test preparation" from the proposed amendment to 19 TAC §227.15(d) and proposed new §227.17(e) because PACT preparation is not included in the EPP requirements in 19 TAC Chapter 228.

Comment: Four individuals, ECAP, and Quality ACT commented that the proposed rules in 19 TAC §227.15 and §227.17 would make it more difficult for schools to hire highly qualified teachers.

Board Response: As the comments relate to an EPP providing coursework and training before contingent admission, the SBEC disagreed. The TEC, §21.0441, requires that the rules of the SBEC must provide that a person is not eligible for admission to an EPP unless the person has met minimum GPA and content knowledge requirements. Therefore, EPPs cannot offer coursework and training that lead to initial certification unless a person is admitted to an EPP. The SBEC disagreed that the proposed rules would make it more difficult for schools to hire highly qualified teachers. The proposed rules would not affect an EPP's ability to admit an applicant who meets the minimum content knowledge requirements that include a minimum number of hours of college credit in the subject-specific content area for the certification sought. EPPs will continue to have the ability to grant certification examination approvals after an applicant is admitted to an EPP. EPPs will also continue to have the ability to collaborate with institutions of higher education, education service centers, school districts, and/or businesses to address the content knowledge needs of their candidates.

As the comments relate to an EPP providing coursework and training before formal admission, the SBEC agreed. The phrase "prior to formal admission" was inadvertently not included in proposed new 19 TAC §227.17(e) rule text that was published as proposed in the *Texas Register*. The SBEC took action to add the phrase "prior to formal admission" in proposed new 19 TAC §227.17(e) so that the proposed rule reflects the explanation that was provided at the time the new section was approved for filing

as proposed at the October 2015 SBEC meeting and the preamble that was published with the rule text in the *Texas Register*. The SBEC also took action to remove the phrase "pre-admission content test preparation" from the proposed amendment to 19 TAC §227.15(d) and proposed new §227.17(e) because PACT preparation is not included in the EPP requirements in 19 TAC Chapter 228.

Comment: One individual, ECAP, and Quality ACT commented that the proposed rules in 19 TAC §227.15 and §227.17 would make it more difficult for candidates to become certified because many of the certification examinations are not given on a daily basis.

Board Response: The SBEC disagreed. The 70 examinations that make up the Texas Educator Certificate Program are administered according to the demand for the examinations and the complexity by which the examinations need to be scored. Twenty-nine percent of the examinations are offered on a continuous basis through computer-based testing. During 2014-2015, 133,639 certification examinations were taken through this method. Forty-seven percent of the examinations are offered seven times a year with the majority of the test dates occurring in the spring and summer. During 2014-2015, 11,908 certification examinations were taken through this method. Ten percent of the examinations are offered three to six times during the year with the majority of the test dates occurring in the spring and summer. During 2014-2015, 6,747 certification examinations were taken through this method. The lowest volume examinations (Master Teacher) and the examinations that are the most complicated to score (Sign Communication and Braille) are only offered two times a year. During 2014-2015, 360 certification examinations were taken through this method. TEA staff monitors the demand for examinations and adjusts the frequency of examination administrations as appropriate. EPPs also have the ability to recommend a candidate for a secondary school probationary certificate if the candidate has twenty-four hours of college credit in the content area with twelve of the hours being upper division.

Comment: Two individuals, ECAP, and ACT San Antonio commented that the proposed rules in 19 TAC §227.15 and 227.17 would restrict the number of people who are eligible to attempt a PACT examination.

Board Response: The SBEC disagreed. The proposed amendment to 19 TAC §227.15 and proposed new §227.17 would not affect an individual's ability to register for a PACT examination through the testing vendor or with TEA staff. The proposed rules also do not affect an EPP's ability to grant certification examination approvals after an applicant is admitted to a program. In addition, the proposed amendment to 19 TAC §227.10 would clarify that an individual who has previously been enrolled in an EPP may register for a PACT examination under procedures developed by TEA staff.

Comment: Eight individuals commented that the proposed rules in 19 TAC §227.15 and §227.17 would prohibit alternative certification programs from preparing educators.

Board Response: As the comments relate to an EPP providing coursework and training before contingent admission, the SBEC disagreed. The TEC, §21.0441, requires that the rules of the SBEC must provide that a person is not eligible for admission to an EPP unless the person has met minimum GPA and content knowledge requirements. Therefore, EPPs cannot offer coursework and training that lead to initial certification unless a per-

son is admitted to an EPP. The proposed amendment to 19 TAC §227.15(d) would clarify that EPPs can provide coursework and training after an individual is contingently admitted.

As the comments relate to an EPP providing coursework and training before formal admission, the SBEC agreed. The phrase "prior to formal admission" was inadvertently not included in proposed new 19 TAC §227.17(e) rule text that was published as proposed in the *Texas Register*. The SBEC took action to add the phrase "prior to formal admission" in proposed new 19 TAC §227.17(e) so that the proposed rule reflects the explanation that was provided at the time the new section was approved for filing as proposed at the October 2015 SBEC meeting and the preamble that was published with the rule text in the *Texas Register*. The SBEC also took action to remove the phrase "pre-admission content test preparation" from the proposed amendment to 19 TAC §227.15(d) and proposed new §227.17(e) because PACT preparation is not included in the EPP requirements in 19 TAC Chapter 228.

Comment: The University of Dallas EPP commented that the proposed rules in 19 TAC §227.15 and §227.17 would have an adverse effect on post-baccalaureate programs because it would not allow transitions from an undergraduate and graduate program at the same institution and it would not allow an individual who graduates with a bachelor's degree from being admitted to the post-baccalaureate program at the same institution.

Board Response: The SBEC disagreed. The proposed amendment to 19 TAC §227.15 and proposed new §227.17 would not prohibit the transition from an undergraduate to a graduate program because if an individual begins his or her educator preparation in an undergraduate program, the individual may be admitted to the entity's post-baccalaureate program for the purpose of completing the program because the undergraduate and post-baccalaureate programs are within the same entity. The proposed rules would also not prohibit an individual who graduates with a bachelor's degree from being admitted to the post-baccalaureate program at the same institution because the coursework and training that was provided by the undergraduate program was for the purpose of the bachelor's degree.

Comment: iteachTEXAS and ECAP commented that the proposed rules in 19 TAC §227.15(d) and §227.17(e) are an overreaching prohibition that would not allow EPPs to work with school districts to meet their unique needs.

Board Response: As the comments relate to an EPP providing coursework and training before contingent admission, the SBEC disagreed. The TEC, §21.0441, requires that the rules of the SBEC must provide that a person is not eligible for admission to an EPP unless the person has met minimum GPA and content knowledge requirements. Therefore, EPPs cannot offer coursework and training that lead to initial certification unless a person is admitted to an EPP. The proposed amendment to 19 TAC §227.15(d) would clarify that EPPs can provide coursework and training after an individual is contingently admitted. The SBEC requires in 19 TAC Chapter 228 that programs must provide coursework and training for candidates and that programs are held accountable for that coursework and training in 19 TAC Chapter 229. The SBEC disagreed that adherence to TEC, §21.0441, and current SBEC rules are an overreaching prohibition that would not allow EPPs to work with school districts to meet their unique needs. The proposed rules would not affect an EPP's ability to admit an applicant who meets the minimum content knowledge requirements that include a minimum number of hours of college credit in the subject-specific content area

for the certification sought. EPPs will continue to have the ability to grant certification examination approvals after an applicant is admitted to an EPP. EPPs will also continue to have the ability to collaborate with institutions of higher education, education service centers, school districts, and/or businesses to address the content knowledge needs of their candidates.

As the comments relate to an EPP providing coursework and training before formal admission, the SBEC agreed. The phrase "prior to formal admission" was inadvertently not included in proposed new 19 TAC §227.17(e) that was published as proposed in the *Texas Register*. The SBEC took action to add the phrase "prior to formal admission" in proposed new 19 TAC §227.17(e) so that the proposed rule text reflects the explanation that was provided at the time the new section was approved for filing as proposed at the October 2015 SBEC meeting and the preamble that was published with the rule text in the *Texas Register*. The SBEC also took action to remove the phrase "pre-admission content test preparation" from the proposed amendment to 19 TAC §227.15(d) and proposed new §227.17(e) because PACT preparation is not included in the EPP requirements in 19 TAC Chapter 228.

Comment: iteachTEXAS commented that an additional clarification should be made to the proposed rules in 19 TAC §227.15(d) and §227.17(e) to require EPPs to notify TEA of the date of contingent and formal admissions within five business days.

Board Response: The SBEC agreed in part. A requirement to notify TEA of the date of contingent and formal admissions within five business days would benefit EPPs, candidates, and TEA staff; however, because this additional clarification may be considered a substantive change at adoption for 19 TAC Chapter 227, this clarification would be added to the proposed reporting requirements in 19 TAC Chapter 229, which was discussed at the December 2015 SBEC meeting.

Comment: ACT San Antonio commented that the proposed rules in 19 TAC Chapter 227 that require documentation of admission offers and acceptance would create additional hurdles to the admission process.

Board Response: The SBEC disagreed. The proposed amendments to 19 TAC §227.15(a)(3) and §227.15(a)(4) and proposed new §227.17(b) and §227.17(c) would require an EPP to extend an offer of admission in writing to an applicant and require an applicant to accept an offer of admission in writing. The offer and acceptance of admission can be accomplished through mail, personal delivery, facsimile, email, or an electronic notification. Many of the issues that EPPs, candidates, and TEA staff have experienced due to the lack of a clear and consistent admission agreement process between EPPs and candidates would be resolved.

Comment: ACT San Antonio commented that formal admission should be defined as when a candidate completes all program requirements and is eligible for an internship or when a candidate secures a teaching position and enrolls in the internship phase of a program.

Board Response: The SBEC disagreed. The TEC, §21.0441, requires that the rules of the Board provide that a person is not eligible for admission to an EPP unless the person has met minimum GPA and content knowledge requirements. The TEC, §21.051, requires that before a candidate for certification can be employed, the candidate must complete at least 15 hours of field-based experience in which the candidate is actively engaged in instructional or educational activities under supervi-

sion. Therefore, EPPs cannot offer coursework, training, and field-based experiences that lead to initial certification unless a person is admitted to an EPP. The proposed amendment to 19 TAC §227.15(d) and proposed new §227.17(e) would clarify that EPPs can provide coursework and training after an individual is contingently or formally admitted.

Comment: The Huston-Tillotson University EPP and iteach-TEXAS commented that the minimum requirements proposed in 19 TAC §227.10 are very acceptable, illustrate that the SBEC is serious about professional credentials, and provides a balanced solution that holds EPPs accountable while allowing EPPs and schools to recruit strong educator candidates.

Board Response: The SBEC agreed.

Comment: The UTeach Program at The University of Texas at Austin commented that the proposed rules do not state that a university undergraduate EPP can count coursework that is provided prior to formal admission to the EPP and were unclear as to how an EPP must determine the admission GPA and as to whether an incoming class was defined as all candidates admitted to an EPP or by programs within an EPP.

Board Response: As the comments relate to an EPP providing coursework and training before contingent admission, the SBEC disagreed. Section 228.35(a)(6) allows an EPP to substitute a candidate's prior or ongoing experience and/or professional training that is directly related to the certificate being sought as long as the experience or training is not also counted as a part of the internship, clinical teaching, or practicum requirements.

As the comments relate to how an EPP may determine an admission GPA, the SBEC offers the following clarification. Each of the methods that an EPP may use to determine an admission GPA, in the proposed amendment to 19 TAC §227.10(a)(3)(A)(i) and (ii), has the word "or" at the end of the phrase. Therefore, an EPP can choose either of the methods.

As the comments relate to how an EPP may determine an admission GPA, the SBEC offers the following clarification. The proposed amendment to 19 TAC §227.5(9) defines *incoming class* as the individuals who are admitted to an EPP and the proposed amendment to 19 TAC §227.5(7) defines *educator preparation program* as the entity that is approved to recommend candidates for certification. Unless a program within an entity has been separately approved by the SBEC to recommend candidates for certification, the incoming class includes all candidates admitted to an entity.

The State Board of Education (SBOE) took no action on the review of the proposed revisions to 19 TAC Chapter 227 at the January 29, 2016 SBOE meeting.

SUBCHAPTER A. ADMISSION TO EDUCATOR PREPARATION PROGRAMS

19 TAC §§227.1, 227.5, 227.10, 227.15, 227.17, 227.19, 227.20

STATUTORY AUTHORITY. The amendments and new sections are adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.031(b), which states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or

renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.044(a), which authorizes the SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; §21.044(g), as amended by Senate Bill (SB) 1296, 84th Texas Legislature, Regular Session, 2015, which requires educator preparation programs to provide the SBEC with certain information; §21.0441, as amended by House Bills (HBs) 2205 and 1300, 84th Texas Legislature, Regular Session, 2015, which requires the SBEC to adopt rules setting certain admission requirements for educator preparation programs (EPPs); §21.049, which authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional EPPs; §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; and §21.051, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate was actively engaged at an approved school in instructional or educational activities under supervision.

CROSS REFERENCE TO STATUTE. The adopted amendments and new sections implement the TEC, §§21.031; 21.044(a) and (g), as amended by SB 1296, 84th Texas Legislature, Regular Session, 2015; 21.0441, as amended by HBs 2205 and 1300, 84th Texas Legislature, Regular Session, 2015; 21.049; 21.050(a); and 21.051.

§227.10. Admission Criteria.

(a) The educator preparation program (EPP) delivering educator preparation shall require the following minimum criteria of all applicants seeking initial certification in any class of certificate, unless specified otherwise, prior to admission to the program:

(1) for an undergraduate university program, an applicant shall be enrolled in an accredited institution of higher education;

(2) for an alternative certification program or post-baccalaureate program, an applicant shall have, at a minimum, a bachelor's degree earned from and conferred by an accredited institution of higher education;

(3) for an undergraduate university program, alternative certification program, or post-baccalaureate program, to be eligible for admission, an applicant into an EPP shall have a grade point average (GPA) of at least 2.5 before admission.

(A) The GPA shall be calculated as follows:

(i) 2.5 on all coursework previously attempted by the person at an accredited institution of higher education:

(I) at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission); or

(II) from which the most recent bachelor's degree or higher from an accredited institution of higher education was conferred (alternative certification program formal admission or post-baccalaureate program formal admission); or

(ii) 2.5 in the last 60 semester credit hours on all coursework previously attempted by the person at an accredited institution of higher education:

(I) at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission); or

(II) from which the most recent bachelor's degree or higher from an accredited institution of higher education was conferred (alternative certification program formal admission or post-baccalaureate program formal admission).

(B) An exception to the minimum GPA requirement may be granted by the program director only in extraordinary circumstances and may not be used by a program to admit more than 10% of any incoming class of candidates. An applicant is eligible for this exception if:

(i) documentation and certification from the program director that an applicant's work, business, or career experience demonstrates achievement equivalent to the academic achievement represented by the GPA requirement; and

(ii) in accordance with the Texas Education Code, §21.0441(b), an applicant must perform at a satisfactory level on an appropriate content matter examination as specified in paragraph (4)(C) and (D) of this subsection for each subject in which the applicant seeks certification prior to admission. Applicants who do not meet the minimum GPA requirement and have previously been admitted into an EPP may request permission to register for an appropriate content matter examination as specified in paragraph (4)(D) of this subsection under procedures approved by Texas Education Agency (TEA) staff.

(C) An applicant who is seeking a career and technical education (CTE) certificate that does not require a degree from an accredited institution of higher education is exempt from the minimum GPA requirement.

(4) for an applicant who will be seeking an initial certificate in the classroom teacher class of certificate, the applicant shall have successfully completed, prior to admission, at least:

(A) a minimum of 12 semester credit hours in the subject-specific content area for the certification sought, unless certification sought is for mathematics or science at or above Grade 7; or

(B) 15 semester credit hours in the subject-specific content area for the certification sought if the certification sought is for mathematics or science at or above Grade 7; or

(C) a passing score on a comparable content certification examination administered by a vendor on the TEA-approved vendor list published by the commissioner of education on the TEA website for the calendar year during which the applicant seeks admission; or

(D) for applicants who have not previously been admitted into an EPP, a passing score on a pre-admission content certification examination administered by a TEA-approved vendor. Applicants who have previously been admitted into an EPP may request permission to register for a pre-admission content examination under procedures approved by TEA staff;

(5) demonstration of basic skills in reading, written communication, and mathematics by meeting one of the requirements established by §4.54 of this title (relating to Exemptions, Exceptions, and Waivers);

(6) demonstration of the English language proficiency skills as specified in §230.11 of this title (relating to General Requirements). An applicant for CTE certification that does not require a bachelor's degree from an accredited institution of higher education may satisfy the English language proficiency requirement with an associate's degree or high school diploma that was earned at an accredited institution of higher education or an accredited high school in the United States;

(7) an application and either an interview or other screening instrument to determine if the EPP applicant's knowledge, experience, skills, and aptitude are appropriate for the certification sought; and

(8) any other academic criteria for admission that are published and applied consistently to all EPP applicants.

(b) An EPP may adopt requirements in addition to and that do not conflict with those explicitly required in this section.

(c) An EPP may not admit an applicant who:

(1) has been reported as completing all EPP requirements by another EPP in the same certification field, unless the applicant only needs certification examination approval; or

(2) has been employed for three years in a public school under a permit or probationary certificate as specified in Chapter 230, Subchapter D, of this title (relating to Types and Classes of Certificates Issued), unless the applicant is seeking clinical teaching that may lead to the issuance of an initial standard certificate.

(d) An EPP may admit an applicant for CTE certification who has met the experience and preparation requirements specified in Chapter 230 of this title (relating to Professional Educator Preparation and Certification) and Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates).

(e) An EPP may admit an applicant who has met the minimum academic criteria through credentials from outside the United States that are determined to be equivalent to those required by this section using the procedures and standards specified in Chapter 245 of this title (relating to Certification of Educators from Other Countries).

§227.15. Contingency Admission.

(a) An applicant may be accepted into an alternative certification program or post-baccalaureate program on a contingency basis pending receipt of an official transcript showing degree conferred, as specified in §227.10(a)(2) of this title (relating to Admission Criteria), provided that:

(1) the applicant is currently enrolled in and expects to complete the courses and other requirements for obtaining, at a minimum, a bachelor's degree at the end of the semester in which admission to the program is sought;

(2) all other admission requirements specified in §227.10 of this title have been met;

(3) the EPP must notify the applicant of the offer of contingency admission in writing by mail, personal delivery, facsimile, email, or an electronic notification; and

(4) the applicant must accept the offer of contingency admission in writing by mail, personal delivery, facsimile, email, or an electronic notification.

(b) The date of contingency admission shall be effective upon the applicant's acceptance of the offer of contingency admission.

(c) An applicant admitted on a contingency basis may begin program training and may be approved to take a certification examina-

tion, but shall not be recommended for a probationary certificate until the bachelor's degree or higher from an accredited institution of higher education has been conferred.

(d) Except as provided by this section, an alternative certification program or post-baccalaureate program, prior to admission on a contingency basis, shall not provide coursework, training, and/or examination approval to an applicant that leads to initial certification in any class of certificate.

(e) The contingency admission will be valid for only the fall, spring, or summer semester for which the contingency admission was granted and may not be extended for another semester. The end of each semester shall be consistent with the common calendar established by the Texas Higher Education Coordinating Board.

§227.17. *Formal Admission.*

(a) For an applicant to be formally admitted to an educator preparation program (EPP), the applicant must meet all the admission requirements specified in §227.10 of this title (relating to Admission Criteria).

(b) For an applicant to be formally admitted to an EPP, the EPP must notify the applicant of the offer of formal admission in writing by mail, personal delivery, facsimile, email, or an electronic notification.

(c) For an applicant to be considered formally admitted to the EPP, the applicant must accept the offer of formal admission in writing by mail, personal delivery, facsimile, email, or an electronic notification.

(d) The date of formal admission shall be effective upon the applicant's acceptance of the offer of formal admission.

(e) Except as provided by §227.15 of this title (relating to Contingency Admission), an alternative certification program or post-baccalaureate program, prior to formal admission, shall not provide coursework, training, and/or examination approval to an applicant that leads to initial certification in any class of certificate.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2016.

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Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

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For further information, please call: (512) 475-1497



SUBCHAPTER B. PRELIMINARY EVALUATION OF CERTIFICATION ELIGIBILITY

19 TAC §§227.103, 227.105, 227.107

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter

21, Subchapter B; and §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and the Texas Occupations Code, §53.105, which specifies that a licensing authority may charge a person requesting an evaluation under the Texas Occupations Code, Chapter 53, Subchapter D, a fee adopted by the authority. Fees adopted by a licensing authority under the Texas Occupations Code, Chapter 53, Subchapter D, must be in an amount sufficient to cover the cost of administering this subchapter.

CROSS REFERENCE TO STATUTE. The adopted amendments implement the TEC, §21.041(b)(1) and (4), and Texas Occupations Code, §53.105.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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State Board for Educator Certification

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For further information, please call: (512) 475-1497



CHAPTER 242. SUPERINTENDENT CERTIFICATE

19 TAC §242.20

The State Board for Educator Certification (SBEC) adopts an amendment to 19 TAC §242.20, concerning provisions for the superintendent certificate. The amendment to §242.20 is adopted with changes to the proposed text as published in the September 4, 2015 issue of the *Texas Register* (40 TexReg 5644). The adopted amendment to 19 TAC §242.20 provides an individual seeking a superintendent certificate the option to substitute managerial experience in a public school district for the requirement of a principal certificate.

REASONED JUSTIFICATION. The SBEC rules in 19 TAC Chapter 242 establish requirements for the issuance and renewal of the superintendent certificate. Section 242.20 currently provides requirements for a superintendent certificate.

In December 2014, Texas Education Agency (TEA) staff held a stakeholder meeting with educators to discuss the rules in 19 TAC Chapter 242. Upon bringing stakeholder recommendations to the SBEC during the March 2015 meeting, the SBEC requested that TEA staff convene an additional stakeholder meeting with business leaders. This meeting was held in June 2015. Both stakeholder groups determined that the rules in 19 TAC Chapter 242 need to be revised and updated to comply with the Texas Education Code (TEC), §21.046(a), which requires candidates for superintendent certification to be allowed to substitute managerial training or experience for at least part of the educational experience, and to allow for a broader pathway to superintendent certification so that the pool of candidates for superintendent certification could include more diverse experiences and skillsets. The SBEC adopted, subject to State Board of Education (SBOE)

review, the recommendations of both stakeholder groups in their October 2015 meeting, and the SBOE subsequently rejected that rule item in their November 2015 meeting with the recommendation that the SBEC reconsider only the recommendations from the first stakeholder meeting. In December 2015, the SBEC revisited the rule item and, consistent with SBOE discussion and action, adopted, subject to SBOE review, the rule revisions that would only allow for the substitution of school district managerial experience for the requirement of the principal certificate.

In 19 TAC §242.20, language has been added to provide for the substitution of managerial experience in a public school district for the requirement of a principal certificate provided that the managerial experience was at least three years in duration; included supervisory or appraisal duties and district-level planning and coordination of programs, activities, or initiatives; and involved either the creation or maintenance of a budget. The amendment also requires the candidate seeking the substitution of managerial experience for principal certification to submit an application to TEA staff so that TEA staff can ensure that the experience meets the requirements specified in the rule.

The adopted amendment to 19 TAC §242.20 broadens the prerequisite experience required of superintendent candidates. The current rule narrowly limits the required experience in education to principal certification, which in turn requires two years of teaching experience. The effect of the adopted amendment is an expansion of the superintendent candidate pool to include those who had not necessarily been teachers or principals but who had management experience in a public school district.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began September 4, 2015, and ended October 5, 2015. The SBEC also provided an opportunity for registered oral and written comments at the October 15, 2015 and December 11, 2015 meetings in accordance with the SBEC board operating policies and procedures. Following is a summary of the public comments received and corresponding board responses regarding the proposed amendment to 19 TAC §242.20.

Comment: Eighteen individuals, the Association of Texas Professional Educators (ATPE), and the Texas Association of School Administrators (TASA) commented that superintendent certification rules should require the attainment of a master's degree as a prerequisite for superintendent certification, as indicated in proposed 19 TAC §242.20(a)(3).

Board Response: The SBEC agreed and took action to remove proposed subsection (b) that would have removed the requirement for a master's degree.

Comment: Twenty-six individuals and the ATPE commented that superintendent certification rules should require experience as a campus principal as a prerequisite for superintendent certification, as indicated in 19 TAC §242.20(a)(4).

Board Response: The SBEC disagreed. Neither current rule nor the proposed amendment requires experience as a principal prior to receiving certification as a superintendent. Current 19 TAC §242.20(4) requires certification as a principal, but not experience as a principal. At the August 2015 SBEC meeting, the SBEC discussed the requirement that a certified superintendent possess certification as a principal. The discussion led to the determination that, although the large majority of school districts would still require and be well served by superintendents that have principal certification, some school districts may require a specific skillset from the superintendent that non-principals could

possess. The SBEC noted that past and current superintendents in certain school districts have demonstrated success without having principal certification.

Comment: Thirty-nine individuals, the Texas American Federation of Teachers (AFT), the Texas State Teachers Association (TSTA) and the ATPE commented that superintendent certification rules should require experience as a classroom teacher as a prerequisite for superintendent certification, which is an implicit requirement for superintendent certification based on the requirement that superintendents must possess principal certification prior to receiving superintendent certification. Section 242.20(4) indicates that a candidate for principal certification must have two creditable years of classroom teaching experience.

Board Response: The SBEC disagreed. At the August 2015 and October 2015 SBEC meetings, the SBEC discussed the implicit requirement that a certified superintendent have teaching experience. The discussion led to the determination that, although the large majority of school districts would still require and be well served by superintendents that have teaching experience, some school districts may require a specific skillset from the superintendent that non-teachers could possess. The SBEC noted that past and current superintendents in certain districts have demonstrated success without having classroom teaching experience.

Comment: The Texas Classroom Teachers Association (TCTA) commented that the amendment to 19 TAC §242.20(a)(5), as proposed, would satisfy the statutory requirement of the TEC, §21.046(a), indicating that a candidate for superintendent certification must be able to substitute managerial experience for a part of the educational experience requirements.

Board Response: The SBEC agreed.

Comment: The TCTA commented that the amendment to 19 TAC §242.20(b), as proposed, does not satisfy the requirements of TEC, §21.046(a), indicating that a candidate for superintendent certification must be able to substitute managerial experience for a part of the educational experience requirements.

Board Response: The SBEC disagreed. Proposed 19 TAC §242.20(b) was not intended to satisfy the requirement of the TEC, §21.046(a), but would have been discretionary. Instead, proposed 19 TAC §242.20(a) was intended to implement the TEC, §21.046(a). The SBEC took action to remove proposed §242.20(b) from the adopted rule. Section 242.20, as adopted, is intended to fulfill the requirements of TEC, §21.046(a).

Comment: Five individuals, the TASA, and the Texas Council of Professors of Educational Administration commented in support of the amendment to 19 TAC §242.20(a), as proposed, but do not support the amendment to 19 TAC §242.20(b), as proposed, which could potentially allow an individual to become a certified superintendent without a master's degree or any experience in education. The commenters indicated that an individual should be able to substitute three years of managerial experience in Kindergarten-Grade 12 (K-12) public education for the principal certification requirement in 19 TAC §242.20(a)(4), but that no individual should be allowed to earn superintendent certification without a master's degree and significant experience in education as evidenced through either the principal certificate or the substitution of three years of K-12 public education management experience in lieu of the principal certificate.

Board Response: The SBEC agreed and took action to remove proposed 19 TAC §242.20(b).

Comment: The TCTA commented that the amendment to 19 TAC §242.20(b)(1), as proposed, does not comply with the statutory requirements of the TEC, §21.003(c), which prevents a school district from hiring an uncertified superintendent without a waiver from the commissioner of education.

Board Response: The SBEC disagreed that the proposed amendment violates TEC, §21.003(c). The proposed amendment would have set out new requirements for superintendent certification; candidates who meet the requirements for superintendent certification do not need to seek a waiver under TEC, §21.003(c). The SBEC has the authority to set certification requirements of superintendents under TEC, §21.041, and a waiver from the commissioner of education is only required under TEC, §21.003(c), when a candidate does not meet the requirements for certification. The SBEC voted to remove proposed §242.20(b). Candidates will have to seek a waiver from the commissioner if an individual lacks the qualifications required under §242.20, as adopted, in accordance with TEC, §21.003(c).

Comment: The TCTA commented that the amendment to 19 TAC §242.20(b), as proposed, should include a requirement that a school board post public notice of the reasons why the school board intends to hire the nontraditional candidate for the position of superintendent.

Board Response: The SBEC agreed that public notice would be appropriate under those conditions. The SBEC voted to remove proposed §242.20(b), however, so no such public notice is necessary in the amendment as adopted.

Comment: The TCTA commented that the amendment to 19 TAC §242.20(b), as proposed, should include a requirement to seek approval from the commissioner of education prior to a school district hiring a nontraditional candidate for superintendent.

Board Response: The SBEC neither agreed nor disagreed because the term "nontraditional" is vague. The SBEC voted to remove proposed §242.20(b). As a result, an individual has to seek a waiver from the commissioner if an individual lacks the qualifications required under §242.20, as adopted.

Comment: One individual and the ATPE commented that no amendment needs to be made to 19 TAC §242.20 because the process by which the commissioner of education can grant a waiver to the requirement that a school district hire a certified superintendent, in accordance with the TEC, §21.003(c), provides an already established and preferable pathway to allowing school districts to hire nontraditional superintendents.

Board Response: The SBEC disagreed. Individuals working as a superintendent through the commissioner's waiver authority in TEC, §21.003(c), are not required by rule to enter into and complete a superintendent preparation program or pass the superintendent certification examination. In addition, if a current superintendent working under a waiver does not have the appropriate prerequisites for earning a standard superintendent certificate, specifically the requirement for a master's degree in 19 TAC §242.20(3) or the principal's certificate in 19 TAC §242.20(4), then that individual is categorically barred from completing a superintendent preparation program and taking the superintendent certification examination due to current rule.

Comment: Eight individuals commented that the SBEC should not weaken standards for becoming a certified superintendent.

Board Response: The SBEC is unable to respond to these comments due to their lack of specificity and vague nature.

Comment: Four individuals and iteachTexas commented that they support the amendment to 19 TAC §242.20 as published as proposed.

Board Response: As it relates to substituting managerial experience in a public school district for the requirement of a principal certificate, the SBEC agreed. As it relates to a school district's ability to hire a superintendent regardless of a candidate's background, the SBEC disagreed. The SBEC determined that a candidate should have at least three years of managerial experience in a public school district or should have a principal's certificate in order to earn a standard superintendent certificate.

The SBOE took no action on the review of the proposed amendment to 19 TAC §242.20 at the January 29, 2016 SBOE meeting.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and §21.046(a), which states that the qualifications for superintendent must permit a candidate for certification to substitute management training or experience for part of the educational experience.

CROSS REFERENCE TO STATUTE. The adopted amendment implements the TEC, §§21.003(a), 21.040(4), 21.041(b)(2)-(4), and 21.046(a).

§242.20. *Requirements for the Issuance of the Standard Superintendent Certificate.*

To be eligible to receive the standard Superintendent Certificate, a candidate must:

- (1) satisfactorily complete an examination based on the standards identified in §242.15 of this title (relating to Standards Required for the Superintendent Certificate); and
- (2) successfully complete a State Board for Educator Certification-approved superintendent preparation program and be recommended for certification by that program; and
- (3) hold, at a minimum, a master's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and
- (4) hold, at a minimum, a principal certificate or the equivalent issued under this title or by another state or country; or
- (5) have at least three creditable years of managerial experience in a public school district.
 - (A) The managerial experience must include responsibility for:
 - (i) supervising or appraising faculty or staff;

(ii) conducting district-level planning and coordination of programs, activities, or initiatives; and

(iii) creating or maintaining a budget.

(B) The candidate must submit an application to Texas Education Agency (TEA) staff for the substitution of managerial experience as defined in this paragraph. The TEA staff will review the application and will notify the applicant, in writing, of approval or denial within 60 calendar days from date of receipt.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

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State Board for Educator Certification

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For further information, please call: (512) 475-1497



TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 129. INCOME BENEFITS-- TEMPORARY INCOME BENEFITS

28 TAC §129.3, §129.11

The Texas Department of Insurance, Division of Workers' Compensation (division) adopts amendments to 28 TAC §129.3 and §129.11, concerning temporary income benefits (TIBs). The amended sections are adopted without changes to the proposed text as published in the October 9, 2015, issue of the *Texas Register* (40 TexReg 7043). No request for a public hearing was submitted to the division. An informal working draft of amended 28 TAC §129.3 and §129.11 was posted on the division's website on June 8, 2015.

The public comment period closed on November 9, 2015. The division made no changes in response to public comments.

The division adopts non-substantive amendments throughout the rule text to conform to agency style. The division deleted the word "Commission," added the word "division," and added the word "insurance" before the word "carrier(s)." The division also relettered and renumbered rule text.

In accordance with Government Code §2001.033, the division's reasoned justification for these rules is set out in this order, which includes the preamble. The following paragraphs include a detailed section-by-section description and reasoned justification of all amendments to 28 TAC §129.3 and §129.11.

Amendments to §129.3 and §129.11 are necessary to implement Senate Bill (SB) 901, 84th Legislature, Regular Session (2015), which amends Labor Code §408.103. Labor Code §408.103

provides the method for calculating the amount of TIBs an injured employee is entitled to receive. SB 901 increased the hourly wage that qualifies an injured employee to be paid TIBs at 75% of the employee's pre-injury average weekly wage for the first 26 weeks of the injured employee's disability. SB 901 increased the qualifying wage from less than \$8.50 an hour to less than \$10 an hour for workers' compensation claims with a date of injury on or after September 1, 2015 under Labor Code §408.103(a)(2). Before SB 901, in order to be eligible for the higher TIBs rate of 75% of the pre-injury average weekly wage for the first 26 weeks of disability, an injured employee had to earn less than \$8.50 an hour. Under SB 901, an injured employee has to earn less than \$10.00 an hour in order to qualify for the higher TIBs rate of 75% of the pre-injury average weekly wage for the first 26 weeks of the injured employee's disability. Amended §129.3 and §129.11 only reflect the amount of statutory TIBs provided by the SB 901 amendments to Labor Code §408.103(a) and do not add any new requirements.

The division also deleted §129.11(f) because the "January 1, 2000" applicability date is no longer relevant. At this point in time all agreements made under §129.11 for monthly payment of TIBs under the provisions of the Act would automatically be entered into after January 1, 2000. Further, any injured employees whose benefits began to accrue prior to January 1, 2000 would no longer be eligible for TIBs under Labor Code §408.083.

Amended §129.3.

Amended §129.3(b) and §129.3(f)(2) increase the hourly wage that qualifies an injured employee to be paid the higher TIBs rate of 75% of the employee's pre-injury average weekly wage for the first 26 weeks of disability. The qualifying wage increased from less than \$8.50 an hour to less than \$10 an hour for workers' compensation claims with a date of injury on or after September 1, 2015. The amendments align the division's rules regarding the calculation and payment of TIBs with statutory changes provided in Labor Code §408.103(a).

Amended §129.3(b) and §129.3(f)(1) clarify that the \$8.50 an hour wage rate still applies to workers' compensation claims with a date of injury before September 1, 2015. The amendments reflect the effective date of Labor Code §408.103(a) as amended by SB 901 and are necessary for ease of stakeholder compliance. Claims that have not yet been brought with dates of injury before September 1, 2015, and claims that were already receiving TIBs before September 1, 2015, will continue to use the \$8.50 an hour wage rate to calculate TIBs.

Amended §129.11.

Amended §129.11(b)(2) increases the hourly wage that qualifies an injured employee to be paid at the higher TIBs rate of 75% of the employee's pre-injury average weekly wage for the first 26 weeks of disability. The qualifying wage increased from less than \$8.50 an hour to less than \$10 an hour for workers' compensation claims with a date of injury on or after September 1, 2015. The amendment aligns the division's rules regarding the calculation and payment of TIBs with statutory changes provided by Labor Code §408.103(a).

Amended §129.11(b)(1) clarifies that the \$8.50 an hour wage rate still applies to workers' compensation claims with a date of injury before September 1, 2015. The amendments reflect the effective date of Labor Code §408.103(a) as amended by SB 901 and are necessary for ease of stakeholder compliance. Claims that have not yet been brought with dates of injury before September 1, 2015, and claims that were already receiving TIBs

before September 1, 2015, will continue to use the \$8.50 an hour wage rate to calculate TIBs.

The division deleted §129.11(f), which stated that §129.11 only applied to agreements entered into on or after January 1, 2000, for payment of TIBs under the provisions of the Act. Section 129.11(f) implemented House Bill 2510, 76th Legislature, Regular Session (1999), which amended Section Labor Code 408.081 to allow monthly payments of income benefits by agreement. The "January 1, 2000" date was relevant when §129.11 was adopted because §129.11 became effective December 26, 1999. However, at this point in time, all agreements made under §129.11 for monthly payment of TIBs under the provisions of the Act would automatically be entered into after January 1, 2000. Further, any injured employees whose benefits began to accrue prior to January 1, 2000 would no longer be eligible for TIBs under Labor Code §408.083.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: Commenter expresses its support for the proposed amendments.

Division Response: The division appreciates the supportive comment.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: The Office of Injured Employee Counsel

For with changes: None

Against: None

The amendments are adopted under Labor Code §§402.00128, 402.021, 402.061, and 408.103. Section 402.00128 lists the general powers of the commissioner, including the power to hold hearings. Section 402.021 establishes the basic goals and legislative intent of the workers' compensation system, including the goal that the system must provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective. Section 402.061 requires the division to adopt rules necessary for the implementation and enforcement of the Texas Workers' Compensation Act. Section 408.103 provides that the amount of TIBs is equal to: (1) 70% of the amount computed by subtracting the employee's weekly earnings after the injury from the employee's average weekly wage; or (2) for the first 26 weeks, 75% of the amount computed by subtracting the employee's weekly earnings after the injury from the employee's average weekly wage if the employee earns less than \$10 an hour.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 2. CHRONIC WASTING DISEASE - MOVEMENT OF DEER

31 TAC §65.94

The Texas Parks and Wildlife Commission (Commission), in a duly noticed meeting on January 21, 2016, adopted new §65.94 concerning Chronic Wasting Disease - Deer Management Permit Provisions without changes to the proposed text as published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9086).

The new rule is constituted as part of Subchapter B, Division 2, Chronic Wasting Disease - Movement of Deer. The department wishes to emphasize that the new rule is an interim replacement for current §65.94, adopted on an emergency basis on October 5, 2015, and published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7305), and extended by executive order dated January 28, 2016 (to be published in the February 12, 2016, issue of the *Texas Register*), which is necessary to maintain regulatory continuity for the duration of the 2015-2016 deer season and the period immediately thereafter. Based on additional information from the ongoing epidemiological investigation, disease surveillance data collected from captive and free ranging deer herds, guidance from the Texas Animal Health Commission, and input from stakeholder groups, the department intends to review the interim rule, along with interim rules governing deer breeder permits and rules regarding permits to Trap, Transport and Transplant (Triple T) deer following the close of the deer season and present the results of that review to the Commission at its March 2016 meeting for possible modifications.

The new rule is part of a comprehensive regulatory response intended to increase the probability of detecting chronic wasting disease (CWD) if a deer infected with CWD is released from a DMP facility. The new rule was developed in cooperation with the department, the Texas Animal Health Commission (TAHC), and other stakeholders (including veterinarians, epidemiologists, resource managers, and landowners) to protect susceptible species of exotic and native wildlife from CWD. TAHC is the state agency authorized to manage "any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, regardless of whether the disease is communicable, even if the agent of transmission is an animal species that is not subject to the jurisdiction" of TAHC. Tex. Agric. Code §161.041(b).

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a transmissible spongiform encephalopathy (TSE), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE) in cattle, and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. There is no scientific evidence to indicate that CWD is transmissible to humans. What is known is that CWD is invariably fatal, and is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease in free-ranging populations has been correlated to deer population declines, and human dimensions research suggests that hunters will avoid areas of high CWD prevalence. The implications of CWD to the multi-billion dollar ranching, hunting, and wildlife management economies in Texas are significant, unless it is contained and controlled.

Under Parks and Wildlife Code, Chapter 43, Subchapters R and R-1, and Deer Management Permit (DMP) regulations for white-tailed deer at 31 TAC Chapter 65, Subchapter D, the department may allow the temporary possession of free-ranging white-tailed or mule deer for breeding purposes within an enclosure on property surrounded by a fence capable of retaining deer. At the current time, there are no rules authorizing DMP activities for mule deer.

In addition to authorizing the temporary possession of free-ranging white-tailed deer for breeding purposes, department regulations authorize the introduction of a buck deer from a deer breeding facility into a DMP facility for breeding purposes. Deer breeders are permitted under Parks and Wildlife Code, Chapter 43, Subchapter L and 31 TAC Chapter 65, Subchapter T. The current rules provide, among other things, that a buck deer introduced to a DMP pen from a deer breeding facility may be liberated from the DMP pen to the surrounding or adjacent high-fenced acreage identified in the deer management plan associated with the DMP facility, returned to the deer breeding facility from which the buck deer was transferred, or transferred to another deer breeding facility. All other deer introduced to a DMP pen, whether by trapping from a free-ranging herd or transfer from a deer breeding facility, must be liberated from the DMP enclosure by a date specified by the department in the DMP permit.

The department has been concerned for over a decade about the possible emergence of CWD in free-ranging and captive deer populations in Texas, and has engaged in several rulemakings over the years to address the threat posed by CWD. In 2005, the department closed the Texas border to the entry of out-of-state captive white-tailed and mule deer and increased regulatory requirements regarding disease monitoring and record keeping. The closure of Texas to out-of-state captive white-tailed and mule deer was updated, effective in January 2010, to address other disease threats to white-tailed and mule deer (35 TexReg 252). Prior to 2012, CWD had not been known to exist in Texas; however, on July 10, 2012, the department confirmed that two free-ranging mule deer sampled in the Texas portion of the Hueco Mountains tested positive for CWD. In response, the department and the Texas Animal Health Commission (TAHC) convened the CWD Task Force, comprised of wildlife-health professionals and cervid producers, to advise the department on the appropriate regulatory and policy measures to be taken to protect white-tailed and mule deer in Texas. Based on recommendations from the CWD Task Force, the department subsequently adopted new rules in 2013 (37 TexReg 10231) to implement a CWD containment strategy in far West Texas. The rules among other things require deer harvested in a specific geographical

area to be presented at designated check stations to be tested for CWD.

On June 30, 2015, the department received confirmation that a two-year-old white-tailed deer held in a deer breeding facility in Medina County ("index facility") had tested positive for CWD. Subsequent testing confirmed the presence of CWD in additional white-tailed deer at the index facility. The source of the CWD at the index facility is unknown at this time. Within the last five years, the index facility accepted deer from 30 other Texas deer breeding facilities and transferred 835 deer to 147 separate sites (including 96 deer breeding facilities, 46 release sites, and three Deer Management Permit (DMP) facilities in Texas, as well as two destinations in Mexico). The department estimates that in the past five years, more than 728 locations in Texas (including 384 deer breeding facilities) either received deer from the index facility or received deer from a deer breeding facility that had received deer from the index facility. CWD has subsequently been detected in an additional deer breeding facility.

In response, the department engaged in a vigorous effort to involve and solicit input from other regulatory agencies, various stakeholder groups, and the regulated community to develop a regulatory response that both discharged the department's duty to protect the wildlife resources of the state for the enjoyment of the people and to the greatest extent possible minimized disruption to the regulated community. As a result of that effort, the department on August 18, 2015, adopted emergency rules governing deer breeder permits (40 TexReg 5566), which were extended for an additional 60 days on December 1, 2015 (41 TexReg 9), and subsequently replaced by interim rules adopted by the commission on November 5, 2016, to be published in the February 5, 2016, issue of the *Texas Register*, and taking effect February 2, 2016.

Those rules (§§65.90 - 65.93 of this subchapter, or "CWD deer breeder rules") address CWD testing requirements and movement restrictions for white-tailed deer and mule deer held under the authority of deer breeder permits issued by the department. The rules set forth specific CWD test requirements for deer breeders, which would have to be satisfied in order to transfer deer to other deer breeders, DMP facilities, or for purposes of release. The CWD deer breeder rules also impose CWD test requirements on sites where certain breeder deer are liberated (release sites). The CWD deer breeder rules create a tiered system of testing requirements based on CWD monitoring and the performance of required testing, and thus represent a level of risk of transmission of CWD for each deer breeding facility and release site. The level of risk is also based on whether the facility contains or is connected to exposed animals.

Epidemiological science dictates that a population receiving individuals from a higher risk population is itself at greater risk. Therefore, the CWD deer breeder rules address transfers from higher risk to lower risk populations by requiring the receiving deer breeding facility to assume the status of the originating facility or release site to comply with the testing requirements associated with the status of the originating facility, if the status of the originating facility is lower than the status of the receiving facility. Because deer from deer breeding facilities and release sites may be introduced into a DMP facility and then either released or returned to a breeding facility, it is necessary to identify how DMP facilities are impacted by the status level of breeding facilities and release sites. The level of risk is based on the degree of testing and exposure to CWD-positive or CWD-exposed animals.

The department notes for purposes of clarification that the provisions of §§65.90 - 65.93 of this subchapter also apply to the new rule. The applicable provisions would include, for example, the definitions in §65.90 of this subchapter and the required testing performance for the categories and classes of breeding facilities and release sites established in §§65.90 - 65.93 of this subchapter.

As noted previously, the new rule replace the emergency rule adopted on October 5, 2016, and extended for an additional 60 days on December 1, 2015 (41 TexReg 9). The new rule differs from the emergency rule as follows:

1. In subsection (a)(1) of the emergency rule, a DMP facility is described as "a property (including the pen in which deer are temporarily detained for breeding purposes and the high-fenced acreage to which the deer are released)." This is technically incorrect. In TWIMS (defined in §65.90 of this title as the "department's Texas Wildlife Information Management Services (TWIMS) online application"), each DMP property gets one facility identification for the enclosure (pen) in which deer are temporarily detained and one facility identification for surrounding acreage to which the deer are released. To avoid confusion, the new rule establishes that the word "facility" as used in the rule text means the DMP pen.

2. In subsection (b) of the emergency rule, the department set forth the various requirements and restrictions for Level 2 and Level 3 DMP facilities. Level 1 DMP facilities were not addressed because the Level 1 DMP category is a default value, consisting of all DMP facilities that either do not receive breeder deer at all or received breeder deer solely from TC 1 breeding facilities (and did not receive any deer from a Class II or Class III release site). As a result, the acreages to which deer are released from those facilities are Class I release sites and no CWD testing is required under §§65.90 - 65.93 of this subchapter. Therefore, to ensure clarity, subsection (b)(1) provides that a Level 1 DMP facility is a DMP facility that is not a Level 2 or 3 DMP facility.

3. Subsection (b)(4) of the emergency rule imposed tagging requirements for deer introduced to a Level 3 DMP facility or released on a Class III release site. The department has determined that because paragraphs (1) - (3), (5), and (6) address the assignment of DMP category designations, paragraph (4) interrupts that process, since it addresses a different topic; therefore, in the new rule the tagging requirements from subsection (b)(4) of the emergency rule are designated as subsection (b)(8).

New §65.94(a) sets forth two general provisions.

New §65.94(a)(1) identifies exactly what is meant by "DMP facility." A DMP facility is an enclosure in which deer are temporarily detained for breeding purposes permitted under the provisions of Parks and Wildlife Code, Subchapter R or R-1 and Subchapter D of this chapter (relating to Deer Management Permit (DMP)). The provision is necessary in order to prevent any ambiguity arising from the use of the term "DMP facility."

New §65.94(a)(2) defines "status" as "the level of testing required by this division for any facility registered in TWIMS (deer breeding facility, trap site, release site, or DMP facility)." The definition of "status" is necessary because the status of any given facility determines the testing and movement requirements that apply to the facility and because it is necessary to clarify that the term applies to all types of permits authorizing the possession of live deer. The new rule also establishes that the highest status for DMP facilities is Level 1 and the lowest status is Level 3, which is necessary to prevent potential misinterpretation. The

designation of DMP facility status will also provide consistency with the provisions of §§65.90 - 65.93 of this subchapter, regarding Chronic Wasting Disease - Movement of Breeder Deer, which designate a Transfer Category (TC) status (TC 1, TC 2, TC 3) for deer breeding facilities and a status for release sites (Class I, II, III). Under §§65.90 - 65.93 of this subchapter, the lower number is the higher status. For example, for deer breeding facilities, a TC 1 is the highest status. For release sites, Class I is this highest status.

New §65.94(b) sets forth several provisions specific to the acquisition and transfer of deer for DMP purposes.

New §65.94(b)(1) - (8) set forth the status (and therefore, the testing requirements) for release sites for deer from DMP facilities based on the status of the source of deer obtained for DMP purposes.

New subsection (b)(1) stipulates that a DMP facility that is not a Level 2 or Level 3 DMP facility is a Level 1 DMP facility. Because the status of a deer breeding facility or a release site is not impacted by receiving deer from a Level 1 DMP facility, no additional provisions are needed to address the impact of deer being held in a Level 1 DMP facility.

New subsection (b)(2) stipulates that a DMP facility that receives deer from a Class II release site or TC 2 breeding facility is a Level 2 DMP facility, unless the DMP facility receives deer from a TC 3 breeding facility or Class III release site.

New subsection (b)(3) stipulates that a DMP facility receiving deer from a TC 3 breeding facility or Class III release site is a Level 3 DMP facility.

New subsection (b)(4) stipulates that if a breeder deer is transferred from a TC 3 breeding facility to a Level 1 or 2 DMP facility, the DMP facility immediately becomes a Level 3 DMP facility and the release site to which the deer are liberated from the DMP pen becomes a Class III release site beginning on the Saturday nearest to September 30 of the following year.

New subsection (b)(5) provides that if a breeder deer is transferred from a TC 2 breeding facility to a Level 1 DMP facility, the DMP facility immediately becomes a Level 2 DMP facility and the release site to which deer are liberated from the DMP facility becomes a Class II release site beginning on the Saturday nearest to September 30 of the following year (the first day of lawful deer hunting), unless the release site is or becomes a Class III release site pursuant to other provisions of this division.

New subsection (b)(6) provides that if a breeder deer is transferred to a deer breeding facility from a DMP facility of lower status, the breeding facility receiving the breeder deer automatically assumes the numeric status of the DMP facility. For example, if a breeder deer is transferred to a TC 2 breeding facility from a Level 3 DMP facility, the deer breeding facility becomes a TC 3 breeding facility.

New subsection (b)(7) provides that a DMP facility automatically becomes a Level 3 DMP facility if deer are introduced to the DMP facility from a Tier 1 facility (a Tier 1 facility is a facility that has a direct connection to a CWD-positive facility, and is defined in §65.90(21) of this subchapter).

New §65.94(b)(8) prohibits the introduction of a breeder deer into a Level 3 DMP facility unless the deer is tagged, prior to leaving the originating facility, by attaching a button-type RFID or NUES tag approved by the department to one ear. (RFID and NUES ear tags are defined in current §65.91.) New §65.94(b)(8) also

prohibits the release of a breeder deer onto a Class III release site unless the deer is tagged, prior to leaving the originating facility, by attaching a button-type RFID or NUES tag approved by the department to one ear. A Level 3 DMP facility is the highest risk DMP facility. Similarly, deer within a Class III release site are at a higher risk for CWD. Therefore, the department believes that breeder deer introduced into a Level 3 DMP facility or released onto a Class III site should be readily identifiable for purposes of subsequent CWD testing. Therefore, the proposed new rule requires such deer to be ear-tagged prior to release.

The department received three comments opposing adoption of the proposed rule. All three commenters provided a reason or rationale for opposing adoption. The comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that deer breeding should be prohibited. The department neither agrees nor disagrees with the comment and responds that the comment is not germane because the rule does not regulate deer breeders. To the extent that the commenter is referring to the relationship between deer breeding and DMP activities, the department disagrees and responds that deer breeding and DMP activities are both authorized by the Texas Parks and Wildlife Code. No changes were made as a result of the comment.

One commenter opposed adoption and stated opposition to deer ranching/farming. The department neither agrees nor disagrees with the comment and responds that the comment is not germane because the rule does not regulate deer breeders. To the extent that the commenter is referring to DMP activities, the department disagrees and responds that DMP activities are authorized by the Texas Parks and Wildlife Code. No changes were made as a result of the comment.

One commenter opposed adoption and stated that as a Class II release site owner, "the restrictions are detrimental," because they cause property values to decline and prevent the commenter from selling deer hunts profitably. The department neither agrees nor disagrees with the comment and responds that the comment is not germane because the rule does not regulate release sites other than those areas to which deer are released from a DMP pen. To the extent the commenter is referring to the release of deer following DMP activities, the department disagrees with the comment and responds that since a deer infected with CWD may not display symptoms of the disease for several years, the ability of the department to identify facilities directly impacted (i.e., facilities that received deer from the index facility, referred to as "Tier 1 facilities") does not eliminate the need to test deer at release sites that receive deer from a DMP facility that had received deer from a TC 2 breeding facility. A release site is designated as a Class II release site on the basis of increased risk of containing exposed deer, specifically, by receiving deer from a TC 2 breeding facility (under the interim CWD breeder rules) or from a Level 2 DMP facility under the rule as adopted. Under the rule as adopted, a DMP facility becomes a Level 2 DMP facility if it receives deer from a TC 2 breeding facility. TC 2 breeding facilities do not have a testing history that provides sufficient confidence that CWD does not exist in those facilities; therefore, testing of hunter harvested deer on Class II release sites is necessary in order to establish additional confidence that CWD was not introduced from a TC 2 deer breeding or Level 2 DMP facility.

The department received two comments supporting adoption of the rule as proposed.

No groups or associations commented on the proposed rule.

The new rule is adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure, and Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1), and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600464

Ann Bright

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Texas Parks and Wildlife Department

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Proposal publication date: December 18, 2015

For further information, please call: (512) 389-4775



PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 523. AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

31 TAC §523.5

The Texas State Soil and Water Conservation Board (State Board) adopts amendments to §523.5, Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality. The amendments are adopted with changes to the proposed text as published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9099). New §523.5(b) concerns the agency's interaction and coordination with Texas Commission on Environmental Quality (TCEQ) in the form of a Memorandum of Understanding (MOU) as a rule. New §523.5(b) outlines the agency's administration of agricultural and silvicultural water quality and the agency's interaction and coordination with the Texas Commission on Environmental Quality (TCEQ) in the form of an MOU.

Section 523.5(a) is amended to show it will become a subsection (a) rather than being an implied (a). The language of subsection (a) continues to state the Texas State Soil and Water Conservation Board may enter into and maintain a Memorandum of Understanding with the Texas Commission on Environmental Quality which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

A new subsection (b) was added to §523.5 to state it is the Adoption of Memoranda of Understanding between the Texas State Soil and Water Conservation Board and Texas Commission on Environmental Quality.

New subsection 523.5(b)(1) states this rule contains the memorandum of understanding ("MOU") between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality, which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

New subsection (b)(1)(A) states Whereas, the Texas State Soil and Water Conservation Board (the Board) is the lead agency in this state for planning, management, and abatement of agricultural and silvicultural nonpoint source pollution; and

New subsection (b)(1)(B) states Whereas, the Board shall represent the State before the United States Environmental Protection Agency (EPA), or other federal agencies on all matters relating to the planning, management, and abatement of agricultural and silvicultural nonpoint source pollution abatement; and

New subsection (b)(1)(C) states Whereas, for purposes of this MOU, the Board is responsible for nonpoint source pollution abatement and prevention activities on all agricultural and silvicultural land as required by Texas Water Code §26.1311; and

New subsection (b)(1)(D) states Whereas, the Board has established and implemented a water quality management plan (WQMP) certification program, in accordance with Texas Agriculture Code §201.026(g) for agricultural and silvicultural lands; and

New subsection (b)(1)(E) states Whereas, the Texas Commission on Environmental Quality (the Commission) is the state agency with primary responsibility for implementing the constitution and laws of the State related to the quality of water and air; and

New subsection (b)(1)(F) states Whereas, the Commission shall coordinate all its activities related to this MOU with the Board; and

New subsection (b)(1)(G) states Whereas, consistent with the intent of Federal Clean Water Act §319, the Board and the Commission are committed to coordinate and jointly administer the development and implementation of the Texas Nonpoint Source Management Program; and

New subsection (b)(1)(H) states Whereas the Board and the Commission are independently and directly awarded equal halves of the annual Federal Clean Water Act §319 grant program for nonpoint source pollution by the EPA, both agencies independently coordinate and administer the preparation of work projects under the grant; and

New subsection (b)(1)(I) states Whereas, for the purpose of this MOU, the Commission is responsible for the enforcement of all laws of the State related to water and air quality including point source and nonpoint source pollution regulations, including agricultural and silvicultural lands; and

New subsection (b)(1)(J) states Whereas, consistent with Texas law and public policy, the Board and Commission mutually desire to protect and maintain a high quality environment and the health of the people of the State; and

New subsection (b)(2) will begin the Memorandum of Agreement by stating Now, the Parties, agree as follows:

New subsection (b)(2)(A) is a statement that introduces a list of items the (TCEQ) Commission agrees to carry out.

New subsection (b)(2)(A)(i) states TCEQ will coordinate and administer the preparation of grant work projects for the Federal Clean Water Act §319 grant program that primarily target nonpoint source pollution from sources other than agriculture and silviculture.

New subsection (b)(2)(A)(ii) states TCEQ will execute cooperative agreements, associated amendments, grant awards, and contracts related to grant work projects coordinated and administered by the Commission. For those grant work projects, the Commission is independently responsible for monitoring, implementation, and providing EPA with the required financial and programmatic reporting information.

New subsection (b)(2)(A)(iii) states TCEQ will implement the provisions of the EPA approved Texas Nonpoint Source Management Program for non-agricultural/silvicultural surface and ground water nonpoint source pollution.

New subsection (b)(2)(A)(iv) states TCEQ will develop and maintain state guidance for all nonpoint source pollution abatement projects other than agricultural or silvicultural nonpoint source pollution projects as described by this MOU.

New subsection (b)(2)(A)(v) states TCEQ will coordinate with the Board those compliance and enforcement actions dealing with agricultural and silvicultural pollution.

New subsection (b)(2)(A)(vi) states that TCEQ will provide to the Board all current forms, timetables, procedural rules, and any policy documents of the Commission for addressing and processing citizen complaints related to agricultural and silvicultural pollution.

New subsection (b)(2)(A)(vii) states TCEQ will refer to the Board complaints concerning violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, except for any person referred to the Commission for enforcement action pursuant to subsection (b)(2)(A)(ix).

New subsection (b)(2)(A)(viii) states TCEQ will retain the responsibility for pursuing any enforcement action related to a violation of state environmental laws and regulations, inclusive of rules, orders, and nonpoint source pollution regulations (including those applied to agricultural and silvicultural lands).

New subsection (b)(2)(A)(ix) states TCEQ will pursue appropriate enforcement action in accordance with Commission rules against any person referred in accordance with subsection (b)(3) and (4).

New subsection (b)(2)(A)(x) states TCEQ will ensure that any operation that was previously referred to the Commission by the Board for environmental non-compliance and subsequent decertification of a WQMP has resolved any Commission enforcement issues prior to referring the operation to the Board for WQMP development or investigation. Any such referral shall be accompanied by a letter to the Board stating the operation has resolved its Commission regulated environmental compliance issues.

New subsection (b)(2)(B) is a statement that introduces a list of items the TSSWCB agrees to carry out.

New subsection (b)(2)(B)(i) states the TSSWCB will coordinate and administer the preparation of grant work projects for the Federal Clean Water Act §319 grant program that primarily tar-

get nonpoint source pollution from agricultural and silvicultural sources.

New subsection (b)(2)(B)(ii) states the TSSWCB will execute cooperative agreements and associated amendments; and grant awards and contracts relating to grant work projects coordinated and administered by the Board. For those grant work projects, the Board is independently responsible for monitoring, implementation, and providing EPA with the required financial and programmatic reporting information.

New subsection (b)(2)(B)(iii) states the TSSWCB will implement the provisions of the EPA approved Texas Nonpoint Source Management Program for agricultural/silvicultural surface and ground water nonpoint source pollution.

New subsection (b)(2)(B)(iv) states the TSSWCB will provide the EPA with required reports for all agricultural/silvicultural projects funded through the Board by the Federal Clean Water Act §319. Reports will be submitted in accordance with EPA requirements.

New subsection (b)(2)(B)(v) states the TSSWCB will develop and maintain state guidance for agricultural or silvicultural nonpoint source pollution as described by this MOU and 31 TAC §523.1.

New subsection (b)(2)(B)(vi) states the TSSWCB will provide to the Commission information about agricultural and silvicultural activities required for the annual evaluation of the state's implementation of the Texas Nonpoint Source Management Program.

New subsection (b)(2)(B)(vii) states the TSSWCB will process citizen complaints related to agricultural and silvicultural nonpoint source pollution in a manner that is consistent with the practices and standards of the Commission.

New subsection (b)(2)(B)(viii) states the TSSWCB will schedule and conduct management meetings with the EPA to review the status of agricultural and silvicultural nonpoint source pollution project activities as negotiated with EPA.

New subsection (b)(2)(B)(ix) states the TSSWCB will develop and maintain a current electronic database to track and document all WQMPs. Data recorded for each WQMP will include, but is not limited to, the name of the WQMP applicant(s), the facility address or location, date of the WQMP application request, the type of operation covered by each WQMP, and the approval date of each WQMP.

New subsection (b)(2)(B)(x) states the TSSWCB will provide the Commission with documentation Board rules, policies, guidance, etc. concerning the development, supervision, and monitoring of individual certified WQMPs.

New subsection (b)(2)(B)(xi) states the TSSWCB will investigate complaints concerning violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, except for any person referred to the Commission for enforcement action pursuant to subsection (b)(1)(l).

New subsection (b)(2)(B)(xii) states the TSSWCB will refer to the Commission violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, where the Board has determined that the necessary corrective action has not been taken. The Board, upon referral, shall provide the Commission documentation, including but not limited to, any original documents or Board certified copies of the original documents; and hard

copies of all photographs, correspondence, records, and other documents relating to the violation.

New subsection (b)(2)(C) is a statement that introduces a list of items that both the (TCEQ) Commission and the State Board agree to carry out.

New subsection (b)(2)(C)(i) states that both will maintain each party's existing level of effort required by the EPA for the implementation of Federal Clean Water Act §319 projects.

New subsection (b)(2)(C)(ii) states that both will communicate and coordinate directly with each other and the EPA on matters relating to project planning and implementation of nonpoint source pollution projects funded by Federal Clean Water Act §319.

New subsection (b)(2)(C)(iii) states that both will provide required reports to the EPA on nonpoint source pollution project activities. Reports will include status of project implementation, summary of information/education activities, monitoring activities, and other outputs satisfactory to EPA.

New subsection (b)(2)(C)(iv) states that both will meet annually to review and discuss the state's nonpoint source water quality program and to refine agency coordination mechanisms.

New subsection (b)(2)(C)(v) states that both will work together to develop and implement water quality management programs that satisfy State water quality standards as established by the Commission.

New subsection (b)(2)(C)(vi) states that both will comply with all relevant state and federal rules and regulations; and grant conditions, including financial audits, data quality assurance, quality control, and progress reports.

New subsection (b)(2)(C)(vii) states that both will cooperate on activities related to the implementation of the "Texas State Management Plan for Prevention of Pesticide Contamination of Groundwater."

New subsection (b)(2)(C)(viii) states that both will coordinate on inspection and enforcement activities relating to animal feeding operations (AFOs) authorized under 30 TAC §321.47 or a WQMP certified by the Board in accordance with Texas Agriculture Code §201.026(g) for the protection of water quality in the State.

New subsection (b)(2)(C)(ix) states that both will coordinate on inspection and enforcement activities for the protection of water quality in the State relating to dry litter poultry concentrated animal feeding operations (CAFOs) authorized under 30 TAC Chapter 321 and a Board certified WQMP.

New subsection (b)(2)(C)(x) states that both will cooperate to establish protocols for the coordination of activities related to complaint response, compliance inspections, and enforcement of AFOs and CAFOs operating under a Board certified WQMP.

New subsection (b)(2)(C)(xi) states that both will conduct interagency meetings annually with regional office staff of both agencies to review and update the AFO and dry litter poultry CAFO complaint/referral process and to refine agency coordination procedures.

New subsection (b)(3) states the coordination on Dry Litter Poultry CAFOs:

New subsection (b)(3)(A) states the Board is the lead agency and has primary responsibility for complaint investigations and

compliance inspections to determine if a dry litter poultry CAFO meets the requirements of a Board certified WQMP and CAFO regulations.

New subsection (b)(3)(B) states the Board shall perform a number of dry litter poultry CAFO compliance inspections to be negotiated annually with the Commission. The Board will provide documentation of such activities to the Commission on a quarterly basis.

New subsection (b)(3)(C) states that for any dry litter poultry CAFO operating under a Board certified WQMP, the Board shall investigate in a timely manner all water quality complaints and the first odor complaint where none has been received by either the Commission or the Board within the previous twelve (12) months.

New subsection (b)(3)(D) states that the Commission shall investigate within eighteen (18) hours the second and all subsequent odor complaints for a rolling twelve (12) month period at any dry litter poultry CAFO operating under a Board certified WQMP.

New subsection (b)(3)(E) states the Board shall refer to the Commission for possible enforcement action violations at dry litter poultry CAFOs regardless of WQMP certification status if it involves:

New subsection (b)(3)(E)(i) lists that if it is a failure to obtain authorization under an individual or general permit if evidence of a discharge is observed; or

New subsection (b)(3)(E)(ii) lists that if it is an unauthorized discharge(s) into or adjacent to surface water in the State; or

New subsection (b)(3)(E)(iii) lists that if it is a failure to notify Commission of any discharge; or

New subsection (b)(3)(E)(iv) lists that if it is a failure to maintain water quality buffers; or

New subsection (b)(3)(E)(v) list that if it is a failure to completely implement nutrient management practices required by CAFO rules and the WQMP; or

New subsection (b)(3)(E)(vi) lists that if it is a failure to completely implement mortality management practices required by the WQMP; or

New subsection (b)(3)(E)(vii) lists that if it is operating a commercial poultry operation without the required WQMP; or

New subsection (b)(3)(E)(viii) lists that if it is a documented nuisance odor violation; or

New subsection (b)(3)(E)(ix) lists that if it is a chronic violations for failure to implement WQMP practices required to meet CAFO rules under 30 TAC Chapter 321, Subchapter B.

New subsection (b)(3)(F) states that the Board shall perform follow-up compliance inspections at dry litter poultry CAFOs found out of compliance with their WQMP to verify that the operation has returned to compliance with the Board-certified WQMP and CAFO regulations.

New subsection (b)(4) is about the coordination on AFOs:

New subsection (b)(4)(A) states that the Board is the lead agency and has primary responsibility for agricultural or silvicultural nonpoint source pollution abatement resulting from all AFOs, as defined under 30 TAC Chapter 321, Subchapter B (relating to concentrated animal feeding operations) that are not

designated as CAFOs or otherwise required to operate under a water quality permit issued by the Commission.

New subsection (b)(4)(B) states that the Board shall investigate water quality complaints and monitor compliance of all AFOs regardless of their participation in the WQMP Program. The Board shall also investigate the first odor complaint, where none has been received by the Commission or the Board within the previous twelve (12) months, at any dry litter poultry AFO operating under a Board-certified WQMP.

New subsection (b)(4)(C) states that the Commission, upon receiving a general water quality complaint regarding an AFO, will determine if the AFO is required to obtain authorization pursuant to 30 TAC Chapter 321, Subchapter B (relating to Control of Certain Activities by Rule). If the determination by the Commission indicates the facility does not meet the definition of a CAFO or otherwise require a water quality permit, the complaint and any written documentation will be referred to the Board, except for any person referred to the Commission for enforcement action pursuant to subsection (b)(1)(I). Additionally, the Commission shall investigate within eighteen (18) hours the second and all subsequent odor complaints for a rolling twelve (12) month period at any dry litter poultry AFO.

New subsection (b)(4)(D) states that the Board, upon receiving a general complaint regarding an AFO, will investigate to determine whether such a facility will need to obtain authorization from the Commission or initiate corrective actions to avoid impacts to aquatic life or human health. Those facilities that are determined to require authorization from the Commission pursuant to 30 TAC Chapter 321, Subchapter B (relating Control of Certain Activities by Rule) will be referred to the Commission in writing within five working days from the date of the investigation.

New subsection (b)(4)(E) states that the Board shall refer an AFO to the Commission for possible enforcement action, if the complaint investigation determines that the potential for a water quality violation exists at a facility and the facility owner or operator does not submit a request for a Board certified WQMP to resolve the complaint within 45 days of notification of the investigation outcome or does not implement appropriate corrective action.

New subsection (b)(4)(F) states that when the owner or operator of an AFO fails to sign a WQMP that was developed to resolve a complaint involving a potential water quality violation within 90 days of signing a request for planning assistance, the Board shall refer the AFO to the Commission for possible enforcement action.

New subsection (b)(4)(G) states that the Board shall refer to the Commission for possible enforcement any AFO complaint received where there is evidence of a discharge.

New subsection (b)(4)(H) states that the Board shall refer to the Commission for possible enforcement action, regardless of WQMP status, any investigation and documentation by the Board of a complaint related to an AFO where there is a documented violation that causes a discharge of pollutants to the air, water, or land that causes serious impact to the environment; or affects human health and safety.

New subsection (b)(4)(I) states that the Board shall refer to the Commission for possible enforcement action, regardless of WQMP status, any violation related to an AFO that the Board has determined that the necessary corrective action has not been taken. The Board, upon referral, shall provide the Com-

mission documentation, including but not limited to, any original documents or Board certified copies of the original documents; and hard copies of all photographs, correspondence, records, and other documents relating to the complaint or violation.

New subsection (b)(5) begins the General conditions:

New subsection (b)(5)(A) establishes the term of MOU. The term of this MOU shall be from the effective date until termination.

New subsection (b)(5)(B) establishes the notice of Termination. Either party may terminate this MOU upon 90 day written notice to the other party. Only upon written concurrence of the other agency can this MOU be modified.

New subsection (b)(5)(C) establishes the cooperation of Parties. It is the intention of the Board and the Commission that the details of providing the services in support of this MOU shall be worked out, in good faith, by both agencies.

New subsection (b)(5)(D) establishes nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

New subsection (b)(5)(E) addresses any other notices. Any notices required by this MOU shall be in writing and addressed to the respective agency as follows: Texas Commission on Environmental Quality, Attn: (Insert Name of Appropriate Individual), P.O. Box 13087, Austin, TX 78711-3087 and to the Texas State Soil and Water Conservation Board, Attn: (Insert Name of Appropriate Individual), P.O. Box 658, Temple, TX 76503-0658.

New subsection (b)(5)(F) establishes the Effective Date of MOU. This MOU is effective upon execution by both agencies. By signing this MOU, the signatories acknowledge that they are acting under proper authority from their governing bodies.

New subsection (b)(5)(F) ends with a line showing Adopted (insert date) and Effective (insert date) dates that will be inserted when the Memorandum of Understanding is approved by both the State Board and TCEQ.

No comments were received regarding the adoption of these amendments.

The amendments are adopted under the Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

§523.5. *Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality.*

(a) The Texas State Soil and Water Conservation Board may enter into and maintain a Memorandum of Understanding with the Texas Commission on Environmental Quality which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

(b) Adoption of Memoranda of Understanding between the Texas State Soil and Water Conservation Board and Texas Commission on Environmental Quality.

(1) This rule contains the memorandum of understanding ("MOU") between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality, which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

(A) Whereas, the Texas State Soil and Water Conservation Board (the Board) is the lead agency in this state for planning, management, and abatement of agricultural and silvicultural nonpoint source pollution; and

(B) Whereas, the Board shall represent the State before the United States Environmental Protection Agency (EPA), or other federal agencies on all matters relating to the planning, management, and abatement of agricultural and silvicultural nonpoint source pollution abatement; and

(C) Whereas, for purposes of this MOU, the Board is responsible for nonpoint source pollution abatement and prevention activities on all agricultural and silvicultural land as required by Texas Water Code §26.1311; and

(D) Whereas, the Board has established and implemented a water quality management plan (WQMP) certification program, in accordance with Texas Agriculture Code §201.026(g) for agricultural and silvicultural lands; and

(E) Whereas, the Texas Commission on Environmental Quality (the Commission) is the state agency with primary responsibility for implementing the constitution and laws of the State related to the quality of water and air; and

(F) Whereas, the Commission shall coordinate all its activities related to this MOU with the Board; and

(G) Whereas, consistent with the intent of Federal Clean Water Act §319, the Board and the Commission are committed to coordinate and jointly administer the development and implementation of the Texas Nonpoint Source Management Program; and

(H) Whereas the Board and the Commission are independently and directly awarded equal halves of the annual Federal Clean Water Act §319 grant program for nonpoint source pollution by the EPA, both agencies independently coordinate and administer the preparation of work projects under the grant; and

(I) Whereas, for the purpose of this MOU, the Commission is responsible for the enforcement of all laws of the State related to water and air quality including point source and nonpoint source pollution regulations, including agricultural and silvicultural lands; and

(J) Whereas, consistent with Texas law and public policy, the Board and Commission mutually desire to protect and maintain a high quality environment and the health of the people of the State; therefore

(2) Now the Parties agree as follows:

(A) The Commission agrees to:

(i) Coordinate and administer the preparation of grant work projects for the Federal Clean Water Act §319 grant program that primarily target nonpoint source pollution from sources other than agriculture and silviculture.

(ii) Execute cooperative agreements, associated amendments, grant awards, and contracts related to grant work

projects coordinated and administered by the Commission. For those grant work projects, the Commission is independently responsible for monitoring, implementation, and providing EPA with the required financial and programmatic reporting information.

(iii) Implement the provisions of the EPA approved Texas Nonpoint Source Management Program for non-agricultural/silvicultural surface and ground water nonpoint source pollution.

(iv) Develop and maintain state guidance for all nonpoint source pollution abatement projects other than agricultural or silvicultural nonpoint source pollution projects as described by this MOU.

(v) Coordinate with the Board those compliance and enforcement actions dealing with agricultural and silvicultural pollution.

(vi) Provide to the Board all current forms, timetables, procedural rules, and any policy documents of the Commission for addressing and processing citizen complaints related to agricultural and silvicultural pollution.

(vii) Refer to the Board complaints concerning violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, except for any person referred to the Commission for enforcement action pursuant to clause (ix) of this subparagraph.

(viii) Retain the responsibility for pursuing any enforcement action related to a violation of state environmental laws and regulations, inclusive of rules, orders, and nonpoint source pollution regulations (including those applied to agricultural and silvicultural lands).

(ix) Pursue appropriate enforcement action in accordance with Commission rules against any person referred in accordance with paragraphs (4) and (5) of this subsection.

(x) Ensure that any operation that was previously referred to the Commission by the Board for environmental non-compliance and subsequent decertification of a WQMP has resolved any Commission enforcement issues prior to referring the operation to the Board for WQMP development or investigation. Any such referral shall be accompanied by a letter to the Board stating the operation has resolved its Commission regulated environmental compliance issues.

(B) The Board agrees to:

(i) Coordinate and administer the preparation of grant work projects for the Federal Clean Water Act §319 grant program that primarily target nonpoint source pollution from agricultural and silvicultural sources.

(ii) Execute cooperative agreements and associated amendments; and grant awards and contracts relating to grant work projects coordinated and administered by the Board. For those grant work projects, the Board is independently responsible for monitoring, implementation, and providing EPA with the required financial and programmatic reporting information.

(iii) Implement the provisions of the EPA approved Texas Nonpoint Source Management Program for agricultural/silvicultural surface and ground water nonpoint source pollution.

(iv) Provide the EPA with required reports for all agricultural/silvicultural projects funded through the Board by the Federal Clean Water Act §319. Reports will be submitted in accordance with EPA requirements.

(v) Develop and maintain state guidance for agricultural or silvicultural nonpoint source pollution as described by this MOU and 31 TAC §523.1.

(vi) Provide to the Commission information about agricultural and silvicultural activities required for the annual evaluation of the state's implementation of the Texas Nonpoint Source Management Program.

(vii) Process citizen complaints related to agricultural and silvicultural nonpoint source pollution in a manner that is consistent with the practices and standards of the Commission.

(viii) Schedule and conduct management meetings with the EPA to review the status of agricultural and silvicultural nonpoint source pollution project activities as negotiated with EPA.

(ix) Develop and maintain a current electronic database to track and document all WQMPs. Data recorded for each WQMP will include, but is not limited to, the name of the WQMP applicant(s), the facility address or location, date of the WQMP application request, the type of operation covered by each WQMP, and the approval date of each WQMP.

(x) Provide the Commission with documentation Board rules, policies, guidance, etc. concerning the development, supervision, and monitoring of individual certified WQMPs.

(xi) Investigate complaints concerning violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, except for any person referred to the Commission for enforcement action pursuant to paragraph (1)(I) of this subsection.

(xii) Refer to the Commission violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, where the Board has determined that the necessary corrective action has not been taken. The Board, upon referral, shall provide the Commission documentation, including but not limited to, any original documents or Board certified copies of the original documents; and hard copies of all photographs, correspondence, records, and other documents relating to the violation.

(C) Both parties agree to:

(i) Maintain each party's existing level of effort required by the EPA for the implementation of Federal Clean Water Act §319 projects.

(ii) Communicate and coordinate directly with each other and the EPA on matters relating to project planning and implementation of nonpoint source pollution projects funded by Federal Clean Water Act §319.

(iii) Provide required reports to the EPA on nonpoint source pollution project activities. Reports will include status of project implementation, summary of information/education activities, monitoring activities, and other outputs satisfactory to EPA.

(iv) Meet annually to review and discuss the state's nonpoint source water quality program and to refine agency coordination mechanisms.

(v) Work together to develop and implement water quality management programs that satisfy State water quality standards as established by the Commission.

(vi) Comply with all relevant state and federal rules and regulations; and grant conditions, including financial audits, data quality assurance, quality control, and progress reports.

(vii) Cooperate on activities related to the implementation of the "Texas State Management Plan for Prevention of Pesticide Contamination of Groundwater."

(viii) Coordinate on inspection and enforcement activities relating to animal feeding operations (AFOs) authorized under 30 TAC §321.47 or a WQMP certified by the Board in accordance with Texas Agriculture Code §201.026(g) for the protection of water quality in the State.

(ix) Coordinate on inspection and enforcement activities for the protection of water quality in the State relating to dry litter poultry concentrated animal feeding operations (CAFOs) authorized under 30 TAC Chapter 321 and a Board certified WQMP.

(x) Cooperate to establish protocols for the coordination of activities related to complaint response, compliance inspections, and enforcement of AFOs and CAFOs operating under a Board certified WQMP.

(xi) Conduct interagency meetings annually with regional office staff of both agencies to review and update the AFO and dry litter poultry CAFO complaint/referral process and to refine agency coordination procedures.

(3) Coordination on Dry Litter Poultry CAFOs:

(A) The Board is the lead agency and has primary responsibility for complaint investigations and compliance inspections to determine if a dry litter poultry CAFO meets the requirements of a Board certified WQMP and CAFO regulations.

(B) The Board shall perform a number of dry litter poultry CAFO compliance inspections to be negotiated annually with the Commission. The Board will provide documentation of such activities to the Commission on a quarterly basis.

(C) For any dry litter poultry CAFO operating under a Board certified WQMP, the Board shall investigate in a timely manner all water quality complaints and the first odor complaint where none has been received by either the Commission or the Board within the previous twelve (12) months.

(D) The Commission shall investigate within eighteen (18) hours the second and all subsequent odor complaints for a rolling twelve (12) month period at any dry litter poultry CAFO operating under a Board certified WQMP.

(E) The Board shall refer to the Commission for possible enforcement action violations at dry litter poultry CAFOs regardless of WQMP certification status if it involves:

(i) failure to obtain authorization under an individual or general permit if evidence of a discharge is observed; or

(ii) unauthorized discharge(s) into or adjacent to surface water in the State; or

(iii) failure to notify Commission of any discharge; or

(iv) failure to maintain water quality buffers; or

(v) failure to completely implement nutrient management practices required by CAFO rules and the WQMP; or

(vi) failure to completely implement mortality management practices required by the WQMP; or

(vii) operating a commercial poultry operation without the required WQMP; or

(viii) a documented nuisance odor violation; or

(ix) chronic violations for failure to implement WQMP practices required to meet CAFO rules under 30 TAC Chapter 321, Subchapter B.

(F) The Board shall perform follow-up compliance inspections at dry litter poultry CAFOs found out of compliance with their WQMP to verify that the operation has returned to compliance with the Board-certified WQMP and CAFO regulations.

(4) Coordination on AFOs:

(A) The Board is the lead agency and has primary responsibility for agricultural or silvicultural nonpoint source pollution abatement resulting from all AFOs, as defined under 30 TAC Chapter 321, Subchapter B (relating to concentrated animal feeding operations) that are not designated as CAFOs or otherwise required to operate under a water quality permit issued by the Commission.

(B) The Board shall investigate water quality complaints and monitor compliance of all AFOs regardless of their participation in the WQMP Program. The Board shall also investigate the first odor complaint, where none has been received by the Commission or the Board within the previous twelve (12) months, at any dry litter poultry AFO operating under a Board-certified WQMP.

(C) The Commission, upon receiving a general water quality complaint regarding an AFO, will determine if the AFO is required to obtain authorization pursuant to 30 TAC Chapter 321, Subchapter B (relating to Control of Certain Activities by Rule). If the determination by the Commission indicates the facility does not meet the definition of a CAFO or otherwise require a water quality permit, the complaint and any written documentation will be referred to the Board, except for any person referred to the Commission for enforcement action pursuant to paragraph (1)(I) of this subsection. Additionally, the Commission shall investigate within eighteen (18) hours the second and all subsequent odor complaints for a rolling twelve (12) month period at any dry litter poultry AFO.

(D) The Board, upon receiving a general complaint regarding an AFO, will investigate to determine whether such a facility will need to obtain authorization from the Commission or initiate corrective actions to avoid impacts to aquatic life or human health. Those facilities that are determined to require authorization from the Commission pursuant to 30 TAC Chapter 321, Subchapter B (relating to Control of Certain Activities by Rule) will be referred to the Commission in writing within five working days from the date of the investigation.

(E) The Board shall refer an AFO to the Commission for possible enforcement action, if the complaint investigation determines that the potential for a water quality violation exists at a facility and the facility owner or operator does not submit a request for a Board certified WQMP to resolve the complaint within 45 days of notification of the investigation outcome or does not implement appropriate corrective action.

(F) When the owner or operator of an AFO fails to sign a WQMP that was developed to resolve a complaint involving a potential water quality violation within 90 days of signing a request for planning assistance, the Board shall refer the AFO to the Commission for possible enforcement action.

(G) The Board shall refer to the Commission for possible enforcement any AFO complaint received where there is evidence of a discharge.

(H) The Board shall refer to the Commission for possible enforcement action, regardless of WQMP status, any investigation and documentation by the Board of a complaint related to an AFO where there is a documented violation that causes a discharge of pol-

lutants to the air, water, or land that causes serious impact to the environment; or affects human health and safety.

(I) The Board shall refer to the Commission for possible enforcement action, regardless of WQMP status, any violation related to an AFO that the Board has determined that the necessary corrective action has not been taken. The Board, upon referral, shall provide the Commission documentation, including but not limited to, any original documents or Board certified copies of the original documents; and hard copies of all photographs, correspondence, records, and other documents relating to the complaint or violation.

(5) General conditions:

(A) Term of MOU. The term of this MOU shall be from the effective date until termination.

(B) Notice of Termination. Either party may terminate this MOU upon 90-day written notice to the other party. Only upon written concurrence of the other agency can this MOU be modified.

(C) Cooperation of Parties. It is the intention of the Board and the Commission that the details of providing the services in support of this MOU shall be worked out, in good faith, by both agencies.

(D) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(E) Notices. Any notices required by this MOU shall be in writing and addressed to the respective agency as follows: Texas Commission on Environmental Quality, Attn: _____, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas State Soil and Water Conservation Board, Attn: _____, P.O. Box 658, Temple, TX 76503-0658.

(F) Effective Date of MOU. This MOU is effective upon execution by both agencies. By signing this MOU, the signatories acknowledge that they are acting under proper authority from their governing bodies. Adopted [insert date] Effective [insert date]

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 3, 2016.

TRD-201600546

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Effective date: February 23, 2016

Proposal publication date: December 18, 2015

For further information, please call: (254) 773-2250 x252



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER A. GENERAL RULES

34 TAC §3.2

The Comptroller of Public Accounts adopts amendments to §3.2, concerning offsets and application of credits and payments to liabilities; unjust enrichment, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9604). This amendment memorializes long-standing policy of the comptroller regarding offsets for oil and gas severance tax.

Subsection (b)(2)(G)(i) has been removed to correctly reflect the comptroller policy allowing offsets for oil and gas severance tax. Subsequent clauses are renumbered to reflect the removal of the oil and gas severance tax category.

No comments were received regarding adoption of the amendment.

This amendment is adopted 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 section implements Tax Code, §111.104 (Refunds).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600466

Don Neal

Chief Deputy General Counsel

Comptroller of Public Accounts

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Proposal publication date: December 25, 2015

For further information, please call: (512) 475-0387



CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER M. LOCAL GOVERNMENT RELIEF FOR DISABLED VETERANS EXEMPTION

34 TAC §§9.4321, 9.4323, 9.4325, 9.4327

The Comptroller of Public Accounts adopts new Chapter 9, Subchapter M, Local Government Relief for Disabled Veterans Exemption, §§9.4321, 9.4323, 9.4325, and 9.4327. New §9.4323 is adopted with changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9606). The other rules are adopted without changes. The comptroller has revised §9.4323(c) (Application) from the initial proposed text to make a nonsubstantive grammatical change.

Subchapter M implements provisions of House Bill 7, Section 25, 84th Legislature, 2015 (codified in Local Government Code, §140.011) which provides for payments to qualified local governments to offset a portion of property tax revenue lost in providing property tax exemptions to disabled veterans under Tax Code, §11.131. Local governments that qualify for payments under the program are those municipalities adjacent to a United States military installation or counties in which a United States military installation is located, and whose lost property tax revenue (due to disabled veterans property tax exemptions being granted) for a fiscal year is equal to or greater than two percent of the jurisdiction's general fund revenue for that fiscal year. Payments to qualified local governments for a fiscal year will be in an amount calculated by subtracting one percent of the local government's general fund revenue from the local government's lost property tax revenue for that fiscal year. The new rules prescribe procedures to be used in administering Subchapter M, §9.4321, Definitions; §9.4323, Application; §9.4325, Review by Comptroller; and §9.4327, Payment to Qualified Local Government.

No comments were received regarding adoption of the new subchapter.

This subchapter is adopted pursuant to Local Government Code, §140.011(i), which requires the comptroller to adopt rules to implement Local Government Code, §140.011.

This subchapter implements Local Government Code, §140.011 (Local Governments Disproportionately Affected by Property Tax Relief for Disabled Veterans).

§9.4323. Application.

(a) In order to receive payment under this subchapter, an applicant must submit a completed application. The completed application must be received no earlier than February 1 nor later than April 1 of the year following the end of a fiscal year for which the applicant is seeking a payment under this subchapter.

(b) A completed application must include the following items:

(1) A map showing that:

(A) if the applicant is a municipality, the municipality is adjacent to a United States military installation; or

(B) if the applicant is a county, a United States military installation is wholly or partly located within that county.

(2) Documentation to substantiate the sources and amounts of general fund revenues listed on the application. That documentation must be:

(A) an independent audit covering the fiscal year for which the applicant is requesting payment; or

(B) a comprehensive annual financial report covering the fiscal year for which the applicant is requesting payment.

(3) If the documentation listed in paragraph (2)(A) or (B) of this subsection does not substantiate all of the sources and amounts of general fund revenues listed on the application, the applicant must submit additional documentation to substantiate the sources and amounts of general fund revenue which is certified by a city, county or independent auditor.

(4) Documentation to substantiate the exemption amount.

(5) Documentation to substantiate the property tax rate adopted by the applicant for the tax year in which the fiscal year for which the applicant is requesting payment begins.

(c) Documentation submitted with the application under subsection (b)(2) - (5) of this section must be highlighted for easy identification of the following values:

(1) the specific total for each general fund revenue source;

(2) the adopted property tax rate; and

(3) the total exemption amount.

(d) The application must be submitted on the comptroller prescribed form. The method in which the application is submitted must conform to the instructions in the comptroller prescribed form.

(e) The application must be signed by an official of the local government that is authorized to bind the local government. The local official must certify that all information in the application is true and correct.

(f) The applicant is responsible for verifying receipt by the comptroller of the completed application and any information requested under §9.4325 of this title (relating to Review by Comptroller).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 2, 2016.

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Don Neal

Chief Deputy General Counsel

Comptroller of Public Accounts

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