TEXAS REGISTER

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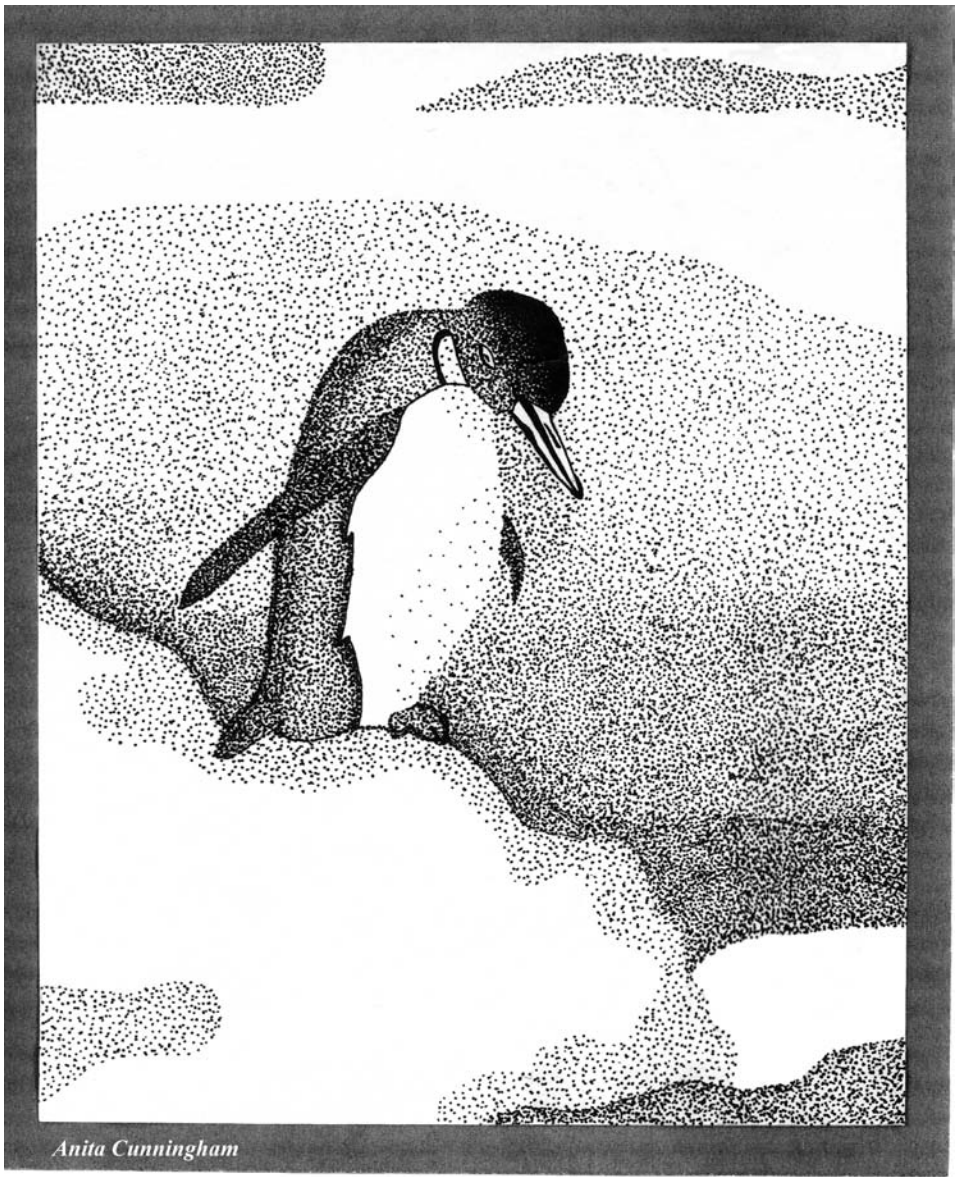

Anita Cunningham

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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Office of the Secretary of State
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(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.state.tx.us

In This Issue

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinions

RQ-1114-GA

Requestor:

The Honorable John Mark Cobern

Titus County Attorney

100 West First Street, Suite 106

Mt. Pleasant, Texas 75455

Re: Whether a county commissioners court may establish a rule that prohibits an elected county official from bringing a pet to his or her county office (RQ-1114-GA)

Briefs requested by April 17, 2013

RQ-1115-GA

Requestor:

Ms. Lisa Smith

Bastrop County Auditor

804 Pecan Street

Bastrop, Texas 78602

Re: Whether property owned by a hospital authority and leased to a charitable organization for use as a hospital is "used for public purposes" under Tax Code section 11.11 (RQ-1115-GA)

Briefs requested by April 17, 2013

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201301152
Katherine Cary
General Counsel
Office of the Attorney General
Filed: March 20, 2013

♦ ♦ ♦

Opinions

Opinion No. GA-0993

The Honorable Abel Herrero

Chair, Committee on Criminal Jurisprudence

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether an arrested person may waive the requirement that he or she be taken before a magistrate and admonished in accordance with article 15.17 of the Code of Criminal Procedure (RQ-1085-GA)

S U M M A R Y

The duty of a magistrate to admonish an arrested person as required by article 15.17 of the Code of Criminal Procedure is a mandatory duty. An arrestee may waive his right to have a magistrate orally recite the admonishments of article 15.17 of the Code of Criminal Procedure only if the waiver is made plainly, freely, and intelligently.

Opinion No. GA-0994

The Honorable Seth C. Slagle

Clay County Attorney

Post Office Drawer 449

Henrietta, Texas 76365-0449

Re: Whether a sheriff must submit an office policy manual to the county commissioners court for approval (RQ-1087-GA)

S U M M A R Y

A court would likely determine that the county commissioners court is not authorized to approve or disapprove of the sheriff's office policy manual.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201301140
Katherine Cary
General Counsel
Office of the Attorney General
Filed: March 19, 2013

♦ ♦ ♦

Opinions

Opinion No. GA-0995

Ms. Michelle Hunter

Executive Director

State Bar of Texas

Post Office Box 12487

Austin, Texas 78711

Re: Whether State Bar of Texas president-elect candidates who are nominated by petition under subsection 81.019(c), Government Code, are nevertheless subject to State Bar of Texas election rules and policies (RQ-1088-GA)

S U M M A R Y

State Bar of Texas president-elect candidates nominated by petition under subsection 81.019(c) of the Government Code are subject to all valid State Bar election rules and policies. Board policy sections 2.01.04 and 2.01.05, relating to the eligibility of certain members of the State Bar to stand for election for president-elect, conflict with both subsection 81.019(c) of the Government Code and State Bar rule article IV, section 11(B). Therefore, those policies are unenforceable.

Opinion No. GA-0996

The Honorable Rene Oliveira

Chair, Committee on Business and Industry

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a school district board of trustees may appoint a single-member district trustee to an at-large position as the district transitions to a new election scheme (RQ-1091-GA)

S U M M A R Y

Pursuant to Education Code section 11.053, the Board of Trustees of Beaumont Independent School District may not appoint one of its current single-member district trustees, whose term will expire in May 2015, to a new at-large position that will expire in May 2017.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201301153
Katherine Cary
General Counsel
Office of the Attorney General
Filed: March 20, 2013

♦ ♦ ♦

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 54. SPECIAL PROGRAMS

SUBCHAPTER A. CHOOSE LIFE GRANT PROGRAM

The Office of the Attorney General (OAG) proposes new Chapter 54, Subchapter A, Division 1, §§54.1 - 54.15, concerning General Provisions and Eligibility; Division 2, §§54.20 - 54.24, concerning Grant Application and Decision Process; Division 3, §§54.30 - 54.39, concerning Grant Budget Requirements; Division 4, §54.45 and §54.46, concerning Application Kit; Resolution of Governing Body; Division 5, §§54.50 - 54.59, concerning Grant Administration; and Division 6, §§54.65 - 54.68, concerning Grant Monitoring and Auditing. New Chapter 54, Special Programs, Subchapter A, Choose Life Grant Program, is concerning the OAG's implementation and administration of the Choose Life grant program.

Ben Taylor, Director of Outreach, Office of the Attorney General, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Taylor also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will clarify and streamline the requirements for the Choose Life grant program administered by the OAG and will have a positive benefit to allow for the implementation of the grant program. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Written comments on the proposal may be submitted for 30 days following the publication of this notice to Ben Taylor, Director of Outreach, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548 or ben.taylor@texasattorneygeneral.gov.

DIVISION 1. GENERAL PROVISIONS AND ELIGIBILITY

1 TAC §§54.1 - 54.15

The new sections are proposed in accordance with Texas Government Code, §402.036(e), which authorizes the OAG to adopt rules necessary to establish guidelines for the expenditure of funds under the Choose Life grant program.

No other code, article or statute is affected by this proposal.

§54.1. Definitions.

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

(1) Application Kit--The information that is required to be completed and submitted by an applicant for a grant contract.

(2) Applicant--An entity that files an application for a grant contract with the OAG.

(3) Eligible application--An application that meets the minimum requirements set forth in the RFA and Application Kit.

(4) Grantee--An entity that receives a grant contract from the OAG.

(5) OAG--Office of the Attorney General.

(6) RFA--Request for Applications.

§54.2. Construction of Rules.

Unless otherwise noted, this subchapter applies to the "Choose Life" grant program. If good cause is established to show that compliance with this subchapter may result in an injustice to any party, this subchapter may be suspended at the discretion of the OAG. The OAG may consult with the Choose Life Advisory Committee regarding construction of this subchapter.

§54.3. Source and Availability of Funds.

Chapter 402 of the Government Code authorizes the Choose Life account as a separate account in the general revenue fund. The OAG is authorized to administer the Choose Life account. The OAG is authorized to make grants from the Choose Life account to an eligible organization. All funding is contingent upon the appropriation of funds by the Texas Legislature and upon approval of a grant application by the OAG.

§54.4. Purpose of Funds and Grant Funding Decisions.

(a) The purpose of the OAG Choose Life grant program is to provide funds as described in Chapter 402 of the Government Code.

(b) The OAG reserves the right to consider all other appropriations or funding an applicant currently receives when making funding decisions.

(c) The OAG reserves the right to give priority to programs that provide services in certain geographic or programmatic areas or other factors considered important by the OAG.

(d) Within its discretion, the OAG shall determine the manner and procedure for making funding decisions that support the efficient and effective use of public funds. A competitive allocation process which includes the distribution of grant funds to grantees based on an application process as well as an evaluation and review process, may be used.

§54.5. Choose Life Eligible Purpose Areas.

Grant contracts awarded under the Choose Life program may be used only to provide for the material needs of pregnant women who are considering placing their children for adoption, including the provision of clothing, housing, prenatal care, food, utilities, and transportation, to provide for the needs of infants who are awaiting placement with adoptive parents, to provide training and advertising relating to adoption, and to provide pregnancy testing or pre-adoption or post-adoption counseling, but may not be used to pay an administrative, legal, or capital expense.

§54.6. Eligible Applicants.

(a) An applicant must be an eligible organization. An "eligible organization" means an organization in this state that:

(1) is exempt from federal income taxation under §501(a), Internal Revenue Code of 1986, by being listed as an exempt charitable organization under §501(c)(3) of that code;

(2) provides counseling and material assistance to pregnant women who are considering placing their children for adoption;

(3) does not charge for services provided;

(4) does not provide abortions or abortion-related services or make referrals to abortion providers;

(5) is not affiliated with an organization that provides abortions or abortion-related services or makes referrals to abortion providers; and

(6) does not contract with an organization that provides abortions or abortion-related services or makes referrals to abortion providers.

(b) The OAG may not discriminate against an eligible organization because it is a religious or nonreligious organization.

§54.7. Match and Volunteer Requirements.

(a) The OAG may require cash and/or in-kind match for grants as stated in the RFA and the Application Kit. The amount of an award and the match requirements are determined solely by the OAG. The OAG reserves the right to alter the required match for any funded program.

(b) All non-governmental programs may have a volunteer component. The specific requirements for the volunteer component will be stated in the RFA and the Application Kit.

§54.8. Funding Levels.

(a) The minimum and maximum amount of funding for the Choose Life grant contract will be stated in the RFA and the Application Kit.

(b) The amount of an award is determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

§54.9. Grant Contract Period.

(a) Generally, grant contracts may be awarded for any number of months up to a two year period beginning September 1st and ending August 31st.

(b) The OAG reserves the right to alter the starting date and length of the grant contract period.

(c) If the grant contract period extends for more than one fiscal year, the grantee may be required to submit additional documentation relating to the subsequent fiscal year of the grant contract period, including an updated budget. The OAG may base its decision on subsequent fiscal year funding amounts on the grantee's prior performance, including but not limited to the timeliness and thoroughness of reporting, effective and efficient use of grant funds and the success of the grant in meeting its goals.

§54.10. Continuation of Funding.

Because a grant is not a right or an entitlement, there is no commitment by the OAG that a grant contract, once funded, will receive subsequent funding. The award of a grant contract to a grantee shall not commit or obligate the OAG in any way to make any additional, supplemental, continuation, or other award to that grantee.

§54.11. Additional Award Opportunities.

The OAG may fund grants outside the standard application cycle or process or at amounts higher or lower than provided for in this subchapter based on availability of funds and a particularized need.

§54.12. Applicant Registration.

(a) The OAG may require applicants to register their intent to apply for funding. If registration is required, the deadline to file, including a time, date and place certain, will be given in the RFA.

(b) Grant applications will not be considered if the registration is not filed by the established deadline.

(c) The OAG will notify an applicant if their application will not be considered due to failure of timely registration.

§54.13. Filings with the OAG.

(a) All documents that are required to be submitted to the OAG must be received by the OAG to be considered as filed. If a deadline is established by the OAG, it will include a time, date and place certain.

(b) Proof of sending a document by email or other means is not proof that the OAG received the information.

(c) All filing decisions rest completely within the discretionary authority of the OAG and the decisions made by the OAG are final and are not subject to appeal.

§54.14. Compliance with Other Standards.

Grantees must comply with all applicable state and federal statutes, rules, regulations, and guidelines. In instances where both federal and state requirements apply to a grantee, the more restrictive requirement applies.

§54.15. Use of the Internet.

(a) The OAG may transmit notices, forms or other documents and information via the Internet or other electronic means.

(b) The OAG may require the submission of notices, forms or other documents and information via the Internet or other electronic means.

(c) Transmission or submission via electronic means meets the relevant requirements contained within this subchapter for submitting information in writing.

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

Filed with the Office of the Secretary of State on March 11, 2013.

TRD-201301081
Katherine Cary
General Counsel
Office of the Attorney General
Earliest possible date of adoption: April 28, 2013
For further information, please call: (512) 936-1180

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DIVISION 2. GRANT APPLICATION AND DECISION PROCESS

1 TAC §§54.20 - 54.24

The new sections are proposed in accordance with Texas Government Code, §402.036(e), which authorizes the OAG to adopt rules necessary to establish guidelines for the expenditure of funds under the Choose Life grant program.

No other code, article or statute is affected by this proposal.

§54.20. Application Process.

(a) The OAG will publish a RFA in the *Texas Register* and post the RFA on the OAG's official agency website.

(b) The RFA, at a minimum, will provide the following information:

(1) applicable funding sources for the types of grants available and eligibility requirements;

(2) how to obtain Application Kits;

(3) deadlines and filing instructions for the grant application;

(4) minimum and maximum amounts of funding available;

(5) start date and length of grant contract period;

(6) any match or volunteer requirements;

(7) award criteria;

(8) any prohibitions on the use of grant funds; and

(9) OAG contact information.

(c) After the RFA is published in the *Texas Register,* the Application Kit will be available on the OAG website.

(d) An applicant must submit an application to the OAG, as referenced in the RFA.

(e) The application, with the required attachments, must be filed and received by the OAG, by the deadline stated in the RFA.

(f) Once the application is filed, it will be initially screened for eligibility, and if eligible it will be evaluated and reviewed, and a grant decision will be made.

(g) Providing false information, knowingly or unknowingly, on a grant application may cause an application to be denied or cause the grant contract, once awarded, to be terminated.

§54.21. Initial Screening; Evaluation and Review Process.

(a) The OAG will initially screen each application for eligibility. Applications that are not eligible will not be scored further and will not be eligible for a grant award. Applications will be deemed ineligible if:

(1) the applicant did not register timely an intent to apply, if required;

(2) the application is submitted by an ineligible applicant;

(3) the application is not filed in the manner and form required by the RFA;

(4) the application is filed after the deadline established in the RFA; or

(5) the application does not meet other requirements as stated in the RFA and the Application Kit.

(b) The OAG may designate teams to evaluate and review eligible applications. The evaluation teams may consist of OAG employees, employees of other state agencies, or other designees. Evaluation factors will be developed to assess the award criteria as stated in the RFA and Application Kit.

(c) During the initial screening or evaluation and review process, an applicant may be contacted to provide additional information.

(d) There are several steps in the evaluation and review process. A decision to deny an application may be made at any point during the evaluation and review process.

§54.22. Grant Decision Notification Process.

(a) The OAG shall notify the applicant in writing of its decision regarding a grant award.

(b) The OAG may utilize a grant contract document or a notice of grant document once a decision is made to award a grant. The applicant will be given a deadline to act to accept the grant award and to return the appropriate document to the OAG within the time prescribed by the OAG. An applicant's failure to return the signed document to the OAG within the applicable time period will be construed as a rejection of the grant award, and the OAG may de-obligate funds.

§54.23. Grant Decisions.

(a) All grant decisions, including, but not limited to, eligibility, evaluation and review, and funding rest completely within the discretionary authority of the OAG and the decisions made by the OAG are final and are not subject to appeal.

(b) The OAG may add special conditions to the grant award. Special conditions made be placed on a grant because of the need for information, clarification, or submission of an outstanding requirement of the grant. A special condition may result in a hold being placed on the OAG grant funds. Special conditions may be placed on a grant at any time. Until satisfied, special conditions may affect the grantee's ability to receive funds. If special conditions are not resolved, the OAG may de-obligate the entire amount of the grant award.

§54.24. Choose Life Advisory Committee.

(a) The Choose Life Advisory Committee is created by §402.037 of the Government Code. The attorney general shall appoint a seven-member Choose Life Advisory Committee.

(b) The committee shall:

(1) meet at least twice a year or as called by the attorney general;

(2) assist the attorney general in developing rules under §402.036(e) of the Government Code; and

(3) review and make recommendations to the attorney general on applications submitted to the attorney general for grants funded with money credited to the Choose Life account.

(c) Members of the committee serve without compensation and are not entitled to reimbursement for expenses. Each member serves a term of four years, with the terms of three or four members expiring on January 31 of each odd-numbered year.

(d) Chapter 2110 of the Government Code does not apply to the committee.

(e) The OAG shall consider the recommendations of the committee before making grant decisions.

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

Filed with the Office of the Secretary of State on March 11, 2013.

TRD-201301082
Katherine Cary
General Counsel
Office of the Attorney General
Earliest possible date of adoption: April 28, 2013
For further information, please call: (512) 936-1180

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DIVISION 3. GRANT BUDGET REQUIREMENTS

1 TAC §§54.30 - 54.39

The new sections are proposed in accordance with Texas Government Code, §402.036(e), which authorizes the OAG to adopt rules necessary to establish guidelines for the expenditure of funds under the Choose Life grant program.

No other code, article or statute is affected by this proposal.

§54.30. General Budget Provisions.

(a) Unless otherwise stated by the RFA and the Application Kit, eligible budget categories are limited to the following categories:

(1) personnel;

(2) fringe benefits;

(3) professional and consultant services;

(4) travel;

(5) equipment;

(6) supplies; and

(7) other direct operating expenses.

(b) All applicants must submit a completed budget on the form prescribed by the OAG.

(c) Grants awarded by the OAG are reimbursement-only grants. However, grantees are reimbursed promptly for authorized actual expenditures substantiated by documentation submitted to the OAG, as requested. If necessary, the OAG may use an alternative method of payment.

(d) An individual paid with grant funds may not receive dual compensation for the same work, even if the services performed benefit more than one entity.

(e) For budget items funded partially by the OAG, an entity must have a documented method for the allocation of direct costs consistent with the benefit received and must maintain adequate receipts and records.

(f) All budget items must be reasonable and necessary and be allocated proportionately within each budget category.

(g) The OAG is not obligated to fund budget items at the amounts requested by the applicant and is not obligated to continue to fund budget items once a grant has been awarded.

(h) Funding will not be awarded in any budget category for the payment of an administrative, legal, or capital expense.

§54.31. Personnel.

(a) The personnel budget category may include salaries of employees only, and not compensation paid to independent contractors. "Employee" is defined as a person under the direction and supervision of the grantee, who is on the payroll of the grantee and for whom the grantee is required to pay applicable income withholding taxes; or a person who will be on the grantee's payroll and for whom the grantee will pay applicable income withholding taxes once the grant is awarded.

(b) A salary for a grant-funded position must be reasonable and may not exceed the salary paid to a person performing comparable work in a position that is not funded by the grant. The OAG will determine whether a salary is reasonable and may limit the grant-funded portion of any salary.

(c) The OAG may set minimum restrictions on the percentage of salary that may be funded.

(d) A grantee may not use grant funds to pay overtime.

(e) Any changes to the job duties or employment status of a grant-funded position must be reported to the OAG promptly.

(f) A grantee may not use grant funds to pay any portion of the salary or any other compensation for an elected government official.

§54.32. Fringe Benefits.

(a) "Fringe benefits" is defined as allowances and services provided by the grantee to its employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans.

(b) Grant funds may be used to pay fringe benefits of an employee only if grant funds are also being used to pay for the salary of the same employee.

(c) A grantee must provide grant-funded personnel the same fringe benefits provided to all other non-grant-funded personnel of the grantee.

§54.33. Professional and Consultant Services.

(a) "Professional and consultant services" is defined as any direct service for which the grantee uses an outside source for necessary support.

(b) Any contract or agreement entered into by a grantee that obligates grant funds must be in writing, must be consistent with Texas contract law, and may be subject to approval by the OAG. Grantees must maintain adequate documentation supporting budget items for a contractor's time, services, and rates of compensation. Grantees must establish a contract administration and monitoring system to regularly and consistently ensure that contract deliverables are provided as specified in the contract.

§54.34. Travel.

(a) Travel expenses may be reimbursed according to the Texas State Travel Guidelines, unless a grantee's travel policy provides a lesser reimbursement.

(b) Travel must relate directly to the delivery of services that supports the program that is funded by the OAG grant.

(c) Grant funds may not be used to pay for out-of-state travel without the prior approval of the OAG.

§54.35. Equipment.

(a) "Equipment" is defined as an article of non-expendable, tangible personal property having a useful life of more than one (1) year and a per unit acquisition cost which equals the lesser of:

(1) the capitalization level established by the grantee for financial statement purposes; or

(2) $5,000.

(b) A grantee may use equipment paid for with OAG funds only for grant-related purposes and not for personal or non-grant-related purposes.

(c) Grant funds may not be used to fund the purchase or lease of vehicles.

§54.36. Supplies.

(a) "Supplies" is defined as consumable items directly related to the day-to-day operation of the grant program. Allowable items include, but are not limited to, office supplies, paper, postage, and education resource materials.

(b) The OAG will not approve funds for the purchase of program promotional items or recreational activities.

§54.37. Other Direct Operating Expenses.

(a) "Other direct operating expenses" is defined as those costs not included in other budget categories and which are directly related to the day-to-day operation of the grant program.

(b) Funds in this budget category may be used to provide for the material needs of pregnant women who are considering placing their children for adoption, including the provision of clothing, housing, prenatal care, food, utilities, and transportation, to provide for the needs of infants who are awaiting placement with adoptive parents, to provide training and advertising relating to adoption, and to provide pregnancy testing or pre-adoption or post-adoption counseling.

(c) Registration fees for conferences and other training sessions should be included in this category.

§54.38. Indirect Costs.

(a) "Indirect costs" is defined as any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(b) The OAG will not fund indirect costs for the Choose Life programs.

§54.39. Unallowable Costs.

(a) A cost will not be allowed unless it is directly related to a permissible expenditure under §402.036(f) of the Government Code.

(b) Choose Life grant funds may not be used to purchase any product or service the OAG identifies as inappropriate or unallowable within the RFA or the Application Kit.

(c) Choose Life grant funds may not be used to pay an administrative, legal, or capital expense.

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

Filed with the Office of the Secretary of State on March 11, 2013.

TRD-201301083
Katherine Cary
General Counsel
Office of the Attorney General
Earliest possible date of adoption: April 28, 2013
For further information, please call: (512) 936-1180

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DIVISION 4. APPLICATION KIT; RESOLUTION OF GOVERNING BODY

1 TAC §54.45, §54.46

The new sections are proposed in accordance with Texas Government Code, §402.036(e), which authorizes the OAG to adopt rules necessary to establish guidelines for the expenditure of funds under the Choose Life grant program.

No other code, article or statute is affected by this proposal.

§54.45. Comprehensive Certification and Assurances Form.

Each Application Kit will have a Comprehensive Certification and Assurances Form. Unless otherwise directed by the RFA or the Application Kit, applicants must submit a signed Comprehensive Certification and Assurances Form with the grant application.

§54.46. Resolution.

(a) The resolution permits the applicant to submit an application. Unless otherwise directed by the RFA or the Application Kit, the resolution must be submitted at the same time the grant application is submitted by the applicant.

(b) The specific requirements for the resolution will be stated in the Application Kit.

(c) A resolution from the applicable governing body, such as the Board of Directors, must contain, at a minimum, the following:

(1) authorization for the submission of the grant application to the OAG; and

(2) a designation of the name or title of an authorized official who is given the power to apply for, accept, reject, alter, or terminate a grant on behalf of the grantee.

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

Filed with the Office of the Secretary of State on March 11, 2013.

TRD-201301084
Katherine Cary
General Counsel
Office of the Attorney General
Earliest possible date of adoption: April 28, 2013
For further information, please call: (512) 936-1180

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DIVISION 5. GRANT ADMINISTRATION

1 TAC §§54.50 - 54.59

The new sections are proposed in accordance with Texas Government Code, §402.036(e), which authorizes the OAG to adopt rules necessary to establish guidelines for the expenditure of funds under the Choose Life grant program.

No other code, article or statute is affected by this proposal.

§54.50. Grant Forms.

(a) Unless otherwise stated, all required forms will be provided by the OAG.

(b) Failure to timely submit the required forms provided by the OAG may result in sanctions as stated in §54.59 of this subchapter (relating to Sanctions).

§54.51. Grant Contact and Authorized Signator.

(a) A grantee must have the following designees:

(1) A "grant contact"--The grant contact must be an employee of the grantee who is responsible for operating and monitoring the project and who is able to readily answer questions about the grant project's day-to-day operations. All grant-related information will be sent to this contact person.

(2) An "authorized signator"--The authorized signator is the person authorized to apply for, accept, decline, or cancel the grant for the applicant entity. This person signs all grant adjustment requests, inventory reports, progress reports and financial reports as well as any other official documents related to the grant. This person may be the executive director of the entity, or designee authorized by the governing body in the resolution.

(b) Any changes in the grant contact or authorized signator must be submitted promptly in writing to the OAG.

(c) An authorized signator may designate alternate persons to sign certain grant documents.

§54.52. Financial Reporting and Reimbursement.

(a) Because grants awarded under this subchapter are reimbursement-only grants, a grantee must regularly submit financial status reports and invoices, as directed by the OAG.

(b) A grantee must ensure that its final invoice is received no later than the 45th calendar day after the end of the grant period (liquidation date). If this date falls on a weekend or a holiday, then the OAG will honor receipt on the following business day. On the liquidation date, if grant funds are on hold for any reason, the funds will lapse and cannot be recovered by the grantee.

(c) Invoices received after the deadline stated in subsection (b) of this section may not be paid by the OAG.

(d) If necessary, the OAG may allow an extension beyond the deadline stated in subsection (b) of this section.

§54.53. Performance Reporting.

(a) A grantee must regularly submit performance reports as directed by the OAG. Failure to do so may result in the OAG placing a grantee on financial hold and may affect future funding requests.

(b) Information relating to performance reporting must be maintained in the grantee's files and must be available for review by the OAG or its designee.

§54.54. Inventory Reporting.

A grantee must maintain an inventory report of all equipment purchased as part of the grant project on file at its principal office. The grantee must complete and submit to the OAG an inventory of grant property no later than the 60th calendar day after the end of the grant period. If this date falls on a weekend or holiday, the OAG will honor receipt on the following business day.

§54.55. Grant Adjustments.

(a) Within each fiscal year, a grantee may transfer funds between direct cost line items in different approved budget categories, not to exceed a cumulative total of ten percent of the approved grant budget during that year, without requesting a grant adjustment from the OAG.

(b) If it becomes necessary to move funds that are greater than ten percent of the total budget between existing budget categories, revise the scope or target of the program, add new budget categories, or alter project activities, a grantee must first request and receive approval from the OAG for a grant adjustment. The person designated to make such requests or the authorized signator must sign all grant adjustment request forms.

(c) The OAG will allow only one grant adjustment per state fiscal year unless:

(1) the grantee demonstrates circumstances that the OAG deems adequately extenuating; or

(2) the OAG requests the grant adjustment.

§54.56. Copyrights.

If a grantee uses any OAG funds to purchase or receive a copyright or for a subcontractor to purchase or receive a copyright, the OAG reserves a royalty-free and irrevocable license to reproduce, publish, use, or authorize others to use the copyrighted material.

§54.57. Procurement, Property Management, and Contract Oversight Procedures.

A grantee shall use reasonable procurement procedures, property management procedures, and contract oversight guidelines. A grantee must comply with all applicable state and federal and local laws and regulations.

§54.58. Maintenance of Records.

(a) The grantee shall maintain adequate records to support its charges, procedures, and performances to the OAG for all work related to the grant. The grantee also shall maintain such records as are deemed necessary by the OAG and auditors of the State of Texas or such other persons or entities designated by the OAG, to ensure proper accounting for all costs and performances related to the grant. As applicable to the grant awarded to a grantee, such records include, but are not limited to:

(1) A copy of any required licenses or certifications of any individual who holds a grant-funded position.

(2) Time and attendance records for all grant-funded positions. These records must include the number of hours worked each day on the project, the signature of the employee, and the signature of the supervisor. Any further documentation requested by the OAG shall be maintained by the grantee for audit and monitoring purposes.

(3) Documentation showing that the terms of any grant-funded third-party contracts are being met.

(4) Adequate travel logs that include, at a minimum, dates, destinations, mileage amounts, expenses, and explanations of grant-related activities performed during the travel.

(5) Verification of completion of training and other related records.

(6) Records of the disposition, replacement or transfer of any equipment purchased with grant funds. The retention period for these records begins on the date of the disposition, replacement or transfer.

(7) Records of any litigation, claims, or audits involving the grant.

(b) The grantee shall maintain and retain for a period of four (4) years after the submission of the final expenditure report all such records as are necessary to fully disclose the extent of services provided under the contract. However, if four years after the submission of the final expenditure report, the records are subject to or implicated in pending litigation, claims, or audits, they must be retained until those matters have been fully and finally resolved.

(c) Records may be retained in an electronic format.

§54.59. Sanctions.

(a) Reimbursement for grant-related expenses is contingent upon a grantee's strict compliance with this subchapter, related requirements, and OAG procedures. Any failure to comply may result in the imposition of temporary or permanent sanctions or both.

(b) Sanctions may include:

(1) placing a grantee on financial hold;

(2) requiring repayment of grant funds;

(3) transferring the administration of a grant project to another entity;

(4) termination of a grant;

(5) ineligibility for future funding with the OAG; or

(6) any other sanction or corrective action that the OAG deems necessary.

(c) The OAG will notify a grantee if grounds for sanctions exist.

(d) If the grantee receives notice of grounds for sanctions and subsequently provides satisfactory evidence that the deficient condition has been corrected, the OAG may release funds.

(e) If the grantee fails to correct the deficient condition, in the time and manner as indicated by the OAG, and the grant is terminated, the OAG may require the grantee to return any equipment purchased with grant funds, and all unexpended or unobligated funds awarded to a grantee will revert to the OAG.

(f) A grantee may request a review of the sanctions imposed, described as follows:

(1) The grantee must make a written request for reconsideration no later than 10 days after the receipt of an OAG notice of sanctions.

(2) A grantee should submit any documentation necessary to support the reconsideration.

(3) The OAG will send the final determination to the grantee in writing.

(4) The OAG decision concerning sanctions is final.

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

Filed with the Office of the Secretary of State on March 11, 2013.

TRD-201301085
Katherine Cary
General Counsel
Office of the Attorney General
Earliest possible date of adoption: April 28, 2013
For further information, please call: (512) 936-1180

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DIVISION 6. GRANT MONITORING AND AUDITING

1 TAC §§54.65 - 54.68

The new sections are proposed in accordance with Texas Government Code, §402.036(e), which authorizes the OAG to adopt rules necessary to establish guidelines for the expenditure of funds under the Choose Life grant program.

No other code, article or statute is affected by this proposal.

§54.65. Violations of Laws.

A grantee must immediately provide notification to the OAG and, if applicable, the local prosecutor's office, of any knowledge, suspicion, or evidence of any violation of law that affects or is related to the grant. Such violations include misappropriation of funds, fraud, theft, embezzlement, forgery, or any serious irregularity or noncompliance with the requirements of this subchapter.

§54.66. Grantee Conflict of Interest.

(a) Grantee personnel, members of a grantee board or governing body, or other persons affiliated with the grant project shall not participate in any proceeding or action where grant funds personally benefit, directly or indirectly, the individuals or their relatives. "Relatives" means persons related to the individual within the third degree by consanguinity or within the second degree by affinity, as determined by Chapter 573 of the Government Code.

(b) Grant personnel and officials must avoid any action that results in or creates the appearance of:

(1) using their official positions for private gain;

(2) giving preferential treatment to any person;

(3) losing independent judgment or impartiality;

(4) making an official decision outside of official channels; or

(5) adversely affecting the confidence of the public in the integrity of the program or the OAG.

§54.67. Quality Assurance.

(a) Quality assurance reviews include programmatic monitoring, financial monitoring, and financial auditing.

(b) The OAG will conduct quality assurance reviews throughout the existence of a grant. A grantee must make all grant-related records available to OAG representatives unless the information is sealed by law.

(c) Quality assurance reviews may be review of required performance reports, on-site visits or desk reviews and may include any information that the OAG deems relevant to the grant.

(d) The OAG, or its designee, may make unannounced visits at any time.

(e) The OAG reserves the right to conduct its own audit or contract with another entity to audit any grantee.

(f) Based on the information gathered during monitoring or auditing, the OAG will issue a quality assurance report.

(g) A grantee must submit documentation to the OAG responding to any findings and questioned costs contained in the report.

(h) The quality assurance determination of the OAG is final and not subject to judicial review.

§54.68. Audit Standards.

(a) The OAG may require a grantee to conduct or undergo an annual audit of a grant based on applicable audit standards.

(b) A grantee must submit to the OAG copies of all audit reports that a grantee undergoes, regardless of the purpose. Such reports must be submitted to the OAG within 30 calendar days of completion.

(c) OAG grant funds may only be used for the fair and reasonable share of audit costs required by the OAG, in accordance with applicable federal and state cost principles governing allowability and allocation.

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

Filed with the Office of the Secretary of State on March 11, 2013.

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Katherine Cary
General Counsel
Office of the Attorney General
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For further information, please call: (512) 936-1180

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.7

The State Securities Board proposes an amendment to §109.7, concerning secondary trading exemptions. The amendment would change the name of the *Standard and Poor's Corporation Records* to *S&P Capital IQ Standard Corporation Descriptions.* The publisher will begin using the new name for the manual on April 1, 2013.

Patricia Loutherback, Director, Registration Division, has determined that for the first five-year period the rule is in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Loutherback also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that registered dealers seeking reliance upon the exemption contained in §5.O of the Texas Securities Act will have notice of the manuals included among the Board's "recognized securities manuals" for purposes of the exemption. There will be no effect on micro- or small businesses. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register.* Comments should be sent to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or sent by facsimile to (512) 305-8336.

The amendment is proposed 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 proposal affects Texas Civil Statutes, Article 581-5.

§109.7. Secondary Trading Exemptions.

(a) - (d) (No change.)

(e) The term "recognized securities manual" used in the Texas Securities Act, §5.O(9)(c), is limited to the following and includes any electronic publication format that is as readily available to the general public as the printed version, including, without limitation, CD-Rom and electronic dissemination over the Internet:

(1) S&P Capital IQ Standard Corporation Descriptions [~~and Poor's Corporation Records~~] (including the Daily News Section);

(2) - (9) (No change.)

(f) (No change.)

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

Filed with the Office of the Secretary of State on March 18, 2013.

TRD-201301123
John Morgan
Securities Commissioner
State Securities Board
Earliest possible date of adoption: April 28, 2013
For further information, please call: (512) 305-8304

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CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.3

The State Securities Board proposes an amendment to §115.3, concerning examination. The amendment notes that the Psychological Corporation no longer administers a state securities examination.

Patricia Loutherback, Director, Registration Division, and Tommy Green, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Loutherback and Mr. Green also have determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that applicants for registration as a dealer or an agent will be apprised of the categories of applicants eligible for a partial waiver of the examination requirements. There will be no effect on micro- or small businesses. Since the amendment will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register.* Comments should be sent to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or sent by facsimile to (512) 305-8336.

The amendment is proposed under Texas Civil Statutes, Articles 581-13.D and 581-28-1. Section 13.D provides the Board with authority to waive examination requirements for any applicant or class of applicants. 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 proposal affects Texas Civil Statutes, Article 581-13.

§115.3. Examination.

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

(c) Waivers of examination requirements.

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

(3) A partial waiver of the examination requirements of the Texas Securities Act, §13.D, is granted by the Board to the following classes of persons:

(A) (No change.)

(B) applicants who passed the "state securities examination" promulgated and formerly administered by the Psychological Corporation, New York, New York, and later by [~~now~~] the Psychological Corporation, San Antonio, Texas, which was an examination on general securities principles. These applicants are required to pass an examination on state securities law as required by subsection (b)(4) of this section;

(C) - (E) (No change.)

(4) (No change.)

(d) (No change.)

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

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John Morgan
Securities Commissioner
State Securities Board
Earliest possible date of adoption: April 28, 2013
For further information, please call: (512) 305-8304

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TITLE 22. EXAMINING BOARDS

PART 40. ADVISORY BOARD OF ATHLETIC TRAINERS

CHAPTER 871. ATHLETIC TRAINERS
SUBCHAPTER A. GENERAL GUIDELINES AND REQUIREMENTS

22 TAC §871.9, §871.12

The Advisory Board of Athletic Trainers (board) proposes amendments to §871.9 and §871.12, concerning the licensure and regulation of athletic trainers.

BACKGROUND AND PURPOSE

In accordance with Occupations Code, Chapter 451, the board is amending the sections to modify the alternative for licensure for applicants who have successfully completed an approved national examination. Additionally, the continuing education requirement for renewal of a license is also modified.

SECTION-BY-SECTION SUMMARY

The amendment to §871.9 restricts the alternative for licensure for applicants who have successfully completed an approved national examination to those that have not previously attempted completion of an examination administered by the board.

The amendment to §871.12 requires a licensee to complete two hours of training in concussion management as part of the continuing education required for renewal of a license.

FISCAL NOTE

Stewart Myrick, Program Director, has determined that for each fiscal year of the first five years the sections are in effect, there will be no fiscal implications to the state as a result of enforcing or administering the sections as proposed. Implementation of the proposed sections will not result in fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Myrick has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Myrick has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the licensing and regulation of athletic trainers.

REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The board has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Stewart Myrick, Program Director, Advisory Board of Athletic Trainers, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347 or by email to at@dshs.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the subject line. Comments

will be accepted for 30 days following publication of the proposal in the *Texas Register.*

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, §451.103, which authorizes the board to adopt rules necessary for the performance of its duties.

The amendments affect Occupations Code, Chapter 451.

§871.9. Examination for Licensure.

(a) - (j) (No change.)

(k) An applicant who fails to take the examination within a period of two years after the initial examination approval notice is mailed by the board shall [~~may~~] have such approval withdrawn and the application for licensure voided.

(l) (No change.)

(m) If an applicant has successfully completed the examination administered by the Board of Certification, Inc. (BOC) on or after January 1, 2004, the applicant shall not be required to complete the state examination described in subsections (a) - (l) of this section, unless the applicant has previously held a license issued by the board. The applicant must furnish the board a copy of the test results indicating that the applicant passed the examination.

(n) An applicant who has failed the state examination described in subsections (a) - (l) of this section must successfully complete that examination in order to be issued a license. If the application has been voided as described in subsection (k) of this section, the person shall submit a new application, and the provisions of subsection (m) of this section shall apply.

(o) [~~(n)~~] If an applicant has completed the examination administered by the Board of Certification, Inc. (BOC) before January 1, 2004, the applicant shall be required to complete the state examination described in subsections (a) - (l) of this section.

§871.12. Continuing Education Requirements.

(a) (No change.)

(b) Hours required for continuing education. A licensee must complete 20 clock-hours of continuing education during each two-year period. The continuing education must include 2 clock-hours of training in concussion management. In addition to the 20 clock-hours of continuing education, a licensee must also successfully complete a cardiopulmonary resuscitation (CPR) techniques course and an automated external defibrillation course during each two-year period. The two-year period begins on the first day following the license issuance month and ends upon the expiration date of the license.

(c) - (j) (No change.)

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

Filed with the Office of the Secretary of State on March 18, 2013.

TRD-201301120
David J. Weir
Chair
Advisory Board of Athletic Trainers
Earliest possible date of adoption: April 28, 2013
For further information, please call: (512) 776-6990

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 523. AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

31 TAC §§523.1 - 523.3, 523.6, 523.7

The Texas State Soil and Water Conservation Board (State Board or agency) proposes amendments to §§523.1 - 523.3 and §523.6; and new §573.7, concerning Agricultural and Silvicultural Water Quality Management.

The rules in Chapter 523 pertain to the abatement of agricultural and silvicultural nonpoint source pollution under the authority of the State Board. Chapter 523 includes the State Board's scope and jurisdiction (§523.1), as well as the process by which the State Board identifies problem areas related to agricultural and silvicultural nonpoint source pollution (§523.2). This chapter includes the administrative and technical procedures of the Water Quality Management Plan Certification Program (§523.3) and the associated cost-sharing function of soil and water conservation land improvement measures (§523.6). Chapter 523 includes a section pertaining to incentives for composting animal manures (§523.7). Section 523.7 is proposed for repeal in this issue of the *Texas Register* because the Dairy Manure Export Support Program no longer exists. Chapter 523 also includes a section pertaining to comprehensive nutrient management planning in the North Bosque River (§523.8). Section 523.4 pertaining to the resolution of complaints and §523.5 pertaining to the memorandum of understanding between the State Board and the Texas Commission on Environmental Quality are contained within this chapter but are not affected by this rulemaking proposal.

As a result of the most recent review of the agency by the Texas Sunset Advisory Commission and the corresponding enactment of House Bill 1808 by the 82nd Legislature, the State Board seeks to implement newly required management recommendations and statutory requirements for the Water Quality Management Plan Program. House Bill 1808 requires the State Board to: (1) develop goals for the program including desired program results and descriptions of program beneficiaries; (2) establish statewide evaluation criteria to document grantee compliance with grant conditions; (3) monitor compliance with the evaluation criteria by gathering, maintaining, and analyzing comprehensive data on grant program activities; and (4) analyze the extent to which grant programs achieve the goals using either empirical or nonempirical evidence. Incentive cost-share payments made to program participants in accordance with §523.6 are considered grants. The Sunset Advisory Commission's Final Report to the Texas Legislature also included a recommendation to agency management that a stakeholder process be used to develop grant goals and performance measures and to routinely use grant results to improve the Program.

Additionally, the State Board seeks to update the Program's priority areas for the control of nonpoint source pollution as required by §201.026(l), Agriculture Code. Section 201.026(g), Agriculture Code requires that the Program be implemented in areas that the State Board has identified as having or having the poten-

tial to develop agricultural or silvicultural nonpoint source water quality problems, or in an area within the "coastal zone" designated by the commissioner of the General Land Office. The State Board is required to consider: (1) bodies of water the Texas Commission on Environmental Quality has identified as impaired through the state water quality assessment process; (2) threatened areas in which action is necessary to prevent nonpoint source pollution; and (3) other areas of concern, including groundwater. Section 201.303(d)(1), Agriculture Code, which pertains to the allocation of cost-share funding for the Program, requires the State Board to give greater weight among the priorities identified under §201.026(g) of the Agriculture Code.

In an effort to balance the implementation of the new requirements with existing statutes, the State Board proposes amendments that specify a stakeholder process will be used to select cost-share incentive priorities, goals, and performance measures for the Program and that create an alternative mechanism whereby cost-share funds may be allocated to priority concerns rather than specific soil and water conservation districts. The alternative mechanism does not preclude the State Board from directly allocating cost-share funds to a soil and water conservation district. There are also numerous other amendments proposed that are intended to improve clarification of the existing rules as well.

Existing §523.1(a)(1) is amended to clarify that there may be additional sources of nonpoint source pollution that are not explicitly listed in rule.

Existing §523.1(a)(1)(B) is amended to clarify that animal feeding operations are considered nonpoint sources in their entirety, as opposed to specific portions or activities that they may be engaged in conducting.

Existing §523.1(b)(2) is amended to clarify that the State Board may utilize general revenue from the state in addition to federal funds provided by §319(h) of the Federal Clean Water Act for certain activities and that those funds may be used for research purposes.

Existing §523.2(c) is amended to clarify that the resources referenced in this section would be allocated toward the programs listed in existing §523.1(b)(1) - (4).

Existing §523.2(c)(1) - (3) is amended to remove the terms "first, second, and third" from the beginning of each paragraph to clarify that the three considerations are not presented in a ranked order of importance.

Existing §523.3(b)(7)(C) is amended by replacing the term "designated" with "devised" as it more accurately describes the process.

Existing §523.3(b)(7)(D) is amended to provide additional clarity to the definition without modifying the meaning of the definition.

Existing §523.3(b)(12) is amended to replace the term "audit" with "assessment" because it more accurately describes the process and to specify that a status review also assesses compliance with a water quality management plan conservation plan of operations.

Existing §523.3(c)(1) is amended to include language currently codified at existing §523.3(g)(2) because it is more applicable to certification rather than practice standards.

Existing §523.3(d) is amended to clarify that recertification is necessary for certain specific modifications to a water quality management plan.

Existing §523.3(e) is amended to clarify that the subsequent section is applicable to the modification of a water quality management plan in addition to the initial receipt of one.

Existing §523.3(e)(4) is amended to clarify that all of the conditions at existing §523.3(c) relating to certification would need to be met, not exclusively the provision relating to water quality standards, prior to certification being made.

Existing §523.3(g)(2) is amended by deleting language relating to the technical planning threshold required for certification from this section. This language is proposed to be moved to existing §523.3(c)(1).

Existing §523.3(j)(3)(A)(vi) is amended to clarify that the "notice of violation" referenced in the section is meant to refer to one issued by the Texas Commission on Environmental Quality.

The title of existing §523.6, "Cost-Share Assistance for Soil and Water Conservation Land Improvement Measures," is amended to clarify that "cost-share" assistance is funding and that it is intended to serve as an incentive for participation. This proposed amendment is present in numerous places throughout the remainder of the section and is made for the same clarifying purpose.

Existing §523.6(a) is amended to clarify that cost-share incentive funding is only available when used toward the implementation of a water quality management plan certified by the State Board.

In existing §523.6(b)(1), the definition of "allocated funds" is amended to include funds allocated to a cost-share incentive priority as well as funds directly allocated by the State Board to a soil and water conservation district. Additionally, this amended section specifies that the latter would be referred to as a "direct allocation."

Proposed new §523.6(b)(6) provides a definition for "cost-share incentive priority." The remaining paragraphs in subsection (b) are renumbered.

In existing §523.6(b)(11) (renumbered as §523.6(b)(12)), the definition of "maintenance agreement" is amended. The amendment clarifies that it is intended to serve as the written agreement between the parties that documents the participant's commitment to implement and maintain the water quality management plan, and the conservation practices within the plan, regardless of whether cost-share incentive funding is provided toward such implementation, or the State Board will remove certification of the plan. If certification is removed, the agreement requires that any practices installed with the assistance of cost-share incentive funding must be maintained by the participant for the life expectancy of the practice even though the water quality management plan is no longer certified. Failing to maintain cost-shared practices for the life expectancy may result in the requirement that all or a prorated portion of the funding be returned to the State Board.

In existing §523.6(b)(12) (renumbered as §523.6(b)(13)), the definition of "obligated funds" is amended to include those from a cost-share incentive priority.

In existing §523.6(b)(13) (renumbered as §523.6(b)(14)), the definition of "operating unit" is amended to be consistent with the same definition as proposed in §523.3(b)(7)(C).

Existing §523.6(b)(13)(D) (renumbered as §523.6(b)(14)(D)) is amended to include language clarifying the existing intended meaning of the definition relating to a change in ownership.

Proposed new §523.6(c), concerning Stakeholder Process, is added to require that the State Board use a stakeholder process to implement goals and performance measures. The remaining subsections are relettered.

Existing §523.6(c)(1)(A) (relettered as §523.6(d)(1)(A)) is amended to specify that the established procedures would include those necessary to allocate funds to a cost-share incentive priority as well as directly to a soil and water conservation district.

Existing §523.6(c)(1)(D) (relettered as §523.6(d)(1)(D)) is amended to clarify that the minimum and maximum amounts of cost-share incentive funding the State Board establishes for an eligible person in a year is intended to be in a "program year," not year in the most general definition. This amendment clarifies that an eligible person could receive more than those amounts during a single calendar year, cumulatively, so long as the amounts from each program year, as defined, do not exceed the amounts established by the State Board for those respective program years.

Proposed new §523.6(d)(1)(E) is added to specify that the State Board shall provide verification to a soil and water conservation district as to whether an application would or would not qualify for a particular cost-share incentive priority. The remaining subparagraphs in subsection (d)(1) are relettered.

Existing §523.6(c)(1)(F) (relettered as §523.6(d)(1)(G)) is amended to specify that the reports soil and water conservation districts submit to the State Board will only pertain to direct allocations.

Existing §523.6(c)(1)(G) (relettered as §523.6(d)(1)(H)) is amended to specify that the requests for reallocated funds from participating soil and water conservation districts pertain to direct allocations.

Existing §523.6(c)(2)(B) (relettered as §523.6(d)(2)(B)) is amended to specify that the district would administer the cost-share funds allocated under a direct allocation.

Existing §523.6(c)(2)(C) (relettered as §523.6(d)(2)(C)) is amended to specify that the establishment of a priority system applies to direct allocations and cost-share incentive priorities.

Existing §523.6(d) (relettered as §523.6(e)), "Administration of Funds," is amended to include cost-share incentive priorities.

Proposed new §523.6(e)(2), concerning Approval of Cost-share Incentive Priority Allocations, is added to specify that the stakeholder process described in new §523.6(c) would be used to identify priorities, and that those recommendations would receive greater weight. The remaining paragraphs in subsection (e) are renumbered.

Existing §523.6(d)(2) (relettered as §523.6(e)(3)) is amended to specify that it pertains to direct allocations and that requests for allocations to address water quality concerns would be considered over requests to address other issues. Direct allocations would be considered after cost-share incentive priorities.

Existing §523.6(d)(3) (relettered as §523.6(e)(4)) is amended to specify that direct allocations would be funded with dollars not already allocated to a cost-share incentive priority.

Existing §523.6(d)(4) (relettered as §523.6(e)(5)) is amended to clarify that the maximum cost-share amount may deviate from the established $15,000 if the funds originate from other sources and that the amount would be established by the terms of the agreement that provided the other funds.

Existing §523.6(e)(2)(B) (relettered as §523.6(f)(2)(B)) is amended to specify that increased acreage and an increase in animal waste production may result in the waiver of a one-time cost-share frequency limitation.

Existing §523.6(e)(2)(E), which enables participants to receive cost-share funding in every instance where a previously mandated and cost-shared practice has reached its life expectancy, is deleted. The remaining subparagraphs in subsection (f)(2) are relettered.

Existing §523.6(e)(2)(F) (relettered as §523.6(f)(2)(F)) is amended to clarify that this waiver is only applicable to the mandated practice and may not be applied more than one time to a single practice.

Existing §523.6(f)(2)(A) (relettered as §523.6(g)(2)(A)) is amended to specify that the State Board would provide guidelines to districts with respect to announcing the availability of funding.

Existing §523.6(f)(2)(C) (relettered as §523.6(g)(2)(C)) is amended to address both direct allocations and cost-share incentive priorities.

New §523.6(g)(2)(F) is established to provide for the State Board to confirm for a district whether or not an application qualifies for a particular cost-share incentive priority. The remaining subparagraphs in subsection (g)(2) are relettered.

Existing §523.6(f)(2)(F) (relettered as §523.6(g)(2)(G)) is amended to include cost-share incentive priorities and clarify the process for reallocation of funds not obligated.

Existing §523.6(f)(5) (relettered as §523.6(g)(5)) is amended to be consistent with proposed new §523.6(b)(12) relating to the maintenance agreement.

Existing §523.7, Incentives for Composting Animal Manure, is proposed for repeal in this issue of the *Texas Register,* because the Dairy Manure Export Support Program is no longer in existence.

Existing §523.8, Comprehensive Nutrient Management Planning in the North Bosque River Watershed, is proposed as new §523.7 and includes numerous repetitive amendments, including the use of "cost-share incentive funding" in place of "assistance."

Kenny Zajicek, Fiscal Officer for the State Board, has determined that for the first five-year period the amendments and new section are in effect there will be no fiscal implications for state or local government as a result of administering the amendments and new section as proposed.

Mr. Zajicek has also determined that for each year of the first five years the amendments and new section are in effect, the public benefit anticipated as a result of administering the amendments and new section will be a consistency of terms and definitions and better understanding of the program by any and all individuals involved with and/or concerned with this program.

There is no anticipated cost to small businesses or individuals resulting from the amendments or new section.

Comments on the proposal may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conser-

vation Board, P.O. Box 658, Temple, Texas 76503; telephone: (254) 773-2250.

The amendments and new section are proposed under the Agriculture Code, 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.

No other statutes, articles, or codes are affected by this proposal.

§523.1. Scope and Jurisdiction.

(a) The Texas State Soil and Water Conservation Board (State Board) is the lead agency in this state for activity relating to abating agricultural and silvicultural nonpoint source pollution.

(1) Nonpoint source pollution is pollution caused by diffuse sources that are not regulated as point sources and normally is associated with, but is not limited to agricultural, silvicultural, and urban runoff including[, ~~runoff from~~] construction activities[, ~~etc~~]. Such pollution is the result of human-made or human-induced alteration of the chemical, physical, biological, and radiological integrity of water. In practical terms nonpoint source pollution does not result from a discharge at a specific, single location (such as a single pipe) but generally results from land runoff, precipitation, atmospheric deposition, or percolation. Pollution from nonpoint sources occurs when the rate at which pollutant materials entering water bodies or groundwater exceeds natural rates or total loadings exceed natural loadings.

(A) (No change.)

(B) Animal feeding operations, in their entirety as a single functioning facility, may be considered a [~~as~~] point or a nonpoint source [~~sources~~] depending on size, location, and other considerations. For the purposes of this chapter [~~these rules~~], all animal feeding operations not required to obtain a permit from the Texas Commission on Environmental Quality are [~~will be~~] nonpoint sources.

(2) - (3) (No change.)

(b) As the lead agency, the State Board shall plan, implement, and manage programs and practices for abating agricultural and silvicultural nonpoint source pollution. At a minimum, these programs shall include:

(1) (No change.)

(2) a nonpoint source grant program funded by §319(h) of the federal Clean Water Act, as well as available non-federal appropriations provided by the Texas Legislature, to initiate [~~and any~~] planning, assessment, education, demonstration, research, or implementation projects and programs associated with the effective administration of the Texas Nonpoint Source Management Program;

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

§523.2. Identification of Problem Areas.

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

(c) Allocation of resources will be based on priority considerations. In allocating [~~program~~] resources for the programs specified in §523.1(b)(1) - (4) of this title, the State Board will consider the following:

(1) [~~first,~~] known problems, where the State Board has determined that adequate data show the existence of a water quality problem caused by agricultural or silvicultural nonpoint sources;

(2) [~~second,~~] potential problems, where the State Board has determined that the intensity and location of certain agricultural and silvicultural activities requires program implementation to prevent pollution problems caused by agricultural and silvicultural nonpoint source activities;

(3) [~~third,~~] corrective action plans needing to be implemented, the economic impact on producers, and benefits to water quality. Corrective action plans may include, but are not limited to, watershed protection plans, total maximum daily loads and associated implementation plans, nonpoint source grant project plans, or certified water quality management plans.

§523.3. Water Quality Management Plan Certification Program.

(a) (No change.)

(b) Definitions. For the purposes of this section the following definitions shall apply.

(1) - (6) (No change.)

(7) Operating unit--Land or lands, whether contiguous or non-contiguous, owned and/or operated in a manner that contributes or has the potential to contribute agricultural or silvicultural nonpoint source pollution to water in the state. An operating unit must be determined through mutual agreement by the holder of the water quality management plan, the soil and water conservation district, and the State Board. When determining the applicability of an operating unit, the following criteria must be considered:

(A) - (B) (No change.)

(C) An operating unit, when devised [~~designated~~] for an animal feeding operation, must at a minimum encompass all land or lands owned and/or operated by the holder of the water quality management plan that are used to produce feed that is consumed by the animals, as well as all land or lands owned and/or operated by the potential holder of the water quality management plan where manures or other agricultural by-products are beneficially used as a source of nutrients to produce food or fiber for any use.

(D) Land or lands within the scope of an existing operating unit for a certified water quality management plan may not be separated from the existing operating unit to establish another operating unit unless the [~~a change of~~] ownership of the lands being separated into a new operating unit has changed [~~occurred~~].

(E) (No change.)

(8) - (11) (No change.)

(12) Status Review--An assessment [~~audit~~] performed by the State Board on a water quality management plan for the purpose of determining adherence to the plan's implementation schedule and conservation plan of operations.

(13) - (16) (No change.)

(c) Certification.

(1) To be certified, a water quality management plan must at a minimum meet the resource quality criteria for water quality at the resource management system level specified within the NRCS FOTG and encompass all lands [~~whether contiguous or non-contiguous~~] that constitute [~~constitutes~~] an operating unit for agricultural or silvicultural nonpoint source pollution abatement purposes. It is the decision of the State Board that the implementation of a water quality management plan based on the NRCS FOTG, including all practices required to minimally meet the resource quality criteria for water quality at the resource management system level, represents the best available technology for meeting Texas surface water quality standards.

(2) (No change.)

(d) A water quality management plan should be modified and re-certified when there is a land use change of any part of the operating unit; an addition or deletion of significant acreage to or from the operating unit covered by the water quality management plan; alteration

of planned permanent practice measures including addition or deletion of such; changes identified by research and advanced technology as being needed to meet Texas surface water quality standards; or when more stringent measures become necessary to meet Texas surface water quality standards.

(e) Process for obtaining or modifying a Water Quality Management Plan.

(1) - (3) (No change.)

(4) When determined to be consistent with the provisions of subsection (c) of this section, [~~Texas surface water quality standards, taking into account the state of existing technology, economic feasibility and water quality needs,~~] the State Board may [~~will~~] certify the plan [~~or plan modification~~].

(f) (No change.)

(g) Practice standards.

(1) (No change.)

(2) Practice standards will be based on criteria in the NRCS, FOTG; however, modification of those practice standards to ensure consistency with Texas surface water quality standards and the Texas Nonpoint Source Management Program will be made as necessary. [~~It is the decision of the State Board that the implementation of a water quality management plan based on the NRCS FOTG, including all practices required to minimally meet the resource quality criteria for water quality at the resource management system level, represents the best available technology for meeting Texas surface water quality standards.~~]

(3) (No change.)

(h) - (i) (No change.)

(j) Water Quality Management Plans for Poultry Facilities.

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

(3) After September 1, 2009 the State Board may not certify a water quality management plan for a proposed newly constructed poultry facility, or an existing poultry facility that proposes to expand by more than 50 percent the number of birds included in the existing certified water quality management plan as of September 1, 2009, that is located less than one half of one mile from a neighbor if the presence of the facility is likely to create a persistent nuisance odor for such neighbors, unless the facility provides an odor control plan the Texas Commission on Environmental Quality determines is sufficient to control odors. A facility that will house fewer than 10,000 total birds is unlikely to create a persistent nuisance odor. Within this paragraph and subparagraphs, the term neighbor includes business, off-site permanently inhabited residence, place of worship, or other poultry farm under separate ownership; and proposed facility has the meaning described [~~above~~] in paragraph (2) of this subsection.

(A) Factors that are considered likely to create a persistent nuisance odor and will require the proposed facility to submit an odor control plan are:

(i) - (v) (No change.)

(vi) A notice of violation from the Texas Commission on Environmental Quality for odor has been issued to the proposed facility within the previous 12 months.

(B) - (D) (No change.)

(4) - (8) (No change.)

§523.6. Cost-Share Incentive Funding [~~Assistance~~] for Soil and Water Conservation Land Improvement Measures.

(a) Purpose. The purpose of cost-share funding [~~this program~~] is to provide an [~~the needed~~] incentive to landowners or operators to install [~~for the installation of~~] soil and water conservation land improvement measures consistent with the purpose of controlling erosion, conserving water, and/or protecting water quality in accordance with a water quality management plan certified by the State Board.

(b) Definitions. For the purposes of this section the following definitions shall apply.

(1) Allocated funds--Funds budgeted through the State Board either allocated directly to a specific soil and water conservation district or to a cost-share incentive priority for utilization by multiple soil and water conservation districts [~~for cost-share assistance~~]. For the purposes of the chapter, funds directly allocated to a specific soil and water conservation district shall be referred to as a direct allocation.

(2) Applicant--A person who applies for cost-share incentive funding [~~assistance~~] from the soil and water conservation district.

(3) Available funds--Monies budgeted, unobligated and approved by the State Board for cost-share incentive funding [~~assistance~~].

(4) (No change.)

(5) Cost-share incentive funding [~~assistance~~]--An award of money made to an eligible person for conservation land improvement measures pursuant to the terms of Agriculture Code §201.301.

(6) Cost-share incentive priority--A geographic location such as a watershed, a soil and water conservation district or other political subdivision boundary, or a specific agricultural or silvicultural activity, or a combination thereof, that is adopted by the State Board as a specified priority for receiving an allocation of cost-share incentive funding. Cost-share incentive priorities must be consistent with the purpose of controlling erosion, conserving water, and/or protecting water quality.

(7) [~~(6)~~] District director--A member of the governing board of a soil and water conservation district.

(8) [~~(7)~~] Eligible land--Those lands that are eligible for application of conservation land improvement measures using cost-share incentive funding [~~assistance~~].

(9) [~~(8)~~] Eligible person--Any of the land holders eligible to apply for cost-share incentive funding [~~assistance~~] or any person designated to represent the applicant as provided by a durable power of attorney, court order or other valid legal document.

(10) [~~(9)~~] Eligible practices--Those conservation land improvement measures that have been approved by the State Board.

(11) [~~(10)~~] Landowner--Any person, firm or corporation holding title to land lying within a soil and water conservation district.

(12) [~~(11)~~] Maintenance agreement--A written agreement between the eligible person and the soil and water conservation district wherein the eligible person(s) agrees to implement and maintain all conservation practices included in the water quality management plan in accordance with the implementation schedule, all technical requirements of the applicable practice standards, and specified life expectancies of practices until such time that the certification of the State Board is withdrawn. The maintenance agreement shall specify that any practices installed through the payment of cost-share incentive funding, to any extent, must be maintained in accordance with the applicable practice standards and specified life expectancies regardless of whether or

not the water quality management plan continues to be certified or not. Failure to maintain cost-shared practices may result in the requirement for all or a prorated portion of the cost-share funding to be returned to the State Board. It is the expectation of the State Board that a water quality management plan be maintained by the landowner for an indefinite period of time. [~~A written agreement between the eligible person and the soil and water conservation district wherein the eligible person(s) agrees, as a condition of the receipt of State cost-share funds, to implement and maintain all measures in the certified water quality management plan consistent with its implementation schedule. The maintenance agreement shall remain in effect for a minimum period of two years after the certified water quality management plan is completely implemented for all practices except those cost-shared. The maintenance agreement shall remain in effect on cost-shared practices for the expected life of the practice as established by the State Board or for a period of two years after the certified water quality management plan is completely implemented, whichever period of time is longer. It is the expectation of the State Board that a water quality management plan be maintained by the landowner for an indefinite period of time. The maintenance agreement is only intended to ensure a minimum period of time during which the State of Texas can realize the conservation and water quality benefits of its investment of technical and financial assistance to a landowner.~~]

(13) [~~(12)~~] Obligated funds--Monies from a soil and water conservation district's allocated funds or from a cost-share incentive priority which have been committed to an applicant after final approval of the application.

(14) [~~(13)~~] Operating Unit--Land or lands, whether contiguous or non-contiguous, owned and/or operated in a manner that contributes or has the potential to contribute agricultural or silvicultural nonpoint source pollution to water in the state. An operating unit must be determined through mutual agreement by the holder of the water quality management plan, the soil and water conservation district, and the State Board.

(A) Contiguous lands under the same ownership and/or operational control must be considered one operating unit.

(B) Non-contiguous lands under the same ownership and/or operational control may be considered as more than one operating unit when there is mutual agreement by the soil and water conservation district and the potential holder of the water quality management plan unless the lands are associated with an animal feeding operation.

(C) An operating unit, when devised [~~designated~~] for an animal feeding operation, must at a minimum encompass all land or lands owned and/or operated by the holder of the water quality management plan that are used to produce feed that is consumed by the animals, as well as all land or lands owned and/or operated by the potential holder of the water quality management plan where manures or other agricultural by-products are beneficially used as a source of nutrients to produce food or fiber for any use.

(D) Land or lands within the scope of an existing operating unit for certified water quality management plan may not be separated from the existing operating unit to establish another operating unit unless the [~~a change of~~] ownership of the lands being separated into a new operating unit has changed [~~occurred~~].

(E) Where mutual agreement regarding an operating unit's consistency with this section [~~these rules~~] is not achieved by the potential holder of the water quality management plan, the soil and water conservation district, and the State Board, the State Board will make a final determination whether or not to certify the water quality management plan.

(15) [~~(14)~~] Performance agreement--A written agreement between the eligible person and the soil and water conservation district wherein the eligible person agrees to perform conservation land improvement measures for which allocated funds are being paid.

(16) [~~(15)~~] Practice standard--A technical specification for a conservation practice within the NRCS FOTG that contains information on why and where the practice should be applied, and sets forth the minimum quality criteria that must be met during the application of that practice in order for it to achieve its intended purpose(s).

(17) [~~(16)~~] Priority system--The system devised by the soil and water conservation district, under guidelines of the State Board, for ranking approved conservation practices and for facilitating the disbursement of allocated funds in line with the soil and water conservation district's priorities.

(18) [~~(17)~~] Program year--The period from September 1 to August 31.

(19) [~~(18)~~] Soil and water conservation district (SWCD)--A governmental subdivision of this state and a public body corporate and politic, organized pursuant to Chapter 201 of the Agriculture Code.

(20) [~~(19)~~] State Board--The Texas State Soil and Water Conservation Board organized pursuant to Chapter 201 of the Agriculture Code.

(c) Stakeholder Process. The State Board shall use a stakeholder process to develop cost-share incentive priorities, goals and performance measures for cost-share incentive priorities, and routinely share the results of program activities with stakeholders to gather input for program improvement actions.

(d) [~~(c)~~] Responsibilities.

(1) The State Board shall:

(A) Establish a procedure to allocate funds to a specific SWCD or to cost-share incentive funding priorities for utilization by multiple soil and water conservation districts [~~designated SWCDs for their use in cost-share assistance~~].

(B) Establish conservation practices eligible for cost-share incentive funding and their standards, specifications, maintenance and expected life.

(C) Establish maximum cost-share rate for each conservation practice approved for cost-share incentive funding.

(D) Establish, prior to September 1 of each year, the minimum cost-share incentive funding amount [~~assistance prior to September 1 each year~~] that may be made under the program and the maximum cost-share incentive funding amount [~~assistance~~] that an eligible person may be obligated from [~~receive under the program~~] in any one program year.

(E) Provide verification to a SWCD that an application qualifies for cost-share incentive funding from a selected cost-share incentive priority prior to SWCD obligation of funds.

(F) [~~(E)~~] Perform clerical, administrative and record-keeping responsibilities required for carrying out [~~the~~] cost-share incentive funding activities [~~program~~].

(G) [~~(F)~~] Receive and maintain monthly reports from SWCDs which have been directly allocated an amount of cost-share incentive funding showing the unobligated balance of allocated funds as shown on each ledger at the close of the last day of each month.

(H) [~~(G)~~] Receive requests for reallocated funds and funds reverted from participating SWCDs that received a direct allocation.

(I) [~~(H)~~] Act on appeals filed by applicants.

(J) [~~(I)~~] Process vouchers and issue warrants for cost-share to eligible recipients.

(2) The SWCDs shall:

(A) Designate, from State Board approved list, those conservation practices that will be eligible for cost-share incentive funding in their SWCD.

(B) Administer [~~the~~] cost-share incentive funding with [~~program within the~~] funds allocated by the State Board if the SWCD received a direct allocation.

(C) Establish, under guidelines of the State Board, the priority system to be used for evaluation of applications for incentive funding through a direct allocation to the SWCD, and to be used for evaluation of applications for cost-share incentive priorities.

(D) Establish the period(s) of time, under the guidelines of the State Board, for accepting applications and announce the availability of cost-share incentive funding [~~program~~] locally.

(E) Accept and process cost-share incentive funding applications.

(F) Determine eligibility of lands and persons for cost-share incentive funding [~~assistance~~] under guidelines established by the State Board.

(G) Notify applicants of the SWCD's decisions on approval of applications.

(H) File approved applications in the SWCD's copy of the applicant's water quality management plan.

(I) Obligate allocated funds for applications receiving final approval.

(J) Provide or arrange for technical assistance to applicants, or approve applicant and provide for an alternate source of technical assistance.

(K) Certify completed conservation practices to the State Board prior to payment.

(L) Submit required reports on the unobligated balance of directly allocated funds and on accomplishments to the State Board.

(e) [~~(d)~~] Administration of Funds.

(1) Allocation of Funds. The State Board may allocate funds appropriated from general revenue fund and other sources for cost-share incentive funding [~~assistance~~] among particular soil and water conservation land improvement measures, specific SWCDs, [~~or~~] among areas of the state through cost-share incentive priorities, or a combination thereof, and may adjust such allocations throughout the year as available funds and SWCD needs and priorities change in order to achieve the most efficient use of state funds. The State Board may designate a portion of the funds allocated to a SWCD or to cost-share incentive priorities to reimburse SWCDs [~~the SWCD~~] for obligations incurred in administering [~~the~~] cost-share incentive activities [~~program~~].

(2) Approval of Cost-share Incentive Priority Allocations. The State Board may allocate cost-share incentive funding to priorities identified by the State Board, local SWCDs through the stakeholder process described at subsection (c) of this section, and other entities. Higher consideration will be given to priorities recommended through the stakeholder process. Priorities will be approved consistent with the purpose of cost-share incentives specified at subsection (a) of this section. A cost-share incentive priority shall exist for no more than two program years without re-approval by the State Board.

(3) [~~(2)~~] Requests for Direct Allocations. SWCDs within areas designated for cost-share program may [~~must~~] submit requests for a direct cost-share incentive fund allocation to the State Board. Such requests must be submitted by September 1st of each program year, and must include a description of how the allocation will control soil erosion, conserve water, and/or protect water quality. Allocations requested to address documented problems with water quality will be considered before other requests, and any request will be subject to the availability of funds after allocations are made to approved cost-share incentive priorities as described in paragraph (2) of this subsection.

(4) [~~(3)~~] Approval of Direct Allocations to SWCDs. The State Board shall consider and approve, reject or adjust SWCD requests for direct allocations giving consideration to the amount of available funding not already allocated to cost-share incentive priorities, relative need for funding and SWCD workload and fund balances, as well as other information deemed necessary by the State Board. Only SWCDs for which the State Board has established an allocation are eligible to directly claim cost-share incentive funds.

(5) [~~(4)~~] Maximum Allowable Amount of Cost-Share Funds per Operating Unit. The maximum allowable amount of cost-share funds that may be applied to any single operating unit is $15,000. This provision applies only to general revenue funds appropriated by the Texas Legislature to assist program participants with the implementation of soil and water conservation land improvement measures as allowed by Agriculture Code §201.301. In cases where the funding for cost-share incentives originates from sources other than appropriations made directly to this program by the Texas Legislature, the maximum allowable amount of cost-share incentive funding per operating unit will be established by the terms of the contractual agreement providing the funds until otherwise specified by the State Board.

(f) [~~(e)~~] Eligibility for Cost-Share Incentive Funding [~~Assistance~~].

(1) Eligible person. Any individual, partnership, administrator for a trust or estate, family-owned corporation, or other legal entity who as an owner, lessee, tenant, or sharecropper, participates in an agricultural or silvicultural operation and has a certified water quality management plan on an operating unit within a [~~the~~] SWCD shall be eligible for cost-share incentive funding [~~assistance~~].

(2) In accordance with the terms of this chapter [~~the maintenance agreement~~] an eligible person may receive cost-share only once for an operating unit. The State Board, on a case-by-case[~~,~~] project or watershed basis and in consultation with the SWCD, may grant a waiver to this requirement in situations where:

(A) Research and/or advanced technology indicate(s) a plan modification to include additional measures to meet Texas surface water quality standards is needed;

(B) The [~~the~~] operating unit is significantly increased in size by the addition of new land areas or the amount of animal waste production is significantly increased requiring additional [~~that require~~] conservation practices, not previously cost-shared, in order to meet Texas surface water quality standards;

(C) More [~~more~~] stringent measures become necessary to meet Texas surface water quality standards;

(D) A [a] landowner has assumed the responsibility of a maintenance agreement in cases where the landowner was not the applicant; or

[(E) the life expectancy of a conservation practice or practices that was/were previously cost-shared through this program has/have expired and the practice or practices is/are mandated by state law or the laws, rules, or regulations of a political subdivision. This waiver is only applicable to the mandated practice or practices; or]

(E) [(F)] A [a] landowner has previously received cost-share through this program but an additional practice or practices has/have been subsequently mandated by state law or the laws, rules, or regulations of a political subdivision. This waiver is only applicable to the mandated practice or practices and may not be applied more than one time to a single practice.

(3) Eligible land. Any of the following categories of land shall be eligible for cost-share incentive funding [assistance]:

(A) Land within the State that is privately owned by an eligible person.

(B) Land leased by an eligible person over which he/she has adequate control and which land is utilized as a part of his/her operating unit.

(C) Land owned by the State, a political subdivision of the State, or a nonprofit organization that holds land in trust for the state.

(4) Ineligible lands. Allocated funds shall not be used:

(A) To reimburse other units of government for implementing conservation practices.

(B) On privately owned land not used for agricultural or silvicultural production.

(5) Eligible purposes. Cost-share incentive funding [assistance] shall be available only for those eligible practice measures included in a certified [an approved] water quality management plan and determined to be needed by the SWCD to:

(A) Reduce erosion;[,] and/or

(B) Improve water quality and/or quantity.

(6) Eligible practices. Conservation practices which the State Board has approved and which are included in the applicant's approved water quality management plan shall be eligible for cost-share incentive funding [assistance]. The list of eligible practices will be approved as needed by the State Board. The SWCDs shall designate their list of eligible practices from those practices approved by the State Board. SWCDs may request the State Board's approval to offer cost-share incentive funding [assistance] for conservation practices not included in the State Board's list of approved practices. The use of special conservation practices is limited to those measures that can solve unique problems in a SWCD and which conform with one or more of the purposes of the [cost-share] program. Requests for special conservation practices will be filed in writing with the State Board in time to obtain action and notification in writing from the State Board of its decision(s) prior to announcing the availability of cost-share incentive funding [program] locally for the program year. Conservation practices may be included in a SWCD's list of eligible practices offered for cost-share incentive funding [assistance] only as approved by the State Board.

(7) Requirement to file an application. In order to qualify for cost-share incentive funding [assistance], an eligible person shall file an application with the local SWCD.

(8) Persons required to sign applications and agreements. All applications and agreements shall be signed by:

(A) The eligible person and;

(B) the landowner in cases where the eligible person does not hold title to the land constituting the operating unit.

(g) [(f)] Cost-Share Incentive Funding [Assistance] Processing Procedures.

(1) Responsibility of applicants. Applicants for cost-share incentive funding [assistance] for conservation practices shall:

(A) Complete and submit an application to the SWCD.

(B) Where an applicant does not have an approved water quality management plan and has not determined the anticipated total cost of the requested measure(s), he/she, as part of the application, may request assistance from the SWCD in developing such plan and determining costs.

(C) After being notified of approval and obligation of funds by the SWCD, request technical assistance through the SWCD to design and layout the approved practices or request approval of alternate sources of technical assistance.

(D) Secure any approved contractor(s) needed and all contractual or other agreements necessary to construct or perform the approved practice(s). Cost-share will not be allowed for work begun before the application is approved.

(E) Complete and sign performance and maintenance agreements and any amendments to those agreements.

(F) Supply the documents necessary to verify completion of the approved practice(s) along with a completed and signed certification of cost.

(2) Responsibilities of SWCDs. SWCDs shall:

(A) Establish the period(s) of time for accepting applications, under the guidelines of the State Board, and announce the availability of cost-share incentive funding [cost-share program] locally.

(B) Accept cost-share applications at the SWCD's office.

(C) Determine eligibility of lands and persons for cost-share incentive funding under either the SWCD's local program for a direct allocation or under a cost-share incentive priority [assistance]. If an applicant's land is in more than one SWCD, the respective SWCD boards of directors will review the application and agree to oversee all works, administrate all contracts and obligate all funds from one SWCD or prorate the funding between SWCDs.

(D) Give initial approval to those applications that meet the eligibility requirements.

(E) Evaluate the initially approved applications under either the SWCD's priority system for a direct allocation or under a cost-share incentive priority and give final approval to the high priority applications that can be funded [by the SWCD's allocated funds].

(F) For applications that may qualify for a cost-share incentive priority, submit the applications to the appropriate State Board office for confirmation of qualification and availability of funds.

(G) [(F)] Obligate funds for the approved conservation practices that can be funded and notify the applicant(s) that his/her conservation practice(s) has/have been approved for cost-share incentive funding and to proceed with installation. Allocated funds must be ob-

ligated by the last day of April of the fiscal year allocated. All unobligated allocations, regardless of whether they exist in a direct SWCD allocation or a cost-share incentive priority, shall become unallocated on [~~revert back as of~~] May 1st of each [~~that fiscal~~] year and may be reallocated to other priorities at the discretion of the State Board to ensure the most efficient use of cost-share incentive funds.

(H) [~~(G)~~] Determine compliance with standards and specifications and certify completed conservation land treatment measure(s) that meet standards.

(3) Amended Applications for Allocated Funds.

(A) In the event that an adjustment to the estimated cost of conservation practice(s) is necessitated by the final design, the applicant shall either agree to assume the additional cost or complete and submit an amendment to his/her application for allocated funds to the SWCD for approval or denial by the SWCD. If the obligated funds originate from a cost-share incentive priority, the SWCD will confer with the State Board to determine if additional funds are available.

(B) The SWCD may elect to adjust the amount of funds obligated for the conservation practices, provided funds are available, or to request additional funds from the State Board. If the obligated funds originate from a cost-share incentive priority, the SWCD will confer with the State Board to determine if additional funds are available.

(C) In the event additional funds are not available, the conservation practice(s) may be redesigned, if possible, to a level commensurate with available funds, provided the redesign still meets practice standards established by the State Board; or the applicant can agree to assume full financial responsibility for the portion of the cost of conservation practice(s) in excess of the amount authorized.

(4) Performance Agreement. As a condition for receipt of cost-share incentive funding [~~assistance~~] for conservation practices, the eligible person receiving the benefit of such incentive funding [~~assistance~~] shall agree to perform those measures in accordance with standards established by the State Board. Completion of the performance agreement and the signature of the eligible person are required prior to payment.

(5) Maintenance Agreement. A written maintenance agreement must be signed between the eligible person and the soil and water conservation district wherein the eligible person(s) agrees to implement and maintain all conservation practices included in the water quality management plan in accordance with the implementation schedule, all technical requirements of the applicable practice standards, and specified life expectancies of practices until such time that the certification of the State Board is withdrawn. The maintenance agreement shall specify that any practices installed through the financing of cost-share incentive funding, to any extent, must be maintained in accordance with the applicable practice standards and specified life expectancies regardless of whether or not the water quality management plan continues to be certified or not. Failure to maintain cost-shared practices may result in the requirement for all or a prorated portion of the cost-share funding to be returned to the State Board. [~~As a condition for receipt of cost-share assistance, the person(s) receiving the assistance shall agree to implement and maintain all measures in the certified water quality management plan consistent with its implementation schedule. The maintenance agreement shall remain in effect for a minimum period of two years after the certified water quality management plan is completely implemented for all practices except those cost-shared. The maintenance agreement shall remain in effect on cost-shared practices for the expected life of the cost-shared practice(s) as established by the State Board or for a period of two years after the certified water quality management plan is completely implemented, whichever period of time is longer. The landowner must sign the application for cost-share pursuant to subsection (e)(8) of this section and assumes the responsibility of the maintenance agreement.~~] Completion of the maintenance agreement and all appropriate signatures are required prior to payment.

(6) Payment to Recipients.

(A) The SWCD shall determine eligibility of the applicant to receive payment of cost-share incentive funding [~~assistance~~], and provide certification to the State Board that measure(s) have been installed consistent with established standards.

(B) The State Board shall issue warrants for payment of cost share incentive funding [~~assistance~~].

(7) Applications Held in Abeyance Because of Lack of Funds. In those cases where funds are not available, the applications will be held by the SWCD until allocated funds become available or until the end of the program year. When additional funds are received, the SWCD will obligate those funds. The SWCD may shift all unfunded applications held in abeyance because of lack of funds that are on hand at the end of a program year to the new program year or require all new applications as it deems appropriate.

(8) Applications Denied for Reasons Other Than Lack of Funds. Applications for funds which are denied by the SWCD directors for other than lack of funds shall be retained in the records of the SWCD in accordance with the SWCD's established record retention policy. Written notification of the denial shall be provided to the applicant along with the reason(s) that the application was denied.

(9) Applications Withdrawn. An application may be withdrawn by the applicant at any time prior to receipt of cost-share incentive funding [~~assistance~~] by notifying the SWCD in writing that withdrawal is desired. Applications withdrawn by the applicant shall be retained in the records of the SWCD in accordance with the SWCD's established record retention policy.

(10) Appeals.

(A) An applicant may appeal the SWCD decisions relative to his/her application for allocated funds.

(B) The applicant shall make any appeal in writing to the SWCD which received his/her application for allocated funds and shall set forth the basis for the appeal.

(C) The SWCD shall have 60 days in which to make a decision and notify the applicant in writing.

(D) The decision of the SWCD may be appealed by the applicant to the State Board.

(E) All appeals made to the State Board shall be made in writing and shall set forth the basis for the appeal.

(F) All State Board decisions shall be final.

(h) [~~(g)~~] Maintenance of Practices.

(1) Requirements for maintenance of practices applied using cost-share incentive funds will be outlined in the eligible person's water quality management plan and reviewed with the eligible person at the time of application [~~for cost-share~~].

(2) A properly executed maintenance agreement shall be signed by the successful applicant prior to receipt of payment of cost-share incentive funding [~~assistance~~] from the SWCD for a conservation practice(s) installed.

(3) The SWCD will request [~~require~~] refund of [~~any or~~] all or a prorated portion of the cost-share incentive funding paid to an el-

igible person when the applied conservation practice(s) has not been maintained in compliance with applicable design standards and specifications for the practice during its expected life as agreed to by the eligible person. The State Board may grant a waiver to this requirement on a case-by-case basis in consultation with the SWCD.

(4) Failed Practice Restoration.

(A) When conservation practices that have been successfully completed and which later fail as the result of floods, drought, or other natural disasters, and not the fault of the applicant, [;] the applicant may apply for and SWCD may allocate additional cost-share incentive funds to restore them to their original design standards and specifications. These funds [~~cannot exceed the amount of the original cost-share practice and~~] must come from either a current direct allocation to the SWCD or from a current cost-share incentive priority with confirmation from the State Board from the [~~SWCD's~~] current program year [~~allocation~~].

(B) When conservation practices that have been successfully completed and which later fail as the result of error or omission on the part of the State Board staff, the SWCD staff, or the USDA Natural Resources Conservation Service staff while assisting the SWCD, and [~~land~~] not the fault of the applicant,[;] the State Board may approve additional cost-share incentive funds to restore the measure(s) to the correct design standards and specifications[,] where an investigation approved by the Executive Director or his designee shows good cause. These funds [~~cannot exceed the amount of the original cost-share practice and~~] must come from either a current direct allocation to the SWCD or from a current cost-share incentive priority with confirmation from the State Board from the [~~SWCD's~~] current program year [~~allocation~~].

(5) In cases of hardship, death of the participant, or at the time of transfer of ownership of land where a conservation practice(s) has been applied using cost-share incentive funding [~~assistance~~] and the expected life assigned the practice has not expired, the participant, heir(s), or buyer(s) respectively, must agree to maintain the practice(s) or the participant, heir(s) or the buyer by agreement with seller must refund all or a prorated portion of the cost-share incentive funds received for the practice as determined by the SWCD. The State Board on a case-by-case basis in consultation with the SWCD may grant a waiver to this requirement.

(i) [~~(h)~~] Determining Status of Practices During Transfer of Land Ownership.

(1) A seller of agricultural land with respect to which a maintenance agreement is in effect may request the SWCD to inspect the practices. If the practices have not been removed, altered, or modified, the SWCD shall issue a written statement that the seller has satisfactorily maintained the permanent practice as of the date of the statement.

(2) The buyer of lands covered by a maintenance agreement may also request that the SWCD inspect the lands to determine whether any practice has been removed, altered, or modified as of the date of the inspection. If so, the SWCD will provide the buyer with a statement specifying the extent of noncompliance as of the date of the statement.

(3) The seller and the buyer, if known, shall be given notice of the time of inspection so that they may be present during the inspection to express their views as to compliance.

(j) [~~(i)~~] Reporting and Accounting. The State Board shall receive and maintain required reports from SWCDs showing the unobligated balance of directly allocated funds as shown on each ledger at the close of the last day of each month.

(k) [~~(j)~~] Pursuant to Agriculture Code §201.311, one or more SWCDs may be designated to administer portions of this section as determined by the State Board.

§523.7. Comprehensive Nutrient Management Planning in the North Bosque River Watershed.

(a) Policy Statement. In accordance with §519.1 of this title (relating to Policy Statement) and the policy of the State Soil and Water Conservation Board to develop and implement a program to provide technical assistance for the development and implementation of soil and water conservation plans and soil and water conservation measures, this section is adopted.

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

(1) Animal feeding operation--A lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or postharvest residues in the normal growing season.

(2) Comprehensive nutrient management plan, herein referred to as CNMP--A resource management plan containing a grouping of conservation practices and management activities which, when combined into a conservation system, will help ensure that both agricultural production goals and natural resource concerns dealing with nutrient and organic by-products and their adverse impacts on water quality are achieved. A CNMP incorporates practices to utilize animal manure and organic by-products as a beneficial resource. To be certified, a CNMP must cover all lands that constitute the conservation management unit.

(3) Conservation management unit--For the purposes of this section and regarding comprehensive nutrient management planning, a conservation management unit includes the production area and land application activities which are onsite or are contiguous to the site.

(4) Environmental stewardship programs for owners and/or operators of animal feeding operations--Any program, administered by a governmental or non-governmental entity, which provides the owner or operator of an animal feeding operation with a mechanism for improving the overall efficiency of the operation, operating in accordance with all applicable state or federal laws pertaining to water quality, and furthers the effective conservation of the state's soil and water resources.

(5) North Bosque River watershed--The geographic area consisting of all the drainage area for the two designated water quality segments as defined in the two adopted Total Maximum Daily Loads for Phosphorus in the North Bosque River. The two designated water quality segments are segment 1226, the North Bosque River, extending from a point 100 meters upstream of FM Road 185 in McLennan County to a point immediately upstream of the confluence of Indian Creek in Erath County, and segment 1255, the Upper North Bosque River, extending from a point immediately upstream of the confluence of Indian Creek in Erath County to the confluence of the North Fork and South Fork of the North Bosque River in Erath County.

(6) Natural Resources Conservation Service, herein referred to as NRCS--An agency of the United States Department of Agriculture which includes the agency formerly known as the Soil Conservation Service (SCS).

(7) NRCS - Field Office Technical Guide, herein referred to as NRCS - FOTG--The official NRCS guidelines, criteria, and standards for planning and applying conservation treatments.

(8) NRCS Technical Service Provider Process--The process by which a technical service provider obtains certification by NRCS to provide technical services including conservation planning, and/or the design, layout, and installation of approved conservation practices.

(9) Resource management plan--A site specific blueprint for implementation of soil and water conservation land improvement measures. It includes a record of the eligible person's decisions made during planning and the resource information needed for implementation and maintenance of the plan that has been reviewed and approved by the SWCD.

(10) Resource management system--A combination of conservation practices and resource management activities for the treatment of all identified resource concerns for soil, water, air, plants, animals, and humans that meets or exceeds the quality criteria in the Natural Resource Conservation Service's Field Office Technical Guide for resource sustainability.

(11) Soil and water conservation district, herein referred to as SWCD--A government subdivision of this state and a public body corporate and politic, organized pursuant to Chapter 201 of the Agriculture Code.

(12) State Board--The State Soil and Water Conservation Board created under the Agriculture Code, Chapter 201.

(13) Technical service provider--An individual, entity, or public agency certified by the NRCS State Conservationist and placed on an approved list to provide technical services.

(14) Texas Commission on Environmental Quality--The state agency created under Title 2, Subtitle A, Chapter 5 of the Texas Water Code (formerly the Texas Natural Resource Conservation Commission).

(c) Applicability. Any owner or operator of an animal feeding operation that meets the following criteria may submit a CNMP to the State Board for certification in accordance with subsection (f) of this section. Owners or operators of an animal feeding operation within the North Bosque River watershed, or owners or operators of an animal feeding operation that has enrolled in any agricultural environmental stewardship program whose administrators have a current memorandum of agreement with the State Board regarding a State Board certification of a CNMP as programmatic requirement.

(d) Process for Obtaining a CNMP. It is the intent of the State Board that all CNMPs be developed by technical service providers certified by NRCS to develop CNMPs or component parts of CNMPs. Owners and operators whose CNMP is developed by persons not certified to develop CNMPs through NRCS' Technical Service Provider process must submit their CNMP to the local NRCS Field Office for approval. Owners and operators of animal feeding operations who meet the applicability criteria set forth in subsection (c) of this section and intend to submit a completely developed CNMP to the State Board for certification shall:

(1) Be a SWCD cooperator.

(2) Declare to the SWCD their intent to submit a CNMP for State Board certification.

(3) Request to view a list of certified technical service providers who have been certified by the NRCS to develop CNMPs from their local SWCD and/or NRCS Field Office. Owners and operators whose CNMP is developed by persons not certified to develop CNMPs through NRCS' Technical Service Provider process must submit their CNMP to the local NRCS Field Office for approval.

(4) Inform the SWCD that they intend to apply for cost-share incentive funding, if applicable. All cost-share incentive funding toward the development of a resource management plan and toward the implementation of land treatment measures contained within the resource management plan, shall be in accordance with §523.6 of this title (relating to Cost-Share Incentive Funding for Soil and Water Conservation Land Improvement Measures).

(e) Cost-share Incentive Funding. In accordance with §523.6 of this title, the State Board may allocate funds to a SWCD for cost-share incentive funding to landowners toward the implementation of land improvement measures consistent with the purpose of controlling erosion, conserving water, and/or protecting water quality. All cost-share incentive funding toward the development of a resource management plan and toward the implementation of land treatment measures contained within the resource management plan, shall be in accordance with §523.6 of this title.

(f) Certification.

(1) When the following conditions are met the State Board may certify that a CNMP satisfies the State Board's technical criteria and programmatic guidance for comprehensive nutrient management planning with the State's requirements for water quality:

(A) The owner or operator of the animal feeding operation concurs and understands that the conservation practices and implementation schedules contained within the CNMP, when applied and maintained to form a resource management system will meet the State's requirements for water quality; the owner or operator of the animal feeding operation agrees to notify the local SWCD in the event of deviation from the implementation schedule; and the owner or operator of the animal feeding operation agrees that any substitution or changes to the conservation practices or schedules must be in accordance with the NRCS - FOTG, the State Board's Technical Criteria and Programmatic Guidance for Comprehensive Nutrient Management Planning, and the rules and regulations of the State.

(B) The CNMP is in accordance with the Technical Criteria and Programmatic Guidance for Comprehensive Nutrient Management Planning adopted by the State Board and contains an implementation schedule pursuant to subsection (i) of this section.

(C) The owner or operator of the animal feeding operation meets the requirements of subsection (c) of this section.

(D) The SWCD has approved the CNMP as including the entire conservation management unit.

(E) The CNMP was developed by a technical service provider certified by the NRCS to develop CNMPs or the NRCS Field Office has approved the CNMP as meeting the requirements of the NRCS - FOTG for a Resource Management System.

(2) Withdrawal of Certification. The State Board may withdraw certification of any CNMP which, in consultation with the SWCD, has been demonstrated to be deficient in one or more of the conditions established under paragraph (1) of this subsection or if the holder of the CNMP fails to implement the CNMP in accordance with subsection (i) of this section.

(g) Technical Criteria and Programmatic Guidance for Comprehensive Nutrient Management Planning. The technical criteria and specific practice standards considered as components of comprehensive nutrient management planning are based on the criteria in the NRCS - FOTG; however, modification of those practice standards to

ensure consistency with state water quality standards, state water quality laws regarding animal feeding operations, and the state agricultural and silvicultural nonpoint source management program will be made by the State Board as necessary. The State Board will adopt and maintain Technical Criteria and Programmatic Guidance for Comprehensive Nutrient Management Planning to ensure consistency with state water quality standards, state water quality laws regarding animal feeding operations, and the state agricultural and silvicultural nonpoint source management program.

(h) Environmental Stewardship Programs for Owners and/or Operators of Animal Feeding Operations. The State Board may enter into agreements with entities administering programs who request that participants of such programs receive certification in accordance with subsection (f) of this section as a programmatic requirement if the State Board determines that the program is consistent with the state agricultural and silvicultural nonpoint source management program and all other State Board policies.

(i) Implementation Schedule. A CNMP must contain an implementation schedule.

(1) The implementation schedule will, as far as is practicable, balance the state's need for protecting water quality with the need of agricultural producers to have sufficient time to implement practices in an economically feasible manner.

(2) Highest priority will be given to the implementation of the most cost effective and most needed pollution abatement practices.

(3) The State Board in consultation with the local SWCDs will conduct an annual status review of plan implementation.

(4) The State Board in consultation with the local SWCDs may withdraw certification of a CNMP that is not being implemented in accordance with its schedule. Prior to certification being withdrawn, a landowner will be notified and be given a reasonable period of time to implement the CNMP according to the schedule or a modified schedule approved by the SWCD.

(5) The holder of a certified CNMP shall notify the local SWCD in the event he or she deviates from the implementation schedule.

(j) Applicability of State Water Quality Standards. To the extent allowed by available technology, CNMP development, approval and certification will be based on state water quality standards as established by the Texas Commission on Environmental Quality.

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

Filed with the Office of the Secretary of State on March 13, 2013.

TRD-201301109
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: April 28, 2013
For further information, please call: (254) 773-2250

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31 TAC §523.7, §523.8

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Soil and Water Conservation Board or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas State Soil and Water Conservation Board (State Board) proposes the repeal of §523.7 and §523.8, concerning Agricultural and Silvicultural Water Quality Management.

Section 523.7, relating to Incentives for Composting Animal Manure, is proposed for repeal because the Dairy Manure Export Support Program no longer exists.

Section 523.8, relating to Comprehensive Nutrient Management Planning in the North Bosque River Watershed, is proposed for repeal and reproposed as new §523.7 elsewhere in this issue.

Kenny Zajicek, Fiscal Officer for the State Board, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of administering the repeals as proposed.

Mr. Zajicek has also determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be the removal of an obsolete rule from the Texas Administrative Code.

There is no anticipated cost to small businesses or individuals resulting from the proposed repeals.

Comments on the proposal may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503; telephone: (254) 773-2250.

The repeal is proposed under the Agriculture Code, 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.

No other statutes, articles, or codes are affected by this proposal.

§523.7. Incentives for Composting Animal Manure.

§523.8. Comprehensive Nutrient Management Planning in the North Bosque River Watershed.

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

Filed with the Office of the Secretary of State on March 13, 2013.

TRD-201301110
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: April 28, 2013
For further information, please call: (254) 773-2250

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE

DIVISION 1. BEHAVIOR MANAGEMENT

37 TAC §380.9503

The Texas Juvenile Justice Department (TJJD) proposes to amend §380.9503, concerning Rules and Consequences for Residential Facilities.

Under the current rule, a youth's stage in the TJJD rehabilitation program may be demoted only for the following major rule violations: serious sexual misconduct, assault causing serious bodily injury, and any violation eligible for referral to the Phoenix program. The amended rule will allow the stage demotion consequence to be imposed for any major rule violation proven through a Level II due process hearing.

Bill Monroe, Senior Director of Finance and Technology, has determined that for the first five-year period the section is in effect, there will be no additional fiscal impact for state or local government as a result of enforcing or administering the section.

Rebecca Thomas, Director of State-Operated Programs and Services, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be increased safety and security of youth and staff in TJJD-operated residential facilities and for the communities to which TJJD youth will return.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

Written comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email to policy.proposals@tjjd.texas.gov.

TJJD will hold a public hearing on April 22, 2013, beginning at 8:30 a.m., to receive comments on the proposed amendments to §380.9503. The hearing will be held in the Brown-Heatly Building, Room 1410, 4900 North Lamar Boulevard, Austin, Texas. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact TJJD at (512) 424-6004 at least 72 hours in advance so appropriate arrangements can be made.

Subject to approval by the Texas Juvenile Justice Board upon its final adoption of this amended rule, the agency proposes to expedite the effective date of the rule pursuant to Government Code §2001.036. Due to the potential for imminent harm to the youth and staff in TJJD facilities and the need for enhancements to the agency's behavior management system, the agency is proposing to make the final rule effective immediately upon filing the adoption notice with the Secretary of State rather than 20 days after filing.

The amendment is proposed under Human Resources Code §242.003, which authorizes TJJD to make rules appropriate to the proper accomplishment of its functions and to govern the schools, facilities, and programs operated by TJJD.

No other statute, code, or article is affected by this proposal.

§380.9503. Rules and Consequences for Residential Facilities.

(a) Purpose. The purpose of this rule is to establish the actions that constitute violations of the rules of conduct for [~~youth will be expected to follow while in~~] residential facilities. Violations of the rules may result in disciplinary consequences that are proportional to the severity and extent of the violation. Appropriate due process, including a consideration of extenuating circumstances, must be followed before imposing consequences.

(b) Applicability. This rule applies to youth assigned to a residential facility.

(c) Definitions. The following terms, as used in this rule, have the following meanings.

(1) Bodily Injury--physical pain, illness, or impairment of physical condition. Fleeting pain or minor discomfort does not constitute bodily injury.

(2) Multi-Disciplinary Team--has the meaning assigned by §380.8501 of this title.

(3) Residential Facility--includes [~~both~~] high and medium restriction residential placements.

(4) Attempting to Commit--engaging in conduct that amounts to more than mere planning, but failing to commit the intended rule violation.

(5) Serious Bodily Injury--bodily injury which involves:

(A) a substantial risk of death;

(B) extreme physical pain;

(C) protracted and obvious disfigurement; or

(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(d) General Provisions.

(1) Rules in this policy may be restated or otherwise adapted to accommodate a particular program to help clarify expected behavior in that program. All adapted or restated rules must [~~shall~~] remain consistent with the general rules of conduct.

(2) The rules of conduct must be posted in a visible area accessible to youth in each facility and program.

(3) Repeated violations of any rule of conduct may result in more serious disciplinary consequences.

(4) Youth may be issued more than one disciplinary consequence for a rule violation proven in a Level II or III due process hearing held in accordance with §380.9555 or §380.9557 of this title, respectively.

(5) Major rule violations require the completion of a formal incident report.

(6) A youth's disciplinary record consists [~~shall consist~~] only of rule violations that are proven through a Level I or II due process hearing in accordance with §380.9551 or §380.9555 of this title, respectively.

(7) An appropriate investigation must be started within [~~Within~~] 24 hours after a report of a major rule violation or a minor rule violation resulting in a referral to the security unit. Based on available evidence, the facility administrator or designee must determine whether to hold [~~referral, a case worker, program supervisor, or other appropriate non-involved staff member will review the incident and assess whether to request~~] a Level II due process hearing in order to pursue major consequences and/or placement of the violation on the youth's disciplinary record. [~~The facility administrator or designee will determine whether or not to hold a Level II due process hearing.~~]

(8) When a youth is found to be in possession of prohibited money as defined in this rule, a Level II due process hearing is required to seize the money. Seized money must [~~will~~] be placed in the student benefit fund in accordance with §380.9555 of this title.

(9) [~~(8)~~] Except as noted in paragraph (9) of this subsection, minor rule violations must [~~will~~] be documented on the appropriate activity log. A formal incident report is not required.

(10) [~~(9)~~] A minor rule violation that escalates to the point that the current program/activity cannot continue due to the disruption[~~,~~] or that poses a substantial risk to personal safety or facility security[~~,~~] must be documented on a formal incident report. In high restriction facilities, this type of minor rule violation [~~will~~] also includes [~~include~~] a referral to the security unit.

(11) [~~(10)~~] Any time a formal incident report is prepared for an alleged rule violation, a copy of the incident report must be given to the youth within 24 hours after the alleged violation.

(12) [~~(11)~~] Although certain rule violations may not result in immediate disciplinary consequences, a rule violation proven through a Level II due process hearing may be considered upon expiration of the youth's minimum length of stay in determining whether a youth is in need of additional rehabilitation.

(13) [~~(12)~~] Each multi-disciplinary team must [~~will~~] review all privilege suspensions for youth on its caseload at least once per week. The multi-disciplinary team may:

(A) lessen the duration of the suspension or allow the youth to accrue certain privileges for use after the period of suspension is complete as an incentive to display positive behavior; or

(B) extend (one time only) or modify an on-site privilege suspension issued by direct care staff if warranted by the youth's behavior.

(e) Consequences for High Restriction Facilities.

(1) Major Disciplinary Consequences.

(A) Placement in the Phoenix Program--in accordance with §380.9535 of this title, a youth may be placed in the Phoenix program when it is found that the youth [~~has been found to have~~] engaged in certain aggressive behavior.

(B) Major Suspension of Privileges--a youth has all privileges suspended for 30 calendar days from the date of the hearing. This consequence may be issued only for minor rule violations resulting in a referral to the security unit or major rule violations, and only if the rule violation is proven through a Level II due process hearing in accordance with §380.9555 of this title.

(C) Loss of Transition Eligibility--a youth who has not completed the minimum length of stay serves [~~will serve~~] an additional month in high restriction facilities prior to becoming eligible for transition to a medium restriction facility under §380.8545 of this title. This consequence may only be issued if it is proven through a Level II due process hearing that the youth committed:

(i) assault causing bodily injury to youth or staff, as defined in subsection (i)(3) - (4) of this section; or

(ii) sexual misconduct as defined in subsection (i)(21)(A) - (B) of this section.

(D) Stage Demotion--a youth's assigned stage in the agency's rehabilitation program is lowered by one or more stages. This consequence may be issued only if it is proven through a Level II due process hearing that the youth committed a major rule violation.[~~:~~]

[(i) ~~assault causing serious bodily injury to youth or staff, as defined in subsections (e)(5) and (i)(3) - (4) of this section;~~]

[(ii) ~~sexual misconduct, as defined in subsection (i)(21)(A) of this section; or~~]

[(iii) ~~any major rule violation resulting in admission to the Phoenix program.~~]

(2) Minor Disciplinary Consequences.

(A) Suspension of Privileges by Multi-Disciplinary Team--a[~~. A~~] youth has one or more privileges removed for up to 14 calendar days from the date of the multi-disciplinary team meeting[~~,~~] or has his/her privileges adjusted to those associated with a lower stage until the next scheduled meeting. This consequence may be issued for major or minor rule violations. In order to issue this consequence, the multi-disciplinary team must:

(i) meet with the youth to discuss the youth's behavior and potential consequences;

(ii) consider any on-site suspension of privileges already imposed for the behavior; and

(iii) document the discussion of the youth's conduct and consequence imposed.

(B) On-Site Suspension of Privileges--a[~~. A~~] youth has one specific privilege removed for up to seven calendar days from the date of the violation or all privileges removed for up to three calendar days. This consequence may be issued by a staff member with direct supervisory responsibility for the youth after witnessing a major or minor rule violation. This consequence should be issued only after non-disciplinary interventions have been attempted. The staff member must document the conduct and consequence and discuss the consequence and the reasons for it with the youth.

(f) Consequences for Medium Restriction Facilities.

(1) Major Consequences.

(A) Disciplinary Transfer--a youth assigned to a medium restriction facility is transferred to a high restriction facility. Disciplinary transfer may be issued only for major rule violations that are proven through a Level II due process hearing in accordance with §380.9555 of this title. This consequence does not apply to youth who are on parole status in [~~and who are currently assigned to~~] a medium restriction facility.

(B) Placement in the Phoenix Program--in accordance with §380.9535 of this title, a youth on institutional status may be transferred to a high restriction facility and placed in the Phoenix program when the youth has been found to have engaged in certain aggressive behavior.

(C) Major Suspension of Privileges--a youth has all privileges suspended for 30 calendar days from the date of the hearing. This consequence may be issued only for major rule violations that are proven through a Level II due process hearing.

(D) Stage Demotion--a youth's assigned stage in the agency's rehabilitation program is lowered by one or more stages. This consequence may be issued only if it is proven through a Level II due process hearing that the youth committed a major rule violation.[~~:~~]

[(i) ~~assault causing serious bodily injury to youth or staff, as defined in subsections (e)(5) and (i)(3) - (4) of this section;~~]

[(ii) ~~sexual misconduct, as defined in subsection (i)(21)(A) of this section; or~~]

[(iii) ~~any major rule violation resulting in admission to the Phoenix program.~~]

(2) Minor Consequences. Minor disciplinary consequences include but are not limited to consequences described in this paragraph. Minor consequences may only be imposed following a

Level III due process hearing held in accordance with §380.9557 of this title.

(A) Privilege Suspension--a suspension of one or more privileges for no more than 14 calendar days.

(B) Community Service Hours--disciplinary assignment of up to 40 hours in an approved community service assignment.

(C) Trust Fund Restriction--youth is restricted from accessing his/her accrued personal funds for up to seven calendar days.

(D) Facility Restriction--youth is restricted for up to 48 hours from participating in any activity outside the assigned placement other than approved constructive activities.

(g) Review and Appeal of Consequences.

(1) All minor disciplinary consequences issued by staff other than the youth's multi-disciplinary team must [~~will~~] be reviewed for policy compliance by the youth's assigned case manager [~~worker~~] or dorm supervisor within one workday of issuance. All minor consequences issued by the youth's multi-disciplinary team must [~~will~~] be reviewed for policy compliance and consistency by the facility administrator or designee.

(2) The facility administrator or designee:

(A) must review any minor consequence issued for longer than 24 hours within 24 hours after issuance of the consequence; and

(B) may overturn or modify any privilege suspension determined to be excessive or not validly related to the nature or seriousness of the conduct.

(3) Youth may appeal major disciplinary consequences by filing an appeal in accordance with §380.9551 or §380.9555 of this title.

(h) Placement Disposition Options. In accordance with §380.9517 of this title, youth in high restriction facilities may be placed in the Redirect program when the youth is found to have engaged in certain major rule violations. Placement in the Redirect program is not a disciplinary consequence.

(i) Major Rule Violations. It is a violation to knowingly commit [~~violate~~], attempt to commit [~~violate~~], or help someone else commit [~~violate~~] any of the following:

(1) Assault - [--]Unauthorized Physical Contact with Another [~~another~~] Youth (No Injury)--making unauthorized physical contact with another youth that does not result in bodily injury, such as, but not limited to, pushing, poking, and grabbing.

(2) Assault - [--]Unauthorized Physical Contact with Staff (No Injury)--intentionally making unauthorized physical contact with a staff member, contract employee, or volunteer that does not result in bodily injury, such as, but not limited to, pushing, poking, and grabbing.

(3) Assault Causing Bodily Injury to Another Youth--intentionally and knowingly or recklessly engaging in conduct that causes another youth to suffer bodily injury.

(4) Assault Causing Bodily Injury to Staff--intentionally and knowingly or recklessly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury.

(5) Attempted Escape--committing an act that amounts to more than mere planning but that fails to effect an escape.

(6) Chunking Bodily Fluids--causing a person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, and/or feces of another with the intent to harass, alarm, or annoy another person.

(7) Distribution of Prohibited Substances--distributing or selling any prohibited substances or items.

(8) Escape--leaving a high or medium restriction residential placement without permission or failing to return from an authorized leave.

(9) Extortion or Blackmail--demanding or receiving favors, money, actions, or anything of value from another in return for protection against others, to avoid bodily harm, or in exchange for not reporting a violation.

(10) Fighting Not Resulting in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that does not result in bodily injury.

(11) Fighting that Results in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that results in bodily injury.

(12) Fleeing Apprehension--running from or refusing to come to staff when called and such act results in disruption of facility operations.

(13) Two or More Failures to Comply with Written, Reasonable Request (for Youth in Medium Restriction Residential Placement)--failing on two or more occasions to comply with a written, reasonable request of staff. If the expectation is daily or weekly, the two failures to comply must be within a 30-day period. If the expectation is monthly, the two failures to comply must be within a 90-day period.

(14) Misuse of Medication--using medication provided to the juvenile by authorized personnel in a manner inconsistent with specific instructions for use, including removing the medication from the dispensing area.

(15) Participating in a Major Disruption of Facility Operations--intentionally participating with two (2) or more persons in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs.

(16) Possession of Prohibited Items--possessing the following prohibited items:

(A) cellular telephone;

(B) matches or lighters;

(C) jewelry, unless allowed by facility rules;

(D) money in excess of the amount or in a form not permitted by facility rules (see §380.9555 of this title for procedures concerning seizure of such money);

(E) pornography;

(F) items which have been fashioned to produce tattoos or body piercing;

(G) cleaning products when the youth is not using them for a legitimate purpose; or

(H) other items that are being used inappropriately in a way that poses a danger to persons or property or threatens facility security.

(17) Possession of a Weapon--possessing a weapon or item(s) which has been made or adapted for use as a weapon.

(18) Possession or Use of Prohibited Substances and Paraphernalia--possessing or using any unauthorized substance, including controlled substances or intoxicants (including alcohol and tobacco), medications not prescribed for the juvenile by authorized medical or dental staff, tobacco products, similar intoxicants, or related paraphernalia such as that used to deliver or make any prohibited substance.

(19) Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen. (Note: If the youth says he/she cannot provide a sample, the youth must be given water to drink and two hours to provide the sample.)

(20) Refusing a Search--refusing to submit to an authorized search of person or area.

(21) Sexual Misconduct--intentionally and knowingly engaging in any of the following:

(A) causing contact, including penetration (however slight), between the penis and the vagina or anus; between the mouth and penis, vagina or anus; or penetration (however slight) of the anal or genital opening of another person by hand, finger or other object;

(B) touching or fondling, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person;

(C) kissing for sexual stimulation;

(D) exposing the anus, buttocks, breasts, or genitals to another or exposing oneself knowing the act is likely to be observed by another person; or

(E) masturbating in an open and obvious way, whether or not the genitals are exposed.

(22) Stealing--intentionally taking property from another without permission and the property has an estimated value of $100 or more.

(23) Tampering with Safety Equipment--intentionally tampering with, damaging, or blocking any device used for safety or security of the facility. This includes, but is not limited to, any locking device or item that provides security access or clearance, any fire alarm or fire suppression system or device, video camera, radio, telephone (when the tampering prevents it from being used as necessary for safety and/or security), handcuffs, or shackles.

(24) Tattooing/Body Piercing--engaging in tattooing or body piercing of self or others. Tattooing is defined as making a mark on the body by inserting pigment into the skin.

(25) Threatening Another [~~another~~] with a Weapon--intentionally and knowingly threatening another with a weapon. A weapon is something that is capable of inflicting bodily injury in the manner in which it is being used.

(26) Vandalism--intentionally causing $100 or more in damage to state property or personal property of another.

(27) Violation of any Law--violating a Texas or federal law that is not already defined as a major or minor rule violation.

(j) Minor Rule Violations. It is a violation to knowingly commit [~~violate~~], attempt to commit [~~violate~~], or help someone else commit [~~violate~~] any of the following:

(1) Breaching Group Confidentiality--disclosing or discussing information provided in a group session to another person not present in that group session.

(2) Disruption of Program--engaging in behavior that requires intervention to the extent that the current program of the youth and/or others is disrupted. This includes, but is not limited to:

(A) disrupting a scheduled activity;

(B) being loud or disruptive without staff permission;

(C) using profanity or engaging in disrespectful behavior toward staff or peers; or

(D) refusing to participate in a scheduled activity or abide by program rules.

(3) Failure to Abide by Dress Code--failing to follow the rules of dress and appearance as provided by facility rules.

(4) Failure to do Proper Housekeeping--failing to complete the daily chores of cleaning the living environment to the expected standard.

(5) Gang Activity--participating in an activity or behavior that promotes the interests of a gang or possessing or exhibiting anything related to or signifying a gang, such as, but not limited to, gang-related literature, symbols, or signs.

(6) Gambling or Possession of Gambling Paraphernalia--engaging in a bet or wager with another person or possessing paraphernalia that may be used for gambling.

(7) Horseplay--engaging in wrestling, roughhousing, or playful interaction with another person or persons that does not rise to the level of an assault. Horseplay does not result in any party getting upset or causing injury to another.

(8) Improper Use of Telephone/Mail/Computer--using the mail, a computer, or the telephone system for communication that is prohibited by facility rules, at a time prohibited by facility rules, or to inappropriately access information.

(9) Lending/Borrowing/Trading Items--lending or giving to another youth, borrowing from another youth, or trading with another youth possessions, including food items, without permission from staff.

(10) Lying/Falsifying Documentation/Cheating--lying or withholding information from staff, falsifying a document, and/or cheating on an assignment or test.

(11) Possession of an Unauthorized Item--possessing an item the youth is not authorized to have (possession of which is not a major rule violation), including items not listed on the youth's personal property inventory. This does not include personal letters or photographs.

(12) Refusal to Follow Staff Verbal Instructions--deliberately failing to comply with a specific reasonable verbal instruction made by a staff member.

(13) Stealing--intentionally taking property from another without permission and the property has an estimated value of less than $100.

(14) Threatening Others--making verbal or physical threats toward another person or persons.

(15) Undesignated Area--being in any area without the appropriate permission to be in that area.

(16) Vandalism--intentionally causing less than $100 in damage to state or personal property.

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

Filed with the Office of the Secretary of State on March 18, 2013.

TRD-201301127

Brett Bray
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: April 28, 2013
For further information, please call: (512) 424-6014

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.6

The State Securities Board withdraws the proposed amendment to §109.6 which appeared in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8667).

Filed with the Office of the Secretary of State on March 18, 2013.

TRD-201301125
John Morgan
Securities Commissioner
State Securities Board
Effective date: March 18, 2013
For further information, please call: (512) 305-8304

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CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.23

The State Securities Board withdraws proposed new §139.23 which appeared in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8670).

Filed with the Office of the Secretary of State on March 18, 2013.

TRD-201301126
John Morgan
Securities Commissioner
State Securities Board
Effective date: March 18, 2013
For further information, please call: (512) 305-8304

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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 K. MEDICAID RECIPIENT UTILIZATION REVIEW AND CONTROL

1 TAC §§354.2401, 354.2403, 354.2405, 354.2407

The Health and Human Services Commission (HHSC) adopts amendments to §354.2401, concerning Definitions; §354.2403, concerning Monitoring and Review; §354.2405, concerning Utilization Control Methods; and §354.2407, concerning Recipient Rights. The amendments to §354.2401 and §354.2407 are adopted with changes to the proposed text as published in the January 11, 2013, issue of the *Texas Register* (38 TexReg 215), and, therefore, the sections will be republished. The amendments to §354.2403 and §354.2405 are adopted without changes to the proposed text as published in the January 11, 2013, issue of the *Texas Register* (38 TexReg 215) and will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments update existing HHSC Office of Inspector General (OIG) provisions relating to the lock-in of recipients who overutilize Medicaid services, as authorized by federal regulations at 42 CFR §431.54(e). The HHSC-OIG may restrict (lock-in) a Medicaid recipient to a designated health care and/or pharmacy provider if it finds that a recipient has utilized health care or pharmacy services at a frequency or amount that is not medically necessary and that exceeds standards established by HHSC, such as duplicative, excessive, contraindicated, or conflicting health care services, including drugs; and/or abuse, misuse, or fraudulent actions relating to Medicaid benefits or services. All Medicaid-eligible recipients are subject to lock-in status regardless of their age, program type, or Medicare eligibility. The HHSC-OIG considers standards and criteria for drug use based on the Drug Use Review compendia approved by the Texas Medicaid Drug Utilization Review Board as part of the lock-in review.

The rules are adopted to update definitions and the description of case referral sources to reflect current and best practices within the industry, clarify lock-in period time frames, update and clarify requirements for recipient notice and right to appeal, and improve readability. The adopted amendments also reflect that HHSC is changing the name of the program responsible for performing lock-in reviews from "Limited Program" to "Lock-in Program." The rules do not impose additional requirements or reduce existing requirements to persons who must comply with them.

HHSC made minor grammatical corrections to the proposed rule language as follows:

- In §354.2401(4), inserted new text to clarify that subparagraphs (A) and (B) refer to "A designated provider."

- In §354.2401(8), inserted a comma after "Chapter 36."

- In §354.2407(a), corrected the spelling of "Heath" to "Health."

COMMENTS

HHSC received no comments on the proposed rules, including at a public hearing held on January 25, 2013, in Austin, Texas.

STATUTORY AUTHORITY

The amendments are adopted under Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient operation of the Medicaid program.

§354.2401. Definitions.

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

(1) Abuse--Practices that are inconsistent with sound fiscal, business, or medical practices and that result in unnecessary program cost or in reimbursement for services that are not medically necessary, do not meet professionally recognized standards for health care, or do not meet standards required by contract, statute, regulation, previously sent interpretations of any of the items listed, or authorized governmental explanations of any of the foregoing.

(2) Conflicting--Incompatible, unsuitable for use together because of undesirable chemical or physiological effects. For example, the recipient may receive drugs and/or health care services which may be inadvisable in the presence of certain medical conditions or which conflict with the care ordered by another provider.

(3) Contraindicated--Condition or factor that indicates the inadvisability of a medical treatment or procedure.

(4) Designated Provider--A provider enrolled in the Texas Medicaid program that is not on payment review status; under administrative action, sanction, or investigation for failure to comply with Medicaid rules or acceptable Medicaid practices; or under sanction or inactive or other limited administrative status by a state licensing board or other regulatory entity. The designated provider oversees the Medicaid benefits or services provided to a recipient in lock-in status. A designated provider includes:

(A) a primary health care provider who provides and/or directs all medically necessary health care benefits or services for which the recipient is eligible. The primary health care provider may include a physician, physician group, dentist, dental home, advanced practice nurse, physician assistant, outpatient clinic, Rural Health Clinic, or Federally Qualified Health Center; or

(B) a pharmacy that monitors medications prescribed to a recipient in lock-in status for contraindicative, conflicting, duplicative, or excessive use and that ensures the recipient's use does not represent abuse, misuse, or fraud.

(5) Emergency medical condition--A medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain), such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical care could result in:

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part;

(D) serious disfigurement; or

(E) serious jeopardy to the health of the fetus of a pregnant Medicaid recipient.

(6) Emergency services--Covered inpatient and outpatient services that are furnished by a provider who is qualified to furnish such services under a Medicaid provider agreement and are services which are needed to evaluate or stabilize an emergency medical condition.

(7) Excessive Use or Overuse--Exceeding what is usual, medically necessary or customary use of Medicaid services and benefits. Also defined as, but not limited to, the following:

(A) receipt of Medicaid benefits or services from one or multiple providers of service in an amount, duration, or scope in excess of which would reasonably be expected to result in a medical or health benefit to the patient; or

(B) use exceeding the standards and criteria for utilization of outpatient drugs or products, as listed in the compendia and peer reviewed medical literature and/or criteria and standards approved by the Texas Medicaid Drug Utilization Review Board.

(8) Fraud--Any act that constitutes fraud under applicable federal or state law, including any intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to that person or some other person. Fraud may include any acts prohibited by the Texas Human Resources Code, Chapter 36, or Texas Penal Code, Chapter 35A. Fraudulent activities include, but are not limited to:

(A) lending or altering a Medicaid card for the purpose of obtaining Medicaid benefits or services for which a person is not legitimately entitled;

(B) falsely representing medical coverage;

(C) using the Medicaid Identification card of another or altering or duplicating Medicaid identification;

(D) furnishing incorrect eligibility or false information to a vendor to obtain treatment;

(E) possessing blank or forged prescription pads;

(F) forging, duplicating or altering a prescription;

(G) assisting providers in rendering services or defrauding the Medicaid program; or

(H) selling or trading, or attempting to sell or trade, drugs, products, or supplies acquired independently or through Medicaid that results in duplicative services.

(9) Lock-in--An action taken by the Health and Human Services Commission (HHSC) restricting a Medicaid recipient to a designated pharmacy or health care provider.

(10) Lock-in period--The effective time period of a lock-in measured in cumulative eligibility time frames of 36 months, 60 months, or lifetime. Eligibility time frames may or may not be contiguous.

(11) Misuse--To use incorrectly, misapply, or illegally use Medicaid benefits or services. To seek or obtain medical services from a number of like providers and in quantities that exceed the levels considered medically necessary by current medical practices, standards and policies.

(12) Recipient--Any individual who is deemed eligible to receive Medicaid benefits and services under the Texas Medicaid Program.

(13) Referrals--Complaint information regarding recipient use of Medicaid benefits or services supplied to HHSC for lock-in review. Sources may include, but are not limited to, providers, state agencies, law enforcement officials, Medicaid managed care organizations, or members of the general public. HHSC may make referrals to other state agencies and/or Medicaid managed care plans.

(14) Waste--Practices that a reasonably prudent person would deem careless or that would allow inefficient use of resources, items, or services.

§354.2407. Recipient Rights.

(a) The Health and Human Services Commission (HHSC) gives a recipient timely and adequate notice of an action to assign the recipient to a designated provider and opportunity for a fair hearing. Hearings are conducted under Chapter 357, Subchapter A, of this title (relating to Uniform Fair Hearing Rules).

(1) The written notice to a recipient of the recipient's right to a hearing will be mailed at least ten calendar days before the lock-in period effective date.

(2) HHSC will grant a hearing if it receives a recipient's request for a hearing no later than:

(A) 90 calendar days from the date of the initial notice of intent to assign a designated provider; or

(B) 90 calendar days from the date of the notice of intent to continue a lock-in period.

(3) If a request for a hearing is received by the lock-in effective date, HHSC will not implement the lock-in status until the hearing has been held and a final decision rendered.

(4) If a request for a hearing is received after the lock-in effective date, the lock-in status will remain in effect until the hearing has been held and a final decision rendered that reverses the lock-in action.

(5) The recipient does not have the right to a fair hearing when the lock-in is the result of a misdemeanor or felony offense related to fraud and/or abuse of Medicaid benefits and/or services, or to controlled substances.

(6) During the lock-in period, the recipient is not entitled to a fair hearing for denial of either of the following requests:

(A) change in designated provider; or

(B) termination of the lock-in period.

(b) A lock-in recipient must have reasonable access to Medicaid services and benefits and must be able to receive emergency services for an emergency medical condition. A provider other than the designated providers may provide the emergency services. The emergency care provider must certify that the recipient required emergency services for an emergency medical condition.

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

Filed with the Office of the Secretary of State on March 13, 2013.

TRD-201301099
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: April 2, 2013
Proposal publication date: January 11, 2013
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 12. WEIGHTS AND MEASURES

SUBCHAPTER B. DEVICES

4 TAC §12.12

The Texas Department of Agriculture (the department) adopts amendments to §12.12, concerning the fees for commercial weighing and measuring devices, without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 564). The amendments are necessary to comply with changes made to the weights and measures program by the 82nd Texas Legislature, which required that all of the costs of administering this program be entirely offset by revenue generated from the program. The department has conducted a cost recovery analysis and has determined that through continued cost cutting measures, reorganization of the department, and fiscal responsibility, the department has been able to reduce expenditures during fiscal year 2013 below the amount appropriated for Weights and Measures licensing, inspection and enforcement. The amendments to §12.12 decrease fees for weighing and measuring devices by an average of twenty percent.

The amendments to §12.12 decrease fees for a liquid measuring device with a maximum flow rate of 20 gallons per minute or less and dispensing one product per nozzle from $9 to $7.20; for a liquid measuring device with a maximum flow rate of 20 gallons per minute or less and dispensing multiple products per nozzle from $26.50 to $21.20; for liquid bulk measuring device from $45 to $36; for LPG $40 to $32; for scales with a capacity less than 5,000 pounds from $20 to $16; for ranch scales from $20 to $16; for non-ranch, non-truck, and non-livestock scales with a capacity of 5,000 pounds or greater from $150 to $120; and for truck scales and livestock scales with a capacity of 5,000 pounds or greater from $215 to $172.

Comments in support of the proposal were received from the Texas Food and Fuel Association and the Texas Retailers Association.

The amendments to §12.12 are adopted under Texas Agriculture Code (the Code), §13.002, which provides the Texas Department of Agriculture (the department) with the authority to enforce the provisions of the Code, Chapter 13, concerning weights and measures; the Code, §13.1011, which provides the department with the authority to adopt rules establishing a system of annual registration under Chapter 13; §13.1151, which provides the department with the authority to set and charge a registration fee for registration of a pump, scale, or bulk or liquefied petroleum gas metering device registered under the Code, §13.101; and the Code, §12.016, which provides the department with the authority to adopt rules necessary for administration of the Code.

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

Filed with the Office of the Secretary of State on March 11, 2013.

TRD-201301088
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: March 31, 2013
Proposal publication date: February 8, 2013
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 105. RULES OF PRACTICE IN CONTESTED CASES

7 TAC §105.5

The State Securities Board adopts an amendment to §105.5, concerning contents of notice of hearing, without changes to the proposed text as published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8667).

The amendment adds the Director of the Registration Division to the Staff personnel authorized to sign a notice of hearing in an administrative case filed with the State Office of Administrative Hearings.

Contested cases involving denials of registration can now be brought directly by the Director of Registration.

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, Articles 581-14, 581-23, 581-23-2, and 581-24.

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

Filed with the Office of the Secretary of State on March 18, 2013.

TRD-201301121
John Morgan
Securities Commissioner
State Securities Board
Effective date: April 7, 2013
Proposal publication date: November 2, 2012
For further information, please call: (512) 305-8304

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CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §116.11

The State Securities Board adopts an amendment to §116.11, concerning disclosure requirement/brochure rule, without changes to the proposed text as published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8669).

The amendment adds a requirement that wrap fee advisers provide Part 2B of Form ADV to clients and prospective clients. Part 2B of Form ADV contains information about the advisory personnel providing investment advice to clients.

Prospective and existing clients of wrap fee advisers will receive enhanced disclosures and the rule will coordinate with federal requirements.

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, Articles 581-12 and 581-19.

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

Filed with the Office of the Secretary of State on March 18, 2013.

TRD-201301122
John Morgan
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8304

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 7. LOCAL RECORDS
SUBCHAPTER F. RECORDS STORAGE STANDARDS

13 TAC §§7.161 - 7.165

The Texas State Library and Archives Commission (TSLAC) adopts new 13 TAC §§7.161 - 7.165, concerning storage of local government records. Sections 7.163 - 7.165 are adopted with changes to the proposed text as published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8673) and will be republished. Section 7.162 and §7.163 are adopted without changes and will not be republished.

The new rules are being adopted to establish required minimum storage conditions for permanent records and historic court records, and to establish optional enhanced storage conditions for all local government records. Language was added to section headings to help clarify what refers to optional versus mandatory requirements.

Comments were received from four individuals during the comment period. These comments and the resulting changes to the proposed text as published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8673) are identified in this preamble.

Agency responses to comments

Comment: A county Records Management Officer (RMO) stated that all counties have records that are not permanent but have to be kept 50 to 75 years. Shouldn't these records be given more safeguards to ensure they last until the retention period has passed?

Response: The agency lacks the legal standing to establish rules for non-permanent records. TSLAC will be recommending these conditions as best practices for storage of long-term records.

Comment: A county RMO stated that daily temperature and humidity checks are a concern because the record storage facilities are eleven miles from the courthouse.

Response: There are temperature monitoring devices that do not require daily maintenance by a staff member. This is a recommended condition only; not a requirement. The agency will be providing training on best practices to meet the required and optional conditions.

Comment: A county RMO stated that the positive atmospheric pressure proposal may be unattainable for large buildings (5,000 square feet).

Response: This is a recommended condition only; not a requirement. The agency will be providing training on best practices to meet the required and optional conditions.

Comment: A county RMO recommended allowing the local environment to be taken into account when setting temperature and humidity levels.

Response: Because this condition is optional, not mandatory, local governments are able to set internal temperature and humidity goals that will best fit their particular conditions. The agency will be providing training on best practices to meet the required and optional conditions.

Comment: Two county RMOs stated that two years is not sufficient time to meet many of these storage conditions. Recommends requiring compliance for new construction begun after the adoption of these standards and allow existing facilities to show their progress as they work to implement changes.

Response: The agency feels the minimum conditions set forth in these storage standards need to be achieved within two years in order to protect permanent records.

Comment: A county RMO recommended adding "or converted" to §7.164(d) because the chances are greater that a county will use an existing structure to store records rather than construct a new building.

Response: Because certain historical buildings cannot have these systems added during a conversion, the standards only require these systems for new construction.

Comment: A county RMO stated concern about the costs of installing fire suppression systems.

Response: This is a recommended condition only; not a requirement.

Comment: A county RMO recommended adding requirements to comply with NFPA 232 fire protection standards.

Response: The NFPA 232 (National Fire Protection Association) standard must be purchased by local governments. Because smaller local governments with more limited budgets would be more likely to not have a local fire code requiring this standard would place additional burdens on the governments that can afford them the least.

Comment: A county RMO recommended removal of §7.165(b)(1) because it is already addressed in §7.164(d).

Response: Agency agrees with commenter; §7.165(b)(1) has been removed and the remaining paragraphs renumbered accordingly.

Comment: A county RMO recommended §7.165(b)(2) as a requirement.

Response: Members of the Local Government Records Storage Task Force all agreed that a fire suppression system is a burdensome requirement for some small local governments with limited budgets.

Comment: A county RMO stated that the temperature and humidity requirements are too strenuous. Recommended considering adopting the standards set forth in NAGARA's "Protecting Records: A Guide for Local Governments". Also consider authorizing variances permitting custodians to adopt different temperature and humidity ranges to reflect local environmental factors so long as they prevent mold blooms.

Response: Because this condition is optional, not mandatory, local governments are able to set internal temperature and humidity goals that will best fit their particular conditions. The agency will be providing training on best practices to meet the required and optional conditions.

Comment: A local government RMO recommended adding language to clarify which sections are required and which are optional.

Response: Agency agrees with commenter; language added to section headings to help clarify.

The new rules are adopted under Government Code §441.025 which requires the Texas State Library and Archives Commission to adopt rules for the storage of court documents filed with, otherwise presented to, or produced by a court in this state before January 1, 1951 and Local Government Code §203.048 which requires the commission to adopt rules for the proper care and storage of local government records of permanent value.

The adopted new rules affect Government Code §441.025 and Local Government Code §203.048.

§7.163. Required Minimum Storage Conditions for Certain Non-Permanent Court Records.

(a) Pre-1951 court records with retention periods less than permanent shall be stored under conditions that meet the requirements of this section. Pre-1951 court records with permanent retention, e.g., case papers, shall be stored under conditions that meet the requirements of §7.164 of this title (relating to Required Minimum Storage Conditions for Permanent Records).

(b) Records shall be stored in a manner that offers protection from fire, water, steam, structural collapse, unauthorized access, theft, and other similar hazards.

§7.164. Required Minimum Storage Conditions for Permanent Records.

(a) Permanent records shall be stored under conditions that meet the requirements of this section.

(b) Records shall be stored in a manner that complies with the following:

(1) offers protection from fire, water, steam, structural collapse, unauthorized access, theft, and other similar hazards; and

(2) does not expose records to direct sunlight.

(c) Records or storage boxes shall not be stored in contact with the floor.

(d) Records stored in a building or storage area constructed after the effective date of this section shall be protected by an operational fire detection system or the facility must be in compliance with local fire codes.

(e) Records shall not be stored in any area of a building or storage area constructed after the effective date of this section that is located in a 100 year flood plain area, as established by the U.S. Geological Survey at the time of the construction of the building, unless the floor of said area is at least five feet above the 100 year flood level.

§7.165. Optional Enhanced Storage Conditions for Permanent Records.

(a) As resources permit, local governments should strive to store records under conditions that meet as many of the recommendations of this section as practicable.

(b) Records should be stored in a building or storage area that:

(1) has an operational fire suppression system;

(2) has adequate environmental controls:

(A) A maximum temperature of 70 degrees Fahrenheit and a constant relative humidity of 45% with a maximum variance of plus/minus 5% relative humidity in a 24-hour period should be maintained in the storage area.

(B) Daily temperature/humidity checks should be conducted.

(C) Positive atmospheric pressure should be maintained within the storage area.

(3) has a pest management program; and

(4) has appropriate shelving:

(A) Shelving should be constructed of metal or other non-porous material.

(B) The lowest shelf should be at least 4 to 6 inches from the floor.

(C) Shelving should be arranged such that records are at least 4 inches from the interior face of exterior walls.

(c) Records should be covered or housed in acid-neutral boxes to protect them from deterioration.

(d) Ultraviolet filtering shields should be affixed to any fluorescent lights or windows.

(e) If a Heating, Ventilation, and Air Conditioning (HVAC) system is in use in a records storage area, it should not be turned off and settings should not be changed for nights and weekends.

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

Filed with the Office of the Secretary of State on March 18, 2013.

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Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 13. MISCELLANEOUS INSURERS AND OTHER REGULATED ENTITIES SUBCHAPTER E. HEALTH CARE COLLABORATIVES

The commissioner of insurance adopts new 28 Texas Administrative Code (TAC) Chapter 13, Subchapter E, §§13.401 - 13.404, 13.411 - 13.417, 13.421 - 13.426, 13.429, 13.431, 13.432, 13.441, 13.451 - 13.455, 13.461, 13.471 - 13.474, 13.481 - 13.483, and 13.491 - 13.494. Sections 13.402 - 13.404, 13.413 - 13.416, 13.422 - 13.424, 13.429, 13.431, 13.441, 13.453, 13.461, 13.473, 13.474, 13.482, 13.483, 13.491, and 13.492 are adopted with changes to the proposed text published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7681). Sections 13.401, 13.411, 13.412, 13.417, 13.421, 13.425, 13.426, 13.432, 13.451, 13.452, 13.454, 13.455, 13.471, 13.472, 13.481, 13.493, and 13.494 are adopted without changes to the proposed text and will not be republished.

REASONED JUSTIFICATION. The commissioner adopts this new subchapter to implement Article 4 of Senate Bill 7, enacted by the 82nd Legislature, First Called Session, effective September 28, 2011. SB 7 adds Insurance Code Chapter 848 relating to health care collaboratives (HCCs).

The adopted sections provide the necessary framework for establishing HCCs and regulating their activity in the health care market in pursuit of innovative health care delivery systems and payment models to achieve better patient outcomes, improve health care transparency, and make efficient use of health care resources.

SB 7, Article 2, §2.01(b), includes a specific legislative finding that: ". . .certified [HCCs] will increase pro-competitive effects as the ability to compete on the basis of quality of care will overcome any anticompetitive effects." The adoption will support the legislative objectives in Insurance Code Chapter 848, Subchapters B and C, relating to the authority of an HCC to do business in this state; the powers and duties of an HCC; and the legislative goal of greater competition in health care services based on delivery of quality health care.

The Legislature stated a clear intention in SB 7, Article 2, §2.01(c), to exempt from antitrust laws and to provide immunity from federal antitrust laws through the state action doctrine an HCC authorized under Insurance Code Chapter 848, and its contract negotiations with payors. The Legislature further stated that it does not intend or authorize any person or entity to engage, or to conspire to engage, in activities that would constitute per se violations of federal antitrust laws.

Accordingly, the adopted sections require every initial and renewal application for an HCC certificate of authority to undergo independent department and attorney general antitrust review. This competition-related review must occur at least annually to ensure that

(1) there is no reduction of competition due to HCC size or composition,

(2) pro-competitive benefits outweigh anticompetitive effects of increases in market power, and

(3) HCCs do not violate the enumerated rights of physicians.

Review associated with the pro-competitive benefit analysis will be in accord with established antitrust principles of market power analysis.

Other essential aspects of the department's application review process will focus on solvency, organization, quality, and efficiency in service delivery.

Solvency and organization review standards are necessary to ensure that the HCC maintains financial solvency through sufficient capitalization and reserves, and that it complies with statutory formation and governance requirements.

Quality and efficiency review standards are necessary to ensure that the HCC provides adequate networks; increases collaboration; promotes improved patient outcomes, safety, and coordination of services; reduces preventable events; and contains costs without compromising the quality of patient care.

If the commissioner determines that an application for a certificate of authority complies with all Insurance Code Chapter 848 certification requirements, the commissioner must forward the application and all items considered in making the determination to the attorney general. The attorney general must then conduct an independent antitrust review of the application to determine if the applicant meets the requirements of Insurance Code §848.057(a)(5) and (6). After making the determination, the attorney general must notify the commissioner of concurrence or nonconcurrence with the commissioner's determination.

Insurance Code §848.151 authorizes the commissioner and attorney general to adopt reasonable rules necessary and proper to implement the requirements of Insurance Code Chapter 848.

The adopted sections are necessary to implement Insurance Code §848.054 and §848.152, which require the commissioner to adopt rules governing application for a certificate of authority to organize and operate an HCC, and to prescribe the regulatory fees and assessments imposed on HCCs to cover reasonable expenses of the department and the attorney general in administering Chapter 848.

The adoption includes a number of requirements similar to those that apply to issuers of other network-based health plans, such as health maintenance organization (HMO) plans and preferred provider benefit plans. The adoption also includes requirements that are more expansive, consistent with the consideration of antitrust issues and regulations.

Department outreach. In preparation for the proposal, the department invited and received extensive input from stakeholders. On January 30, 2012, the department held a public meeting to provide stakeholders the opportunity to discuss HCC rule development, including: the application process, such as organizational and financial documents, networks, and antitrust issues; the regulatory fees and assessments associated with the organization and operation of an HCC; and the renewal process. Representatives from the Office of the Attorney General attended the meeting.

On April 16, 2012, the department posted a call for public comments on the substance of an informal working draft of the rule and its and possible implementation costs. In addition to receiving written comments on the draft, the department conducted a second stakeholder meeting on April 24, 2012, to discuss the draft and potential implementation costs, including compliance costs. Representatives from the Office of the Attorney General also attended this meeting.

The department received and considered stakeholder comments and, to the extent possible, integrated the comments into the proposed rules published for formal public comment in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7681).

The department conducted a public hearing to consider adoption of the proposed rules on October 18, 2012, at 9:30 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. Representatives from the Office of the Attorney General attended the hearing. The department considered oral comments presented at the hearing. The period to submit written comments on the proposal ended October 29, 2012.

In response to written comments on the published proposal and oral comments made at the hearing, the department has changed some of the proposed language in the text of the rule as adopted. The department also has changed some of the proposed language for clarification purposes, and has made other nonsubstantive changes to conform with the agency's style guidelines. These changes do not materially alter issues presented in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

Division 1. General Provisions.

Section 13.401 states that the purpose of Subchapter E is to implement Insurance Code Chapter 848 and other Texas insurance laws that apply to HCCs. It also provides that the subchapter's provisions are severable and do not limit the commissioner's exercise of statutory authority.

Section 13.402 defines the words and terms used in the new subchapter, providing for the uniform application of the subchapter. In response to comment, the department has changed the definition of "clinical director" in §13.402 to add the requirement that such persons must be licensed "in good standing in Texas," for consistency with the provision in §13.473(b) relating to the HCC's clinical director and for clarification of the appropriate licensure requirement. In response to comment, the department has changed the definition of "common service" in §13.402(3) to clarify that it is an identical or substantially similar health care service provided to patients by two or more independent HCC participants. For further clarification, the department has added a new §13.402(18) to define the term "patient" as an individual who receives a health care service and renumbered the subsequent definitions. In response to comment, the department has changed the definition of "pro-competitive benefit" in §13.402(22) to clarify that it is a benefit "that ultimately accrues to the benefit of the HCC's patients."

Section 13.403 describes the location and method to file original or renewal HCC applications. It identifies and adopts by reference forms that must be used to facilitate review and requires completion of the forms in accord with each form's instructions and data content requirements.

The commissioner adopts by reference the following forms:

(1) Original/Renewal Application for Certificate of Authority to do the Business of a Health Care Collaborative (HCC) in the State of Texas

(2) Health Care Collaborative Officers and Directors Page

(3) Biographical Affidavit

(4) Request to Convert to Renewal of Certificate of Authority to do the Business of a Health Care Collaborative (HCC) in the State of Texas

(5) Financial Authorization and Release Form

(6) Health Care Collaborative Payor Information Form, and

(7) Health Care Collaborative (HCC) Acquisition Form.

Forms (1) and (4) - (7) have a June 2012 revision date. Forms (2) and (3) contain an update to the Agency Counsel Office e-mail address effective after the proposal but before the adoption of the sections, and have a March 2013 revision date. Section

13.403(c) has been changed to reflect revision dates for the seven forms.

Section 13.404 restricts the use of the terms "health care collaborative" or "HCC" by an applicant both before and after issuance of a certificate of authority to ensure that members of the public interacting with the developing or established HCC are informed about its operating status.

Division 2. Application for Certificate of Authority.

Section 13.411 sets amounts for non-refundable application fees for original and renewal applications at $10,000 and $5,000, respectively. It also provides that each HCC must pay an annual assessment to the department, as required by Insurance Code §848.152 and described in §13.421(c). The annual assessment is necessary to make up any shortfall between the expenses incurred by the department and the attorney general, and the funds collected through application fees, renewal fees, and examination expenses. The section also provides notice that the application is public information, except as provided by Insurance Code §848.005(b).

Section 13.412 addresses procedures governing revisions during the review of an HCC application. This section also requires that each revision to the basic organizational documents, bylaws, or officers' and employees' bonds include a certification by the HCC's corporate secretary or president that the revision is true, accurate, and complete.

Section 13.412 also specifies that the department will conduct examinations and notify the applicant of any necessary revisions to the application, and that the department can withdraw the application on behalf of the applicant if the applicant does not make the necessary changes. The section provides that if the time required by the applicant to make the corrections will exceed the time limit provided in Insurance Code §848.056(c), the applicant must: (1) request a specific amount of additional time, which may not exceed 90 days; and (2) include sufficient detail for the commissioner to determine if cause exists to grant the extension. The applicant may request additional time. The commissioner may grant or deny a request under Insurance Code §848.056.

Section 13.413 sets forth the application contents for an HCC certificate of authority.

To facilitate the department's review, §13.413(a) requires that the application include items in the order listed in the section; and §13.413(b) requires that nonelectronic filings include two additional copies of the application.

Section 13.413(c) requires the applicant to submit to the department a complete application for a certificate of authority that includes an HCC representative's attestation that the HCC's collection methodology for confidential information satisfies rule requirements for any confidential information included in the filing. Subsection (c) includes nine categories of HCC general organizational, operational, and governance information filing requirements.

Section 13.413(d) sets forth financial information filing requirements, including the form and any proposed payment methodology of any contract between the applicant and any payor that addresses the applicant arranging for medical and health care services for the payor in exchange for payments in cash or in kind as provided in Insurance Code Chapter 848. In response to comment, the inclusion of the proposed payment methodology in §13.413(d)(3) represents a clarifying change to more clearly state the filing requirement for implementation of Insurance Code §848.103(c).

Section 13.413(e) sets forth provider and service area information filing requirements.

Section 13.413(f) identifies quality assurance (QA) and quality improvement (QI) information that an applicant must submit. It requires that the completed application includes a detailed description of policies and processes contained in the QA and QI program required by §13.482.

Section 13.413(g) requires disclosure information as specified about any accreditation the HCC has attained from a nationally recognized accrediting body. In response to comment, the department has changed the subsection to add the Accreditation Association for Ambulatory Health Care (AAAHC) to the referenced accrediting bodies to recognize the association's status as a nationally recognized accrediting body.

Section 13.413(h) sets forth information submission requirements for antitrust analysis.

Section 13.413(i) requires additional antitrust analysis information to be provided by an HCC applicant that does not fall within the limited filing exemption set forth in §13.414.

In response to comment the adoption includes a change to §13.413(i)(6) that reduces the look-back period for certain information from 36 to 24 months, consistent with the position that a 24-month period is sufficient to determine whether additional information is necessary. It also includes a change, in response to comment, that transfers §13.413(i)(7) as published to §13.461(c) as new paragraph (25) of the items the commissioner may require if deemed reasonably necessary to complete the review required by Insurance Code Chapter 848. The paragraph relates to the HCC applicant submitting participants' contribution margins or fixed-or-variable costs for health services in the service area as part of the information provided in the application process. The change reflects that the burden of producing the information is sufficient to merit changing the nature of the requirement to one that is imposed by request under §13.461, and the remaining paragraphs in §13.413(i) are renumbered accordingly.

Section 13.414 establishes a limited exemption from certain information filing requirements and provides for certain exceptions.

Section 13.414(a) provides a general-purpose statement. The department has changed the subsection, in response to comment, to correct a grammatical error.

Section 13.414(b) states that an applicant is not required to provide the information specified in §13.413(i) if, for each primary service area (PSA) in which two or more participants provide common services, the applicant's market share is 35 percent or less; and no contract exists between the HCC and any participating hospital that restricts either party from contracting with other HCCs, networks, hospitals, physicians, physician groups, health care providers, or private payors.

Section 13.414(c) states that an HCC that contracts with a physician or health care provider in a rural county does not have to provide the information specified in §13.413(i) if there is no contract with a physician or health care provider that restricts that physician or health care provider from contracting or dealing with other HCCs, networks, physicians, or health care providers; and inclusion of the physician or health care provider is the sole rea-

son that the HCC's share of any common service exceeds 35 percent.

Section 13.414(d) states an HCC that includes a rural hospital does not have to provide the information specified in §13.413(i) if no contract with the hospital restricts the hospital from contracting with other HCCs, networks, physicians, or health care providers; and inclusion of the rural hospital is the sole reason the HCC's share of any common service exceeds 35 percent.

Section 13.414(e) provides, by categories, the formula for calculating market share.

Section 13.414(f) permits an alternative method of calculating market share on a satisfactory demonstration that the calculation based on the HCC's PSA for a health care specialty provides a more accurate measure of competition relating to the participant in the context of the HCC than the calculation based on the participant's PSA.

Section 13.414(g) provides notice that the commissioner has discretion to require an applicant to provide any or all of the information specified in §13.413(i), §13.461, or both, when the commissioner deems the information is reasonably necessary to conduct the review required by Insurance Code Chapter 848.

Section 13.415 identifies documents that must be available for examinations and specifies 18 types of documents that an HCC must provide to the department on request, make available for the department to review at the HCC's office located in Texas, and maintain for at least five years. In response to comment, the adoption includes a clarifying change in §13.415(a)(2) - (4), (12), (13), (16), and (17) to replace the term "renewal applications" with the term "certified HCCs" to clarify that the document submission requirements apply to all certified HCCs, not just HCCs applying for renewal. The department has also changed §13.415(a)(2), in response to comment, to clarify that the requirement to submit and make available documents related to QI encompasses documents in support of the requirements under §13.482. In response to comment the adoption also includes a change to §13.415(b) to clarify that documents listed in the section must be maintained for at least five years from the anniversary date of the applicable document's creation.

Section 13.416 addresses the review of an original or renewal application.

Section 13.416(a) provides that Insurance Code §§848.056 - 848.060 and §848.153 govern the processing of the application.

Section 13.416(b) explains when examinations will be performed.

Section 13.416(c) provides that application review will include the evaluation of pro-competitive benefits and the anticompetitive effects of market power increase in accord with established antitrust principles.

Section 13.416(d) sets forth by example six categories of restrictions that the commissioner has discretion to impose on an HCC applicant's certificate of authority if determined necessary to preserve competition.

Section 13.417 provides for withdrawal of an application by an applicant, or by the department on behalf of an applicant if the department determines that the applicant has failed to respond to department requests for additional information on an incomplete application in a timely manner.

Division 3. Examinations; Regulatory Requirements for an HCC after Issuance of Certificate of Authority; and Advertising and Sales Material.

Section 13.421 addresses examinations and fees for examination expenses.

Section 13.421(a) provides that the department may conduct financial, quality of care, market conduct, or antitrust examinations individually or in consolidation, during an original or renewal application review, or any other time as needed to oversee the HCC's activity.

Section 13.421(b) states the authority of the commissioner under Insurance Code §848.152(d) to set and collect fees in an amount sufficient to pay reasonable expenses of the department, the attorney general, and their contractors in administering Insurance Code Chapter 848. It also sets forth the specific fee components associated with examination of an HCC.

Section 13.421(c) outlines specific details for imposition of an annual assessment by the department and sets forth a timetable to phase in full implementation of HCC revenue reporting requirements, as well as the assessment basis and time frame for assessment of and payment by all certified HCCs.

Section 13.421(d) provides that an HCC, following the department's notification of a pending examination but prior to the department issuing a draft examination report, may request conversion to a renewal review. The subsequent renewal date for the HCC will be 12 months following the approval date of the application to renew.

Section 13.422 requires an authorized HCC to file certain information with the commissioner, either for approval prior to effectuation or for information only, and to report a material change in the size, composition, or control of the HCC after certification.

Section 13.422(c) addresses the specific filings that an HCC must make.

Section 13.422(c)(1) provides that the department will not accept a filing for review until it is complete.

Section 13.422(c)(2) specifies those categories of filings that require approval before implementation or action. In response to comment, the adoption includes a clarifying change to §13.422(c)(2), adding new subparagraph (I) regarding proposed new or revised contract terms addressing payment methodology, for consistency with Insurance Code §848.103.

Section 13.422(c)(3) provides that an HCC must make certain filings for information about deletions or modification to specified categories of previously approved or filed operations or documents within 30 days after a change is effective. In response to comment, the adoption includes a clarifying change to §13.422(c)(3)(D), which specifies proposed new or revised payment methodologies as an item not filed for information only. The change is also necessary for consistency with Insurance Code §848.103.

Section 13.422(c)(4) addresses the approval time frame and process for approving, withdrawing approval for, and rejecting forms.

Section 13.422(c)(5) specifies the filing review procedures that apply to filings under the section. The adoption includes a clarifying change to §13.422(c)(5)(B) to correct an erroneous publication reference.

Section 13.423 addresses service area change applications. It requires the HCC to file an application for approval before expanding or reducing an existing service area or adding a new service area. It also sets forth categories of items that, if changed by a service area expansion or reduction, must be submitted to the department for approval or information, as appropriate.

Section 13.423(c) and (d) requires that the application be complete before review will begin, and states that an application is complete when all information reasonably necessary for a final determination by the department, including information demonstrating the HCC's compliance with the subchapter's QA, QI, and credentialing requirements, has been filed with the department.

Section 13.423(e) sets forth circumstances under which the department may require the HCC to file an application for renewal before the date required by Insurance Code §848.060(a).

Section 13.424 requires that an authorized HCC must file with the commissioner an application to renew its certificate no later than 180 days before its certificate anniversary date. It also sets forth items for inclusion in the filing.

Section 13.424(c) states that the HCC is not required to resubmit previously filed documents that are not amended, modified, revised, canceled, terminated, replaced, or otherwise changed since issuance of the HCC's most recent certificate of authority. Instead, the HCC must file a transmittal form identifying those documents along with an authorized HCC representative's attestation that the identified documents are unchanged.

Section 13.424(d) extends the scope of §13.424(c) to documents filed and either approved or accepted under §13.422 after issuance of the certificate of authority.

Section 13.424(e) states that file review will begin only when the filing is complete, and sets forth content specifications for notices the department will issue to advise an HCC about necessary additional submissions to complete the filing.

Section 13.424(f) provides that a completed renewal application review will be in accord with Insurance Code §848.060.

Section 13.425 addresses necessary requirements and prohibitions associated with an HCC's compensation arrangements.

Section 13.425(a) restates the requirement that an HCC comply with Insurance Code §848.053, concerning a compensation advisory committee and data sharing.

Section 13.425(b) requires an HCC to establish and enforce procedures to maintain the confidentiality of charge, fee, and payment data; and information between its participants and any individual or entity outside the HCC, including information for transmittal to the department.

Section 13.425(c) prohibits a participant from using confidential charge, fee, and payment data collected by the HCC in any negotiation to which the HCC is not a party.

Section 13.426 addresses confidentiality requirements, including establishing and administering internal controls to safeguard and ensure against sharing confidential information with or among participants. The provisions mandate collection, custodial, retrieval, and transmittal procedures to ensure that confidential information is not shared either with entities and individuals outside the HCC or between or among participants.

Section 13.429 requires HCCs to comply with Insurance Code Chapters 541 and 542 and department rules adopted under those chapters, as applicable, in the same manner as insurance companies or HMOs.

Division 4. Financial Requirements.

Section 13.431 addresses reserves and working capital requirements. It requires an HCC to have and maintain

(1) working capital that is composed of current assets and that meets the requirements of the subsection concerning unencumbered net equity and asset-liability ratio as applicable, and

(2) reserves sufficient to operate and maintain the HCC and to arrange for services and expenses it incurs, and to compute financial reserves in accordance with Generally Accepted Accounting Principles in an amount not less than 100 percent of incurred but not paid claims of nonparticipating physicians and providers.

Section 13.431(c) specifies reserve requirements that apply to any certified HMO or insurer that forms an HCC under Insurance Code §848.001 or contracts with an HCC under Insurance Code §848.103. The reserve must be

(1) equivalent in value to three months of prepaid funding or capitation payments

(2) phased in over a period no more than 36 months

(3) maintained separately from and in addition to all other reserves and liabilities of the HMO or insurer

(4) unencumbered and dedicated to assure its availability for its intended purpose, and

(5) reported separately from all other reserves and liabilities of the HMO or insurer.

The adoption includes a change to §13.431(c) to clarify that it applies to an HMO or insurer certified by the department that forms an HCC under Insurance Code Chapter 848.

Section 13.431(d) limits current assets to U.S. currency, certificates of deposit with fixed terms of one year or less, money market accounts, accounts receivable from government payors, and other accounts receivable net of all allowances and no more than 90 days old for purposes of meeting the section's minimum working capital requirements.

Section 13.431(e) excludes investments in capital assets, mortgages, notes, and loan-backed securities from the calculation of reserves and net equity in determining satisfaction of the section's minimum requirements.

Section 13.432 prohibits a director, member of a committee, officer, or representative of an HCC who is charged with the duty of handling or investing its funds from intentionally

(1) depositing or investing those funds other than in the corporate name of the HCC or in the name of a nominee of the HCC, or

(2) taking or receiving for his or her own use any fee, brokerage, or commission for, or on account of, a loan made by or on behalf of the HCC, except for reasonable interest on amounts that the individual has loaned to the HCC.

Division 5. HCC Contract Arrangements.

Section 13.441 addresses general provisions concerning HCC contracts.

Section 13.441(a) provides that an HCC's contracts with physicians and health care providers must not impede application of provisions in the Insurance Code and Title 28 TAC that regulate HMOs and preferred provider benefit plans, and that impose re-

quirements concerning relations with physicians or health care providers.

Section 13.441(b) prohibits an HCC from using a financial incentive or making a payment to a physician or health care provider if the incentive or payment acts directly or indirectly as an inducement to limit medically necessary services.

Section 13.441(c) prohibits an HCC with a dominant provider, as defined in the subsection, in the PSA in which the dominant provider furnishes services, from requiring a private payor to contract exclusively with the HCC or otherwise restricting a private payor's ability to contract or deal with other HCCs, networks, physicians, or health care providers. The adopted section includes a change to §13.441(c) to more clearly reflect that the intended scope of its prohibition is the PSA in which the dominant provider furnishes services.

Division 6. Change of Control by Acquisition of or Merger with HCC.

Section 13.451 defines "control" and "voting security."

Section 13.452 addresses determination of control for this division of the subchapter, with provisions for rebutting the presumption of control and commissioner determination of control.

Section 13.453 addresses filing requirements that apply in connection with a change of control of the HCC by

(1) specifying prohibitions that apply concerning the acquisition of ownership interest in or control of a certified HCC unless the individual or entity acquiring the interest or control has filed specified documents with the department

(2) listing the documents that the individual or entity acquiring the ownership interest or control must file under oath or affirmation, and

(3) clarifying the application of the section's requirements concerning each partner of a partnership, member of a syndicate or group, and individual or entity who controls the partner or member subject to the filing requirements of the section.

Section 13.454 provides the grounds for commissioner disapproval of a proposed acquisition of control, and the time frame within which either the commissioner's disapproval action is to take place or approval of the change of control is effective.

Section 13.455 provides that for a change of control of an HCC resulting in an increase to market share for any PSA, as provided in §13.414, the department may require that the HCC file an application for renewal before the date required by Insurance Code §848.060(a). Further, an HCC may submit an application for renewal of the certificate of authority in connection with a filing under this division.

Division 7. Administrative Procedures.

Section 13.461 provides that the commissioner may require additional information from an HCC or any participant necessary to make any determination required by Insurance Code Chapter 848, this subchapter, and applicable insurance laws and regulations, including any or all additional information item types set forth in the section. The section does not require the HCC to create the listed items unless they are required by the department to be provided; but once any of the items is created, the HCC or participant must maintain the items for at least five years. In response to comment, the adopted section transfers §13.413(i)(7) as published to §13.461(c) as new paragraph (25). The paragraph relates to the HCC applicant submitting participants' contribution margins or fixed-or-variable costs for health services in the service area in the application process. The transfer reflects that the burden of producing the information is sufficient to merit changing the nature of the requirement to one that is imposed by request under §13.461.

Division 8. Other Requirements.

Section 13.471 requires an HCC to notify all affected payors in writing of a material change in the payment arrangements for physicians or health care providers, or both, within 30 days of any change in payment arrangement type. The notification must include descriptions of both the payment arrangement that has been changed and the new payment arrangement. This notice is distinct from notice requirements in Insurance Code §843.321 and §1301.136, which require notice not later than the 90th day before an insurer or HMO effects changes to coding guidelines or fee schedules that will result in a change of payments to a physician or provider.

Section 13.472 identifies contracts with other specified providers and requires the HCC to submit to the department a monitoring plan to ensure the implementation of all delegated functions in compliance with all department regulatory requirements. The section also requires the HCC to conduct an on-site or desk audit of the delegated entity, delegated network, or delegated third party at least annually to verify continuing compliance with department regulatory requirements. It also requires the HCC to take prompt action to correct any failure by the delegated entity, delegated network, or delegated third party to comply with the department's regulatory requirements applicable to delegated functions.

Section 13.473 addresses the general organization of an HCC.

Section 13.473(a) provides that the governing body of an HCC must be ultimately responsible for the development, approval, implementation, and enforcement of essential policies and procedures related to the HCC's operations. In response to comment, the adoption includes a clarifying change to §13.473(a) to reflect that the HCC's governing body must comply with Insurance Code §848.052.

Section 13.473(b) specifies requirements that apply to the HCC's clinical director.

Section 13.473(c) permits the HCC to establish one or more service areas within Texas, specified by counties and ZIP codes, or portions of counties, with cost center accounting for each service area to facilitate reporting on divisional operations in financial reporting. Section 13.473(c) also states the requirements for network adequacy for any of the service areas that the HCC establishes in Texas.

Section 13.473(d) requires that the HCC protect against acts of fraud or dishonesty by its officers and employees in one of three ways:

(1) maintaining in force in its own name a fidelity bond on its officers and employees in an amount of at least $100,000 or another amount prescribed by the commissioner

(2) maintaining in force in its own name insurance coverage in a form and amount acceptable to the commissioner, or

(3) depositing with the comptroller readily marketable liquid securities acceptable to the commissioner.

Section 13.474 sets forth essential requirements for an HMO's or insurer's delegation of functions to HCCs. The section states

that delegation of HMO or insurer functions to an HCC is governed by Insurance Code Chapter 1272 and 28 TAC Chapter 11, Subchapter AA. It further provides that if this subchapter conflicts with Chapter 1272 or 28 TAC Chapter 11, Subchapter AA, this subchapter will govern. The section also requires specific disclosures in provider listings, insurance policies, and certificates distributed to insureds or enrollees if there is a delegation agreement between the HCC and an HMO or insurer. In response to comment, the adoption includes a change to §13.474(d) to clarify that an HCC must require the HMO or insurer to disclose, in all provider listings distributed to insureds or enrollees, those providers participating in the HCC within the HMO's or insurer's approved service area.

Division 9. Quality and Cost of Health Care Services.

Section 13.481 provides essential details for the QI structure for HCCs. It requires the HCC to develop and maintain an ongoing QI program to objectively and systematically monitor and evaluate the quality and appropriateness of the health care services it arranges for or offers. It provides that the governing body ultimately is responsible for the QI program and sets forth QI duties of the governing board. It requires the board to appoint a QI committee (QIC) that must evaluate the overall effectiveness of the QI program, and to use multidisciplinary teams when indicated to accomplish the HCC's QI program goals. It permits the QIC to delegate QI activities to other appointed committees, that will prepare and submit written reports of any QI findings and recommendations.

Section 13.482 requires an HCC to establish, implement, and administer a continuous QA and QI program that includes defined policies and processes to achieve the basic legislative objectives for HCCs. The new section sets forth specific program components. These components include promoting use of evidence-based medicine and best practices, securing patient engagement, promoting coordination of care across a continuum of care, and measuring and reporting on quality of health care services and impact on cost. The adoption includes a change to §13.482(b)(1)(C) in response to comment to clarify the endorsed nature of the National Quality Forum standards referenced in the subparagraph.

Section 13.483 addresses credentialing and requires an HCC to implement a documented process for selecting and retaining contracted participants. It provides that the process must comply with standards promulgated by the National Committee for Quality Assurance, URAC, the Joint Commission on Accreditation of Hospital Organizations (JCAHO), or the AAAHC, as appropriate and applicable. In response to comment, the department changed the section to include the AAAHC to clarify the association's status as a nationally recognized accreditation entity.

Division 10. Complaint Systems; Rights of Physicians; Limitations on Participation.

Section 13.491 requires each HCC to implement and maintain a complaint system that complies with Insurance Code §848.107 to provide reasonable procedures for resolving an oral or written complaint concerning the HCC or health care services arranged by or offered through the HCC. The section defines "complaint," requires a process for notice and appeal of a complaint initiated by or on behalf of a patient who sought or received health care services by a participant, and affirms the commissioner's authority to examine a complaint system for compliance with §848.107 and the subchapter.

Section 13.492 sets forth requirements for acknowledging, responding to, and investigating complaints, and issuing a complaint resolution letter. It also provides for issuing a decision letter in cases where a patient complaint is appealed. The complaint resolution and decision letters must include specific reasons for the resolution or decision, and must disclose that the complainant may file a complaint with the department if the complainant is dissatisfied with the resolution, the appeal, or the HCC's complaint process. The section also requires maintenance of a complaint log that captures and categorizes each complaint. The HCC must maintain the log for each complaint and documentation on each complaint, complaint proceeding, and action taken until the third anniversary after the date the complaint was received.

Section 13.493 addresses rights of physicians and provides that before a complaint against a physician is resolved, or before an HCC involuntarily terminates a physician, the HCC must provide the physician with the opportunity to dispute the complaint or termination. The section requires that the dispute process include providing the physician with written notice of the complaint or the basis of termination, an opportunity for hearing and presentation of information at the hearing, and a written decision from the HCC that specifies reasons for the decision.

Section 13.494 permits an HCC to limit a physician or physician group from participating in the HCC only if the limitation is based on an established development plan approved by the HCC's board of directors, a copy of which must be provided to the physician or physician group. The section also prohibits the HCC from taking a retaliatory or adverse action against a physician or health care provider that files a complaint with a regulatory authority regarding an HCC's action.

HOW THE SECTIONS WILL FUNCTION.

Division 1. General Provisions.

Division 1 consists of §§13.401 - 13.404, addresses general provisions of the rule.

Section 13.401 sets forth the purpose of Subchapter E, provides that the subchapter's provisions are severable, and states that the subchapter does not limit the commissioner's exercise of statutory authority.

Section 13.402 defines terms for uniform application throughout the subchapter.

Section 13.403 describes the location and method to file original or renewal HCC applications.

Section 13.404 restricts the use of the terms "health care collaborative" and "HCC" by an applicant both before and after issuance of a certificate of authority.

Division 2. Application for Certificate of Authority.

Division 2 consists of §§13.411 - 13.417 and addresses the application process for an HCC certificate of authority.

Section 13.411 provides for payment of a nonrefundable application fee, provides for annual assessments to cover any shortfall between incurred expenses by the department and attorney general and the funds collected through the application and examination process, and advises that the application is public information except as provided by Insurance Code §848.005(b).

Section 13.412 addresses procedural details for revisions during review, including requests for additional time to make necessary revisions, and also provides for corporate officer certification for

revisions to basic organizational documents, bylaws, or officers' and employees' bond.

Section 13.413 addresses necessary contents of the application and arrangement of those contents. The section includes specific requirements for submission of several categories of HCC information, including organizational, financial, provider and service area, QA and QI, accreditation, and antitrust analysis at varying levels.

Section 13.414 establishes a limited exemption from certain information filing requirements, provides for certain exceptions, provides by categories the formula for calculating market share and alternative calculation methods, and provides notice of commissioner discretion to require additional information if necessary to meet the review requirements of Insurance Code Chapter 848.

Section 13.415 addresses document availability for examination purposes and specifies 18 types of documents that an HCC must provide on department request, make available for review at its Texas office location, and maintain for at least five years.

Section 13.416 addresses review of an original or renewal application, including the timing of examinations, notice of evaluation of pro-competitive benefits and anticompetitive effects of market power increase in accord with established antitrust principles, and categories of restrictions the commissioner may impose on a certificate holder if determined to be necessary to preserve competition.

Section 13.417 provides for withdrawal of an application by the applicant or by the department under specified circumstances.

Division 3. Examinations; Regulatory Requirements for an HCC after Issuance of Certificate of Authority; and Advertising and Sales Material.

Division 3 consists of seven sections and addresses examinations and regulatory requirements that apply after issuance of an HCC's certificate of authority.

Section 13.421 addresses examinations and fees for examination expenses for financial, quality of care, market conduct, or antitrust examinations performed individually or in consolidation. It states the authority of the commissioner to set and collect fees sufficient to pay reasonable expenses of the department, the attorney general, and their contractors. It also specifies HCC examination fee components, outlines specific details, and sets forth the implementation time frame for imposition of an annual fee assessment. The section provides that an HCC, on department notification of a pending examination, may request conversion to a renewal review if specified conditions are met.

Section 13.422 addresses post-certification HCC filing requirements. It specifies information that must be filed with the commissioner, either for approval prior to effectuation or for information, and that a filing submitted for review must be complete to be accepted for review. It also specifically requires the HCC to report a material change in size, composition, or control of the HCC to the commissioner.

Section 13.423 addresses service area change applications. It requires an application be approved before expansion or reduction of an existing service area or adding a new service area. It sets forth categories of items that must be submitted if affected by a service area change. It further requires that an application be complete before review begins and provides criteria for achieving application completion. The section also sets forth circumstances under which the department may require the HCC to file an application for renewal before the date provided in Insurance Code §848.060(a).

Section 13.424 addresses certificate of authority renewal requirements. It sets forth the time frame for filing, the items required to be included with the filing, the criteria for a complete application, and the scope and extent of review for a renewal application.

Section 13.425 addresses compensation arrangements. It restates the Insurance Code §848.053 requirements concerning an HCC's compensation advisory committee and data sharing; requires that the HCC have and enforce procedures to maintain confidentiality of charge, fee, and payment data, and information between participants and individuals or entities outside the HCC; and prohibits a participant from using HCC-collected confidential charge, fee, and payment data in any negotiation to which the HCC is not a party.

Section 13.426 addresses confidentiality requirements, including establishing and administering internal controls to safeguard and ensure against sharing confidential information with or among participants. The provisions mandate collection, custodial, retrieval, and transmittal procedures to ensure that confidential information is not shared either with entities and individuals outside the HCC or between or among participants.

Section 13.429 requires HCCs to comply with Insurance Code Chapters 541 and 542 and department rules adopted pursuant to those chapters, as applicable, in the same manner as insurance companies and HMOs.

Division 4. Financial Requirements.

Division 4 consists of §13.431 and §13.432.

Section 13.431 addresses reserves and working capital requirements. It specifies the working capital requirements and standards that apply to an HCC based on its composition and certification experience. It sets forth a minimum reserve standard and the methodology for its computation. It also specifies reserve requirements that apply to an HMO or insurer certified by the department that forms an HCC or enters into a contract with an HCC. It defines what qualifies as a current asset for the purpose of meeting the section's minimum working capital requirements and specifies that accounts receivable must be reported net of all allowances. It also excludes specified investments from the calculation of reserves and net equity in determining satisfaction of the section's minimum requirements.

Section 13.432 addresses the fiduciary responsibility of a director, member of a committee, officer, or representative of an HCC who handles or invests HCC funds.

Division 5. HCC Contract Arrangements.

Division 5 consists of §13.441, which generally addresses HCC contracts. It prohibits

(1) an HCC's contracts with physicians and health care providers from impeding application of provisions in the Insurance Code and Title 28 TAC that regulate HMOs and preferred provider benefit plans

(2) an HCC from using a financial incentive or making a payment to a physician or health care provider if the incentive or payment acts directly or indirectly as an inducement to limit medically necessary services, and

(3) an HCC with a dominant provider as defined in the subsection, in the PSA in which the dominant provider furnishes services, from requiring a private payor to contract exclusively with the HCC or otherwise restricting a private payor's ability to contract or deal with other HCCs, networks, physicians, or health care providers.

Division 6. Change of Control by Acquisition of or Merger with HCC.

Division 6 consists of §§13.451 - 13.455.

Section 13.451 defines "control" and "voting security."

Section 13.452 addresses determination of control and rebutting the presumption of control for Division 6 purposes.

Section 13.453 addresses filing requirements that apply in connection with a change of control of the HCC, including

(1) specifying the prohibitions applicable to the acquisition of ownership interest in or control of a certified HCC

(2) specifying the documents that the individual or entity acquiring the ownership interest or control must file under oath or affirmation, and

(3) clarifying the application of the section's requirements concerning each partner of a partnership, member of a syndicate or group, and individual or entity who controls the partner or member subject to the section's filing requirements.

Section 13.454 specifies grounds for commissioner disapproval of a proposed acquisition of control and the timetable for commissioner action.

Section 13.455 addresses the department's discretion to require, and the HCC's discretion to submit, an application for renewal before the date required by Insurance Code §848.060(a) for any change of control of an HCC resulting in an increase to market share for any PSA as provided in §13.414.

Division 7. Administrative Procedures.

Division 7 consists of §13.461 and permits the commissioner to require additional information from an HCC or any participant necessary to make any determination required by Insurance Code Chapter 848; 28 TAC Chapter 13, Subchapter E; and applicable insurance laws and regulations. Additional information includes any or all of the information item types set forth in the section. It does not require the creation of the items listed unless they are required to be provided. It mandates a document retention period of at least five years.

Division 8. Other Requirements.

Division 8 consists of §§13.471 - 13.474.

Section 13.471 requires specified written notice from an HCC to all affected payors of a material change in the payment arrangement for physicians, health care providers, or both within 30 days of any change in payment arrangement type.

Section 13.472 identifies contracts with other specified providers and requires for those contracts that the HCC submit to the department a monitoring plan to ensure the implementation of all delegated functions in compliance with all department regulatory requirements. The section requires audits of delegated entities at least annually and also requires prompt corrective action for regulatory compliance failure, as necessary.

Section 13.473 addresses the general organization of an HCC and

(1) provides that the governing body of an HCC must be ultimately responsible for the development, approval, implementation, and enforcement of essential policies and procedures related to the HCC's operations

(2) specifies requirements that apply to the HCC's clinical director

(3) permits the HCC, subject to network adequacy requirements, to establish one or more service areas within Texas, specified by counties, ZIP codes, or portions of counties, with cost center accounting for each service area to facilitate the reporting of divisional operations in financial reporting, and

(4) requires that the HCC protect against acts of fraud or dishonesty by its officers and employees, as specified.

Section 13.474 sets forth essential requirements for an HMO's or insurer's delegation of functions to HCCs, including that delegation of HMO or insurer functions to an HCC is governed by Insurance Code Chapter 1272 and 28 TAC Chapter 11, Subchapter AA. It also requires specified disclosures.

Division 9. Quality and Cost of Health Care Services.

Division 9 consists of §§13.481 - 13.483 and addresses both quality and cost of health care services in providing essential requirements for the QI structure for HCCs.

Section 13.481 and §13.482 require an HCC to have an ongoing QI program, and to establish and administer a specified continuous QA and QI program, respectively.

Section 13.483 requires an HCC to have a documented process for selection and retention of contracted participants.

Division 10. Complaint Systems; Rights of Physicians; Limitations on Participation.

Division 10 consists of §§13.491 - 13.494 and addresses complaint systems and physician rights.

Section 13.491 requires an HCC to have and maintain a complaint system with reasonable complaint resolution procedures that comply with Insurance Code §848.107.

Section 13.492 requires that the system include complaint acknowledgement, response, investigation, and issuance of a resolution letter. It also provides for an appeals process, and maintenance of a complaint log that captures and categorizes each complaint.

Section 13.493 addresses rights of physicians and provides that before a complaint against a physician is resolved or a physician's association with an HCC is involuntarily terminated, the HCC must provide the physician with the opportunity to dispute the complaint or termination.

Section 13.494 permits an HCC to limit a physician or physician group from participating in an HCC only if the limitation is based on an HCC board-approved development plan, a copy of which must be provided to the physician or physician group. It prohibits an HCC from taking a retaliatory or adverse action against a physician or health care provider that files a complaint with a regulatory authority regarding an HCC's action.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comments: Several commenters express appreciation for the state's efforts to develop new and innovative health care delivery systems and thank the department and attorney general staff for their work on the HCC rules. Several commenters express ap-

preciation for the department's work to seek and consider stakeholder responses regarding the regulation of HCCs through an informal draft posting. Two of the commenters also state that the proposal now addresses several of the commenters' previous concerns.

Agency Response: The department appreciates the supportive comments.

Comment: §13.402 - "Hospital-based physician" or "facility-based physician." A commenter recommends that the department define "hospital-based physician" or "facility-based physician" in the absence of a statutory definition as follows: "An anesthesiologist, emergency room physician, neonatologist, pathologist, radiologist, or other physician specialty who furnishes substantially all of their professional services in a hospital-based or facility-based setting."

Agency Response: The department disagrees that the rule should include definitions for the terms "hospital-based physician" or "facility-based physician" because the rule uses neither term. Inclusion of the proposed definition for the terms would not result in increased uniformity because of the ambiguity in the proposed definition. As proposed, any class of physician specialty could potentially meet the definition, and the definition could create confusion about applicability to specialty physicians who furnish substantially all of their professional services on behalf of a hospital or facility at a remote location. The department, therefore, declines to make this change.

Comment: §13.402(2) - Definition of Clinical Director. Some commenters recommend that the department change the definition of "clinical director" in §13.402(2) to reflect the need for Texas-licensed physician leadership in the clinical oversight of the HCC because the proposed definition includes any appropriately licensed "health care professional." The commenters state that the term does not: require the clinical director to be a physician; limit the licensure status of the director to Texas; or require that the license be in good standing with the applicable licensing agency.

The commenters state that SB 7 expressly recognizes physicians as a critical component of HCCs by defining an HCC in Insurance Code §848.001(2)(C) as an entity that must always be composed of physicians, regardless of any additional provider or insurer composition. Also, the commenters state that Insurance Code §848.056(b)(4) requires the HCC to demonstrate in its application for a certificate of authority that it has a sufficient number of primary care physicians in the HCC's service area.

To address these issues, the commenters propose the following revised definition:

"(2) Clinical director--A physician who is:

(A) licensed and in good standing with the Texas Medical Board;

(B) an individual who is a party to a contract with an HCC; and

(C) responsible for clinical oversight of the utilization review program, the credentialing of professional staff and QI functions."

The commenters state their proposed revised definition conforms with Insurance Code Chapter 848. They state that it recognizes that a physician is the appropriate professional to be responsible for the utilization review program, the credentialing of professional staff, and the QI functions of the HCC. The commenters say only a physician has the requisite education, training, and experience necessary to credential the HCC's staff, which will necessarily include other physicians.

The commenters note that the suggested definition sets a higher standard than the federal regulations concerning accountable care organizations (ACOs) in the Medicare Shared Savings Program (MSSP), but they assert that a higher state law standard does not preclude an HCC from participation in the MSSP. The commenters state that the legislative goal of improving the quality and efficiency of health care through HCCs can be accomplished through a Texas-licensed physician clinical director without disadvantaging MSSP-participating HCCs.

Agency Response: The department agrees that it is appropriate for a Texas HCC's clinical director to be licensed in Texas because the clinical director will be actively involved in all quality management activities for provision of services in Texas. In addition, the director will be responsible for clinical oversight of the utilization review program and credentialing functions. For these reasons, §13.473(b) requires an HCC's clinical director to be licensed in Texas or otherwise authorized to practice in this state. The department also clarifies that the status of the requisite license or authorization must be one of good standing. To clarify both of these requirements, the department is changing §13.402(2)(A) to require that the clinical director be "appropriately licensed in good standing in Texas."

While the department agrees that the clinical director will appropriately be a physician in many cases, the department does not agree that this will be required in all cases. It is possible that a specialty HCC will form to provide select health care services and inclusion of a more restrictive physician-licensing requirement could be unnecessarily burdensome to this type of HCC. The department's definition does not prevent an HCC from employing a physician as its clinical director. The department suggests an HCC consider its participation in programs such as MSSP in making this type of oversight determination.

The department agrees that Insurance Code Chapter 848 requires that: (1) an HCC must consist of physicians, with or without other health care providers, insurers, or HMOs; and (2) an HCC's application for a certificate of authority must demonstrate that the HCC contracts with a sufficient number of primary care physicians in the HCC's service area. But the department does not interpret these requirements to mean that an HCC's clinical director can only be a physician, or be a party to a contract with an HCC.

The department further disagrees that the clinical director's oversight of utilization review, credentialing, and QI functions require that the clinical director be a physician. As stated, a specialty HCC could form to provide select health care services, and inclusion of a more restrictive physician-licensing requirement could potentially be unnecessarily burdensome to this type of HCC. Further, an HCC is permitted to delegate credentialing and utilization review functions under Insurance Code §848.108, rendering the suggested limitation unnecessary. The department declines to require an HCC's clinical director to be a physician.

Comment: §13.402(21) - Definition of "pro-competitive benefit." A commenter states that the definition of "pro-competitive benefit" is inadequate and does not tie to the concept codified in Insurance Code Chapter 848 because the definition's examples describe "pro-quality" benefits. The commenter requests that the definition instead refer to systems or protocols that, if implemented, would benefit the competitiveness of the health care marketplace and give consumers, including employers and other purchasers of health care, more choice in how they access and pay for that care.

A second commenter states that the definition of pro-competitive benefit should link to the goals of quality and coordinated care outlined in Insurance Code Chapter 848 and clarify that the benefit is to the HCC's patients. The commenter states that the use of electronic health records, for example, is not itself a benefit for patients. Instead, the commenter asserts that electronic health records are a tool that can result in benefits for patients (such as reduction of duplicative tests, fewer prescription errors, and remote patient access to medical records), and providers (such as improved efficiency in records maintenance and improved coding and billing).

When showing that pro-competitive benefits outweigh the risks of provider consolidation, the commenter asserts that HCCs should not be able to propose expanding electronic health records as a pro-competitive benefit, for example, and then measure the percentage of HCC providers using them. Instead, the commenter states that the HCCs should propose a reduction of duplicative tests as an example of the pro-competitive benefit, and measure improvement in that outcome.

The commenter recommends that the department revise the definition based on requirements in Insurance Code §848.057(a)(2)(A) as follows:

(21) Pro-competitive benefit--A benefit to patients obtained from clinical or financial integration by the establishment and operation of the HCC in the form of increased provider collaboration, improved quality-based health care outcomes, improved patient safety, improved patient engagement, improved coordination of services, reduced potentially preventable events, or incentives that reduce health care costs without jeopardizing patient quality of care.

Agency Response: The department does not agree that the published definition of "pro-competitive benefit" excludes systems or protocols that increase competitiveness and provide choice in how to access and pay for health care. The department also disagrees that the definition does not reflect the concept in Insurance Code Chapter 848.

Insurance Code §848.057(a)(6) provides that an applicant must, as a condition of certification as an HCC, satisfy the commissioner that "the pro-competitive benefits of the applicant's proposed health care collaborative are likely to substantially outweigh the anticompetitive effects of any increase in market power." In this regard, the department notes that an ACO, an organization analogous in many respects to an HCC, may form and provide services to Medicare beneficiaries under the MSSP, even if the ACO's formation will potentially lead to an increase in market power. The antitrust test in Insurance Code §848.057(a)(6) is consistent with that undertaken by the Federal Trade Commission (FTC) and Department of Justice (DOJ) in assessing whether an ACO satisfies federal antitrust concerns. See *Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program,* 76 Fed. Reg. 67026, Oct. 28, 2011, (final Policy Statement), "A rule of reason analysis evaluates whether the collaboration is likely to have anticompetitive effects and, if so, whether the collaboration's potential pro-competitive efficiencies are likely to outweigh those effects."

The final Policy Statement clarifies those agencies' enforcement policy concerning collaborations among independent providers that wish to form an ACO in the Medicare Shared Savings Program. *Id.* at 67026. Specifically, the FTC and DOJ will apply a rule of reason analysis to joint price agreements among competitor health care providers that are financially or clinically integrated, if the agreements are "reasonably necessary to accomplish the pro-competitive benefits of the integration." *Id.* at 67027.

The federal agencies consider both the financial and clinical integration components in determining whether an agreement is reasonably necessary to accomplish the pro-competitive benefits of the integration, citing as an example the possibility that the joint venture will create "an active and ongoing program to evaluate and modify practice patterns by the venture's providers, and to create a high degree of interdependence and cooperation...to control costs and ensure quality." *Id.*

The FTC and DOJ analysis considers the ACO eligibility requirements to promote evidence-based medicine and patient engagement, report on quality and cost measures, and coordinate care for beneficiaries. The analysis concludes that these requirements are consistent indicators of the level of clinical integration that the federal agencies have identified as "reasonably likely to be bona fide arrangements intended to improve the quality and reduce the costs of providing medical and other health care services through their participants' joint efforts." *Id.* at 67027-67028.

It is the department's position that the definition of "pro-competitive benefit" in §13.402(22) is, in its inclusion of quality-related factors, consistent with the application of the term as used in the federal antitrust analytical model for an ACO, providing for increased consistency in the application of antitrust scrutiny between the analogous federal and state models.

The definition in §13.402(22) is also consistent with the requirements in Insurance Code Chapter 848, which specifically include quality-related eligibility criteria, such as promoting improvement in quality-based health care outcomes, patient safety, patient engagement, and coordination of services under §848.057(a)(2)(A)(ii), incorporating requirements for very specific categories of pro-competitive benefits as a matter of statute.

The department agrees that it is appropriate to clarify the implicit requirement that a pro-competitive benefit ultimately accrues to the HCC's patients. This agreement is based on

(i) the emphasis in antitrust analysis on QI for patients, as previously discussed, and

(ii) the express eligibility requirements in Insurance Code §848.057(a)(2)(A) that the HCC applicant satisfy the commissioner that the applicant is willing and able to ensure its services will be provided in a manner to

(a) increase collaboration among health care providers and integrate health care services

(b) promote improvement in quality-based health care outcomes, patient safety, patient engagement, and coordination of services, and

(c) reduce the occurrence of potentially preventable events.

The department is changing the definition to explicitly clarify this point.

Because of this change, the department is also adding a definition for the term "patient" at §13.402(18), defining the term as "an individual who receives a health care service."

Insurance Code §848.057(a)(2)(A) already includes the specific broad categories of patient benefits referenced in the second commenter's proposed definition. The department does not

agree that those categories must also be restated in the definition of pro-competitive benefit, since the department will already receive related information as part of the basic application requirements. The department does agree that the eligibility requirements in Insurance Code §848.057(a)(2)(A) are related to the types of pro-competitive benefits contemplated in Insurance Code Chapter 848 and in the department's rule, as explained previously in this response.

Regarding the commenter's concern about use of electronic health records as a pro-competitive benefit, the department clarifies that the quantifier usage described by the commenter would instead be part of the analysis provided with the application under §13.413(h)(6). The example of usage of electronic health records in the definition of "pro-competitive benefit" refers to usage to improve patient outcomes. The department's change to this definition emphasizing that the benefit must ultimately accrue to the patient population should serve to clarify this point, and no further changes to the definition are necessary.

Comment: §13.404(c) - Use of the Term "HCC," Trademarks, d/b/a. Some commenters note that §13.404 permits HCC applicants to use the terms "health care collaborative" and "HCC" provided that the developmental status of the proposed HCC is clearly communicated. The commenters support this provision as a means of permitting HCC organization, but suggest an additional new subsection to require disclosure to the public that an HCC is not an insurance or HMO product to prevent public confusion over the status and functions of certain HCCs. The commenters suggest new subsection (c) as follows: "(c) Unless an organization holds a certificate of authority as an HMO or is licensed as an insurer, an organizer of a HCC, an applicant for a certificate of authority under this chapter, and a HCC that is a certificate holder under this chapter must clearly communicate that the HCC is not providing an insurance or HMO product."

Agency Response: The department appreciates the supportive comment. However, because Insurance Code §848.003 already prohibits an HCC that is not an insurer or HMO to use words or initials that are descriptive of the insurance or HMO business in its name, contracts, or literature, the department disagrees that the commenter's suggested additional required disclosure is necessary. While an HCC's additional voluntary disclosure that its services are not an insurance or HMO product would help to demonstrate an HCC's intent to comply with §848.003, an additional required disclosure is not necessary. The department declines to make this requested change.

Comment: §13.411(d) and §13.421 - Filing Fee, Annual Assessments, Fee for Expenses. Some commenters note that §13.411(d) and §13.421 operate respectively to impose an annual assessment on HCCs to fully fund the expense of regulating HCCs under Insurance Code Chapter 848 and the proposed rules, with the annual assessment based on the total annual gross revenues reported by the HCCs and adjusted for the amount of any HCC application fees. For purposes of reporting gross revenues relevant to the assessment, the commenters state that §13.421 permits the HCC to reduce its gross revenues by amounts paid to individuals or entities unaffiliated with the HCC for: (i) drugs or biological supplies that, by law, require a prescription to be dispensed; and (ii) devices or medical supplies that, by law, require premarket approval by or premarket notification to the Food and Drug Administration.

The commenter supports the exclusion of the costs of drugs, biological supplies, and devices from the calculation of gross revenue as proposed in §13.421 and incorporated into §13.411(d) because this exclusion will help ensure that smaller disease- or disorder-specific HCCs do not bear a disproportionate assessment due to the cost of basic supplies.

Agency Response: The department appreciates the supportive comment for the determination to permit the exclusion of these amounts from an HCC's gross revenues in calculating an HCC's annual assessment amount.

Comment: §13.413 and §13.482 - Reporting and publication of quality measures; QA and QI; uniform measures. *Accountability.* A commenter states that the rules lack sufficient accountability to ensure that HCCs deliver improved coordinated care to patients across various health care settings, a goal of SB 7. The commenter states that HCC formation allows health care providers to consolidate in ways that might otherwise be prevented by anti-trust law to facilitate this goal. However, the commenter states that provider consolidations often result in declining quality despite pledges of QIs. To ensure that HCCs deliver real value to consumers through less fractured health care delivery, the commenter asserts that HCCs must be accountable for delivering better coordinated, higher quality care focused on patient and enrollee needs. The commenter recommends that the department accomplish this by requiring HCCs to report on quality metrics.

Uniform measures. The commenter notes that HCCs may pick the measures that they report on under §13.413(h)(6)(C) and §13.482(b)(1), and recommends the department develop a core set of standard quality measures that all HCCs will report on at renewal to preclude HCCs from picking the measures on which they score well and avoiding those that show room for improvement. The commenter asserts that self-selection of measures misses the point of performance measures and will inhibit the regulator's ability to ensure the public benefits from provider consolidation and integration through HCCs.

The commenter states that the department and the attorney general have sufficient authority to adopt a uniform set of quality measures for reporting under Insurance Code §848.151. The commenter asserts that standard quality performance measures would aid in the agencies' evaluation of an HCC's actual performance in delivering quality, coordinated care under Insurance Code §848.060(b)(2)(D) and (E). The commenter states that requiring HCCs to report on standard quality measures that support the goals in Insurance Code Chapter 848, and publicly displaying the results, is vital. The commenter noted that the required reporting would help achieve the following: oversight of pro-competitive benefits; monitoring HCC progress on promoting evidence-based medicine, patient engagement, coordination of care, and quality reporting; and ensuring that cost savings do not come from limiting medically necessary services, a trend that could show up in quality measure reporting.

Due to the complexity of setting uniform quality measures for HCCs that may take different forms for providers that do not always agree on quality measures, the commenter recommends several approaches.

The commenter suggests that the department

(1) Partner with the Department of State Health Services or an agency that has expertise in quality measures.

(2) Use a small set of measures that have been validated and broadly accepted within the provider community, such as National Quality Forum-endorsed standards.

(3) Choose measures from the specific domains that are goals in Insurance Code §848.057(a)(2).

(4) Use the 33 standard quality measures in the Medicare ACO regulation as a starting point because the measures align with the Physician Quality Reporting System and the Electronic Health Record Incentive Programs, will be familiar to providers, and might already be subject to reporting by some HCC participants.

(5) Use ACO Measures 1 - 7 from the Clinician and Group Consumer Assessment of Health Care Providers and Systems (CAHPS) that measure the patient and caregiver experience, and ACO Measure 8, the risk-adjusted 30-day hospital readmission rate, which measures coordination of care.

(6) Use another National Quality Forum-endorsed, readmission-based measure or other measures that are part of the Medicare ACO care coordination domain.

The commenter asks the department to establish the uniform measure requirements either as part of an HCC's renewal submission requirements or as part of §13.482, provided inclusion in §13.482 does not affect public reporting of quality measures.

The commenter also suggests that the department require an HCC to explain to the department and the attorney general why any standard measure does not apply to the HCC if the HCC is narrowly focused, replacing that measure with another in the same domain, such as patient experience or care coordination. Further, the commenter recommends that the department require HCCs to report on other quality measures that the HCC determines to be appropriate that go beyond the scope of the core set of standard measures.

The commenter states support for the inclusion of a CAHPS survey as a uniform measure in support of consumer protection that all the HCCs will be submitting under §13.482(b).

Section 13.413(h)(6). The commenter also recommends requiring applicants under §13.413(h)(6) to identify the pro-competitive benefits that support the goals in Insurance Code Chapter 848, using a set of standard HCC quality measures to support the assessment of their pro-competitive benefits in addition to other relevant standards, as appropriate. For example, the commenter states that if the applicant anticipates that the HCC will improve the coordination of care, it should use the department-defined standard measures from the care coordination domain in its renewal application, along with other appropriate measures.

The commenter states that it supports the use of interim benchmarks in §13.413(h)(6)(C)(iii) when benefits will take more than one year to be achieved because the commenter understands that it will take time for some pro-competitive benefits to be achieved. The commenter also asserts that, consistent with Insurance Code Chapter 848, cost control measures should not jeopardize the quality of patient care. The commenter, recommends that if an HCC proposes a pro-competitive benefit under §13.413(h)(6)(D), it should similarly lay out the reference point, standards, and time frame that it will use to demonstrate that alternative payment methods either led to improvements in or did not result in diminished quality of care.

Transparency. The commenter also states that because transparency will be key to consumer protection and consumers' understanding of HCCs, CAHPS surveys and the quality measures that HCCs report on should be publicly posted and available. The commenter notes that the statute makes QIC activities confidential but asserts that the measures themselves don't improve quality, are not confidential, and are already reported by health plans, Medicaid plans, and HMOs. Further, the commenter asks the department to move the requirement for use of CAHPS and quality measures out of §13.482 if necessary to ensure publication.

Agency Response: *Accountability.* The department agrees that improved patient outcomes are a key focus for HCC design, operation, and regulation. This focus is evidenced by the certification requirements in Insurance Code §848.057(a), which provides that the applicant demonstrate that the HCC is able to ensure that the health care services it provides will promote improvement in quality-based health care outcomes, patient safety, patient engagement, and coordination of services.

The department asserts that new Subchapter E implements this by requiring in §13.482(a) that HCCs establish, implement, and administer a continuous QA and QI program with defined policies and processes to: (i) promote evidence-based medicine and best practices; (ii) secure patient engagement; (iii) promote coordination of care across a continuum of care; and (iv) measure and report the quality of health care services and impact on cost. Further, the HCC is required as part of its application under §13.413(f) to include a detailed description of these QI processes.

As a result of a different comment, the department has changed §13.415(a)(2) to clarify that specified documents supporting an HCC's QI program must be provided to the department on request and made available for review at the HCC's office in Texas.

Given this focus on quality of health care services and QI, the department disagrees that the rule lacks accountability for achieving the QI goals of Insurance Code Chapter 848.

Uniform measures. As previously explained in this response, §13.482 implements the improved patient outcome requirements of Insurance Code §848.057(a) by requiring an HCC to establish, implement, and administer a continuous QA and QI program with defined policies to promote evidence-based medicine and best practices, secure patient engagement, promote coordination of care, and measure and report the quality of health care services and the impact on cost. An HCC must also include a detailed description of its QI program processes as part of the application process under §13.413(f) and provide specified documents supporting its QI program to the department on request in accord with adopted §13.415(a), as clarified by the department in response to a different comment.

The department purposefully established these requirements in a manner that permits some flexibility in an HCC's selection of measures under §13.482(a) so that an HCC may tailor its measures in a manner appropriate to its services.

The department disagrees that it is necessary to require HCCs to target, assess, and report on standard measures in a more specific manner at this initial phase of regulation, either to address the patient outcomes of Insurance Code §848.057(a), or to ensure that there is a public benefit from provider consolidation. Sections 13.413(f), 13.415(a), and 13.482 implement the patient outcome requirements of §848.057(a) and provide for periodic department oversight of an HCC's QA and QI program in a manner that permits flexibility in an HCC's selection of measures. The department's position is that these requirements will provide sufficient information for the department and the attorney general to determine whether an HCC meets the requirements in Insurance Code §848.057 in a manner consistent with the requirements of Insurance Code §848.060(b)(2)(D) and (E).

These two paragraphs incorporate requirements for an HCC's application to include evaluations of the quality and cost of health care services provided by the HCC and of the HCC's processes to promote evidence-based medicine, patient engagement, and coordination of health care services provided by the HCC, respectively.

For these, the department declines to adopt uniform measures. Should the department determine that the adoption of uniform standards is appropriate in the future, the department agrees that it would be appropriate to consider the implementation options suggested by the commenter.

The department further disagrees that HCCs will likely choose only measures at which they already excel because HCCs are required as part of the application process under §13.413(h)(6) to provide detailed information about how the applicant will achieve or extend pro-competitive benefits that the applicant expects from the HCC's formation. This information must include a pre-implementation starting point regarding the pro-competitive benefit to be achieved. Under Insurance Code §848.060(a), the HCC must file a renewal application at least 180 days prior to the anniversary of the date on which its certificate of authority was issued or most recently renewed. This process gives the department an opportunity to periodically review an HCC's application information, and assess the HCC's pro-competitive achievements.

The measures reporting requirements in §13.482 implement patient outcome requirements in Insurance Code §848.057(a) that are necessary for both certification and, by incorporation of Insurance Code §848.060(c), renewal; and they ensure that patient outcomes will be continuously addressed by the HCC. Insurance Code §848.057(a)(6) requires that the pro-competitive benefits of the applicant's proposed HCC must be likely to substantially outweigh the anticompetitive effects of any increase in market power. The department's position is that an HCC is likely to choose a measure in which there is room for demonstrated improvement or expansion in support of its application. The department expects that HCCs might select pro-competitive benefits from among its QA and QI measures as part of its ongoing certification and renewal requirements. That selection would permit an HCC to efficiently address the certification and renewal requirements of Insurance Code §848.057(a) and §13.482(a), while simultaneously addressing the requirements to identify pro-competitive benefits to comply with Insurance Code §848.057(a)(6).

CAHPS. The department appreciates the comment in support of the inclusion of CAHPS surveys.

Section 13.413(h)(6). As previously explained, the department disagrees that it is necessary to adopt uniform and standard quality measures in §13.482(a), so there are no uniform standards to incorporate by rule into the identification of pro-competitive benefits under §13.413(h)(6), as the commenter recommends. But the department agrees that the QI elements reflected in §13.482(a) would be appropriate for use in identification of pro-competitive benefits under §13.413(h)(6).

Because the department is not adopting uniform measures and has already addressed the relationship of the pro-competitive benefit referenced in §13.413(h)(6) to the QI requirements referenced in §13.482, the department disagrees that incorporating uniform measures under §13.482 into the identification and assessment of pro-competitive benefit requirements in §13.413(h)(6) is necessary or appropriate. Section 13.413(h)(6) provides sufficient identification and assessment requirements concerning the pro-competitive benefits the applicant anticipates will result from establishing the HCC, so the department declines to make this change.

The department appreciates the statement of support for the requirements concerning interim benchmarks in §13.413(h)(6). The department clarifies that §13.413(h)(6)(C) requires an applicant to submit information about all pro-competitive benefits that the HCC anticipates it will achieve through its formation, including those that derive from financial integration. The department disagrees that it is necessary to change §13.413(h)(6)(D) to require HCCs to submit this information and declines to make this change.

Transparency. The department agrees that transparency is important but disagrees that it is necessary at this time to require public posting of CAHPS surveys and quality measures because stakeholders have not had sufficient notice of, and opportunity to comment on, a public posting requirement; and it is not clear that the quality measures information is public information.

Insurance Code §848.005 specifies that an application, filing, or report required under Chapter 848 is public information subject to disclosure under Government Code Chapter 552. Section 848.005 also includes exceptions to this public information requirement. These exceptions include: (i) information relating to trade secrets submitted to the department or attorney general; (ii) information relating to the diagnosis, treatment, or health of a patient who receives health care services from an HCC under a contract for services; and (iii) information relating to QI or peer review activities of an HCC.

It is possible that an HCC's quality measures results could fall into one of these excepted categories or another provision of law that specifically provides for the confidentiality of information held by a governmental body, and stakeholders have not had an opportunity to comment on the issue. The department declines to add a public posting requirement at this time.

The department notes that Government Code Chapter 552 specifies the process for obtaining open records and for an attorney general decision as to whether requested information falls within an exception from public disclosure. This process remains available to stakeholders interested in obtaining and reviewing information concerning an HCC's quality measures results.

Because the potential exception from public disclosure of CAHPS and other survey measures is not solely dependent on the placement of the requirement to submit this information within the rule, the department disagrees that the provision needs to be moved and declines to make this change.

Comment: §13.413(c)(9) - Contents of Application. A commenter states that §13.413(c)(9) is too broad and covers too many disparate subjects without specifying what the applicant should submit to comply with this subsection. The commenter asks that the department separate the paragraph into distinct provisions for greater clarity.

Agency Response: The department disagrees that §13.413(c)(9) is too broad and requires further clarity. The requirements in §13.413(c)(9) are similar to those in 28 TAC §11.204(23) concerning an HMO application, which applicants successfully implement on a routine basis. The department declines to make this change.

However, in response to the comment, the department clarifies that the focus of §13.413(c)(9) is to describe how the specified

components of the HCC incorporate meeting the needs of patients and participants, and the requirements of regulatory and contracting entities. The department does not prescribe how the HCC must meet this description requirement, permitting flexibility for the HCC in addressing the requirement, provided that each element of the requirements in §13.413(c)(9) is addressed. The department also does not specify the logistics of how an HCC will establish processes sufficient to meet the patient, participant, regulatory, and contracting entity needs described in the paragraph, instead allowing flexibility in business decisions and design to address how each HCC will meet these needs. Where particular organizational requirements do exist, the department has clearly identified the requirement. See, for example, §13.481, addressing QI structure requirements.

Comment: §13.413(d)(3) - Applicant contracts with payors. A commenter states that Insurance Code §848.103(c) and (d) address its primary concern by prohibiting an HCC from accepting compensation on a capitation or prepaid basis from any entity other than an insurer or HMO and by requiring the department to review an HCC's proposed payment methodologies with government or private entities to ensure compliance with that requirement. The commenter states that the department may have addressed this issue in §13.413(d)(3) by requiring the original application to include the form of any contract between any payor and the HCC that addresses the applicant arranging for medical or health care services for the payor in exchange for payments in cash or in kind.

However, the commenter suggests that the department revise this language to parallel the statutory language because the proposed requirement is to file the template contract terms and does not directly address the compensation methodology. The commenter suggests the following revised provision: "...the form and proposed payment methodology of any contract between the applicant and a governmental or private entity related to the provision of medical or health care services." The commenter also notes that the department requires these contracts to be filed for informational purposes subsequent to licensure, per §13.422(3)(D).

A second commenter asks whether there are any minimum standards or required provisions for the applicant contracts with payors that an HCC applicant must submit under §13.413(d)(3).

Agency Response: The department agrees that the intent in §13.413(d)(3) is, in part, to address the review requirement specified in Insurance Code §848.103(c). The department further agrees that additional clarification will prevent confusion as to the scope of the requirement. The department revises §13.413(d)(3) to read as follows: "...(3) the form, including any proposed payment methodology, of any contract between the applicant and any payor that addresses the applicant arranging for medical and health care services for the payor in exchange for payments in cash or in kind as provided in Insurance Code Chapter 848."

The department also agrees that the requirement for the department to review proposed payment methodologies in Insurance Code §848.103(c) requires review of such methodologies before execution. Therefore, the department changes §13.422(c)(2)(I) to require an HCC to submit for approval any new or revised proposed payment methodology for use in any contract between the HCC and a payor that relates to the applicant HCC arranging for medical or health care services for the payor in exchange for payments in cash or in kind.

The department has made a conforming change to §13.422(c)(3)(D) to clarify that these proposed new or revised payment methodologies are not within the scope of the provision as subject to filing for information.

The department clarifies that §13.474 addresses requirements for HMO or insurer delegation of functions to HCCs, including contract requirements. This is not an exhaustive identification of requirements, and other standards or requirements may apply, depending on the type of payor with which an HCC contracts and the plans covered by the contract. For example, Insurance Code §1301.0625 addresses contract requirements that apply to a contract between an HCC and an insurer that issues a preferred provider benefit plan. A payor and an HCC are responsible for ensuring that their contracts comply with the standards and requirements applicable to specific contracts.

Comment: §13.413(e) - Provider and service area information. A commenter requests that the department revise §13.413(d) to require that an HCC application include the submission of an access plan if the HCC does not meet the rule's provider access standards in every ZIP code within its proposed service area, as well as a description of what the expected patterns of care will be for those provider services not offered by participants of the HCC applicant. The commenter states that HMOs are required to submit similar information to the department.

The commenter also requests that the department add a new provision to §13.413(e) to require the submission of the form of each provider contract template between the HCC and a physician and other health care provider that plans to provide health care services through the HCC.

Agency Response: The department clarifies that in most cases an HCC will not constitute the entirety of the payor's network. An insurer or HMO will remain responsible to provide access to physicians and health care providers. The department disagrees that the requested change is appropriate or necessary.

The department also clarifies that §13.413(e)(5)(B) already requires the HCC to submit the form used in any contract between the applicant and any delegated entity, delegated network, or delegated third party as described in Insurance Code Chapter 1272; the form used in any contract used with other physicians or health care providers; and the form used in any subcontract between those individuals or entities and any physician or health care provider to provide health care services. Because this information is already required under this existing provision, the additional provision requested by the commenter is not necessary.

Comment: §13.413(g) - Disclosure of accreditation, and §13.483 - Credentialing. A commenter requests that the department change §13.413(g) to specifically list the AAAHC among the examples of nationally recognized accrediting bodies whose accreditation information an HCC applicant must disclose if it has attained the accreditation. The commenter also requests that the department change §13.483 to state that an HCC's credentialing process must comply with the privileging and credentialing standards promulgated by the AAAHC in addition to the list of credentialing organizations included in the proposed section.

The commenter states that §13.413(g) and §13.482 do not include the AAAHC despite previous recognition by the department, state, and other state and federal jurisdictions of its accreditation and credentialing standards. The commenter supports its request by asserting that the AAAHC has extensive ex-

perience related to QI in ambulatory health care and accreditation of ambulatory health care providers, with an accreditation program recognized by regulators, third-party payors, and commercial insurance carriers, as well as health plan and HMO accreditation.

The commenter further notes that the AAAHC standards, including credentialing standards, are published annually, developed professionally, and designed to be dynamic.

Agency Response: The department agrees that the AAAHC has a long history of nationally recognized provider and health plan accreditation and credentialing, including recognition in Texas. See, for example, Insurance Code Chapter 847, recognizing AAAHC as a nationally recognized accreditation organization for purposes of determining a health benefit plan issuer's presumed compliance with certain requirements. The department agrees that inclusion of the AAAHC among the examples of nationally recognized accrediting bodies whose accreditation information an HCC applicant must disclose if it has attained the accreditation is appropriate. The department has changed §13.413(g) accordingly.

For the same reason, and because the department has specifically recognized the quality of the AAAHC credentialing program in relation to preferred provider benefit plan credentialing requirements in §3.3706(c), the department also agrees that the AAAHC's credentialing standards are an appropriate option for inclusion in §13.483. The department has changed §13.483 to state, "The credentialing process must comply with the standards promulgated by the National Committee for Quality Assurance, URAC, the Joint Commission on Accreditation of Hospital Organizations, or the Accreditation Association for Ambulatory Health Care, as appropriate, to the extent that those standards are applicable and do not conflict with other laws of this state." This change provides an additional and appropriate option to HCCs that are choosing among nationally recognized credentialing standards.

Comment: §13.413(h) - Antitrust analysis information required of all applicants, and §13.414(b) - (d) - Limited exemption from certain information filing requirements. Some commenters state general support for §13.413(h), and the detailed list of information that each HCC application must contain to enable the department to perform the antitrust analysis required under SB 7. The commenters note that much of this information is comparable to information necessary to conduct an antitrust analysis under MSSP, and should facilitate participation by HCCs in the MSSP as well as the commercial markets in Texas.

The commenters assert that it is imperative that the list of information contained in proposed §13.413(h) promote the application of the state action doctrine for antitrust immunity contemplated by the Texas Legislature in SB 7, Article 2, §2.01(c). The commenters state that the legislative intent of granting antitrust immunity to HCCs may only be fulfilled through compliance with the two prongs of the state action doctrine, which requires the challenged restraint to be clearly articulated and affirmatively expressed as state policy, and "actively supervised by the State itself." *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.,* 445 U.S. 97, 105 (1980).

Market share threshold. Some commenters state support for the requirement in §13.413(h)(4)(A) for an HCC to provide data used in determining market share because the data will enable the department to substantiate the market share analysis provided by HCC applicants. But the commenters recommend that the department change §13.413(h)(4)(B) to require the HCC to highlight each common service area in each PSA in which the market share exceeds 30, rather than 35, percent.

The commenters note that the department has set the threshold for a more rigorous antitrust analysis at market shares exceeding 35 percent and question this deviation from the 30 percent threshold established for the basic ACO safety zones articulated in the FTC and DOJ *Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program.*

To support legislative intent to grant HCCs certified by the department an exemption from antitrust enforcement under the state action doctrine, the commenters state that HCCs should undergo more scrutiny than that contemplated by the federal guidance, particularly since ACOs in the MSSP have to meet detailed clinical integration requirements that are not required under SB 7 for HCCs. The commenters argue that the market share threshold for the department's analysis should be the same or lower than the 30 percent threshold established at the federal level.

The commenters also recommend that the department correspondingly lower the threshold for the limited filing exemption in §13.414(b)(1), (c), and (d) to 30 percent to further the legislative intent to invoke the state action doctrine's antitrust immunity for HCCs. The commenters assert that the state must apply significant oversight for HCCs to avail themselves of a potential state action doctrine immunity defense.

One commenter adds that in the major metropolitan areas of Texas, with thousands of physicians practicing in each market, it is highly unlikely that an HCC will form in which the participants' common services make up 35 percent or more of the market share. The commenter requests that the department lower the threshold to 15 to 20 percent, which the commenter asserts constitutes a significant portion of a given market that has potential anti-competitive effects, including on pricing.

Disclosure of market share studies. Also, to increase state oversight and substantiate the market share information provided under proposed §13.413(h), some commenters recommend that the department amend §13.413(h) to require all HCC applicants, and not only those with a market share exceeding 35 percent, to supply documentation of market studies and forecasts, and studies of patient origin and flow. The commenters oppose the market share-based limitation on disclosure of the studies.

Policies and procedures for noninducement of limitations on medically necessary services. Some commenters state support for §13.413(h)(7), which provides that the application must include "a description of the policies and procedures the HCC will establish and administer to ensure that none of its financial incentives will result in any limitation on medically necessary services." The commenters state that this requirement is important to ensure that quality of care is not sacrificed to cost containment.

The commenters assert that HCCs should not be permitted to incentivize physicians or other health care providers to limit medically necessary services because

(1) Patient care must be paramount in the framework established by the department for HCCs.

(2) Physicians have a general ethical obligation to act in the patient's best interest without regard to financial conflicts that should preclude an HCC from acting counter to the physicians'

ethical obligations or impinging on physicians' independent medical judgment.

(3) An HCC's intrusion into the patient-physician relationship would foster conduct that may negatively impact patient care.

(4) Section 13.413(h)(7) is aligned with Insurance Code §843.314 and §1301.068, which prohibit HMOs and insurers from paying or providing financial inducements to physicians or other health care providers to limit medically necessary services, so that adoption of the language in proposed §13.413(h)(7) will facilitate compliance with these laws by HCCs that include HMO or insurer participants.

Agency Response: The department appreciates the supportive comments.

Section 13.413(h)(7). Regarding the §13.413(h)(7) requirement addressing medically necessary services, the department agrees it is an essential component. Insurance Code §848.057(a)(2)(B) states the ongoing HCC process requirement to help ensure that no HCC health care cost containment process has a negative impact on the quality of patient care provided through the HCC. The policies and procedures referenced in §13.413(h)(7) must be established and administered to safeguard against financial process elements that would impact quality through limitation on medically necessary services. This provision is crucial to maintain the legislatively stated dynamic between quality of medically sufficient patient care and appropriate health care cost containment.

Market share threshold. The department disagrees that a lower threshold percentage for exemption is necessary or that the 35 percent threshold is too lenient. This is because antitrust review under Insurance Code Chapter 848 is mandatory, frequent, and subject to restrictions by the commissioner where additional protections are appropriate; and because the commissioner retains authority to require disclosure of any or all of the information specified in §13.413(i) or §13.461, or both, when the information is reasonably necessary for the department to conduct its review.

Insurance Code §848.057 and §848.059 require the commissioner and attorney general to determine that an HCC applicant satisfies the requirements for approval of a certificate of authority, including that the pro-competitive benefits of the applicant's proposed HCC are likely to substantially outweigh the anticompetitive effects of any increase in market power.

Under Insurance Code §848.060(c), the application for renewal that an HCC must submit not later than the 180th day after a certificate of authority is most recently issued or renewed is subject to a review by both the commissioner and the attorney general as if the application for renewal were a new application.

Further, Insurance Code §848.060(e) requires an HCC to report to the department a material change in the size or composition of the collaborative and authorizes the department to require the HCC to file its application for renewal even earlier than 180 days from issuance or renewal of the HCC certificate of authority.

Thus, under Insurance Code §§848.057, 848.059, and 848.060, antitrust review of an HCC by both the department and the attorney general is both mandatory and frequent, demonstrating significant active supervision of the HCC in a manner consistent with SB 7, Article 2, §2.01, concerning the state action doctrine.

Further demonstrating active supervision by the department, §13.416(d) clarifies that the commissioner may impose restrictions on an applicant's certificate of authority as necessary to preserve competition.

Finally, while §13.414(b)(1), (c), and (d) establish a preliminary limited filing exemption, §13.414(g) makes clear that the section does not limit the authority of the commissioner to require provision of any or all of the information under §13.413(i) or §13.461, or both, when the information is reasonably necessary for the department to conduct its review. The limited filing exemption in the section does not negate that authority, and the level of the threshold at which the limited filing exemption attaches does not preclude the department from obtaining any of the additional market power information that it determines to be necessary to its review. The department will review substantial market power information for all applicants in a manner consistent with active state supervision.

The department also notes that any benefit that would be obtained by routinely requiring all HCCs to submit more extensive market information would not likely be worth the additional burden, given that the department already has expansive authority under Insurance Code Chapter 848 and, as clarified in this rule, can request and obtain the additional market information on a case-by-case basis.

The department declines to lower the limited exemption threshold.

Market study disclosures. With respect to the recommendation to require all applicants to provide the information specified in §13.413(i)(3)(A) - (C), the department disagrees that it is necessary to expand the requirement. As previously explained, the department retains the authority to obtain the HCC's information about market studies and forecasts, studies of patient origin and flow, and market share studies following review of an initial application. The department is already requesting substantial information under §13.413(h), and this information should provide sufficient screening data for the department to determine whether a particular application warrants requesting and reviewing additional information. This approach will also prevent creating an undue burden in producing the information for all applicants, even those for whom additional review would otherwise be unnecessary.

The department, therefore, declines to expand this requirement.

Comment: §13.413(i) - Market power and market power information. A commenter states concern with the antitrust review process and the amount of information required for submission with an application if an HMO's market share exceeds 35 percent. The commenter asserts that the amount of information required by §13.413(i) is extensive and will be very expensive to assemble and produce. The commenter agrees that a broad range of business and financial information is needed to conduct the antitrust review but asserts that the documents required by §13.413(i) substantially exceed what the FTC and DOJ have required in the policy statement regarding ACOs.

The commenter recommends that any business documents or other information requested be more limited and that the time frames specified in §13.413(i)(3), (6), and (9) be limited to the previous 12 months. In addition, the commenter states concerns about §13.413(i)(7) and the required documentation of each participant's contribution margins or fixed and variable costs. For HCCs with a significant number of participating providers, the commenter states that developing this documentation will be complicated and costly and may have limited benefit to the an-

titrust review of a proposed collaborative. The commenter recommends that the department delete §13.413(i)(7).

Agency Response: The department acknowledges that, as supported by the department's cost note portion of the proposal, there will be costs associated with the HCC formation and application process. This cost may be higher for larger HCCs with more participants. The department has mitigated this cost by requiring that only HCCs with a market share that exceeds 35 percent submit the documents described in §13.413(i). The department has consulted extensively with the Office of the Attorney General concerning antitrust analysis and has determined that the requirements in §13.413(i) are appropriate for antitrust analysis. The requirements support application of the state action doctrine to an HCC's formation that might otherwise violate antitrust law. To obtain immunity through the state action doctrine, a restraint must be clearly articulated and affirmatively expressed as state policy and be actively supervised by the state. *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.,* 445 U.S. 97, 105 (1980). The submission requirements in §13.413(i) directly support the active supervision requirement of the state action doctrine. The department declines to make the recommended changes to §13.413 except as follows:

With respect to reducing the time frames for which document submission requirements apply in §13.413(i)(3), (6), and (9), the department disagrees that 12 months is a sufficient time frame for adequate consideration of the effects of an HCC's formation on the market. Review of business planning information for a 24-month period, as required under §13.413(i)(3), will permit the department and attorney general to assess the market impact of HCC formation on business planning by providing a pre-formation baseline. With respect to §13.413(i)(9), adopted as §13.413(i)(8), review of memoranda relating to potential and realized cost savings and efficiencies for any participant through a joint venture, internal cost-cutting, or associated transaction for a 24-month period will likewise permit the department and attorney general to assess both pre-formation and formation stage market impact. The department agrees that information for a 24-month period is sufficient for purposes of §13.413(i)(6) as a screen to determine whether additional information is necessary and has changed the paragraph accordingly.

With respect to deleting the submission requirement in §13.413(i)(7), the department disagrees that the information concerning contribution margins and quantified costs is of limited benefit because the information will aid in the assessment of both profits and costs to participants of the HCC. However, the department agrees that the burden of producing the information is sufficient to merit changing the nature of the requirement to one that is imposed by request under §13.461. Accordingly, the department has changed §13.413(i) by deleting paragraph (7) and renumbering the remaining paragraphs to conform to the change. The department has also changed §13.461 by adding the requirement as new subsection (c)(25).

Comment: 13.414(a) - Limited exemption from filing requirements. A commenter states that §13.414(a) is missing the word "or" between "original" and "renewal application."

Agency Response: The department agrees and has revised §13.414(a) to clarify that the subsection addresses the filing of an original *or* renewal application.

Comment: §13.402 - Definition of common service, and §13.414(e)(2) - Market share calculation. A commenter states that §13.414(e)(2) provides that the market share for outpatient services at a facility is calculated by dividing the number of physicians or other health care providers participating in the HCC within the service area by the total number of physicians or health care providers within the service area that provide a common service. The commenter states that the provision addresses the market share calculations for physicians and other health care professionals that provide outpatient services in a health care facility but does not provide a basis for calculating the market share for outpatient hospital services. Further, the commenter states that the term "common service" is not well defined and it may be difficult to determine how to make the calculation for physician and other health care professional services.

To clarify the calculation of market share for outpatient services provided by physicians and other health care providers, the commenter recommends that the department change §13.414(e)(2) to refer to a common service provided within a medical specialty, pointing out that the FTC and DOJ policy statement provides that each medical specialty is identified by its Medicare Specialty Code, as defined by the Centers for Medicare and Medicaid Services (CMS). The commenter also recommends that the department add a new provision to §13.414(e) to require the market share for outpatient hospital services be calculated in the manner specified by the FTC and DOJ policy statement that bases the calculation on outpatient categories, as defined by CMS.

Agency Response: The department agrees that a clarifying revision to the definition of "common service" in §13.402(3) will result in a more informed application of §13.414(e)(2), for purposes of calculating an HCC's market share under §13.414.

The intent of the rule is that the term "common service" should be defined in terms of the health care service provided, not who is providing the service. The department has revised the definition of "common service" in §13.402(3) to include reference to "health care" in the introductory wording and to emphasize the nature of the health care service as a predominant factor in the definition as follows: "Common service--An identical or substantially similar health care service provided to patients by two or more independent HCC participants."

This clarification highlights the intent of the rule that a common service is defined in terms of what is provided, and it recognizes the potential overlap between a common service and who is providing it. This recognition is consistent with the recognition reflected in the joint final Policy Statement of the FTC and DOJ on antitrust enforcement policy regarding ACOs participating in the MSSP. The October 20, 2011, joint final Policy Statement includes an appendix explaining how to calculate the PSA shares of common services discussed in the Policy Statement. For example, an appendix footnote explains that primary care services, though categorized by differing specialty codes, are considered a single service for purposes of the statement because they represent substantially similar services.

This clarifying revision to §13.402(3) addresses the portion of the comment recommending the addition of the reference "within a medical specialty" at the end of §13.414(e)(2), and that inclusion of the recommended reference is, therefore, unnecessary.

Finally, consistent with its response to comment on §13.414(e)(3) of the rule, the department declines to make the change recommended for an additional paragraph in §13.414 to address calculation of market share for outpatient hospital services on the basis of outpatient categories as defined by CMS.

Comment: §13.414(e)(3) - Market share calculation. A commenter states that §13.414(e)(3) provides that the market share for inpatient hospital services be based on staffed beds by medical specialty for each common service area. The commenter states that the terms "medical specialty" and "common service area" are not defined, but points out that the use of the phrase "major diagnostic category for inpatient services at a hospital" in §13.413(h)(2)(B) suggests that a hospital's market share would be determined based on the number of staffed beds in each of the 25 major diagnostic categories.

The commenter states that §13.414(e)(3) also provides that the determination of hospital market share be based on information reported by hospitals to the Texas Department of State Health Services (TDSHS). The commenter agrees that using major diagnostic categories makes sense for inpatient hospital services, and is generally consistent with how market share is calculated for inpatient services under the FTC and DOJ joint final Policy Statement. But the commenter notes that the final Policy Statement uses the number of discharges in a particular diagnostic category rather than the number of beds to make the calculation.

The commenter asserts that the primary source of hospital data, including information on the types of services provided by hospitals, is the Annual Survey of Hospitals, which collects information on the number of hospital-staffed beds but does not report information by major diagnostic categories. The commenter asserts that because hospitals report staffed beds by broad categories of services, such as general medical-surgical care, pediatric medical-surgical care, and obstetrics, rather than by diagnostic categories, it will not be possible to calculate the market share for inpatient hospital services based on the data reported to TDSHS on the hospital annual survey.

For these reasons, the commenter recommends that the department change §13.414(e)(3) to allow the calculation of inpatient hospital services to be based on the number of discharges for each of the applicable major diagnostic categories. While this calculation is more complicated, the commenter states that it would be consistent with the approach taken by the federal antitrust agencies, and that there is a state data source for this information because most Texas hospitals are required to submit discharge data to the TDSHS through its Texas Health Care Collection, Division of Health Statistics.

Agency Response: The department appreciates the comment and its focus on alternative data types for calculation of market share under §13.414(e)(3). For the reasons set forth below, however, the department declines to make a change to the paragraph.

Section 13.414(e)(3) relies on a depository of publicly available and verifiable data that is sufficient to permit the department and the attorney general to determine whether market share for a submitting entity exceeds 35 percent. The section also relies on the number of staffed beds as a measure. The department's position is that §13.414(e)(3) provides a fundamental and meaningful basis on which to conduct an initial market share analysis. Historically, federal antitrust enforcers and the attorney general have utilized the same data specified in §13.414(e)(3) to perform necessary analysis in the hospital merger context.

In addition, §13.414(e)(3) reflects consideration and balancing between requiring submission of potentially more precise data with the additional expense associated with submission of more complicated, less accessible data for purposes of the §13.414(e)(3) calculation. The department emphasizes that the calculation of market share serves as only the initial step in determining whether the proposed HCC gives rise to antitrust concerns. Once the initial market share is calculated, the antitrust review process provides for a detailed appraisal of the potential anti-competitive effects of the proposed HCC, if necessary. If an HCC applicant believes that the market share calculation is not a proper measure of the transaction's anticompetitive effects, it will have an opportunity during the antitrust review process to bring this to the attention of the department or the attorney general.

For these reasons, the department makes no change to §13.414(e)(3).

Comment: §13.415(a)(3) - Documents to be available for quality of care and financial examination. A commenter notes that §13.415(a)(3) describes the utilization management documents that an HCC must make available for the department's review, and asks if the provision implies that an HCC composed of physicians, ancillary service providers, and hospitals will have staff employed by the HCC performing utilization management services for all services rendered by HCC participants without the HCC holding a utilization review agent's license. The commenter states that exemption from URA licensing requirements would conflict with the URA Act and regulations. The commenter states that it is unable to find an exemption from URA Act compliance within Chapter 848 of the Insurance Code.

The commenter asserts that, other than like providers being able to provide utilization review with respect to services of similarly licensed providers, it would be unlawful for an HCC made up of both physicians and other provider types to perform utilization review without a URA's license or without delegating this function to a licensed URA.

Agency Response: The department clarifies that §13.415(a)(3) does not address certificate of registration requirements for a URA under Insurance Code Chapter 4201, concerning URAs. Insurance Code §848.108(c)(1)(G) authorizes an HCC to enter into a delegation agreement with an entity licensed under Chapter 841, 842, or 883 if the delegation agreement assigns to the entity responsibility for a function regulated by Chapter 4201. Based on this statutory requirement, it is appropriate for an HCC to have and make available for department review utilization management documents as described in §13.415(a)(3). Actual performance of utilization review is subject to the licensing requirements under Insurance Code Chapter 4201.

Comment: §13.415 - Documents to be available for quality of care and financial examinations. Some commenters state their support for §13.415 and the extensive list of documents and information that an HCC must make available for review on request, as well as for the alignment of the disclosures for quality of care and financial examinations. The commenters contend that §13.415 appropriately ensures that the department has broad access to the information necessary to perform an adequate review of the HCC.

The commenters state specific support for §13.415(a)(4), which requires the HCC to maintain and provide complaints and appeals logs on department request, provided the department retains the detailed categories in §13.492(e) in the rule. The commenters assert that the department must have the ability to track and monitor the different types of complaints and appeals that an HCC receives.

A commenter states specific support for §13.415(a)(6), which requires the HCC to supply the department with the network configuration information necessary for the department to discern the HCC's capability to provide the health care services it has promised to deliver.

The commenters also state support for §13.415(a)(7) - (9), which require the HCC to provide to the department executed contracts during the qualifying examination, contending that making this information available to the department will provide the department with a basis to review whether an operating HCC must obtain a certificate as an insurer.

The commenters also note that §13.415(b) includes a five-year document retention requirement. The commenters state support for the retention policy and suggest that the department clarify the requirement by specifying that the documents listed in the section must be maintained for at least five years from the anniversary date the documents were created.

Agency Response: The department appreciates the supportive comments. The department agrees that the recommendation concerning §13.415(b) adds clarification to the document retention requirement and has changed §13.415(b) to clarify that the documents must be maintained for at least five years from the anniversary date of the applicable document's creation.

Comment: §13.415 - Documents to be available for quality of care and financial examination, and §13.424 - Certificate of authority renewal requirements. A commenter states that the title of §13.415 does not reference renewal applications, which are addressed in §13.424, but states that §13.415(a)(2) - (4), (12), (16), and (17) reference information that must be submitted with renewal applications that are not found in §13.413, concerning content of the application, or §13.424.

The commenter recommends that the department clarify which documents must be available at the HCC's office or provided to TDI on request during examinations, and which documents an HCC must submit as part of a complete renewal application. The commenter further suggests that the document requirements for the renewal application be listed in §13.413 or §13.424 and included in Form 492, Original/Renewal Application for Certificate of Authority.

The commenter recommends that the department change §13.415 to require HCCs to make the quality measure data, documentation of data validation, and supporting documents available during examinations in order to hold HCCs accountable for improving quality of care and better coordinating care by measuring and reporting on a core set of quality measures defined by the department. The commenter asserts that this data is essential to the department in order to review and evaluate at renewal the HCC's quality of care, promotion of evidence-based medicine, promotion of patient engagement, and coordination of care as is required under Insurance Code §848.060(b)(2)(D) and (E).

The commenter states that the department should add a requirement to submit these measures for evaluation at renewal and recommends that either §13.415 or §13.482 could establish the standard set of HCC quality measures by referencing the Medicare ACO regulation or a subset of it, or the core set of measures. The commenter also states that §13.415 should specifically require HCCs to have for examinations and submit on renewal the results of the CAHPS survey and other quality measures required under §13.482(b)(1).

The commenter also recommends the use of a standard patient experience of care survey like CAHPS, as opposed to a patient "satisfaction survey," referenced in §13.415(a)(16).

Agency Response: *Available documents versus submissions with an application.* The department clarifies that the references to renewal applications in §13.415 do not constitute additional application submission requirements for a renewal application. Instead, the references specify those documents that a certified HCC must provide to the department on request and have available for review in the HCC's office, but that an uncertified applicant would not yet have available, such as program evaluations.

Based on the comment, the department agrees that this language may cause confusion. The department has changed the sections to delete references to renewal applications and substitute references to certified HCCs in §13.415(a)(2) - (4), (12), (13), (16), and (17). Because this change should eliminate confusion concerning documents that must be available on request and for review, as opposed to documents that are required elements of an application, no additional changes are necessary.

Documents supporting quality measures data. The department clarifies that §13.415(a)(2) requires an HCC to provide to the department on request and make available for review at the HCC's office the quality measures data, documentation of data validation, and supporting documents referenced by the commenter. Because the comment indicates that the proposed text in §13.415(a)(2) may cause confusion as to the scope of the provision and what is encompassed by the term "program evaluations," the department is changing §13.415(a)(2) to clarify this point. Adopted §13.415(a)(2) reads as follows:

"(2) quality improvement: program description and work plan as required by §13.481 of this title (relating to Quality Improvement Structure for HCCs); and, to support requirements under §13.482 of this title (relating to Quality Assurance and Quality Improvement) for certified HCCs, program evaluations and meeting minutes for committees and subcommittees."

Uniform standards for quality measures. Because the department is not adopting uniform standards for quality measures in this rule for the reasons previously explained, the department has determined that it is not necessary to make additional changes to §13.415 or §13.482 to reflect such a requirement.

Patient care surveys. The department disagrees that only standard surveys such as CAHPS are appropriate measures of patient experience of care. Section 13.415(a)(16) reflects the department's decision to permit additional flexibility in how an HCC may capture this information. This flexibility may be particularly appropriate in the case of specialized HCCs. The department notes that under §13.482, an HCC must establish, implement, and administer a QA and QI program that includes appropriate evaluation tools applicable to the services provided by the HCC, including CAHPS surveys. As such, an HCC must also use CAHPS survey information and make it available under §13.415(a)(16). No additional change to the section is necessary.

Comment: Division 3. Some commenters state support for the framework established in Division 3 with regard to examinations and other regulatory requirements imposed on HCCs after issuance of a certificate of authority. The commenters state that the division's requirements make clear that the department has undertaken its role as regulator of the new HCC entities with the diligence necessary to protect patients, protect participating physicians and providers, and ensure that HCCs are able to fulfill

the obligations they undertake. The commenters also state that the provisions in Division 3 offer proof of ongoing state oversight, which is critical to protect against undue federal scrutiny with regard to antitrust concerns.

Agency Response: The department appreciates the supportive comment.

Comment: §13.411 - Filing fee, and §13.421(c) - Fee for expenses. A commenter states that §13.421(c) requires an HCC to pay an annual assessment based on the expenses incurred by the department to administer the regulatory requirements under the law. The commenter agrees that the department must recover its costs associated with the regulatory process, but states that the amount of the assessment each year is uncertain and could be a significant amount if only a few organizations are certified as HCCs. The commenter recommends that the department change §13.421(c) to limit the responsibility of organizations to pay annual assessments to an amount such as $5,000 per year.

A second commenter states appreciation for the department's decision to apply assessment obligations in 2014 to allow time for a larger number of HCCs to share in the costs. However, the commenter states concern regarding the potential assessment amount. The commenter agrees with the approach of increasing the filing fee associated with licensure under §13.411 because the department could spend time and resources reviewing applications that fail to ultimately obtain HCC certification. The commenter states that a higher application fee would more fairly share the costs of administrative oversight.

Agency Response: The department disagrees with the recommendation to set a cap on assessment amounts in §13.421. Insurance Code §848.152(d) specifically requires the commissioner to set fees and assessments under this section in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred in examining and reviewing HCCs. The department has mitigated potential assessment expenses by using a $10,000 nonrefundable filing fee for an original application. The department agrees that assessment amounts could be more significant if there are few HCC applicants, but asserts that this is the necessary result under Insurance Code §848.152(d).

The department agrees that a higher initial application filing fee is appropriate because it is true that an application could require the expenditure of significant money and resources without resulting in certification. The department's opinion is that the initial $10,000 fee for an original application and the subsequent $5,000 fee for a renewal application are appropriate based on the department's experience in reviewing other complex applications. For these reasons, the department makes no changes to §13.411 or §13.421.

Comment: §13.422 - Filing requirements that apply after issuance of a certificate of authority. Some commenters state that §13.422 sets forth the list of documents that the department will require the HCC to file with the commissioner after certification.

In regard to filings that require approval, the commenters state that §13.422(c) mandates approval of dividends issued by the HCC that reach a certain threshold, presumably to provide a regulatory mechanism that, in part, serves to protect the financial stability of an HCC. The commenters assert that in the insurance market, many Texas carriers do not own the trademarks or service marks they use. The commenter explains that, as a result, the Texas subsidiary pays a fee to the carrier's holding company for the use of that intellectual property. The commenter asserts that this expense for the use of intellectual property serves as a method to transfer funds to a parent without triggering a dividend that the department must approve.

The commenter suggests that the department regulate this method of transferring funds in the HCC rules by amending the proposed rules to provide that any agreements to pay for the use of intellectual property, such as trademarks or service marks, be subject to the same thresholds and approvals as dividends.

Agency Response: The department disagrees with the commenter's recommended change because the rule already requires an HCC to provide sufficient information concerning contracts between an HCC and an affiliate for the department to monitor for solvency purposes.

Section 13.413(c)(7) requires, as part of the application, the submission of separate organizational charts or lists that meet certain requirements. The charts must clearly identify the contractual relationships involved in the applicant's health care delivery system and between the applicant and any affiliates, and a list of contracts to provide services between the applicant and affiliates. The information must clearly identify any relationship between the HCC and any affiliate or other organization if a common individual or entity directly or indirectly controls 10 percent or more of both the HCC and the affiliate or other organization. Further, §13.422(c)(2)(H) specifies as a required filing for approval any original or renewal service contracts and management agreements, the terms of which must comply with Insurance Code §823.101 as if the HCC were an insurer.

For these reasons, and based on the department's experience in administering comparable provisions, the department disagrees that the recommended change is necessary and declines to change the rule.

Comment: §13.423 - Service area change applications. A commenter states support for §13.423, which requires that a proposed expansion or addition of a service area will require an HCC to file certain documents and obtain affirmative approval by the department before the expansion or addition may occur. The commenter also states support for the level of detail and content of the application to expand or add a service area, stating that including these requirements will ensure that the HCC maintains its ability to adequately arrange for or provide health care services in the applicable service areas, as well as to assess the proposal for antitrust implications.

Agency Response: The department appreciates the supportive comment.

Comment: §13.429 - HCCs subject to the Insurance Code Chapters 541, 542, and 547 and related rules. Some commenters state their support for §13.429, which provides that HCCs must comply with certain chapters of the Insurance Code. Although this is a requirement of SB 7, the commenters support the rule's emphasizing that the law and rules will apply, to ensure that HCCs are cognizant of the numerous laws affecting their formation and operation beyond Insurance Code Chapter 848.

Agency Response: The department appreciates the supportive comments.

Comment: §13.431 and §13.432 - Financial Requirements. Some commenters state that Division 4 contains the basic financial requirements for HCCs and state strong agreement that working capital and reserves are necessary to protect patients

and providers from the adverse consequences of an HCC's insolvency. A commenter states concern that insolvencies may occur despite the requirements in Division 4 absent additional changes. With those changes, the commenter asserts that provisions set forth in Division 4, in conjunction with the annual review requirements, are reasonable.

The commenters state that §13.431(a) establishes a ratio of current assets to current liabilities of 1.25:1 and working capital requirements based on the composition of an HCC, so that there is one set of requirements for HCCs consisting of physicians and one or more facilities and another set of requirements for all other HCCs. The commenter states support for these strong solvency requirements to protect the public and the physicians who participate in HCCs. To monitor compliance with this standard, the commenter suggests that the department consider either modifying §13.424(b) to allow for audited financial statements to accompany renewal applications as necessary or taking some additional step to ensure that current assets and liabilities are correctly stated, such as requiring audited statements.

The commenters also state support for §13.431(b), noting that reserve requirements are prudent to ensure that providers who are not part of the HCC do not face financial losses due to risk voluntarily taken by the HCC.

The commenters state support for the §13.431(c) requirement that HMOs and insurers hold reserves when they enter into prepayment or capitation payment arrangements that transfer some of their risk to the HCC. The commenters state support for the concept that HMOs and insurers are required to ensure that those reserves remain available to pay for services of the HCC and other providers who provide services on behalf of the HCC, and also for the requirement that the reserves should not be encumbered or limited in ways that could prevent their availability for that purpose.

Another commenter states that §13.431(c) contains a new reserve obligation on HMOs or insurers that contract with HCCs that may be duplicative of existing financial reserve obligations for HMOs and insurers. An additional commenter requests that the department delete the requirement in §13.431(c) because the commenter asserts that HMO and insurance company reserve requirements are already substantial. The commenter instead asks that the department revise §13.431(c) to state that the dedicated reserves due to an HCC risk contract be maintained within existing and current reserves but not in addition to such reserves.

Regarding §13.431(d), some commenters state that the subsection clarifies the rule's working capital requirements by listing the HCC's current assets that are permitted to count towards the working capital requirements. Commenters state support for the requirement that reported accounts receivable always be reduced to net of all allowances as a means to ensure the HCC is solvent and able to meet obligations.

Commenters also state support for the fiduciary responsibility requirements proposed in §13.432 on directors, members of committees, officers, and representatives of HCCs who are charged with the duty of handling or investing the HCC's funds because the provisions should help to prevent private enrichment at the expense of HCC solvency. Agency Response: The department appreciates the statements of support. The department also notes that an HCC's financial statements must comply with Insurance Code §848.060(b)(2)(A), which requires certification by an independent certified public accountant. Based on the department's experience in addressing solvency protection issues in the past, the department's position is that solvency requirements in §13.431 are strong enough without the need for additional and expensive audit requirements. The department declines to make this change.

The department disagrees that the HCC reserve requirements are duplicative. The reserve requirements mandate contingency reserving in lieu of regular reserving to provide for stronger solvency protection than is available under regular reserving. This stronger protection is appropriate based on the department's experience in addressing solvency failures in the past and provides a basis for transition of health care consumers to new providers.

Comment: §13.441(a) - HCC contract arrangements. A commenter states that §13.441(a) provides that an HCC's contracts with providers may not "impede" application of provisions of Insurance Code Chapters 843 and 1301 and asks for clarification of what the section means and why it is required.

A second commenter also states concern with §13.441(a) because it requires that an HCC's contracts with participating providers must meet the requirements imposed on HMOs and preferred provider organizations concerning relations with physicians or other health care providers. The commenter asserts that Insurance Code Chapter 848 creates a number of requirements that an HCC must comply with in its relationships with participating physicians and other health care providers but does not require an HCC to meet the referenced provisions in Insurance Code Chapters 843 and 1301. The commenter also states that Insurance Code §848.004(b) provides that an HCC must comply with specific chapters of the Insurance Code but does not include Insurance Code Chapter 843 or 1301, except to the extent that an HCC is accepting prepaid or insurance risk and would be subject to regulation as an HMO or insurance company. The commenter states that if the Texas Legislature had intended for HCCs to be subject to certain provisions of Chapter 843 or 1301, those chapters would have been listed in Insurance Code §848.004(b). The commenter asserts that the department lacks the statutory authority to impose these requirements on HCCs and asks that the department delete §13.441(a).

Agency Response: The department clarifies that §13.441(a) underscores the relationship between requirements in Insurance Code Chapters 843 and 1301, and HCC contracts with physicians and health care providers. The requirements of those chapters apply to a plan regulated under the chapters regardless of whether the HMO or insurer provides access to services under a contract with an HCC. This is consistent with Insurance Code §843.344 and §1301.109, which specify applicability of provisions of those chapters to entities with whom HMOs and insurers contract.

The department disagrees that it lacks statutory authority to require an HCC to comply with Insurance Code §843.344 and §1301.109 due to the lack of specific reference to those sections in Insurance Code §848.004(b). This is because the plain language of the sections makes the additional inclusion of the sections in Insurance Code §848.004(b) unnecessary. However, the department does clarify that §13.441(a) applies only to services provided under a contract between an HCC and an HMO or insurer making services available under a plan regulated under Insurance Code Chapter 843 or 1301.

The department declines to delete §13.441(a).

Comment: §13.441(c) - HCC contract arrangements. Some commenters state that §13.441(c) prohibits an HCC with a dominant provider from: (i) requiring a private payor to contract exclusively with the HCC; or (ii) otherwise restricting a private payor's ability to contract or deal with other HCCs, networks, physicians, or health care providers. The commenters also note that in defining a "dominant provider," the section provides that if an HCC participant's market share exceeds 50 percent in a PSA on any service that no other HCC participant provides to patients in that PSA, the participant furnishing the service is a dominant provider.

The commenters note that this requirement is similar to that regarding dominant participants under the FTC or DOJ's *Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program.* Several commenters assert that the 50 percent threshold in §13.441(c) for determining a dominant provider is high, and some commenters assert that the subsection should not be construed to permit those providers below the threshold to require exclusive contracts with a private payor or otherwise affect contracts or deals with other networks.

The commenters state that per the FTC and DOJ Policy Statement, the availability of the PSA safety zone for ACOs in the MSSP differs in some cases, depending on whether an ACO participant is exclusive or nonexclusive to the ACO. Commenters add that any hospital or ambulatory surgical center participating in an ACO must be nonexclusive to fall within the federal ACO safety zone, regardless of its PSA share. The commenters state that the federal safety zone for physicians, regardless of the physician's status as a hospital employee, does not differ based on whether the physicians are exclusive or nonexclusive to the ACO unless the physician falls within the rural exception or dominant participant limitation described in the Policy Statement.

The commenters note that recent FTC and DOJ action, as well as that of the attorney general, has stopped efforts by hospital systems in Houston and Wichita Falls from adversely affecting contracting by insurers with other systems in their market area. The commenters also state that in *Jefferson Parish Hospital Dist. No. 2 v. Hyde,* 466 U.S. 2 (1984), the standard for a health care antitrust monopoly was set at one-third, which the commenter asserts to be supportable and rational. The commenters also state that research indicates that employers who are more profitable pay higher insurance premiums even when there are as many as ten major carriers in a market, and that this exercise of market power is most pronounced in markets with six or fewer carriers.

One commenter asks that the department add a new provision to §13.441(c) to restrict an HCC with a dominant provider from contracting with, or otherwise allowing to join the HCC, any further participants who practice in the same practice area, including general, specialty, or subspecialty areas, as the dominant provider.

Agency Response: The department agrees that §13.441(c) does not authorize an HCC that does not have a dominant provider in a PSA to require a private payor to contract exclusively with the HCC or otherwise restrict the private payor's ability to contract with or deal with other HCCs, networks, physicians, or health care providers. The department disagrees that the 50 percent threshold in §13.441(c) for determining when a provider is dominant is too high or that a new provision automatically prohibiting an HCC with a dominant provider from contracting with or obtaining the participant services of additional physicians or health care providers in the same practice area is necessary. Section 13.416(d) makes clear that the commissioner may impose restrictions on an applicant's certificate of authority as necessary to preserve competition. This permits the department to tailor its approach to antitrust implications that are unique to a particular service area or practice area in a way that is most likely to maximize the pro-competitive effects of the HCC and outweigh the anticompetitive effects of any increase in market power. The department declines to change the dominant provider threshold in §13.441(c) or to add a new automatic prohibition on an HCC with a dominant provider.

Comment: Division 6 - HCC contract arrangements, and §13.455 - Change of control with increased market share. Some commenters state that Division 6 contains requirements for obtaining commissioner approval of a proposed acquisition of control of an HCC and state support for those provisions that are similar to the current requirements for holding companies under Insurance Code Chapter 823.

The commenters assert that §13.455 refers to an increase in an HCC's "market share" as a potential triggering event for the HCC to file an application for renewal, and they state support for this requirement. The commenters note the use of the "market share" terminology in this section refers to §13.414, which describes the markets for physician services, outpatient services, and inpatient services. The commenters state that three additional market share definitions may aid the department's regulatory efforts: (i) the market for physician services, referred to in Insurance Code §848.057(a)(5); (ii) the HCC's geographic market, referred to in Insurance Code §848.057(a)(5)(B); and (iii) the HCC's "market power," referred to in Insurance Code §848.057(a)(6).

Agency Response: The department appreciates the supportive comments and agrees that Insurance Code §848.057, including each of the provisions cited by the commenters, establishes the threshold eligibility requirements for approval of an HCC's application for approval of a certificate of authority. Further, the department notes that these requirements are incorporated into any renewal application pursuant to Insurance Code §848.060(c).

The department's position is that the market share calculation methodology in §13.414(e) considers each of the aspects of market share emphasized by the commenters. This is because the calculation considers participant market shares in the aggregate within participant PSAs by class of service. Further, §13.414(f) provides for calculation of market share through reference to the HCC's PSA for a health care specialty if calculation on that basis provides the more accurate measure of competition.

Comment: §13.461 - Commissioner's authority to require additional information. Some commenters state support for the statement in §13.461 of the commissioner's authority to require additional information from the HCC or any participant in the HCC as reasonably necessary to make a determination required by Insurance Code Chapter 848, the attendant rules, and other insurance laws and regulations applicable to HCCs.

The commenters also state their support for the list of additional information that the commissioner may require under §13.461(b). The commenters state opposition to the §13.461(c)(9) statement that the commissioner may require the HCC or any participant in the HCC to provide "questionnaires submitted by participants to applicable professional associations

in connection with annual surveys of association members, and to any other association, accreditation agency, or government agency, in connection with any annual or other periodic survey of such participant."

The commenters seek clarification regarding the relevance of professional association annual surveys for HCC regulation purposes, and an appropriate narrowing of this provision to exclude all surveys that are not directly related to the department's determination of the HCC's compliance with applicable laws and regulations.

Further, the commenters state opposition to §13.461(c)(9) due to the burden this requirement places on HCCs and HCC participants when read in conjunction with the requirement in §13.461 that the submitted questionnaires be retained by the HCC or HCC participant for a minimum of five years. The commenters note that it is not a common practice for physicians or other health care providers to retain questionnaires submitted to professional associations for any length of time. Thus, the commenters assert that the retention requirement imposes a significant new administrative burden on HCC participants with little discernible benefit to the department's HCC review. Additionally, the commenters assert that many questionnaires are now submitted electronically and retention of the surveys in conformity with the rule may be impractical, if not impossible, under some circumstances.

The commenters also state that §13.461(c)(9) will unnecessarily chill participation in professional surveys without any compelling corresponding benefit to the department's review of HCCs.

Agency Response: The department appreciates the supportive comments. Concerning §13.461(c)(9), the department disagrees that the requirement to produce the participant questionnaires is overly burdensome, unlikely to benefit the department's HCC review, or likely to produce a chilling effect on survey participation. Section 13.461(b) provides that an HCC or HCC participant is not required to create the items in subsection (c) unless and except as required by the commissioner. The department clarifies that submitting responses to an electronic survey for which the participant does not and will not have electronic or physical possession of a document containing all survey responses will not trigger the maintenance requirement. The retention requirement applies only after the HCC creates a document. Section 13.461(c) exemplifies the information that the commissioner could determine to be reasonably necessary to make any determination required by law.

These types of questionnaires are beneficial to the department's oversight of HCCs because they might provide information to substantiate or contradict known information concerning QA, QI, contract, and marketing activities that is relevant to the physician market, the geographic market, and the HCC and participant market share. The information could affect the commissioner's and the attorney general's determination of whether the pro-competitive benefits of the applicant's proposed HCC are likely to substantially outweigh the anticompetitive effects of any increase in market power. The department also has no reason to believe that a participant will be unwilling to provide survey information or responses to associations, accreditation agencies, or government agencies if the participant knows that the department might request the information, and the commenter has provided no support for this proposition.

The department declines to change §13.461(c)(9).

Comment: §13.472(1) - Requirements for certain delegation contracts. Some commenters state that under §13.472, an HCC that contracts with a delegated entity must submit a monitoring plan, conduct an on-site or desk audit of the delegate, and take prompt action to correct any failure by the delegate. The commenters suggest that the department, as part of the submission of a monitoring plan, mandate the HCC provide the name of the delegate, the delegate's primary business address, and contact information of a person at the delegated entity who is responsible for communicating with the department, should the need arise.

Agency Response: The department disagrees that it is necessary to add these contact information requirements to §13.472 based on the department's experience concerning similar monitoring plans. In the department's experience, there have not been difficulties to the department's oversight and regulation of monitoring plan requirements due to a lack of contact information in the monitoring plan, so this requirement does not appear to be necessary at this time. The department, therefore, declines to make this change.

Comment: §13.473 - Organization of an HCC. Some commenters state that §13.473 describes the essential governing, operating, contracting, and other requirements that govern an HCC's eligibility to receive a certificate of authority from the department and suggests moving the section nearer to §13.413, concerning the required contents of the application, due to the fundamental nature of these criteria as prerequisites for certification.

The commenters also recommend that the governing body composition, referenced in Insurance Code Chapter 848, be expressed in the regulatory language itself. The commenters assert that the composition of the governing board is a key protection of Insurance Code Chapter 848. The commenters state that an HCC comprised solely of physicians may have a physician-only governing body, while a "mixed" provider HCC must have a governing body with 50 percent of its members selected by physicians participating in the HCC, with an additional physician selected by nonphysician participants.

Another commenter agrees, stating that anesthesiologists supported the Legislature's inclusion of requirements in Insurance Code §848.052 for material physician participation in the governance of all HCCs and asserting that hospital-based anesthesiologists have a unique perspective on how health care organizations led by hospitals and for-profit health care organizations function.

The commenter further states that the active participation of hospital-based physicians will be critical to the success of HCCs and hospital-based physicians should have a voice in the management of these organizations. The commenter, therefore, recommends that the department include a requirement in §13.473 that at least one of the physician members of an HCC's governing board be a hospital-based physician, as set out in Insurance Code §848.052(d-1).

Agency Response: The department appreciates the supportive comments and clarifies that an HCC's board membership under Insurance Code §848.052 consists of an odd number of members so that there is no "50 percent" of the board. Insurance Code §848.052 requires that if the participants in an HCC are both physicians and other health care providers, the board of directors must consist of: (i) an even number of members who are individual physicians, selected by physicians who participate in

the HCC; (ii) a number of members equal to the number of members under Subdivision (1) who represent health care providers, one of whom is an individual physician, selected by health care providers who participate in the HCC; and (iii) one individual member with business expertise, selected by unanimous vote of the members described by Subdivisions (1) and (2).

The department disagrees that §13.473 needs to be moved to emphasize the crucial nature of HCC organization requirements. The department has structured Chapter 13, Subchapter E, so that Division 2 includes the sections most pertinent to the actual application for a certificate of authority, including §13.413. This arrangement does not denote any lesser importance for the requirements located in any other division, including §13.473. The department considers all of the requirements of the subchapter to be important to the compliant operation of an HCC both during and after the HCC's formation. The department declines to move the contents of §13.473.

The department's position is that the plain language of Insurance Code §848.052 is sufficient to administer requirements concerning the composition of an HCC's governing board. However, to facilitate compliance with the new statutory requirements and based on this comment, the department is changing §13.473(a) to clarify that the governing body must comply with the requirements described in Insurance Code §848.052 instead of simply referring to the governing body described in that section. This language should suffice to remind an applicant that the statute includes specific requirements concerning the governing board without the need to restate those statutory requirements.

Comment: §13.473(a) - Organization of an HCC. A commenter states support for §13.473(a) and the requirement that the governing body has the ultimate responsibility for developing, approving, implementing, and enforcing administrative, operational, personnel, and patient care policies and procedures related to the operation of an HCC. The commenter expresses concern that applicants may attempt to limit the authority of the HCC governing board through "reserved powers." The commenter states that joint ventures are not an unusual undertaking in the health care marketplace. Per the commenter, it is not unusual for a hospital partner to reserve certain powers to itself over capital investment and important financial matters in the joint venture or partnership documents. The commenter asserts that §13.473(a) ensures that the governing board must be empowered to make decisions that certain hospital partners attempt to reserve to their board.

Agency Response: The department appreciates the supportive comment. Insurance Code §848.052(a) specifies that an HCC must be governed by a board of directors, and Insurance Code §848.052(i) prohibits an HCC's organizational documents from conflicting with the requirements of Insurance Code Chapter 848. Section 13.473(a) clarifies the department's interpretation of Chapter 848's governance requirements. An HCC's organizational documents may not conflict with these requirements, including through the use of reserved powers.

Comment: §13.473(b) - Organization of an HCC. Some commenters state support for §13.473(b), stating that an HCC's clinical director must be a physician licensed and residing in Texas, be available to resolve complaints, demonstrate active involvement in quality management, and be subject to credentialing.

Agency Response: The department appreciates the supportive comments concerning the clinical director requirements in §13.473(b). However, the department clarifies that §13.473(b) does not require that the clinical director be a physician, and the department is not changing this requirement for the reasons explained previously in the comment and response section of this adoption order.

Comment: §13.473(c) - Organization of an HCC. A commenter states concern with §13.473(c), which establishes network adequacy requirements for HCCs. While an HCC should have a sufficient number of participating providers to meet the medical needs of patients who will receive services under contracts the HCC has entered into with public or private payors, the commenter asserts that the range of services provided by an HCC may vary significantly, and the network adequacy standards should be consistent with the scope of services provided by a particular HCC. For example, the commenter asserts that §13.473(c)(1)(E) would require an HCC to provide emergency care on a 24-hour, seven-days a week basis even if the HCC did not include a hospital and none of the participating providers offered emergency services. The commenter states that many of the other requirements imposed by this provision may not be appropriate for a particular HCC and recommends that the department modify §13.473(c) to state the network adequacy requirements in more general terms or clarify that the different requirements be made conditional or as applicable to an HCC.

Agency Response: The department clarifies that the requirements in §13.473(c) apply on an "as applicable" basis. Section 13.473(c)(1) requires the HCC to provide a delivery network that meets the requirements of the paragraph "as applicable to the services that the HCC has contracted or will contract to provide." It is the department's position that the subsection already tailors the requirements to accommodate a specialty HCC.

Using the requirement in §13.473(c)(1)(E) as an example, the department would consider whether the type of service offered by the HCC is consistent with the need for an HCC to ensure that it has an adequate number of participants available and accessible to patients 24 hours a day, seven days a week in considering an HCC's compliance with the provision. For instance, if the HCC will provide diabetes care, depending on the scope of the HCC, it may or may not need a hospital and emergency services. If the HCC will provide physical therapy, there is little need for a hospital or emergency services. If the HCC will provide primary care services or cardiac services, it will need a hospital and all associated services.

However, to enhance rule clarity, the department has made a change to §13.473(c)(1) to emphasize that an HCC is required to demonstrate is its ability to provide continuity, accessibility, availability, and quality of services that it has contracted or will contract to provide within its service area, including items in subparagraphs (A) through (I), as applicable.

Comment: §13.474(d) - Requirements for HMO or insurer delegation of functions to HCCs. A commenter notes that §13.474(d) requires a delegation agreement between an HMO or insurer and an HCC to mandate that the HMO or insurer disclose in all provider listings distributed to insureds or enrollees those providers participating in the HCC. The commenter requests that the department revise this subsection to reflect that these listings are only mandated with respect to providers whose practices and office locations are within the HMO's or insurer's approved service area, as applicable; and providers who have open panels and are accepting new patients.

Agency Response: The department agrees that it is reasonable to restrict the provider listing requirement in §13.474(d) to

those providers whose practices and office locations are within the HMO's or insurer's approved service area, as applicable. The department has, therefore, changed §13.474(d) to incorporate this limitation on the requirement. Adopted §13.474(d) provides that a delegation agreement between an HMO or insurer and an HCC must mandate that the HMO or insurer disclose in all provider listings distributed to insureds or enrollees those providers participating in the HCC within the HMO's or insurer's approved service area.

With respect to limiting the listing requirement to providers who have open panels and are accepting new patients, it is the department's position that existing provider listing requirements already address provider listing content requirements for specific plans, and additional requirements in §13.474(d) are unnecessary. See, for example, Insurance Code §843.2015 and §1301.1591 concerning information that an HMO and an insurer offering a preferred provider benefit plan must list concerning physicians and providers if the HMO or insurer maintains an internet website. The department, therefore, declines to make this requested change.

Comment: §13.481 - QI Structure for HCCs. Some commenters state support for the §13.481(b) requirement that the governing body is ultimately responsible for the QI program and agree that it is appropriate for the governing body to have ultimate responsibility for the HCC's QI program due to the strong physician composition of the HCC's governing body mandated by Insurance Code §848.052. The commenters assert that the physician members of the governing body possess the necessary education, training, and experience to approve the QI program and plan and to assess the QI program's performance. For the same reason, the commenters support the governing body's appointment of the QI committee in §13.481(b)(1).

However, the commenters also state support for the express inclusion of the physician clinical director on the QI committee, asserting that to be actively involved in quality management activities as required by §13.473, the clinical director must be part of this QI committee.

The commenters also state support for the requirement in §13.481(b)(1) that clarifies that the health care provider members of the committee must be individual health care providers in lieu of corporate entities, and the department position that "individual health care providers" are necessary members of the QI committee only where applicable, so that a physician-only HCC would not be required to name a nonphysician member to the committee.

The commenters recommend that the department strengthen §13.481(c)(1) by requiring that the QIC subcommittee include practicing physicians because, as currently drafted, the subcommittees are permitted, but not required, to include practicing physicians, individual health care providers, and patients from the service area. Additionally, the commenters recommend that the department modify §13.841(c)(1) to acknowledge that some HCCs may be composed solely of physicians, as permitted by Insurance Code §848.001(2)(C)(i).

The commenters assert that these changes would ensure that practicing physicians are always a part of the QI improvement process, even if those activities are delegated by the QI committee. Given the clinical nature of QI activities, the commenters assert that it is imperative that physicians have active involvement in and oversight over all QI activities.

Agency Response: The department appreciates the supportive comments and agrees that inclusion of the clinical director in the QIC under §13.481(b)(1) is consistent with the requirement for the clinical director to be actively involved in quality management activities under §13.473. However, the department clarifies that §13.473(b) does not require that the clinical director be a physician, and the department declines to change this requirement for the reasons explained previously in the comment and response section of this adoption order.

The department also agrees that nonphysician participation in an HCC's QIC would not be required for a physician-only HCC. However, the department disagrees that §13.481(c)(1) should be changed to require the inclusion of practicing physicians and, as applicable, individual health care providers on QI subcommittees. Subcommittees generally focus on discrete functions that may be less appropriate for mandatory direct physician participation. For example, a subcommittee could address customer service issues. The department's position is that the oversight of the QIC, as required under §13.481(c)(1)(B), in conjunction with collaboration with other committees as required under §13.481(c)(1)(B), sufficiently addresses physician participation. The department, therefore, declines to make this change.

Comment: Division 9 - Quality and cost of health care services. A commenter states that future physician participation in HCCs has been enhanced by the Legislature's decision to include in Insurance Code §848.053(d) a requirement that an HCC's compensation advisory committee and board of directors may not use or consider a government payor's payment rates in setting charges or fees for health care services provided by a physician or health care provider who participates in an HCC, except in certain limited circumstances. The commenter recommends that the department include this statutory language in Division 9.

Agency Response: The department's position is that the plain language of Insurance Code §848.053(d) is sufficient to administer and enforce the requirement. Because the department finds restatement of the requirement to be unnecessary, the department declines to change the rule as requested.

Comment: §13.482(a) - Definition of "Evidence-Based Medicine." Some commenters state that §13.482(a) requires the HCC to establish, implement, and administer a continuous QA and QI program that includes defined policies and processes to be used to promote evidence-based medicine and best practices, but note that the department does not define "evidence-based medicine" in the rules.

To clarify the rule, the commenters recommend that the department include the following definition of "evidence-based medicine" in §13.402: "Evidence-based medicine means the use of current best quality medical evidence formulated from credible clinical studies, including peer-reviewed medical literature, and treatment and practice guidelines in making decisions about the care of individual patients."

Agency Response: The department disagrees that it is necessary to define "evidence-based medicine" to provide guidance concerning the department's expectations. In administering comparable requirements concerning evidence-based medicine, the department's experience is that the term is commonly understood in general terms in the health care market. Further, it is the department's intent to leave some flexibility in the use of the term to accommodate the possibility that a specialty HCC would have difficulty in meeting more rigidly defined requirements concerning evidence-based medicine,

and defining the term in more specific terms in the manner recommended by the commenter would not be consistent with that intent. The department, therefore, declines to change the section to define the term.

Comment: §13.482(a) - QI structure for HCCs. A commenter states that §13.482(a) does not mention patient safety or the reduction of potentially preventable events as components of the mandatory QA and QI program, although those components reflect goals that are incorporated into Insurance Code Chapter 848. The commenter recommends that the department expressly incorporate patient safety and the reduction of potentially preventable events into §13.482(a).

Agency Response: The department's position is that the broad requirement for an HCC to establish, implement, and administer a continuous QA and QI program that includes defined policies and processes to promote evidence-based medicine and best practices already encompasses policies and processes to address patient safety and reduce potentially preventable events.

Further, the department's position is that this requirement implements and is in addition to specific statutory requirements. Insurance Code §848.057(a)(2)(A)(ii) and (iii) requires an applicant to satisfy the commissioner that it is willing and able to ensure health care service provision in a manner that promotes patient safety and reduces the occurrence of potentially preventable events. Also, Insurance Code §848.106 requires the HCC to establish QI policies using standards relating to the development, implementation, monitoring, and evaluation of evidence-based best practices and other processes to improve the quality and control the cost of health care services provided by participating physicians and health care providers, including practices or processes to reduce the occurrence of potentially preventable events. For this reason, the department disagrees that a change to §13.482 is necessary and declines to make the change.

Comment: §13.482(b) - QA and QI. A commenter states that §13.482(b)(1)(B) and (C) references Agency for Healthcare Research and Quality (AHRQ) standards, and National Quality Forum (NQF) standards, respectively, among the practice evaluation tools that a QA and QI program must include as appropriate. However, the commenter states that NQF endorses quality measures, but AHRQ does not. The commenter also says that AHRQ has a database of quality measures, but they are not "AHRQ standards." The commenter, therefore, questions the meaning of the requirement in §13.482(b)(1)(B) and recommends that the department change §13.482(b)(1)(C) to "National Quality Forum endorsed standards."

Agency Response: The department clarifies that §13.482(b)(1)(B) references all of the measures within the AHRQ database of measures, including but not limited to the measures created by AHRQ. The department agrees that it is more accurate to state that National Quality Forum endorses measures and is, therefore, changing §13.482(b)(1)(C) to reference "National Quality Forum-endorsed standards."

Comment: §13.482(c)(1) - QA and QI. A commenter states support for the requirement in §13.482(c)(1) that HCCs have a process in place to evaluate the health needs of their enrolled populations. However, the commenter suggests the department require that the evaluation occur at least annually, include considerations of diversity in the HCC's patient population, and be used by the HCC to create a plan to address the needs of its population. The commenter further states that one way to help ensure network adequacy is to require the HCC to demonstrate how they will update their network in response to the findings of the needs assessment.

Agency Response: The department appreciates the supportive comment, but the department disagrees that it is necessary to incorporate annual evaluation requirements for diversity considerations into §13.482(c)(1) because §13.481(b) and (c) already address requirements for the QI committee to approve an annual QI plan and evaluate the overall effectiveness of the QI program. The department's position is that additional discrete evaluation and plan requirements are unnecessary. For this reason, the department declines to make the suggested change.

Comment: §13.482(c)(2) - (4) - QA and QI. A commenter states support for the requirements in §13.482(c)(2) - (4) that HCCs have processes and written standards in place to help providers communicate clinical information understandably and promote patient engagement, but asks the department to require HCCs to provide a detailed explanation of how its providers will communicate clinical knowledge and evidence-based medicine to enrollees in a way that is understandable and engages the patient in treatment decisions. Examples include requiring the HCC to demonstrate how it will ensure information is conveyed at the appropriate literacy level and in the beneficiary's primary language, what specific decision aids providers will use, and how the HCC will identify and incorporate patient values and preferences. The commenter suggests that the HCC can accomplish this by providing examples of the materials that the HCC will use as part of its application.

The commenter asks that the department monitor HCCs in this area at renewal and during quality-of-care exams to ensure that the HCC is following the processes set out in the application. Among other things, the commenter notes that CAHPS measures how enrollees feel providers communicate and their experience with shared decision making, so the commenter states that monitoring CAHPS results at renewal will help the department to monitor and improve patient engagement.

The commenter suggests the department amend §13.482(c) to read:

"(c) The patient engagement process should include:

(1) evaluating the health needs of its enrolled population, including considerations of diversity in its patient population, and a plan to address the needs of its patient population;

(2) communicating clinical knowledge and evidence-based medicine to patients and patient representatives clearly and understandably;

(3) promoting patient engagement, through shared-decision making and independent care plans that take into account the patients unique needs, preferences, values, and priorities;

(4) establishing written standards for patient communications; and

(5) establishing a process for patients to access their medical records."

The commenter asserts that without this measurement the department, the attorney general, and the public cannot ascertain that: (i) quality care is delivered; (ii) quality improves overtime; (iii) HCCs are facilitating coordinated care and not just provider consolidation; and (iv) HCCs are not sacrificing quality as a means to contain costs.

Agency Response: The department's position is that the detailed explanations and materials requested for inclusion in §13.482(c) are already sufficiently addressed in the adopted rule text in a way that provides flexibility for the HCC to demonstrate how it will meet the requirement. Section 13.413(f) requires an application to include a detailed description of the policies and processes contained in the QA and QI program required by §13.482; and adopted §13.415(a)(2) requires the HCC to provide to the department on request and make available for review the HCC's program description and work plan as required by §13.481, as well as program evaluations in support of requirements under §13.482 for certified HCCs.

The department notes that some of the suggestions for change, such as requiring an HCC to provide information on its use of decision aids to help engage patients in treatment standards, could have the effect of imposing uniform standards in a manner that is inconsistent with the department's intent to provide for HCC flexibility to establish, implement, and administer defined policies and processes to secure patient engagement. The additional flexibility is especially appropriate given the possibility that a specialty HCC will form that might otherwise have difficulty meeting the more rigid requirements concerning the patient engagement process. For these reasons, the department declines to make the suggested change.

Comment: §13.482 - Processes for measuring and reporting quality of health care services and impact on cost. Some commenters state that prior informal draft rules would have required that each HCC's processes for measuring and reporting quality of health care services and impact on cost include "standards that are consistent with those promulgated by the Texas Institute of Health Care Quality and Efficiency established under Health and Safety Code Chapter 1002."

The commenters state support for the department's decision not to retain this requirement and opposition to inclusion of language that would require HCCs to follow institute recommendations, based on the lack of a requirement in SB 7 for HCCs to comply with any of the standards recommended by the institute. The commenters also state that Health and Safety Code §1002.101(3) and §1002.151 only require the institute to make recommendations rather than establish standards.

Agency Response: The department appreciates the supportive comment.

Comment: §13.493 - Rights of Physicians. Some commenters note that §13.493 closely tracks Insurance Code §848.110 in stating the rights of physicians before a complaint against a physician under Insurance Code §848.107 is resolved or before the involuntary termination of a physician's association with an HCC. The commenters recommend that the department amend §13.493 to expressly include the right for a physician to appeal an adverse determination so that the section will comport with more stringent standards applicable to participants who may form an HCC, such as hospitals who are accredited by the JCAHO.

The commenters state that JCAHO Standard MS.10.01.01 requires accredited hospitals to have a fair hearing and appeal process to address adverse decisions regarding denial, reduction, suspension, or revocation of privileges that may relate to quality of care, treatment, or service issues; and JCAHO's Element of Performance No. 5 for MS.10.01.01 specifies that a compliant policy developed by the organized medical staff for a fair hearing and an appeal process has the following characteristic: "with the governing body, has a mechanism to appeal adverse decisions as provided in the medical staff bylaws."

The commenter asserts that the JCAHO due process standard, which includes the right to an appeal, is the framework on which most medical staff bylaws are modeled and is one with which most facilities are familiar. Absent a compelling reason, the commenter asserts that the department should not deviate from the JCAHO standard.

Further, the commenter asserts that the stated rationale for MS.10.01.01 generally applies to HCCs, as well as hospitals accredited by the JCAHO, by stating that "the purpose of a fair hearing and appeal is to assure full consideration and reconsideration of quality and safety issues, and . . . allow practitioners an opportunity to defend themselves."

The commenter asserts that under SB 7, the Texas Legislature envisioned HCCs as entities that would enhance the quality of health care provided to Texas residents; thus, any strengthening of the due process requirements under §13.494 would achieve that goal by providing "full consideration and reconsideration of quality and safety issues" consistent with the stated rationale of the JCAHO standard. The commenter asserts that Texas patients need assurance that their physicians have the freedom to act in their best interest without the fear of termination through a process that lacks full consideration and reconsideration of the relevant issues.

Agency Response: The department disagrees that it is necessary to make this change because the department has already addressed requirements for the selection and retention of participants in §13.483. Adopted §13.483 requires an HCC to implement a documented process for the selection and retention of contracted participants. The section requires the credentialing process to comply with the standards promulgated by the National Committee for Quality Assurance, URAC, the JCAHO, or the AAAHC, as appropriate, to the extent that those standards are applicable and do not conflict with other laws of this state. Because these standards address the physician right of appeal, no change to §13.493 is necessary, and the department declines to make the change.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For, with recommended changes: Texas Chapter of the American College of Cardiology; Texas Medical Association; Texas Orthopaedic Association; Texas Radiological Society; Texas Society of Anesthesiologists; Texas Society for Gastroenterology and Endoscopy; Texas Society of Pathologists; and Texas Urological Society.

Neither for nor against, with recommended changes: Accreditation Association for Ambulatory Health Care; Center for Public Policy Priorities; Superior Health Plan, Inc.; Texas Association of Health Plans; and Texas Hospital Association.

DIVISION 1. GENERAL PROVISIONS

28 TAC §§13.401 - 13.404

STATUTORY AUTHORITY. The new sections are adopted under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for a certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§13.402. Definitions.

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

(1) Affiliate--As defined in Insurance Code §848.001(1).

(2) Clinical director--Health professional who is:

(A) appropriately licensed in good standing in Texas;

(B) an employee of, or party to a contract with, an HCC; and

(C) responsible for clinical oversight of the utilization review program, the credentialing of professional staff, and quality improvement functions.

(3) Common service--An identical or substantially similar health care service provided to patients by two or more independent HCC participants.

(4) Confidential information--Information that relates to bidding, pricing, trade secrets, business planning documents, financial position and related operational results, profit and loss statements, contracts, salaries, employee benefits, or other competitively sensitive information.

(5) Credentialing--The periodic process of collecting, assessing, and validating qualifications and other relevant information pertaining to a physician or health care provider to determine eligibility to deliver health care services.

(6) Entity--An artificial person, including a partnership, association, organization, trust, or corporation; the term does not include a securities broker performing no more than the usual and customary broker's function.

(7) Facility--

(A) an ambulatory surgical center licensed under Health and Safety Code Chapter 243;

(B) a birthing center licensed under Health and Safety Code Chapter 244; or

(C) a hospital licensed under Health and Safety Code Chapter 241 or 577.

(8) Financial statement--An HCC's annual statement of financial position and operating results, including a balance sheet, receipts, and disbursements, certified by an independent certified public accountant and prepared in accord with Generally Accepted Accounting Principles.

(9) Health care collaborative or HCC--As defined in Insurance Code §848.001(2).

(10) Health care provider--As defined in Insurance Code §848.001(4).

(11) Health care services--As defined in Insurance Code §848.001(3).

(12) Health maintenance organization or HMO--As defined in Insurance Code §848.001(5).

(13) Hospital--As defined in Insurance Code §848.001(6).

(14) Individual--A natural person.

(15) Individual health care provider--A health care provider who is a natural person.

(16) Network--A health care delivery system in which an HCC provides or arranges to provide health care services directly or through contracts and subcontracts with governmental entities or private individuals or entities.

(17) Participant--Each physician or health care provider that has agreed to participate in the HCC.

(18) Patient--An individual who receives a health care service.

(19) Physician--As defined in Insurance Code §848.001(8).

(20) Primary service area or PSA--For each common service and each participant, the area defined by the smallest number of postal ZIP codes from which the participant draws at least 75 percent of its patients for that service.

(21) Private payor--Any of the following:

(A) an insurer that writes health insurance policies;

(B) an HMO, to the extent that it pays physicians or health care providers for health care services under an HMO evidence of coverage or under a negotiated-rate contract with the physician or health care provider; or

(C) any other entity, including an insurer or third-party administrator for self-insured private or governmental employers, that provides, or offers to provide, health care services to a patient pursuant to a negotiated-rate contract that the entity negotiated with physicians or health care providers.

(22) Pro-competitive benefit--A benefit obtained from clinical or financial integration by the establishment and operation of the HCC that ultimately accrues to the benefit of the HCC's patients. A pro-competitive benefit may include use of electronic medical records, implementation of quality control procedures, utilization review, clinical protocols, coordination of care, and financial incentives to reduce costs or increase quality.

(23) Quality improvement or QI--A system to continuously examine, monitor, and revise processes and systems that support and improve administrative and clinical functions.

(24) Rural hospital--A hospital:

(A) that is paid under the Medicare hospital inpatient prospective payment system and is either located more than 35 miles from other like hospitals or is located in a rural area, and meets the criteria for sole community hospital status as specified by 42 CFR §412.92; or

(B) located in a rural area and that has been certified as a Medicare critical access hospital based on the criteria set forth in 42 CFR Part 485, Subpart F.

(25) Service area--A geographic area within which health care services are available and accessible to an HCC's patients who live, reside, or work within that geographic area and that complies with §13.473 of this title (relating to Organization of an HCC).

(26) Utilization review--As defined in Insurance Code §4201.002.

§13.403. Filing and Required Forms; How to Obtain Forms.

(a) All HCC filings for original or renewal application as required by this subchapter must be made to Company Licensing & Registration, Mail Code 305-2C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, and copies of all HCC forms are available through that address. All forms also are available on the department website at www.tdi.texas.gov.

(b) All HCC forms for an original or renewal application filing may be submitted electronically in a format permitted by the department.

(c) Paragraphs (1) - (7) of this subsection identify the forms specified for use with the rules adopted under this subchapter. Forms identified in paragraphs (1) and (4) - (7) have a June 2012 revision date. Forms identified in paragraphs (2) and (3) have a March 2013 revision date. Each HCC or other individual or entity must use the form(s) as required by this title in accord with the form's instructions and content requirements and as appropriate to particular activities. The commissioner adopts by reference the following forms:

(1) Original/Renewal Application for Certificate of Authority to do the Business of a Health Care Collaborative (HCC) in the State of Texas;

(2) Health Care Collaborative Officers and Directors Page;

(3) Biographical Affidavit;

(4) Request to Convert to Renewal of Certificate of Authority to do the Business of a Health Care Collaborative (HCC) in the State of Texas;

(5) Financial Authorization and Release Form;

(6) Health Care Collaborative Payor Information Form; and

(7) Health Care Collaborative (HCC) Acquisition Form.

§13.404. Use of the Term "HCC;" Service Mark; Trademarks; d/b/a.

(a) While planning or developing an HCC, an organization may use the terms "health care collaborative" or "HCC" as a part of the proposed HCC's name provided the developmental status of the proposed HCC is clearly communicated in all dealings with employers, individuals, prospective contract holders, news media, and other individuals or entities.

(b) After the certificate of authority is issued, the HCC must include the name as it appears on the certificate of authority on all advertising and forms distributed to the public.

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

Filed with the Office of the Secretary of State on March 11, 2013.

TRD-201301071
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: March 31, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 463-6327

DIVISION 2. APPLICATION FOR CERTIFICATE OF AUTHORITY

28 TAC §§13.411 - 13.417

STATUTORY AUTHORITY. The new sections are adopted under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for a certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§13.413. Contents of the Application.

(a) Order of contents. The application must include the items in the order listed in this section.

(b) Original and copies. An applicant filing a nonelectronic application must submit two additional copies of the application along with the original application.

(c) General contents. An application must include:

(1) a declaration executed under oath or affirmation by an officer or other authorized representative of the HCC certifying that the collection of any confidential information for purposes of satisfying filing requirements of this subchapter was made in accord with the confidentiality requirements of §13.426 of this title (relating to Confidentiality);

(2) a completed application for certificate of authority;

(3) the basic organizational documents and any amendments to them, complete with the original incorporation certificate with charter number and seal indicating certification by the secretary of state, if applicable;

(4) the bylaws, rules, or any similar documents regulating the conduct of the internal affairs of the applicant, certified by an officer or other authorized representative of the applicant HCC;

(5) a plan of operation for the HCC, including an overview, history, types of health care service offered, and operations provisions that include pro-competitive strategies of the HCC;

(6) information about officers, directors, and staff:

(A) a completed officers and directors page; and

(B) biographical data forms for all individuals who are to be responsible for the day-to-day conduct of the affairs of the applicant;

(7) separate organizational charts or lists, as described in subparagraphs (A) - (C) of this paragraph:

(A) charts clearly identifying the contractual relationships involved in the applicant's health care delivery system and between the applicant and any affiliates, and a list of contracts to provide services between the applicant and the affiliates;

(B) a chart showing the internal organizational structure of the applicant's management and administrative staff; and

(C) for the purposes of this paragraph, the information provided must clearly identify any relationship between the HCC and any affiliate or other organization if a common individual or entity directly or indirectly controls 10 percent or more of both the HCC and the affiliate or other organization;

(8) notice of the physical address in Texas of all books and records described in §13.415 of this title (relating to Documents to be Available for Quality of Care and Financial Examinations); and

(9) a description of the information systems, management structure, and personnel that demonstrates the applicant's capacity to meet the needs of patients and participants and to meet the requirements of regulatory and contracting entities.

(d) Financial information. An application must include financial and financially-related information consisting of the following:

(1) projected financial statements, including a balance sheet, income statement, and cash flow statement. Additionally:

(A) the projected data must be provided for two consecutive annual reporting periods;

(B) the financial statements must include the identity and credentials of the individual making the projections; and

(C) the projected data must reflect compliance with §13.431 of this title (relating to Reserves and Working Capital Requirements);

(2) a balance sheet reflecting actual assets and liabilities, and net assets sufficient to comply with §13.431 of this title;

(3) the form, including any proposed payment methodology, of any contract between the applicant and any payor that addresses the applicant arranging for medical and health care services for the payor in exchange for payments in cash or in kind as provided in Insurance Code Chapter 848;

(4) if applicable, insurance or other protection, or both, against insolvency and:

(A) any reinsurance agreement and any other agreement described in Insurance Code §848.102 covering the cost of a potential significant event or catastrophe; and

(B) any other arrangements offering protection against insolvency;

(5) proof of the applicant's maintenance of a fidelity bond or similar officer and employee antifraud protection as provided in §13.473(d) of this title (relating to Organization of an HCC); and

(6) authorization for disclosure to the commissioner of the financial records of the applicant and affiliates to confirm assets.

(e) Provider and service area information. An application must include:

(1) a description and a map of the service area, with key and scale, that identifies the county or counties, or portions of the county or counties, to be served. If the original map is in color, all copies also must be in color;

(2) network configuration information, including maps demonstrating the location and distribution of the participants by physician type and provider type within the proposed service area by county, counties, or ZIP code(s); lists of participants in Excel-compatible format, including business address, county, license type and specialization, hospital admission privileges, and an indication of whether they are accepting new patients;

(3) the identity of any integrated practice group or independent practice association to which any participant belongs, including the group's name, business address, type of legal organization, and approximate number of members;

(4) for each participating facility:

(A) the facility's name and business address;

(B) a description of the services provided by the facility; and

(C) a statement as to whether the facility's agreement with the HCC allows the facility to contract or affiliate with other HCCs;

(5) the form of any contract or monitoring plan between the applicant and:

(A) any individual listed on the officers and directors page;

(B) any delegated entity, delegated network, or delegated third party as described in Insurance Code Chapter 1272; or any other physician or health care provider, plus the form of any subcontract between those individuals or entities and any physician or health care provider to provide health care services. All contracts must include a

hold-harmless provision that complies with Insurance Code §843.361 and §1301.060, as applicable, for the protection of patients covered by health benefit plans;

(C) any exclusive agent or agency; or

(D) any individual or entity who will perform management, marketing, administrative, data processing, or claims processing services; and

(6) a written description of the types of compensation arrangements, such as compensation based on fee-for-service arrangements, risk-sharing arrangements, prepaid funding arrangements, or capitated risk arrangements, made or to be made with physicians and health care providers in exchange for the provision of, or the arrangement to provide, health care services to patients, including any financial incentives for physicians and health care providers.

(f) Quality assurance and quality improvement information. An application must include a detailed description of the policies and processes contained in the quality assurance and quality improvement program required by §13.482 of this title (relating to Quality Assurance and Quality Improvement).

(g) Accreditation disclosure. If an HCC has attained accreditation from a nationally recognized accrediting body such as the National Committee for Quality Assurance, URAC, or the Accreditation Association for Ambulatory Health Care, the HCC must disclose:

(1) the name of the accrediting body;

(2) the date accreditation was granted;

(3) the accreditation level;

(4) current accreditation status; and

(5) a copy of the accreditation report.

(h) Antitrust analysis information required of all applicants. An application must include:

(1) for each participant in the HCC, disclosure of any known past or pending investigation, or administrative or judicial proceeding, in which it is alleged that the participant has engaged in any form of price-fixing or other antitrust violation, or health care fraud or abuse, including any governmental or private investigations, lawsuits, and any judgments, fines, or penalties relating to those allegations;

(2) identification of each common service provided by participants, grouped by:

(A) specific Medicare specialty code for each specialty of any participating physician or health care provider;

(B) specific major diagnostic category for inpatient services at a hospital; and

(C) specific outpatient category as established by the Centers for Medicare and Medicaid Services for outpatient services at a facility;

(3) identification of the PSA for each common service for each participant;

(4) the HCC's calculated market share for each common service in each PSA in which two or more participants serve patients for that service, utilizing the identification procedures and calculation steps set forth in §13.414 of this title (relating to Limited Exemption from Certain Information Filing Requirements); and

(A) identifying the market participants and providing the data used in determining the market share; and

(B) highlighting each common service area in each PSA in which the market share exceeds 35 percent;

(5) identification of all physicians, physician group practices, or other entities the HCC applicant considers to be or have been competitors of the HCC or its participants in its proposed service area;

(6) for each pro-competitive benefit that the applicant anticipates will result from the establishment of the HCC:

(A) a description of the pro-competitive benefit;

(B) an explanation as to why the establishment of the HCC will help achieve the pro-competitive benefit or will help extend the pro-competitive benefit to new patient populations or service areas; and

(C) a description of how the HCC will assess whether the pro-competitive benefit has been achieved, including:

(i) the reference point to be used in determining the status prior to implementation of the pro-competitive benefit;

(ii) the standard to be used by the HCC in tracking progress toward achieving the pro-competitive benefit; and

(iii) the period of time to be used in assessing whether the pro-competitive benefit has been achieved. If the period is longer than one year, the applicant must set forth interim benchmarks that will allow the commissioner to assess whether the HCC is making progress toward achieving the pro-competitive benefit; and

(D) for any pro-competitive benefit that the HCC expects to achieve as the result of financial integration, a description of the alternative payment methods the HCC anticipates using to create the financial, pro-competitive benefit;

(7) a description of the policies and procedures the HCC will establish and administer to ensure that none of its financial incentives will result in any limitation on medically necessary services; and

(8) a description of the confidentiality policies and procedures established and enforced by the HCC applicant as required by §13.426 of this title to protect the confidential information of a participant in the HCC from disclosure to other participants in the HCC. The description must include the types and specifications of safeguards and address confidential information collected in the process of preparing or submitting the HCC application.

(i) Market and market power information. HCC applicants ineligible for the limited information filing exemption. An HCC application for an applicant that does not qualify for the limited information filing exemption set forth in §13.414 of this title must also include additional information. For each PSA that does not fall within the limited filing exemption, for each participant in the PSA, the application must include:

(1) for each participant, the name of each private payor that individually accounts for five percent or more of the participant's business in the past year, measured by:

(A) revenue;

(B) billed charges, if revenue data is unavailable; or

(C) patient visits, if billed charges data is unavailable;

(2) for each participant referenced in paragraph (1) of this subsection, a completed Health Care Collaborative Payor Information Form;

(3) all business planning documents created within the previous 24 months relating to the HCC applicant's or its participants'

plans relating to any health care service in each service area, including:

(A) market studies and forecasts;

(B) studies of patient origin and flow;

(C) market share studies;

(D) budgets;

(E) investment banker and other consultant reports;

(F) expansion or retrenchment plans;

(G) research and development documents; and

(H) presentations to management committees, executive committees, and boards of directors;

(4) the name of each individual responsible for negotiating contracts on behalf of participants with payors over the last five years, the name of the participant on whose behalf the individual negotiated, the period of time during which the individual was responsible for those negotiations, and, if known, the individual's current address and phone number;

(5) documents reflecting the applicant's price lists, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, and pricing decisions relating to any medical or health care service in the service area;

(6) for each individual or entity that has provided or stopped providing any competing health care service in the service area within the previous 24 months, the following items:

(A) name and address of the individual or entity;

(B) beginning date, or beginning and ending date, of the individual's or entity's provision of the health care service in the service area; and

(C) whether the individual or entity built a new facility, converted assets previously used for another purpose, or began using facilities that already were being used for the same purpose;

(7) if the applicant believes that approval of the application is necessary for the future financial viability of one or more of the participants, for that participant, documents referencing its future viability, gross or net margins, ability to obtain financing for capital improvements, or other documents the applicant deems necessary for the evaluation of that participant's financial condition;

(8) all memoranda created within the previous 24 months relating to cost savings, economies, or other efficiencies that have been or could be achieved by any participant through a joint venture, internal cost-cutting, or any associated transaction, regardless of whether the applicant establishes and operates the proposed HCC;

(9) identification of every physician or health care provider in its proposed PSA that the applicant has communicated with concerning the possibility of contracting with the HCC within the previous 12 months; and

(10) for each participant, for the previous 12 months, all agendas, minutes, summaries, handouts, and presentations made to the participant's: board of directors; executive committee; strategic or business planning committees; physician or health care provider recruitment committee; and any committee responsible for approving contracts with facilities, clinics, or private payors.

§13.414. Limited Exemption from Certain Information Filing Requirements.

(a) This section specifies circumstances under which an applicant is not required to provide the information specified in §13.413(i) of this title (relating to Contents of the Application) in filing an original or renewal application for certificate of authority.

(b) An applicant is not required to provide the information specified in §13.413(i) of this title if:

(1) for each PSA in which two or more individual or group participants provide common services, the applicant's market share is 35 percent or less; and

(2) no contract between the HCC and any participating hospital restricts the HCC or hospital from contracting with other HCCs, networks, hospitals, physicians, physician groups, health care providers, or private payors.

(c) Notwithstanding the provisions of subsection (b) of this section, an HCC that has a contract with a physician or health care provider in a rural county as defined by the U.S. Census Bureau and that does not restrict that physician's or health care provider's ability to contract or deal with other HCCs, networks, physicians, or health care providers is not required to provide the information specified in §13.413(i) of this title, if the inclusion of the physician or health care provider alone causes the HCC's share of any common service to exceed 35 percent.

(d) Notwithstanding the provisions of subsection (b) of this section, an HCC that includes a rural hospital but does not restrict the hospital from contracting with other HCCs, networks, physicians, or health care providers is not required to provide the information specified in §13.413(i) of this title, if the inclusion of the rural hospital alone causes the HCC's share of any common service to exceed 35 percent.

(e) For purposes of this section, an HCC's market share is determined by aggregating the market shares of its participants, calculated as follows:

(1) for physicians or individual health care providers within a particular health care specialty, by dividing the number of physicians or individual health care providers in the specialty within the HCC by the total number of physicians or health care providers providing each of the common services within that health care specialty within a participating physician's or health care provider's PSA;

(2) for outpatient services at a facility, by dividing the number of physicians or health care providers participating in the HCC within each PSA by the total number of physicians or health care providers within each PSA that provide each common service;

(3) for hospital inpatient services, by dividing the number of staffed hospital beds by particular medical specialty within the hospital or group of hospitals as reported to the Texas Department of State Health Services, for each common service area, by the total number of staffed hospital beds by medical specialty within each participating hospital's PSA; and

(4) if an HCC's participants can be classified as falling within more than one of the categories set forth in paragraphs (1) - (3) of this subsection, calculations must be made for all of the categories within which the participants in the HCC provide services.

(f) Notwithstanding the definition of PSA in §13.402 of this title (relating to Definitions), a participant may calculate market share through reference to the HCC's PSA for a health care specialty rather than the participant's PSA if the participant demonstrates to the commissioner's satisfaction that analysis of competition within the HCC's PSA provides a more accurate measure of competition relating to the participant in the context of the HCC than the analysis of competition within the participant's PSA.

(g) Notwithstanding this section, on receipt of the original or renewal application, the commissioner has discretion to require an applicant to provide any or all of the information specified in §13.413(i) of this title or §13.461 of this title (relating to Commissioner's Authority to Require Additional Information), or both, when the commissioner deems the information reasonably necessary to conduct the review required under Insurance Code Chapter 848.

§13.415. Documents to be Available for Quality of Care and Financial Examinations.

(a) The following documents must be provided to the department on request and available for review at the HCC's office located within Texas:

(1) administrative: policy and procedure manuals, including procedures relating to confidentiality; patient materials; organizational charts; and key personnel information, such as resumes and job descriptions;

(2) quality improvement: program description and work plan as required by §13.481 of this title (relating to Quality Improvement Structure for HCCs); and, to support requirements under §13.482 of this title (relating to Quality Assurance and Quality Improvement) for certified HCCs, program evaluations and meeting minutes for committees and subcommittees;

(3) utilization management: program description; policies and procedures; criteria used to determine medical necessity; templates of adverse determination letters and adverse determination logs for all levels of appeal, or, for certified HCCs, examples of those letters and logs; and, for certified HCCs, utilization management files;

(4) complaints and appeals: policies and procedures; and templates of letters, complaint logs, and appeal logs, or, for certified HCCs, examples of those letters and logs, including documentation and details of actions taken;

(5) health information systems: policies and procedures for accessing patient health records and a plan to provide for confidentiality of those records in accord with applicable law;

(6) network configuration information: as outlined in and required by §13.413(e)(2) of this title (relating to Contents of the Application), demonstrating adequacy of the physician and health care provider network;

(7) executed agreements, including:

(A) contracts with payors;

(B) management services agreements;

(C) administrative services agreements; and

(D) delegation agreements;

(8) executed participant contracts: copy of the first page, including the form number, and signature page of individual and group contracts;

(9) executed subcontracts: copy of the first page, including the form number, and signature page of all contracts with subcontracting physicians and providers;

(10) physician and health care provider manuals: current physician manual and current health care provider manual, which must be provided to each contracting physician and health care provider, respectively, and which must contain details of the requirements by which the physicians and health care providers will be governed;

(11) credentialing documentation: credentialing policies, procedures, and files that demonstrate compliance with §13.483 of this title (relating to Credentialing);

(12) reporting system: the statistical reporting system developed and maintained by the HCC that allows for compiling, developing, evaluating, and reporting statistics relating to the cost of operation, the pattern of utilization of services, and the accessibility and availability of services; and, for certified HCCs, reports generated by the system concerning those components;

(13) claims systems: policies and procedures that demonstrate the capacity to pay claims timely, if applicable, and to comply with all applicable statutes and rules; and, for certified HCCs, as applicable, evidence of timely claims payments and reports that substantiate compliance with all applicable statutes and rules regarding claims payment to physicians, health care providers, and patients;

(14) financial records: including statements; ledgers; checkbooks; inventory records; evidence of expenditures, investments, and debts; and related bank confirmations necessary to ascertain funding;

(15) compliance or accreditation: records regarding compliance with applicable statutes and rules or accreditation standards, including audits or examination reports by other entities, such as governmental authorities or accrediting agencies;

(16) satisfaction surveys: for certified HCCs only, patient, physician, and provider satisfaction surveys; and patient disenrollment and termination logs;

(17) reports: for certified HCCs only, any reports submitted by the HCC to a governmental entity; and

(18) other documents and information: any records requested pursuant to Insurance Code §848.153.

(b) The documents listed in this section must be maintained for at least five years from the anniversary date of the applicable document's creation.

§13.416. Review of Original or Renewal Application; Commissioner Discretion.

(a) An original application or renewal application will be processed pursuant to Insurance Code §§848.056 - 848.060 and §848.153.

(b) The department will conduct an examination as specified in §13.421(a) of this title (relating to Examination; Fee for Expenses) in conjunction with each application. If a hearing is held in connection with an application, then the examination(s) will occur prior to the date of the hearing.

(c) Application review will include a determination of compliance with Insurance Code §848.057. The review of pro-competitive benefits of the proposed or existing HCC in relation to anticompetitive effects of market power increase will be in accord with established antitrust principles of market power analysis.

(d) The commissioner has sole discretion to impose restrictions on an HCC applicant's certificate of authority that are deemed necessary to preserve competition. Examples of these restrictions include the following:

(1) prohibiting the HCC applicant from including "anti-steering," "guaranteed inclusion," "product participation," "price parity," or similar contractual clauses or provisions in its contracts with a private payor;

(2) prohibiting the HCC applicant from tying sales, explicitly or implicitly through pricing policies, of the HCC's services to a

private payor's purchase of other services from physicians or health care providers outside of the HCC (and vice versa), including providers affiliated with HCC participants;

(3) prohibiting contracting with HCC participants on a basis that prevents or discourages them from contracting outside the HCC, either individually or through other HCCs or provider networks;

(4) prohibiting restrictions on a private payor's ability to provide its health plan enrollees with cost, quality, efficiency, and performance information used by the HCC to aid enrollees in evaluating and selecting physicians and health care providers in the health plan;

(5) prohibiting sharing with or among the HCC's participants any competitively sensitive pricing or other data that could be used to set prices or other terms for services that the participants provide outside the HCC; and

(6) restricting the HCC's certificate of authority to certain geographic areas or health care services.

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

Filed with the Office of the Secretary of State on March 11, 2013.

TRD-201301072
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: March 31, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 463-6327

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DIVISION 3. EXAMINATIONS; REGULATORY REQUIREMENTS FOR AN HCC AFTER ISSUANCE OF CERTIFICATE OF AUTHORITY; AND ADVERTISING AND SALES MATERIAL

28 TAC §§13.421 - 13.426, 13.429

STATUTORY AUTHORITY. The new sections are adopted under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for a certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§13.422. Filing Requirements That Apply After Issuance of Certificate of Authority.

(a) After the issuance of a certificate of authority, each HCC must file certain information with the commissioner, either for approval prior to effectuation or for information only, as provided in this section.

(b) In accord with Insurance Code §848.060(e), an HCC must report to the department a material change in the size, composition, or control of the HCC.

(c) An HCC must make the filings outlined in paragraphs (2) and (3) of this subsection and in §13.423 of this title (relating to Service Area Change Applications). These requirements include filing changes necessitated by federal or state law or regulations.

(1) Complete filings required. The department will not accept a filing for review until the filing is complete.

(2) Filings requiring approval. After the issuance of a certificate of authority, an HCC must file for approval with the commissioner a written request to implement or modify the following operations or documents and receive the commissioner's approval prior to effectuating those modifications:

(A) a description and a map of the service area, with key and scale, that identifies the county, counties, or portions of counties to be served;

(B) any material change in size, composition, or control of the HCC;

(C) proposed dividends for any calendar year that if declared and paid will, individually and in the aggregate, have a distribution value equal to or exceeding the greater of:

(i) 10 percent of the HCC's net asset value for the prior year; or

(ii) 10 percent of the HCC's net income for the prior year;

(D) any new or revised loan agreements evidencing loans made by the HCC to any affiliated individual or entity or to any physician or health care provider, whether providing services currently, previously, or potentially in the future; and any guarantees of any affiliated individual's or entity's or of any physician's or health care provider's obligations to any third party;

(E) a copy of any proposed material amendment to basic organizational documents; however, if the approved amendment must be filed with the secretary of state, an original or a certified copy of the document with the original file mark of the secretary of state must be filed with the commissioner;

(F) a copy of any material amendments to bylaws of the HCC, with a notarized certification bearing the original or electronic

signature of the corporate secretary of the HCC that it is a true, accurate, and complete copy of the original;

(G) any name, or assumed name, on a form, as specified in §13.404 of this title (relating to Use of the Term "HCC;" Service Mark; Trademarks; d/b/a);

(H) original or renewal service contracts and management agreements, the terms of which must comply with Insurance Code §823.101 as if the HCC were an insurer; and

(I) any proposed new or revised payment methodology for use in any contract between the HCC and any payor that addresses the applicant arranging for medical and health care services for the payor in exchange for payments in cash or in kind as provided in Insurance Code Chapter 848.

(3) Filings for information. Material filed under this paragraph is not to be considered approved, but may be subject to review for compliance with Texas law and consistency with other HCC documents. On or before 30 days after the effective date of a change, an HCC must file with the commissioner, for information only, deletions and modifications to the following previously approved or filed operations and documents:

(A) the list of officers and directors, a biographical data sheet for each individual listed on the officers and directors page, and biographical affidavit forms in §13.413(c)(6)(A) and (B) of this title (relating to Contents of the Application);

(B) any change in the physical address of the books and records described in §13.415 of this title (relating to Documents to be Available for Quality of Care and Financial Examinations);

(C) any new trademark or service mark or any changes to an existing trademark or service mark;

(D) a copy of the form of any new contract or subcontracts or any substantive changes to previously filed copies of forms of all contracts described in §13.413(d)(3) and (e)(5) of this title, not including management agreements or proposed new or revised payment methodologies filed for approval, with amended contract forms accompanied by an additional copy of the contract form that reflects the revisions made;

(E) notice of the cancellation of any management contracts described in §13.413(e)(5)(D) of this title;

(F) any insurance contracts or amendments to those contracts, guarantees, or other protection against insolvency, including the stop-loss or reinsurance agreements, if changing the insurer or description of coverage, as described in §13.413(d)(4)(A) of this title;

(G) any change in the affiliate chart as described in §13.413(c)(7) of this title;

(H) modifications to any types of compensation arrangements, such as compensation based on fee-for-service arrangements, risk-sharing arrangements, prepaid funding arrangements, or capitated risk arrangements, made or to be made with physicians and health care providers in exchange for the provision of, or the arrangement to provide, health care services to patients, including any financial incentives for physicians and providers. The HCC must maintain the confidentiality of these compensation arrangements;

(I) any material change in network configuration; and

(J) a description of the quality assurance and quality improvement program, as set forth in §13.481 and §13.482 of this title (relating to Quality Improvement Structure for HCCs and Quality Assurance and Quality Improvement, respectively).

(4) Approval period. Any modification for which commissioner's approval is required is considered approved unless disapproved within 60 days from the date the filing is determined by the department to be complete. The commissioner may postpone the action for a period not to exceed 60 days, as necessary for proper consideration. The commissioner will notify the HCC by letter of any postponement. The commissioner, after notice and opportunity for hearing, may withdraw approval of a filing made under paragraph (2) of this subsection or reject any informational filing made under paragraph (3) of this subsection.

(5) Filing review procedure. Within 20 days from the department's receipt of an initial filing for commissioner's approval under this section, the department will determine whether the filing is complete or incomplete for purposes of acceptance for review and, if found to be incomplete, the department will issue a written notice in paper or electronic form to the HCC of its incomplete filing.

(A) Incomplete filing. The written notice of an incomplete filing will state that the filing is not complete and has not been accepted for review. In addition, the notice will specify the information, documentation, and corrections necessary to make the filing complete for purposes of this section. If a filing is resubmitted in whole or in part and is still incomplete, an additional written notice will be issued. The notice will specify the corrections or information necessary for completeness and state that the 60-day period for official action will not begin until the date the department determines the filing to be complete. If a filing is not resubmitted within 30 days of the date of the written notice of incompleteness, the department will consider the filing withdrawn and will close it.

(B) Processing of complete filing. The department will in writing approve or disapprove a complete filing within the period of time set forth in paragraph (4) of this subsection, beginning on the date the filing is determined to be complete. The HCC may waive in writing the deemed approval time line set forth in paragraph (4) of this subsection.

(C) Conversion to renewal review. If the filing by the HCC under this subsection is sufficiently material, the department may require the HCC to file an application for renewal before the date required by Insurance Code §848.060(a).

§13.423. Service Area Change Applications.

(a) An HCC must file an application for approval with the department before the HCC may expand or reduce an existing service area or add a new service area.

(b) If any of the following items are changed by a proposed service area expansion or reduction, the new item or any amendments to an existing item must be submitted for approval or filed for information, as specified in §13.422 of this title (relating to Filing Requirements That Apply After Issuance of Certificate of Authority):

(1) a description and a map with key and scale, showing both the currently approved service area and the proposed new service area as required by §13.413(e)(1) of this title (relating to Contents of the Application);

(2) a form of any new contracts or amendment of any existing contracts in the new area, as described in §13.413(e)(5) of this title;

(3) network configuration information, as required by §13.413(e)(2) of this title;

(4) a brief narrative description of the administrative arrangements and organizational charts as described in §13.413(c)(7) of this title and any other information the HCC considers to be pertinent;

(5) biographical data sheets for any new management staff assigned to the new area;

(6) copies of leases, loans, agreements, and contracts to be used in the proposed new area, including information described in §13.422(c)(2)(D) of this title;

(7) separate and combined sources of financing and financial projections as described in §13.413(d)(1) - (3) of this title; and

(8) any new or amended reinsurance agreements, insurance, or other protection against insolvency, as specified in §13.413(d)(4) of this title.

(c) The department will not accept an application for review until the application is complete. An application to modify the certificate of authority is considered complete when all information required by §13.422 of this title, this section, and §13.481 and §13.482 of this title (relating to Quality Improvement Structure for HCCs and Quality Assurance and Quality Improvement, respectively), that is reasonably necessary for a final determination by the department has been filed with the department.

(d) A service area expansion or reduction application will be considered only if both the existing and proposed service areas of the HCC comply with the requirements of §13.481 and §13.482 of this title, and §13.483 of this title (relating to Credentialing).

(e) If the filing for proposed service area change might materially affect the HCC's ability to arrange for or provide health care services, or might materially change the antitrust analysis of the HCC, the department may require the HCC to file an application for renewal before the date required by Insurance Code §848.060(a).

§13.424. Certificate of Authority Renewal Requirements.

(a) Not later than 180 days before its certificate anniversary date, the HCC must file with the commissioner an application to renew its certificate.

(b) The filing must include:

(1) the Original/Renewal Application for Certificate of Authority to do the Business of a Health Care Collaborative (HCC) in the State of Texas form; and

(2) the financial statements for the HCC, as of the close of the preceding calendar year.

(c) For purposes of this section, an HCC is not required at renewal to make a duplicate filing of any document or information item specified to be and filed as part of the original application for certificate of authority under §13.413 of this title (relating to Contents of the Application) that has not been amended, modified, revised, canceled, terminated, replaced, or otherwise changed since the original or most recent renewal certificate of authority was issued. A transmittal form specifically identifying the documents and items that have not changed since the original or most recent renewal certificate of authority was issued must be filed as a part of the renewal application and accompanied by an attestation executed by an officer or other authorized representative of the HCC certifying that the documents and items identified in the transmittal form have not changed.

(d) The provisions of subsection (c) of this section also apply to the duplicate filing of any document or information item specified to be and filed pursuant to provisions of §13.422 of this title (relating to Filing Requirements That Apply After Issuance of Certificate of Authority) that has not changed since its filing was approved or accepted by the department, as applicable.

(e) The department will accept for review an application for renewal when the filing is complete.

(1) The department will send written notice of an incomplete initial filing within 20 days of the filing, stating that the filing is not complete and has not been accepted for review.

(2) The notice must specify the information, documentation, and corrections necessary to make the filing complete.

(f) If a completed application for renewal is filed under Insurance Code §848.060 and this section, the commissioner will conduct a review and take official action on the completed application in accord with the provisions of Insurance Code §848.060. The review will be conducted under Insurance Code §848.057 as if the application for renewal were a new application.

§13.429. HCCs Subject to Insurance Code Chapters 541 and 542 and Related Rules.

HCCs must comply with Insurance Code Chapters 541 and 542, and rules promulgated by the department pursuant to Insurance Code Chapters 541 and 542, as applicable, in the same manner as insurance companies or HMOs.

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

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Sara Waitt
General Counsel
Texas Department of Insurance
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DIVISION 4. FINANCIAL REQUIREMENTS

28 TAC §13.431, §13.432

STATUTORY AUTHORITY. The new sections are adopted under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for a certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable ex-

penses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§13.431. Reserves and Working Capital Requirements.

(a) An HCC must maintain working capital composed of current assets with a ratio of current assets to current liabilities of 1.25:1, based on the greater of the prior year's actual liabilities or the projected liabilities for the subsequent year, subject to the following requirements, as applicable:

(1) an HCC consisting of physicians and one or more facilities must maintain unencumbered net equity of not less than $200,000; and

(2) an HCC must base its ratio of assets to liabilities on the projected liabilities for the subsequent year if the HCC has not been certified for more than one year.

(b) An HCC must have reserves sufficient to operate and maintain the HCC and to arrange for services and expenses it incurs. An HCC must maintain financial reserves computed in accord with Generally Accepted Accounting Principles in an amount not less than 100 percent of incurred but not paid claims of nonparticipating physicians and providers.

(c) Any HMO or insurer certified by the department that forms an HCC pursuant to Insurance Code §848.001(2)(C)(iii) and (iv) or enters into a contract with an HCC pursuant to Insurance Code §848.103 must maintain a reserve that is:

(1) equivalent in value to three months of prepaid funding or capitation payments;

(2) phased in over a no-more-than 36-month period;

(3) maintained separately from and in addition to all other reserves and liabilities of the HMO or insurer;

(4) unencumbered and dedicated to assure its availability for its intended purpose; and

(5) reported in the aggregate separately from all other reserves and liabilities of the HMO or insurer.

(d) For the purpose of meeting the minimum working capital requirements of this section, current assets of an HCC are limited to U.S. currency, certificates of deposit with fixed terms of one year or less, money market accounts, accounts receivable from government payors, and other accounts receivable that have remained due 90 days or less. Accounts receivable must be reported net of all allowances. Assets with a maturity period or fixed term that is greater than one year are not current assets for purposes of this section.

(e) For the purpose of meeting the minimum reserve and minimum net equity requirements of this section, investments in capital assets, mortgages, notes, and loan-backed securities must be excluded from the calculation of reserves and net equity in determining satisfaction of minimum requirements.

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

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DIVISION 5. HCC CONTRACT ARRANGEMENTS

28 TAC §13.441

STATUTORY AUTHORITY. The new section is adopted under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for a certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§13.441. General Provisions.

(a) An HCC's contracts with physicians and health care providers must not impede application of provisions in Insurance Code Chapters 843 (Health Maintenance Organizations) and 1301 (Preferred Provider Benefit Plans), and in Chapter 11 of this title (relating to Health Maintenance Organizations) and Chapter 3, Subchapter X of this title (relating to Preferred and Exclusive Provider Plans), that impose requirements concerning relations with physicians or health care providers.

(b) An HCC is prohibited from using a financial incentive or making a payment to a physician or health care provider if the incentive or payment acts directly or indirectly as an inducement to limit medically necessary services.

(c) If an HCC participant's market share as calculated under §13.414 of this title (relating to Limited Exemption from Certain Information Filing Requirements) exceeds 50 percent in a PSA for any service that no other HCC participant provides to patients in that PSA, the participant furnishing the service is a dominant provider for purposes of this subchapter. An HCC with a dominant provider is prohibited, in the PSA in which the dominant provider furnishes those services, from:

(1) requiring a private payor to contract exclusively with the HCC; or

(2) otherwise restricting a private payor's ability to contract or deal with other HCCs, networks, physicians, or health care providers.

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

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Sara Waitt
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DIVISION 6. CHANGE OF CONTROL BY ACQUISITION OF OR MERGER WITH HCC

28 TAC §§13.451 - 13.455

STATUTORY AUTHORITY. The new sections are adopted under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for a certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§13.453. Filing Requirements.

(a) Unless an individual or entity has filed with the department the items as set forth in subsection (b) of this section, the individual or entity is prohibited from:

(1) acquiring an ownership interest in an entity that holds a certificate of authority as an HCC if the individual or entity is, or after the acquisition would be, directly or indirectly in control of the certificate holder; or

(2) otherwise acquiring control of or exercising any control over the certificate holder.

(b) An individual or entity described in subsection (a) of this section must, under oath or affirmation, file:

(1) a Biographical Affidavit form for each individual by whom or on whose behalf the acquisition of control is to be effected; and

(2) a Health Care Collaborative (HCC) Acquisition Form.

(c) The department may require a partnership, syndicate, or other group that is subject to the filing requirements specified in subsections (a) and (b) of this section to provide the information required by subsection (b) of this section for each partner of the partnership, each member of the syndicate or group, and each individual or entity who controls the partner or member.

(d) If the partner, member, or entity is a corporation, or if the entity required to file the documents set forth in subsection (b) of this section is a corporation, the department may require that the information under that subsection be provided regarding:

(1) the corporation;

(2) each individual who is an executive officer or director of the corporation; and

(3) each individual or entity who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of the corporation.

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

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DIVISION 7. ADMINISTRATIVE PROCEDURES

28 TAC §13.461

STATUTORY AUTHORITY. The new section is adopted under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for a certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

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Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§13.461. Commissioner's Authority to Require Additional Information.

(a) The commissioner may require additional information from the HCC or any participant in the HCC as reasonably necessary to make any determination required by Insurance Code Chapter 848, this subchapter, and applicable insurance laws and regulations of this state.

(b) The commissioner may require any or all of the additional information set forth in subsection (c) of this section. An HCC or HCC participant is not required to create the items listed in subsection (c) of this section unless and except as the commissioner requires the items to be provided under this section. Once created, the documents must be maintained by the HCC or participant for at least five years.

(c) Additional information the commissioner may require includes the following:

(1) underlying documentation or data supporting any information, reports, or memoranda submitted to the department under the Insurance Code or this title;

(2) contact information for current participants or employees of the HCC, and last known contact information for former participants or employees;

(3) interviews by the department with individuals affiliated with the HCC or HCC participants;

(4) any participant's agendas, minutes, recordings, summaries, handouts, or presentations to the HCC;

(5) documents relating to past, current, or planned fees, risk-sharing, fee schedules, fee conversion factors, withholds, capitation, pricing plans, pricing strategies, or other forms of payment;

(6) documents relating to planned additions to the participation in the HCC or expansions of participants in the HCC;

(7) de-identified information regarding utilization of services by the HCC's patients or participants, including both medical and financial information;

(8) current bylaws, rules, or regulations of an HCC participant's professional staff or any of its departments or subunits;

(9) questionnaires submitted by participants to applicable professional associations in connection with annual surveys of association members, and to any other association, accreditation agency, or government agency, in connection with any annual or other periodic survey of the participant;

(10) reports prepared by accreditation agencies in connection with accreditation of the HCC or any HCC participant;

(11) revenue-and-cost reports, profitability reports, and other financial reports;

(12) internal or external reports relating to quality of care at any health care service location in each service area by the HCC or its participants, including:

(A) data or reports submitted to or received from or by quality rating organizations;

(B) quality-of-care initiatives;

(C) quality assurance or quality improvement systems; and

(D) the effect of changes in health care service location quality on patient volume and revenue;

(13) financial reports regularly prepared by or for the HCC applicant on any periodic basis relating to any arranged health care service;

(14) memoranda, excluding engineering and architectural plans and blueprints, relating to plans of the HCC applicant, or any participant, for the construction of new facilities, the closing of any existing facilities, or an expansion, a conversion, or a modification of current facilities;

(15) memoranda relating to plans of, or steps undertaken by the HCC applicant or any participant for any acquisition, divestiture, joint venture, alliance, or merger involving any participant in the service area other than the application for certificate of authority of the applicant;

(16) memoranda analyzing or discussing the effect of any merger, joint venture, acquisition, or consolidation of HCCs in the applicant's service area, including the HCC's application if approved, on the HCC's prices, costs, margins, service quality, or any other aspect of competitive performance, including:

(A) memoranda comparing the actual cost savings or other benefits of the transactions to those previously projected; and

(B) memoranda discussing how the benefits were or might be achieved;

(17) a description relating to the consolidation or realignment of any medical and health care services arranged by or through the applicant whether completed, in progress, or planned among the participants;

(18) the names and addresses of all contracting physicians, in Excel-compatible format;

(19) documents created or used by, for, or on behalf of the applicant for the purpose of soliciting physicians or health care providers to join the applicant as an employee or participant, promoting continued participation in the applicant, or otherwise offering, promoting, or advertising the applicant's services or activities on behalf of physicians or health care providers, and all documents supplied by the HCC to newly recruited physicians or health care providers;

(20) contracts between the HCC applicant or any of its participants and any private payor, all attachments to the contracts, and all documents relating to the contracts, including:

(A) documents sufficient to show the name, contact person, and telephone number of each health plan contracting with the applicant for physician services;

(B) documents relating to fees, fee schedules, fee conversion factors, withholds, capitation, pricing plans, pricing strategies, or other forms of payment;

(C) documents discussing actual or potential negotiations, offers, or responses to any contract, fee schedule, or risk-sharing arrangement with a third-party payor;

(D) copies of internal memoranda relating to:

(i) the development or negotiation of contracts with payors or participants, and internal HCC decisions regarding negotiating positions;

(ii) competition to obtain contracts;

(iii) decisions to terminate contracts;

(iv) draft, contingent, or expired contracts, including contracts not entered into, not yet finalized or in force, or no longer in force; and

(v) contract amendments or modifications; and

(E) the beginning date and termination date, as applicable, for each contract;

(21) documents relating to plans, interests, or steps undertaken by the HCC applicant for any acquisition, divestiture, joint venture, alliance, collaboration, license, or merger with any HCC or other health care provider, including:

(A) any notes or minutes taken; or

(B) reports, memoranda, or correspondence regarding meetings between the HCC applicant and any other HCC or other health care provider;

(22) documents reflecting:

(A) actual or planned lease, management contract, or other agreement for the HCC applicant to operate a facility in the service area that is, or will be, owned in whole or in part by another individual or entity; and

(B) formal or informal commercial or operational relationships or affiliations that have existed, exist, or are planned between or among any facilities, or facilities and any physician organizations in the service area, including purchases by the HCC applicant of services from other facilities or from physician organizations, and vice versa;

(23) for each participant, summaries and interpretations of contract terms and methodologies used to determine the payment due to the participant under a contract with a payor in effect at any time during the previous three years for each treatment, office visit, or other medical or health care service provided or delivered in the service area;

(24) a list and description by Current Procedural Technology code, if available, of each medical or health care service arranged by or through the applicant in the HCC's service area, and for each code listed, a statement of:

(A) the number of procedures performed;

(B) the amount of revenue received by the applicant;

(C) the ZIP code for each patient receiving the procedure or service; and

(D) the location of the office where the procedure or service was performed; and

(25) documents reflecting participants' contribution margins or identifying or quantifying fixed or variable costs for the provision of any health care service in the service area.

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

Filed with the Office of the Secretary of State on March 11, 2013.

TRD-201301076
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: March 31, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 463-6327

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DIVISION 8. OTHER REQUIREMENTS

28 TAC §§13.471 - 13.474

STATUTORY AUTHORITY. The new sections are adopted under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for a certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable ex-

penses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§13.473. Organization of an HCC.

(a) The governing body, which must comply with the requirements described in Insurance Code §848.052, must have ultimate responsibility for the development, approval, implementation, and enforcement of administrative, operational, personnel, and patient care policies and procedures related to the operation of the HCC.

(b) The HCC must have a clinical director who:

(1) is currently licensed in Texas or otherwise authorized to practice in this state in the field of services offered by the HCC;

(2) resides in Texas;

(3) is available at all times to address complaints, clinical issues, utilization review, and any quality-of-care issues on behalf of the HCC;

(4) demonstrates active involvement in all quality management activities; and

(5) is subject to the HCC's credentialing requirements, as appropriate.

(c) The HCC may establish one or more service areas within Texas. For each defined service area, the HCC must:

(1) provide a delivery network that is adequate and complies with Insurance Code Chapter 848, and demonstrate to the department the ability to provide continuity, accessibility, availability, and quality of services that the HCC has contracted or will contract to provide within the HCC's service area, including the following, as applicable:

(A) participants that are sufficient in number, size, and geographic distribution to be capable of furnishing the contracted health care services, taking into account the number of potential patients, their characteristics, and their medical and health care needs, including the following:

(i) current utilization of covered health care services within the prescribed geographic distances outlined in this section; and

(ii) projected utilization of covered health care services;

(B) an adequate number of participants available and accessible to patients 24 hours a day, seven days a week;

(C) sufficient numbers and classes of participants to ensure choice, access, and quality of care;

(D) an adequate number of participating physicians who have admitting privileges at one or more participating hospitals to make any necessary hospital admissions;

(E) emergency care that is available and accessible 24 hours a day, seven days a week;

(F) services sufficiently available and accessible as necessary to ensure that the distance from any point in the HCC's designated service area to a point of service is not greater than:

(i) 30 miles in nonrural areas and 60 miles in rural areas for primary care and general hospital care; and

(ii) 75 miles for specialty care and specialty hospitals;

(G) urgent care available and accessible within 24 hours for health and behavioral health conditions;

(H) routine care available and accessible:

(i) within three weeks for health conditions; and

(ii) within two weeks for behavioral health conditions;

(I) preventive health services available and accessible:

(i) within two months for a child, or earlier if necessary for compliance with nationally recognized recommendations for specific preventive care services; and

(ii) within three months for an adult;

(2) specify the counties and ZIP codes, or any portions of any counties, included in the service area; and

(3) maintain separate cost center accounting for each service area to facilitate the reporting of divisional operations as required for HCC financial reporting.

(d) The HCC must maintain in force in its own name a fidelity bond on its officers and employees.

(1) The fidelity bond must be in an amount of at least $100,000, or another amount prescribed by the commissioner, and issued by an insurer that holds a certificate of authority in this state.

(2) The fidelity bond must obligate the surety to pay any loss of money or other property the HCC sustains because of an act of fraud or dishonesty by an employee or officer of the HCC, acting alone or in concert with others, while employed or serving as an officer of the HCC.

(3) Subject to the same coverage amount and conditions required for a fidelity bond under this subsection, an HCC may, instead of obtaining a fidelity bond:

(A) obtain and maintain in force in its own name insurance coverage in a form and amount acceptable to the commissioner; or

(B) deposit with the Texas Comptroller of Public Accounts readily marketable liquid securities acceptable to the commissioner.

§13.474. Requirements for HMO or Insurer Delegation of Functions to HCCs.

(a) An HMO's delegation of functions to an HCC is subject to the requirements of Insurance Code Chapter 1272 and Chapter 11, Subchapter AA of this title (relating to Delegated Entities).

(b) An insurer's delegation of functions to an HCC is subject to the requirements of Insurance Code Chapter 1272 and Chapter 11, Subchapter AA of this title as if the insurer were an HMO.

(c) If a provision of this subchapter imposes a compliance requirement that is greater than or in conflict with those contained in Insurance Code Chapter 1272 or Chapter 11, Subchapter AA of this title, the requirement of this subchapter governs.

(d) A delegation agreement between an HMO or insurer and an HCC must mandate that the HMO or insurer disclose in all provider

listings distributed to insureds or enrollees those providers participating in the HCC within the HMO's or insurer's approved service area.

(e) If an insurer contracts for services with an HCC on a basis other than fee-for-service, the insurer must disclose the nature of its payment arrangement with the HCC in either the insurance policy and certificates or in any provider listing distributed to insureds.

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

Filed with the Office of the Secretary of State on March 11, 2013.

TRD-201301077
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: March 31, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 463-6327

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DIVISION 9. QUALITY AND COST OF HEALTH CARE SERVICES

28 TAC §§13.481 - 13.483

STATUTORY AUTHORITY. The new sections are adopted under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for a certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§13.482. Quality Assurance and Quality Improvement.

(a) An HCC must establish, implement, and administer a continuous quality assurance and quality improvement program that includes defined policies and processes to:

(1) promote evidence-based medicine and best practices;

(2) secure patient engagement;

(3) promote coordination of care across a continuum of care; and

(4) measure and report the quality of health care services and the impact on cost.

(b) Unless otherwise approved by the commissioner, the program must include:

(1) appropriate practice evaluation tools applicable to the services provided by the HCC, including:

(A) Consumer Assessment of Healthcare Providers and Systems surveys developed by the Agency for Healthcare Research and Quality;

(B) Agency for Healthcare Research and Quality standards, as available; and

(C) National Quality Forum-endorsed standards;

(2) periodic review; and

(3) policies for coordinating with the HCC's quality improvement committee to make necessary updates and adjustments.

(c) The patient engagement process must include, as appropriate:

(1) evaluating the health needs of its enrolled population;

(2) communicating clinical knowledge to patients and patient representatives clearly and understandably;

(3) promoting patient engagement, including engagement in treatment decisions; and

(4) establishing written standards for patient communications.

(d) The processes to promote coordination of care across a continuum of care must include, as appropriate:

(1) a method or system to identify high-risk individuals; and

(2) processes to manage care throughout an episode of care and during transitions.

(e) The processes for measuring and reporting quality of health care services and impact on cost must include:

(1) measurement and evaluation of health care services and processes described in subsection (a)(1) - (3) of this section; and

(2) as appropriate, a process for medical peer review and arrangements for sharing pertinent medical records between participants and ensuring the record's confidentiality.

§13.483. Credentialing.

An HCC must implement a documented process for selection and retention of contracted participants. The credentialing process must comply with the standards promulgated by the National Committee for Quality Assurance, URAC, the Joint Commission on Accreditation of Hospital Organizations, or the Accreditation Association for Ambulatory Health Care, as appropriate, to the extent that those standards are applicable and do not conflict with other laws of this state.

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

Filed with the Office of the Secretary of State on March 11, 2013.

TRD-201301078
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: March 31, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 463-6327

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DIVISION 10. COMPLAINT SYSTEMS; RIGHTS OF PHYSICIANS; LIMITATIONS ON PARTICIPATION

28 TAC §§13.491 - 13.494

STATUTORY AUTHORITY. The new sections are adopted under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for a certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§13.491. Complaint Systems.

(a) Each HCC must implement and maintain a complaint system that complies with Insurance Code §848.107 and this division that provides reasonable procedures for resolving an oral or written complaint initiated by a complainant concerning the HCC or health care services arranged by, or offered through, the HCC.

(b) For purposes of this subchapter, a complaint is any oral or written expression of dissatisfaction by a complainant to an HCC regarding any aspect of the HCC's operation.

(c) The HCC's complaint system must address a complaint initiated:

(1) by or on behalf of a patient who sought or received health care services by a participant; or

(2) by a participant.

(d) The complaint system for complaints initiated by or on behalf of patients must include a process for the notice and appeal of a complaint.

(e) The commissioner has discretion to examine a complaint system for compliance with Insurance Code §848.107 and this subchapter and will require the HCC to make corrections that the commissioner considers necessary.

§13.492. Complaints; Deadlines for Response and Resolution.

(a) Not later than seven calendar days after receipt of an oral or written complaint, the HCC must:

(1) acknowledge receipt of the complaint in writing;

(2) acknowledge the date of receipt; and

(3) provide a description of the HCC's complaint procedures, its appeal process for complaints filed by patients, and deadlines associated with each.

(b) An HCC must investigate each complaint received in accord with the HCC's policies and in compliance with Insurance Code §848.107 and this subchapter.

(c) After an HCC has investigated a complaint, the HCC must issue a resolution letter to the complainant not later than the 30th calendar day after the HCC receives the written complaint or the close of any hearing held under §13.493(2) of this title (relating to Rights of Physicians) that:

(1) explains the HCC's resolution of the complaint;

(2) states the specific reasons for the resolution;

(3) states the specialization of any health care provider consulted; and

(4) states, if the complainant is a patient who is dissatisfied with the resolution of the complaint, that the complainant may file an appeal of the complaint resolution, or may file a complaint with the department.

(d) In situations in which a patient complaint has been appealed, the HCC must issue a decision letter after considering the appeal that includes specific reasons for the decision and states that if the complainant is dissatisfied with the resolution of the complaint, the appeal, or the complaint process, the complainant may file a complaint with the department.

(e) An HCC must maintain a complaint log that captures each complaint by category, including at least the following:

(1) quality of care or services;

(2) accessibility and availability of services, providers, or both;

(3) complaint procedures;

(4) physician and provider contracts;

(5) claims processing and bill payment disputes; and

(6) miscellaneous.

(f) Each HCC must maintain the complaint log required under subsection (e) of this section and documentation on each complaint, complaint proceeding, and action taken on the complaint until the third anniversary after the date the complaint was received.

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

Filed with the Office of the Secretary of State on March 11, 2013.

TRD-201301079
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: March 31, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 463-6327

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider for readoption, revision, or repeal Chapter 91, §§91.101 (Definitions and Interpretations), 91.103 (Public Notice of Department Decisions), 91.104 (Public Notice and Comment on Certain Applications), 91.105 (Acceptance of Other Application Forms), 91.110 (Protest Procedures for Applications), 91.115 (Safety at Unmanned Teller Machines), 91.120 (Posting of Notice Regarding Certain Loan Agreements), 91.121 (Complaint Notification), 91.125 (Accuracy of Advertising), 91.201 (Incorporation Procedures), 91.202 (Bylaw and Articles of Incorporation Amendments), 91.203 (Share and Deposit Insurance Requirements), 91.205 (Credit Union Name), 91.206 (Underserved Area Credit Unions--Secondary Capital Accounts), 91.208 (Notice of Known or Suspected Criminal Violations), 91.209 (Call Reports and Other Information Requests), 91.210 (Foreign Credit Unions), 91.1003 (Mergers/Consolidations), 91.1005 (Conversion to a Texas Credit Union), 91.1006 (Conversions to a Federal or Out-of-State Credit Union), 91.1007 (Conversion to a Mutual Savings Institution), 91.1008 (Conversion Voting Procedures and Restrictions; Filing Requirements), 91.3001 (Opportunity to Submit Comments on Certain Applications), and 91.3002 (Conduct of Meetings to Receive Comments) of Title 7, Part 6 of the Texas Administrative Code in preparation for the Commission's Rule Review as required by §2001.039, Government Code.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Comments or questions regarding these rules may be submitted in writing to Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or electronically to info@cud.texas.gov. The deadline for comments is April 30, 2013.

The Commission also invites your comments on how to make these rules easier to understand. For example:

* Do the rules organize the material to suit your needs? If not, how could the material be better organized?

* Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?

* Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?

* Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

* Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register.* The proposed rules will be open for public comment prior to final adoption by the Commission.

TRD-201301160
Harold E. Feeney
Commissioner
Credit Union Department
Filed: March 20, 2013

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Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission proposes to review the rules in 13 TAC Chapter 8, concerning the TexShare Library Consortium, pursuant to the requirements of the Texas Government Code, §2001.039.

The rules were adopted pursuant to the Texas Government Code, §441.222, that requires the Texas State Library and Archives Commission to establish and maintain the TexShare consortium. The rules are necessary to carry out the statutory obligations of the Texas State Library and Archives Commission for the establishment of standards for school library programs.

Written comments on the Texas State Library and Archives Commission review of 13 TAC Chapter 8 rules may be directed to Deborah Littrell, Director, Library Development and Networking Division, P.O. Box 12927, Austin, Texas 78711-2927 or by fax to (512) 463-8800.

TRD-201301151
Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
Filed: March 20, 2013

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Adopted Rule Reviews

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission has completed the review of rules in 13 TAC Chapter 6, concerning the management, retention, microfilming, and electronic storage of state agency records and the fee schedules for the commission's imaging and records storage services. Notice of the review was published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8860).

No comments were received during the comment period.

The commission finds that the reasons for the adoption of the rules in 13 TAC Chapter 6 continue to exist. The rules are necessary to fulfill the statutory obligations of the Texas State Library and Archives Commission in the management of state records and for state agencies to meet the requirements of the Texas Government Code, Chapter 441, Subchapter L, relating to the preservation and management of state records.

The rules in Chapter 6 are readopted in accordance with the Texas Government Code, §2001.039, and under authority of the Texas Government Code, §441.182, which permits the Texas State Library and Archives Commission to adopt rules to manage the state records program.

The rules affect the Texas Government Code, Chapter 441, Subchapter L.

TRD-201301150
Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
Filed: March 20, 2013

Texas Department of Agriculture

Request for Applications: Young Farmer Grant Program

Statement of Purpose. Pursuant to the Texas Agriculture Code, §58.011, the Texas Department of Agriculture (TDA) is requesting applications for the Young Farmer Grant program (YFGP). The YFGP is administered by TDA under the direction of the Texas Agricultural Finance Authority (TAFA). The purpose of this program is to provide financial assistance in the form of dollar-for-dollar matching grant funds to those persons 18 years or older but younger than 46 years of age that are engaged or will be engaged in creating or expanding an agricultural business in Texas.

Submission Dates/Locations. Forms required for submitting an application are available by accessing TDA's website at: www.TexasAgriculture.gov or by emailing TAFA at finance@TexasAgriculture.gov. One hard copy of the application must arrive no later than 5:00 p.m. on **May 3, 2013** to one of the following:

Physical Address: Texas Department of Agriculture, Texas Agricultural Finance Authority, Attn: Allen Regehr, 1700 N. Congress Avenue, 2nd Floor, Austin, Texas 78701; Telephone Number: (512) 463-9932 or (512) 463-4320; Fax Number: (888) 216-9867.

Mailing Address: Texas Department of Agriculture, Texas Agricultural Finance Authority, Attn: Allen Regehr, P.O. Box 12847, Austin, TX 78711.

Proposals must set forth accurate and complete information as required by this Request for Applications (RFA). Oral modifications will not be considered. Electronic applications will not be accepted or considered.

Eligibility. Grant applications will be accepted from any person 18 years or older but younger than 46 years of age that is engaged or will be engaged in creating or expanding agriculture in Texas. The applicant must be able to make dollar-for-dollar matching expenditures to sustain, create or expand the proposed project.

Application Requirements.

Funding Parameters: The TAFA Board of Directors (board) anticipates funding in an amount of $150,000 for grants not less than $5,000 and not to exceed $10,000 per grant application. Recipients will have up to two years to expend grant funds.

The TAFA board reserves the right to fully or partially fund any particular grant application.

Form Requirements: Applications must be submitted on form RED-300 for consideration. Required forms and instructions are available by accessing TDA's website at www.TexasAgriculture.gov or by emailing TAFA at: finance@TexasAgriculture.gov. An applicant is permitted to submit only one application pursuant to this RFA. Multiple grant applications submitted by the same applicant under the same RFA will be rejected and will not be considered by the board.

Budget Information: YFGP projects are paid on a cost reimbursement basis.

1. Eligible Expenses. Generally, eligible expenses include those costs that are necessary and reasonable for proper and efficient performance and administration of a project. Expenses must be properly documented with sufficient detail, including copies of invoices. Examples of eligible expenditures are:

Personnel costs - both salary and benefits of those that perform work for the grant recipient;

Materials and direct operating expenses - equipment that costs less than $5,000 per unit, animals, seed, fertilizer, irrigation, etc.;

Equipment - nonexpendable, tangible personal property having a useful life of less than one year and an acquisition cost of less than $5,000;

Other expenses - any expenses that do not fall into the above categories; and

Indirect expenses - the YFGP limits reimbursable indirect expenses to 10% of the grant award.

2. Ineligible Expenses. Expenses that are prohibited by state or federal law are ineligible. Examples of these expenditures are:

Alcoholic beverages;

Entertainment;

Contributions for charitable, political, or lobbying purposes;

Expenses falling outside of the contract period;

Expenses for expenditures not listed in the project budget;

Expenses that are not adequately documented;

Value of applicant's own services;

Land; and

Personal property or other capital items with a useful life of more than one year and a cost of more than $5,000.

3. Description of the Budget. Applicant must present an overall project budget and include the following items in the budget description:

A. Wages: Grant funds may be used for directly supporting salaries and wages of employees, but not for the value of your own services.

B. Materials and Direct Operating Expenses: The grant may be used for expenses that are directly related to the day-to-day operation of the project, if those expenses are not included in any other budget category, and if those expenses have an acquisition cost of less than $5,000 per unit. An applicant must allocate costs on a prorated basis for shared usage.

C. Equipment: Eligible equipment is defined as tangible personal property having a useful life of less than one year and an acquisition cost of $5,000 or less per unit. Applicants must submit a list of all proposed equipment purchases for approval. Recipients are not authorized to purchase any equipment until they have received written approval to do so from the Commissioner or his designee through the original grant award or a subsequent grant adjustment notice. The YFGP may refuse any request for equipment. Decisions regarding equipment purchases are made based on whether or not the grant recipient has demonstrated

that the requested equipment will be purchased at a reasonable cost and is essential to the successful operation of the project.

D. Professional/Contractual: Any contract or agreement between a grant recipient and a third party must be in writing and consistent with Texas law. Recipients must maintain adequate documentation supporting budget items for a contractor's time, services, and rates of compensation.

E. Indirect Expenses: Grant funds may be used for indirect costs up to 10% of the amount of the grant award.

F. Additional Budget Information: Applicant should provide additional information that will be helpful to the TAFA board in evaluating a grant application, including justification for equipment purchases, a list of subcontractors and amounts, a list of key personnel and salaries to be paid with the grant, and a description of other large expenditures.

G. Documentation of Employment Status. Applicant should be prepared to furnish documentation of lawful employment status for each employee included in personnel costs for the project.

Evaluation of Applications. The TAFA board will review and evaluate all applications. Prior to consideration by the board, TDA staff will score and rank the applications based on the criteria identified by the TAFA board. The board is not required to make awards based solely on staff's scoring or ranking of the applications. The board may consider other factors in making grant awards under the program, including, without limitation, the quality of the application, applicant's need for financial assistance, the project's ability to create, enhance, or sustain applicant's agricultural operation, the project's ability to improve overall agricultural productivity in Texas, and the project's ability to increase the number of agricultural enterprises in Texas that are owned and operated by young farmers.

Award Information and Notification. The TAFA board will approve projects for funding. The TAFA board reserves the right to accept or reject any or all applications. TDA and TAFA are under no legal or other obligation to award a grant on the basis of a submitted application. Neither TDA nor TAFA will pay for any cost or expense incurred by applicant or any other entity in responding to this RFA, including, without limitation, compensation for the value of applicant's time or services incurred in responding to this RFA.

Public announcements and written notifications of funding rounds will be made. Selected applicants will be notified of the amount of award, duration of the grant, and any special conditions associated with the project.

General Compliance Information.

1. Prior to accepting the Young Farmer grant and signing the grant agreement, the recipient will be provided a copy of TDA reporting requirements, for review and execution. The Grant Agreement outlines billing procedures, annual reporting requirements, procedures for requesting a change in the scope or budget for a project, and other miscellaneous items.

2. Late or incomplete applications will not be accepted.

3. Any delegation by a grant recipient to a subcontractor regarding any duties and responsibilities imposed by the grant award must be approved in advance by TDA but shall not relieve the recipient of responsibility for performance.

4. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature, TDA and TAFA.

5. Any information or documentation submitted to TDA in connection with a grant application is subject to disclosure under the Texas Public Information Act.

6. While TDA and TAFA attempt to observe the strictest confidence in handling applications, they cannot guarantee complete confidentiality on any matter. The confidentiality of applicant's "proprietary data", if so designated, shall be strictly observed to the extent permitted by Texas law, including the Texas Public Information Act.

7. The ownership and disposition of all patentable products and intellectual property inventories shall be subject to the agreement of the grant recipient and TDA.

8. Funded projects must remain in full compliance with state and federal law and regulations. Noncompliance may result in termination.

9. Grant recipients must keep a separate bookkeeping account with a complete record of all expenditures relating to the project. Records shall be maintained for three years after the completion of the project or as otherwise agreed with TDA. TDA and the Texas State Auditor's Office reserve the right to examine all books, documents, records, and accounts relating to the project at any time throughout the duration of the grant agreement and for three years immediately following completion of the project. If there has been any litigation, claim, negotiation, audit or other action started prior to the expiration of the three-year period involving the project's records, then the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. TDA and the Texas State Auditor's Office reserve the right to inspect project locations and to obtain full information regarding all project activities.

10. If a grant recipient has a financial audit performed in any year during which the recipient receives grant funds, the recipient shall, upon TDA's request, provide a complete copy of such audit and all information related thereto to TDA and/or TAFA, including the audit transmittal letter, management letter, and any schedules in which grant funds are analyzed, discussed, included, or reported.

11. Grant awards shall comply in all respects with the Uniform Grant Management Standards (UGMS). A copy may be downloaded from the following website: http://www.governor.state.tx.us/files/state-grants/UGMS062004.doc.

For any questions: Please contact Allen Regehr at (512) 463-9932 or by email at: finance@TexasAgriculture.gov.

TRD-201301157
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: March 20, 2013

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Central Texas Council of Governments

Request for Qualifications

The Central Texas Council of Governments (CTCOG) has issued a Request for Qualifications (RFQ) for a Watershed Coordinator for the Leon River Watershed Stakeholder Group.

Copies of the RFQ may be obtained on the CTCOG website (www.ctcog.org) or at 2180 North Main Street, Belton, Texas.

Responses to the RFQ must be submitted in their entirety to CTCOG no later than 2:00 p.m. Friday, April 5, 2013, at the following address:

Jim Reed, AICP

Executive Director, CTCOG

Central Texas Council of Governments

2180 North Main Street

P.O. Box 729

Belton, Texas 76513

(254) 770-2236

All questions and inquiries should be addressed to the above address.

TRD-201301114
Jim Reed
Executive Director
Central Texas Council of Governments
Filed: March 15, 2013

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Comptroller of Public Accounts

Notice of Contract Award

The Texas Comptroller of Public Accounts (Comptroller) announces the award of a TRAN bond counsel contract to Andrews Kurth, LLP (Contractor), 111 Congress Avenue, Suite 1700, Austin, Texas 78701, under Request for Proposals (RFP) 206b. The total amount of the contract is not to exceed $200,000.00. The term of the contract is March 12, 2013, through August 31, 2015.

The notice of the RFP was published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8872).

TRD-201301111
Jennifer W. Sloan
General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 14, 2013

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Notice of Request for Applications

Pursuant to Chapters 403, 447 and 2305, Texas Government Code; and the State Energy Plan (SEP) and related legal authority and regulations, the Texas Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO), announces this Request for Applications (RFA #AF-G1-2013) and Notice of Funding Availability of $1,400,000.00 (individual awards, if any, are not-to-exceed $200,000.00) in grant funding and invites applications from eligible interested Texas political subdivisions or taxpayer-supported Texas Independent School District (ISDs) for grant funds for the Alternative Fuels Initiatives Program of the State Energy Conservation Office (SECO). To be eligible, prospective applicants must be a Texas political subdivision or a taxpayer-supported Texas ISD. Applications must include a twenty percent (20%) match of total project costs. Comptroller reserves the right to award more than one grant under the terms of this RFA. If a grant award is made under the terms of the RFA, selected applicants will be expected to begin performance of the grant agreement on or about May 10, 2013, or as soon thereafter as practical.

Contact: For general questions about these instructions or the application form, please contact Jason C. Frizzell, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, at: 111 E. 17th Street, Room 201, Austin, Texas 78774 (Issuing Office) via email to contracts@cpa.state.tx.us or fax to (512) 463-3669. This RFA will be published after 10:00 a.m. Central Time (CT) on Friday, March 29, 2013 and posted on the Electronic State Business Daily (ESBD) at: http://esbd.cpa.state.tx.us after 10:00 a.m. CT on Friday, March 29, 2013. The application and sample grant agreement will be posted shortly thereafter on the following website: http://www.seco.cpa.state.tx.us/funding/.

Questions: All written inquiries and questions must be received in the Issuing Office no later than 2:00 p.m. (CT) on April 5, 2013. Prospective applicants are encouraged to send questions via email to contracts@cpa.state.tx.us or fax to (512) 463-3669 to ensure timely receipt. On or about April 12, 2013, or as soon thereafter as practical, Comptroller expects to post responses to the questions received by the deadline on the on the Electronic State Business Daily website at: http://esbd.cpa.state.tx.us/. Late Questions will not be considered under any circumstances.

Closing Date: Applications must be delivered to the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. (CT), on Friday, April 26, 2013. Comptroller will NOT accept applications submitted via fax or email. Late applications will not be accepted or considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of applications in the Issuing Office.

Evaluation Criteria: Applications will be evaluated under the criteria outlined in the grant application and instructions for this RFA. Comptroller reserves the right to accept or reject any or all applications submitted. Comptroller is not obligated to execute a grant agreement on the basis of this notice or the distribution of any RFA. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or to the RFA.

The anticipated schedule of events pertaining to this RFA is as follows: Issuance of RFA - March 29, 2013, after 10:00 a.m. CT; Questions Due - April 5, 2013, 2:00 p.m. CT; Official Responses to Questions posted - April 12, 2013; Applications Due - April 26, 2013 2:00 p.m. CT; Grant Agreement Execution - May 10, 2013, or as soon thereafter as practical. Commencement of Project - May 10, 2013, or as soon thereafter as practical.

TRD-201301155
Jason Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 20, 2013

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/25/13 - 03/31/13 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/25/13 - 03/31/13 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 04/01/13 - 04/30/13 is 5.00% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 04/01/13 - 04/30/13 is 5.00% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201301130

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 18, 2013

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Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from InvesTex Credit Union (Houston) seeking approval to merge with StarTrust Federal Credit Union (Houston). InvesTex Credit Union will be the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201301144
Harold E. Feeney
Commissioner
Credit Union Department
Filed: March 20, 2013

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

Alpine Community Credit Union, Alpine, Texas - See *Texas Register* issue dated November 30, 2012.

Grand Prairie Credit Union, Grand Prairie, Texas - See *Texas Register* issue dated December 28, 2012.

Brazos Valley Schools Credit Union (#2), Katy, Texas - See *Texas Register* issue dated December 28, 2012.

Texas Bay Area Credit Union, Pasadena, Texas - See *Texas Register* issue dated December 28, 2012.

EECU, Fort Worth, Texas - See *Texas Register* issue dated January 25, 2013.

PosTel Family Credit Union, Wichita Falls, Texas - See *Texas Register* issue dated January 25, 2013.

Application to Expand Field of Membership - Denied

Brazos Valley Schools Credit Union (#1), Katy, Texas - See *Texas Register* issue dated December 28, 2012.

Application for a Merger or Consolidation - Approved

Unity One Credit Union (Fort Worth) and Argentine Santa Fe Industries Credit Union (Kansas) - See *Texas Register* issue dated November 30, 2012.

TRD-201301145
Harold E. Feeney
Commissioner
Credit Union Department
Filed: March 20, 2013

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Texas Education Agency

Notice of Correction: Request for Applications Concerning Preschool Transition Education Training (PTET) Grant Program

The Texas Education Agency (TEA) published Request for Applications (RFA) #701-13-103 concerning the Preschool Transition Education Training (PTET) Grant Program in the February 1, 2013, issue of the *Texas Register* (38 TexReg 511).

The TEA is amending the deadline for receipt of applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, April 4, 2013, to be eligible to be considered for funding. This correction reflects a change from the original deadline date of Thursday, March 21, 2013.

The TEA is also amending the grant start date to July 15, 2013. This correction reflects a change from the original start date of July 1, 2013.

Further Information. For clarifying information about the RFA, contact Howard Morrison, Division of Federal and State Education Policy, TEA, (512) 936-6060.

TRD-201301149
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: March 20, 2013

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is April 29, 2013. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on April 29, 2013.

Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: 529 #35 LTD.; DOCKET NUMBER: 2012-2367-MWD-E; IDENTIFIER: RN102183613; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and TWC, §26.121(a)(1), by failing to maintain authorization for the discharge of wastewater; PENALTY: $8,750; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: ALISHAH SHAIKH, INCORPORATED dba New Way Grocery; DOCKET NUMBER: 2012-2390-PST-E; IDENTIFIER: RN102357498; LOCATION: Tyler, Smith County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $7,500; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: ALKA CORPORATION dba Circle P Food Store; DOCKET NUMBER: 2012-2529-PST-E; IDENTIFIER: RN102349511; LOCATION: Crockett, Houston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(b) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the suction piping associated with the UST system; PENALTY: $3,893; Supplemental Environmental Project offset amount of $1,557 applied to City of Baytown - Hospital Remediation Project at Goose Creek; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: AL-QAMAR, INCORPORATED dba Zam Zam Water Supply; DOCKET NUMBER: 2012-1784-PWS-E; IDENTIFIER: RN101196160; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to timely provide the results of annual nitrate/nitrite monitoring to the executive director; 30 TAC §§290.106(e), 290.107(e), 290.108(e), and 290.113(e), by failing to provide the results of triennial mineral, synthetic organic contaminant, Stage 1 Disinfectant By-product, and radionuclide monitoring to the executive director; 30 TAC §290.107(e), by failing to provide the results of the sexenniel volatile organic contaminant monitoring to the executive director; 30 TAC §290.109(c)(4)(B), by failing to collect one raw groundwater source *escherichia coli* sample from the facility's well within 24 hours of notification of a distribution total coliform-positive result during the month of October 2010; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of each quarter; PENALTY: $1,598; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: ANMOL ENTERPRISES, INCORPORATED dba Tarkington Exxon; DOCKET NUMBER: 2012-2680-PST-E; IDENTIFIER: RN101780450; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,563; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Big Oaks Municipal Utility District; DOCKET NUMBER: 2012-2693-MWD-E; IDENTIFIER: RN102080025; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013021001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; and 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ0013021001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; PENALTY: $2,025; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: CHAIRMAN, LLC dba Stuckey's Pecan Shoppe 109; DOCKET NUMBER: 2012-2579-PST-E; IDENTIFIER: RN102894516; LOCATION: Anahuac, Chambers County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Channelview Independent School District; DOCKET NUMBER: 2012-2610-PST-E; IDENTIFIER: RN101914232; LOCATION: Channelview, Harris County; TYPE OF FACILITY: gasoline fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; Supplemental Environmental Project offset amount of $2,700 applied to Gulf Coast Waste Disposal Authority - River, Lakes, Bays, and Bayous Trash Bash; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: CHEVRON U.S.A., INCORPORATED; DOCKET NUMBER: 2012-2684-PST-E; IDENTIFIER: RN102005337; LOCATION: Bellaire, Harris County; TYPE OF FACILITY: emergency generators with four underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the UST system; and 30 TAC §§101.27(g), 335.323(a), and 335.324(a), TWC, §5.702, and Texas Health and Safety Code, §382.0621, by failing to pay outstanding and additional late fees for Air Emissions and Hazardous Waste Facility Account Numbers 21006232, 21001579, 21003863,

21004662, and 0300005F; PENALTY: $5,767; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: City of Arlington; DOCKET NUMBER: 2012-2663-PST-E; IDENTIFIER: RN102064599; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: emergency generator with one underground storage tank (UST); RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: City of Cleveland; DOCKET NUMBER: 2013-0173-MWD-E; IDENTIFIER: RN101613735; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010766002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $1,375; Supplemental Environmental Project offset amount of $1,100 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: City of Dickens; DOCKET NUMBER: 2012-2507-MWD-E; IDENTIFIER: RN101919389; LOCATION: Dickens, Dickens County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5) and Texas Pollutant Discharge Elimination System Permit Number WQ0011138001, Operational Requirements Number 1, by failing to ensure at all times that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(13) COMPANY: City of Idalou; DOCKET NUMBER: 2013-0019-PWS-E; IDENTIFIER: RN101406825; LOCATION: Idalou, Lubbock County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.122(b)(2)(A), by failing to post public notification for failure to comply with the Maximum Contaminant Level (MCL) for arsenic for the first quarter of 2011 at Entry Point 001 and Entry Point 002; and 30 TAC §290.107(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the MCL of 0.007 milligrams per liter for 1,1-Dichloroethylene, based on the running annual average; PENALTY: $330; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(14) COMPANY: City of Missouri City; DOCKET NUMBER: 2013-0050-PST-E; IDENTIFIER: RN101826022; LOCATION: Missouri City, Fort Bend County; TYPE OF FACILITY: gasoline fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §21.4 and TWC, §5.702, by failing to pay Consolidated Water Quality fees and associated late fees for TCEQ Financial Administration Account Numbers 23003571, 23004673, and 23006394 for Fiscal Year 2013; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: City of Panhandle; DOCKET NUMBER: 2013-0048-PWS-E; IDENTIFIER: RN102670874; LOCATION: Panhandle, Carson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and Texas Health and Safety Code, §341.031(a), by failing to comply with the Maximum Contaminant Level for total coliform during the month of August 2012; 30 TAC §290.109(c)(3)(A)(i), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample collected in August 2012; 30 TAC §290.109(c)(4)(B), by failing to collect a raw groundwater source *escherichia coli* sample from each of the facility's three wells within 24 hours of notification of a distribution total coliform-positive sample during the month of July 2012; and 30 TAC §21.4 and §330.673 and TWC, §5.702, by failing to pay Consolidated Water Quality and Solid Waste Disposal fees for TCEQ Financial Administration Account Numbers 0708360 and 23001920 for Fiscal Year 2013; PENALTY: $960; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(16) COMPANY: Connel Oil Corporation dba Mr. C Food Store 4; DOCKET NUMBER: 2012-2477-PST-E; IDENTIFIER: RN102363629; LOCATION: Monahans, Ward County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $3,375; Supplemental Environmental Project offset amount of $1,350 applied to Trans-Pecos Water and Land Trust - Trans-Pecos Water Rights Acquisition Project; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(17) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2012-2393-AIR-E; IDENTIFIER: RN100222330; LOCATION: Goldsmith, Ector County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §116.615(2), Standard Permit Number 73563 and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions (Incident Number 161035); 30 TAC §116.615(2), Standard Permit Number 73563, and THSC, §382.085(b), by failing to prevent unauthorized emissions (Incident Number 161118); and 30 TAC §116.615(2), Standard Permit Number 73563, and THSC, §382.085(b), by failing to prevent unauthorized emissions (Incident Number 161121); PENALTY: $39,375; Supplemental Environmental Project offset amount of $15,750 applied to Railroad Commission of Texas - Alternative Fuels Clean School Bus Replacement Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(18) COMPANY: DENNIS PORTER, INCORPORATED dba Porter's Shell; DOCKET NUMBER: 2012-2602-PST-E; IDENTIFIER: RN101879534; LOCATION: Andrews, Andrews County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $3,500; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(19) COMPANY: Flint Hills Resources Corpus Christi, LLC; DOCKET NUMBER: 2012-2382-AIR-E; IDENTIFIER:

RN100235266; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refining plant; RULE VIOLATED: 30 TAC §101.201(a)(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for Incident Number 171024 no later than 24 hours after the discovery of the emissions event; and 30 TAC §§116.115(c), 101.20(3), and 122.143(4), Federal Operating Permit Number O-1272, Special Terms and Conditions Number 32, Flexible Permit Numbers 8803A and PSDTX413M9, Special Conditions Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions during an emissions event; PENALTY: $7,975; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(20) COMPANY: Grace G. Kim dba J & C Stop & Serve; DOCKET NUMBER: 2012-2597-PST-E; IDENTIFIER: RN102221488; LOCATION: Trinity, Trinity County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: HIGH POINT WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-0109-PWS-E; IDENTIFIER: RN101233070; LOCATION: Forney, Kaufman County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to operate the disinfection equipment to maintain a disinfectant residual of at least 0.5 milligrams per liter of total chlorine throughout the distribution system at all times; and 30 TAC §290.110(c)(4)(B), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once per day; PENALTY: $338; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Ilyas Shakoor dba Hiras Wil Max; DOCKET NUMBER: 2012-2475-PST-E; IDENTIFIER: RN103993325; LOCATION: Gilmer, Upshur County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once a month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(23) COMPANY: INDO-AMERICAN ENTERPRISE, INCORPORATED dba Bingo Truck Stop; DOCKET NUMBER: 2012-2709-PST-E; IDENTIFIER: RN102647690; LOCATION: Winnie, Chambers County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $6,750; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Intertek USA, Incorporated dba Intertek Automotive Research; DOCKET NUMBER: 2012-2731-PST-E; IDENTIFIER: RN101519643; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,000; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(25) COMPANY: Jesus Lopez; DOCKET NUMBER: 2012-2173-MLM-E; IDENTIFIER: RN106422314; LOCATION: Barnhart, Irion County; TYPE OF FACILITY: travel trailer on private property; RULE VIOLATED: 30 TAC §285.3(i) and TWC, §26.121(a)(1), by failing to prevent the discharge of wastewater into or adjacent to any water in the state; PENALTY: $713; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(26) COMPANY: Jim Eanes and Shelley Eanes dba Midway Grocery; DOCKET NUMBER: 2012-2228-PST-E; IDENTIFIER: RN102965480; LOCATION: Rockdale, Milam County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: $3,879; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2570; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(27) COMPANY: KCMJ Enterprises, Incorporated dba Exxon HP 67; DOCKET NUMBER: 2012-2446-PST-E; IDENTIFIER: RN101774552; LOCATION: New Caney, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: LAKE WINONA PROPERTY OWNERS ASSOCIATION; DOCKET NUMBER: 2012-2549-PWS-E; IDENTIFIER: RN101180313; LOCATION: Navasota, Grimes County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), and Texas Health and Safety Code (THSC), §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher license; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block that extends at least three feet in all directions from the well casing; 30 TAC §290.42(e)(3), by failing to provide disinfection facilities for the groundwater supply to ensure that continuous and effective disinfection can be secured under all conditions for the purpose of microbiological control throughout the distribution system; 30 TAC §290.41(c)(3)(O) and §290.43(e), by failing to provide an intruder-resistant fence to protect the facility's well and pressure tank; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the facility's pressure tank; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling tap on the well discharge line; 30 TAC §290.41(c)(3)(K), by failing to screen the well casing vent with an

opening that is covered with a 16-mesh or finer corrosion-resistant screen facing downward, elevated, and located as to minimize the drawing of contaminants into the well; 30 TAC §290.39(m), by failing to provide written notification to the commission of the startup of a new public water supply system or reactivation of an existing public water supply system; 30 TAC §290.39(e)(1) and (h)(1) and THSC, §341.035(a), by failing to submit engineering plans and specifications prior to the construction of a new public water supply system; and 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for each well to measure production yields and provide for the accumulation of water production data; PENALTY: $1,557; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(29) COMPANY: Mario Aldalu dba Expresso Food Store; DOCKET NUMBER: 2012-2461-PST-E; IDENTIFIER: RN102257763; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $4,600; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: N.E. Jones Oil Company, Incorporated dba 3 Way Grocery; DOCKET NUMBER: 2012-2458-PST-E; IDENTIFIER: RN101805562; LOCATION: Jefferson, Marion County; TYPE OF FACILITY: an underground storage tank (UST) system with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide proper release detection for the suction piping associated with the UST system; PENALTY: $8,036; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(31) COMPANY: Oiltanking Houston, L.P.; DOCKET NUMBER: 2012-2548-IWD-E; IDENTIFIER: RN100224740; LOCATION: Channelview, Harris County; TYPE OF FACILITY: hydrocarbon and chemical product storage and transfer facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number WQ0004898000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $1,175; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(32) COMPANY: OST FOOD MART, INCORPORATED dba OST Food Store; DOCKET NUMBER: 2012-2664-PST-E; IDENTIFIER: RN100868595; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(33) COMPANY: PINE MEADOW MHC, LLC; DOCKET NUMBER: 2012-2289-PWS-E; IDENTIFIER: RN101987626; LOCATION: Silsbee, Hardin County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(1)(A) and (B), by failing to collect routine distribution coliform samples at active service connections which are representative of water quality throughout the distribution system and are listed on the facility's monitoring plan; 30 TAC §290.42(l), by failing to maintain a thorough plant operations manual for operator review and reference; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.42(j), by failing to use an approved chemical or media for the disinfection of potable water that conforms to the American National Standards Institute/National Sanitation Foundation standards; 30 TAC §290.43(d)(2), by failing to provide the facility's three pressure tanks with pressure release devices; 30 TAC §290.46(f)(2) and (3)(D)(ii), by failing to provide accurate facility records to commission personnel at the time of the investigation; and 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher license; PENALTY: $1,550; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(34) COMPANY: PRODUCERS COOPERATIVE ELEVATOR dba Floydada 1 Grain Elevator; DOCKET NUMBER: 2012-2146-PST-E; IDENTIFIER: RN100536135; LOCATION: Floydada, Floyd County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of the discovery; 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; and 30 TAC §334.10(b), by failing to maintain all UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $20,101; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(35) COMPANY: Sambidhan Lacoul dba Ritz Food Mart Texaco; DOCKET NUMBER: 2012-2469-PST-E; IDENTIFIER: RN102754470; LOCATION: Carrollton, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,943; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(36) COMPANY: Texpac Group, Incorporated dba Andy Mart; DOCKET NUMBER: 2012-2640-PST-E; IDENTIFIER: RN102239605; LOCATION: Mount Pleasant, Titus County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE

VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(37) COMPANY: Tuan Ngoc Do dba Xpress Mart; DOCKET NUMBER: 2012-2710-PST-E; IDENTIFIER: RN102236551; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,888; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(38) COMPANY: U.S. Army Corps of Engineers; DOCKET NUMBER: 2013-0011-MWD-E; IDENTIFIER: RN101715407; LOCATION: Clifton, Bosque County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0012087001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $3,250; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(39) COMPANY: Zahid Khan dba Hilltop Grocery; DOCKET NUMBER: 2012-2402-PST-E; IDENTIFIER: RN102664471; LOCATION: Copeville, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,825; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(40) COMPANY: Zeway Corporation dba Zack Shell & Deli; DOCKET NUMBER: 2012-2327-PST-E; IDENTIFIER: RN102050739; LOCATION: Dallas, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $4,125; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201301118
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 18, 2013

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Correction of Error

The Texas Commission on Environmental Quality (TCEQ) proposed new 30 TAC §106.359, concerning Planned Maintenance, Startup, and Shutdown (MSS) at Oil and Gas Handling and Production Facilities, in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1785). The following errors were included in the document as submitted by TCEQ.

On page 1786, second column, second complete paragraph, the seventh sentence which reads "There is currently no specific PBR available for OGSs that covers all known planned MSS activities." should be deleted and replaced with the following sentence:

"There is a need to develop an MSS authorization for planned MSS activities and facilities other than those that are required to register under §106.352(a) - (k) or subsections (a) - (k) of the non-rule Air Quality Standard Permit for Oil and Gas Handling and Production Facilities."

On page 1794, first column, first paragraph, the second sentence which reads "However, OGSs that are required to register under §106.352(a) -(k), effective November 22, 2012, or the non-rule Air Quality Standard Permit for Oil and Gas Handling and Production Facilities, effective November 8, 2012, have planned MSS addressed in those authorizations and are not eligible to use the proposed PBR." should be deleted and replaced with the following sentence:

"However, OGSs that are required to register under §106.352(a) - (k) or subsections (a) - (k) of the non-rule Air Quality Standard Permit for Oil and Gas Handling and Production Facilities have planned MSS addressed in those authorizations and are not eligible to use the proposed PBR."

On page 1800, the phrase "subsections (a) - (k) of" should be inserted in proposed subsection (a)(1) before the words "the non-rule Air Quality...." The corrected paragraph should read as follows:

(1) This section does not apply to oil and gas handling or production facilities or sites authorized under §106.352(a) - (k) of this title (relating to Oil and Gas Handling and Production Facilities), subsections (a) - (k) of the non-rule Air Quality Standard Permit for Oil and Gas Handling and Production Facilities, §106.355 of this title (relating to Pipeline Metering, Purging, and Maintenance), or Subchapter U of this chapter (relating to Tanks, Storage, and Loading)."

TRD-201301136

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Enforcement Orders

An agreed order was entered regarding Tarif Al-Rousan dba A Motion Food Mart, Docket No. 2011-1581-PST-E on March 11, 2013 assessing $2,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bhany Patel dba Coastal Cooler, Docket No. 2011-1805-PST-E on March 11, 2013 assessing $2,629 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Delma Wilburn and Thelma Russell, Docket No. 2011-2003-PST-E on March 11, 2013 assessing $3,675 in administrative penalties with $75 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HERSHANA BAY, INC dba Lavon Food Mart, Docket No. 2012-0041-PST-E on March 11, 2013 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C. J. RESOURCES, INC., Docket No. 2012-0146-MSW-E on March 11, 2013 assessing $2,326 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Paint Rock, Docket No. 2012-0342-PWS-E on March 11, 2013 assessing $946 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TMT, INC. dba Whip In 105, Docket No. 2012-0344-PST-E on March 11, 2013 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jose G. Nieto dba Nieto's Service Station 1, Docket No. 2012-0366-PST-E on March 11, 2013 assessing $2,639 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tommy Slama dba Lionbacker Drive Inn, Docket No. 2012-0433-PST-E on March 11, 2013 assessing $2,635 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROSEMIN ENTERPRISES, INC. dba Express Store, Docket No. 2012-0739-PST-E on March 11, 2013 assessing $2,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cullen McMorrow, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRIUMPH BUSINESS LLC dba Chevron Mart 5, Docket No. 2012-0790-PST-E on March 11, 2013 assessing $5,775 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Raymon E. Windham dba Deer Run Water System, Docket No. 2012-0871-PWS-E on March 11, 2013 assessing $1,832 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KHAN, INC. dba KHAN'S FOOD MART, Docket No. 2012-0874-PST-E on March 11, 2013 assessing $3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BJAYS INC. dba J P Discount Beer & Wine, Docket No. 2012-0901-PST-E on March 11, 2013 assessing $1,925 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNIFIED AFFILIATES, LLC dba New Metro Food Mart, Docket No. 2012-0927-PST-E on March 11, 2013 assessing $3,634 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Khurram Saeed Zai dba Korner Food Mart 1, Docket No. 2012-1091-PST-E on March 11, 2013 assessing $3,825 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carl Burris dba Super C West, Docket No. 2012-1124-PST-E on March 11, 2013 assessing $2,943 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TIMPSON QUICK-STOP INC., Docket No. 2012-1156-PST-E on March 11, 2013 assessing $6,874 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Myung Cha Cha dba Youngs Mart 3, Docket No. 2012-1175-PST-E on March 11, 2013 assessing $5,129 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jenson L. Gainer, Docket No. 2012-1214-LII-E on March 11, 2013 assessing $682 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Signature Car Wash I, Ltd., Docket No. 2012-1232-PST-E on March 11, 2013 assessing $4,739 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Xuan Van Nguyen dba Super Gas Mart, Docket No. 2012-1254-PST-E on March 11, 2013 assessing $3,508 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201301147
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 20, 2013

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 29, 2013.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 29, 2013.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: AFRIN C-STORE, INC. d/b/a PAPA KEITH'S GROCERY; DOCKET NUMBER: 2012-1375-PST-E; TCEQ ID NUMBER: RN101839926; LOCATION: 3748 State Highway 19, Riverside, Walker County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; PENALTY: $7,500; STAFF ATTORNEY: David Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: AMPM ENTERPRISES, INC. d/b/a Super Food Mart; DOCKET NUMBER: 2012-1493-PST-E; TCEQ ID NUMBER: RN102714995; LOCATION: 2706 West Gentry Parkway, Tyler, Smith County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and failing to provide release detection for the piping associated with the USTs; TWC, §26.3475(c)(2) and 30 TAC §334.51(b)(2), by failing to equip the USTs with proper spill containment equipment; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $6,380; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: ASPRI INVESTMENTS, LLC d/b/a Citgo Express; DOCKET NUMBER: 2012-1843-PST-E; TCEQ ID NUMBER: RN102379526; LOCATION: 3969 Thousand Oaks Drive, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and to provide release detection for the piping associated with the USTs; PENALTY: $2,637; STAFF ATTORNEY: David Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Bains Brothers, LLC d/b/a Bains Brothers Petroleum 6; DOCKET NUMBER: 2012-0757-PST-E; TCEQ ID NUMBER: RN100532373; LOCATION: 591 West Campbell Road, Richardson, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report to the TCEQ a suspected release of regulated substances within 30 days of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substances within 30 days of discovery; PENALTY: $17,600; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Dome Petrochemical, L.C.; DOCKET NUMBER: 2012-2357-AIR-E; TCEQ ID NUMBER: RN101519551; LOCATION: 6655 West Bay Road, Baytown, Chambers County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §122.145(2)(B), §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number

O-1572, General Terms and Conditions (GTC), by failing to submit a semi-annual deviation report; and 30 TAC §122.146(2), §122.143(4), THSC, §382.085(b), and FOP Number O-1572, GTC, by failing to submit a permit compliance certification no later than 30 days after the end of the certification period; PENALTY: $7,875; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC R-13, (403) 403-4023; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Gordon R. Morris and Leslie L. Morris d/b/a Space Estates Mobile Home Park; DOCKET NUMBER: 2012-1491-PWS-E; TCEQ ID NUMBER: RN103998811; LOCATION: 13826 East Hardy Road, Houston, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform positive result on a routine sample for the months of February and March 2012; 30 TAC §290.109(c)(4)(B), by failing to collect one raw groundwater source *Escherichia coli* sample from the facility's well within 24 hours of notification of a distribution total coliform-positive sample for the months of February and March 2012; and 30 TAC §290.109(c)(2)(F), by failing to collect at least five routine distribution coliform samples the month following a coliform-positive sample result for the month of March 2012; PENALTY: $1,525; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Hamidi Food Mart Inc; DOCKET NUMBER: 2012-1354-PST-E; TCEQ ID NUMBER: RN101873255; LOCATION: 1904 Bandera Road, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the UST system; PENALTY: $3,881; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Iftkhar Ali dba Food Stop; DOCKET NUMBER: 2012-0007-PST-E; TCEQ ID NUMBER: RN102425865; LOCATION: 7701 9th Avenue, Port Arthur, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and retail gasoline dispensing facility; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current, TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs at the station; 30 TAC §115.246(7)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain a copy of the California Air Resources Board (CARB) Executive Order or third-party certification for the Stage II vapor recovery system at the station; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months, and vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever comes first; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order, and free from defects that would impair the effectiveness of the system; PENALTY: $12,207; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Oakhollow MH Park, LLC d/b/a Oakhollow Mobile Home Park and Gary Don Stahlheber d/b/a Oakhollow Mobile Home Park; DOCKET NUMBER: 2012-0301-PWS-E; TCEQ ID NUMBER: RN101453843; LOCATION: 16730 County Road 127, Trailer 1A, Pearland, Brazoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR), to the executive director for the third quarter of 2011; 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(1)(B), (2)(A), and (f), by failing to submit a DLQOR to the executive director each quarter by the tenth day of the month following the end of the quarter for the fourth quarter of 2006 through the second quarter of 2011, and failing to provide public notice of the failure to submit a DLQOR for the fourth quarter of 2006, first quarter of 2007, fourth quarter of 2008, first quarter of 2009, second quarter of 2009, third quarter of 2010, and fourth quarter of 2010; 30 TAC §290.106(e) and §290.122(c)(1)(B), (2)(A) and (f), by failing to timely provide the results of triennial metal and mineral sampling to the executive director and failing to provide public notices of the failure to provide the results of triennial metal and mineral sampling to the executive director for the monitoring period from January 1, 2008 - December 31, 2010; 30 TAC §290.106(e) and §290.122(c)(1)(B), (2)(A) and (f), by failing to timely provide the results of annual nitrate sampling to the executive director and failing to timely provide public notices of the failure to provide the results of annual nitrate sampling to the executive director for the 2010 monitoring period; 30 TAC §290.107(e) and §290.122(c)(1)(B), (2)(A), and (f), by failing to timely provide the six-year period monitoring results for volatile organic compound (VOC) contaminant sampling to the executive director and failing to provide public notices of the failure to provide the results of VOC contaminant sampling to the executive director for the monitoring period from January 1, 2005 - December 31, 2010; 30 TAC §290.271(b) and §290.274(a) and (c), and TCEQ Default Order Docket Number 2010-0701-PWS-E, Ordering Provisions Numbers 3.a. and 3.b., by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failing to submit to the executive director by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility for the years 2009 and 2010; 30 TAC §290.113(e), by failing to provide the results of disinfectant by-product sampling to the executive director for the monitoring period from January 1, 2008 - December 31, 2008; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay Public Health Service fees, including late fees, for TCEQ Financial Administration Account Number 90200055 for fiscal years 1997 - 2012; PENALTY: $5,867; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201301131
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 19, 2013

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the pro-

posed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 29, 2013.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 29, 2013.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Atlas Woodworks, LLC; DOCKET NUMBER: 2012-2064-IWD-E; TCEQ ID NUMBER: RN106455199; LOCATION: 2401 Worthington Drive, Suite 145, Denton, Denton County; TYPE OF FACILITY: millwork and cabinet operation; RULES VIOLATED: TWC, §26.121, 40 Code of Federal Regulations §122.26(c) and 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge storm water associated with industrial activities under Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR050000; PENALTY: $1,312; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Esteban Prado Sanchez, Sr.; DOCKET NUMBER: 2012-1400-LII-E; TCEQ ID NUMBER: RN103495578; LOCATION: 515 South First Street, Sherman, Grayson County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §344.24(a) and §344.52(c), by failing to comply with local regulations by failing to have a backflow prevention device tested prior to being put into service and the results provided to the local water purveyor and the irrigation system's owner within ten business days on July 27, 2011; 30 TAC §344.24(a) and §344.35(d)(2), by failing to have the final inspection conducted on an irrigation system; 30 TAC §344.24(a) and §344.35(d)(2), by failing to comply with local regulations by failing to obtain a permit prior to installing a landscape irrigation system, and failing to have a final inspection conducted on the irrigation system; 30 TAC §344.38, by failing to provide TCEQ with irrigation system plans within ten days of the request; 30 TAC §344.24(a) and §344.52(c), by failing to comply with local regulations by failing to have a backflow prevention device tested prior to being put into service and the results provided to the local water purveyor and the irrigation system's owner within ten business days on September 14, 2011; 30 TAC §344.24(a) and §344.61(a), by failing to comply with local regulations by failing to have a paper or electronic copy of the irrigation system plan on the irrigation job site at all times; and 30 TAC §344.24(a) and §344.62(o), by failing to comply with local regulation by failing to have a licensed irrigator or irrigation technician on-site during installation of an irrigation system; PENALTY: $5,384; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Global New Millennium Partners, Ltd.; DOCKET NUMBER: 2011-0816-PST-E; TCEQ ID NUMBER: RN102827649; LOCATION: 24652 Highway 124, Hamshire, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and real property; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.50(a)(1)(A) and §334.54(b)(2), (c)(2), and (d)(2), by failing to provide a release detection method capable of detecting a release from any portion of the UST system which has not been emptied of all regulated substances; failing to ensure that any residue from stored regulated substances which remained in the system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering or vandalism by an unauthorized person; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days from the occurrence of the change or addition; PENALTY: $7,500; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: METROPLEX LUCKY STAR, LLC d/b/a Texaco Food Mart 10; DOCKET NUMBER: 2012-2198-PST-E; TCEQ ID NUMBER: RN102276219; LOCATION: 12950 Coit Road, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $5,130; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: MK Petroleum, LLC d/b/a Briar Forest Shell; DOCKET NUMBER: 2012-1997-PST-E; TCEQ ID NUMBER: RN102252517; LOCATION: 1585 Highway 6 South, Houston, Harris; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $3,750; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Phillicia K. Dean d/b/a Annex Cleaners 2 and Mary L. Shumaker d/b/a Annex Cleaners 2; DOCKET NUMBER: 2011-1133-DCL-E; TCEQ ID NUMBER: RN102913936; LOCATION: 1620 Martin Luther King Jr. Boulevard, Dallas, Dallas County; TYPE OF FACILITY: dry cleaner drop station; RULES VIOLATED: Texas Health and Safety Code, §374.102 and 30 TAC §337.10(b)(1)(A), by failing to complete and submit the required registration form to the TCEQ for a dry cleaning facility and/or drop station; PENALTY: $5,000; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE:

Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: VA WESTFIELD PARTNERS, LLC dba Westfield Homes Addition; DOCKET NUMBER: 2012-0977-WQ-E; TCEQ ID NUMBER: RN106132657; LOCATION: 802 Westfield Drive, Anna, Collin County; TYPE OF FACILITY: construction site for single-family residential construction; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $5,000; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201301132
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 19, 2013

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Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 29, 2013.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DOs is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 29, 2013.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Kawa Tahasalih d/b/a Jupiter Fina; DOCKET NUMBER: 2012-0794-PST-E; TCEQ ID NUMBER: RN102319266; LOCATION: 3080 South Jupiter Road, Garland, Dallas County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $6,246; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Petra Petroleum Management LLC d/b/a Parkway Mobil Mart 2; DOCKET NUMBER: 2012-1506-PST-E; TCEQ ID NUMBER: RN102270444; LOCATION: 6010 K Avenue, Plano, Collin County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; TWC, §26.3475(a), (c)(1), and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), and failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain all UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $12,826; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201301133
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 19, 2013

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Notice of Water Quality Applications

The following notices were issued on March 8, 2013 through March 15, 2013.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN

30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

DEER PARK ENERGY CENTER LLC AND CALPINE OPERATING SERVICES COMPANY INC which operates the Deer Park Energy Center, a combined cycle power generation facility, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004344000, which authorizes the discharge of cooling tower blowdown, and previously monitored effluent (low volume waste, and metal cleaning waste) at a daily average flow not to exceed 1,480,000 gallons per day via Outfall 001. The facility is located at 5665 on the north side of State Highway 225, 1,500 feet east of Shell Dock Road in the City of Deer Park, Harris County, Texas 77536.

HFOTCO LLC which operates Houston Fuel Oil Terminal, a bulk petroleum storage terminal for hire, has applied for a renewal TPDES Permit No. WQ0002277000, which authorizes the discharge of treated stormwater, facility wastewater, and steam condensate at an intermittent and flow-variable rate via Outfall 001, and the discharge of treated stormwater, facility wastewater, and steam condensate at an intermittent and flow-variable rate via Outfall 021. The facility is located at 1201 South Sheldon Road, in the northeast corner of the intersection of Jacintoport Boulevard and South Sheldon Road, on the north bank of the Houston Ship Channel, in the City of Houston, Harris County, Texas 77015.

JOHANN HALTERMANN LTD which operates Johann Haltermann - Jacintoport Facility, a facility that primarily recovers saleable products from off-specification petroleum products and solvents by fractional distillation and occasionally manufactures organic compounds, has applied for a major amendment to TPDES Permit No. WQ0002458000 to authorize the discharge of consisting of sand filter backwash, cooling tower blowdown, and water softener backflush on an intermittent and flow variable basis via Outfall 002. The existing permit authorizes the discharge of treated process wastewater, utility wastewater, domestic wastewater, and stormwater at a daily average flow not to exceed 220,000 gallons per day, and a daily maximum flow not to exceed 440,000 gallons per day via Outfall 001; stormwater on an intermittent and flow variable basis via Outfall 002; and non-contact heating water on an intermittent and flow variable basis via Outfall 003. The facility is located at 16717 Jacintoport Boulevard on the north bank of the Houston Ship Channel, approximately 1.6 miles east of the intersection of Sheldon Road and Jacintoport Boulevard, near the Community of Channelview, Harris County, Texas 77015. The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the General Land Office and has determined that the action is consistent with the applicable CMP goals and policies.

VALLEY MUNICIPAL UTILITY DISTRICT NO 2 which operates Rancho Viejo Reverse Osmosis Water Treatment Plant, has applied for a renewal of TPDES Permit No. WQ0003936000, which authorizes the discharge of reverse osmosis reject water at a daily average flow not to exceed 500,000 gallons per day via Outfall 001. The facility is located at 100 Hidalgo, on the west side of State Highway 83, approximately 1.25 miles north of the intersection of State Highway 83 and Farm-to-Market Road 511, and approximately 3.5 miles south of the intersection of State Highway 83 and State Highway 100, in the City of Rancho Viejo, Cameron County, Texas, 78575.

CITY OF DILLEY has applied for a new permit, proposed TPDES Permit No. WQ0010404005, to authorize the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 30,000 gallons per day. The facility is located at the northeast corner of Avant Addition Street and the Union Pacific Railroad, approximately 0.4 mile south of the intersection of Main Street (Interstate Highway 35 Business) and Leona Street (State Highway 85) in Frio County, Texas 78017.

JEFFERSON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 10 has applied for a renewal of TPDES Permit No. WQ0010838003 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located to the northwest of Nederland in the area bounded by Spurlock Road, U.S. Highway 69/96/287 and State Highway 347, and on the northwest side of Rhodair Gully, approximately 3,500 feet upstream from the point where Rhodair Gully passes beneath U.S. Highway 69/96/287 in Jefferson County, Texas 77627.

TRINITY RIVER AUTHORITY OF TEXAS has applied for a renewal of TPDES Permit No. WQ0010984001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 24,000,000 gallons per day. The facility is located at 1430 Malloy Bridge Circle, approximately 2.0 miles northeast of the City of Ferris, north of Ten Mile Creek and approximately 3.5 miles from its confluence with the Trinity River in Dallas County, Texas 75125.

OIL STATES INDUSTRIES INC has applied for a renewal of TPDES Permit No. 12314-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,500 gallons per day. The facility is located in the southwest corner of a company-owned tract in the eastern part of the Jacintoport Industrial District and approximately 7500 feet east of the intersection of Sheldon Road and Jacintoport Boulevard in the City of Channelview in Harris County, Texas.

CITY OF WEST TAWAKONI has applied for a new permit, proposed Permit No. WQ0014344002 to authorize the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 55,000 gallons per day. The facility is located at 200 Water Line Road, West Tawakoni in Hunt County, Texas 75474.

THE SIGNORELLI COMPANY has applied for a renewal of TPDES Permit No. WQ0014597001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 4,400 feet west of the crossing of U.S. Highway 59 over White Oak Creek in Montgomery County, Texas 77365.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

GULF COAST WASTE DISPOSAL AUTHORITY has applied for a minor amendment to the TPDES Permit No. WQ0011571001 to authorize the use of chlorination disinfection. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 9,250,000 gallons per day. The facility is located at 3902 West Bay Area Boulevard on the northeast bank of Clear Creek, approximately three miles southeast of the City of Friendswood and three miles southwest of Interstate Highway 45 at the NASA One Road exit in Harris County, Texas 77546.

If you need more information about these permit applications or the permitting process, please call the Texas Commission on Environmental Quality (TCEQ) Public Education Program, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201301146

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 20, 2013

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Texas Facilities Commission

Request for Proposals #303-4-20369-A

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Insurance (TDI), the State Office of Administrative Hearings (SOAH), and the Texas Lottery Commission (LOTTERY), announces the issuance of Request for Proposals (RFP) #303-4-20369-A. TFC seeks a five (5) or ten (10) year lease of approximately 19,631 square feet of office space in Fort Worth, Tarrant County, Texas.

The deadline for questions is April 12, 2013, and the deadline for proposals is April 19, 2013, at 3:00 p.m. The award date is May 31, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=104901.*

TRD-201301129
Kay Molina
General Counsel
Texas Facilities Commission
Filed: March 18, 2013

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Request for Proposals #303-4-20376

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-4-20376. TFC seeks a five (5) or ten (10) year lease of approximately 5,081 square feet of office space in Granbury, Hood County, Texas.

The deadline for questions is April 8, 2013, and the deadline for proposals is April 15, 2013, at 3:00 p.m. The award date is May 15, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=104906.*

TRD-201301134
Kay Molina
General Counsel
Texas Facilities Commission
Filed: March 19, 2013

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Department of Family and Protective Services

Title IV-B Child and Family Services Plan

The Texas Department of Family and Protective Services (DFPS), as the designated agency to administer Title IV-B programs in the state of Texas, is developing the annual update of the Title IV-B Child and Family Services Plan (CFSP) for Texas. Under guidelines issued by the U.S. Department of Health and Human Services, Administration for Children and Families, DFPS is required to review the progress made in the previous year toward accomplishing the goals and objectives identified in the state's five-year CFSP for the period from October 1, 2009, through September 30, 2014.

The CFSP Annual Progress and Services Report (APSR) is required for the state to receive its federal allocation for fiscal year 2014 authorized under Title IV-B of the Social Security Act, Subparts 1 and 2, and the Child Abuse Prevention and Treatment Act (CAPTA). The APSR also gives states an opportunity to apply for fiscal year 2014 funds for the Chafee Foster Care Independence Program. The annual report referenced above must be submitted by June 30, 2013.

The purpose of this notice is to solicit input in the development of the APSR. This input will enable DFPS to consider and include any changes to the Title IV-B State Plan in order to best meet the needs of the children and families that DFPS serves. Members of the public can obtain more detailed information regarding the CFSP from the DFPS Web site at: http://www.dfps.state.tx.us. The Web site includes a copy of last year's Title IV-B report. After you go to the Web site, click "About DFPS," "Reports, Plans, Statistics, and Presentations," and then "Child and Family Services State Plans (Title IV-B)."

Written comments regarding the annual update may be faxed or mailed to: Texas Department of Family and Protective Services, Attention: Max Villarreal; P.O. Box 149030, MC Y-934; Austin, Texas 78714-9030; telephone (512) 919-7868; fax (512) 339-5927. The comments must be received no later than May 1, 2013.

TRD-201301128
Phoebe Knauer
Interim General Counsel
Department of Family and Protective Services
Filed: March 18, 2013

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 23, through February 28, 2013. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on March 13, 2013. The public comment period for this project will close at 5:00 p.m. on April 12, 2013.

FEDERAL AGENCY ACTIVITY:

Applicant: Department of the Navy; Draft Environmental Impact Statement (DEIS) Notice for the Atlantic Fleet Training and Testing Study Area: The applicant proposes an airspace, seaspace and undersea space from the mean water mark extending into the Gulf of Mexico and the Atlantic Ocean. The proposed action is to conduct training and testing activities, which may include the use of active sound navigation, sonar and explosives, primarily within existing range complexes and testing ranges in the Gulf of Mexico and Navy pierside locations including channels and transit routes in ports and facilities associated with designated Navy ports and naval shipyards. Because the Study Area extends to shore, it includes the coastal zone in the Gulf of Mexico. The DEIS can be viewed at http://aftteis.com.

CMP Project No.: 13-1011-F2

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the application listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Sheri Land, Director, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Ms. Land at the above address or by email.

TRD-201301158
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: March 20, 2013

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Notice of Funds Availability - Texas Coastal Management Program

The General Land Office and the Coastal Coordination Advisory Committee (CCAC) file this Notice of Funds Availability to announce the availability of §306/§306A federal grant funds under the Texas Coastal Management Program (CMP). The purpose of the CMP is to improve the management of the state's coastal resources and to ensure the long-term ecological and economic productivity of the coast.

A federal award to the state of approximately $2 million in §306/§306A funding is expected in October 2014. The General Land Office, which oversees the implementation of the CMP with the advice of the CCAC, passes through approximately 90% of the available §306/§306A funds to eligible entities in the coastal zone to support projects that implement and/or advance the CMP goals and policies.

Eligible Applicants

The following entities are eligible to receive grants under the CMP:

1) Incorporated cities within the coastal zone boundary;

2) County governments within the coastal zone boundary;

3) Texas state agencies;

4) Texas public colleges/universities;

5) Subdivisions of the state with jurisdiction in the coastal zone (e.g., navigation districts, port authorities, river authorities, and Soil and Water Conservation Districts with jurisdiction in the coastal zone);

6) Councils of governments and other regional governmental entities within the coastal zone boundary;

7) The Galveston Bay Estuary Program;

8) The Coastal Bend Bays and Estuaries Program;

9) Nonprofit organizations located in Texas that are nominated by an eligible entity in categories 1-8 above.

(A nomination may take the form of a resolution or letter from a responsible official of an entity in categories 1-8. The nominating entity is not expected to financially or administratively contribute to the management and implementation of the proposed project.)

Funding Categories

The General Land Office and the CCAC will accept applications for projects that address any of the following funding categories. The categories are not listed in order of preference:

1) Coastal Natural Hazards Response;

2) Critical Areas Enhancement;

3) Public Access;

4) Water Sediment Quantity and Quality Improvements;

5) Waterfront Revitalization and Ecotourism Development;

6) Permit Streamlining/Assistance, Governmental Coordination and Local Government Planning Assistance.

Grant workshops will be held in three coastal cities to help potential applicants through the Guidance and Application Package. Grant workshops are opportunities for potential applicants to learn about the changes made to the grant program and to discuss specific project ideas with staff. Applicants are not required to attend a workshop, but attendance is strongly encouraged for first-time and/or inexperienced applicants who are unfamiliar with the CMP application process.

May 8, 2013, 9:00 a.m., Port Isabel, Port Isabel Housing Authority - Community Center, 100 Hockaday Drive.

May 15, 2013, 9:30 a.m., Corpus Christi, Texas A&M University - Natural Resources Center, 6300 Ocean Drive, Room 1003.

May 22, 2013, 9:30 a.m., Galveston, County Courthouse, 722 Moody, Workshop Room.

The requirements to receive federal grant funds are outlined in the CMP Cycle #19 Grant Guidance and Application Packet. To download the electronic version, the grant guidance and application packet is available at http://www.glo.texas.gov/what-we-do/caring-for-the-coast/grants-funding/cmp/index.html.

In order to submit pre-proposals or final applications, you must register to receive a user ID and password.

Applicants must submit electronically. Facsimiles or hard copies of pre-proposals and final applications will not be accepted.

The deadline to submit pre-proposals is Wednesday, June 19, 2013, by 5:00 p.m. Submission of a pre-proposal is optional but is strongly recommended for first-time and/or inexperienced applicants who are unfamiliar with the CMP application process, applicants who have an idea for a new and/or innovative project, applicants who are uncertain if a project is eligible under this grant program, or applicants submitting research projects. Written comments will only be provided to applicants who submit pre-proposals by June 19, 2013, by 5:00 p.m. The deadline to submit final grant applications is Wednesday, September 25, 2013, by 5:00 p.m.

TRD-201301159

Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: March 20, 2013

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Texas Department of Housing and Community Affairs

Announcement of the Opening of the Public Comment Period for the Draft 2013 State of Texas Consolidated Plan Annual Performance Report - Reporting on Program Year 2012

The Texas Department of Housing and Community Affairs (Department) announces the opening of a 15-day public comment period for the *State of Texas Draft 2013 Consolidated Plan Annual Performance Report - Reporting on Program Year 2012 (Report)* as required by the US Department of Housing and Urban Development (HUD). The Report is required as part of the overall requirements governing the State's consolidated planning process. The Report is submitted in compliance with 24 CFR §91.520, Consolidated Plan Submissions for Community Planning and Development Programs. The 15-day public comment period begins March 29, 2013, and continues until 5:00 p.m. on April 12, 2013.

The Report gives the public an opportunity to evaluate the performance of the past program year for four HUD programs: the Community Development Block Grant Program administered by the Texas Department of Agriculture, the Emergency Shelter Grants and HOME Investment Partnerships programs administered by the Department, and the Housing Opportunities for Persons with AIDS Program administered by the Texas Department of State Health Services. The following information is provided for each of the four programs covered in the Report: a summary of program resources and programmatic accomplishments; a series of narrative statements on program performance over the past year; a qualitative analysis of program actions and experiences; and a discussion of program successes in meeting program goals and objectives.

Beginning March 29, 2013, the Report will be available on the Department's website at www.tdhca.state.tx.us. A hard copy can be requested by contacting the Housing Resource Center at P.O. Box 13941, Austin, Texas 78711-3941 or by calling (512) 475-3976.

Written comment should be sent by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, by email to info@tdhca.state.tx.us, or by fax to (512) 475-1672.

TRD-201301113
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 14, 2013

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Texas Department of Insurance

Company Licensing

Application to change the name of MHEALTH INSURANCE COMPANY to MEMORIAL HERMANN HEALTH INSURANCE COMPANY, a domestic Life, Accident and/or Health company. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201301148
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: March 20, 2013

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Texas Department of Insurance, Division of Workers' Compensation

Public Hearing

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC), received a request for a public hearing on March 11, 2013. TDI-DWC will hold a public hearing on Friday, April 12, 2013 in the Tippy Foster Room at the TDI-DWC Central Office, 7551 Metro Center Drive, Suite 100 in Austin. TDI-DWC will audio stream the public hearing for persons who are unable to appear in person.

The public hearing will begin at 1:30 p.m. and TDI-DWC will take testimony on the following rule:

Chapter 130. Impairment and Supplement Income Benefits.

Subchapter A. Impairment Income Benefits.

§130.1. Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment.

This proposed rule was published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 630), and may be viewed on the TDI website at http://www.tdi.texas.gov/wc/rules/proposedrules/index.html. The comment period for this rule closed on Monday, March 11, 2013 at 5:00 p.m. Comments presented at this hearing will be considered.

To listen to the audio stream of the public hearing, access the TDI-DWC Public Outreach Events/Training Calendar on the TDI website at http://www.tdi.texas.gov/wc/events/index.html. Then click on the "Link to Live Webcast" link for the public hearing. The applications Media Player 7 (or newer version) or RealPlayer 10 (or newer version) are required to hear the audio stream. Audio streaming will begin approximately five minutes before the public hearing begins.

TDI offers reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, contact Idalia Salazar at (512) 804-4403 at least two business days prior to the public hearing date.

For further information regarding this notice, contact Timothy Eubank of TDI-DWC Workers' Compensation Counsel at (512) 804-4756 or Timothy.Eubank@tdi.texas.gov.

TRD-201301141
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: March 19, 2013

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Texas Department of Licensing and Regulation

Public Notice - Revised Enforcement Plan

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held March 6, 2013, the Commission adopted the Texas Department

of Licensing and Regulation's (Department) revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is revised to update penalty matrices for Cosmetologists and for Barber Schools and to adopt the initial penalty matrix for the Polygraph Examiners Program.

On August 14, 2012, the cosmetologists' penalty matrix was approved by the Commission. This revised matrix was announced in the September 21, 2012, issue of the *Texas Register* (37 TexReg 7527) and posted to the Department's website. The Commission instructed the Department's Enforcement Division to review violations in Classes E and F and to specifically look at the various non-biological violations and whether they should be moved to different classes. The Cosmetology Advisory Board also made some violation changes per the Commission's recommendations and public input.

The revised penalty matrix for barber schools addresses changes set forth in House Bill 2106, 80th Legislature, Regular Session (2007); House Bill 2310, 81st Legislature, Regular Session (2009), which made major changes to Texas Occupations Code, Chapter 51, and 16 TAC Chapter 60, Procedural Rules of the Commission and the Department; and Senate Bill 1170, 82nd Legislature (2011). The Department's Enforcement Division also made some changes in response to public feedback and Commission concerns regarding penalties.

Additionally, the Commission adopted the initial penalty matrix for the Polygraph Examiners Program, which was transferred to the Department by Acts of the 81st Legislature, Senate Bill 1005, Regular Session (2009).

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.state.tx.us. You may also contact the Enforcement Division at (512) 539-5600 or by email at enforcement@tdlr.texas.gov to obtain a copy of the revised plan.

TRD-201301117
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: March 18, 2013

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Texas Lottery Commission

Instant Game Number 1508 "Money Mania"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1508 is "MONEY MANIA". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1508 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1508.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, MANIA SYMBOL, $5.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $500, $1,000 and $50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO.1508 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
MANIA SYMBOL	WIN ALL
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$40.00	FORTY

$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1508), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1508-0000001-001.

K. Pack - A Pack of "MONEY MANIA" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MONEY MANIA" Instant Game No. 1508 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "MONEY MANIA" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the MANIA NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "MANIA" Play Symbol, the player WINS ALL 20 PRIZES instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. No duplicate MANIA NUMBERS Play Symbols on a Ticket.

C. No duplicate non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. No more than three identical non-winning Prize Symbols on a Ticket.

E. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 10 and $10).

G. When the "MANIA" (win all) Play Symbol appears, there will be no occurrence of any of YOUR NUMBERS Play Symbols matching to any MANIA NUMBERS Play Symbol.

H. The "MANIA" (win all) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

I. The top Prize Symbol will appear at least once on every Ticket unless restricted by other parameters, play action or prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY MANIA" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONEY MANIA" Instant Game prize of $1,000 or $50,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY MANIA" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "MONEY MANIA" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "MONEY MANIA" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in

these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 Tickets in the Instant Game No. 1508. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1508 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	750,400	10.71
$10	857,600	9.38
$15	321,600	25.00
$20	107,200	75.00
$50	23,450	342.86
$100	36,314	221.40
$500	5,159	1,558.44
$1,000	160	50,250.00
$50,000	10	804,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.83. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1508 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1508, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301143

Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 19, 2013

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Public Utility Commission of Texas

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 18, 2013, for a service provider certificate of operating authority (SPCOA) pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Telco Experts, LLC for a Service Provider Certificate of Operating Authority, Docket Number 41297.

Applicant intends to provide resale-only telecommunications services.

Applicant intends to provide telecommunications services within the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than April 5, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 41297.

TRD-201301139
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 19, 2013

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On March 14, 2013, Campus Communications Group, Inc. (Applicant) filed an application to amend service provider certificate of operating authority (COA) Number 60141. Applicant seeks approval to reflect a change in ownership/control whereby Applicant will become wholly-owned by Pavlov Media, Inc.

The Application: Application of Campus Communications Group, Inc. for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 41291.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than April 5, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 41291.

TRD-201301116
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 15, 2013

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Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 15, 2013, for an amendment to certificated service area for a service area exception within Lamb County, Texas.

Docket Style and Number: Application of Lamb County Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Lamb County. Docket Number 41296.

The Application: Lamb County Electric Cooperative, Inc. (LCEC) filed an application for a service area boundary exception to allow LCEC to provide service to a specific customer located within the certificated service area of Southwestern Public Service Company (SPS). SPS has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or to intervene should contact the Public Utility Commission of Texas no later than April 9, 2013 by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 41296.

TRD-201301138
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 19, 2013

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Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services pursuant to P.U.C. Substantive Rule §26.208(h).

Docket Title and Number: Application of Southwestern Bell Telephone Company d/b/a AT&T Texas to Withdraw Residence Measured Service for New Customers Pursuant to Substantive Rule §26.208 - Docket Number 41255.

The Application: On March 1, 2013, pursuant to P.U.C. Substantive Rule §26.208(h), Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T Texas or Applicant) filed an application with the commission to withdraw Residence Measured Service for new customers. AT&T Texas explained that it is discontinuing this service due to its overall plan to align and simplify product offerings throughout its 22-state footprint. Additionally, AT&T Texas explained that Residence Measured Service is now priced much closer to Flat Rate Service for most customers than it has been in the past, making its value less attractive to the majority of prospective customers than it used to be. Current customers will be grandfathered in. AT&T Texas proposed an effective date of July 3, 2013. The proceedings were docketed and suspended on March 4, 2013, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Docket Number 41255.

TRD-201301115
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 15, 2013

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Request for Comments - Rulemaking Regarding Demand Response in the Electric Reliability Council of Texas (ERCOT) Market

The commission convened a workshop on March 14, 2013 regarding Project Number 41061, *Rulemaking Regarding Demand Response in the Electric Reliability Council of Texas (ERCOT) Market.* At this workshop, the commission requested that interested parties provide reply comments regarding the following issues: (1) Demand Response (DR) in connection with resource adequacy; (2) the potential impact of DR; (3) further integration of this resource into the ERCOT market; and (4) the specific proposals presented at the workshop.

Comments may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by Monday, April 22, 2013. All responses should reference Project Number 41061. The commission requests that comments be limited to 20 pages.

Questions concerning this request for comments should be referred to Rebecca Reed, Analyst, Competitive Markets Division, (512) 936-7371, or Adrian Eissler, Attorney, Legal Division, (512) 936-7442. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201301154
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 20, 2013

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Tyler County

Request for Comments and Proposals from Parties Interested in Providing Additional Medicaid Beds in Tyler County, Texas

Section 32.0244 of the Texas Human Resources Code permits a County Commissioners Court of a county with no more than two (2) nursing homes to request that the Department of Aging and Disability Services (DADS) contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Commissioners Court of Tyler County is considering requesting that DADS contract for more Medicaid nursing facility beds in Tyler County. The Commissioners Court is soliciting comments on whether the request should be made. Further, the Commissioners Court seeks proposals from persons interested in providing additional Medicaid beds in Tyler County, including persons providing Medicaid beds in a nursing facility with a high occupancy rate, to determine if qualified entities are interested in submitting proposals to provide these additional Medicaid nursing facility beds.

Comments and proposals for the Department of Aging and Disability Services to contract for additional Medicaid beds in Tyler County should be presented at the public hearing scheduled for Thursday, April 11, 2013, at 10:00 a.m. in Room 101 of the Tyler County Courthouse, 100 W. Bluff, Woodville, Texas.

TRD-201301135
Jacques Blanchette
County Judge
Tyler County
Filed: March 19, 2013

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Texas Water Development Board

Request for Water Research Topics

The Texas Water Development Board (TWDB) has a research program through which we fund research on practical problems with statewide implications. Last year we funded $300,000 in research projects. Funding for this program comes from the Research and Planning Fund within the Water Assistance Fund.

Our process for this program is:

1. Staff solicits research topics from Board Members, stakeholders, and staff.

2. Staff reviews topics and chooses the most relevant topics for consideration by the Board.

3. Staff seeks Board approval on the topics and permission to post a Request for Qualifications for the topics.

4. Staff reviews statements of qualifications and ranks the applicants.

5. Staff seeks Board approval to negotiate contracts with the top-ranked applicants.

We are soliciting your input on research topics relating to the conservation and development for the state's water resources. Your ideas for water research topics are of great importance to staff in the topic selection process. We also reach out to various stakeholders and internal staff for their ideas. This is an opportunity to participate in generating research topic ideas if you so desire.

In recent years, topics funded by the TWDB have included research on issues related to:

determining cost benefit and demand savings of municipal water conservation efforts;

a manual to assist utilities in reducing water loss;

evaluating the potential for direct potable reuse in Texas;

assessing global climate models for water resources planning applications;

mining and oil and gas water use;

assessing aquifer storage and recovery in Texas;

standardizing measures of long-term water conservation implementation and short-term drought contingency plan implementation;

unified cost tool for regional water planning;

developing practical alternatives to pilot plant studies for innovative water technologies;

evaluating flood and sediment control structure conditions to better estimate erosion rates;

lifetime cost/benefit assessment of natural channel design versus traditional stormwater infrastructure; and

establishing a subdivision-scale rainwater harvesting system.

As directed by §15.404 of the Texas Water Code, the research must be related to the conservation and development of water resources. According to the Texas Administrative Code, Title 31, Chapter 355, any person may apply for research grants. Generally, the research topics should address practical problems and not be duplicative of previously completed or ongoing research.

Please submit your suggestions regarding potential research topics no later than 4:30 p.m. on Friday, April 26, 2013, to:

Patricia Blanton

Water Science and Conservation

Texas Water Development Board

P.O. Box 13231 Austin, Texas 78711-3231

patricia.blanton@twdb.texas.gov

Please direct questions to Patricia Blanton at (512) 463-8043 or via email patricia.blanton@twdb.texas.gov.

TRD-201301112

Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: March 14, 2013

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Rules - sections proposed for adoption.

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

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

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

Review of Agency Rules - notices of state agency rules review.

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

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

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

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

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

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

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*