TEXAS REGISTER

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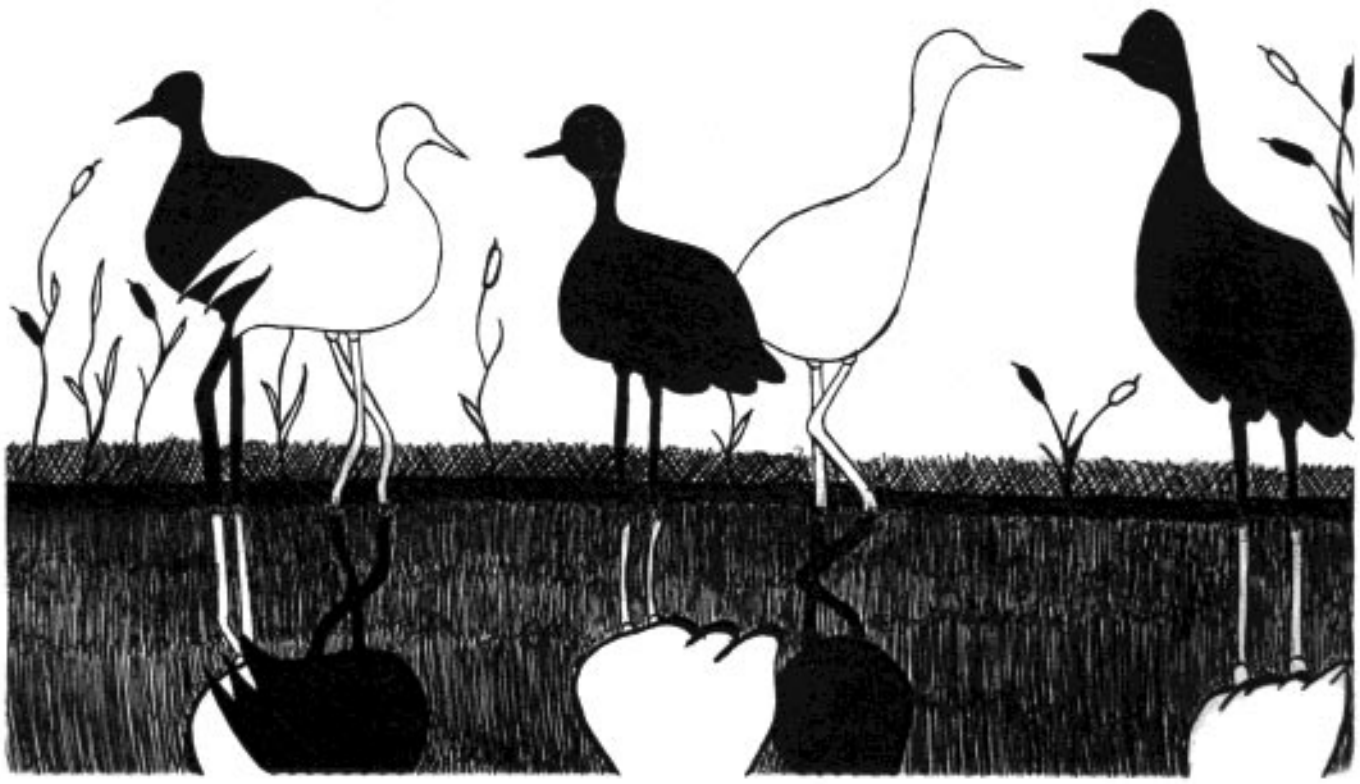

This month's front cover artwork:

Artist: *Cassandra Castillo*

10th Grade

New Braunfels ISD

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. 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.

We will display artwork on the cover of each *Texas Register.* The artwork featured on the front cover is chosen at random.

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.* The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register.*

For more information about the student art project, please call (800) 226-7199.

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PROPOSED RULES

ADOPTED RULES

RULE REVIEW

IN ADDITION

PROPOSED RULES

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

Symbology in proposed amendments. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Subchapter H. Telephone

16 TAC §23.99

(Editor's note: The text of the following section proposed for repeal will not be published.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

The Public Utility Commission of Texas (commission) proposes the repeal of §23.99 relating to Unbundling. Project Number 17709 has been assigned to this proceeding. The Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to: (1) satisfy the requirements of §167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. As a result of this reorganization, §23.99 will be duplicative of proposed new §26.276 of this title (relating to Unbundling) in Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers.

Ms. Ericka Kelsaw, assistant general counsel, Office of Regulatory Affairs, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Kelsaw has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the elimination of a duplicative rule. There will be no effect on small businesses as a result of repealing this section. There is no anticipated economic cost to persons as a result of repealing this section.

Ms. Kelsaw has also determined that the proposed repeal should not affect a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the proposed repeal (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. All comments should refer to Project Number 17709, repeal of §23.99.

This repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002.

§23.99. Bundling.

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 December 21, 1998.

TRD-9818533
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: February 7, 1999
For further information, please call: (512) 936–7308

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Chapter 26. Substantive Rules Applicable to Telecommunications Service Providers

Subchapter L. Wholesale Market Provisions

16 TAC §26.276

The Public Utility Commission of Texas (commission) proposes new §26.276 relating to Unbundling. The proposed new section replaces §23.99 of this title (relating to Unbundling). The proposed rule requires incumbent local exchange companies to unbundle their network to the extent ordered by the Federal Communications Commission (FCC) as required by Public Utility Regulatory Act (PURA) §60.021. Project Number 17709 has been assigned to this proceeding.

The Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to: (1) satisfy the requirements of §167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 26 has been established for all commission substantive rules applicable to telecommunications service providers. The duplicative sections of Chapter 23 will be proposed for repeal as each new section is proposed for publication in the new chapter.

General changes to rule language:

The proposed new section reflects different section, subsection, and paragraph designations due to the reorganization of the rules. Citations to the Public Utility Regulatory Act have been updated to conform to the Texas Utilities Code throughout the sections and citations to other sections of the commission's rules have been updated to reflect the new section designations. Some text has been proposed for deletion as unnecessary in the new section because the dates and requirements in the text no longer apply due to the passage of time and/or fulfillment of the requirements. The *Texas Register* will publish this section as all new text. Persons who desire a copy of the proposed new section as it reflects changes to the existing section in Chapter 23 may obtain a redlined version from the commission's Central Records under Project Number 17709.

Other changes specific to each section:

The definitions subsection in existing §23.99(c) has not been included in proposed 26.276.The definitions have been moved to the general definitions section, §26.5 of this title (relating to Definitions).

Subsection (f) is revised so that the language requiring incumbent local exchange companies (ILECs) to designate unbundled components as basic network services, discretionary services, or competitive services is consistent with the classification of services in Chapter 58 of the Public Utility Regulatory Act.

Ms. Bih-Jau Sheu, senior economist, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Sheu has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the ability of carriers to purchase only those components of the local exchange company (LEC) network that they need to compete with the local exchange carrier. The enhanced competition in telecommunications markets should provide additional service choices to customers, increase incentives for efficiency and lower prices, and facilitate new and innovative services. The access to unbundled services and the resulting positive effect on competition in telecommunications markets are expected to have a positive effect on small and large businesses. There are no anticipated economic costs to persons who are required to comply with the proposed rule because it ensures the recovery of appropriate costs.

Ms. Sheu has also determined that for each year of the first five years the proposed section is in effect there will be no impact on employment in the geographic area affected by implementing the requirements of the section.

Comments on the proposed section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. The commission also invites specific comments regarding the §167 requirement as to whether the reason for adopting §23.99 continues to exist in the proposed new section. All comments should refer to Project Number 17709 - proposed §26.276 relating to Unbundling.

This section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §60.021, which requires at a minimum, an incumbent local exchange company shall unbundle its network to the extent ordered by the Federal Communications Commission.

Cross Index to Statutes: Public Utility Regulatory Act §14.002 and §60.021

§26.276. Unbundling.

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §60.021, which requires an incumbent local exchange company (ILEC), at a minimum, to unbundle its network to the extent ordered by the Federal Communications Commission (FCC).

(b) Application.

(1) The provisions of this section apply, as of its effective date, to each ILEC that serves one million or more access lines.

(2) The provisions of this section apply upon a bona fide request to each ILEC that serves 31,000 or more access lines but fewer than one million access lines.

(3) The provisions of this section apply, after September 1, 1998, upon a bona fide request to each ILEC that serves fewer than 31,000 access lines.

(c) Unbundling requirements.

(1) Unbundling pursuant to current FCC requirements. Each ILEC that is subject to this section shall unbundle as specified in subparagraphs (A) and (B) of this paragraph. An ILEC with interstate tariffs in effect shall unbundle its network/services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC shall also not impose a charge or rate element that is not included in its interstate tariffs for these unbundled rate elements. Nothing herein precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled pursuant to this paragraph.

(A) The ILEC's network shall be unbundled to the extent ordered by the FCC in compliance with its open network architecture requirements; and

(B) Signaling for tandem switching shall be unbundled to the extent ordered by the FCC in compliance with CC Docket Number 91- 141, Third Report and Order, In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II.

(2) Unbundling pursuant to future FCC requirements. An ILEC shall unbundle its network/services as defined in the term "unbundling" in §26.5 of this title (relating to Definitions) for intrastate services to the extent ordered, in the future, by the FCC for interstate services. An ILEC with interstate tariffs in effect shall unbundle these services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC shall also not impose a charge or rate element that is not included in its interstate tariffs for unbundling. Nothing herein precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled pursuant to this paragraph.

(d) Costing and pricing of services in compliance with this section.

(1) Cost standard. Services unbundled in compliance with this section shall be subject to the following cost standard.

(A) The cost standard for unbundled services shall be the long run incremental costs (LRIC) of providing the service.

(B) Any ILEC subject to §23.91 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility Services) shall file LRIC studies pursuant to that rule for unbundled components specified in subsection (c)(1) of this section.

(C) For any ILEC that is subject to §23.91 of this title, the cost standard for unbundled services required under subsection (c)(2) of this section shall be the long run incremental costs pursuant to §23.91 of this title.

(D) The long run incremental cost standard shall not apply if the ILEC proposes rates that are the same as the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service or if the ILEC adopts rates of another ILEC pursuant to paragraph (2)(B) of this subsection.

(2) Pricing standard. Services unbundled in compliance with this section shall be subject to the following pricing standard.

(A) Any ILEC may propose rates, without cost justification, that are at parity with the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service. The ILEC shall amend its intrastate rates, terms and conditions to be consistent with subsequent revisions in its interstate tariffs providing for unbundling pursuant to filing requirements established in subsection (f)(5) of this section.

(B) In addition to the provision in subparagraph (A) of this paragraph, ILECs that are not subject to §23.91 of this title may adopt the rates of another ILEC that are developed pursuant to the requirements of this section.

(C) If an ILEC proposes rates that are not at parity with the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service or does not adopt the rates of another ILEC pursuant to subparagraph (B) of this paragraph, the following requirements shall apply to any service approved under this section:

(i) Unless waived or modified by the presiding officer, the service shall be offered in every exchange served by the ILEC, except exchanges in which the ILEC's facilities do not have the technical capability to provide the service.

(ii) If the sum of the rates of the new unbundled components is equal to the price of the original bundled service and if the ratio of the rate of each unbundled component to its LRIC is the same for each unbundled component, there shall be a rebuttable presumption that the rate of an unbundled component is reasonable.

(iii) The proposed rates and terms of the service shall not be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive.

(D) Rates based upon the new LRIC cost studies required under paragraph (1)(B) of this subsection shall be subject to the pricing rulemaking referred to in §23.91(p) of this title to the same extent as any other service offered by an ILEC subject to the pricing rule.

(e) Basket assignment. An ILEC electing incentive regulation under PURA Chapter 58 shall, in its compliance tariff filed pursuant to subsection (f) of this section, include a proposal and rationale for designating the unbundled components as basic network services, discretionary services, or competitive services.

(f) Filing requirements.

(1) Initial filing to implement subsection (c)(1) of this section in effect for ILECs serving one million or more access lines. An ILEC serving one million or more access lines shall file initial tariff amendments to implement the provisions of subsection (c)(1) of this section not later than 60 days from the effective date of this section. The proposed effective date of such filings shall be not later than 30 days after the filing date, unless suspended. Tariff revisions filed pursuant to this subsection shall not be combined in a single application with any other tariff revision.

(2) Filings to comply with subsection (c)(2) of this section for ILECs serving one million or more access lines. An ILEC serving one million or more access lines shall file tariff amendments to implement the provisions of subsection (c)(2) of this section, within 60 days of the effective date of its interstate tariff providing for unbundling. The proposed effective date of such filings shall be not later than 30 days after the filing date, unless suspended. Tariff

revisions filed pursuant to this subsection shall not be combined in a single application with any other tariff revision.

(3) Filings to implement subsections (c)(1) and (2) of this section for ILECs serving 31,000 or more access lines but fewer than one million access lines. If an ILEC serving 31,000 or more access lines but fewer than one million access lines receives a bona fide request, it shall unbundle its network/services pursuant to the bona fide request within 90 days from the date of receipt of the bona fide request or shall have the burden of demonstrating the reasons for not unbundling pursuant to the bona fide request.

(4) Filings to implement subsections (c)(1) and (2) of this section for ILECs serving fewer than 31,000 access lines. If an ILEC serving fewer than 31,000 access lines receives a bona fide request, after September 1, 1998, it shall unbundle its network/services pursuant to the bona fide request within 90 days from the date of receipt of the bona fide request or shall have the burden of demonstrating the reasons for not unbundling pursuant to the bona fide request.

(5) Filings to comply subsection (d)(2)(A) of this section. An ILEC proposing rates pursuant to subsection (d)(2)(A) shall file tariff amendments to implement the revisions in its interstate tariffs providing for unbundling, within 30 days of the effective date of its interstate tariff providing for unbundling. The proposed effective date of such filings shall be not later than 30 days after the filing date, unless suspended. Tariff revisions filed pursuant to this subsection shall not be combined in a single application with any other tariff revision.

(g) Requirements for notice and contents of application in compliance with this section.

(1) Notice of Application. The presiding officer may require notice to be provided to the public as required by Chapter 22, Subchapter D of this title (relating to Notice). The notice shall include, at a minimum, a description of the service, the proposed rates and other terms of the service, the types of customers likely to be affected if the service is approved, the probable effect on ILEC's revenues if the service is approved, the proposed effective date for the service, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, PO Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection 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 may reach the commission's toll free number by calling Relay Texas at (800) 735-2988."

(2) Contents of application for an ILEC serving one million or more access lines that is required to comply with subsection (f)(1), (2), and (5) of this section An ILEC shall request approval of an unbundled service by filing an application that complies with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Office of Regulatory Affairs, Legal Division, and one copy to the Office of Public Utility Counsel. The application shall contain the following information:

(A) a description of the proposed service and the rates, terms and conditions, under which the service is proposed to be offered and a demonstration that the proposed rates, terms and conditions are in conformity with the requirements in subsections (c), (d), and (e) of this section, as applicable;

(B) a statement detailing the type of notice, if any, the ILEC has provided or intends to provide to the public regarding the application and a brief statement explaining why the ILEC's notice proposal is reasonable;

(C) a copy of the text of the notice, if any;

(D) a long run incremental cost study supporting the proposed rates, if the rates are not at parity with the carrier's interstate rates;

(E) detailed documentation showing that the proposed service is priced above the long run incremental cost of such service, including all workpapers and supporting documentation relating to computations or assumptions contained in the application, if the rates are not at parity with the carrier's interstate rates;

(F) projection of revenues, demand, and expenses demonstrating that in the second year after the service is first offered, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as well as a contribution for joint and/or common costs, if the rates are not at parity with the carrier's interstate rates;

(G) explanation that the proposed rates and terms of the service are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive;

(H) the information required by §§26.121 of this title (relating to Privacy Issues), 26.122 of this title (relating to Customer Proprietary Network Information, and 26.123 of this title (relating to Caller Identification Services; and

(I) any other information which the ILEC wants considered in connection with the commission's review of its application.

(3) Contents of application for an ILEC serving fewer than one million access lines that is required to comply with subsection (f)(3), (4), and (5) of this section. An ILEC shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Office of Regulatory Affairs, Legal Division, and one copy shall be delivered to the Office of Public Utility Counsel. The application shall contain the following:

(A) contents of application required by paragraph (2)(A), (B), (C), (H), and (I) of this subsection;

(B) contents of application required by paragraph (2)(D), (E), (F), and (G) of this subsection, if the rates are not at parity with the carrier's interstate rates or the rates of another ILEC;

(C) a description of the proposed service(s) and the rates, terms, and conditions under which the service(s) are proposed to be offered and an affidavit from the general manager or an officer of the ILEC approving the proposed service;

(D) a notarized affidavit from a representative of the ILEC affirming that the rates are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory; subsidized directly or indirectly by regulated monopoly services; or predatory, or anticompetitive; and

(E) projections of the amount of revenues that will be generated by the proposed service.

(h) Commission processing of application.

(1) Administrative review. An application considered under this section may be reviewed administratively unless the ILEC requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date shall be according to the requirements in subsection (f) of this section.

(B) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any time deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(C) While the application is being administratively reviewed, the commission staff and the staff of the Office of the Public Utility Counsel may submit requests for information to the ILEC. Six copies of all answers to such requests for information shall be filed with Central Records and one copy shall be provided to the Office of Public Utility Counsel within ten days after receipt of the request by the ILEC.

(D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the commission staff written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations concerning the application.

(E) No later than 35 days after the effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the ILEC's application.

(2) Approval or denial of application. The application shall be approved by the presiding officer if the proposed tariff meets the requirements in this section. If, based on the administrative review, the presiding officer determines, that one or more of the requirements not waived have not been met, the presiding officer shall docket the application.

(3) Standards for docketing. The application may be docketed pursuant to §22.33(b) of this title (relating to Tariff Filings).

(4) Review of the application after docketing. If the application is docketed, the operation of the proposed rate schedule shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the merits. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(5) Interim rates. For good cause, interim rates may be approved after docketing. If the service requires substantial initial investment by customers before they may receive the service, interim rates shall be approved only if the ILEC shows, in addition to good cause, that it will notify each customer prior to purchasing the service that the customer's investment may be at risk due to the interim nature of the service.

(i) Commission processing of waivers. Any request for modification or waiver of the requirements of this section shall include a complete statement of the ILEC's arguments and factual support for that request. The presiding officer shall rule on the request expeditiously.

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 December 21, 1998.

TRD-9818534
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: February 7, 1999
For further information, please call: (512) 936–7308

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 3. Life, Accident and Health Insurance and Annuities

Subchapter X. Preferred Provider Plans

28 TAC §3.3705

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

The Texas Department of Insurance proposes repeal of §3.3705 (relating to Procedure to Assure Adequate Treatment). Contemporaneously with this proposed repeal, proposed new §3.3705 and proposed amendments to §§3.3701-3.704 and new §3.3706 are published elsewhere in this issue of the *Texas Register*. The purpose and objective of the proposed new §3.3705 and proposed amendments to §3.3706 is to implement legislation from the 75th Legislative session in Senate Bill 383. In addition proposed amendments to §3.3703 capture provisions relating to contract requirements between the insurer and a preferred provider and §3.3706 capture provisions relating to termination that were included in §3.3705 for which repeal is now proposed.

Kim Stokes, Associate Commissioner, Life/Health and Managed Care Division, has determined that during the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections. There will be no measurable effect on local employment or the local economy.

Ms. Stokes has also determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of administration and enforcement of the repealed sections will be increased efficiency in the operation of the department arising from consistent application of procedures among types of regulated entities. Additionally, the legislative intent of the 75th Legislature in passing Senate Bill 383 is being implemented through the revision of the regulations relating to preferred providers, of which the repeal of

this section is but a small part. There is no anticipated difference in cost of compliance between small and large businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Comments on the proposed repeal must be submitted within 30 days after publication of the proposed section in the Texas Register to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be submitted to Linda Von Quintus, Deputy Commissioner, Regulation and Safety Division, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

Repeal of §3.3705 is proposed pursuant to Insurance Code, Chapter 3, Subchapter X, as amended by the 75th Legislature in Senate Bill 383 and Insurance Code, Article 1.03A. Under the Insurance Code, Article 3.70-3C (Preferred Provider Benefit Plans), Section 9 the commissioner shall adopt rules and regulations as necessary to implement the provisions of the article and to ensure reasonable assessibility and availability of preferred provider and basic level benefits to Texas citizens. Insurance Code Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

The proposed repeal affects regulation pursuant to the following statutes: Insurance Code Articles 3.42, 3.51-6, 3.70-2(B), 3.70-3C, 21.21-6, 21.21-8 and 21.52. Insurance Code Chapters 20, 22 and 26.

§3.3705. Procedure To Assure Adequate Treatment.

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 December 22, 1998.

TRD-9818549
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: February 7, 1999
For further information, please call: (512) 463-6327

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28 TAC §§3.3701-3.3706

The Texas Department of Insurance proposes amendments to §§3.3701 - 3.3704, and new §3.3705 and §3.3706, concerning preferred provider plans. Elsewhere in this issue of the *Texas Register* the department proposes repeal of current §3.3705. The proposed amendments and new sections implement legislation enacted by the 75th Legislative session in Senate Bill 383 which amends Chapter 3, Subchapter G of the Insurance Code by adding Article 3.70-3C (Preferred Provider Benefit Plans) and House Bill 2846 which amends Chapter 3, Subchapter G of the Insurance Code by adding Article 3.70-3C (Use of Advanced Practice Nurses and Physician Assistants by Preferred Provider Benefit Plans), and Senate Bill 786 which amends Insurance Code, Chapter 21, Subchapter E by adding Article 21.53K concerning the provisions of services related to immunizations and vaccinations under managed care plans. The proposed amendments and new sections restructure the existing rules, §§3.3701-3.3705, by moving some of the existing rules and incorporating them into other sections, altering the language of the rules to comply with the legislative enactments, and reorganizing the rules into individual sections relating to specific components of a preferred provider benefit plan, thus rendering the rules better organized and easier to read.

The proposed amendments to §3.3701 add advanced practice nurses and physician assistants as preferred providers and indicate that Articles 3.70-3C (Preferred Provider Benefit Plans), 3.70-3C (Use of Advanced Practice Nurses and Physician Assistants by Preferred Provider Benefit Plans) and 21.53K, which concerns the provisions of services related to immunizations and vaccinations under managed care plans, are now applicable to the provisions of Subchapter X.

The proposed amendments to §3.3702 redefine the words and terms used in the subchapter to comply with amendments made to Chapter 3 of the Insurance Code by the 75th Legislature and to eliminate definitions that are no longer necessary. The proposed amendments to §3.3703 consolidate the contracting requirements between insurers and physicians and health care providers, contained in the existing rules, which were not affected by the enactment of Insurance Code Article 3.70-3C (Preferred Provider Benefit Plans) and which are distributed throughout several sections of the existing rules. The proposed amendments to §3.3703 include additional contracting provisions required by Article 3.70-3C (Preferred Provider Benefit Plans) and two provisions required by Insurance Code Article 21.53K which concern written protocols for immunizations or vaccinations to be administered by a pharmacist. The proposed amendments to §3.3704 consolidate the existing rules relating to an insured's freedom of choice in the selection of providers, add additional requirements required by Article 3.70-3C (Preferred Provider Benefit Plans), and delete provisions concerning coverage information which are now set forth in proposed new §3.3705.

Proposed new §3.3705 sets forth readability and mandatory disclosure requirements for preferred provider benefit plans issued pursuant to Chapter 3 of the Insurance Code. Proposed new §3.3706 sets forth procedures by which a provider shall be notified of an insurer's sponsorship of a preferred provider plan, how application for designation as a preferred provider can be made, notification requirements for providers upon disapproval of an application for designation as a preferred provider, notification requirements for a provider upon of termination by an insurer from a plan as a preferred provider, and mandatory review procedures available whenever a physician or health care practitioner is not designated as a preferred provider or is terminated from a plan by an insurer.

In addition, subsections (d) and (e) of proposed §3.3706 create expedited and standard versions of the review processes required by statute. It should be noted that the review process is already required by the existing rules. These proposed changes involve only alterations to the time schedule required by Article 3.70-3C (Preferred Provider Benefit Plans). The rules add a proposed expedited process at subsection (e) of proposed §3.3706 which requires a physician or health care practitioner requesting review from an insurer to deliver all relevant material pertaining to the review within ten business days of receipt of the notice of intent to terminate him or her as a preferred provider. The insurer is required to render a decision within thirty calendar days. The standard process, set forth in subsection (d) of proposed §3.3706, allows the provider twenty calendar days

in which to submit materials pertaining to the review and the insurer sixty calendar days within which to render a decision.

Kim Stokes, Associate Commissioner, Life/Health and Managed Care Division, has determined that for each year of the first five years the proposed amendments and new sections will be in effect there will be no measurable effect on state or local government, local employment, or the local economy as a result of the proposal.

Ms. Stokes has also determined that for each year of the first five years the proposed sections are in effect, the public benefits anticipated as a result of the proposed sections will be increased consumer and provider awareness of the requirements that must be met by insurers who sponsor preferred provider plans regulated under Chapter 3 of the Insurance Code; increased accessibility by insureds to immunizations and vaccinations; and ultimately, improved ability by providers and citizens to make informed choices about health care services. Subsection (f) of proposed §3.3706 requires an insurer to maintain confidentiality of patient identity and records involved in a review requested by a provider under this subsection. State law already mandates that an insurer maintain confidentiality of all patient identities and records. The new section clarifies that the already existing confidentiality requirements apply to the review processes as well.

The proposed amendments add terms under §3.3703 which must be included in a contract between an insurer and a preferred provider that reflect changes required by Article 3.70-3C (Preferred Provider Benefit Plans) as to how preferred provider benefit plans are administered. For example, subsection (a)(19) of proposed §3.3703 requires a contract to contain a provision that discloses that a physician or health care practitioner has a right to request a review of their termination as a preferred provider by an insurer. The statute requires only that such notice be given upon termination. However, §3.3703 requires that all affected parties be made aware of their rights and responsibilities concerning the review process before the need to access the process arises. As a result, the process will function more smoothly for insurers and providers, and they will be able to more efficiently utilize their resources. Therefore, it is the department's position that by requiring specific contract provisions that track the general contract requirements of Art. 3.70-3C (Preferred Provider Benefit Plans), all persons required to comply with these rules will be benefited.

Ms. Stokes estimates that all costs to persons required to comply with the proposed amended sections and the new sections are the result of the legislative enactment of Insurance Code Articles 3.70-3C (Preferred Provider Benefit Plans), 3.70-3C (Use of Advanced Practice Nurses and Physician Assistants by Preferred Provider Benefit Plans) and 21.53K and not the result of these proposed rules. Article 3.70-3C (Preferred Provider Benefit Plans) requires each affected insurer, regardless of whether it is considered to be a small or large business, to comply with the provisions contained therein. Therefore, it is the department's position that these rules are mandated by the underlying state statute, and considering the statute's purposes, it would be neither legal nor feasible to reduce their effect on small businesses as doing so would prevent insureds and providers, and potential insureds and providers, from benefiting from these provisions.

Comments on the proposal must be submitted within 30 days after publication of the proposed amendments and new sections in the Texas Register to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be submitted to Linda Von Quintus, Deputy Commissioner, Regulation and Safety Division, Mail Code 107-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas, 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendments and new sections are proposed under the Insurance Code, Chapter 3, Subchapter X, as amended by the 75th Legislature in Senate Bill 383 and House Bill 2846, Chapter 21, Subchapter E, as amended by the 75th Legislature in Senate Bill 786, and Article 1.03A. Insurance Code Article 3.70-3C (Preferred Provider Benefit Plans), Section 9 provides that the commissioner shall adopt rules and regulations as necessary to implement the provisions of this article and to ensure reasonable accessibility and availability of preferred provider and basic level benefits to Texas citizens. Insurance Code Article 1.03A provides that the Commissioner of Insurance may adopt rules necessary for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute.

The following statutes are affected by this proposal: Insurance Code Articles 3.42, 3.51-6, 3.70, 3.70-2(B), 3.70-3C, 21.21-6, 21.21-8, 21.52, and 21.53K. Insurance Code Chapters 20, 22 and 26.

§3.3701. Application [~~Scope~~].

(a) The sections of this subchapter apply to any [~~a~~] preferred provider benefit plan [~~in which an insurer as defined in §3.3702 of this title (relating to Definitions) provides through its health insurance policy for the payment of a level of coverage which is different from the basic level of coverage provided by the health insurance policy, if the insured uses a preferred provider. The sections of this subchapter do not apply to nor do they sanction any plan arranged or provided for by any provider, employer, union, third-party entity, or any person or entity other than an insurer authorized to engage in the business of health insurance in this state~~]. The sections of this subchapter do not apply to provisions for dental care benefits in any health insurance policy. This subchapter is not an interpretation of and has no application to any law requiring licensure to act as a principal or agent in the insurance or related businesses including, but not limited to, health maintenance organizations.

(b) The provisions of this subchapter shall be subject to the Insurance Code[~~,~~] Articles 3.70-2(B), 3.70-3C (Preferred Provider Benefit Plans), 3.70-3C (Use of Advanced Practice Nurses and Physician Assistants by Preferred Provider Plans), 21.52, and 21.53K as they relate to insurers and the practitioners named therein.

(c) These sections do not create a private cause of action for damages or create a standard of care, obligation or duty that provides a basis for a private cause of action. These sections do not abrogate a statutory or common law cause of action, administrative remedy or defense otherwise available.

(d) If any terms, sections or subsections of this subchapter are determined by a court of competent jurisdiction to be inconsistent with the Insurance Code or invalid for any reason, the remaining terms, sections or subsections of this subchapter will continue in effect.

§3.3702. Definitions.

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

(1) Contract holder – An individual who holds an individual health insurance policy, or an organization which holds a [an individual or] group health insurance policy.

(2) Emergency care – As defined in Insurance Code, Article 3.70-3C §1(1) (Preferred Provider Benefit Plans) [3.70-2(I)].

(3) Health care provider or provider – As defined in Insurance Code Article 3.70-3C §1(3) (Preferred Provider Benefit Plans) [Any practitioner (other than a physician), institutional provider, or any other person or organization that furnishes health care services, and that is licensed or otherwise authorized to practice in this state].

(4) Health insurance policy – As defined in Insurance Code Article 3.70-3C §1(2) (Preferred Provider Benefit Plans) [A group or individual insurance policy or contract providing benefits for medical or surgical expenses incurred as a result of an accident or sickness, which is approved under the Insurance Code, Article 3.42].

(5) Health Maintenance Organization (HMO) – As defined in Insurance Code Article 20A.02(n).

(6) Hospital – As defined in Insurance Code Article 3.70-3C §1(4) (Preferred Provider Benefit Plans) [A licensed public or private institution as defined by the Texas Hospital Licensing Law, Texas Civil Statutes, Article 4437f, or by the Texas Mental Health Code, §88, Texas Civil Statutes, Article 5547-88].

(7) Institutional provider – As defined in Insurance Code Article 3.70-3C §1(5) (Preferred Provider Benefit Plans) [A hospital, nursing home, or any other medical or health-related service facility caring for the sick or injured or providing care for other coverage which may be provided in a health insurance policy].

(8) Insurer – As defined in Insurance Code Article 3.70-3C §1(6) (Preferred Provider Benefit Plans) [Any life, health, and accident; health and accident; or health insurance company or company operating pursuant to the Insurance Code, Chapters 3, 10, 20, 22, and 26, as amended, authorized to issue, deliver, or issue for delivery in this state health insurance policies approved under the Insurance Code, Article 3.42].

[Medical care –Furnishing those services defined as the practice of medicine in the Medical Practice Act of Texas, Texas Civil Statutes, Article 4495b].

(9) Physician – As defined in Insurance Code Article 3.70-3C §1(8) (Preferred Provider Benefit Plans) [Anyone licensed to practice medicine in the State of Texas].

(10) Practitioner – As defined in Insurance Code Article 3.70-3C §1(9) (Preferred Provider Benefit Plans) [One who practices a healing art and is specified in the Insurance Code, Article 3.70-2(B) or 21.52].

(11) Preferred provider – As defined in Insurance Code Article 3.70-3C §1(1) (Use of Advanced Practice Nurses and Physician Assistants by Preferred Provider Plans) [A physician, practitioner, hospital, institutional provider, or health care provider, or an organization of physicians or health care providers, who contracts with an insurer to provide medical care or health care to insureds covered by a health insurance policy a authorized by law and this subchapter].

(12) Preferred Provider Benefit Plan – As defined in Insurance Code Article 3.70-3C §1(2) (Use of Advanced Practice Nurses and Physician Assistants by Preferred Provider Plans).

(13) Prospective insured – As defined in Insurance Code Article 3.70-3C §1(11) (Preferred Provider Benefit Plans) [For group coverage, an individual, including dependents, eligible for coverage under a health insurance policy issued to the group. For individual coverage, an individual, including dependents, eligible for coverage who has expressed an interest in purchasing an individual health insurance policy].

(14) Quality assessment – As defined in Insurance Code Article 3.70-3C §1(12) (Preferred Provider Benefit Plans) [A mechanism which is in place or put into place and utilized by an insurer for the purposes of evaluating, monitoring, or improving the quality and effectiveness of the medical care delivered by physicians or health care providers to persons covered by a health insurance policy to insure that such care delivered is consistent with that delivered by an ordinary, reasonable, prudent physician or health care provider under the same or similar circumstances].

(15) Service area – As defined in Insurance Code Article 3.70-3C (Preferred Provider Benefit Plans) §1(13) [A geographic area or areas set forth in the health insurance policy or preferred provider contract].

(16) Utilization Review – As defined in Insurance Code Article 21.58A §2(20) [A system for prospective or concurrent review of the medical necessity and appropriateness of health care services being provided or proposed to be provided to an individual within this state. Utilization review shall not include elective requests for clarification of coverage].

§3.3703. Contracting Requirements.

(a) An insurer marketing a preferred provider benefit plan must contract with physicians and health care providers to assure that all medical and health care services and items contained in the package of benefits for which coverage is provided, including treatment of illnesses and injuries, will be provided under the plan in a manner that assures both availability and accessibility of adequate personnel, specialty care, and facilities. Each contract must meet the following requirements [A health insurance policy that includes different benefits from the basic level of coverage for use of preferred providers shall not be considered unjust under the Insurance Code, Article 3.42, or unfair discrimination under the Insurance Code, Articles 21.21-6 or 21.21-8, or to violate Article 3.70-2(B) or 21.52 of the Insurance Code, if]:

[(1) physicians, practitioners, institutional providers and health care providers other than physicians, practitioners and institutional providers, if such other health care providers are included by the insurer as preferred providers, licensed to treat injuries or illnesses or to provide services covered by the health insurance policy that comply with the terms and conditions established by the insurer for designation as preferred providers may apply for and shall be afforded a fair, reasonable, and equivalent opportunity to become preferred providers. Such designation shall not be unreasonably withheld. If such designation is withheld relating to a physician, the insurer shall provide a reasonable review mechanism that incorporates an advisory role only by a physician panel. Any recommendation of the physician panel shall be provided upon request to the affected physician. In the event of an insurer determination which is contrary to any recommendation of the physician panel, a written explanation of the insurer's determination shall also be provided upon request to the affected physician. The panel shall be composed of not less than three physicians selected by the insurer from a list of those physicians contracting with the in-

surer, and shall include one member who is a physician in the same or similar specialty, if available. The list of physicians is to be provided to the insurer by those physicians contracting with the insurer in the applicable service area. The insurer must give a physician or health care provider not designated upon initial application written reasons for denial of the designation; however, unless otherwise limited by Insurance Code, Article 21.52B, this subsection does not prohibit an insurer from rejecting an application from a physician or health care provider based on the determination that the preferred provider plan has sufficient qualified providers. Any insurer, when sponsoring a preferred provider plan, shall notify immediately all physicians and practitioners in the geographic area covered by the plan of its intent to offer such a plan by publication, or in writing to each physician and practitioner of the opportunities to participate. Such notice and opportunities to noncontracting physicians and practitioners as described above shall be provided on a yearly basis thereafter. The insurer shall, upon request, make available information concerning the application process and qualification requirements for participation as a provider in the plan to any physician or health care provider;]

[(2) the terms and conditions of the contract between the insurer and the preferred providers shall be reasonable, shall not violate any law or any section of this subchapter, shall be based solely on economic, quality, and accessibility considerations, and shall be applied in accordance with reasonable business judgment.]

(1) [Exclusive preferred provider] A contract [contracts] between a preferred provider and an insurer shall not restrict [under which] a physician or health care provider [is prevented] from contracting with other insurers, preferred provider plans, preferred provider organizations, or HMOs [others to provide similar services shall not be permitted under this subchapter].

(2) Any term or condition limiting participation on the basis of quality, contained in a contract between a preferred provider and an insurer, shall be consistent with established standards of care for the profession.

(3) In the case of physicians or practitioners with hospital or institutional provider privileges who provide a significant portion of care in a hospital or institutional provider setting, a contract between a preferred provider and an insurer may contain terms and conditions which [may] include the possession of practice privileges at preferred hospitals or institutions, except that if no preferred hospital or institution offers privileges to members of a class of physicians or practitioners, the contract may not provide that the lack of hospital or institutional provider privileges may [shall not] be a basis for denial of participation as a preferred provider to such physicians or practitioners of that class.

(4) A contract between an [No] insurer and [may contract with] a hospital or institutional provider shall not [which], as a condition of staff membership or privileges, require [requires] a physician or practitioner to enter into a preferred provider contract.

(5) A contract between a [The] preferred provider and an insurer may provide that the preferred provider will [agree with an insurer to] not bill the insured for unnecessary care, if a physician or practitioner panel has determined the care was unnecessary, but the contract [plan] shall not require the preferred provider to pay hospital, institutional, laboratory, x-ray, or like charges resulting from the provision of services lawfully ordered by a physician or health care provider, even though such service may be determined to be unnecessary.[;]

[(3) under the preferred provider plan, the insured shall be provided with direct and reasonable access to all classes of physicians and practitioners licensed to treat illnesses or injuries and to provide services covered by the health insurance policy.]

(6) A contract between a preferred provider and an insurer [There] shall not [be no]:

(A) contain restrictions on the classes of physicians and practitioners who may refer an insured to another physician or practitioner; or [requirement that the insured be referred by a physician or practitioner of another class or by a subspecialty within the same class, except that a plan may provide for a different level of coverage for use of a nonpreferred provider if a referral is made by a preferred provider. The]

(B) require a referring physician or practitioner [may not be required] to bear the expenses of a referral for specialty care in or out of the preferred provider panel. Savings from cost-effective utilization of health services by contracting physicians or health care providers may be shared with physicians or health care providers in the aggregate.

(7) A contract between a preferred provider and an [An] insurer shall not contain [use] any financial incentives [incentive or make payment] to a physician or a health care provider which act [acts] directly or indirectly as an inducement to limit medically necessary services. This subsection does not prohibit the savings from cost-effective utilization of health services by contracting physicians or health care providers from being shared with physicians or health care providers in the aggregate.

(8) A contract between a physician, physicians' group, or practitioner and an insurer shall have a mechanism for the resolution of complaints initiated by an insured, a physician, physicians' group, or practitioner which provides for reasonable due process including, in an advisory role only, a review panel selected by the manner set forth in subsection (b) of §3.3706 of this title (relating to Designation as a Preferred Provider, Decision to Withhold Designation, Termination of a Preferred Provider, Review of Process).

(9) A contract between a preferred provider and an insurer shall not require any health care provider, physician, or physicians' group to execute hold harmless clauses that shift an insurer's tort liability resulting from acts or omissions of the insurer to the preferred provider.

(10) A contract between a preferred provider and an insurer shall include a provision that requires a preferred provider who is compensated by the insurer on a discounted fee basis to bill the insured only on the discounted fee and not the full charge.

(11) A contract between a preferred provider and a insurer shall include a provision for payment to the physician or health care provider for covered services that are rendered to insureds that complies with Insurance Code Article 3.70-3C (Preferred Provider Benefit Plans) §3(m).

(12) A contract between a preferred provider and an insurer shall include provisions requiring the provider to comply with Insurance Code Article 3.70-3C (Preferred Provider Benefit Plans) §4 which relates to Continuity of Care.

(13) A contract between a preferred provider and an insurer shall not prohibit, penalize, permit retaliation against, or terminate a provider for communicating with any individual listed in Insurance Code Article 3.70-3C (Preferred Provider Benefit Plans) §7(c) about any of the matters set forth therein.

(14) A contract between a preferred provider and an insurer conducting, using, or relying upon economic profiling to admit

physicians or health care providers to a plan or to terminate physicians or health care providers from a plan shall include provisions informing the provider of the insurer's obligation to comply with Insurance Code Article 3.70-3C (Preferred Provider Benefit Plans) §3(h).

(15) A contract between a preferred provider and an insurer that engages in quality assessment shall disclose in the contract all requirements of Insurance Code Article 3.70-3C (Preferred Provider Benefit Plans) §3(i).

(16) A contract between a preferred provider and an insurer shall not require a physician to issue an immunization or vaccination protocol for an immunization or vaccination to be administered to an insured by a pharmacist.

(17) A contract between a preferred provider and an insurer shall not prohibit a pharmacist from administering immunizations or vaccinations if such immunizations or vaccinations are administered in accordance with the Texas Pharmacy Act, Article 4542a-1, Texas Civil Statutes and rules promulgated thereunder.

(18) A contract between a preferred provider and an insurer shall include provisions notifying the provider of the responsibility of a physician or health care provider that voluntarily terminates the contract to provide reasonable notice to the insured, and of the insurer's responsibility to provide assistance to the physician or health care provider in doing so as required by Insurance Code Article 3.70-3C (Preferred Provider Benefit Plans) §6(e)(2).

(19) A contract between a preferred provider and an insurer must disclose the provider's right to written notice upon termination by the insurer, and in the case of termination of a physician or practitioner, the right to request a review, as set forth in §3.3706(c) of this title (relating to Designation as a Preferred Provider, Decision to Withhold Designation, Termination of a Preferred Provider, Review of Process).

(b) Any contract between a preferred provider and an insurer shall explicitly include all of the terms required to be included in a contract by subsection (a) of this section and any applicable provision of the Insurance Code.

(c) [~~(4)~~] In [~~in~~] addition to all other contract rights, violations of these rules shall be treated for purposes of complaint and action in accordance with the Insurance Code[~~,~~] Article 21.21-2, and the provisions of that article shall be utilized insofar as practicable, as it relates to the power of the department, hearings, orders, enforcement, and penalties. [~~;~~]

[~~(5) The insurer offering preferred provider plans shall, upon request, file with the Texas Department of Insurance all data and information on activities of preferred provider plans in order to assess the impact of these plans on:~~]

[~~(A) quality of care;~~]

[~~(B) access to care;~~]

[~~(C) cost of care;~~]

[~~(D) the availability and affordability of accident and health insurance; and~~]

[~~(E) the provision of care of the uninsurable or medically indigent.~~]

(d) An insurer may enter into an agreement with a preferred provider organization for the purpose of offering a network of preferred providers, provided that it remains the insurer's responsibility to:

(1) meet the requirements of Insurance Code Article 3.70-3C ("Preferred Provider Benefit Plans") and this subchapter; or

(2) ensure that the requirements of Insurance Code Article 3.70-3C (Preferred Provider Benefit Plans) and this subchapter are met.

§3.3704. Freedom of Choice; Availability of Preferred Providers.

(a) A preferred provider benefit plan shall not be considered unjust under the Insurance Code Article 3.42, or unfair discrimination under the Insurance Code Articles 21.21-6 or 21.21-8, or to violate Articles 3.70-2(B) or 21.52 of the Insurance Code provided that:

(1) pursuant to the Insurance Code, Article 3.70-3C §3 (Preferred Provider Benefit Plans), Article 3.51-6, §3, and Article 3.70-3(A)(9), no preferred provider benefit plan [~~health insurance policy~~] may require that a service be rendered by a particular hospital, physician, or practitioner;

(2) insureds shall be provided with direct and reasonable access to all classes of physicians and practitioners licensed to treat illnesses or injuries and to provide services covered by the preferred provider benefit plan;

(3) insureds shall have the right to treatment and diagnostic techniques as prescribed by a physician or other health care provider included in the preferred provider benefit plan;

(4) insureds shall have the right to continuity of care as set forth in Article 3.70-3C, §4 (Preferred Provider Benefit Plans);

(5) insureds shall have the right to emergency care services as set forth in Article 3.70-3C, §5 (Preferred Provider Benefit Plans); [~~A health insurance policy that includes different benefits from the basic level of coverage for use of preferred providers shall not be considered to unlawfully restrict freedom of choice in the selection of physicians or health care provider by insureds provided.~~]

(6) [~~(1)~~] the basic level of coverage, excluding a reasonable difference in deductibles, is not more than 30% less than the higher level of coverage. A reasonable difference in deductibles shall be determined considering the benefits of each individual policy;

(7) [~~(2)~~] the rights of an insured to exercise full freedom of choice in the selection of a physician or provider [~~physician, hospital, or practitioner~~] are not restricted by the insurer[~~, and physicians and health care providers shall be free to join one or more insurance plans or other preferred provider plans or HMOs whether or not sponsored by an insurance carrier or HMO~~];

[~~(3) the insurer shall establish reasonable procedures for assuring a transition of insureds to physicians or health care providers and for continuity of treatment, including providing reasonable advance notice to the insured of the impending termination from the plan of a physician or health care provider who is currently treating the insured and making available to the insured a current listing of preferred providers, in the event of termination of a preferred provider's participation in the plan. Each contract between an insurer and a physician or health care provider must provide that the termination of a preferred provider's participation in the plan, except for reason of medical competence or professional behavior, shall not release the physician or health care provider from the generally recognized obligation to treat the insured and cooperate in arranging for appropriate referrals or release the obligation of the insurer to reimburse the physician or health care provider or, if applicable, the insured at the same preferred provider rate if, at the time of preferred provider termination, the insured has special circumstances such as a disability, acute condition, or life threatening illness or is past the 24th week of pregnancy and is receiving treatment in accordance~~

with the dictates of medical prudence. Special circumstances mean a condition such that the treating physician or health care provider reasonably believes that discontinuing care by the treating physician or provider could cause harm to the patient. Special circumstances shall be identified by the treating physician or health care provider who must request that the insured be permitted to continue treatment under the physician or provider's care and agree not to seek payment from the patient of any amounts for which the insured would not be responsible if the physician or health care provider were still a preferred provider. Contracts between an insurer and physicians and health care providers shall include procedures for resolving disputes regarding the necessity for continued treatment by the physician or health care provider. This section does not extend the obligation of the insurer to reimburse, at the preferred provider rate, the terminated physician or health care provider or, if applicable, the insured for ongoing treatment of an insured beyond 90 days from the effective date of the termination];

(8) [(4)] if the insurer is issuing other health insurance policies in the service area that do not provide for the use of preferred providers, [then] the basic level of coverage must be reasonably consistent with such other health insurance policies offered by the insurer which do not provide for a different level of coverage for use of a preferred provider;

(9) any actions taken by an insurer engaged in utilization review under a preferred provider benefit plan shall be taken pursuant to Insurance Code Article 21.58A and Chapter 19, Subchapter R of this title (relating to Utilization Review Agents);

[(5) an insurer shall provide reimbursement for the following emergency care services at the preferred provider level of benefits if the insured cannot reasonably reach a preferred provider and until the insured can reasonably be expected to transfer to a preferred provider:]

[(A) any medical screening examination or other evaluation required by state or federal law to be provided in the emergency department of a hospital which is necessary to determine whether a medical emergency condition exists;]

[(B) necessary emergency care services including the treatment and stabilization of an emergency medical condition; and]

[(C) services originating in a hospital emergency department following treatment or stabilization of an emergency medical condition;]

[(6) physicians or health care providers may refer an insured to providers other than preferred providers, provided that the insured is advised that a different indemnity payment may apply.]

(10) if [If] covered services are not available through preferred providers within the service area, [the insurer shall pay for medically necessary covered services by a] non-preferred providers [provider] shall be reimbursed at the same percentage level of reimbursement as [at the] preferred providers [provider level of benefits]. Nothing in this section requires reimbursement at a preferred level of coverage solely because an insured resides out of the service area and chooses to receive services from providers other than preferred providers for the insured's own convenience;

(11) a preferred provider benefit plan may provide for a different level of coverage for use of a nonpreferred provider if the referral is made by a preferred provider, provided that full disclosure of the difference is included in the plan and the written description as required by §3.3705(b) of this title (relating to Readability and Mandatory Disclosure Requirements); and

[(7) all health insurance policies, health benefit plan certificates, endorsements, amendments, applications or riders shall be written in plain language, must be in a readable and understandable format and must comply with Texas Department of Insurance rules found in Subchapter G of this chapter (relating to Plain Language Requirements for Health Benefit Policies). The insurer shall provide to a prospective group contract holder and prospective insured upon request an accurate written description of the terms and conditions of the policy to allow the prospective group contract holder or prospective insured to make comparisons and informed decisions before selecting among health care plans. The written description must be in a readable and understandable format, by category, and must include a clear, complete and accurate description of these items in the following order:]

[(A) a statement that the entity providing the coverage is an insurance company, the name of the insurance company, and that the insurance contract contains preferred provider benefits;]

[(B) a toll free number, unless exempted by statute or rule, and address for the prospective group contract holder or prospective insured to obtain additional information;]

[(C) an explanation of the distinction between preferred and nonpreferred providers;]

[(D) all covered services and benefits, including payment for services of a preferred provider and a nonpreferred provider, and prescription drug coverage, both generic and name brand;]

[(E) emergency care services and benefits and information on access to after-hours care;]

[(F) out of area services and benefits;]

[(G) an explanation of the insured's financial responsibility for payment for premiums, deductibles, coinsurance or any other out-of-pocket expenses for noncovered or nonpreferred services;]

[(H) any limitations and exclusions, including the existence of any drug formulary limitations, and any limitations regarding preexisting conditions;]

[(I) any prior authorizations, including preauthorization review, concurrent review, post-service review, and postpayment review and any penalties or reductions in benefits resulting from the failure to obtain any required authorizations;]

[(J) provision for continuity of treatment in the event of termination of a preferred provider's participation in the plan;]

[(K) summary of complaint resolution procedures, if any, and a statement that the insurer is prohibited from retaliating against the insured because the insured or other person has filed a complaint on behalf of the insured and against a physician or provider who, on behalf of the insured, has reasonably filed a complaint against the insurer or appealed a decision of the insurer;]

[(L) a current list of preferred providers and complete descriptions of the provider networks, including names and locations of physicians and health care providers, and a disclosure of which preferred providers will not accept new patients;]

[(M) service area;]

[(8) a copy of the written description of the terms and conditions of the policy to be made available to prospective group contract holders and prospective insureds as required in paragraph (5) of this section shall be filed with the department. A current list of

preferred providers and the insurer's service area shall be filed with the department annually by June 1;]

[(9) the health insurance policy and all promotional, solicitation, and advertising material concerning the health insurance policy shall clearly describe the distinction between preferred and nonpreferred providers. Any illustration of preferred provider benefits must be in close proximity to an equally prominent description of basic benefits. A list of preferred providers shall be distributed to all prospective insureds. Any change in the list of preferred providers shall be provided to all insureds no less than annually to all insureds. Unless exempted by statute or rule, the insurer shall provide to each insured a toll free number to be maintained 40 hours per week during regular business hours that the insured can call to obtain a current up-to-date list of preferred providers;]

[(10) no insurer, or agent or representative thereof, may cause or permit the use or distribution of prospective insured information which is untrue or misleading;]

(12) [(11)] both preferred provider benefits and basic level benefits must be reasonably available to all insureds within a designated service area.[;]

(b) [(12)] Payment [payment] by the insurer shall be made for services of a nonpreferred provider in the same prompt and efficient manner as to a preferred provider.

[(13) the insurer will make a good faith effort to have a mix of for-profit, non-profit, and tax-supported institutional providers under contract as preferred providers in the plan's service area to afford all persons insured under such plan freedom of choice in the selection of institutional providers at which they will receive care, unless such a mix proves to be not feasible due to geographic, economic, or other operational factors. In addition, special consideration shall be given to contracting with teaching hospitals and hospitals providing indigent care or care for uninsured individuals as a significant percentage of their overall patient load.]

(c) An insurer shall not engage in retaliatory action against an insured, including cancellation of or refusal to renew a policy, because the insured or a person acting on behalf of the insured has filed a complaint against the insurer or a preferred provider or has appealed a decision of the insurer.

(d) In addition to the requirements for availability of preferred providers set forth in Insurance Code Article 3.70-3C §8 (Preferred Provider Benefit Plans), any insurer offering a preferred provider benefit plan shall make a good faith effort to have a mix of for-profit, non-profit, and tax-supported institutional providers under contract as preferred providers in the service area to afford all insureds under such plan freedom of choice in the selection of institutional providers at which they will receive care, unless such a mix proves to be not feasible due to geographic, economic, or other operational factors. An insurer shall give special consideration to contracting with teaching hospitals and hospitals that provide indigent care or care for uninsured individuals as a significant percentage of their overall patient load.

§3.3705. Readability and Mandatory Disclosure Requirements.

(a) All health insurance policies, health benefit plan certificates, endorsements, amendments, applications or riders shall be written in a readable and understandable format that meets the requirements of §3.602 of this title (relating to Plain Language Requirements for Health Benefit Policies).

(b) The insurer shall, upon request, provide to a current or prospective group contract holder or a current or prospective insured an accurate written description of the terms and conditions of the policy which allows the current or prospective group contract holder or current or prospective insured to make comparisons and informed decisions before selecting among health care plans. An insurer may utilize its handbook to satisfy this requirement provided that the insurer complies with all requirements set forth in this subsection including the level of disclosure required. The written description must be in a readable and understandable format, by category, and must include a clear, complete and accurate description of these items in the following order:

(1) a statement that the entity providing the coverage is an insurance company, the name of the insurance company, and that the insurance contract contains preferred provider benefits;

(2) a toll free number, unless exempted by statute or rule, and address to enable a current or prospective group contract holder or a current or prospective insured to obtain additional information;

(3) an explanation of the distinction between preferred and nonpreferred providers;

(4) all covered services and benefits, including payment for services of a preferred provider and a nonpreferred provider, and prescription drug coverage, both generic and name brand;

(5) emergency care services and benefits and information on access to after-hours care;

(6) out-of-area services and benefits;

(7) an explanation of the insured's financial responsibility for payment for any premiums, deductibles, copayments, coinsurance or other out-of-pocket expenses for noncovered or nonpreferred services;

(8) any limitations and exclusions, including the existence of any drug formulary limitations, and any limitations regarding preexisting conditions;

(9) any prior authorizations, including preauthorization review, concurrent review, post-service review, and postpayment review and any penalties or reductions in benefits resulting from the failure to obtain any required authorizations;

(10) provisions for continuity of treatment in the event of termination of a preferred provider's participation in the plan;

(11) a summary of complaint resolution procedures, if any, and a statement that the insurer is prohibited from retaliating against the insured because the insured or another person has filed a complaint on behalf of the insured, or against a physician or provider who, on behalf of the insured, has reasonably filed a complaint against the insurer or appealed a decision of the insurer;

(12) a current list of preferred providers and complete descriptions of the provider networks, including names and locations of physicians and health care providers, and a disclosure of which preferred providers will not accept new patients; and

(13) the service area.

(c) A copy of the written description required in subsection (b) of this section shall be filed with the department with the initial filing of the preferred provider benefit plan and at any time a material change is made in the information required in subsection (b).

(d) The preferred provider benefit plan and all promotional, solicitation and advertising material concerning the preferred provider benefit plan shall clearly describe the distinction between preferred and nonpreferred providers. Any illustration of preferred provider

benefits must be in close proximity to an equally prominent description of basic benefits.

(e) No insurer, or agent or representative of an insurer, may cause or permit the use or distribution of information which is untrue or misleading.

(f) A current list of preferred providers shall be distributed to all prospective insureds, and to all insureds no less than annually, and shall be filed with the department by June 1 of each year.

(g) Unless exempted by statute or rule, the insurer shall provide to each insured a toll free number to be maintained 40 hours per week during regular business hours that the insured can call to obtain a current, up-to-date list of preferred providers.

§3.3706. Designation as a Preferred Provider, Decision to Withhold Designation, Termination of a Preferred Provider, Review of Process.

(a) Physicians, practitioners, institutional providers, and health care providers other than physicians, practitioners, and institutional providers, if such other health care providers are included by an insurer as preferred providers, licensed to treat injuries or illnesses or to provide services covered by the preferred provider benefit plan and that comply with the terms and conditions established by the insurer for designation as preferred providers, shall be eligible to apply for and be afforded a fair, reasonable and equitable opportunity to become preferred providers.

(1) An insurer initially sponsoring a preferred provider benefit plan shall notify all physicians and practitioners in the service area covered by the plan of its intent to offer the plan and of the opportunity to apply to participate.

(2) Subsequently, an insurer shall annually notify all non-contracting physicians and providers in the service area covered by the plan of the existence of the plan and the opportunity to apply to participate in the plan.

(3) An insurer shall, upon request, make available to any physician or health care provider information concerning the application process and qualification requirements for participation as a provider in the plan.

(4) All notifications given by an insurer pursuant to this paragraph shall be made by publication or distributed in writing to each physician and practitioner in the same manner.

(b) Designation as a preferred provider shall not be unreasonably withheld provided that, unless otherwise limited by the Insurance Code or rule promulgated by the department, an insurer may reject an application from a physician or health care provider on the basis that the preferred provider benefit plan has sufficient qualified providers.

(1) An insurer shall provide written notice of denial of any initial application to a physician or health care provider which includes:

(A) the specific reasons for the denial; and

(B) in the case of physicians and practitioners, the right to a review of the denial as set forth in paragraph (2) of this subsection.

(2) An insurer shall provide a reasonable review mechanism that incorporates, in an advisory role only, a review panel.

(A) The review panel shall be composed of not less than three individuals selected by the insurer from the list of physicians or practitioners contracting with the insurer.

(B) At least one of the three individuals on the review panel shall be a physician or practitioner in the same or similar specialty as the physician or practitioner requesting review unless there is no physician or practitioner in the same or similar specialty contracting with the insured.

(C) The list of physicians or practitioners required by subparagraph (A) of this paragraph shall be provided to the insurer by the physicians or practitioners who contract with the insurer in the applicable service area.

(D) The recommendation of the panel shall be provided upon request to the affected physician or practitioner.

(E) In the event that the insurer makes a determination that is contrary to the recommendation of the panel, a written explanation of the insurer's determination shall be provided to the physician or practitioner upon request.

(c) Before terminating a contract with a preferred provider, the insurer shall provide written notice of termination which includes:

(1) the specific reasons for the termination; and

(2) in the case of physicians or practitioners, notice of the right to request a review prior to termination conducted in the same manner as the review mechanism set forth in subsection (b)(2) of this section which includes the timelines set forth in subsections (d) and (e) for requesting review, except in cases involving:

(A) imminent harm to patient health;

(B) an action by a state medical or other physician licensing board or other government agency which impairs the physician's or practitioner's ability to practice medicine or to provide services; or

(C) fraud or malfeasance.

(d) To obtain a standard review of an insurer's decision to terminate him or her, a physician or practitioner shall:

(1) make a written request to the insurer for a review of that decision within ten business days of receipt of notification of the insurer's intent to terminate him or her; and

(2) deliver to the insurer within 20 business days of receipt of notification of the insurer's intent to terminate him or her, any relevant documentation the physician or practitioner desires the panel and insurer to consider in the review process.

(3) The review process, including the recommendation of the panel and the insurer's determination as required by subsection (b)(2)(E) of this section, shall be completed and the results provided to the physician or practitioner within 60 calendar days of the insurer's receipt of the request for review.

(e) To obtain an expedited review to obtain an expedited review of an insurer's decision to terminate him or her, a physician or practitioner shall:

(1) make a written request to the insurer for a review of that decision within five business days of receipt of notification of the insurer's intent to terminate him or her; and

(2) deliver to the insurer, within ten business days of receipt of notification of the insurer's intent to terminate him or her, any relevant documentation the physician or practitioner desires the panel to consider in the review process.

(3) The expedited review process, including the recommendation of the panel and the insurer's determination as required

by subsection (b)(2)(E) of this section, shall be completed and the results provided to the physician or practitioner within 30 calendar days of the insurer's receipt of the request for review.

(f) Confidentiality of information concerning the insured.

(1) An insurer shall preserve the confidentiality of individual medical records and personal information used in its termination review process. Personal information shall include, at a minimum, name, address, telephone number, social security number and financial information.

(2) An insurer may not disclose or publish individual medical records or other confidential information about an insured without the prior written consent of the insured or unless otherwise required by law. An insurer may provide confidential information to the advisory panel for the sole purpose of performing its advisory review function. Information provided to the advisory panel shall remain confidential.

(g) Notice to insureds.

(1) If a physician or practitioner is terminated for reasons other than at the preferred provider's request, an insurer shall not notify insureds of the termination until the effective date of the termination or at such time as a review panel makes a formal recommendation regarding the termination, whichever is later.

(2) If a physician or provider voluntarily terminates the physician's or provider's relationship with an insurer, the insurer shall provide assistance to the physician or provider in assuring that the notice requirements are met as required by §3.3703(a)(18) of this title (relating to Contracting Requirements).

(3) If a physician or practitioner is terminated for reasons related to imminent harm, an insurer may notify insureds immediately.

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 December 22, 1998.

TRD-9818550
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: February 7, 1999
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 321. Control of Certain Activities By Rule

Subchapter B. Concentrated Animal Feeding Operations

30 TAC §§321.31-321.37, 321.39-321.42, 321.46, 321.47

The Texas Natural Resource Conservation Commission (Commission) proposes amendments to §§321.31-321.37, 321.39-321.42, 321.46 and new §321.47, concerning technical requirements and administrative procedures relating to authorizations of concentrated animal feeding operations (CAFOs). The purpose of these changes is to provide for State assumption of NPDES permitting of CAFO facilities.

On September 14, 1998, the U.S. Environmental Protection Agency (EPA) authorized Texas to implement its Texas Pollutant Discharge Elimination System (TPDES) program. TPDES is the state program to carry out both the National Pollutant Discharge Elimination System (NPDES), a federal regulatory program to control discharges of pollutants to surface waters of the United States and the corresponding state permitting program. As part of the TPDES program, Texas has assumed responsibility for authorization of Concentrated Animal Feeding Operations (CAFO) facilities.

The current Subchapter B CAFO rules were adopted by the commission on August 19, 1998 and became effective on September 18, 1998. TNRCC's current authorizations by rule for CAFOs are state- only authorizations. The purpose of the proposed rules is to implement NPDES assumption and to make the existing rules consistent with federal regulations. As amended, this subchapter will allow the TNRCC to administer a single permitting program for NPDES and state permits and provide CAFOs the opportunity to apply for just one permit to gain both state and federal coverage.

The commission has taken into consideration the following state and federal actions in proposing these amendments to Subchapter B:

(1) EPA Region VI General Permit for CAFOs (March, 1993), which establishes the currently effective technical and procedural requirements for CAFOs to meet in order to maintain federal authorization to discharge under the National Pollutant Discharge Elimination System (NPDES).

(2) Proposed EPA Region VI NPDES General Permit for CAFOs (1998), which proposes requirements for permit coverage for CAFOs that discharge or have a potential to discharge process wastewater into waters of the United States.

(3) Section 26.040 of the Texas Water Code, under which Subchapter B was originally adopted and which directed that the commission may by rule regulate and set requirements and conditions for discharges of waste whenever the commission determines that requiring individual permits is unnecessarily burdensome both to the waste discharger and to the commission.

(4) House Bill 1542, 75th Texas Legislature (1997), which amended §26.040 of the Texas Water Code. This bill specifies that all current rules adopted by the TNRCC under §26.040 as it read prior to the effective date of the HB 1542 remain in effect, as they may be amended by the commission from time to time as appropriate, and provides that the commission's authority for subsequent amendments or modifications is not affected by the changes made by the bill.

(5) Proposed EPA Region VI NPDES General Permit for CAFOs Located in Impaired Watersheds (1998), which proposes additional requirements for permit coverage for CAFOs and others that discharge or have a potential to discharge process wastewater into watershed impaired by CAFO- related activities.

(6) NPDES Memorandum of Agreement between the TNRCC and EPA Region VI (September 14, 1998), which establishes policies, responsibilities, and program commitments for assumption of the NPDES program by the TNRCC.

(7) Federal NPDES Regulations contained in 40 Code of Federal Regulations (CFR) Parts 122, and 412.

EXPLANATION OF PROPOSED RULE

Proposed changes to §321.31, Waste and Wastewater Discharge and Air Emission Limitations, deletes the term "disposed" in order to clarify that disposal of CAFO waste or wastewater in not authorized by Subchapter B. Rather, the land application of manure and wastewater to cropland may be authorized at levels that do not exceed agronomic rates.

Proposed changes to §321.32, Definitions, includes adding swine weighing under 55 pounds within the definitions for "animal unit" and "CAFO" based on comments received on the previous proposed version of this rule. Also, the definition for "CAFO general permit" is being modified to accomplish the consistency between state and federal programs.

Proposed changes to §321.33, Applicability, provide that any facility holding authorizations from both the TNRCC and EPA shall continue to operate under the terms of these authorizations until the NPDES authorization expires. As part of NPDES assumption, TNRCC adopted the EPA's 1993 CAFO general permit, which will remain in effect as TPDES authorization for those facilities with NOIs filed with EPA and approved prior to March 10, 1998. That permit will cease to be effective when EPA issues a replacement general permit. At that time facilities that were operating under the expired EPA issued general permit must obtain TPDES authorization from TNRCC. Within sixty days of such expiration, a facility shall apply for authorization under this amended subchapter and shall continue to operate the facility under the terms of the expired authorization until final disposition of the application.

Any facility that holds an authorization from the TNRCC and that is not required to obtain NPDES authorization shall continue to operate under the terms of their existing TNRCC authorization until expiration, amendment or termination. All such TNRCC authorizations shall expire five years from the effective date of these rules, unless such authorization specifies a different expiration date.

Any facility that holds an authorization from the TNRCC and that is required, but does not hold, a current NPDES authorization, shall file an application under this subchapter within 60 days of the effective date these rules failure to timely submit an application may result in enforcement proceedings.

Any facility with an unexpired authorization under Chapter 321, and which is not required to obtain NPDES authorization, may request a transfer of its authorization to a registration under this subchapter if a written request is submitted on forms approved by the executive director and the facility operates in accordance with the provisions of this subchapter. Those holding unexpired authorizations under Subchapter K are not excluded from this transfer provision. Subchapter K was declared invalid, and six specific Subchapter K registrations were canceled by judgment of a State District Court earlier this year. This judgment is currently on appeal. This proposal provides an optional vehicle for facilities with unexpired Subchapter K authorizations not specifically nullified by judicial order to transfer to Subchapter B.

The proposed changes would also clarify that an owner/operator holding a current authorization is required to obtain an amendment prior to any increase in the number of animals authorized for confinement or to making any modification to the facility which would cause a substantial change to the site plan or in the buffer distance determination. Nonsubstantial modifications are described that may be made to the site plan or the Pollution Prevention Plan (PPP) without prior authorization from the commission. This list of nonsubstantial modifications is descriptive rather than exclusive, and staff intends to provide further elaboration by published guidance, if necessary.

Proposed changes to §321.34, Procedures for Making Application for an Individual Permit, adds an amendment procedure for individual permits. In addition, all applications for permit renewal must be administratively and technically complete and meet all applicable technical requirements of this subchapter.

Proposed changes to §321.35, Procedures for Making Application for Registration, would include requiring that all applications for permit renewal must be administratively and technically complete and meet all applicable technical requirements of this subchapter. The application procedures for registrations were changed to clarify the existing amendment process and to allow the Executive Director to determine which Pollution Prevention Plan components are necessary in an application. Finally, the term "disposal" is proposed to be replaced by the term "land application" in order to clarify that disposal of CAFO waste or wastewater in not authorized by Subchapter B.

The proposed change to §321.36, Notice of Application for Registration, includes the replacement of the term "disposal" with the term "land application" in order to clarify that disposal of CAFO waste or wastewater is not authorized by Subchapter B.

Proposed changes to §321.37, Action on Applications for Registration, requires the executive director to consider any written comments on any applications for registration received within 30 days of mailing the notice.

Proposed changes to §321.39, Pollution Prevention Plans, would establish new requirements for land application of waste or wastewater. Some of the components that must be addressed in the PPP include: a site map showing the location of any land application areas; a description of waste handling procedures and equipment availability; the calculations and assumptions used for determining land application rates; and all nutrient analysis data.

Also, the proposed changes would require that when an annual soil sampling analysis for extractable phosphorus indicates a level greater than 200 parts per million (reported as P) in Zone 1 for a particular waste and/or wastewater land application field, the operator cannot apply wastewater to the affected application area unless the land application is implemented in accordance with a detailed nutrient utilization plan developed by NRCS, or by any professional agronomist or soil scientist.

In addition, the term "disposal" was replaced with the term "land application" in order to clarify that disposal of CAFO waste or wastewater is not authorized by Subchapter B.

Proposed changes to §321.40, Best Management Practices, replace the term "disposal" with the term "land application" in order to clarify that disposal of CAFO waste or wastewater is not authorized by Subchapter B.

Proposed changes to §321.41, Other Requirements, reference the definition for CAFOs in §321.32(9)(B) and replaces the term "disposal" with the term "land application" in order to clarify that

disposal of CAFO waste or wastewater is not authorized by Subchapter B.

Proposed changes to §321.42, Monitoring and Reporting Requirements, require that when control of a land application area changes, the operator must file an application to amend the existing authorization to reflect an alternate method for beneficially utilizing the waste or wastewater or to add new or additional land application areas to the authorization. Also, changes are proposed to require an operator to retain copies on-site of all records required by this subchapter and to make them available to the executive director upon request.

Proposed changes to §321.46, Air Standard Permit Authorization for a CAFO General Permit, provide that an air quality standard permit may be obtained in conjunction with a water quality application. If no water quality application is pending, a separate written request may be submitted which demonstrates compliance with all the requirements in this subchapter.

Proposed new §321.47, Initial Texas Pollutant Discharge Elimination System (TPDES) Authorization, establishes procedures under which an existing facility may submit written notice that it will operate as required under this amended subchapter as an authorized TPDES facility for the remainder of unexpired term of its current authorization. Upon expiration of the term of the facility's current authorization, the owner/operator shall file for an Individual Permit or Registration.

FISCAL NOTE

Matthew Johnson, Financial Administration, has determined that for each year of the first five- year period the sections as proposed are in effect, there will be fiscal implications as a result of administration or enforcement of the sections. The effect on state government is projected to be a slight increase in renewal application fee revenue from facilities currently holding perpetual permits and a slight increase in amendment fee revenue amending existing authorizations. Under the current rule, the fee to renew a CAFO permit is $315.00 and the fee to amend a CAFO permit is $350.00. The state is not expected to have an increase in operating costs because the amended rules will not result in additional cost to issue permits and registrations. There will be no anticipated effects for local governments because local governments will not be enforcing this rule.

The amended rule as proposed will require owner/operators intending to increase the number of animals at their facility to obtain an amendment to their existing authorization. The proposed sections will also require amendments for facility modifications that would cause a substantial change to the site plan or buffer determination. Such owner/operators would incur the cost of developing an amendment as well as any amendment fees. Under the current rule, the fee to amend a CAFO permit is $350.00. The amended rule as proposed will also will change the maximum term of these permits to five years and require a relatively small number of owner/operators whose TNRCC CAFO permits are perpetual to renew their permits. Under the current rule, the fee to renew a CAFO permit is $315.00. The proposed rule is not expected to adversely affect small business. Under the proposed sections, some CAFO owner/operators, including some who may be small businesses, may be required to file amendments or renewals to their existing CAFO permits. However, the regulatory fees of $315.00 or $350.00 for renewals or amendments are not estimated to be significant new costs where applicable. In general, CAFO owner/operators, including small businesses, are expected to realize significant time and cost savings as a result of implementing the delegated NPDES program, which allows permitting by and reporting to one regulatory entity instead of two.

PUBLIC BENEFIT

For the first five-year period the sections as proposed are in effect, the public benefit anticipated as a result of enforcement and compliance with the sections will be further implementation of the delegated NPDES program. Specifically, with NPDES delegation to Texas, the CAFO community is now regulated primarily by one entity (the TNRCC) instead of two (TNRCC and EPA). Regulated CAFO's are expected to realize time and cost savings by reporting to and receiving permits from only one governmental entity.

REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirement of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The proposed rule amendment, which is intended to protect the environment and reduce risks to human health, will not have a material adverse affect on the economy or sector of the economy, productivity, competition, jobs, the environment or the public health and safety of the state or a sector of the state. The proposed rule amendment will not have a material adverse affect on the economy or a sector of the economy, productivity, and jobs because the rule changes will allow the TNRCC to fulfill the requirements of TPDES assumption thereby eliminating the need to obtain separate federal and state authorization for operating a CAFO in Texas. The proposed rule amendment will not have a material adverse affect on the environment or the public health and safety of the state or a sector of the state because the rule changes will not make any of the technical requirements for operating a CAFO less stringent.

TAKINGS IMPACT ANALYSIS

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The specific purpose of the Subchapter B rule amendments is to allow the TNRCC to fully implement the NPDES CAFO program in Texas by making the existing Subchapter B rules consistent with the EPA Region 6 CAFO general permit requirements. The rule changes will also allow the TNRCC to fulfill the requirements of TPDES assumption and to administer one permitting program for both NPDES and state permits. This action will not burden private real property that is the subject of the regulation because the amended rules will enable the TNRCC to fully implement the NPDES program for CAFOs in Texas and thereby eliminate the need to obtain separate federal and state authorization for operating a CAFO.

PUBLIC HEARING

A public hearing on the proposal will be held February 16, 1999 at 10:00 a.m. in Room 2210 of the Commission Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured to receive oral or written comments by interested persons. Individuals may present oral statements, when called

upon, in the order of registration. Open discussion will not occur during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

PUBLIC COMMENTS

Written comments on the proposal should refer to Rule Log No. 98074-321-WT and may be submitted to Heather Evans, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be received by 5:00 p.m., February 16, 1999. For further information concerning this proposal, please contact Darrell Williams, Texas Natural Resource Conservation Commission, Water Quality Division, (512) 239-5768.

COASTAL MANAGEMENT PLAN

Under 31 TAC §505.11 permits for a new CAFO within one mile of a coastal natural resource area (CNRA) must be consistent with the applicable goals and polices of the CMP contained in Chapter 501, Subchapter B of Title 31. These proposed rules would specifically require CAFOs within one mile of a CNRA to obtain an individual permit for the specific purpose of ensuring consistency with applicable CMP goals and policies.

Preliminary Consistency Determination: The commission has performed a preliminary consistency determination for the proposed rules pursuant to 31 TAC §505.22 and has found the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. CMP goals applicable to the proposed rule include the protection, restoration and enhancement of the diversity, quality, quantity, functions and values of Coastal Natural Resource Areas (CNRA) and to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the proposed rule include the following: 1) discharges in the coastal zone shall comply with water- quality-based effluent limits; 2) discharges in the coastal zone that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development; and 3) to the greatest extent practicable, new wastewater outfalls shall be located where they will not adversely affect critical areas. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because these rules require that any new proposed CAFO located within one mile of a CNRA obtain an individual permit. This will allow the commission to consider the effects of such a facility on the CNRA, establish effluent limits, if necessary, on any discharges from the proposed facility to maintain applicable water quality standards and allow opportunity for notice, public comment and public hearing.

STATUTORY AUTHORITY

The amendments are proposed under the Texas Water Code, §26.040, under which the commission has authority to amend rules adopted under §26.040 prior to its amendment by H.B. 1542 in 1997, and §5.102, which provides the commission with the authority to carry out duties and general powers of the commission under its jurisdictional authority as provided by Texas Water Code §5.103. These amendments are also proposed under §§26.028(c) and 26.041 of the Texas Water Code and §§382.011, 382.017, and 382.051 of the Texas Health and Safety Code.

There are no other codes, statutes, or rules that will be affected by this proposal.

§321.31. Waste and Wastewater Discharge and Air Emission Limitations.

(a) It is the policy of the Texas Natural Resource Conservation Commission that there shall be no discharge or disposal of waste and/or wastewater from animal feeding operations into or adjacent to waters in the state, except in accordance with subsection (b) of this section, any individual permits issued or adopted by the commission [~~under this subchapter~~] prior to the effective date of these rules, [~~any~~] CAFO general permit [~~permits~~], or §305.1 of this title (relating to Scope and Applicability). Waste and[~~/or~~] wastewater generated by a concentrated animal feeding operation under this subchapter shall be retained and utilized [~~or disposed of~~] in an appropriate and beneficial manner as provided by commission rules, orders, registrations, authorizations, CAFO general permits or individual permits.

(b) Wastewater may be discharged to waters in the state whenever rainfall events, either chronic or catastrophic, cause an overflow of process wastewater from a facility designed, constructed and operated to contain process generated wastewaters plus the runoff (storm water) from a 25-year, 24- hour rainfall event for the location of the [~~point source (~~]facility authorized under this subchapter[~~)~~]. There shall be no effluent limitations on discharges from retention structures constructed and maintained to contain the 25-year, 24-hour storm event if the discharge is the result of a rainfall event which exceeds the design capacity and the retention structure has been properly maintained. Retention structures shall be designed in accordance with §321.39 of this title (relating to Pollution Prevention Plans).

(c) (No change.)

§321.32. Definitions.

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

(1) Agronomic rates - The land application of animal wastes and/or wastewater at rates of application which will enhance soil productivity and provide the crop or forage growth with needed nutrients for optimum health and growth.

(2) (No change.)

(3) 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 post harvest residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other, or if they use a common area or system for the beneficial use [~~disposal~~] of wastes.

(4) Animal unit - A unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle and dairy heifers multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of swine weighing 55 pounds or less multiplied by 0.1, plus

the number of sheep multiplied by 0.1, plus the number of horses/ mules multiplied by 2.0.

(5) (No change.)

(6) Best Management Practices ("BMPs") - The schedules of activities, prohibitions of practices, maintenance procedures, and other management and conservation practices to prevent or reduce the pollution of waters in the state. Best Management Practices also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, [or] land application [waste disposal], or drainage from raw material storage.

(7) CAFO general permit - A general permit issued or adopted by the commission in accordance with Chapter 26 of the Texas Water Code[, §26.040] for the express purpose to regulate discharges from concentrated animal feeding operations on a statewide or geographic basis.

(8) (No change.)

(9) Concentrated animal feeding operation ("CAFO") - Any animal feeding operation which the executive director designates as a significant contributor of pollution or any animal feeding operation defined as follows:

(A) Any new and existing operations which stable and confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in any of the following categories:

(i)-(ii) (No change.)

(iii) 2500 swine weighing over 55 pounds or 10,000 swine weighing 55 pounds or less ;

(iv)-(x) (No change.)

(B) Any new and existing operations covered under this subchapter which discharge pollutants into waters in the state either through a man-made ditch, flushing system, or other similar man-made device, or directly into the waters in the state, and which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers or types of animals in the following categories:

(i)-(ii) (No change.)

(iii) 750 swine weighing over 55 pounds or 3,000 swine weighing 55 pounds or less ;

(iv)-(x) (No change.)

(C) Poultry facilities that have no discharge to waters in the state normally are not considered a concentrated animal feeding operation. However, poultry facilities that use a liquid waste handling system or stockpile litter near watercourses or dispose of litter on land such that stormwater runoff [or flooding] will be transported into surface water or groundwater may be considered a concentrated animal feeding operation. For the purposes of air quality, the term CAFO, as used in this subchapter, includes any associated feed handling and/or feed milling operations located on the same site as the CAFO.

(10) Control facility - Any system used for the retention of wastes on the premises until their ultimate beneficial use or disposal. This includes the collection and retention of manure, liquid waste, process wastewater and runoff from the feedlot area.

(11)-(20) (No change.)

(21) New concentrated animal feeding operation - A concentrated animal feeding operation which was not authorized under a rule, order or permit of the commission in effect at the time of the adoption of these amended rules (1999 [1998]).

(22)-(38) (No change.)

§321.33. Applicability.

(a) Any CAFO operating under currently effective authorizations granted under state law only by the TNRCC or under federal law by EPA prior to the effective date of these amended rules (1999) shall do one of the following: [A CAFO operating under a currently valid authorization granted prior to the effective date of these amended rules shall continue to be authorized and regulated in accordance with the terms of its existing authorization. Any application that has been determined administratively complete prior to the effective date of these amendments will be reviewed and issued under the provisions of the rules in effect at the time the application was declared administratively complete. Any application for permit renewal, amendment or transfer for any permit issued under this subchapter prior to the effective date of these rules shall be reviewed and/or issued under the provisions of §321.34 of this title (relating to Procedures for Making Application for an Individual Permit).]

(1) Any facility holding both such authorizations shall continue to operate under the terms of both until the NPDES authorization expires. Within sixty days of expiration of the existing NPDES authorization, the facility owner/operator shall apply for authorization under this amended subchapter (1999) in accordance with the provisions of either §321.34 or §321.35 of this title (relating to Procedures for Making Application for an Individual Permit or Procedures for Making Application for Registration). If such application is filed and is administrative and technically complete within the sixty day period, the applicant shall continue to operate the facility under the terms of the expired authorization until final disposition of the application in accordance with this subchapter.

(2) Any facility holding only an authorization from the TNRCC and which is not required under federal law to obtain NPDES authorization shall continue to operate under the terms of its existing TNRCC authorization until expiration, amendment or termination. All such TNRCC authorizations shall expire five years from the effective date of the amendments (1999) to these rules, unless such authorization specifies an earlier expiration date.

(3) Any facility holding an authorization from the TNRCC under state law only and which under federal law is required to, but does not, hold a current NPDES authorization, shall file an application in accordance with provisions of this subchapter within sixty days of the effective date of these amended (1999) rules.

(b)-(e) (No change.)

(f) Any existing, new or expanding CAFO which is neither authorized by a CAFO general permit in accordance with the notice of intent requirements of such [the] general permit or authorized pursuant to subsections (a) or (b) of this section and which is designed to stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in the definition of CAFO in §321.32(9)(A) of this title (relating to Definitions) shall apply for registration in accordance with §321.35 of this title (relating to Procedures for Making Application for Registration) or individual permit in accordance with §321.34 of this title.

(g) Any existing, new or expanding animal feeding operation which is neither authorized by a CAFO general permit in accordance with the notice of intent requirements of such [the] general permit nor

authorized pursuant to subsections (a) or (b) of this section, which is located in areas specified in the definition of Dairy Outreach Program Areas in §321.32 of this title, and which is designed to stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the number of animals specified in the definition of CAFO in §321.32(9)(B) of this title, but less than or equal to the number of animals specified in the definition of CAFO in §321.32(9)(A) of this title shall apply for registration in accordance with §321.35 of this title or individual permit in accordance with §321.34 of this title.

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

(j) Any CAFO which has existing authority under the Texas Clean Air Act (TCAA) does not have to meet the air quality criteria of this subchapter. Upon request, pursuant to the TCAA, §382.051, any CAFO which files an application, meets the requirements of §321.46 of this title (relating to Air Standard Permit Authorization) and obtains approval of such application in accordance with the provisions [~~meets all of the requirements~~] of this subchapter is hereby entitled to an air quality standard permit authorization under this subchapter in lieu of the requirement to obtain an air quality permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification). Those CAFOs which would otherwise be required to obtain an air quality permit under Chapter 116 of this title, which cannot satisfy all of the requirements of this subchapter shall apply for and obtain an air quality permit pursuant to Chapter 116 of this title in addition to any authorization required under this subchapter. Those animal feeding operations which are not required to obtain authorization under this subchapter may be subject to requirements under Chapter 116 of this title. Any change in conditions such that a person is no longer eligible for authorization under this section requires authorization under Chapter 116 of this title. No person may concurrently hold an air quality permit issued under Chapter 116 of this title and an authorization with air quality provisions under this subchapter for the same site. Any application for a permit renewal, amendment or transfer for any permit issued under the TCAA shall be reviewed and/or issued under the provisions of Chapter 116 of this title.

(k) (No change.)

(l) By written request to the executive director, the owner/operator of any facility [~~authorized by the commission~~] may request a transfer of its authorization from an individual permit granted by the commission to a [~~to an application for~~] registration. Such transfer shall be processed in accordance with the provisions of §§321.35-321.37 of this title (relating to Procedures for Making Application for Registration, Notice of Application for Registration and Actions on Applications for Registration). If approved, such transfer under this subsection shall include all special conditions/provisions from the existing individual permit, and in addition, shall not impose any additional conditions or other requirements unless there is substantial modification to the facility constituting a major amendment as defined by §305.62 of this title (relating to Amendment) or to address compliance problems with the facility or its operations in accordance with a commission order or amendment. If approved, transfer of authorization under this subsection will require compliance with the appropriate provisions of §§321.38-321.42 of this title (relating to Proper CAFO Operation and Maintenance, Pollution Prevention Plans, Best Management Practices, Other Requirements, and Monitoring and Reporting Requirements). If approved, such transfer shall not require any changes to existing structural measures which are documented to meet design and construction standards in effect at the time of installation.

(m) No person may concurrently hold both an individual permit or approved registration under this subchapter and an authorization under a CAFO general permit in accordance with the notice of intent requirements of the general permit for the same site.

(n) (No change.)

(o) By written request to the executive director, the owner/operator of any facility described in §321.33(a)(2) of this title (relating to Applicability) and holding an unexpired authorization granted under Subchapter K of this chapter (relating to Concentrated Animal Feeding Operations) may request a transfer of their authorization to a registration under this subchapter. Such written request shall be on the same form as required under §321.47 of this title (relating to Initial TPDES Authorization) and such continued authorization shall be in accordance with the terms of §321.47 of this title. A Subchapter K authorization that has been specifically set aside by court order shall not be eligible for transfer under this subsection. [~~Such request shall include:~~]

[~~(1) the name and address of the applicant(s);~~]

[~~(2) the TNRCC identification number the Subchapter K authorization to be transferred;~~]

[~~(3) any change that has occurred in the information contained in the application upon which the Subchapter K authorization was granted;~~]

[~~(4) the names and addresses of the potentially affected landowners required to be identified on the final site plan that would be required under §321.35 of this title (relating to Procedures for Making Application for Registration);~~]

[~~(5) certification that the facility is not the subject of an unexpired final enforcement order or of an unresolved TNRCC enforcement action in which the executive director has issued written notice that enforcement has been initiated; ~~]

[~~(6) the signatures and certifications of the applicant(s) as provided in §§305.43 and 305.44 of this title (relating to Who Applies and Signatories to Applications); and~~]

[~~(7) the application fee required under §321.35(d) of this title.~~]

(p) Any owner/operator holding a current authorization issued at any time under this subchapter shall obtain an amendment pursuant to §321.34 of this title (relating to Procedures for Making Application for an Individual Permit) or §321.35 of this title (relating to Procedures for Making Application for Registration) prior to any increase in the number of animals authorized for confinement or to making any modification to the facility which would cause a substantial change to the site plan or in the buffer distance determination as specified in §321.46 of this title (relating to Air Standard Permit Authorization). Nonsubstantial modifications may be made to the site plan or the PPP submitted with the approved application without prior authorization from the commission. Nonsubstantial modifications do not include any that would result in an increase in the number of animals confined, a change in the required buffer zone or lagoon capacity, a change boundaries of the site plan or a violation of any management practice or physical or operational requirement of this subchapter. [~~Within five working days of receipt of a complete and accurate request, the executive director shall prepare a notice of the receipt of the request that is suitable for mailing and forward that notice, together with a copy of the request, to the chief clerk. The notice shall include a statement that the request for transfer will be granted by the executive director unless within 30 days after the date the notice is mailed, the chief clerk receives a written objection~~

~~from a person described in §321.36(e) of this title (relating to Notice of Application for Registration). The chief clerk shall transmit the notice and a copy of the request to the persons and in the manner described in §321.36(e) of this title. If no such objection is timely received, the executive director shall approve the transfer. If the transfer is disapproved, and not withdrawn by the applicant, the request for transfer shall be processed under §§321.35-321.37 of this title (relating to Procedures for Making Application for Registration, Notice of Application for Registration and Actions on Applications for Registration). If the request is approved either as a transfer or as a new registration under §§321.35-321.37 of this title, such authorization will require compliance with the provisions of §§321.38-321.42 of this title (relating to Proper CAFO Operation and Maintenance, Pollution Prevention Plans, Best Management Practices, Other Requirements, and Monitoring and Reporting Requirements), except that no changes shall be required to existing structural measures which are documented to meet design and construction standards in effect at the time of installation or to any buffer zone requirement satisfied under the prior Subchapter K authorization.~~]

§321.34. Procedures for Making Application for an Individual Permit.

(a) A CAFO that was not authorized under a rule, order or permit issued or adopted by [~~of~~] the commission and in effect at the time of the adoption of these amended rules (1999) shall apply for an individual permit in accordance with the provisions of this section or shall apply for [~~an application for~~] registration in accordance with the provisions of §321.35 of this title (relating to Procedures for Making Application for Registration). Application for an individual permit shall be made on forms provided by the executive director. The applicant shall provide such additional information in support of the application as may be necessary for an adequate technical review of the application. At a minimum, the application shall demonstrate compliance with the technical requirements set forth in §321.38-321.42 of this title (relating to Proper CAFO Operation and Maintenance, Pollution Prevention Plan, Best Management Practices, Other Requirements and Monitoring and Reporting Requirements) and shall demonstrate compliance with the requirements specified in §321.35(c)(1)-(13) of this title (relating to Procedures for Making Application for Registration). Applicants shall comply with §§305.41, 305.43-305.44 and 305.46-305.47 of this title (relating to Applicability; Who Applies; Signatories to Applications; Designation of Material as Confidential and Retention of Application Data). Each applicant shall pay an application fee as required by §305.53 of this title (relating to Application Fees). An annual waste treatment inspection fee is also required of each permittee as required by §305.503 and §305.504 of this title (relating to Fee Assessments and Fee Payments). An annual Clean Rivers Program fees is also required as required under §220.21(d) of this title (relating to Water Quality Assessment Fees). Except as provided in subsections (b)-(e) of this section, each permittee shall comply with §§305.61 and 305.63-305.68 of this title (relating to Applicability, [~~Amendment,~~] Renewal, Transfer of Permits, Permit Denial, Suspension and Revocation; Revocation and Suspension Upon Request or Consent; and Action and Notice on Petition for Revocation or Suspension). Each permittee shall comply with §305.125 of this title (relating to Standard Permit Conditions). Individual permits granted under this subchapter shall be effective for a term not to exceed five years. To qualify for the air quality standard permit, the applicant must meet the requirements in §321.46 of this title (relating to Air Standard Permit Authorization).

(b) All applications for permit renewal must be administratively and technically complete, meet all applicable technical requirements of this subchapter and be in accordance with one of the following [~~Permit renewal will be according to the following procedure~~]:

(1) An application to renew an individual [~~a~~] permit for an animal feeding operation which was issued between July 1, 1974, and December 31, 1977, may be renewed by the commission at a regular meeting without holding a public hearing if the applicant does not seek to discharge into or adjacent to waters in the state and does not seek to change materially the pattern or place of land application [~~disposal~~].

(2) Except as provided by §305.63(3) of this title (relating to Renewals), an application for a renewal of an individual [~~a~~] permit for a facility as described in §321.33(a)(2) of this title (related to Applicability) may be granted by the executive director without public notice if it does not propose any change which constitutes a major amendment as defined in Chapter 305 of this title or a major source as defined under Chapter 116 of this title. Renewal under this paragraph shall be allowed only if there has been no related formal enforcement action against the facility during the last 36 months of the term of the permit in which the commission has determined that:

(A) a violation occurred that contributed to pollution of surface or ground water, or an unauthorized discharge has occurred, or a violation of §101.4 of this title (relating to Nuisance) has occurred or any violation of an applicable state or federal air quality control requirement has occurred; and

(B)-(C) (No change.)

(3) If the application for renewal cannot meet all of the criteria in this subsection, then an application for renewal shall be filed in accordance with subsection (a) of this section.

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

~~[(e) If the application for renewal cannot meet all of the criteria in subsection (b) of this section, then an application for renewal shall be filed in accordance with subsection (a) of this section.]~~

(e) [~~(f)~~] Any permittee with an issued and effective individual permit shall submit an application for renewal at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the executive director. The executive director shall provide the permittee notice of deadline for the application for renewal at least 240 days before the permit expiration date. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(f) [~~(g)~~] Notice provided by the executive director under subsection (e) [~~(f)~~] of this section shall be sent by certified mail, return receipt requested.

(g) [~~(h)~~] A facility owner/operator shall submit a complete application within 90 days of notification from the executive director that an individual permit is required.

(h) [~~(i)~~] If an application [~~for renewal~~] requests an [~~a major~~] amendment, as defined by §321.33 (p) [~~305.62~~] of this title (relating to Applicability [~~Amendment~~]), of the existing individual permit, an application shall be filed and processed as set out in [~~accordance with subsection (a) of~~] this section.

(i) [~~(j)~~] If a renewal application has been filed before the individual permit expiration date, the existing individual permit will remain in full force and effect and will not expire until action on the application for renewal is final.

§321.35. Procedures for Making Application for Registration.

(a) A CAFO that was not authorized under a rule, order or permit of the commission in effect at the time of the adoption of these amended rules shall apply for and receive registration under this section or shall apply for an individual permit in accordance with the provisions of §321.34 of this title (relating to Procedures for Making Application for an Individual Permit). A person who requests a registration [~~or an amendment, modification,~~] or renewal of such registration granted under this subchapter, or an amendment as defined in §321.33(p) of this title (relating to Applicability), shall submit a complete and accurate application to the executive director, according to the provisions of this section.

(b) (No change.)

(c) Application for registration under this section shall be made on forms prescribed by the executive director. The applicant shall submit an original completed application with attachments and one copy of the application with attachments to the executive director at the headquarters in Austin, Texas, and one additional copy of the application with attachments to the appropriate Texas Natural Resource Conservation Commission regional office. The completed application shall be submitted to the executive director signed and notarized and with the following information:

(1)-(4) (No change.)

(5) A proposed [~~final~~] site plan for the facility showing the boundaries of land owned, operated or controlled by the applicant and to be used as a part of a CAFO, the locations of all pens, lots, ponds, on-site and off-site land application [~~disposal~~] areas, and any other types of control or retention facilities, and all adjacent landowners within 500 feet of the property line of all tracts containing facilities and all on-site or off-site land application [~~waste disposal~~] areas, including their name[~~,~~] and address [~~and telephone number~~]. As used in this subchapter, the term "land application [~~disposal~~] area" does not apply to any lands not owned, operated or controlled by the CAFO operator for the purpose of off-site land application of manure, wherein the manure is given or sold to others for land application [~~beneficial use~~].

(6)-(7) (No change.)

(8) Sections of the pollution prevention plan designated by the executive director [~~A copy of the pollution prevention plan for the CAFO~~] for which the application is filed. Prior to utilization of wastewater retention facilities, documentation of liner certifications by a licensed professional engineer must be submitted (if applicable).

(9)-(10) (No change.)

(11) Where the applicant can not document the absence of recharge features on the tracts for which an application is being filed, the proposed [~~final~~] site plan shall also indicate the specific location of any and all recharge features found on any property owned, operated or controlled by the applicant under the application as certified by a NRCS engineer, licensed professional engineer, or qualified groundwater scientist. The applicant shall also submit a plan, developed by a NRCS engineer or licensed professional engineer, to prevent impacts on any located recharge feature and associated groundwater formation which may include the following:

(A) Installation of the necessary and appropriate protective measures for each located recharge feature such as impervious cover, berms or other equivalent protective measures covering all affected facilities and land application [~~disposal~~] areas; or

(B) Submission of a detailed groundwater monitoring plan covering all affected facilities and land application [~~disposal~~] areas. At a minimum, the ground-water monitoring plan shall specify procedures to annually collect a ground-water sample from representative wells, have each sample analyzed for chlorides, nitrates and total dissolved solids and compare those values with background values for each well; or

(C) (No change.)

(12)-(13) (No change.)

(d)-(g) (No change.)

(h) An application for renewal [~~Renewal~~] of a registration under this section must be administratively and technically complete, meet all applicable technical requirements of this subchapter and [~~will~~] be according to the following procedures:

(1) Except as provided by §305.63(3) of this title (relating to Renewals), an administratively and technically complete application for a renewal of a registration for a facility described in §321.33(a)(2) of this title (relating to Applicability) may be granted by the executive director without public notice if it does not propose any other change to the registration as approved. Renewal under this paragraph shall be allowed only if there has been no related formal enforcement action against the facility during the last 36 months of the term of the registration in which the commission has determined that:

(A)-(C) (No change.)

(2)-(5) (No change.)

§321.36. Notice of Application for Registration.

(a) Administrative and Technical Review.

(1) (No change.)

(2) Within five working days of declaration of administrative completeness, the executive director shall assign the application a number for identification purposes, and prepare a statement of the receipt of the application and declaration of administrative and technical completeness which is suitable for publishing or mailing, under the requirements of subsection (c) of this section , [~~§321.186(b) of this title (relating to Notice of Application)~~] and shall forward that statement to the applicant.

(b) Notice of application. The notice of application for registration and administrative/ technical completeness shall contain the following information:

(1)-(4) (No change.)

(5) a brief summary of the information included in the application for registration, including but not limited to the general location of facilities and land application [~~disposal~~] areas associated with the application, the proposed size of the facility, a description of the receiving water for any discharge and the location where a copy of the application for registration may be reviewed by interested persons;

(6)-(7) (No change.)

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

(e) Notice by mail.

(1) (No change.)

(2) the notice shall be mailed by the chief clerk to the following:

(A) the potentially affected landowners named on the [~~final~~] site plan submitted with the application;

(B)-(J) (No change.)

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

§321.37. Actions on Applications for Registration.

(a) Public Comment on Applications for Registrations. A person may provide the commission with written comments on any applications for registration for which notice has been issued under this subchapter. The executive director shall review any written comments [~~when they are~~] received within 30 days of mailing the notice. Only written comments received within the 30 day period must [~~will~~] be considered. The written information received will be utilized by the executive director in determining what action to take on the application for registration, pursuant to subsection (b) of this section.

(b) The executive director shall determine, after review of any application for registration, if he will approve or deny an application for registration in whole or in part, deny with prejudice, suspend the authority to conduct an activity for a specified period of time, or condition approval upon amendment [~~amend~~] or modification of [~~modify~~] the proposed activity requested by the applicant. The determination of the executive director shall include review and action on any new applications or changes, renewals, and requests for [~~major~~] amendment of any existing registration [~~application~~]. In considering [~~consideration of such~~] an application for registration, the executive director will consider all relevant requirements of this subchapter and consider all information pertaining to those requirements timely received by the executive director regarding the application for registration. The written determination on any application for registration, including any authorization granted, shall be mailed by the Office of Chief Clerk to the applicant upon the decision of the executive director. At the same time the executive director's decision is mailed to the applicant, a copy or copies of this decision shall also be mailed by the Office of Chief Clerk to all persons who timely submitted written information on the application, as described in subsection (a) of this section. The written determination of the executive director shall include a response to all significant comments received during the 30-day comment period .

(c) Motion for reconsideration. The applicant or any person submitting comments in accordance with subsection (a) of this section may file with the chief clerk a motion for reconsideration, under the procedures of §50.39(b)-(f) of this title (relating to Motion for Reconsideration), of the executive director's final approval of an application. Any person who was entitled to but not given proper notice of an application and who subsequently did not submit comments within the 30 day comment period may file a motion for reconsideration.

§321.39. Pollution Prevention Plans.

(a)-(e) (No change.)

(f) The plan shall include, at a minimum, the following items:

(1) Each plan shall provide a description of potential pollutant sources. Potential pollutant sources include any activity or material that may reasonably be expected to add pollutants to waters in the state from the facility. An evaluation of potential pollutant sources shall identify the types of pollutant sources, provide a description of the pollutant sources, and indicate all measures that will be used to prevent contamination from the pollutant sources. The type of pollutant sources found at any particular site varies depending upon a number of factors including site location, historical land use, proposed facility type, land application [~~waste disposal~~] practices, etc. The evaluation shall encompass all land that will be used as part of the CAFO as indicated in the site plan. Each potential pollutant source must be identified in the plan. A thorough site inspection of the facility is recommended to ensure that all sources have been identified. Potential pollutant sources found at CAFO facilities include, but are not limited to, the following: manure; sludge; wastewater; dust; silage stockpiles; fuel storage tanks; pesticide storage and applications; lubricants; disposal of any dead animals associated with production at the CAFO; land application of waste and wastewater; manure stockpiling; pond clean-out; vehicle traffic; and pen clean-out. Each plan shall include:

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

(C) A list of any significant spills of these materials at the facility after the effective date (1999) of these rules, or for new facilities, since date of operation.

(D) (No change.)

(2)-(7) (No change.)

(8) Evaporation systems shall be designed to withstand a 10-year (consecutive) period of maximum recorded monthly rainfall (other than catastrophic), as determined by a hydrologic needs analysis (water balance), and sufficient freeboard (not less than two feet [~~one foot~~]) shall be maintained to dispose of rainfall and rainfall runoff from the 25-year, 24-hour rainfall event without overflow. In the hydrologic needs analysis determination, any month in which a catastrophic event occurs the analysis shall replace such an event with not less than the long term average rainfall for that month.

(9)-(18) (No change.)

(19) Retention facilities shall be equipped with either irrigation or evaporation systems capable of dewatering the retention facilities, or a regular schedule of wastewater removal by contract hauler. The pollution prevention plan must include all calculations, as well as, all factors used in determining land application rates, acreage, and crops. Land application rates must take into account the nutrient contribution of any land applied manures. If land application is utilized, [~~for disposal of wastewater,~~] the following requirements shall apply:

(A) (No change.)

(B) When [~~irrigation disposal of~~] wastewater is used to irrigate land application areas, the plan shall include: a description of waste handling procedures and equipment availability; the calculations and assumptions used for determining land application rates; and all nutrient analysis data. Application [~~application~~] rates shall not exceed the nutrient uptake of the crop coverage or planned crop planting with any land application of wastewater and/or manure. Land application rates of wastewaters shall be based on the available nitrogen content, however, where annual soil sampling analysis for extractable phosphorus as described in paragraph (28)(F) of this subsection indicates a level greater than 200 ppm of extractable phosphorus (reported as P) in Zone 1 for a particular waste and/or wastewater land application field , the operator may apply wastewater to the affected application area only in accordance with the conditions established in paragraph (28)(G) of this subsection [~~local water quality is threatened by phosphorus, the operator shall limit the application rate to the recommended rates of available phosphorus for crop uptake, based upon crop and realistic yield goals, and provide controls for runoff and erosion as appropriate for site conditions.~~]

(C)-(H) (No change.)

(I) The pollution prevention plan shall include the following information:

(i) a site map showing the location of any land application areas, either on-site or off-site which are owned, operated

or under the control of the facility owner/operator which will be utilized for land application of waste and/or wastewater;

(ii) the location and description of the major soil types within the identified land application areas;

(iii) crop types and rotations to be implemented on an annual basis;

(iv) predicted yield goals based on the major soil types within the identified land application areas;

(v) procedures for calculating nutrient budgets to be used to determine application rates;

(vi) a detailed description of the type of equipment and method of application to be used in applying the waste and/or wastewater;

(vii) projected rates and timing of application of the manure and wastewater as well as other sources of nutrients that will be applied to the land application areas.

(J) The owner/operator shall maintain on-site and update records of all waste and wastewater either utilized at the facility or removed from the facility.

(i) For facilities where waste or wastewater is applied on property owned, operated or controlled by the owner/operator, such records shall include the following information: date of waste and/or wastewater application; location of the specific application site and the number of acres utilized during each application event; acreage of each individual crop on which waste and/or wastewater is applied; number of dry tons, percent nitrogen based on a dry basis, and the percent moisture content of the manure; and actual annual yield of each harvested crop.

(ii) Where waste or wastewater is removed from the facility, records must be maintained in accordance with paragraph (23) of this subsection.

(20)-(21) (No change.)

(22) Where the operator decides to land apply manures or [~~and~~] pond solids the plan shall include: a description of waste handling procedures and equipment availability; the calculations and assumptions used for determining land application rates; and all nutrient analysis data. Land application rates of wastes shall [~~should~~] be based on the available nitrogen content of the solid waste, except [~~.~~] however [~~However~~], where annual soil sampling analysis for extractable phosphorus as described in paragraph (28)(F) of this subsection indicates a level greater than 200 ppm of extractable phosphorus (reported as P) in Zone 1 for a particular waste and/or wastewater land application field , the operator may apply solid waste to the affected application area only in accordance with the conditions established in paragraph (28)(G) of this subsection [~~local water quality is threatened by phosphorus, the application rate shall be limited to the recommended rates of available phosphorus for crop uptake, based upon crop and realistic yield goals, and provide controls for runoff and erosion as appropriate for site conditions~~].

(23) If [~~the waste~~] [~~(~~]manure[~~)~~] is sold or given to other persons for off-site land application or disposal, the operator must maintain a log of: date of removal from the CAFO; name of hauler; and amount, in wet tons, dry tons or cubic yards, of waste removed from the CAFO. (Incidental amounts, given away by the pick-up truck load, need not be recorded.) Where the wastes are to be land applied by the hauler, the operator must make available to the hauler any nutrient sample analysis of the manure from that year.

(24) The procedures documented in the pollution prevention plan must ensure that the handling and land application [~~disposal~~] of wastes as defined in §321.32 of this title (relating to Definitions) comply with the following requirements:

(A) Manure storage capacity based upon manure and waste production and land availability shall be provided. Storage and/or surface application [~~disposal~~] of manure in the 100-year flood plain, near water courses or recharge feature is prohibited unless protected by adequate berms or other structures. The land application of wastes at agronomic rates shall not be considered surface disposal in this case and is not prohibited.

(B)-(C) (No change.)

(D) Manure shall be uniformly applied to suitable land at appropriate times and at agronomic rates. Discharge (run-off) of waste from the application site is prohibited. Timing and rate of applications shall be in response to crop needs, assuming usual nutrient losses, expected precipitation and soil conditions.

(E)-(G) (No change.)

(H) Nighttime application of liquid and/or solid waste shall [~~only~~] be allowed only in areas with no occupied residence(s) within 0.25 mile from the outer boundary of the actual area receiving waste application. In areas with an occupied residence within 0.25 mile from the outer boundary of the actual area receiving waste application, application shall only be allowed from one hour after sunrise until one hour before sunset, unless the current occupants of such residences have in writing agreed to such nighttime applications.

(I)-(L) (No change.)

(25)-(27) (No change.)

(28) Prior to commencing wastewater irrigation and/or waste application on land owned or operated by the operator, and annually thereafter, the operator shall collect and analyze representative soil samples of the wastewater and waste application sites according to the following procedures:

(A)-(D) (No change.)

(E) Soil samples shall be submitted to a soil testing laboratory along with a previous crop history of the site, intended crop use and yield goal. Soil test reports shall include nutrient recommendations for the crop yield goal.

(F) (No change.)

(G) When results of the annual soil analysis for extractable phosphorus in subparagraph (F) of this paragraph indicates a level greater than 200 ppm of extractable phosphorus (reported as P) in Zone 1 for a particular waste and/or wastewater land application [~~disposal~~] field or if ordered by the commission to do so in order to protect the quality of waters in the state, then the operator shall not apply any [~~limit~~] waste and/or wastewater to the affected area unless the waste and/or wastewater application is implemented in accordance with a detailed nutrient utilization plan developed by NRCS, or any professional agronomist or soil scientist certified by the American Society of Agronomy (ASA) or who is an active member of ASA holding a Masters or Doctorate degrees from an accredited US institution in areas such as soil fertility, soil chemistry, soil conservation, agricultural engineering, soil environmental science, soil management or a closely related area and such plan is approved by the executive director. No land application under an approved nutrient utilization plan shall cause or contribute to a violation of water quality standards or create a nuisance. [~~application on that site to the recommended P rates based on crop uptake. Waste and/or~~

~~wastewater application shall remain limited to recommended P rates until soil analysis indicates extractable phosphorus levels have been reduced below 200 ppm P, or to a lower level as ordered by the commission.~~]

(29)-(31) (No change.)

§321.40. Best Management Practices.

The following Best Management Practices (BMPs) shall be utilized by concentrated animal feeding operations owners/ operators, as appropriate, based upon existing physical and economic conditions, opportunities and constraints. Where the provisions in a NRCS plan are equivalent or more protective the operator may refer to the NRCS plan as documentation of compliance with the BMPs required by this subchapter.

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

(7) There shall be no water quality impairment to public and neighboring private drinking water wells due to waste handling at the permitted facility. Facility wastewater retention facilities, holding pens or waste/wastewater land application [~~disposal~~] sites shall not be located closer than 500 feet of a public water supply well or 150 feet of a private water well [~~wells, except in accordance with Chapter 238 of this title (relating to Water Well Drillers)~~].

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

(12) Collection, storage, and land application [~~disposal~~] of liquid and solid waste shall be managed in accordance with recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land application [~~disposal~~] site shall be secondary to the proper application [~~disposal~~] of waste and wastewater.

(13) (No change.)

§321.41. Other Requirements.

(a) Education and Training.

(1) Any CAFO owner/operator with greater than the number of animals specified in §321.32 (9)(B)of this title (relating to Definitions) [~~300 animal units~~] and located within an area specified in the definition of Dairy Outreach Program Areas in §321.32 of this title (relating to Definitions) shall obtain authorization under this subchapter and, within twelve months of receiving such authorization, the owner/operator or his designee with operational responsibilities shall complete an eight hour course or its equivalent on animal waste management. In addition, that owner/operator shall also complete at least eight additional hours of continuing animal waste management education for each two year period after the first twelve months. The minimum criteria for the initial eight hours and the subsequent eight hours of continuing animal waste management education shall be developed by the executive director and the Texas Agricultural Extension Service. Verification of the date and time(s) of attendance and completion of required training shall be documented to the pollution prevention plan.

(2) Where the employees are responsible for work activities which relate to compliance with provisions of this subchapter, those employees must be regularly trained or informed of any information pertinent to the proper operation and maintenance of the facility and land application of waste [~~disposal~~]. Employee training shall inform personnel at all levels of responsibility of the general components and goals of the pollution prevention plan. Training shall include topics as appropriate such as land application of wastes, proper operation and maintenance of the facility, good housekeeping and material management practices, necessary recordkeeping requirements, and spill response and clean up. The operator is responsible for determining the appropriate training frequency for different levels of personnel and the pollution prevention plan shall identify periodic dates for such training.

(b)-(f) (No change.)

§321.42. Monitoring and Reporting Requirements.

(a) If, for any reason[~~,~~] there is a discharge to waters in the state, the operator shall [~~is required to~~] notify the executive director orally within 24 hours and in writing within 14 working days of the discharge from the retention facility or any component of the waste handling or land application [~~disposal~~] system. In addition, the operator shall document the following information to the pollution prevention plan within 14 days of becoming aware of such discharge:

(1)-(7) (No change.)

(b)-(c) (No change.)

(d) The operator shall retain copies on-site [~~of~~] all records required by this subchapter for a period of at least three years from the date reported or received, and shall make them available to the executive director upon request. This period may be extended by request of the executive director at any time.

(e)-(g) (No change.)

(h) The operator shall maintain ownership, operation or control over the retention facilities, land application [~~disposal~~] areas and control facilities identified in the [~~final~~] site plan submitted with the application under §321.34 or 321.35 of this title (relating to Procedures for Making Application for an Individual Permit or Procedures for Making Application for Registration). In the event owner loses ownership, operation or control of any of these areas, the operator shall notify the executive director prior to such loss of control and immediately request and file an application to amend the existing authorization to reflect an alternate method for beneficially utilizing the waste or wastewater or to add new or additional land application areas to the authorization , an application for a new authorization under this subchapter or present the executive director with a plan to cease all concentrated animal feeding operations at that site.

(i) Any operator required to obtain authorization under §321.33 of this title (relating to Applicability) shall locate and maintain all facilities in accordance with the [~~final~~] site plan submitted with the application as required under §321.34 or 321.35 of this title (relating to Procedures for Making Application for an Individual Permit or Procedures for Making Application for Registration). In the event the operator does not properly locate and maintain such facilities in accordance with the [~~final~~] site plan and the provisions of §321.33(p) of this title (relating to Applicability) they shall be deemed in noncompliance with the provisions of this subchapter.

(j) Operator shall furnish to the executive director soil testing laboratory results of all soil samples within 60 days of the date the samples were taken in accordance with the requirements of this subchapter [~~subsection~~].

§321.46. Air Standard Permit Authorization.

Pursuant to Texas Clean Air Act §382.051, any CAFO which meets all of the requirements for registration or individual permit outlined in this subchapter or all the requirements for operating under a CAFO general permit and which satisfy this section is hereby entitled to an air quality standard permit authorization in lieu of the requirement to obtain an air quality permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification). Facilities which meet all the "Air Quality Only" requirements in §321.39 of this title (relating to Pollution Prevention Plans) and obtain either a registration or individual permit or a CAFO

general permit are eligible for an air quality standard permit. The air quality standard permit may be obtained in conjunction with a water quality application. If no water quality application is pending, a separate request may be submitted in writing which demonstrates compliance with all the requirements in this subchapter. In addition to meeting the "Air Quality Only" requirements, the applicant must also demonstrate compliance with the following:

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

§321.47. Initial Texas Pollutant Discharge Elimination System (TPDES) Authorization.

In lieu of the procedure specified in §321.33 of this title (relating to Applicability), the owner/operator of any existing facility as described in §321.33(a) of this title may submit to the executive director written notice that they will operate the facility in accordance with the provisions of this subchapter. Such notice shall be on forms approved by the executive director and submitted within 45 days of the effective date of these amended (1999) rules. A facility for which a complete and accurate written notice has been submitted in accordance with this section may operate as an authorized TPDES facility under this amended subchapter for the remainder of unexpired term of their current authorization. Upon expiration of the specified term of the facility's current authorization , the owner/operator shall file for renewal in accordance with either §321.34 or §321.35 of this title (relating to Procedures for Making Application for an Individual Permit or Procedures for Making Application for Registration). If the existing authorization contains any special conditions or provisions, the owner/operator shall operate such facility in accordance with the provisions of this subchapter and any additional special provisions or conditions specified in the authorization.

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 December 28, 1998.

TRD-9818563
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: February 16, 1999
For further information, please call: (512) 239-4640

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 15. Drivers License Rules

Subchapter B. Application Requirements-Original Renewal, Duplicate, and Identification Certificates

37 TAC §15.42

The Texas Department of Public Safety proposes an amendment to §15.42, concerning the eligibility of non-United States residents, ineligible to obtain a social security number due to immigration status, to obtain a driver's license. The amendment is necessary due to the anticipated policy change of the Social Security Administration (SSA) regarding the issuance of social security numbers (SSNs). It is expected that the SSA will begin issuing SSNs only to aliens who are lawfully in the United States for the purpose of work and will no longer issue SSNs solely for the purpose of obtaining a driver's license. On September 1, 1998, the department adopted emergency rules relating to this amendment. This amendment proposed for permanent adoption contains pertinent changes from the emergency rule previously filed. (NOTE: SSA was scheduled to make this policy change effective September 1, 1998).

Subsection (c) and (d) are amended for clarification regarding verification of SSN for Identification Certificate and eligible renewal-by-mail applicants.

The amendment further adds new subsection (e) which sets forth the procedures and provides a means for the department to continue processing driver's license applications for individuals ineligible to obtain an SSN due to immigration status.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Mr. Haas 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 or administering the rule will be to inform the public of the procedures required of individuals, ineligible for SSN issuance due to immigration status, to obtain a driver's license. There is no anticipated economic cost to small or large businesses. The cost to individuals who are required to comply with the section will be the cost of a Texas driver's license.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas, 78773-0140, (512) 424-2890.

The amendment is proposed pursuant to Texas Transportation Code, §521.005 which provides the director of the Texas Department of Public Safety with the authority to adopt rules necessary to administer this chapter.

Texas Transportation Code, §521.005 is affected by this proposal.

§15.42. Social Security Number.

(a) The social security number shall be obtained from all applicants for the purpose of additional identification. Texas Transportation Code, §521.142(e)[~~Civil Statutes, Article 6687b, §6~~], provides that the department may require information necessary to determine the applicant's identity, competency, and eligibility.

(b) (No change.)

(c) On all duplicate and renewal driver's license applications, the documented social security number shall be obtained where it is not currently a part of the driving record. After the social security number becomes a part of the driver's license record, all future duplicate and renewal of driver's license will be verified for correct social security number. Eligible renewal-by-mail applicants are required to provide a social security number certified by signature that the number provided on the application is true and correct.[~~Eligible renewal-by-mail applicants are not required to provide a social security number.~~]

(d) Applicants for an identification certificate will be asked to provide verification of SSN documentation. If the applicant fails or refuses to provide that social security information, the identification certificate will be issued without such documentation unless state or federal statute requires otherwise. [~~The Federal Privacy Act prohibits~~

~~the requiring of a person's social security number as a condition of the issuance of an identification card. If the applicant refuses to show a social security card, the ID card must be issued without requiring the social security card.~~]

(e) Individuals who do not possess a social security number will be referred to the Social Security Administration to obtain such number.

(1) An individual, ineligible to obtain a social security number due to immigration status, will be required to obtain a letter from the Social Security Administration (SSA L-676) indicating their non-eligibility.

(2) Upon presentation of the Social Security Administration letter demonstrating the applicant's ineligibility to obtain a social security number, the department will assign the applicant an alternate numeric identifier, to be used in lieu of the social security number. Thereafter, the driver's license application will be processed in accordance with existing policies, rules, and procedures.

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 December 22, 1998.

TRD-9818551
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: February 7, 1999
For further information, please call: (512) 424–2135

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ADOPTED RULES

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

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

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 3. Boll Weevil Eradication Program

Subchapter E. Creation of Eradication Zones

4 TAC §3.116

The Texas Department of Agriculture (the department) adopts new §3.116 concerning the creation of a nonstatutory boll weevil eradication zone. Section 3.116 is adopted without changes to the proposed text published in the November 13, 1998 issue of the *Texas Register* (23 TexReg 11513).

The new section is adopted to establish a new nonstatutory boll weevil eradication zone consisting of counties not currently located in a statutory zone created under Chapter 74, Subchapter D, §74.1021, in order to allow cotton producers in the new zone an opportunity to establish a manageable, efficient eradication program that meets the local needs of producers in the zone. New §3.116 adopts, upon the request of the Northern Blacklands Boll Weevil Advisory Committee, the designation of the Northern Blacklands Boll Weevil Eradication Zone, which consists of all of all of Montague, Cooke, Grayson, Fannin, Lamar, Red River, Bowie, Cass, Morris, Titus, Franklin, Hopkins, Delta, Hunt, Rockwall, Collin, Denton, Wise, Jack, Parker, Tarrant, Dallas, Kaufman, Rains, Van Zandt, Henderson, Navarro, Ellis, Johnson, Hood, Somervell, Bosque, Hamilton, and Hill counties; and parts of McLennan and Limestone counties. A grower referendum may be conduced at a future date to determine whether or not a boll weevil eradication program and assessment will be approved for that zone. No referendum date has been discussed.

Comments generally in favor of the proposal were received from the Blackland Cotton and Grain Producers Association and the Texas Boll Weevil Eradication Foundation (the Foundation). In addition, the Foundation commented that the zone's boundaries as proposed make possible program implementation based on entomology, geography and the economics concerned. Other written comments received generally approved of the proposal boundaries and establishment of the new Northern Blacklands zone. One dissenting comment suggested that the climate and cultural practices of the area northeast of Dallas are too different from those south of Dallas. In addition, this farmer expressed concern that growers in that area would vote against a program, and that the rule was written to bring those farmers into a program against their will. Since there is no referendum scheduled, nor has one been discussed for the area, the rule only serves to designate the area as a cotton-growing region and allows the Commissioner of Agriculture to appoint a director to represent the area on the Texas Boll Weevil Eradication Foundation Board of Directors. All growers will have the opportunity to vote on whether or not there will be a program, thus the rule is not bringing an unwilling group into an eradication program. A program will be established only if approved by growers in the zone. Finally, due to the location of the cotton and the amount of the cotton grown in the area in question, there appears to be no geographic or economic distinction to draw a line such as that suggested. There was no formal comment offered at a public hearing on the proposal held by the department on December 2, 1998, in Ennis, Texas.

The department agrees with the comments received in support of the designation of the proposed zone. Further, the department believes that enough grower support and justification has been demonstrated to adopt the designation of the Northern Blacklands zone as proposed and provide the opportunity for growers in the zone to express their support by passing or defeating a referendum to establish a zone eradication program.

The new section is adopted under the Texas Agriculture Code, §74.1042, which provides the commissioner of agriculture with the authority, by rule, to designate an area of the state as a proposed boll weevil eradication zone.

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 December 21, 1998.

TRD-9818531
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: January 10, 1999
Proposal publication date: November 13, 1998
For further information, please call: (512) 463–7541

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 22. Practice and Procedure

Subchapter F. Parties

16 TAC §§22.102, 22.103, 22.105

The Public Utility Commission of Texas (commission) adopts amendments to §22.102 relating to Classification of Parties and §22.105 relating to Alignment of Parties with no changes to the proposed text as published in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9221) and will not be republished. The commission adopts an amendment to §22.103 relating to Standing to Intervene with changes to the proposed text as published in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9221). The amendments enable these sections to more accurately reflect commission policy and procedures. Project Number 17709 has been assigned to this proceeding.

In proposed §22.103 the commission proposed new subsection (c) pertaining to standing to intervene in dispute resolution proceedings pursuant to the federal Telecommunications Act of 1996. The September 11, 1998, publication failed to indicate subsection (c) as new text. A correction was published on October 16, 1998, issue of the *Texas Register* (23 TexReg 10741). The commission adopts §22.103 as corrected on October 16, 1998.

The Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001. Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission had invited specific comments regarding the §167 requirement, as to whether the reason for adopting these rules continues to exist, in the comments on the proposed amendments. No interested persons commented on the §167 requirement or on the proposed amendments as published or corrected. The commission finds that the reason for adopting these sections continues to exist.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§22.103. Standing to Intervene.

(a) Office of Regulatory Affairs. The Office of Regulatory Affairs shall have standing in all proceedings before the commission, and need not file a motion to intervene.

(b) (No change.)

(c) Dispute resolution pursuant to the federal Telecommunications Act of 1996 (FTA96). Standing to intervene in proceedings concerning dispute resolution and approval of agreements pursuant to the commission's authority under FTA96 is subject to the requirements of Subchapter P of this chapter (relating to Dispute Resolution).

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 December 28, 1998.

TRD-9818559

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Effective date: January 17, 1999

Proposal publication date: September 11, 1998

For further information, please call: (512) 936–7308

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Subchapter G. Prehearing Proceedings

16 TAC §§22.123-22.127

The Public Utility Commission of Texas adopts amendments to §§22.123 relating to Appeal of an Interim Order, 22.124 relating to Statements of Position, 22.125 relating to Interim Relief, 22.126 relating to Bonded Rates, and 22.127 relating to Certification of an Issue to the Commission with no changes to the proposed text as published in the October 16, 1998 *Texas Register* (23 TexReg 10591). Project Number 17709 has been assigned to this proceeding.

The proposed amendments enable these sections to more accurately reflect commission policy and procedures and correct citations to the Public Utility Regulatory Act as codified in the Texas Utilities Code. The proposed amendments to §22.123 extend the time for ruling on an appeal, and require the presiding officer to notify the commission if the presiding officer should decide to treat the appeal as a motion for reconsideration.

The Appropriations Act of 1997, House Bill 1, Article IX, §167 (§167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001. Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission had invited specific comments regarding the §167 requirement, as to whether the reason for adopting the rules continues to exist, in the comments on the proposed amendments. No interested persons commented on the §167 requirement or on the proposed amendments. The commission finds that the reason for adopting these sections continues to exist.

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

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 December 28, 1998.

TRD-9818560

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Effective date: January 17, 1999

Proposal publication date: October 16, 1998

For further information, please call: (512) 936–7308

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TITLE 34. PUBLIC FINANCE

Part III. Teacher Retirement System of Texas

Chapter 51. General Administration

34 TAC §51.2

The Teacher Retirement System of Texas (TRS) adopts a new §51.2 relating to Vendor Protests, Dispute Resolutions, and a Hearing. Section 51.2 is adopted without changes to the proposed text published in the November 13, 1998 issue of the *Texas Register* (23 TexReg 11559). The text will not be republished

The justification for this rule is found at §2155.076 of the Government Code which requires that each state agency by rule to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues. This rule provides the process for a vendor to protest purchases made by TRS. Purchases made by the General Services Commission (GSC) on behalf of TRS are addressed in GSC rules at Texas Administrative Code, Title 1, Chapter 111. The rule will bring TRS in compliance with the Government Code, §2155.076.

No public comments were received.

The new rule is adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system. In addition, §2155.076 of the Government Code requires such rules.

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 December 28, 1998.

TRD-9818564
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: January 17, 1999
Proposal publication date: November 13, 1998
For further information, please call: (512) 391–2115

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. 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

Public Utility Commission of Texas

Title 16, Part II

The Public Utility Commission of Texas files this notice of intention to review §23.99 relating to Unbundling pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167). Project Number 17709 has been assigned to the review of this section.

As part of this review process, the commission is proposing the repeal of §23.99 and is proposing new §26.276 of this title (relating to Unbundling) to replace §23.99. The proposed repeal and new section may be found in the Proposed Rules section of the *Texas Register*. As required by §167, the commission will accept comments regarding whether the reason for adopting the rule continues to exist in the comments filed on the proposed new section.

Any questions pertaining to this notice of intention to review should be directed to Rhonda Dempsey, Rules Coordinator, Office of Regulatory Affairs, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711-3326 or at voice telephone (512) 936-7308.

16 TAC §23.99. Unbundling.

TRD-9818532
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 21, 1998

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Adopted Rule Reviews

General Land Office

Title 31, Part I

The General Land Office (GLO) adopts without changes its proposed rule review conclusion that the reasons for adopting the rules contained in Chapter 1, §1.3, of Title 31 of the Texas Administrative Code continue to exist. Although substantive amendments to this rule are currently pending, the GLO adopts Chapter 1, §1.3, of Title 31 of the Texas Administrative Code for purposes of the Appropriations Act, §167.

No comments were received regarding this proposed rule review conclusion.

TRD-9818591
Garry Mauro
Commissioner
General Land Office
Filed: December 30, 1998

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The following is a correction to an adopted rule review published in the Rule Review section of the January 1, 1998, issue of the Texas Register. The General Land Office inadvertently omitted the second paragraph.

This is a correction to the adoption of Chapter 151, published in the January 1, 1999, issue of the *Texas Register*.

The General Land Office (GLO) adopts without changes its proposed rule review conclusion that the reasons for adopting the rules contained in Chapter 151 of Title 31 of the Texas Administrative code continues to exist. However, as explained in the proposed rule review, the GLO has repealed Chapter 151 and replaced it with a new, comprehensive Chapter 151 that contains the substance of former Chapters 151 and has been revised largely for the sake of clarity and administrative efficiency.

No comments were received regarding this proposed rule review, repeal, or revision.

TRD-9818588
Garry Mauro
Commissioner
General Land Office
Filed: December 30, 1998

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The following is a correction to an adopted rule review published in the Rule Review section of the January 1, 1998, issue of the Texas Register. The General Land Office inadvertently omitted the second paragraph.

This is a correction to the adoption of Chapter 153, published in the January 1, 1999, issue of the *Texas Register*.

The General Land Office (GLO) adopts without changes its proposed rule review conclusion that the reasons for adopting the rules contained in Chapter 153 of Title 31 of the Texas Administrative code continues to exist. However, as explained in the proposed rule review, the GLO has repealed Chapter 153 and replaced it with a new, comprehensive Chapter 153 that contains the substance of former Chapters 153 and has been revised largely for the sake of clarity and administrative efficiency.

No comments were received regarding this proposed rule review, repeal, or revision.

TRD-9818589
Garry Mauro
Commissioner
General Land Office
Filed: December 30, 1998

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The following is a correction to an adopted rule review published in the Rule Review section of the January 1, 1998, issue of the Texas Register. The General Land Office inadvertently omitted the second paragraph.

This is a correction to the adoption of Chapter 201, published in the January 1, 1999, issue of the *Texas Register*.

The General Land Office (GLO), acting on behalf of the Texas Department of Parks and Wildlife and Texas Department of Criminal Justice Boards for Lease, adopts without changes its proposed rule review conclusion that the reasons for adopting the rules contained in Chapter 201 of Title 31 of the Texas Administrative code continues to exist. However, as explained in the proposed rule review, the GLO has repealed Chapter 201 and replaced it with a new, comprehensive Chapter 201 that contains the substance of former Chapters 201 and has been revised largely for the sake of clarity and administrative efficiency.

No comments were received regarding this proposed rule review, repeal, or revision.

TRD-9818590
Garry Mauro
Commissioner
General Land Office
Filed: December 30, 1998

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Public Utility Commission of Texas

Title 16, Part II

The Public Utility Commission of Texas (commission) has completed the review of Procedural Rules, Subchapter F (relating to Parties), §§22.101 relating to Representative Appearances; 22.102 relating to Classification of Parties; 22.103 relating to Standing to Intervene; 22.104 relating to Motions to Intervene; and 22.105 relating to Alignment of Parties as noticed in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9441). The commission readopts these sections, pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167) and finds that the reason for adopting these rules continues to exist. Project Number 17709 is assigned to this proceeding.

The commission received no comments on the §167 requirement as to whether the reason for adopting the rules continues to exist. As part of this review process, the commission proposed amendments to §§22.102, 22.103 and 22.105 as published in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9221). No comments were received on the proposed amendments.

These sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

16 TAC §22.101. Representative Appearances.

16 TAC §22.102. Classification of Parties.

16 TAC §22.103. Standing to Intervene.

16 TAC §22.104. Motions to Intervene.

16 TAC §22.105. Alignment of Parties.

TRD-9818561
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 28, 1998

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The Public Utility Commission of Texas (commission) has completed the review of Procedural Rules, Subchapter G (relating to Prehearing Proceedings), §§22.121 relating to Prehearing Conferences; 22.122 relating to Interim Orders; 22.123 relating to Appeal of an Interim Order; 22.124 relating to Statements of Position; 22.125 relating to Interim Relief; 22.126 relating to Bonded Rates; and 22.127 relating to Certification of an Issue to the Commission as noticed in the October 16, 1998, issue of the *Texas Register* (23 TexReg 10659). The commission readopts these sections, pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167) and finds that the reason for adopting these rules continues to exist. Project Number 17709 is assigned to this proceeding.

The commission received no comments on the §167 requirement as to whether the reason for adopting the rules continues to exist. As part of this review process, the commission proposed amendments to §§22.123-22.127 as published in the *Texas Register* on October 16, 1998, (23 TexReg 10591). No comments were received on the proposed amendments.

These sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

16 TAC §22.121. Prehearing Conferences.

16 TAC §22.122. Interim Orders.

16 TAC §22.123. Appeal of an Interim Order.

16 TAC §22.124. Statements of Position.

16 TAC §22.125. Interim Relief.

16 TAC §22.126. Bonded Rates.

16 TAC §22.127. Certification of an Issue to the Commission.

TRD-9818562
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 28, 1998

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IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

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 Articles 1D.003, 1D.005 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003, 1D.005, and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Article 1D.003 and 1D.009 for the period of 01/04/99 - 01/10/99 is 18% for Consumer [1]/Agricultural/ Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Article 1D.003 and 1D.009 for the period of 01/04/99 - 01/10/99 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Article 1D.005 and 1D.009[3] for the period of 01/01/99 - 01/31/99 is 18% for Consumer/Agricultural/ Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Article 1D.005 and 1D.009 for the period of 01/01/99 - 01/31/99 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-9818576
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 29, 1998

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Texas Department of Criminal Justice

Notice To Bidders-Cancellation

The Texas Department of Criminal Justice hereby gives notice of cancellation of bids for the Death House Renovation-Requisition Number: 696-FD-8-B027, published in the July 10, 1998, issue of the *Texas Register* (23 TexReg 7282).

The date of cancellation was December 13, 1998.

TRD-9818594
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: December 30, 1998

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Texas Department of Economic Development

Notice of Request for Proposals

The Department is requesting proposals from independent consultants "Consultant" to provide ongoing information-gathering and monitoring of federal actions affecting Texas military installations and missions via contact with the military services, the Joint Chiefs of Staff, and the Office of the Secretary of Defense. It is critical that this information gathering and monitoring occur while such federal actions are still in the formative stages, enabling more informed, efficient and proactive responsiveness by the Office of Defense Affairs and the Texas communities that are entitled to this information by legislative mandate.

Background

A significant segment of the Texas economy is dependent on federal defense dollars in the form of contracting, military employment of civilian personnel and active-duty military, and retired military payroll. The expected continued decline in federal defense funding necessitates the implementation of a comprehensive, coordinated and integrated program of information and assistance for Texas communities, workers and defense companies. The program has two broad objectives. First, develop and implement a state strategy to attract new defense missions to Texas while ensuring current missions are retained through efforts aimed at increasing the military value of each Texas defense installation. Second, assist communities, dislocated workers and businesses impacted by decreased defense spending in their economic adjustment and transition efforts.

Accordingly, the 75th Texas Legislature established the Office of Defense Affairs (the "ODA") within the Department and charged it with a number of responsibilities, including the provision of information to defense-dependent communities regarding federal actions affecting military installation and missions.

Scope of Services

1) The Consultant shall provide research and assessment services, including, but not limited to, gathering all relevant information and providing analysis, as required, on each of the issues outlined below. The Consultant shall be responsible for critically assessing any source material for accuracy.

a) Proposed changes to the missions assigned the military services and the missions assigned to the commanders of unified and specified commands.

b) Proposed military force restructuring (due to budget adjustments or operational decisions).

c) Proposed changes to the location of major military forces assigned in Texas (i.e., ships, squadrons, wings, corps, divisions, brigades, regiments, etc.).

d) Proposed end strength gains or losses of active duty, DOD civilian, National Guard or Reserve units assigned in Texas.

e) Potential award, non-award, or reduction of contracts to defense-related businesses in Texas.

f) Attempts by other states to influence the relocation of military units assigned in Texas or to influence the award of a defense contract away from a Texas' defense-related business.

2) The Consultant shall also assist the Texas Office of State and Federal Relations in developing strategies and tactics to counter any actions adverse to Texas military installations or missions and assist the Department in preparing proactive efforts to maintain and enhance the state's defense business and industry base.

Deliverables

1) Consultant shall communicate specific time-sensitive information to the Office of Defense affairs in an appropriately expedient manner; verbally by phone, by fax, or by delivered written report.

2) Consultant shall provide the Office of Defense Affairs and the Texas Office of State and Federal Relations with a brief, written, bi-monthly report outlining work completed and pending, including summaries of information and analysis gathered since the previous report. Reports shall be delivered to the Department no later than the first Monday of each month, and the third Monday of each month for the duration of the Contract. In the case of state holiday or other Department closure on the first or third Monday of a month, the report must be delivered to the Department no later than the next business day.

3) Consultant shall provide additional brief written reports or presentations as necessary to provide the assistance described in Paragraph 2 of "Scope of Services," above.

Proposed Time Line

January 8, 1999–Request for Proposals published in *Texas Register*

January 20, 1999, 5:00pm CST–Closing date for receipt of questions

February 8, 1999, 5:00pm CST–Closing date for receipt of proposals

March 1, 1999–Anticipated contract award date

Within five days of actual award date–Consultant orientation meeting

August 31, 1999–Contract termination date. Department anticipates that the contract may possibly be extended at the end of the period.

Selection Criteria

Proposals will be evaluated by a panel that may be comprised of Department staff members and one or more members of the Texas Strategic Military Planning Commission.

Mandatory Elements

1) Consultant has no conflict of interest with regard to other work performed by the Consultant for the State, any military service, or the United States government.

2) Consultant is an established vendor regularly engaged in the business of providing consulting services similar to those required herein.

3) Consultant has at least five years experience within the past seven years performing consultant services similar to those required herein.

4) Consultant has previous experience with data used to analyze methods used by previous BRAC commissions to determine closure and downsizing recommendations.

5) Consultant has previous experience with processes behind military force downsizing, restructuring and relocation issues, and defense-related business contracting and usage.

6) Consultant has previous experience in effectively utilizing recognized quality standards when providing analysis of trends in military contracting.

7) Consultant adheres to the instructions in the request for proposals on preparing and submitting the proposal and submits a complete response.

8) Consultant's timetable is acceptable to the Department.

Technical Qualifications

1) Expertise and Experience

a) Extent and quality of experience with similar projects, based on information provided by Consultant as well as references of former and current clients; and

b) The quality of the individual staff to be assigned to the project.

2) Methodology

a) All other things being equal, the Department will give preference to a respondent whose principal place of business is in Texas.

b) Adequacy of proposed staffing;

c) Adequacy and completeness of data collection techniques and sources;

d) Adequacy of analytical procedures to be used;

e) Adequacy of previously demonstrated problem solving techniques and philosophies.

f) Adequacy of overall methodology; and

g) Adequacy of proposed deliverable format and presentation.

Price

Reasonableness of proposed cost as evidenced by billing rates and hours budgeted for each type of position or task. Although a significant factor, fees charged may not be the dominant factor. The Department will weigh the quality and extent of work proposed and billing rates against available budget in evaluating the reasonableness of proposed cost.

Oral Presentations

At the discretion of the Department, the Consultants submitting proposals may be requested to make an oral presentation as part of the evaluation process.

Release of Responses and Proprietary Information

In accordance with the Texas Open Records Act, Texas Government Code, Chapter 552, responses to requests for proposals are generally considered to be public information after a contract is awarded. If a Consultant wishes to maintain that any of the information contained in its proposal should not be publicly disclosed, the Consultant is responsible for identifying proprietary information in the proposal at the time of submission and setting forth with specificity reasons why the information should not be disclosed. A final determination regarding whether or not proprietary information identified must be disclosed is subject to a decision of the Attorney General of Texas, in accordance with the Act.

Right to Reject Proposals, Costs Incurred

The Department reserves the right to accept or reject any or all proposals submitted. The information contained in this notice of request for proposals is intended to serve only as a general description of the services desired. Additional terms and conditions relating to this proposal request will be provided in the proposal preparation instructions. The Department intends to use responses to this notice as a basis for further negotiation of specific project details with respondents. Issuance of this notice of request for proposals creates no obligation to award a contract or to pay any costs incurred in the preparation of a proposal. Direct or indirect costs incurred in responding to the request for proposals are the sole responsibility of the respondents. Proposals and accompanying documents will become the property of the Department and will not be returned to the proposers.

Department Contact

Consultants interested in submitting a proposal or obtaining a complete Request for Proposal should contact Texas Department of Economic Development, Attention Gail Little, Purchasing Department, P.O. Box 12728, Austin, Texas, 78711-2728, telephone: (512) 936-0119; facsimile (512) 936-0123.

Written Questions

After the pre-proposal conference, all further substantive questions must be submitted in writing to the above address or fax number and must be received by 5:00 pm, CST, on January 20, 1999. Questions received after this time will be neither reviewed nor responded to.

Closing Date

All proposals, regardless of delivery method, must arrive at the Department of Economic Development's office by 5:00 pm CST, February 8, 1999, to be considered. Date of postmark or delivery to courier will not be considered–actual receipt by the date and time specified is required. Late proposals will not be considered under any circumstances. Proposals transmitted via facsimile, Internet, or electronic mail will not be considered under any circumstances.

TRD-9818592
Robin Abbott
General Counsel
Texas Department of Economic Development
Filed: December 30, 1998

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Texas Education Agency

Request for Proposals Concerning the Texas Primary Reading Inventory

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) Number 701-99-006 from education service centers, colleges and universities, publishers, nonprofit organizations, for-profit organizations, or a consortium of the foregoing to typeset, print, package, and distribute the Texas Primary Reading Inventory (TPRI). Historically underutilized businesses (HUBs) are encouraged to submit a proposal. Special consideration will be given to those proposers who have a base of operation in Texas.

Description. TEA requires the services of a proposer to typeset, print, package, and disseminate copies of the TPRI to Texas schools. Proposals submitted must describe the activities the contractor will conduct to produce and distribute the TPRI.

The proposer will detail activities to be used to revise the design of the current TPRI. Preliminary activities must include a review of the current TPRI with suggestions on how to increase the utility of the document. Suggestions are to include plans to redesign the layout and/or format of the document. The proposer will not be responsible for development or revision of any test item; rather, the proposer will provide suggestions for the presentation of material.

The proposer will detail methods to be used to print the TPRI in order to assure a quality document is produced. The proposer must document how time and resources will be dedicated to producing a quality, color document. The proposer must plan to produce a document that has a multi-color cover with tricolor content pages. The proposer must plan to produce the TPRI with high quality paper.

The proposer will detail activities to be used to package the TPRI. TEA will expect the proposer to produce classroom kits that include twenty-four student booklets, one teacher guide, and manipulatives that match the test items (e.g. foam alphabet letters). The proposer should plan to package the TPRI as a classroom kit that includes a high quality box that will hold all the materials and can be used to store the materials by a classroom teacher.

The proposer will describe a plan for distributing the TPRI to Texas school districts. The plan will be implemented by the contractor. The contractor will provide districts with sufficient numbers of classroom kits. The printing and shipping of the TPRI must be scheduled to allow districts to distribute the material before the start of the 1999 school year.

Dates of Project. All products and services related to this proposal will be conducted within specified dates. Proposers should plan for a starting date of no earlier than March 15, 1999, and an ending date of no later than August 31, 1999.

Project Amount. One contractor will be selected to receive an amount not to exceed $5,000,000, which is subject to further negotiation.

Selection Criteria. Proposals will be evaluated based on the ability of the contractor to carry out the requirements contained in the RFP within the specified dates. Prior experience with typesetting, printing, packaging, and dissemination will be taken into consideration.

TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP number 701-99-006 may be obtained by writing the: Document Control Center,

Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFP number in your request.

Further Information. For clarifying information about this RFP, contact the Office of Statewide Initiatives, Texas Education Agency, (512) 463-9027.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Wednesday, February 24, 1999, to be considered.

TRD-9818584
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: December 30, 1998

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Texas Department of Health

Notice of Public Hearing on Proposed Midwifery Rules

The Texas Midwifery Board (board) will hold a public hearing to receive public comments on proposed rules concerning the midwifery rules (repeal of 25 Texas Administrative Code (TAC) §§37.175, 37.178, and 37.180; and new 22 TAC, §§831.11, 831.31, 831.101, and 831.161) for documentation, education, administration of oxygen, and complaint review. These rules were published in the January 1, 1999, issue of the *Texas Register*.

The hearing is scheduled from 9:30 a.m. to 2:00 p.m., Monday, January 11, 1999, in the Main Building, Room K-100 (auditorium), Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756.

Further information may be obtained from Belva Alexander or Yvonne Feinleib of the Texas Midwifery Board, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, Telephone (512) 834-6628, Extension 2716.

TRD-9818593
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 30, 1998

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Texas Department of Housing and Community Affairs

Notice of Administrative Hearing

Manufactured Housing Division

Thursday, January 14, 1999, 1:00 p.m.

State Office of Administrative Hearing, Stephen F. Austin Building, 1700 North Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the Texas Department of Housing and Community Affairs vs. Fernando Cisneros dba Cisneros House Mover to hear alleged violations of the Act, §§4(d) (f) and 7(d) and the Rules §80.54 and §80.125(e) regarding obtaining, maintaining or possessing a valid installer's license and proper installation of a manufactured home. SOAH 332-98-2425. Department MHD1997000785D and MHD1998002604IC.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas, 78711-2489, (512) 475-3589.

TRD-9818585
Daisy Stiner
Acting Executive Director
Texas Department of Housing and Community Affairs
Filed: December 30, 1998

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Texas Department of Insurance

Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by the Connecticut Indemnity Company proposing to use rates outside the flexibility band promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code Annotated, Article 5.101, §3(g). They are proposing rates for commercial automobile insurance ranging from -30% below the benchmark for ambulances, -57.5% below the benchmark for fire departments, and -20% below the benchmark for all others.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Article 5.101, §3(h), is made with the Chief Actuary, Philip Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9818587
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 30, 1998

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Third Party Administrator Applications

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for admission to Texas of Gallagher Bassett Services, Inc., a foreign third party administrator. The home office is Dover, Delaware.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-9818578
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 29, 1998

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Texas Lottery Commission

Request for Proposals for Instant Tickets and Services

The Texas Lottery Commission (the "Texas Lottery") is issuing a Request for Proposals for Instant Tickets and Services (the "RFP") The purpose of the RFP is to obtain proposals from vendors to provide instant ticket manufacturing and services to the Texas Lottery.

The games are to be designed to make possible the winning of an immediately payable prize and to provide for the possibility of winning later prizes or prize opportunities. A purchaser must be able, readily and easily, to reveal previously concealed numbers or symbols imaged on the ticket.

At its sole option, the Texas Lottery may select two Successful Proposers, a primary contractor and a back-up contractor, to perform services under the RFP. The primary contractor will be the prime source of instant tickets and services for the Texas Lottery. The back-up contractor will perform all of the functions set forth in this RFP in the event that the primary contractor is unable to perform. In addition, the back-up contractor will manufacture a minimum of one game per contract year. The number of games beyond one game per contract year that will be manufactured by the back-up contractor will be determined at the sole option of the Texas Lottery.

At its sole option and subject to its right to cancel the RFP, the Texas Lottery may enter into a one (1), two (2) or three (3) year contract(s) as a result of the RFP. All Proposers are be required to submit a cost proposal based on each one of these options.

Schedule of Events

The time schedule for awarding a contract(s) under the RFP is shown below. The Texas Lottery reserves the right to amend the schedule.

December 21, 1998-Issuance of RFP

January 11, 1999-Letter of Intent to Propose Due (4:00 p.m., CT)

January 11, 1999-Written Questions Due (4:00 p.m., CT)

January 14, 1999-Answers to Written Questions Issued

February 3, 1999-**DEADLINE FOR PROPOSALS (4:00 p.m., CT)**

February 26, 1999-Announcement of Apparent Successful Proposer(s)

To obtain a copy of the RFP please contact Kaye Schultz, Assistant General Counsel, Texas Lottery Commission, Post Office Box 16630, Austin, Texas 78761-6630, (512) 344-5050, or by fax (512) 344-5189.

TRD-9818595
Ridgely C. Bennett
Deputy General Counsel
Texas Lottery Commission
Filed: December 30, 1998

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Texas Natural Resource Conservation Commission

Notice Of Application for a Texas Weather Modification Permit.

The following applicants seek to obtain a Texas weather-modification permit under Texas Water Code Chapter 18 (Texas Weather Modification Act of 1967) and the Rules of the Texas Natural Resource Conservation Commission (TNRCC), 30 TAC Chapter 289.

Application Number E834083 submitted by SOUTHWEST TEXAS RAIN ENHANCEMENT ASSOCIATION, P. O. Box 1433, Carrizo Springs, Texas 78834. The application was received on July 22, 1998, and has been declared administratively complete. The proposed operation will include rainfall enhancement during a period of four years from the date of issuance of the permit, within a portion of Southwest Texas. If issued, the area of intended effect would include Kinney, Maverick, Uvalde, Zavala, Dimmit, LaSalle, Webb, Frio, McMullen, Duval, Jim Hogg and Zapata Counties, Texas.

Application Number E902608 submitted by BELDING FARMS, A DIVISION OF TEXAS PRODUCTION COMPANY, Route 1, Box 140, Fort Stockton, Texas 79735. The application was received on September 21, 1998, and has been declared administratively complete. The proposed operation will include hail suppression during a period of four years from the date of issuance of the permit, within the confines of a pecan orchard of about 2200 acres, located approximately ten miles southwest of the Fort Stockton, Texas airport on FM 2037 in Pecos County, Texas.

Issuance of a permit, which must be preceded by the issuance of a Texas weather-modification license to the applicant, certifies that the person(s) or organization holding the permit may conduct weather modification activities.

Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9818580
LaDonna Castanuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: December 29, 1998

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Public Hearing Notice

Notice is hereby given that pursuant to the requirement of the Texas Government Code, Subchapter B, Chapter 2001 and of the Texas Health and Safety Code, §382.017, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning the amendments to the air quality provisions, technical requirements and administrative procedures related to authorizations of concentrated animal feeding operations (CAFOs) in Chapter 321, Subchapter B.

The purposes of the proposed rules are to implement National Pollutant Discharge Elimination System (NPDES) assumption and to make the existing rules consistent with federal regulations. As amended, this subchapter will allow the TNRCC to administer a single permitting program for NPDES and state permits and provide CAFOs the opportunity to apply for just one permit to gain both state and federal coverage.

A public hearing on the proposal will be held February 16, 1999, at 10:00 a.m. in the TNRCC office complex, Building F, Room 2210, 12100 Park 35 Circle, Austin. The hearing is structured to receive oral or written comments by interested persons. Individuals may present oral statements, when called upon, in the order of registration. Open discussion will not occur during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments on the proposal should refer to Rule Log Number 98074-321-WT and may be submitted to Heather Evans, Texas Natural Resource Conservation Commission, Office of Policy and

Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be received by 5:00 p.m., February 16, 1999. For further information concerning this proposal, please contact Darrell Williams, Texas Natural Resource Conservation Commission, Water Quality Division, (512) 239-5768.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1459. Requests should be made as far in advance as possible.

TRD-9818577
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: December 29, 1998

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Public Utility Commission of Texas

Notices of Applications for 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 December 21, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154-54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of TotalTel, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 20273 before the Public Utility Commission of Texas.

Applicant intends to provide all forms of intrastate local exchange telecommunications services including basic residential services, residential custom calling and Class Features, basic business exchange services, business custom calling and Class features, adjunct provided features, and business and residential ancillary services.

Applicant's requested SPCOA geographic area includes those areas of Texas currently served by Southwestern Bell Telephone Company, GTE Southwest, Inc., and United Telephone Company of Texas, Inc.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than January 13, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9818574
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 28, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 22, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of SmartCom Telephone, L.L.C. for a Service Provider Certificate of Operating Authority, Docket Number 20275 before the Public Utility Commission of Texas.

Applicant intends to provide local exchange, interexchange, switched access service and all related services with enhanced options of one number follow me, virtual office and voicemail.

Applicant's requested SPCOA geographic area includes the geographic area of Texas comprising the Brownsville, Corpus Christi and San Antonio Local Access and Transport Areas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 no later than January 13, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9818581
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 30, 1998

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Public Notices of Amendments to Interconnection Agreements

On December 2, 1998, Southwestern Bell Telephone Company and AT&T Wireless Services, Inc., collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20164. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20164. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 14, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20164.

TRD-9818569
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 28, 1998

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On December 14, 1998, Southwestern Bell Telephone Company and Nextlink of Texas, Inc., collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20233. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20233. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 14, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20233.

TRD-9818567
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 28, 1998

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On December 15, 1998, Southwestern Bell Telephone Company and Tech Telephone Company, Ltd., collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20242. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20242. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 14, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20242.

TRD-9818565
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 28, 1998

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Public Notices of Interconnection Agreements

On December 14, 1998, Nextel of Texas, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20231. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20231. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 22, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20231.

TRD-9818568
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 28, 1998

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On December 15, 1998, Southwestern Bell Telephone Company and Poka Lambro Telecommunications, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20237. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of

the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20237. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 14, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20237.

TRD-9818566
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 28, 1998

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On December 15, 1998, Peoples Telecommunications, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20243. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20243. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 14, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20243.

TRD-9818570
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 28, 1998

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On December 15, 1998, Southwestern Bell Telephone Company and Poka Lambro PCS, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20244. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or

rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20244. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 14, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20244.

TRD-9818571
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 28, 1998

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On December 16, 1998, Southwestern Bell Telephone Company and Discount Calling, Inc., collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20245. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20245. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 14, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20245.

TRD-9818572
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 28, 1998

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On December 16, 1998, Southwestern Bell Telephone Company and DPI-Teleconnect, Inc., collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20246. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20246. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 14, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20246.

TRD-9818573
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 28, 1998

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Texas Savings and Loan Department

Notice of Application to Establish a Remote Service Unit of a Savings and Loan

Notice is hereby given that an application has been filed with the Savings and Loan Commissioner of Texas by applicant: Snyder Savings and Loan Association, Snyder, Scurry County, Texas, for approval to establish and operate a remote service unit at the following location:

Address - 4109 College Avenue, Snyder, Scurry County, Texas

The applicant asserts that the security of the savings and loan's funds and that of its account holders will be maintained, and that the proposed service will be a substantial convenience to the public.

Anyone desiring to protest the above application must file a written protest with the Commissioner within ten days following publication. The Commissioner may dispense with a hearing on this application.

This application is filed pursuant to 7 T.A.C. §53.11 et. seq. of the Rules and Regulations Applicable to Texas Savings and Loan Associations. These rules are on file with the Secretary of State, Texas Register Division, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705.

TRD-9818575
James L. Pledger
Commissioner
Texas Savings and Loan Department
Filed: December 29, 1998

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Notice of Application for Remote Service Unit of a Savings Bank

Notice is hereby given that an application has been filed with the Savings and Loan Commissioner of Texas by applicant: First American Bank Texas, Bryan, Texas, for approval to establish and operate a remote service unit at the following location:

Skinny's Convenience Store Number 66, 2689 Buffalo Gap Road, Abilene, Texas 79605

The applicant asserts that the security of the savings bank's funds and that of its account holders will be maintained, and that the proposed service will be a substantial convenience to the public.

Anyone desiring to protest the above application must file a written protest with the Commissioner within 10 days following publication. The Commissioner may dispense with a hearing on this application.

This application is filed pursuant to 7 T.A.C. §75.37 et. seq. of the Rules and Regulations Applicable to Texas Savings Banks. These rules are on file with the Secretary of State, Texas Register Division, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705.

TRD-9818582
James L. Pledger
Commissioner
Texas Savings and Loan Department
Filed: December 30, 1998

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