Texas Register

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Texas Register

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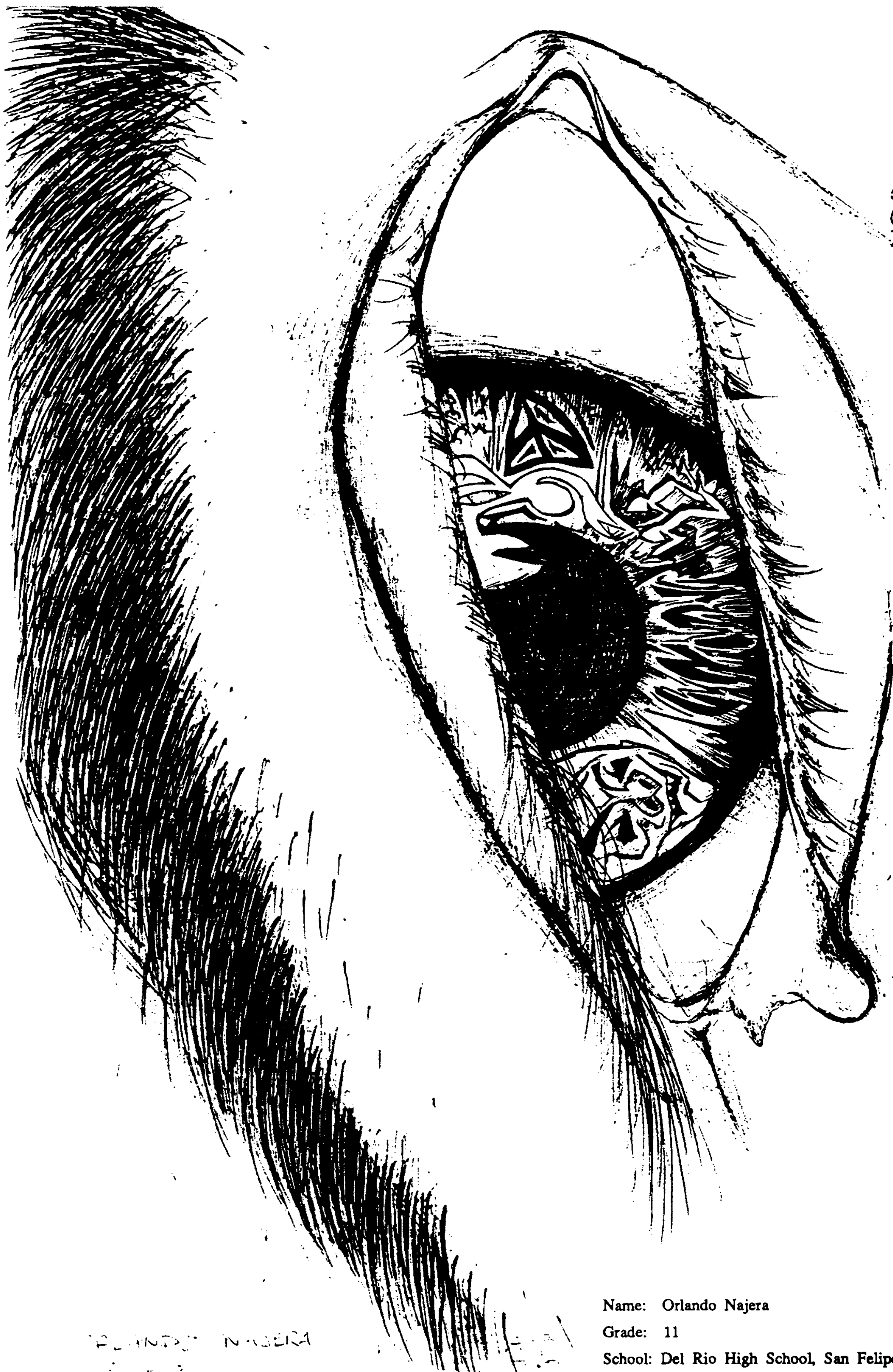

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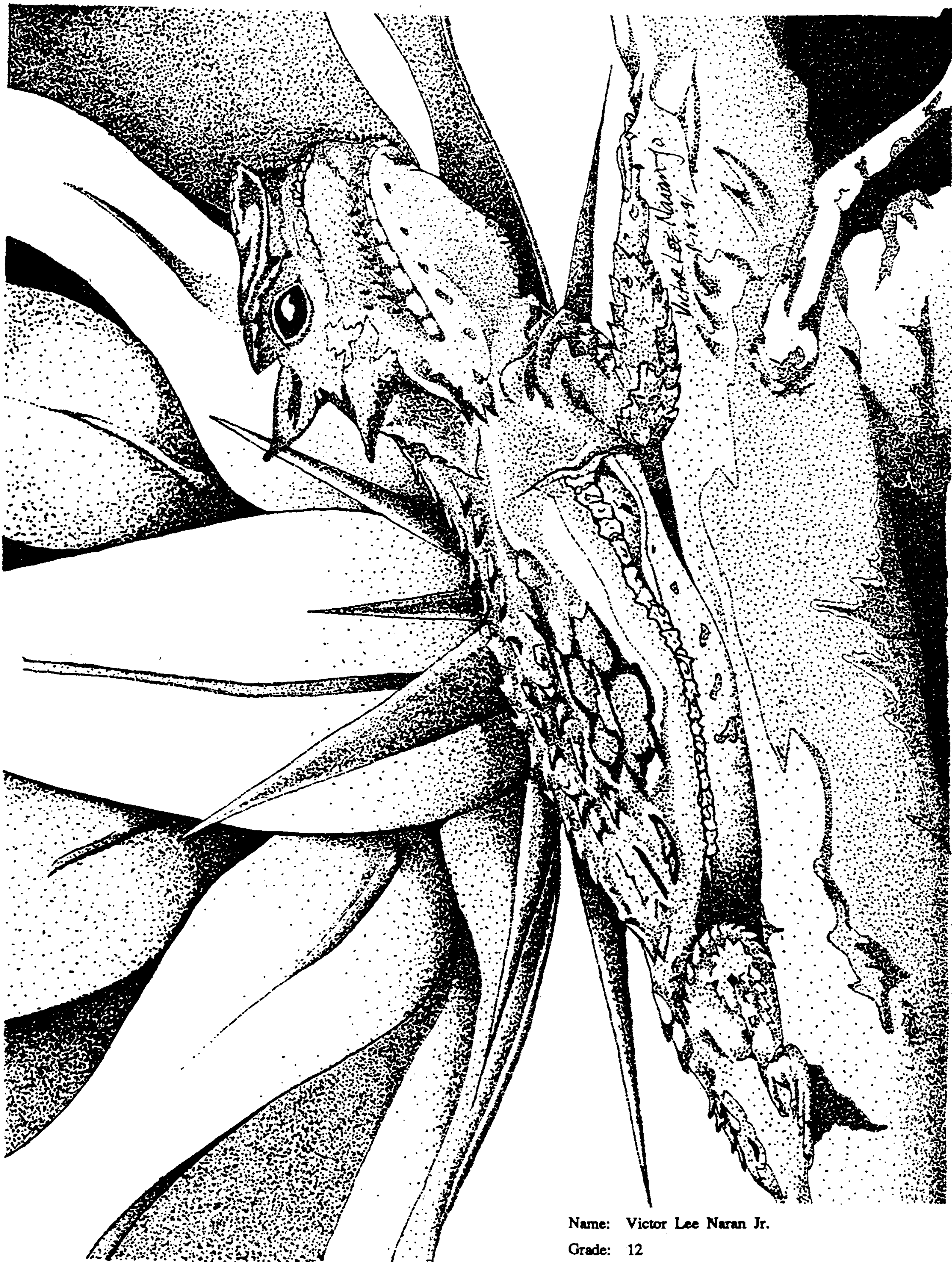

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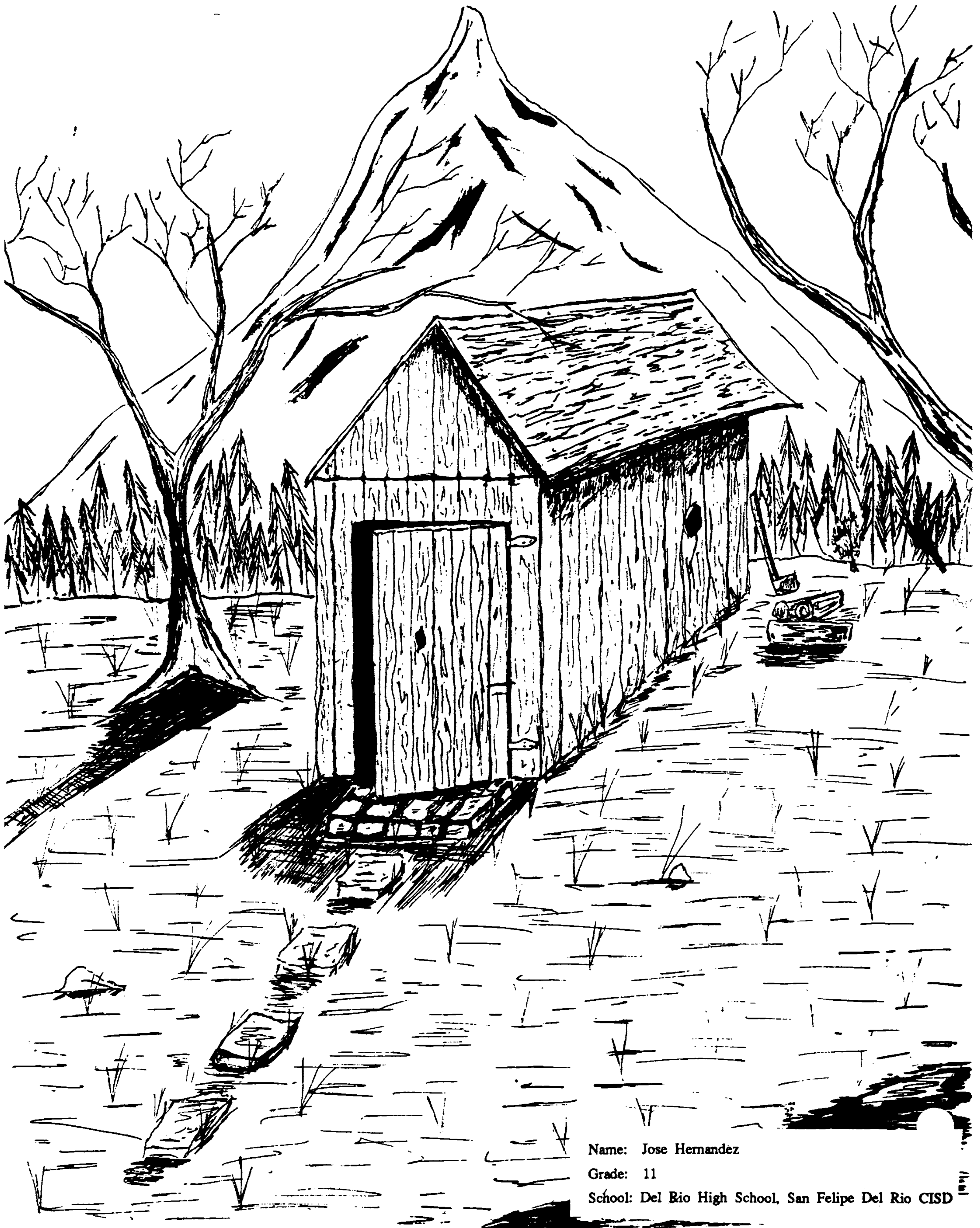

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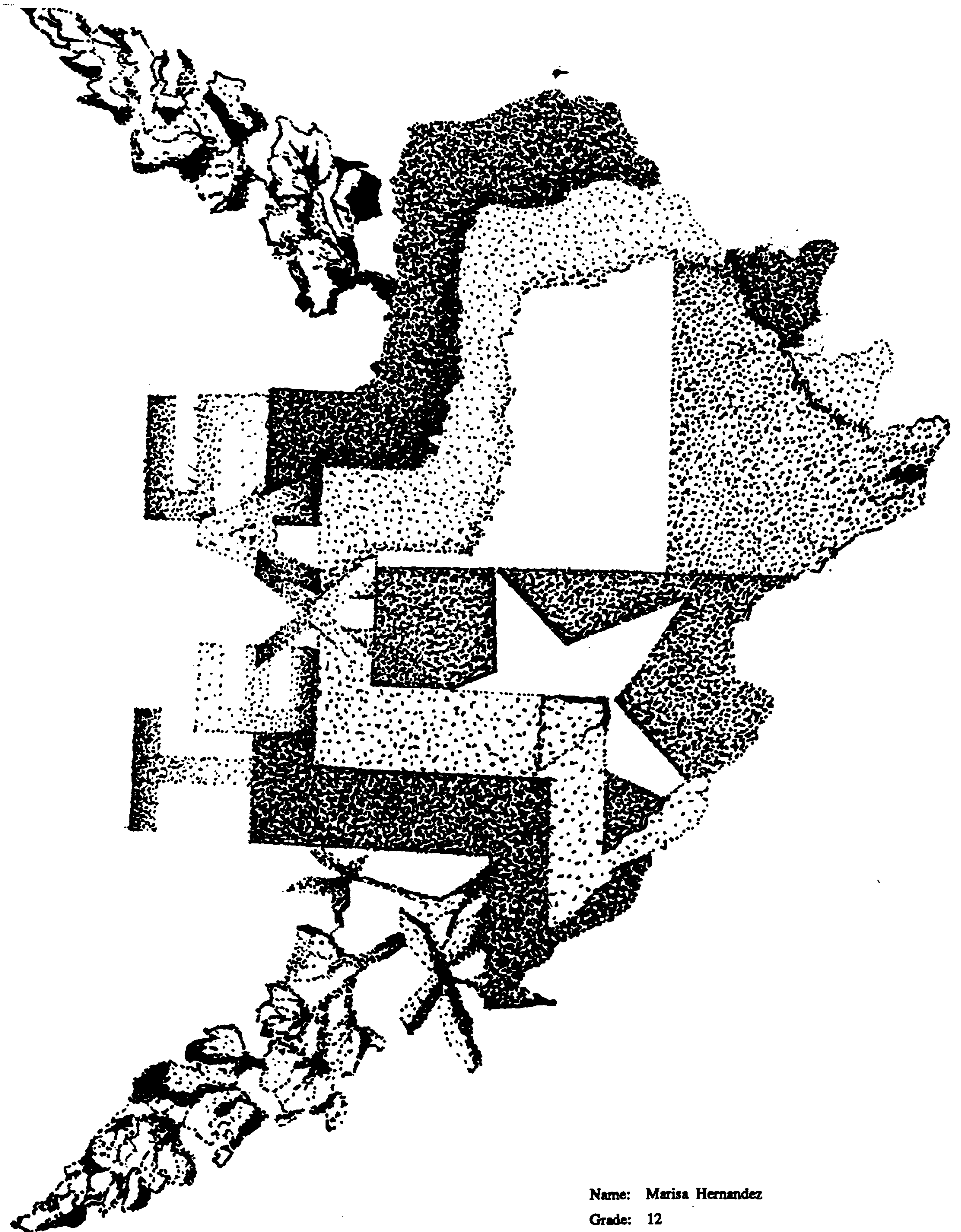

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40 TAC §19.502, §19.503—7367

40 TAC §§19.601, 19.603, 19.604—7367

40 TAC §§19.801, 19.802, 19.804, 19.805, 19.808, 19.810—7367

40 TAC §19.804, §19.807—7368

40 TAC §§19.901-19.909, 19.911—7368

40 TAC §19.912—7368

40 TAC §§19.1001-19.1004, 19.1007—7368

40 TAC §19.1006—7369

40 TAC §§19.1101, 19.1104, 19.1105—7369

40 TAC §19.1103—7370

40 TAC §§19.1201, 19.1202, 19.1204, 19.1206, 19.1207—7370

40 TAC §19.1301, §19.1304—7370

40 TAC §19.1305—7370

40 TAC §19.1401—7370

40 TAC §19.1501, §15.1518—7371

40 TAC §19.1518—7371

40 TAC §§19.1603, 19.1605, 19.1606, 19.1610, 19.1613—7371

40 TAC §§19.1701, 19.1702, 19.1706-19.1708—7372

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40 TAC §19.1911—7375

40 TAC §19.2001, §19.2005—7375

40 TAC §19.2104, §19.2105—7375

40 TAC §19.2102, 19.2104—7375

40 TAC §19.2104, 19.2154—7376

40 TAC §29.301—6997

40 TAC §29.504—7544

40 TAC §29.607—6997

40 TAC §29.609—7105

40 TAC §29.1101, §29.1104—7463

40 TAC §29.1104—7465

40 TAC §48.2501—7217

40 TAC §49.1313—7544

40 TAC §72.901—7544

Part VI. Texas Commission for the Deaf and Hearing Impaired

40 TAC §181.820, §181.830—7019

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

43 TAC §§1.80-1.84—6998

43 TAC §§9.20-9.22—7019

43 TAC §17.69—7020

The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in Chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1814.

Appointments Made December 12, 1991

To be a member of the **Texas Higher Education Coordinating Board** for a term to expire August 31, 1997: Ray E. Santos, M.D., 4512 11th Street, Lubbock, Texas 79416. Dr. Santos is being reappointed.

To be chairman of the **Texas Turnpike Authority Board of Directors** for a term at the pleasure of the Governor: Luther G. Jones, Jr. of Corpus Christi. Mr. Jones will be replacing Clive Runnells of Houston who will remain on the board.

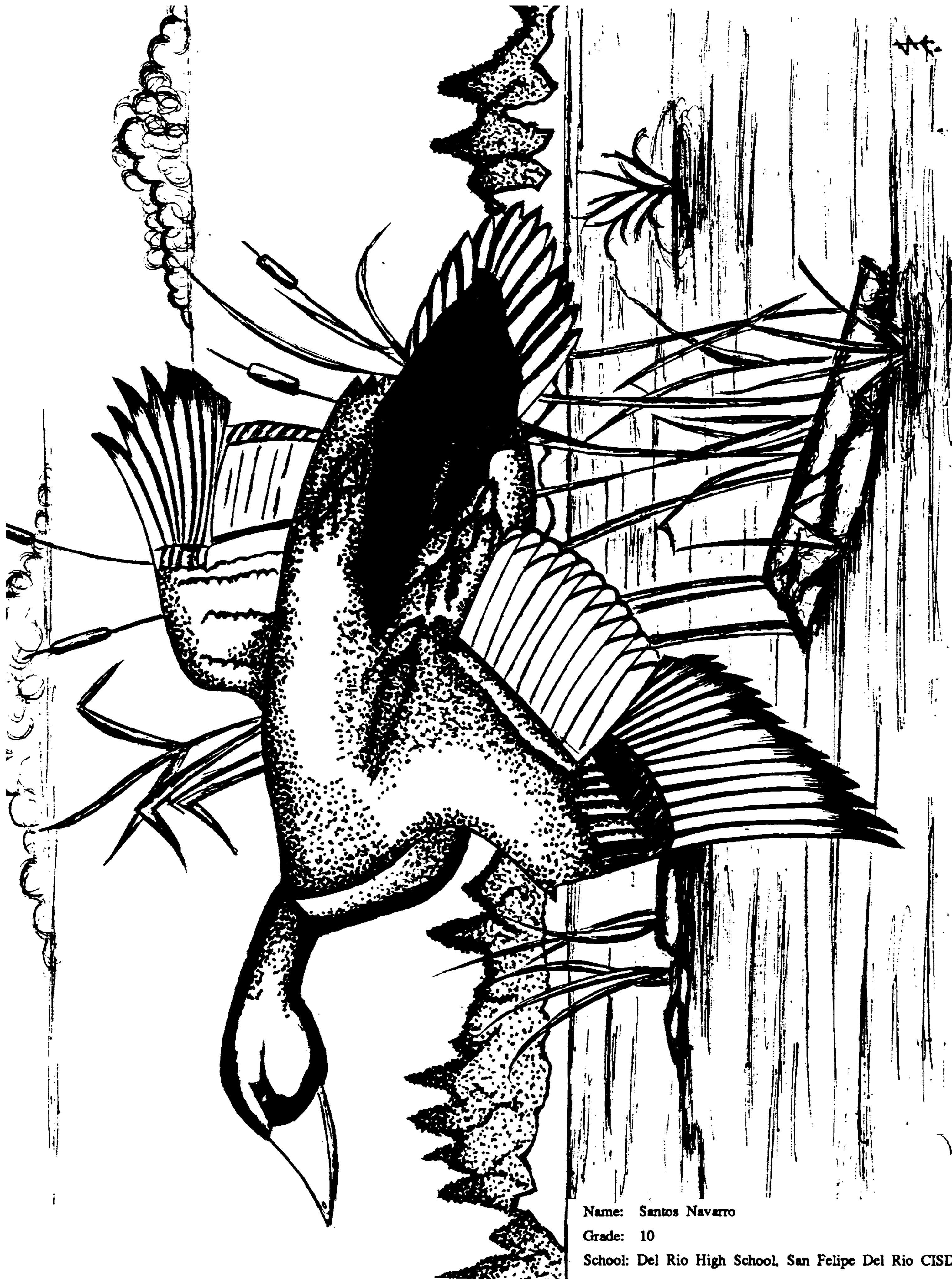
To be a member of the **Texas Higher Education Coordinating Board** for a term to expire August 31, 1997: Rene Haas, 4751 Ocean Drive, Corpus Christi, Texas 78411. Ms. Haas will be replacing Jess Ben Latham, III of Amarillo, whose term expired.

To be a member of the **Texas Higher Education Coordinating Board** for a term to expire August 31, 1997: Andrew R. Melontree, 2801 North Whitten, Tyler, Texas 75702. Commissioner Melontree will be replacing Phillip G. Warner of Houston, whose term expired.

To be a member of the **Texas Higher Education Coordinating Board** for a term to expire August 31, 1997: Martha Miller, 206 Oak Hill Road, Texarkana, Texas 75503. Ms. Miller will be replacing Regina J. Rogers of Houston, whose term expired.

Issued in Austin, Texas, on December 13, 1991.

TRD-9115829 Ann W. Richards, Governor of Texas



Name: Santos Navarro

Grade: 10

School: Del Rio High School, San Felipe Del Rio CISD

Executive Order

AWR 91-18

CREATING THE TEXAS ENVIRONMENTAL ENFORCEMENT TASK FORCE

WHEREAS, Texas leads the nation in generation of toxic substances and also faces serious and diverse environmental problems that include polluted air in the state's major urban areas, contaminated surface and drinking water, degradation of coastal areas and critical wildlife habitats, and solid waste disposal needs; and

WHEREAS, Texas would be better served by more cohesive and consistent enforcement of state and federal environmental laws and regulations; and

WHEREAS, numerous state agencies have responsibilities for enforcement of Texas' environmental protection laws and regulations; and

WHEREAS, state agencies also share responsibility for environmental enforcement with several federal agencies; and

WHEREAS, specific environmental problems and potential violations may fall within the jurisdiction of more than one state or federal agency; and

WHEREAS, other environmental problems and potential violations may fall outside the direct authority of any one state or federal agency; and

WHEREAS, this fragmentation of responsibility has contributed to the state's failure to protect public health and the environment, to address citizen concerns, to respond to local government needs, and to distinguish environmental violators from those responsible businesses that comply with environmental standards; and

WHEREAS, legislation enacted by the 72nd Legislature creates additional administrative, civil, and criminal penalties for violations of the state's environmental laws and regulations; and

WHEREAS, no mechanism exists for coordinating the environmental enforcement activities of different state agencies or ensuring that complex environmental enforcement problems that fall under the jurisdiction of more than one state agency are addressed quickly and effectively; and

WHEREAS, no mechanism exists for coordinating the environmental enforcement activities of Texas state agencies and federal authorities;

NOW, THEREFORE, I, Ann W. Richards, Governor of Texas, under the authority vested in me, do hereby create the Texas Environmental Enforcement Task Force. The Task Force is composed of designated staff from the following state agencies: Texas Water Commission, Texas Air Control Board, Texas Department of Health, Texas Parks and Wildlife Department, Texas Attorney General's Office, General Land Office; Texas Railroad Commission; and the Governor's Office. The Task Force may be expanded to include additional agencies as appropriate.

The Task Force shall meet monthly or at the call of the Chair.

The goal of the Task Force is to increase federal and state cooperation in prosecuting criminal violations of state and federal environmental laws.

Designated staff of the participating state agencies will cooperate with the U.S. Attorney's Office, the U.S. Environmental Protection Agency, and the Federal Bureau of Investigation in conducting inspections, taking and analyzing samples, and performing other functions necessary to support criminal investigations and prosecutions. The state agencies will also cooperate with the federal agencies in identifying and initiating criminal investigations.

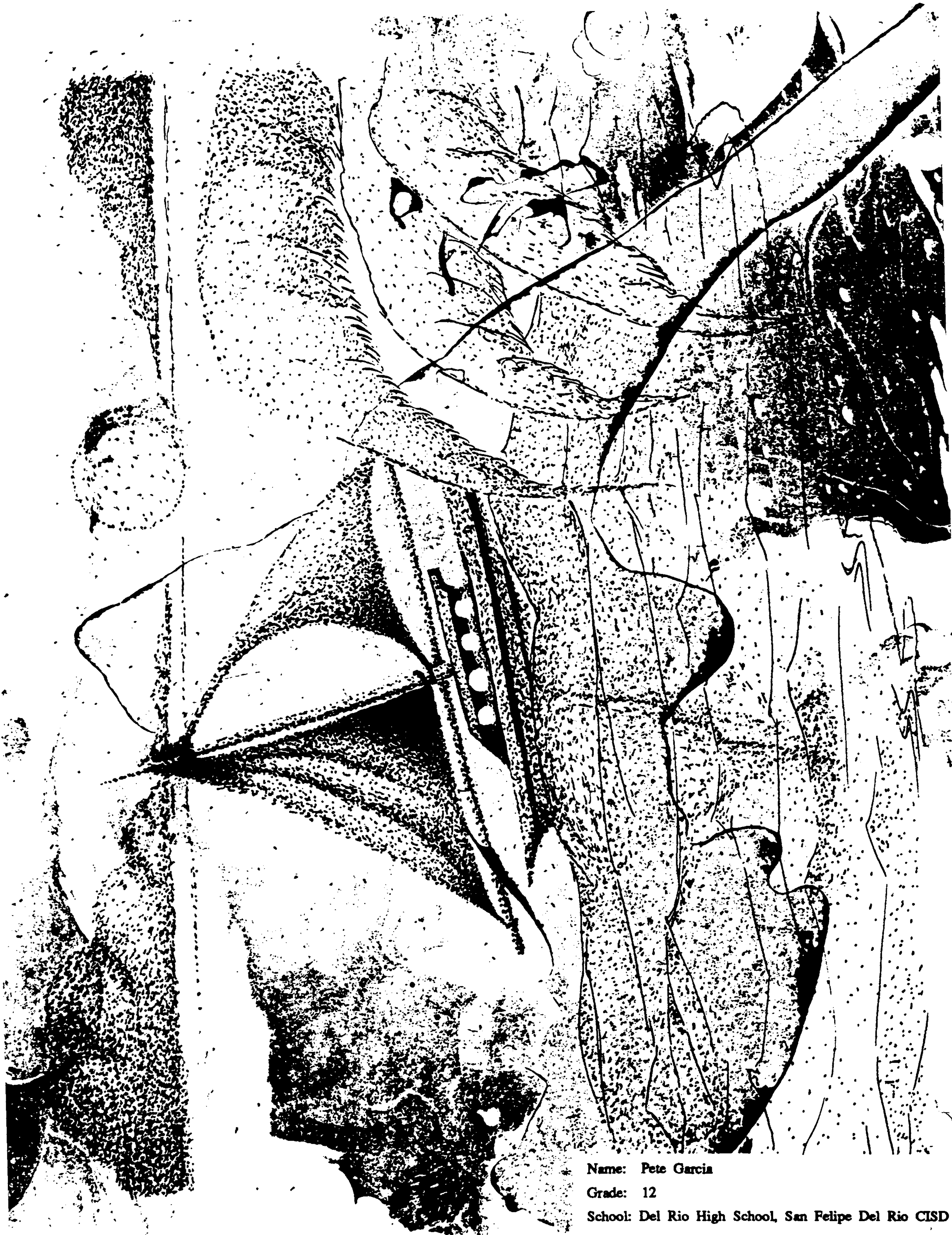
The designated staff within the governor's office will coordinate the efforts of the Task Force and serve as the primary contact person with the federal agencies. The Texas Water Commission will provide a staff person to chair the Task Force.

The participating agencies shall absorb the costs of the Task Force activities within their respective agencies.

Issued in Austin, Texas, on December 11, 1991.

TRD-9115830 Ann W. Richards
Governor of Texas

◆ ◆ ◆



Name: Pete Garcia

Grade: 12

School: Del Rio High School, San Felipe Del Rio CISD

Emergency Sections

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the *Texas Register*, or on a stated date less than 20 days after filing, for no more than 120 days. The emergency action is renewable once for no more than 60 days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the use of **bold text.** [Brackets] indicate deletion of existing material within a section.

TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners

Chapter 5. Interior Designers

Subchapter A. Scope; Definitions

The Texas Board of Architectural Examiners adopts on an emergency basis new §§5.1-5.18, 5.31-5.39, 5.51-5.60, 5.71-5.80, 5.91-5.99, 5.111-5.114, 5.131-5. 132, 5.151-5.156, 5.171-5.187, and 5.201-5.205 concerning interior designers.

These new sections are adopted on an emergency basis to allow implementation of the registration process for interior designers in accordance with Texas Civil Statutes, Article 249e, which became effective September 1, 1991.

• **22 TAC §§5.1-5.18**

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§5.1. Purpose. The rules and regulations of the Texas Board of Architectural Examiners are set forth for the purpose of interpreting and implementing Texas Civil Statutes, Article 249e, "the Regulation of the Practice of Interior Design" in Texas; establishing the board and conferring upon it responsibility for registration of interior designers and the regulation of the practice of interior design.

§5.2. Citation. The rules and regulations shall be known, and may be cited as rules of the board.

§5.3. Board's Regulatory Authority. The cited rules of the board are promulgated under authority of the cited statute, Texas Civil Statutes, Article 249e, a title law, and shall be in conformity with applicable provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, (APTRA).

§5.4. Severability. If any provision of these regulations or the application thereof to any person or circumstance is invalid, such invalidity shall not affect other provisions or application of these regulations which can be given effect without the invalid provision or application, and to this end the provisions of these regulations are declared to be severable.

§5.5. Terms Defined Herein. The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

Applicant–An individual who has submitted an application for registration.

APTRA–Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

Candidate–An individual who has qualified for examination.

Contract documents–Documents issued for permits, or con- struction purposes, consisting of plans, specifications, and related documents.

Coordination of consultant's work–Comparative review by the interior designer of the construction documents as prepared by the interior designer and by each of his or her consultants for the purpose of revealing possible conflicts and omissions and for observing the consultant's proper seal or other certification applied to his or her own work. Revisions necessary for coordination shall remain the responsibility of the consul- tants.

FIDER–Foundation for Interior Design Education Research.

Interior designer–An individual currently registered to use the title "interior designer" and authorized to offer or perform "interior design" services in the State of Texas.

Interior Designers' Registration Law–"Regulation of the Practice of Interior Design," Texas Civil Statutes, Article 249e.

NCIDQ–National Council for Interior Design Qualification.

Principal–An individual who is an interior designer, and in charge of an organization's interior design practice, either alone or with other interior designers.

Registrant–See interior designer.

Table of Equivalents–The latest edition of the document used by the board to qualify candidates for examination, entitled "Table of Equivalents for Education and Experience in Interior Design."

TBAE–Texas Board of Architectural Examiners.

§5.6. Office. The board shall maintain an office as its official place of business, which shall be the board's office for its executive director, staff, and records in Austin.

§5.7. Person for Service of Process. The name and address of the person designated by the board upon whom service of process may be served in judicial procedures against the board is the executive director and/or the secretary-treasurer at the address of the official place of business of the board.

§5.8. Meetings and Notices Thereof. Two regular meetings shall be held each year and as many special meetings as may be necessary for the proper performance of the duties of the board. An annual meeting of the board shall be held during the month of January of each year at a time, place, and date which shall be determined by the board. Special meetings of the board may be called by the chairman or upon the request of any two members, by giving at least five days written notice to each member of the time and place of such meeting. All meetings of the board shall be held in accordance with the Open Meetings Act (Texas Civil Statutes, Article 6252-17).

§5.9. Officers and Employees. As prescribed by law, the governor shall appoint a chairman, the board shall elect a vice-chairman, and secretary-treasurer. The chairman shall hold office until replaced by the governor. The vice-chairman and secretary-treasurer shall hold office until their successors have been elected and qualified.

(1) The chairman shall, when present, preside at all meetings; appoint all committees; sign all certificates of registration issued; and perform all other duties pertaining to his office.

(2) The vice-chairman shall, in the absence of the chairman, fulfill the responsibilities of the chairman and, if necessary, succeed the chairman until a new chairman has been appointed by the governor without election in the then current year.

(3) The secretary-treasurer shall, with the assistance of such executive and clerical help as may be required, keep a record of all proceedings of the board and of all monies received or expended by the board, which record shall be open to public inspection at all reasonable times.

(4) The board may employ such executive, stenographic, and office assistance, including an executive director, as is necessary and such professional assistance at examinations as is required, and shall rent office space as necessary to house the staff and records.

(5) The board may designate the executive director who shall have possession, on behalf of the secretary-treasurer, of all the official records of the board and who may, under the supervision of the board and the secretary-treasurer, perform such administrative and ministerial duties as the board authorizes.

(6) The board authorizes the executive director and director of programs or administrative technician IV to sign expenditure vouchers.

§5.10. Committees.

(a) A standing rules committee consisting of a minimum of three board members with equal representation, shall be appointed by the chairman at the annual meeting. Duties of the rules committee shall be:

(1) to review and accept or modify proposed changes to board rules as presented by staff;

(2) to initiate proposed changes and review with staff; and

(3) present agreed proposed changes to the board at the fall meeting of the board, or at an interim meeting when the immediate attention of the board is required.

(b) A standing personnel committee consisting of the current board officers and immediate past chairman shall have the following duties and responsibilities:

(1) meet with the executive director on a periodic basis to discuss personnel matters and the operation and organization of the agency;

(2) meet at least once a year with the executive director for the purpose of evaluation of the executive director's performance in accordance with the job description; and

(3) review and recommend any salary adjustments for the executive director prior to the preparation and submittal of the agency's budget request.

§5.11. Official Seal. As its official seal, the board will use a seal similar to that of the State of Texas with the words "Texas Board of Architectural Examiners" replacing the words "The State of Texas," inscribed around the perimeter.

§5.12. Attorneys. In discharging its responsibilities the Texas Board of Architectural Examiners may utilize the services of the attorney general, the district attorney, the county attorney, or may engage private counsel as prescribed by statutes.

§5.13. Robert's Rules of Order. Unless required otherwise by law or these rules, "Roberts Rules of Order" shall be used in the conduct of business by this board.

§5.14. Quorum. Five members of the board shall constitute a quorum, but official action may not be taken upon any question unless five members vote in accord, and the chairman may cast a vote.

§5.15. Signing Certificates. Each certificate of registration shall be signed by the chairman, vice-chairman, and secretary-treasurer of the board, and shall bear the seal of the Texas Board of Architectural Examiners.

§5.16. Official Records. Among other official records required by law, or by rules of other agencies in support of law, there shall be kept in the board offices accurate and current records, including, but not limited to:

(1) minutes. a record containing in proper order, proceedings of each meeting of the board;

(2) record of registrants. a record containing the name and registration number of all persons to whom certificates of registration are issued, the last known address of all interior designers, and a record of all current renewals effected through annual registration;

(3) registrant files. an individual file for each interior designer, containing the original application, relevant verification and evaluation data, records of examinations and scores, date of original registration, and a record of annual registrations and fees received after original registration, and, when applicable, records of alleged violations, suspensions, and revocations;

(4) finances. a system of record keeping correctly and currently indicating funds budgeted, committed, spent, and remaining, as well as projections of appropriate requests for consideration in budget development;

(5) records of candidates. an individual file for each candidate for licensing, containing the original application, educational transcripts, employer certification, evaluation data, records of examinations and scores, and date of original registration. Upon registration, such files shall be transferred to the registrant's permanent file (see also §5.60 of this title (relating to Reapplication);

(6) records of nonregistrants. records which shall be kept of those unregistered persons, against whom allegations of violations have been filed, together with the resulting actions taken in accordance with the authority in Subchapter J of this chapter (relating to Violations by Unregistered Persons).

§5.17. Expenses. Members of the board and board staff shall be reimbursed expenses incurred in the conduct of board business, as allowed by law.

§5.18. NCIDQ.

(a) The board shall maintain membership in the National Council for Interior Design Qualification and its regional conference.

(b) Up-to-date information on the examination syllabus and policies adopted from time to time by NCIDQ shall be developed by the board staff, and reported to the board regularly.

(c) This board will cooperate with other registration boards in furnishing transcripts of records, giving examinations upon request, and rendering all other assistance calculated to aid in establishing uniform standards of professional qualification throughout the United States.

Issued in Austin, Texas, on December 10, 1991.

TRD-9115636

Robert H. Norris, AIA
Executive Director
Texas Board of Architectural Examiners

Effective date: December 11, 1991

Expiration date: April 9, 1992

For further information, please call: (512) 458-1363

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Subchapter B. Registration

• 22 TAC §§5.31-5.39

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§5.31. Eligibility.

(a) The board shall accept for interior designer registration without examination:

(1) an applicant who files an application with this board no later than August 31, 1992, and who prior to September 1, 1991, had six or more years total experience credits as a full-time:

(A) principal in an organization which offers or performs interior design services;

(B) employee with interior design responsibilities in organizations which offer or perform interior design services;

(C) teacher of interior design courses in a FIDER accredited program(s); or

(D) principal, employee, and/or teacher as described in subparagraphs (A), (B), and/or (C) of this paragraph or any combination thereof;

(2) an applicant who files an application with this board no later than August 31, 1992, and who, prior to August 31, 1991, had been:

(A) a principal in an organization(s) which offered or performed interior design services;

(B) an employee with interior design responsibilities in an organization(s) which was offering or performing interior design services;

(C) a teacher of interior design courses in a FIDER accredited program(s); and

(D) who subsequently completes a combined total of six or more years credits in subparagraphs (A), (B), or (C) of this paragraph.

(b) The board shall accept for interior designer registration by examination an applicant who files an application showing evidence of having:

(1) a degree in interior design from a FIDER accredited program; and, one or more years of experience credit in interior design; or

(2) a combined total of six or more years of interior design education and/or experience credits including at least one year of each.

(c) Education and experience credits in subsections (a) and (b) of this section shall be evaluated in accordance with the latest edition of the "Table of Equivalents."

§5.32. Exceptions.

(a) The following are sufficient individually to deny an applicant's eligibility as a candidate for registration:

(1) violations of the statutes governing the registration of interior designers of another jurisdiction;

(2) conviction of a crime consistent with the provisions of Texas Civil Statutes, Article 6252-13c;

(3) misrepresentations or falsifications of fact filed in the application.

(b) The application of a person against whom the board has initiated legal action may be held at the board's discretion, without approval, disapproval, or rejection until the applicant is in full compliance with:

(1) any order or judgment of the court; and

(2) any action brought by the board; and

(3) rules of the board; and

(4) all provisions of the Interior Designers' Registration Law.

(c) When such compliance as referred to in subsection (b) of this section has been secured and evidence furnished, the board shall complete the consideration of the application in the regular order of business for other applications to the board.

§5.33. Forms and Instructions. Application forms and instructions will be furnished upon request. The forms required must be properly and completely executed, and returned over the signature of the applicant with all required supporting documentation and fees.

§5.34. Fees. Fees required by this board, for application, examination, registration, renewal, and reinstatement are outlined in Subchapter E of this chapter (relating to Fees).

§5.35. Processing.

(a) All applications and supporting documentation for examinations shall be submitted to the board no later than the following dates:

(1) spring administered NCIDQ examination: December 1;

(2) fall administered NCIDQ examination: June 1.

(b) Applications must be postmarked no later than the listed date, or hand delivered to the board office no later than 5 p.m. that date, except when that date falls on a Saturday or Sunday, in which case the date shall be the following Monday. The board shall accept a postmark date as evidence of intent to submit an application by the application deadline date. Proprietary postage meter dates will not be accepted as evidence of intent to make timely submission payment if contradicted by postal service postmark dates.

(c) When received incomplete or without required fees, applications will be returned for completion and resubmittal.

(d) When received complete and accompanied by required fees, applications will be entered into the board records. Information submitted will be verified and evaluated, and subsequent submittals may be required of the applicant.

§5.36. Approval/Rejection. Applicants will be notified of approval or rejection. Rejections of such applications will include evaluation reports and instructions for completing requirements.

§5.37. Continuance.

(a) Properly submitted applications for registration by written examination, approved or in the process of approval, will be effective for three years only. Thereafter, the board may require the applicant to update the application or reapply.

(b) Should the board require additional information of an applicant, in support of the application, such must be submitted promptly. Files not completed as required will be with-drawn after one year, and the applicant may be required to reapply.

§5.38. Reciprocal Transfer.

(a) Individuals holding certificates of registration in other states, nations, or territories applying for registration in Texas by reciprocal transfer, shall be considered upon transmittal of their written application on a form provided by the board. Acceptance of the information submitted will be subject to confirmation by the applicant's state from which he or she is applying.

(b) Criteria for reciprocal registration as described in subsection (a) of this section includes:

(1) certification by state boards in which candidate holds current registration that the applicant is in good standing with the jurisdiction that granted the applicant a license or registration;

(2) the requirements for licensing or registration in the other jurisdiction are substantially equivalent to those of this state.

(c) Application fees for registration in Texas, as stated in Subchapter E of this

chapter (relating to Fees), must be submitted with the certification record and application.

(d) Approval of applications for registration by reciprocal transfer will be by letter confirming the board action. The fee for registration, after approval of application, as stated in Subchapter E of this chapter, must be remitted within 60 days after notification of the approval.

(e) Rejections of applications for registration by reciprocal transfer will be by letter explaining the reasons and outlining procedures under which reconsideration may be possible.

§5.39. Education and Experience Equivalencies. In the board's evaluation of education and experience credits required, the applicant's application will be subject to equivalency standards established in the Table of Equivalents.

Issued in Austin, Texas, on December 10, 1991.

TRD-9115637 Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural Examiners

Effective date: December 11, 1991

Expiration date: April 9, 1992

For further information, please call: (512) 458-1363

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Subchapter C. Examinations

• 22 TAC §§5.51-5.60

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§5.51. Required. Applicants for registration by examination, with required approval as candidates by this board, must submit to the examination as outlined in this subchapter.

§5.52. Schedules. Examinations will be administered by this board to approved candidates only. Examination formats, dates, times, and places will be announced in notices mailed to candidates.

§5.53. Format.

(a) The examination administered for registration as an interior designer by the Texas Board of Architectural Examiners will be the National Council for Interior Design Qualification (NCIDQ) examination, a multiple section written and graphic examination, on specified dates.

(b) The NCIDQ format may be obtained from the board office. A candidate must achieve a passing score in each division of the examination; scores from the individual sections CANNOT be averaged to achieve a passing score.

§5.54. Reporting. Approved candidates shall appear personally for examination at the designated date, time, and place. Each candidate will be identified by an authorized "Candidate Identification Card" mailed to the candidate prior to examination dates.

§5.55. Conditions.

(a) Examinations will be conducted under conditions warranting honest and best results. Board members and/or their representatives will monitor all tests, and candidates will not be permitted to communicate with one another, or others, during examination periods.

(b) Candidates will be responsible for all materials required, other than examination papers, to complete the work assigned them.

§5.56. Scoring.

(a) Scoring procedures for all examinations will be given to the candidates prior to the examination.

(b) There will be no board review of examinations.

§5.57. Subject Matter. Printed subject matter, explaining the examinations will be available upon request from the Texas board.

§5.58. Reexamination. Candidates will have unlimited opportunities to retake individual sections of the National Council for Interior Design Qualification examination they have failed.

§5.59. Transfer of Passing Scores. At the board's discretion candidates' passing scores may be exchanged with other National Council for Interior Design Qualification member boards. The acceptance of such scores shall terminate the candidate's application with the board forwarding the scores.

§5.60. Reapplication. Candidates who do not appear for examination within a three-year period will be required to reapply for admission to the examination. Any credit for sections previously passed will be forfeited.

Issued in Austin, Texas, on December 10, 1991.

TRD-9115638 Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural Examiners

Effective date: December 11, 1991

Expiration date: April 9, 1992

For further information, please call: (512) 458-1363

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Subchapter D. Certification and Annual Registration

• 22 TAC §§5.71-5.80

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§5.71. Certificates of Registration. Certificates of registration will be issued to individuals only, and to such individuals only, as have met statutory registration requirements through established board rules and regulations. No certificates of registration will be issued to any firm, partnership, corporation, or other group of persons.

§5.72. Issuance and Description. Certificates of registration will be issued by this board for the life of the registrant, subject to powers of suspension and revocation vested in this board by law. Such certificates will identify the registrant by name and registration number, show the effective date, confirm the registrant's qualifications, and acknowledge the registrant's right to practice interior design in this state.

§5.73. Display of Certificate. Each person holding a certificate of registration shall display it at his or her place of practice, and be prepared, to substantiate annual registration renewal for the current year.

§5.74. Replacement Certificate. A replacement certificate will be issued to a registrant to replace one lost or destroyed provided:

(1) the current annual registration renewal is effective;

(2) the registrant makes proper request for such replacement certificate and submits an acceptable explanation of the loss or destruction of the original certificate; and

(3) the registrant pays the fee prescribed in subchapter E of this chapter (relating to Fees).

§5.75. Surrender of Certificates. Upon notice of this board, certificates of registration suspended or revoked by board action shall

be surrendered immediately in the manner prescribed by that notice.

§5.76. Annual Registration Required. Statutes require that all interior designers desiring to continue their practice in Texas must register annually with this board and pay an annual registration renewal fee.

§5.77. Annual Registration Procedure. Annual registration renewal notices will be sent all registrants to the last known address of record. Instructions and dates for remitting will appear on such notices. It is the responsibility of the registrant to notify the board in writing of any change of mailing address.

§5.78. Failure to Register Annually.

(a) Failure to register annually and remit renewal fees as prescribed by law will result in board hearing for revocation of the registrant's certificate of registration.

(b) Notices of board hearing and final action will be sent to the last known address of registrants failing to register annually and remit renewal fees.

§5.79. Reinstatement.

(a) Registrations revoked, for any cause, may be reinstated only by board action, and only then in the manner determined by such board action.

(b) Requests for reinstatement of registration revoked should be addressed to the executive director, and should show cause why such board action is justified.

(c) A registrant whose license has been revoked for a period greater than three years shall:

(1) be reexamined prior to reinstatement; or

(2) reciprocally transfer a current license from another jurisdiction in accordance with §5.38 of this title (relating to Reciprocal Transfer).

(d) Applications for reinstatement may be rejected for any of the reasons that an initial application for a certificate may be rejected or that a certificate may be revoked.

(e) The board may require that applications for reinstatement include verification that the applicant has complied with the laws governing the practice of interior design.

§5.80. Denial of Annual Renewal. Failure, as a student loan borrower, to comply with the requirements of the Texas Education Code, §57.491, is sufficient grounds to deny annual renewal of a registrant's certificate of registration.

Issued in Austin, Texas, on December 10, 1991.

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Executive Director
Texas Board of
Architectural Examiners

Effective date: December 11, 1991

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For further information, please call: (512) 458-1363

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Subchapter E. Fees

• 22 TAC §§5.91-5.99

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 249e, which provide Texas Board of Architectural Examiners with the authority to promulgate rules.

§5.91. General.

(a) Certain statutory limits are fixed, within which this board may set certain fees so authorized. These, therefore, are subject to change without notice.

(b) Payment shall be made by personal check, money order, or cashier's check made payable to the Texas Board of Architectural Examiners. Notations, explaining the payment remitted, should be on the face of the checks or within cover letters of submittal.

(c) The board shall accept a postmark date as evidence of intent to remit timely payment of a fee. Proprietary postage meter dates will not be accepted as evidence of intent to make timely payment if contradicted by postal service postmark dates.

§5.92. Registration Without Examination Fee. All applicants for registration without examinations must remit a fee of $100.

§5.93. Application and Examination Fees. All applicants for registration by examination must remit $10 with their original application. When approved as a candidate, additional notices will require payment of examination or record maintenance fees as prescribed by the board.

§5.94. Reexamination Fees. Candidates failing in first efforts will receive reexamination notices and statements for reexamination fees as prescribed by the board.

§5.95. Annual Registration and Renewal Fee.

(a) Notices of annual registration and renewal will be mailed to all interior designers. These notices will specify the fee required by law.

(b) Registrations will expire on staggered dates. Notices will be mailed to interior designers whose license number ends with an even number on or about April 20, without payment due no later than June 1. For those whose license number ends with an odd number, notices will be mailed on or about October 20, with payment due no later than December 1.

(c) Failure to renew a certificate of registration within 90 days following the expiration date established by the board shall result in an increase in the renewal fee in the amount of one-half the examination fee; and, failure to renew within 91 days to one year of the expiration date established by the board shall result in an increase in the renewal fee in the amount of the examination fee.

(d) If failure to renew shall continue for more than one year after the date of expiration of the certificate of registration, such certificate to practice interior design in this state may be revoked and an entry of such revocation made in the official records of the board.

§5.96. Reinstatement Fee. Certificates of registration revoked for any cause stated in these rules, may be reinstated by board action only upon payment of the current examination fee plus the current renewal fee. Payments, by cashier's check or money order, thus required can be remitted only as directed by notices from the board office. The reinstatement fee will be waived for emeritus interior designers.

§5.97. Reciprocal Transfer Fee. Initial registration fee for reciprocal license in Texas shall be $100.

§5.98. Replacement Certificate Fee. A replacement certificate authorized by this board will require remittance of $25 with the letter of request.

§5.99. Emeritus Fee. Interior designers 62 years of age or older, who have retired from active practice and/or other related professional activities, may request emeritus status. The annual renewal fee for approved emeritus interior designers will be $10.

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TRD-9115640 Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural Examiners

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For further information, please call: (512) 458-1363

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Subchapter F. The Interior Designer's Seal

• 22 TAC §§5.111-5.114

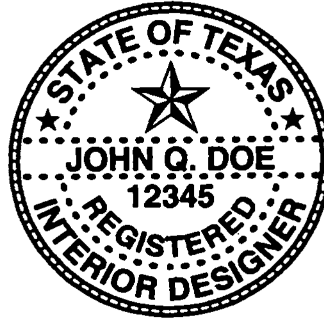
The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§5.111. Seal Required. Each interior designer upon registration and before issuance of his or her certificate of registration must obtain a seal of the design authorized by the board.

§5.112. Type and Design.

(a) The seal required for use on opaque original contract documents not intended for duplication shall be of a type which will produce an impression facsimile of the seal, or a rubber stamp which will produce an ink facsimile of the seal. The seal required for use on transparent original contract documents intended for duplication shall be of a type which will produce an ink facsimile of the seal such as a rubber stamp, decal, or computer generated type. The use of pre-printed documents bearing a pre-printed facsimile of the seal is prohibited.

(b) The design of the seal shall be exactly as reproduced in this section and bear the words, "Registered Interior Designer", "State of Texas", the name of the interior designer and his or her registration number.



Signature

Sealed

Registration Expires

[graphic]

§5.113. Use of Seal.

(a) Interior designers shall affix their seal to all original contract documents, including index sheets identifying all drawings covered; specification cover and index pages identifying all specification pages covered; change orders and supplemental instructions which are developed and issued under the direct supervision or authorship of the interior designer as contract documents. Adjacent to the seal, approximately as shown, the interior designer shall place his or her actual signature, date of signature execution, and expiration date of his or her certificate of registration. Presentation documents (renderings, drawings used to communicate conceptual information only) are not required to be sealed, signed, or dated.

(b) Contract documents considered incomplete by the interior designer may be released for interim review without the interior designer's seal or signature affixed, but shall be dated, bear the interior designer's name and registration number, and be conspicuously marked to clearly indicate the documents are for interim review and not intended for bidding, permit, or construction purposes.

(c) Those sheets or pages prepared by consultants (architectural, structural, mechanical, electrical, etc.) retained by the interior designer shall also bear the seal and registration number of the consultant responsible therefor. The interior designer's seal on the work of his or her consultants shall be applied only after the seal of the consultant has been applied and shall attest only to the interior designer's coordination of the consultant's work with that of the interior designer's and does not imply the interior designer's practice of other consultant's specialty.

(d) Once documents bearing the interior designer's seal are issued from the interior designer's office, the seal shall not be removed.

(e) The interior designer shall submit to a client only that work (plans, specifications, reports, etc.) done by the interior designer or under his or her responsible supervision; however, an interior designer, as a third party, may complete, correct, revise, or add to the work of others when engaged to do so by a client, provided:

(1) the client furnishes the documentation of such work submitted to him by the first party;

(2) the first party is notified in writing by the third party interior designer, of the engagement referred to in paragraph (1) of this subsection immediately upon acceptance of the engagement; and

(3) the completed, corrected, or revised work shall have a seal affixed by and become the responsibility of the third party interior designer.

(f) Subject to subsection (e) of this section, no interior designer shall affix the seal and signature to contract documents developed by others not under the direct and continuing supervision and not subject to the authority of that interior designer in critical professional judgments.

(g) No person, other than the interior designer represented, shall use or attempt to use the prescribed seal or modify documents bearing such seal without first obtaining the written authority of the interior designer represented, and clearly indicating on the documents the extent of the modifications made.

(h) The use of signature reproductions such as rubber stamps or computer generated or other facsimiles shall not be permitted in lieu of actual signatures.

(i) If, in the course of his or her work on a project, an interior designer becomes aware of a course of action taken against the interior designer's advice, which may violate applicable state or local building laws and regulations and which will, in the interior designer's judgment, materially affect adversely the safety to the public of the finished project, the interior designer shall:

(1) report the course of action in writing to the owner, to the local building officials, and to other responsible parties; and

(2) refuse to consent to the course of action.

(j) Authorized use of the prescribed seal is an individual act whereby the interior designer must personally inscribe the seal. The interior designer is responsible for its security when not in use.

§5.114. Statement of Certification.

(a) For client (consumer) information, each interior designer shall provide the client the following written statement: "The Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Suite 107, Austin, Texas 78758, telephone (512) 458-1363, has jurisdiction over individuals licensed under the Interior Designers' Registration Law, Texas Civil Statutes, Article 249e."

(b) The board has ruled that a rubber stamp bearing the notice in subsection (a) of this section will suffice and recommends that the notice be placed on the last page of the written agreement under the interior designer's signature, or in the absence of a written agreement, the notice shall appear as part of the contract conditions in the project's contract documents or in the absence of both, by written notice to the client.

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Executive Director
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Subchapter G. Titles and Firm Names

• 22 TAC §5.131, §5.132

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§5.131. Titles.

(a) Persons holding certificates of registration for interior design issued by this board are authorized to employ the title "interior designer" and use the words "interior design", or various constructions thereof, in describing or identifying services he or she solicits, offers, or executes.

(b) No other person, firm, partnership, corporation, or groups of persons may employ the title "interior designer" or constructions of the words "interior design" or constructions of the words "interior design" to describe persons or services nor do such unregistered individuals or groups have authority to solicit, offer, or execute "interior design" services in this state.

§5.132. Authority for Practice.

(a) Without lawful authority to practice interior design in Texas, organizations of people however constituted are not authorized to solicit or execute "interior design" services; such groups of persons organized in practice are dependent on the authority of individual interior designers responsible to this board. Unregistered persons who offer to provide "interior design" services in Texas may do so only if the interior designer who will be performing such services is identified by name and registration number at the time such services are offered.

(b) Each interior design firm in the State of Texas where "interior design" service is offered or performed shall have a Texas registered interior designer in charge of each separate office location except where a project office is established for onsite construction administration.

(c) Corporate practice in interior design is permissible under the statutes, when lawfully constituted, but only then upon the authority of individual interior designers responsible to this board for the acts and conduct of the corporate practice.

(d) Thus, that responsibility of this board to protect the public interests from the irresponsible practice of "interior design" is vested in the qualification and responsibility of interior designers who are accountable individually.

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Subchapter H. Rules of Conduct

• 22 TAC §§5.151-5.156

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§5.151. Authority.

(a) Authority for enforcement of the Interior Designers' Registration Law is vested in the board, with provisions therein for incurring "expense reasonably necessary in that behalf."

(b) The board is charged with adoption of all reasonable and necessary rules and regulations which it may deem advisable and is empowered with authority to suspend or revoke certificates of registration, and levy fines for certain causes.

(c) To establish certain standards of procedure and conduct for interior designers in practice, this and other chapters of these rules should be studied carefully.

(d) These rules of conduct are not intended to suggest or define standards of liability in civil actions against interior designers involving their professional conduct.

§5.152. Standards of Practice. This board will require of each interior designer conduct witnessing to high standards of integrity, judgment, and professional skill in practice.

§5.153. Grounds for Discipline. The board may deny an applicant's eligibility; reprimand or place on probation an interior designer; and suspend or revoke an interior designer's certificate of registration upon proof satisfactory to the board the applicant or interior designer is guilty of:

(1) violating registration law;

(2) gross negligence; or

(3) mental incompetence.

§5.154. Gross Negligence Defined. The following practices, among others, may be deemed "gross negligence," and cause for denial of an applicant's eligibility and suspension or revocation of an interior designer's certificate of registration:

(1) failure to use due diligence and proper restraint in planning or observation procedures;

(2) failure to engage necessary design professionals competent and authorized to practice in their disciplines; or

(3) failure to develop contract documents that provide against reasonable misunderstandings that could jeopardize the client and/or builder.

§5.155. Addition/Habituation. If in the course of a disciplinary proceeding, it is found by the board that addiction or habituation to alcohol or a controlled substance, as provided by Texas Civil Statutes, Article 4476-15 (Controlled Substance Act), §1.02, Subdivision 4, contributed to a violation of the Interior Designers' Registration Law or rules of this board, then the board may condition its disposition of the disciplinary matter on the interior designer's completion of a rehabilitation program approved by the Texas Commission on Alcohol and Drug Abuse at a facility also approved by the commission.

§5.156. Record of Conviction. The board may deny an applicant's eligibility and suspend or revoke an interior designer's certificate of registration for conviction of a misdemeanor or felony and consistent with Texas Civil Statutes, Article 6252-13c. The procedures for such action by the board will be governed by Texas Civil Statutes, Article 6252-13d.

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Subchapter I. Charges Against Interior Designers: Action

• 22 TAC §§5.171-5.187

The new sections are adopted on emergency basis under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§5.171. Disciplinary Action.

(a) The board may revoke a certificate of registration for failure to register annually and remit renewal fees as described in Subchapter D of this chapter (relating to Certification and Annual Registration).

(b) The board may reprimand or place on probation an interior designer, suspend, or revoke a certificate of registration for proof of acts as described in Subchapter H of this chapter (relating to Rules of Conduct).

§5.172. Definition of Complaint. In order for the board to act on complaints against interior designers filed with the board by persons other than the board's enforcement staff, the complaint shall be submitted in writing, on a form provided by the board, and acknowledged before a notary public. No oral communication of complaints shall be investigated by the board. All written complaints shall be kept in an information file as required by Texas Civil Statutes, Article 249e, §5(e), the Regulation of the Practice of Interior Design.

§5.173. Records.

(a) The executive director shall maintain a separate file containing all information in connection with complaints, charges, hearings in connection with such charges, and the action of the board in each case.

(b) On each written complaint relating to an interior designer filed with the board, a report to the complainant shall be made at least as frequently as quarterly on the status of the complaint until the final disposition of the complaint.

§5.174. Administrative Procedure and Texas Register Act. The provisions of the Administrative Procedure and Texas Register Act (APTRA) shall apply to the conduct of all disciplinary hearings, with additional rules as may be hereinafter adopted by the board which shall be in addition to and not inconsistent with APTRA.

§5.175. Informal Disposition. Informal hearings of disciplinary actions may be conducted after the filing of a sworn complaint but before a formal board hearing is set. Informal disposition may be made of any proceeding by stipulation, agreed settlement, consent order, or default. Informal hearings may be chaired by one board member, or the designate or representative of the board. The board shall present its evidence substantiating the complaint, and the interior designer may present evidence by correspondence or appearance at the informal hearings, in an effort to bring about an adjustment and equitable solution to the matter without a formal hearing before the board. All informal dispositions of matters shall not be final and effective until the board, at a regularly called session, endorses and renders its acceptance of the proposed agreement of the parties. If the controversy is not resolved, such informal hearing shall be held without prejudice to the right of the board thereafter, to institute a formal hearing governing the same matters, or the right of the interior designer involved, to request a formal hearing.

§5.176. Notice of Hearings. Prior to an informal or formal hearing by the board, the interior designer shall be advised of the specifics in the complaint as well as the date, time, and place of such informal or formal hearings; provided, however that notice of said hearing shall be served upon the interior designer no less than 15 days prior to the date set for said hearing.

§5.177. Appeals from Board Orders. An interior designer who is aggrieved by a decision of the board, may file an appeal within 30 days of receipt of a copy of the board's order in the District Court of Travis County and as set out in the Interior Designers' Registration Law.

§5.178. Witnesses. The board shall hear such witnesses as are reasonably necessary to fairly present the relevant issues as set forth in the complaint, together with witnesses knowledgeable of material facts to the defense of the interior designer.

§5.179. Notices. Copies of the notices of hearings scheduled by the board shall be filed with the secretary of state and other appropriate agencies.

§5.180. Official Record. The board shall keep an official record of all proceedings and exhibits.

§5.181. Transcript. The board may cause a transcript of the proceedings to be made which, together with the evidence and exhibits submitted, shall be the record of the hearing. Such transcript may be made also on written request of either party of said charges, but at the expense of the demand party. A copy of such transcript, however caused to be made, shall be submitted to the board and become part of the record of the case.

§5.182. Findings.

(a) At the conclusion of each hearing and after careful consideration of all the evidence, the board shall make a finding in each case. The board may find that:

(1) the complaint is without merit, and should be dismissed; or

(2) the complaint is substantiated and the interior designer has violated the Interior Designers' Registration Law, or board rules and regulations involved. In such case, the board shall then determine the penalty to be imposed. The penalty shall be one of the following:

(A) reprimand-the formal notice of the board that the finding has resulted in public censure for improper conduct by the registrant;

(B) suspension-the formal notice of the board that the finding has resulted in suspension of the interior designer's certificate of registration for a stated period of time as determined by the board; all or part of which suspension may be probated under such terms as may be determined by the board;

(C) revocation-the formal notice of the board that the finding has resulted in revocation of the interior designer's certificate of registration;

(D) place on probation-the formal notice of the board that the finding has resulted in disciplinary action, for which the board has granted clemency for a stated period of time.

(b) When the board has made its findings, and imposed the penalty, the meeting of the board shall stand recessed as to that case, subject to recall by the chair. If a hearing is not concluded on the day it commences, the board shall, to the extent possible, proceed with the conduct of the hearing on each subsequent working day until the hearing is concluded.

§5.183. Correspondence. The executive director may carry on correspondence with the interior designer or the complainant, provided copies of such correspondence with either shall be immediately furnished the other.

§5.184. Disqualification of Board Members. If, for personal reasons, a member of the board finds that he should not act on any charge before the board, he may disqualify himself from acting in the proceedings. By majority vote, the board may request but cannot demand that a member so disqualify himself. Suggestions by any party that a member of the board should disqualify himself shall be included in the record of the proceedings and shall be considered by the board.

§5.185. Absence from a Hearing. Appearance at a hearing may be waived by the interior designer. If so waived, the hearing shall proceed at the time and place set in the notice of the hearing and said waiver shall be noted in the record. If the interior designer fails to appear at the hearing, the board may proceed to hear evidence and render a judgment thereon.

§5.186. Time Extensions. Motions for postponement, continuance, withdrawal, or dismissal of matters which have been duly set for hearing, shall be in writing, shall be filed with the executive director and distributed to all interested parties, under a certificate of service, not less than 10 calendar days prior to the date set, unless the cause for such motion arises at a later time. Such motion shall set forth, under oath, the specific grounds upon which the moving party seeks such action and shall make reference to all prior motions of the same nature filed in the same proceeding. Once a matter has actually proceeded to a hearing, pursuant to the notice issued thereon, no postponement or continuance shall be granted by the presiding officer without consent of all parties involved, unless the board shall have ordered such postponement or continuance.

§5.187. Summons. The board may summon and question witnesses or examine other evidence on its own motion in any proceeding. Any party to the charges and any witnesses shall answer fully and truthfully and without reservation all questions asked of them at any hearing which shall be deemed relevant by the board.

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Subchapter J. Violations By Unregistered Persons

• 22 TAC §§5.201-5.205

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§5.201. Authority. The Texas Interior Designers' Registration Law is specific in its provisions, authorizing the lawful practice of "interior design." It is equally specific in charging the Texas Board of Architectural Examiners with the responsibility for enforcement of the Interior Designers' Registration Law. The statute exempts certain persons from provisions of the Interior Designers' Registration Law, but otherwise, unregistered persons are liable for violations. Persons offering or performing the "interior design" services not under an exception as permitted under the Interior Designers' Registration Law should be aware that this board has authority to seek Class "C" Misdemeanor conviction and fines up to $500 for each day of each offense as defined in the Interior Designers' Registration Law, §16(b).

§5.202. Complaints; Alleged Violations.

(a) Complaints alleging violation of law or lawful rules and regulations, the enforcement of which is a responsibility of the board, shall be addressed to the board office, substantiated by evidence, and, signed by the complainant before a notary public.

(b) No oral communications of complaints shall be investigated by the board. All written complaints shall be kept in a file in the board office.

§5.203. Investigation. Sworn written complaints alleging violations shall be confirmed and preliminarily investigated by the board's enforcement staff and executive director. After preliminary investigation the executive director, with the assistance of the board's enforcement staff and counsel, shall:

(1) dismiss the charges, so notifying the complainant, for lack of evidence;

(2) correspond with the person charged with the complaint, confronting him with such evidence as is available, and request such assurances as the board seeks that such violations will not be repeated; or

(3) refer the matter to the board counsel for injunctive relief.

§5.204. Action.

(a) The board, when referring cases to counsel for court action, shall direct counsel to initiate and maintain such actions against the named respondent as are possible, in support of the Interior Designers' Registration Law and applicable and lawful rules and regulations.

(b) In support of such requests forwarded to counsel, the board's executive director stands instructed to support and cooperate with counsel and the courts in any manner possible, and to keep the board advised of relevant matters as the case develops.

§5.205. Records.

(a) In the board office there shall be maintained a current file of all complaints alleging violations by unregistered persons, firms, etc, reflecting all information and action pertinent thereto.

(b) Upon its own motion the board may reopen any such case on record and direct a reinvestigation of the respondent's actions subsequent to resolution of the earlier complaint.

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Part XXVII. Board of Tax Professional Examiners

Chapter 624. Education

• 22 TAC §§624.1-624.11

The Board of Tax Professional Examiners adopts on an emergency basis new §§624.1-624.11, concerning rules applicable to the education of property tax professionals registered with and certified by the board. The chapter is adopted on an emergency basis because the policies, procedures, and standards applicable to the property tax education program that were contained in State Property Tax Board rules became null and void when the State Property Tax Board was abolished effective September 1, 1991, and the Board of Tax Professional Examiners was given responsibility for the education program under the amended Property Tax Code, §5.05. The emergency adoption is imperative in order taht standards and procedures pertaining to education, conducted at considerable expense to local governments, can be implemented by the state as required by state law.

The new sections are adopted on an emergency basis under the Property Taxation Professional Certification Act (8885 Texas Civil Statutes), which provides the Board of Tax Professional Examiners with the authority to make rules concerning the certification of property tax professionals.

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

Content outlined–A detailed list of specific items that must be addressed in a course.

Course–A course description (course number and name, statement of purpose, course objective, and course outline showing allocation of time); textbook; student workbook; instructor's guide and end-of-course examination with key (and supplementary texts, if any).

Course content–The material in the textbook, to include appendices or annexes, if any, and supplementary texts, if any.

Course provider–Any person or party that prepares and presents a course which the board accepts for course equivalency, elective, or continuing education credit.

Curriculum–A list of courses required of board registrants for certification.

Instructor–A person responsible to a course sponsor for the presentation of a course to students, who is listed on the roster of instructors approved by the board.

Primary sponsor–An association, organization, university or college, or other private party or a government agency that prepares and may present a course or courses which may be credited for curriculum course requirements and board continuing education units.

Secondary sponsor–A private party or government agency that does not prepare courses but presents a course or courses which may be credited for curriculum course requirements and board continuing education units.

Study guide–A summary guide to a Level III or Level IV comprehensive board examination, issued by the board to prospective examinees.

§624.2. Curriculum.

(a) The board shall determine the curriculum or list of courses required of persons seeking certification by the board. The board shall solicit advice and comments on the curriculum from property tax professionals and course sponsors.

(b) The courses required of persons registered with the board shall be as stated in §623.8-623.10 of this title (relating to Evaluation; Guidance; and Elective Courses).

§624.3. Content Outlines.

(a) The board shall issue a detailed content outline for each course in the curriculum. All items in a content outline shall be addressed in the course textbook. The course textbook may, at the discretion of the sponsor and with concurrence of the board, address items that are not in the outline but are germane to the subject.

(b) The board shall develop content outlines in coordination with the Comptroller of Public Accounts, and with systematic consideration of proposals and comments from property tax professionals, course sponsors, and the public.

(c) Content outlines shall be the basis for board examinations.

§624.4. Sponsors.

(a) A party requesting approval as a primary or secondary sponsor or both shall submit a completed sponsor agreement form to the board. A sponsor agreement shall be effective from the date of the agreement for a period of three years for all courses prepared and presented by the sponsor, and shall be renewable for three-year periods.

(b) An approved primary sponsor may submit courses to the board for approval and may present those approved courses with instructors who have been approved by the board; and may also act as a secondary sponsor presenting a course prepared by another primary sponsor.

(c) Primary sponsors shall issue or shall arrange with a secondary sponsor for the issue of completion letters or certificates to persons who pass courses and failure letters to persons who do not pass courses.

(d) Sponsors shall advise the board on curriculum, course content, and other education matters.

(e) An approved secondary sponsor may present an approved course with an approved instructor provided the secondary sponsor files a course presentation agreement with the board 30 days before the first presentation of the course.

§624.5. Course Approval and Administration.

(a) A primary sponsor may request that the board approve a course by filing a course approval request and course materials at least 45 days before the date the course is first scheduled for presentation. The executive director shall approve or deny the request on behalf of the board and shall deliver a written notice of approval or disapproval not later than 30 days after receiving the request. If the course is disapproved, the notice shall include the reasons. The sponsor may re-submit the course with corrections or appeal the disapproval to the board.

(b) To be approved a course shall consist of:

(1) a course description with the course number and name as shown on the content outline, a general statement of the purpose of the course, a statement of course objectives, and a course outline showing the allocation of time to subject areas and class activities;

(2) a textbook that addresses each item on the content outline;

(3) a student workbook with problems, case studies, data, discussion topics, drills, or other devices that will be useful in demonstrating practical applications of the principles cited in the textbook;

(4) an instructor's guide with time allocations and plans for the use of training aids and handouts, individual and group work, and other instructional techniques;

(5) a copy of the end-of-course examination and the examination answer key. End-of-course examination materials shall be treated as confidential by the board with secure storage, no distribution to third parties, and duplication only for purposes of review by board members in executive session;

(6) a copy of supplementary books or other written materials that will be required reading for students, if any.

(c) An approved course may be presented as scheduled by the sponsor, provided the sponsor has a current sponsor agreement on file with the board, and a secondary sponsor also has the appropriate course presentationagreement on file with the board (see §624.4(c) of this title (relating to Sponsors)).

(d) The board shall advise each primary sponsor of a particular course of any change to the content outline for that course, and of the date for incorporating the change or changes into the course.

(e) The board shall publish standards and procedures for course preparation, course presentation, end-of-course examinations, instructors, and evaluation. The executive director may revoke course approval for failure to comply with the standards or procedures, subject to appeal by the sponsor to the board.

§624.6. Course Equivalency. he executive director may give a registrant credit for a required course when the registrant presents evidence of passing a course which the board has not approved but which the executive director determines is equivalent to an approved course. Such a course must:

(1) be offered by an accredited college or university, or by a course provider whose courses have been approved for certification or continuing education by the Appraisal Foundation or other instrument of the federal government or of the State of Texas, or by a course provider approved by the board on recommendation of the executive director;

(2) address a preponderance of items in the board's content outline for the subject in point.

§624.7. Instructors.

(a) The executive director shall maintain a list of all persons approved as instructors for board approved courses.

(b) The board shall publish qualifications that a person must meet to be approved as an instructor. The qualifications may vary by course. Instructor approval will be contingent upon a person required to register with the board being in good standing with the board.

(c) An individual may be considered for approval as a course in- structor by filing an instructor approval request form with the executive director. The director shall deliver a written notice of approval, or disapproval with reasons, to the applicant within 21 days of the date the form is received.

(d) The executive director may withdraw approval of an instructor for:

(1) providing false information on an approval request form;

(2) failure to comply with board rules or board education standards or procedures;

(3) unacceptable teaching skills or methods as evidenced by student, sponsor, or board evaluations.

(4) cancellation, suspension, or revocation of the registration of an instructor who was or is registered with the board whether such action is final or probated.

(e) If the executive director withdraws approval of an instructor, he shall deliver a written notice of withdrawal to the individual within ten days after the date he makes a determination. He shall include with the notice a brief explanation of the procedures for protesting the withdrawal. An instructor whose approval is withdrawn may not request approval for at least one year from the date he receives notice of withdrawal.

(f) An individual who is denied approval as an instructor or an instructor whose approval is withdrawn may protest by filing a petition to the board within 21 days after the date the executive director sends notice of denial or withdrawal.

(g) An instructor shall be placed on the inactive roll when he or she ceases teaching board approved or equivalent courses for a period of three consecutive years. To be placed on the active roll again the instructor must file a new request for approval.

§624.8. Evaluation. The board shall systematically evaluate curriculum, course content, sponsor and instructor performance, and board standards and procedures on the basis of comments from registrants, instructors, sponsors, employers of registrants, and the public.

§624.9. Guidance. The board shall issue "Education Standards and Procedures" as guidance for all parties involved in property tax education and as information to the general public.

§624.10. Elective Courses. A registrant may satisfy a board requirement to successfully complete an elective course by passing a curriculum course, or a course that the board has determined to be equivalent to a curriculum course, provided the course is not required in the registrant's field or fields; or by passing a related examined course of at least 20 class hours in an accredited college or university or with a course provider recognized by the board.

§624.11. Continuing Education.

(a) The board shall award continuing education units (CEU) for approved curriculum courses and for other educational activities as stated in the board's policies and procedures file.

(b) A course approved by the board to satisfy requirements for completion of a curriculum course may be taken by a certified registrant for CEU, provided that the registrant has not taken the course within the last three years and that the course is taken only once during a five-year recertification period. A course subject to major revision may be considered as a new course at the discretion of the board.

Issued in Austin, Texas, on December 11, 1991.

TRD-9115963 Sam H. Smith
Executive Director
Board of Tax Professional Examiners

Effective date: December 11, 1991

Expiration date: April 9, 1992

For further information, please call: (512) 329-7981

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 229. Food and Drug

Licensure of Wholesale Distributors of Drugs

• 25 TAC §§229.251-229.254

The Texas Department of Health is renewing the emergency effectiveness of the emergency adoption of new §229.251-229.254, concerning the licensure of wholesale distributors of drugs for an additional 60 days. The text of the new sections was originally published in the September 3, 1991, issue of the *Texas Register* (16 TexReg 4776).

Issued in Austin, Texas, on December 11, 1991.

TRD-9115745 Robert A. MacLean, M.D. Deputy Commissioner Texas Department of Health

Filed: December 12, 1991

Effective Date: December 30, 1991

Expiration Date: February 28, 1992

For further information, please call: (512) 458-7248

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TITLE 34. PUBLIC FINANCE

Part IX. Texas Bond Review Board

Chapter 190. Allocation of the State's Limit on Certain Private Activity Bonds

Subchapter A. Program Rules

• 34 TAC §§190.1-190.8

The Texas Bond Review Board adopts on an emergency basis new §§190.1- 190.8, concerning program rules. The new sections provide the public with the information necessary to understand the allocation and reservation system, the filing requirements to apply for a portion of the state's ceiling, and the procedures for securing a final allocation to allow for the issuance of certain tax-exempt private activity bonds. This emergency action is necessary because the Texas Bond Review Board is responsible for the program beginning January 1, 1992. The program year begins on January 1, and applications will be filed beginning January 2. The previously published rules will not be in effect on that date.

The new sections are adopted on an emergency basis under Texas Civil Statute 5190.9a, which gives the Texas Bond Review Board the authority to propose rules pertaining to the adoption, implementation, and administration of the allocation of the state's ceiling on private activity bonds.

§190.1. General Provisions.

(a) Introduction. Pursuant to the authority granted by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and Texas Civil Statutes, Article 5190. 9a, the Bond Review Board prescribes the following sections regarding practice and procedure before the board in the administration of the allocation of the authority in the state to issue private activity bonds.

(b) Objective. The objective of the sections in this chapter is to establish the most equitable and efficient means of allocating the state ceiling on private activity bonds in accordance with the Act. The intent of the board is to formulate policies and guidelines that would provide standards of eligibility and procedures for applications submitted to reserve a portion of the state ceiling for private activity bonds.

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

(1) Act–Texas Civil Statutes, Article 5190.9a.

(2) Amount–With respect to bonds, reservation certificate, or a portion of the state ceiling, is a sum measured in terms of United States dollars.

(3) Application fee–The $500 nonrefundable application fee submitted to the board simultaneously with an application for reservation or an application for carryforward.

(4) Application for carryforward–The application for a carryforward required to be filed by an issuer with all attachments and amendments to reserve a portion of the state ceiling for carryforward purposes.

(5) Application for reservation–The application for reservation required to be filed by an issuer with all attachments to reserve a portion of the state ceiling.

(6) Authorized representative–A representative authorized by the issuer to execute certain correspondence under §190.5(i) and (j) of this title (relating to Consideration of Qualified Applications by the Board).

(7) Available–Any amount of the state ceiling set aside for reservations by an issuer upon compliance with the terms of the Act and this chapter.

(8) Board–The Bond Review Board created under Chapter 1078, Acts of the 70th Legislature, 1987 (Texas Civil Statutes, Article 717k-7).

(9) Bond authorization requirements–Those requirements that are to be filed by the issuer no later than 35 days after the issuer's reservation date.

(10) Bonds–Includes all bonds, certificates, notes, and other obligations authorized to be issued by any issuer by any statute, city home-rule charter, or the Texas Constitution and which are subject to the limitations of the Code, §146.

(11) Borrower–Any person or persons whose private business use, within the meaning of the Code, would cause any bonds to constitute private activity bonds within the meaning of the Code. If there is more than one such person with respect to any issue of bonds, then the term shall mean and include each and every such person known at the time that the issuer files an application for reservation or an application for carryforward, except that any one of such persons may execute any such application, letter, or other writing which the Act and this chapter requires to be executed by the borrower.

(12) Business day–A day on which the board is open for business. The term shall not include any Saturday, Sunday, or holiday officially observed by the state. The board's normal business hours are 8 a.m. to 5 p.m. each business day.

(13) Carryforward–The amount of the state ceiling that has not been reserved before December 15 and any amount previously reserved that becomes available on or after that date because of the cancellation of a reservation.

(14) Certificate of allocation–The notice given by the board to an issuer confirming the issuance of bonds receiving a portion of the state ceiling pursuant to the Act and the Code.

(15) Certificate of delivery–The notice given to the board by the issuer stating the closing date of the bonds and the amount of bonds issued and delivered at closing.

(16) Certificate of reservation–The notice given by the board to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.

(17) Certification regarding fees–The notice given to the board by legal counsel stating that a check for a required fee was sent by overnight delivery as described in §190.8(c) of this title (relating to Notices, Filings, and Submissions) in a timely manner.

(18) Close or closing–The issuance and delivery of bonds by an issuer in exchange for the required payment therefore, or in the case of mortgage credit certificates, the date when an issuer elects not to issue qualified mortgage bonds and establishes a mortgage credit certificate program under the code. The term does not include a delivery of bonds if the expenditure of the proceeds of the bonds is conditioned on obtaining credit enhancement in support of the bonds.

(19) Closing date–The date on which the bonds have been issued and delivered in exchange for the required payment therefore.

(20) Closing documents–Those documents that are required to be filed by the issuer not later than the fifth day after the day on which the bonds are closed.

(21) Closing fee–The nonrefundable fee in the amount of $1,000 or 0. 025% of the principal amount of the bonds

certified as provided by the Act, §6(a)(2), whichever is greater. The foregoing notwithstanding, an issuer exchanging a portion of the state ceiling for mortgage credit certificates shall submit to the board a closing fee in the amount of $1,000 or 0.0125% of the amount of the state ceiling reserved, whichever is greater.

(22) Code–The Internal Revenue Code of 1986, as the same from time to time may be amended.

(23) Election–An election by an issuer of qualified mortgage bonds to convert its bond authority to mortgage credit certificates under applicable sections of the Code.

(24) Executive director–The executive director of the board.

(25) Finance team members–Members associated with the specific bond issue and project or mortgage credit certificate program which may include the issuer, user, bond counsel, placement agent, or underwriter, trustee, or any other members.

(26) Governing body–The board, council, commission, commissioners' court, or legislative body of the governmental unit.

(27) Governmental unit–A city, county, or other political subdivision which may create and utilize a corporation, or act for and on its behalf.

(28) Housing finance corporation–A corporation created under the Texas Housing Finance Corporations Act, Texas Local Government Code, Chapter 394.

(29) Issued–Bonds that have actually been delivered and paid for in full. The date of issuance shall be the date on which the bonds have been delivered and paid for in full.

(30) Issuer–Any department, board, authority, agency, subdivision, municipal corporation, political subdivision, body politic, or instrumentality of the State of Texas of every kind or type whatsoever and any non-profit corporation acting for or on behalf of any of the foregoing.

(31) Joint housing finance corporation–A housing finance corporation acting on behalf of more than one local governmental unit as provided in the Texas Housing Finance Corporations Act, Texas Local Government Code, Chapter 394, §394.012.

(32) Local governmental unit–Any city or county.

(33) Local population–The population in the local governmental unit or units on whose behalf a housing finance corporation is created as determined by the most recent federal census estimate. If two local governmental units which overlap have each created housing finance corporations, prior to the submission of either the application for reservation or the application for carryforward by either housing finance corporation, there shall be excluded from the population of the larger local governmental unit that portion of the population of any smaller local governmental unit having a population as determined by the most recent federal census estimate of 20,000 or more which is within the larger local governmental unit, unless the smaller local governmental unit assigns its authority to issue qualified mortgage bonds, based upon its population, to the larger local governmental unit.

(34) Locally voted issue–An issue of bonds which has been authorized pursuant to a referendum approved by the voters of a political subdivision of the State of Texas.

(35) Mortgage credit certificate–A certificate of the nature described in the Code, §25.

(36) Prepayments–Reduction of the principal amount of a loan that was originated from bond proceeds resulting in a corresponding reduction of the principal amount of the bond proceeds.

(37) Private activity bond–A private activity bond within the meaning given that term under the Code.

(38) Project–Any eligible facility, as described in the application for reservation or carryforward, proposed to be financed, in whole or in part, by an issue of bonds. With respect to qualified mortgage bonds or student loan bonds, the board shall consider the project or purpose to be the provision of financial assistance to qualifying mortgagors or students within all or any portion of the jurisdiction of the issuer.

(39) Qualified application–A completed application for reservation or an application for carryforward.

(40) Qualified bond–A qualified bond within the meaning given that term under the Code.

(41) Qualified mortgage bond–A qualified mortgage bond within the meaning given that term under the Code, including mortgage credit certificates.

(42) Qualified residential rental project issue–An issue of bonds for a qualified residential rental project, as that term is defined under the Code, §142(d).

(43) Qualified small issue bond–A qualified small issue bond within the meaning given that term under the Code.

(44) Related person–Related person within the meaning given that term under the Code.

(45) Reservation–A reservation of a portion of the state ceiling for a specific bond issue.

(46) Reservation date–The earliest date on which a qualified application for reservation is accepted for filing with the board pursuant to the Act and a portion of the state ceiling is or becomes available to the issuer.

(47) Rules–Any statement of general applicability that implements, interprets, or prescribes law or policy, or describes the board's procedures and practice.

(48) Significant expenditures–Expenditures greater than the lesser of $1 million or 10% of the reasonably anticipated cost of the project.

(49) Staff–The staff of the board.

(50) State–The State of Texas.

(51) State ceiling–The amount of the authority in the state to issue tax exempt private activity bonds during the calendar year, as determined under the Code.

(52) State voted issue–An issue of bonds which has been authorized pursuant to a statewide referendum approved by the voters of the state.

(d) Amendment and suspension of sections. These sections may be amended by the board at any time in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, as amended.

(e) Statements and opinions. Statements and opinions expressed orally or in writing by the staff in response to inquiry or otherwise, and not specifically identified and promulgated as sections, shall not be considered regulatory standards of the board and shall not be considered binding upon the executive director in consideration with specific determinations undertaken by the board or the executive director thereafter.

(f) Examination of records. Any party requesting the examination of records pursuant to the Open Records Act, Texas Civil Statutes, Article 6252-17a, shall indicate in writing the specific nature of the document to be viewed, and if photocopying is desired, the appropriate fee must accompany the request.

§190.2. Allocation and Reservation System.

(a) The state's ceiling shall be determined for each calendar year by the executive director based upon the most recent census estimate of the resident population of the state published by the Bureau of the Census prior to the beginning of such calendar year. The amount of the state ceiling

shall be published in the *Texas Register* in the first January issue of each year.

(b) On or after January 2, the board will accept applications for reservation from issuers authorized to issue private activity bonds. The board shall not grant a reservation to any issuer prior to January 10. If two or more issuers file an application for reservation of the state ceiling in any of the categories described in the Act, §2(b), the board shall conduct a lottery establishing the order of priority of each such application for reservation. Once the order of priority for all applications for reservation filed on or before January 10 is established, reservations for each issuer within the categories described in the Act, §2(b)(2)-(5) shall be granted in the order of priority established by such lottery. If more than 10 applications are granted a reservation initially, an additional lottery will be held immediately to determine staggered reservation dates. The order of priority for reservations in the category described in the Act, §2(b)(1), shall further be determined as provided in the Act, §3(c).

(1) The first category of priority shall include those applications for a reservation filed by housing finance corporations which filed an application for a reservation on behalf of the same local population prior to September 1 of the previous calendar year, but which did not receive a reservation during such year.

(2) The second category of priority shall include those applications for a reservation filed by housing finance corporations to which state ceiling could not be made available by August 31 for that calendar year because of the application of the Act, §4(b).

(3) The third category of priority shall include those applications for a reservation not included in the first and second categories of priority.

(4) Within each category of priority, reservations shall be granted in reverse calendar year order of the most recent closing of qualified mortgage bonds by each housing finance corporation, with the most recent closing being the last to receive a reservation and with those housing finance corporations that have never received a reservation for mortgage revenue bonds being the first to receive a reservation, and, in the case of closings occurring on the same date, reservations shall be granted in an order determined by the board by lot. All applications for a reservation filed after January 10 by any issuer for the issuance of bonds shall be accepted by the board in their order of receipt.

(c) If any issuer which was subject to the lottery conducted as described previously does not, prior to September 1 of that year, receive the amount requested by such issuer in its application for reservation filed on or before January 10, and if state ceiling becomes available on or after September 1 such issuer, subject to the provisions of the Act, §3(a), shall receive a reservation for any state ceiling becoming available on or after September 1 in the order of priority established by such lottery, without regard to the provisions of the Act, §3(c), relating to the order of priority for the category described in the Act, §2(b)(1).

(d) An application for a reservation may not be submitted after December 14.

(e) The amount of the state's ceiling that has not been reserved prior to December 15 and any amount previously reserved that becomes available on or after that date because of the cancellation of a reservation or any other reason, may be designated, by the board, as carryforward for the carryforward purposes outlined in the code through submission of the application for carryforward and any other required documentation.

(f) An issuer may submit an application for carryforward to the board at any time during the year through the last business day in December.

(g) Issuers will be eligible for carryforward according to the priority classifications listed in the Act.

§190.3. Filing Requirements For Applications For Reservation.

(a) Form. Applications must be filed on forms prescribed by the board and must contain all information and documentation required under the Act and this chapter, as applicable.

(b) Application filing. The issuer shall submit one original and two copies of the application for reservation. Each application must be accompanied by the following:

(1) the application fee;

(2) the certificate regarding fees, on the form prescribed by the board;

(3) a copy of the inducement resolution or other similar official action taken by the issuer with respect to the bonds and the project which are the subject of the application, certified by an officer of the issuer; or a copy of the certified resolution of the issuer authorizing the filing of the application for reservation;

(4) a statement by the issuer, other than an issuer of a state-voted issue, that the bonds are not being issued for the same stated purpose for which the issuer has received sufficient carryforward during a prior year or for which there exists unexpended proceeds from a prior issue or issues of bonds issued by the same issuer;

(5) if unexpended proceeds exist from a prior issue or issues of bonds issued by issuer or on behalf of issuer for the same stated purpose for which the bonds are the subject of this application, a statement by the trustee as to the current amount of unexpended proceeds that exists for each such issue. The issuer shall certify to the current amount of unexpended proceeds that exists for each issue should a trustee not administer the bond issues;

(6) if unexpended proceeds other than prepayments exist from a prior issue or issues of bonds issued by issuer or on behalf of issuer for the same stated purpose for which the bonds are the subject of this application, a definite and binding financial commitment agreement which must accompany the application in such form as the board finds acceptable, to expend the unexpended proceeds within 12 months after the date of receipt by the board of an application for reservation. For purposes of this paragraph, the commitment by lenders to originate and close loans within a certain period of time shall be deemed a definite and binding agreement to expend bond proceeds within such period of time and any additional period of time during which such origination period may be extended under the terms of such agreement; provided however, that any such extension provision may be amended, prior to date on which the bond authorization requirements described in subsection (c) of this section must be satisfied, to provide that such period shall not be extended beyond 12 months after the date of receipt by the board of an application for reservation;

(7) if unexpended proceeds exist from a prior issue or issues of bonds issued by issuer or on behalf of issuer for the same stated purpose for which the bonds are the subject of the pending application, a written opinion of legal counsel, addressed to the board, to the effect, that the board may rely on the representation contained in the application to fulfill the requirements of the Act and that the agreement referred to in paragraph (5) of this subsection constitutes a legal and binding obligation of the issuer, if applicable, and the other party or parties to the agreement;

(8) a written opinion of legal counsel, addressed to the board, to the effect that the bonds are required to be included under the state ceiling and that the issuer is authorized under the laws of the state to issue bonds for projects of the same type and nature as the project which is the subject of the application. This opinion shall cite by constitutional or statutory reference, the provision of the Constitution or law of the state which authorizes the bonds for the project; and

(9) a qualified mortgage bond issuer that submits an application for reser-

vation as described in the Act, §3(c), shall provide a statement certifying to the most recent closing of qualified mortgage bonds or the most recent date of a reservation received for mortgage revenue bonds and state the governmental unit(s) for which the local population was based for the issuance of bonds or for receipt of a reservation.

(c) Bond authorization requirements. Not later than 35 calendar days after an issue's reservation date, the issuer shall submit to the board:

(1) one-third of the closing fee;

(2) the certificate regarding fees, on the form prescribed by the board;

(3) a certificate signed by the issuer that certifies the principal amount of the bonds to be issued or the portion of the state ceiling that will be converted to mortgage credit certificates;

(4) a list of finance team members with their addresses and telephone numbers;

(5) if applicable, an amended agreement pursuant to subsection (b)(5) of this section;

(6) a bond authorization requirements checklist, on the form prescribed by the board.

(d) Closing fee. The remaining two-thirds of the fee must be paid simultaneously with closing on the bonds. The issuer should submit the fee to the board not later than the fifth calendar day after the day on which the bonds are closed.

(e) Closing documents. Not later than the fifth calendar day after the day on which the bonds are closed the issuer shall file with the board:

(1) a certificate regarding fees, on the form prescribed by the board; by the board;

(2) a closing documents checklist, on the form prescribed by the board;

(3) a certificate of delivery on the form prescribed by the board;

(4) a certified copy of the bond resolution authorizing the issuance of bonds, and setting forth the specific principal amount of the bond issue;

(5) if one is required, a copy of the approval of the governmental unit or governmental units, certified by a public official with the authority to certify such approval. This requirement shall not apply to any bonds for which the Code does not require such a public hearing and approval of a governmental unit or governmental units;

(6) other documents relating to the issuance of bonds, including a statement of the bonds':

(A) principal amount;

(B) interest rate or the formula by which the interest is calculated;

(C) maturity schedule;

(D) purchaser or purchasers; and

(7) an official statement.

(f) Closing documents for mortgage credit certificates shall include:

(1) a certified copy of the issuer's resolution electing to convert state ceiling to mortgage credit certificates;

(2) issuer's mortgage credit certificate election; and

(3) program plan.

(g) Additional information. The board may require additional information at any time before granting a certificate of reservation or certificate of allocation.

(h) Application restrictions.

(1) In order to submit an application for reservation prior to January 11 of the current year an issuer or borrower must have been in existence on January 1 of that current year.

(2) Project substitutions will not be allowed after the application for reservation has been delivered to the board.

(3) No issuer may submit an application for reservation for the same or substantially the same project or projects as are contained in the application of another issuer.

§190.4. Filing Requirements For Applications For Carryforward.

(a) Form. Applications must be filed on forms prescribed by the board and must contain all information and documentation required under the Act and this chapter, as applicable.

(b) Filing. The issuer shall submit one original and two copies of the application for carryforward. Each application must be accompanied by the following:

(1) the $500 nonrefundable filing fee;

(2) the certificate regarding fees, on the form prescribed by the board;

(3) a copy of the inducement resolution or other similar official action taken by the issuer with respect to the bonds and the project which are the subject of the application, certified by an officer of the issuer; or a copy of the certified resolution of the issuer authorizing the filing of the application for carryforward;

(4) documentation of priority classification;

(5) if applicable, a copy of the binding contract to incur significant expenditures or documentation of significant expenditures paid or incurred prior to submission of the application for carryforward;

(6) if significant expenditures have been paid or incurred, a written opinion of legal counsel, addressed to the board, to the effect, that the board may rely on the representation the binding contract or documentation to fulfill the requirements of the Act; and

(7) a written opinion of legal counsel addressed to the board, to the effect that the bonds are eligible for carryforward designation and that the issuer is authorized under the laws of the state to issue bonds for projects of the same type and nature as the project which is the subject of the application. This opinion shall cite by constitutional or statutory reference the provision of the constitution or law of the state which authorizes the bonds for the project.

(c) Additional information. The board may require additional information at any time before granting a certificate of carryforward.

§190.5. Consideration of Qualified Applications by the Board.

(a) All fees required by the Act and the rules must be submitted under separate cover by overnight delivery to the lockbox address as described in §190.8(c) of this title (relating to Notices, Filings, and Submissions). Each check must be accompanied by a fee verification form as prescribed by the board. The bank shall note the receipt of the check on the fee verification form and forward the form to the board. All checks must be received by the bank within 24 hours of the receipt of corresponding documents by the board. If the fee is not received in a timely manner, the corresponding filing will not be considered to be a complete filing.

(b) All other submissions required by the Act must be delivered in person to the board at its offices during normal business hours or sent by overnight delivery, certified or registered mail, postage prepaid, addressed to the board. The board shall note on the face of the documents the date and time that they are received and provide the issuer with a receipt describing the document received and the date and time of receipt. The board will review the application to determine if it is complete. The board shall return any application not in substantial compliance with the Act and these sections.

(c) The board shall stamp or otherwise designate the date and time on which it receives each qualified application. The application shall not be considered complete, and shall not be stamped and accepted for filing, unless and until each of the items required under this section has been received by the board.

(d) The board shall give its certificate of reservation approving the reservation requested by the issuer within five business days after the board receives the qualified application, to the extent that amounts in the state ceiling remain available for certificates of reservation.

(e) If at any time the amount of the state ceiling or portion of the state ceiling reserved for qualified mortgage bonds, state voted issues, qualified small issue bonds, qualified residential rental project issues, or all other bond issues has been exhausted, applications which would otherwise qualify for a reservation shall be received and dated and receive reservations as provided in subsection (f) of this section.

(f) If at any time none of the state's ceiling remains available for certificates of reservation in a specific category, but additional amounts become available in such specific category before June 1 because of cancellations or any other reason, those amounts shall be aggregated and reservations shall be granted from that category on June 1 to qualified applications in an order determined by lot number with respect to those applications having such numbers, and otherwise by date and time of receipt by the board. If any portion of state ceiling becomes available after June 1 and before August 25 in any specific category those amounts shall be aggregated and reservations shall be granted from that category on August 25 to qualified applications in an order determined by lot number with respect to those applications having such numbers, and otherwise by date and time of receipt by the board. The board may grant a reservation at any time on or after January 10 if the amount of state ceiling available in any category exceeds the amount of state ceiling applied for in that category.

(g) After August 25 but prior to September 1, if any portion of the state ceiling set aside exclusively for the housing finance division of the Texas Department of Housing and Community Affairs is not subject to a reservation, such portion prior to September 1 shall be available exclusively to issuers of qualified mortgage bonds in accordance with the Act, §3(c).

(h) A reservation that is received by an issuer of qualified mortgage bonds for only a portion of the amount requested in the application for reservation shall be considered a reservation for the calendar year regardless of the amount reserved, and if an application for a reservation is submitted in the following calendar year by such issuer, as described in the Act, §3(c), the category of priority will be determined in accordance with the Act, §3(c)(3) and the order determined by the Act, §3(c)(4).

(i) If any change in a qualified application or in any of the items accompanying the application should occur prior to the date state ceiling becomes available to an issuer, the issuer or authorized representative shall promptly notify the board of any such change. Upon state ceiling becoming available, an issuer or authorized representative, within three days upon receipt of notice from the board that a portion of the state ceiling will be available to the issuer, must confirm and certify that the information contained in the qualified application and all items accompanying the application are and remain accurate and in full force and effect, except as may be specifically set forth in any amendment to the qualified application (which does not result in the application failing to constitute a qualified application), which amendment will constitute such receiving a reservation, only an issuer may amend the application to change the amount of the state ceiling requested, but the board may not accept an amendment to increase the amount of the state ceiling requested unless at the time of the amendment seeking an increase in the amount of state ceiling there are no other qualified applications pending, subsequent in order to said application, for which state ceiling is not available. A reservation date will not be given by the board until the receipt of such certification.

(j) Upon notice by the board that a portion of the state ceiling will be available to the issuer for less than the requested amount, the issuer or authorized representative must confirm in writing its acceptance or denial of the amount available, within three business days. Refusal by an issuer to accept a certificate of reservation for less than the amount requested in a qualified application shall not change the chronological order in which such issuer will be offered a certificate of reservation. If an issuer accepts a certificate of reservation for less than the requested amount, the issuer shall maintain its current position, and will be offered the next available reservation amounts until the original request has been satisfied. However, the deadline restrictions will be calculated from the date of reservation for each reservation amount.

§190.6. Expiration Provisions.

(a) The expiration date for a certificate of reservation shall be the first business day which occurs on or after the 90th calendar day after the date on which the reservation date is given.

(b) Prior to the expiration date of the reservation, the issuer may give notice to the board that the reservation will not be used, and the amount will be added to the appropriate state ceiling.

§190.7. Cancellation, Withdrawal and Penalty Provisions.

(a) If the issuer does not timely submit the bond authorization requirements described in §190.3(c) of this title (relating to Filing Requirements for Applications for Reservation), the issuer's reservation is canceled and during the 90-calendar-day period beginning on the reservation date of the canceled reservation:

(1) the issuer may not submit an application for a reservation for the same project; and

(2) the issuer is eligible for a carryforward designation for the project only as provided by the Act.

(b) If the closing documents are not received within five days after the closing described in §190.3(e) of this title (relating to Filing Requirements for Applications for Reservation), the issue's reservation is cancelled and during the 120-day period beginning on the reservation date of the cancelled reservation:

(1) the issuer may not submit an application for a reservation for the same project; and

(2) the issuer is eligible for a carryforward designation for the project only as provided by the Act.

(c) If an issuer withdraws an application for reservation prior to the expiration date, there is no penalty for such withdrawal.

(d) A certificate of allocation will not be issued until all required closing documents and the remaining two-thirds of the closing fee have been received by the board.

§190.8. Notices, Filings, and Submissions.

(a) Certificates of reservation and other notices and written communications from the board shall be deemed to have been given when duly deposited in the United States Mail, first class with all postage prepaid. Certificates of reservation may, at the request of the borrower, be picked up by hand or delivered by courier or other delivery service, in any case at the expense of the borrower or issuer.

(b) Applications, notices, and other written communication to, and filings with the board, should be addressed or delivered to the Bond Review Board, Sam Houston Building, 201 East 14th Street, Room 506, Austin, Texas 78701.

(c) Fees should be sent by overnight delivery and addressed as follows: The Bond Review Board, in care of First City Texas, 823 Congress Avenue, Fourth Floor, Item Processing-Lockbox Department, Austin, Texas 78701.

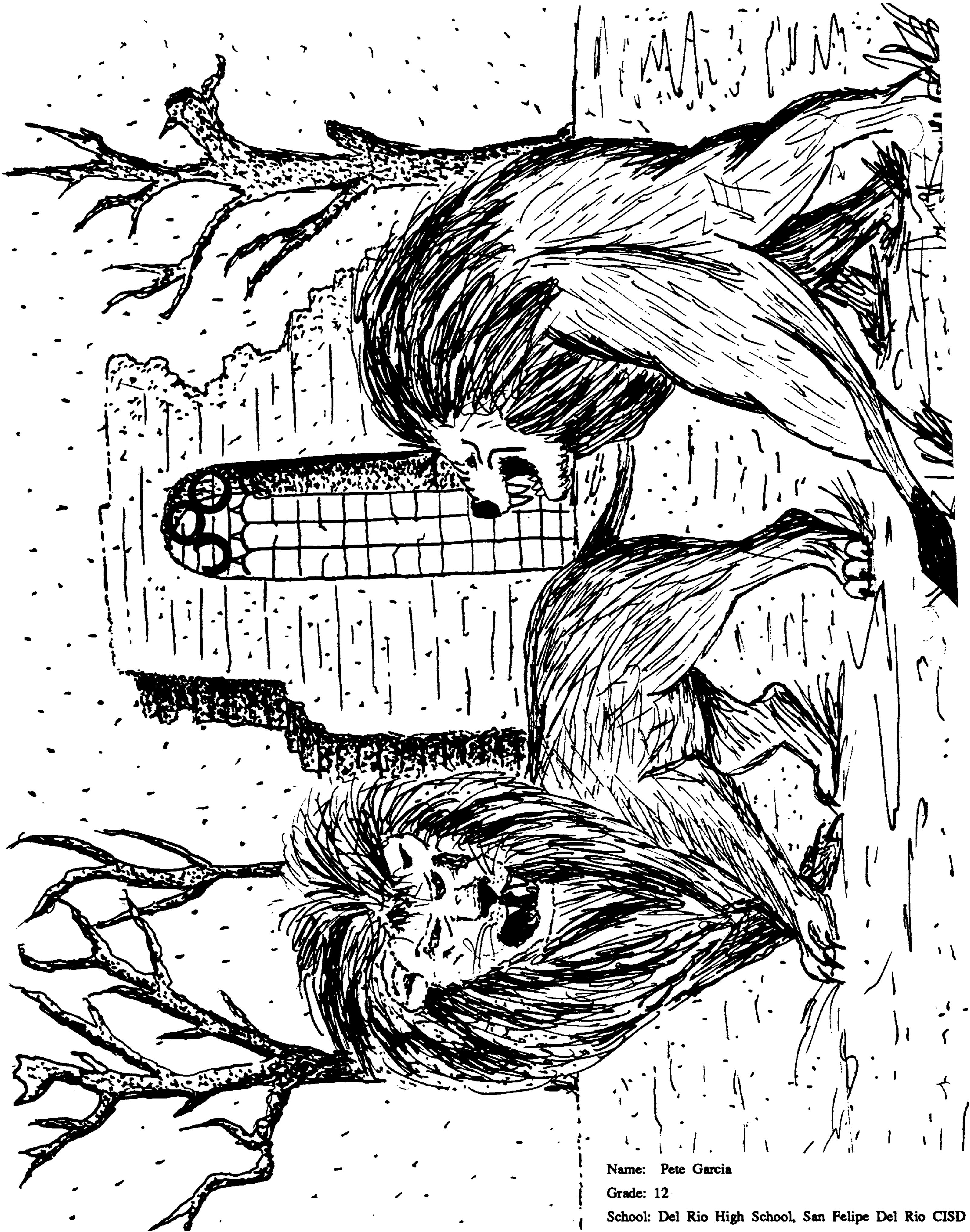
Issued in Austin, Texas, on December 13, 1991.

TRD-9115843 Tom K. Pollard
Executive Director
Texas Bond Review Board

Effective date: January 1, 1992

Expiration date: January 30, 1992

For further information, please call: (512) 463-1741



Name: Pete Garcia

Grade: 12

School: Del Rio High School, San Felipe Del Rio CISD

Proposed Sections

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 any action may be 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 sections, 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 use of **bold text.** [Brackets] indicate deletion of existing material within a section.

TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners

Chapter 5. Interior Designers

Subchapter A. Scope; Definitions

• 22 TAC §§5.1-5.18

(Editor's Note: The Texas Board of Architectural Examiners proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Board of Architectural Examiners proposes new §§5.1-5.18, concerning the scope and definitions of the rules. These new sections explain the purpose and legal authority for the rules; the definitions for terms used in the rules; and, duties of the officers and board members.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarity in the rules and assurance that the composition of the board is in compliance with state law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The new sections are proposed under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

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

Issued in Austin, Texas, on December 10, 1991.

TRD-9115646 Robert H. Norris, AIA
Executive Director
Texas Board of Architectural Examiners

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 458-1363

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Subchapter B. Registration

• 22 TAC §§5.31-5.39

(Editor's Note: The Texas Board of Architectural Examiners proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Board of Architectural Examiners proposes new §§5.31-5.39, concerning the registration of applicants. These new sections explain the requirements and procedures for registration.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the registration and regulation of interior designers in compliance with new state law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The new sections are proposed under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

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

Issued in Austin, Texas, on December 10, 1991.

TRD-9115647 Robert H. Norris, AIA
Executive Director
Texas Board of Architectural Examiners

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For further information, please call: (512) 458-1363

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Subchapter C. Examinations

• 22 TAC §§5.51-5.60

(Editor's Note: The Texas Board of Architectural Examiners proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Board of Architectural Examiners proposes new §§5.51-5.60, concerning the examinations of applicants. These new sections explain the requirements and procedures for examinations.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the assurance of a standard of competence of registered interior designers. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The new sections are proposed under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

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

Issued in Austin, Texas, on December 10, 1991.

TRD-9115648

Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural Examiners

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For further information, please call: (512) 458-1363

Subchapter D. Certification and Annual Registration

• 22 TAC §§5.71-5.80

(Editor's Note: The Texas Board of Architectural Examiners proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Board of Architectural Examiners proposes new §§5.71-5.80, concerning certification and annual registration. These new sections explain the requirements and procedures regarding certification and annual registration.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a procedural explanation of the certification and annual registration of interior designers. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The new sections are proposed under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

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

Issued in Austin, Texas, on December 10, 1991.

TRD-9115649

Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 458-1363

Subchapter E. Fees

• 22 TAC §§5.91-5.99

(Editor's Note: The Texas Board of Architectural Examiners proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Board of Architectural Examiners proposes new §§5.91-5.99, concerning fees. These new sections describe the fees and related procedures regarding registration of interior designers.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be cost recovery from those whose registration services are performed by the board. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the sections as proposed will be as follows:

	1992	1993	1994	1995	1996
Registration Application Fee (without examination) (must apply no later than August 31, 1992)	$100				
Examination Application Fee	$ 10	$ 10	$ 10	$ 10	$ 10
Examination Fee (exam not being given until F.Y. 1993)		$470	$470	$470	$470
Record Maintanance Fee		$ 20	$ 20	$ 20	$ 20
Registrant Renewal		$ 50	$ 50	$ 50	$ 50
Expired Registrant Renewal (1-90 days)		$285	$285	$285	$285
(91 days-1 year)		$520	$520	$520	$520
Registrant Reinstatement Fee		$520	$520	$520	$520
Reciprocal Application Fee	$ 25	$ 25	$ 25	$ 25	$ 25
Reciprocal Registration Fee	$100	$100	$100	$100	$100
Replacement Certificate Fee	$ 25	$ 25	$ 25	$ 25	$ 25
Emeritus Registrant Renewal	$ 10	$ 10	$ 10	$ 10	$ 10

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The new sections are proposed under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

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

Issued in Austin, Texas, on December 10, 1991.

TRD-9115650

Robert H. Norris, AIA
Executive Director
Texas Board of Architectural Examiners

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 458-1363

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Subchapter F. The Interior Designer's Seal

• 22 TAC §§5.111-5.114

(Editor's Note: The Texas Board of Architectural Examiners proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Board of Architectural Examiners proposes new §§5.111-5.114, concerning the interior designer's seal. These new sections set forth the requirements and procedures regarding the design and use of the interior designer seal.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a procedure for identifying professional documents prepared under the supervision of an interior designer. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the sections as proposed will be $25 for fiscal year 1992. There will be no economic cost to persons in fiscal years 1993-1996.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director,

Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The new sections are proposed under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

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

Issued in Austin, Texas, on December 10, 1991.

TRD-9115651 Robert H. Norris, AIA
Executive Director
Texas Board of Architectural Examiners

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 458-1363

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Subchapter G. Titles and Firm Names

• 22 TAC §5.131, §5.132

(Editor's Note: The Texas Board of Architectural Examiners proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Board of Architectural Examiners proposes new §5.131 and §5. 132, concerning titles and authority for practice. These new sections proclaim the legal use of professional title and the performance of professional services.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to clarify the conditions under which interior design services may be offered or performed. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The new sections are proposed under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

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

Issued in Austin, Texas, on December 10, 1991.

TRD-9115652 Robert H. Norris, AIA
Executive Director
Texas Board of Architectural Examiners

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 458-1363

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Subchapter H. Rules of Conduct

• 22 TAC §§5.151-5.156

(Editor's Note: The Texas Board of Architectural Examiners proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Board of Architectural Examiners proposes new §§5.151-5.156, concerning the rules of conduct. These new sections provide guidelines for the performance of professional services by interior designers.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a clearer understanding of standards of professional performance regulated by the board and the procedures followed when investigating a complaint of alleged violation of those standards by an interior designer. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The new sections are proposed under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

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

Issued in Austin, Texas, on December 10, 1991.

TRD-9115653 Robert H. Norris, AIA
Executive Director
Texas Board of Architectural Examiners

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 458-1363

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Subchapter I. Charges Against Interior Designers: Action

• 22 TAC §§5.171-5.187

(Editor's Note: The Texas Board of Architectural Examiners proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Board of Architectural Examiners proposes new §§5.171-5.187, concerning compliant procedures relating to interior designers. These new sections define complaints and the procedures to implement enforcement of the law.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a clearer understanding of the disciplinary actions available to the board and the procedures to be followed when determining whether disciplinary action is warranted. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The new sections are proposed under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

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

Issued in Austin, Texas, on December 10, 1991.

TRD-9115654 Robert H. Norris, AIA
Executive Director
Texas Board of Architectural Examiners

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 458-1363

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Subchapter J. Violations by Unregistered Persons

• 22 TAC §§5.201-5.205

(Editor's Note: The Texas Board of Architectural Examiners proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Board of Architectural Examiners proposes new §§5.201-5.205, concerning complaint procedures relating to unregistered persons. These new sections describe the authority and procedures of the board to enforce alleged violations of the interior designer registration law by unregistered persons.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a clearer understanding of the scope of authority and procedures to be followed by the board when enforcing complaints of alleged violations of the interior designer registration law by unregistered persons. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The new sections are proposed under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

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

Issued in Austin, Texas, on December 10, 1991.

TRD-9115655 Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 458-1363

Part VI. Texas State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

Application for Registration

• 22 TAC §§131.53, 131.55, 131.57, 131.58

The Texas State Board of Registration for Professional Engineers proposes amendments to §§131.53, 131.55, 131.57, and 131.58, concerning application for registration.

The amendments to §§131.53, 131.57, and 131.58 provide consistency with the language contained in the Texas Engineering Practice Act when referring to the registration fee. Section 131.55 is amended to require an applicant registered in another country as either a chartered engineer or a professional engineer to submit documents substantiating the registration.

Charles E. Nemir, P.E., executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Nemir also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be consistency in the terminology between the Act and board rules and clarification of the registration requirements for applicants from other countries. There will be no effect on small businesses as a result of enforcing the sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendments are proposed under Texas Civil Statutes, Article 3271a, §8(a) , which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.53. Submission of Applications. Applications for registration will be submitted to the executive director. An application for registration shall be deemed submitted to the executive director when the application form, accompanied by the fee required by statute or board rule, is actually received at the board office. Incomplete application forms or forms not accompanied by the proper fee shall be returned to the applicant. When an application is accepted by the executive director and entered into the records of the board, the executive director shall send a receipt for the fee. Once an application is accepted and entered into the records of the board, the **registration** [application] fee will not be returned and the application, together with all pertinent documents submitted, will become a part of the permanent records of the board.

§131.55. Application for Registration from Nonresidents. In general, applicants not residents of Texas must apply under the provisions of the Texas Engineering Practice Act (the Act), §21. To be eligible under §21, the applicant must be registered and in good standing in the state in which he is practicing or formerly practiced, and the applicant must have met the requirements for registration under the Act, §12(a) or (b), at the time he was granted an original registration. In addition, the application shall include all documentation as described in §131.54 of this title (relating to General Application Information) to be considered complete. If the applicant is currently registered in the state of his residence or practice but registration was granted under requirements less than those specified in the Act, §12(a) or (b), he may apply under §12(a) or (b), whichever is appropriate, if he has acquired the minimum requirements subsequent to his original registration.

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

(3) A nonresident applicant or others applying under the Act, §21, must furnish with the application a copy of the pocket card or other verification that the licenses in the state of original registration or state of residency and other states (no more than two pocket cards are required) are current and valid and, in addition, include with the application copies of proof or verification that the applicant has taken and passed the engineering examinations. **If the applicant is registered as a chartered engineer or a professional engineer in another country, documents must be provided showing that such person is a chartered engineer or professional engineer, the status of the person (corporate member, graduate member, etc.), the date of registration, and a statement that the membership is current and valid, inactive, or expired.**

*§131.57. **Registration** [Application] Fee.*

(a) **Registration** [Application] fees shall be payable to the professional engineers' fund. The board assumes no responsibility for loss in transit of cash remittances. Applications not accompanied by the proper fee will be returned to the applicant. Personal, company, or other checks are acceptable if drawn on a United States bank payable in United States currency without penalty.

(b)[(1)] An application for registration as a professional engineer under the

Act, §12(a), (b), or §21 shall be accompanied by a fee of $50 **plus any additional fee required by the Act**, which shall be retained by the board regardless of whether the application is approved, not approved, rejected, or withdrawn.

[(2) When an application has been approved and the applicant is registered by the board and issued a certificate of registration, the fee which accompanied the application for registration will be applied toward the required registration fee of $50.]

§131.58. Withdrawing Applications.

(a)-(c) (No change.)

(d) An application withdrawn from consideration by action of the board will be so designated on the records of the board and made a part of the minutes of the next regular board meeting. The application itself together with the **registration** [application] fee will be retained by the board. Further action by the applicant to become registered will require a new application and **registration** [application] fee under the requirements in effect at the time of the new submittal.

(e) (No change.)

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

Issued in Austin, Texas, on December 11, 1991.

TRD-9115669 Charles E. Nemir, P.E.
Executive Director
Texas State Board of Registration for Professional Engineers

Proposed date of adoption: January 22, 1992

For further information, please call: (512) 440-7723

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Examinations

• 22 TAC §131.101, §131.104

The Texas State Board of Registration for Professional Engineers proposes amendments to §131.101 and §131.104, concerning examinations.

The amendment to §131.101(b)(2) will require an applicant who is requesting an exemption from one or both of the examinations based on 20 or more years of outstanding technical achievement and widespread professional recognition to appear before the board for a personal interview. Section 131.101(d)(2) as amended will require applicants applying under the Texas Engineering Practice Act, §21 to pass the principles and practice of engineering examination on the first attempt if the examination is required for registration. The amendment to §131.104 will allow an individual to renew an engineer-in-training certificate one time upon the approval of the board.

Charles E. Nemir, P.E., executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Nemir also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clear and concise examination procedures and the ability for an engineer-in-training to renew the certificate. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendments are proposed under Texas Civil Statutes, Articles 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.\

§131.101. Engineering Examinations.

(a) (No change.)

(b) Individuals may be exempt from one or both of the written examinations for the following reasons.

(1) (No change.)

(2) Individuals who have 20 or more years of outstanding technical achievement and widespread professional recognition in their field of engineering practice indicating competence in the engineering profession may be exempt from one or both of the examinations. A personal interview before the board **will** [may] be required [at the request of the board].

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

(c) (No change.)

(d) Individuals who have been approved to take the examinations will be advised of the first examination date for which they are eligible. The applicants must elect to start an examination schedule with either the first or second examination date for which they are eligible. Once started the schedule shall consist of consecutive examination dates not to exceed the following:

(1) (No change.)

(2) the number of examination dates, not to exceed three, required to pass the principles and practice **of engineering** examination **with the exception of those persons applying under the Act, §21 (those who are registered in another state or jurisdiction). Those persons must pass the principles and practice of engineering examination on the first attempt.**

(e)-(i) (No change.)

§131.104. Engineer-in-Training Certificates. A certificate as an engineer-in-training expired 12 years from the date appearing thereon. This certification does not entitle an individual to practice as a professional engineer. The fee for engineer-in-training certification will be established by the board. To become enrolled as an engineer-in-training, an individual who is eligible, as described in §131.103 of this title (relating to Engineer-in-Training), shall apply to the board for the certificate and pay the established fee. Although the certificate has an expiration date, the records of the board will indicate that an individual has passed the fundamentals of engineering examination and these records will be maintained in the file indefinitely and will be made available as requested by the individual or another licensing jurisdiction. **The certificate may be renewed one time at the request of the individual provided the request is accompanied by an explanation for the reason of the renewal and such request is approved by the board.**

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

Issued in Austin, Texas, on December 11, 1991.

TRD-9115670 Charles E. Nemir, P.E.
Executive Director
Texas State Board of Registration

Proposed date of adoption: January 22, 1992

For further information, please call: (512) 440-7723

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Registration

• 22 TAC §131.133

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.133, concerning certificates of registration.

The amendment adds control systems to the list of recognized branches of engineering under which applications for registration will be accepted and for which a principles and practice examination will be available from the National Council of Examiners for Engineering and Surveying.

Charles E. Nemir, P.E., executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Nemir also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the recognition of control systems as an acceptable branch of engineering under which applications for registration may be submitted. There will be

no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Articles 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.133. Certificates of Registration.

(a) (No change.)

(b) [Effective December 1, 1988, applications] **Applications** for registration will be accepted only for the branches of engineering for which there is an available principles and practice examination from the National Council of Examiners for Engineering and Surveying (NCEES), and the board records annotated with the corresponding alphabetical code as follows:

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

(5) (X) control systems;

(6)[(5)] (E) electrical;

(7)[(6)] (H) fire protection;

(8)[(7)] (L) industrial;

(9)[(8)] (M) mechanical;

(10)[(9)] (I) mining/mineral;

(11)[(10)] (J) metallurgical;

(12)[(11)] (U) manufacturing;

(13)[(12)] (N) nuclear;

(14)[(13)] (P) petroleum;

(15)[(14)] (S) sanitary;

(16)[(15)] (B) structural.

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

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

Issued in Austin, Texas, on December 13, 1991.

TRD-9115855 Charles E. Nemir, P.E.
Executive Director
Texas State Board of Registration

Proposed date of adoption: January 22, 1992

For further information, please call: (512) 440-7723

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• **22 TAC §131.139**

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.139, concerning reregistration. The amendment deletes the erroneous language and stipulates that the board will recognize the successful passing of any examination previously required of an applicant for an original registration and who subsequently applies for reregistration.

Charles E. Nemir, P.E., executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Nemir also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clear and concise requirements for individuals who apply for reregistration. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Articles 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.139. Reregistration.

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

(c) The board will:

(1) (No change.)

(2) recognize official board records which previously confirmed the [any approved engineering degrees and] successful passing of written examinations, as stipulated in the Act, §12(a) and (b).

(d)-(e) (No change.)

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

Issued in Austin, Texas, on December 11, 1991.

TRD-9115671 Charles E. Nemir, P.E.
Executive Director
Texas State Board of Registration

Proposed date of adoption: January 22, 1992

For further information, please call: (512) 440-7723

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Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Licensed Real Estate Inspectors

• **22 TAC §535.220**

The Texas Real Estate Commission proposes new §535.220, concerning professional conduct and ethics for real estate inspectors.

The new section is necessary to establish guidelines for professional conduct and ethics for real estate inspectors, in their dealings with clients, the public, other inspectors and other professionals and related tradesmen. The new section would establish minimum guidelines to assist an inspector in maintaining standards of professionalism, independence, and fairness. With regard to an inspector's clients, the new section would encourage the inspector to protect and promote the interest of a client, to maintain and increase the inspector's level of knowledge and to conduct business in a manner that promotes fair and impartial inspections. With regard to the public, the new section would encourage inspectors to assist the general public in recognizing and understanding the need for inspections in the real estate transactions and to protect the public from fraud, misrepresentation, or unethical practices. With regard to other inspectors, the new section encourages fairness and integrity, including the reporting of possible violations to the commission. Cooperation with other professionals and related tradesmen is encouraged.

The new section has been developed and recommended for Texas Real Estate Commission Provisions of the adoption by the Texas Real Estate Inspector Committee, an advisory committee of inspectors created under the authority of Texas Civil Statutes, Article 6573a, §23.

Jack Morris, director of programs, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Morris also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the creation of ethical standards for real estate inspectors. There will be no anticipated cost for small businesses or any impact on local employment. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jack Morris, Director of Programs, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The new section is proposed under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.220. Professional Conduct and Ethics.

(a) The responsibility of those persons who engage in the business of performing independent inspections of improvements in real estate transactions imposes integrity beyond that of a person involved in ordinary commerce. Each inspector must maintain a high standard of professionalism, independence, and fairness while performing inspections in a real estate transaction.

(b) The relationship between an inspector and a client should at a minimum meet the following guidelines.

(1) In accepting employment as an inspector, the inspector should protect and promote the interest of his client to the best of his ability and knowledge, recognizing that the client has placed his trust and confidence in the inspector.

(2) In the interest of his client and his profession, the inspector should endeavor always to maintain and increase his level of knowledge regarding new developments in the field of inspection.

(3) The inspector should conduct his business in a manner that will assure his client of the inspector's independence from outside influence and interests that might compromise his ability to render a fair and impartial opinion regarding any inspection performed.

(c) The relationship between an inspector and the public should at a minimum meet the following guidelines.

(1) The inspector should deal with the general public at all times and in all manners in a method that is conducive to the promotion of professionalism, independence, and fairness to himself, his business, and the inspection industry.

(2) The inspector should attempt to assist the general public in recognizing and understanding the need for inspections, whether the inspector is selected to perform such inspection or not.

(3) The inspector accepts the duty of protecting the public against fraud, misrepresentation, or unethical practices in the field of real estate inspections.

(d) The relationship of the inspector with another inspector should at a minimum meet the following guidelines.

(1) The inspector should bind himself to the duty of maintaining fairness and integrity in all dealings with other inspectors and other persons performing real estate inspections.

(2) The inspector should cooperate with other inspectors to insure the continued promotion of the high standards of the real estate inspection profession and pledges himself to the continued pursuit of increasing competence, fairness, education, and knowledge necessary to achieve the confidence of the public.

(3) If an inspector has knowledge of a possible violation of the rules of the Texas Real Estate Commission or Texas Civil Statutes, Article 6573a, §23, the inspector should report the possible violation to the Texas Real Estate Commission.

(e) The inspector should make a reasonable attempt to cooperate with other professionals and related tradesmen at all times and in all manners in a method that is conducive to the promotion of professionalism, independence, and fairness to himself, his business, and the inspection industry.

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

Issued in Austin, Texas, on December 10, 1991.

TRD-9115659 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 465-3900

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Part XXVII. Board of Tax Professional Examiners

Chapter 624. Education

• 22 TAC §§624.1-624.11

(Editor's Note: The Board of Tax Professional Examiners proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections are in the Emergency Rules section of this issue.)

The Board of Tax Professional Examiners proposes new §§624.1-624.11, concerning education. This action establishes rules for conduct of the education program for property tax officials required of them for certification under state law. This program was guided by rules of an agency that was abolished September 1, 1991, with responsibility transferred to this board.

Sam H. Smith, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Smith also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improved education and training for property tax appraisers and assessor-collectors serving districts, cities, and counties, statewide. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Sam H. Smith, 4301 Westbank Drive, Building B, Suite 140, Austin, Texas 78746-6565.

The new sections are proposed under the Property Tax Code, §5.05, which provides the Board of Tax Professional Examiners with the authority to develop curricula and supervise educational activities for property tax professionals.

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

Issued in Austin, Texas, on December 11, 1991.

TRD-9115667 Sam H. Smith
Executive Director
Board of Tax Professional Examiners

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 329-7981

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 127. Registry for Providers of Health-Related Services

• 25 TAC §127.2, §127.4

The Texas Department of Health (department) proposes amendments to §127. 2 and §127.4, concerning the registry for providers of health-related services. Section 127.2 covers approved occupations and §127.4 covers fees. The amendments will remove the occupation of dispensing opticians from the list of occupations approved by the Texas Board of Health under the Health and Safety Code, §12.014, to be placed on the registry. Section 12.014 law allows only providers who are not otherwise licensed, registered, or certified to be placed on the registry. Senate Bill 1123, 72nd Legislature, 1991 allows dispensing opticians to become registered by the department. Accordingly, it will no longer be necessary to have dispensing opticians on the registry. The amendments also include some editorial changes for clarification.

Mr. Stephen Seale, Chief Accountant III, budget office, has determined that for the first five-year period the sections are in effect there will be fiscal implications to state government as a result of enforcing or administering the sections. The effect on state government for fiscal year 1992 will be the estimated loss in revenue of $12,780 and as well as a reduction in cost equal to $12,780 collected from opticians. There will be no fiscal implications to state government for fis-

cal years 1993-1996. There will be no effect on local government.

Mr. Seale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to implement Senate Bill 1123. There will be no anticipated economic cost to persons who are required to comply with the sections as proposed. There will be no impact on local employment. There will be no cost to small business.

Comments on the proposal may be submitted to Becky Berryhill, Program Administrator, Professional Licensing and Certification Division, Texas Department of Health, Austin, Texas 78756-3183, (512) 459-2955. Comments will be accepted for 30 days after publication of the proposal in the *Texas Register.*

The amendments are proposed under the Health and Safety Code, §12.014, which provides the Texas Board of Health (board) with the authority to adopt rules establishing a registry of providers of health-related services; §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health; and Senate Bill 1123, §5, 72nd Legislature, 1991, which provides the department with the authority to adopt rules to register dispensing opticians. The amendments will affect the Health and Safety Code, §12.014, and Senate Bill 1123.

§127.2. Approved Occupations.

(a) The **occupation of medical laboratory practitioner is** [following occupations are] approved for inclusion on the registry [:]

[(1) dispensing optician; and

[(2) medical laboratory practitioner].

(b) (No change.)

(c) A person placed on the registry may not represent in any manner that the person is licensed, certified, inspected or otherwise regulated by the **Texas Department of Health** (department). A person in violation of this subsection may be referred to the appropriate governmental agency for action under the Deceptive Trade Practices Act, **Business and Commerce Code, Chapter 17** or other applicable law.

[(d) A dispensing optician is eligible for placement on the registry if the person is not licensed as an optometrist or physician and sells or delivers to the consumer fabricated and finished spectacle lenses, frames, contact lenses, or other ophthalmic devices prescribed by an optometrist or physician.]

(d)[(e)] A medical laboratory practitioner is eligible for placement on the registry if the person is a clinical laboratory director, a clinical laboratory supervisor, a medical technologist (clinical laboratory scientist), a medical laboratory technician (clinical technician), or any other individual who performs technical procedures in a clinical laboratory.

§127.4. Fees.

(a) The schedule of fees shall be as follows:

[(1) dispensing optician (initial application)–$30;]

(1)[(2)] medical laboratory practitioner (initial application) –$30; and

(2)[(3)] annual reapplication (any category)–$30.

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

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

Issued in Austin, Texas, on December 12, 1991.

TRD-9115746 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Proposed date of adoption: February 22, 1992

For further information, please call: (512) 459-2955

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Chapter 145. Long-Term Care

Subchapter S. Minimum Licensing Standards for Personal Care Facilities

• 25 TAC §§145.321, 145.322, 145.324-145.327, 145.333

The Texas Department of Health (department) proposes amendments to §§145.321, 145.322, 145.324-145.327, and 145.333, concerning minimum licensing standards for personal care facilities. The amendments will implement Senate Bill 865, 72nd Legislature, 1991; update statutory references to the Health and Safety Code, Chapter 247; and to incorporate existing department policy concerning personal care facilities into the sections.

Stephen Seale, Chief Accountant III, Budget Office, has determined that for the first-five year period the sections are in effect there will be a fiscal impact on state government as a result of enforcing or administering the sections as proposed. The effect on state government will be an estimated expense of $3,100 the first year to print and mail the translated resident's bill of rights document to each facility currently licensed (246 facilities) and an additional estimated expense of $76 each year thereafter to furnish each newly licensed facility the translated resident's bill of rights (estimated number of facilities newly licensed each year is 200).

Mr. Seale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that for residents, resident's families, and the providers, clarification of the licensing standards is provided to include legislative changes, current statutory references, and current policy interpretations. There is no anticipated cost to small or large businesses; no anticipated cost for the persons affected by this proposal; and no impact on local employment.

Comments on the proposal may be submitted to Janice Caldwell, Dr. P.H., Bureau of Long Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3185, at phone (512) 458-7709. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register.*

The amendments are proposed under the Health and Safety Code, §247.025, which provides the Board of Health (board) with the authority to rules personal care facilities; §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health; and Senate Bill 865, Article II, 72nd Legislature, 1991, which provides the department with the authority to develop a resident's bill of rights and a providers' bill of rights in personal care facilities.

§145.321. Purpose and Scope.

(a) The minimum licensing standards for personal care facilities are promulgated under the authority of the **Health and Safety Code, Chapter 247** [Personal Care Facility Licensing Act, Texas Civil Statutes, Article 4442c-4].

(b) A person or governmental unit, acting severally or jointly with any other person or governmental unit, may not establish or operate a personal care facility without a license issued under **the Health and Safety Code, Chapter 247** [Article 4442c-4].

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

(e) The philosophy of personal care facilities is as follows.

(1) (No change.)

(2) A personal care facility covered by this subchapter includes an establishment, **including a board and care home, that:** [which] furnishes, **in one or more facilities,** [(in single or multiple facilities)] food and shelter to four or more persons **who are** unrelated to the proprietor **of the establishment; and provides personal care services;** and in addition, provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or services which meet some need beyond basic provision of food, shelter, and laundry.

(3)-(5) (No change.)

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

Act-The Personal Care Facility Licensing Act, **Health and Safety Code, Chapter 247** [Texas Civil Statutes, Article 4442c-4].

Attendants-Any **individual who is providing service to the residents,** [All staff persons or representatives who are responsible for direct personal services to residents] and can include, but **is** [are] not limited to aides, cooks, janitors, porters, maids, laundry workers, **security personnel, bookkeepers,** [and] managers **,etc. as they also are of service to the residents.** [if they are also functioning in direct personal services.]

Facility-An institution coming under the scope of Personal Care Facility Licensing Act, **Health and Safety Code, Chapter 247,** [Texas Civil Statutes, Article 4442c-4], and furnishes room, board, and one or more services of a personal care or protective nature.

Immediately available-The capability of facility staff to immediately respond to an emergency situation after being notified through a communication and/or alarm system. The staff is to be no more than 600 feet from the farthest resident.

§145.324. General Requirements.

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

(k) In the event any facility licensed under the Personal Care Facility Act, **Health and Safety Code, Chapter 247,** [Texas Civil Statutes, Article 4442c-4] ceases operation temporarily or permanently, voluntarily or involuntarily, notice **of the closure** shall be provided the residents and residents' relatives or responsible parties [of closure]. If the closure is voluntary, notice to residents' relatives or responsible parties shall be in writing, giving at least seven days' notice for relocation after receipt of notice. In involuntary closure actions, notices shall be provided as required within seven days of ownership's final decision to close. Written notice is waived for involuntary closure; however, the facility remains responsible for **immediate** verbal notice [immediately] to residents, relatives, or responsible parties.

(l)-(p) (No change.)

(q) Facilities serving the elderly or disabled are required by the Human Resources Code, Chapter 106, to request criminal conviction records of prospective employees effective September 1, 1989. The Department of Human Services will obtain criminal conviction records for facilities licensed by the licensing agency under Health and Safety Code, Chapter 242 or **Chapter 247** [Texas Civil Statutes, Article 4442c-4].

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

(r) (No change.)

§145.325. General Enforcement.

(a) The licensing agency or the licensing agency's representative may make any inspection or investigation that it considers necessary and may enter the premises of a personal care facility at any time day or night to make an inspection in accordance with board rules. The licensing agency is entitled to access books, records, and other documents maintained by or on behalf of a facility to the extent necessary to enforce the Personal Care Facility Act, **Health and Safety Code, Chapter 247,** [Texas Civil Statutes, Article 4442c-4] and the rules adopted under this Act. A license holder or an applicant for a license is considered to have consented to entry and inspection of the facility by a representative of the licensing agency in accordance with this subchapter. The licensing agency is entitled to preserve all relevant evidence of conditions found during an inspection or investigation that the licensing agency reasonably believes threaten the health and safety of a resident, including photography and photocopying of relevant documents, such as a license holder's notes, etc. for use in any legal proceeding. When photographing a resident, the licensing agency shall respect the privacy of the resident to the greatest extent possible and may not make public the identity of the resident.

(b) (No change.)

§145.326. Administrative Management. The general requirements for application for a license shall be as follows.

(1) Application shall be made on a form or in a manner as determined by the licensing agency. The application is to be complete, signed by the owner in the presence of a notary public, and returned to the licensing agency with the following prerequisites.

(A) New facilities.

(i) The application shall include:

(I) a **nonrefundable** fee of $100 plus $3.00 for each bed space **,with a maximum of $400,** for which a license is sought. This fee shall be submitted in the form of a check or money order payable to the Texas Department of Health;

(II)-(VI) (No change.)

(ii) (No change.)

(B) Change of ownership.

(i) The application shall include:

(I) a **nonrefundable** fee of $100 plus $3.00 for each bed space, **with a maximum of $400,** for which a license is sought. This fee shall be submitted in the form of a check or money order payable to the Texas Department of Health;

(II)-(IV) (No change.)

(ii) (No change.)

(C) Increase in bed capacity.

(i) The applications shall include:

(I)-(II) (No change.)

(III) a **nonrefundable** fee of $3.00 for each bed space, **with a maximum of $400,** for which a license is sought. The fee shall be submitted in the form of a check or money order payable to the Texas Department of Health; and,

(IV) (No change.)

(ii)-(iii) (No change.)

(D) Renewal.

(i) The application shall include:

(I) a **nonrefundable** fee of $100 plus $3.00 for each bed space , **with a maximum of,** $400 for which a license is sought. The fee shall be submitted in the form of a check or money order payable to the Texas Department of Health;

(II)-(III) (No change.)

(ii) (No change.)

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

§145.327. Staffing.

(a) Manager.

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

(3) The manager of a **licensed** [large Type A or Type B] facility shall show evidence of six hours of annual continuing education that includes **at least one** of the following **areas:**

(A) **resident and provider rights and responsibilities, abuse/neglect, and confidentiality;**

(B)[(A)] basic principles of supervision;

(C)[(B)] **skills for working with residents, families, and other professional service providers** [interpersonal skills for dealing with residents and families];

(D)[(C)] resident characteristics and needs;

(E)[(D)] community resources; [or]

(F) [(E)] accounting and budgeting; **or** [.]

(G) **basic emergency first aid (e.g., CPR, choking, etc.)**

(4)-(5) (No change.)

(b) Attendants.

(1) There shall be an attendant **(as defined by §145.322 of this title (relating to Definitions))** in the facility at all times when residents are in the facility. Additionally, there shall be other attendant personnel as needed to maintain order, safety, and cleanliness; to assist with medication regimens; to prepare and service meals; assist with laundry; and to assure that each resident receives the kind and amount of supervision and care required to meet his basic needs.

(2) The following staff-resident ratio shall be maintained in a Type A or Type B facility. **The shift time designations in this section are for illustration purposes only. The facility management has the authority to use other shift designations to define day, evening, and night shift start and end times:**

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

(C) 11 p.m.-7 a.m. = 1 to 40

(i) Type A facility: 11 p.m.-7 a.m. staff in a 40 or less licensed bed capacity facility only needs to be immediately available **(as defined by §145.322)**. In a 41+ licensed bed capacity facility the staff must be awake; and

(ii) (No change.)

(D) (No change.)

(3) The attendants shall have the following knowledge prior to assuming responsibilities: needs of the resident(s) and tasks to be provided, resident's health conditions and how it may affect provision of tasks, [and] conditions about which the attendant should notify the facility manager,[.] **and a job description.**

§145.333. Resident's Bill of Rights and Provider Bill of Rights *[Resident Rights].*

(a) Resident's bill of rights.

(1) Each personal care facility shall post the resident's bill of rights, as provided by the licensing agency, in a prominent place in the facility and written in the primary language of each resident.

(2) [(a)] In addition to other rights a resident has as a citizen, a resident has the rights provided by this section.

(3) The resident's bill of rights must provide that each resident in the personal care facility has the right to:

(A)[(1) A resident may] not be physically or mentally abused or exploited;[.]

(B)[(2) A resident may] not be physically or chemically restrained unless the restraint:

(i)[(A)] is necessary in an emergency to protect the resident or others from injury after the individual harms or threatens to harm himself or another; or

(ii)[(B)] is authorized in writing by a physician for a limited and specified period of time;[.]

(C)[(3) A mentally retarded resident may] **if mentally retarded,** participate in a behavior modification program involving use of restraints or adverse stimuli only with the informed consent of a guardian;[.]

(D)[(4) A resident shall] be treated with respect, consideration, and recognition of **his or her** [the individual's] dignity and individuality. A resident shall receive personal care and private treatment **in a safe and decent living environment;** [.]

(E)[(5) A resident may] not be denied appropriate care on the basis of **his or her** [the individual's] race, **religious practice** [religion], color, national origin, sex, age, handicap, marital status, or source of payment;[.]

(F) [(6) A resident may] not be prohibited from communicating in **his or her** [the individual's] native language with other individuals or employees for the purpose of acquiring or providing any type of treatment, care, or services;[.]

(G)[(7) A resident is] be encouraged and assisted in the exercise of **his or her** [an individual's] rights. A resident may **present grievances on behalf of the resident or others to the manager, state agencies, or other persons without threat of reprisal in any manner** [voice grievance or recommend changes in policy or service without restraint, interference, coercion, discrimination, or reprisal]. The person providing services shall develop procedures for submitting complaints and recommendations by residents and for assuring a response by the person providing services;[.]

(H)[(8)] **receive and send unopened mail** [A resident may associate, communicate, and meet privately with other individuals unless to do so would infringe on the rights of other individuals. A resident's mail may not be opened by the facility unless authorized in writing by the resident];[.]

(I)[(9)] **unrestricted communication, including personal visitation with any person of the resident's choice, including family members and representatives of advocacy groups and community service organizations, at any reasonable hour** [A resident may participate in activities of social, religious, or community groups unless a physician determines that participation would harm the individual. The physician must record the determination in the resident's record] ;[.]

(J) make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable;

(K)[(10) A resident may manage his or her] **manage his or her** [personal] financial affairs, or shall be given at least a quarterly accounting of financial transactions made on his or her behalf by the facility should the facility accept his or her written delegation of this responsibility to the facility for any period of time in conformance with state law;[.]

(L)[(11)] **have** [A resident's records are] **confidential records which cannot** [and may not] be released without **his or her** [the resident's] written permission. A resident may inspect **his or her** [his/her] personal records maintained by the person providing services;[.]

(M)[(12)] **have the** [A] person providing services [shall] answer [a resident's] questions concerning the resident's health, treatment, and condition unless a physician determines that the knowledge would harm the resident. The physician must record the determination in the resident's record;[.]

(N) [(13) A resident may] choose a personal physician;[.]

(O)[(14) A resident may] participate in planning **his or her service plan** [the resident's total care] and medical treatment; [.]

(P)[(15) A resident shall] be given the opportunity to refuse treatment after the possible consequences of refusing treatment are fully explained;[.]

(Q) unaccompanied access to a telephone at a reasonable hour or in case of an emergency or personal crisis;

(R) [(16)] **privacy, (not a single bedroom)** [If an area is available, a person providing services shall, on request, provide the resident with a private area to receive visitors. If the resident is married and the spouse is receiving similar services, the couple may share a room];

[(17) A resident's visitors may not be restricted unless a physician determines that a restrictions is medically necessary.

(S)[(18) A resident may] retain personal clothing and possessions as space permits. The number of personal possessions may be limited for health and safety reasons which are documented in the resident's medical record. The number of personal possessions may be limited for the health and safety of other residents; [.]

(T) determine his or her dress, hair style, or other personal effects according to individual preference, except the resident has the responsibility to maintain personal hygiene;

(U) retain and use personal property in his or her immediate living quarters and to have an individual locked area (cabinet, closet, drawer, footlocker, etc.) in which to keep personal property;

(V) [(19)] **refuse to perform services for the facility, except as contracted for by the resident and operator** [A person may not be required to perform services for the person providing services];[.]

(W)[(20)] **be informed, in writing, by the person providing services** [A person providing services shall inform a resident in writing] of available services and the applicable charges if the services are not covered by Medicare, Medicaid, or other form of health insurance;[.]

(X)[(21) A person providing services may] not **be transferred** [transfer] or **discharged** [discharge a resident] unless:

(i)[(A)] the resident's medical needs require transfer;

(ii)[(B)] the resident's health and safety or the health and safety of another resident requires transfer or discharge;

(iii)[(C)] the resident fails to pay for services, except as prohibited by federal law; or

(iv)[(D)] the resident repeatedly abuses alcohol, drugs, facility smoking regulations, or manifests severe and intentional anti-social behavior;[.]

(Y)[(22)] **not be transferred or discharged, except in an emergency situation. The responsible party of the resident and the attending physician shall be notified immediately;** [Except in an emergency situation, if a person providing services intends to transfer or discharge a resident, the person providing services shall notify the resident, the responsible party of the resident, and attending physician not later than five days before the date on which the individual will be transferred or discharged.]

(Z) leave the facility temporarily or permanently, subject to contractual or financial obligations; and

(AA) not be deprived of any constitutional, civil, or legal right solely by reason of residence in a personal care facility.

(b) **Provider's bill of rights.** [The facility shall provide each resident with a written list of the resident's rights and responsibilities before providing services or as soon after providing services as possible, and shall post the list in a conspicuous location. The facility providing the services must inform a resident of changes or revision in the list].

(1) Each personal care facility shall post a provider's bill of rights in a prominent place in the facility. The provider's bill of rights must provide that a provider of personal care services has the right to:

(A) be shown consideration and respect that recognizes the dignity and individuality of the provider and personal care facility;

(B) terminate a resident's contract for just cause after a written 30-day notice;

(C) terminate a contract immediately, after notice to the department, if the provider finds that a resident creates a serious or immediate threat to the health, safety, or welfare of other residents of the personal care facility;

(D) present grievances, file complaints, or provide information to state agencies or other persons without threat of reprisal or retaliation;

(E) refuse to perform services for the resident or the resident's family other than those contracted for by the resident and the provider;

(F) contract with the community to achieve the highest level of independence, autonomy, interaction, and services to the residents;

(G) have access to resident information concerning a client referred to the facility, which must remain confidential as provided by law;

(H) refuse a person referred to the facility if the referral is inappropriate;

(I) maintain an environment free of weapons and drugs; and

(J) be made aware of a resident's problems, including self-abuse, violent behavior, alcoholism, or drug abuse.

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

Issued in Austin, Texas, on December 11, 1991.

TRD-9115968 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Proposed date of adoption: February 22, 1992

For further information, please call: (512) 458-7709

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TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 134. Benefits-Guidelines for Medical Services, Charges, and Payments.

Subchapter I. Provider Billing Procedures

• 28 TAC §§134.800-134.802

The Texas Workers' Compensation Commission proposes amendments to §§134. 800-134.802, concerning health care provider billing. The amendments are needed to clarify procedure for submitting bills when an employer seeks to advance compensation for medical bills, under the Texas Workers' Compensation Act, §4. 06. Various technical amendments have also been proposed.

Section §134.800 is amended to delete subsection (a), relating to submitting bills for payment and sending information copies, in conjunction with transferring this subject matter to §134.801. The amendment also deletes the information items required to be included on bills, since such requirements now appear in the printed instructions accompanying the commission-prescribed forms.

Section 134.801 is amended to permit a health care provider to elect to submit a bill to an injured worker's employer in place of the workers' compensation insurance carrier, to establish that such an election constitutes waiver of certain statutory rights, to clarify the distinction between submitting a bill for payment and sending information copies, and to require the provider to send an information copy of a bill to the employer upon request, and to inscribe information copies with an explanatory statement.

Section 134.802 is amended to require the carrier to file with the commission copies of medical bills for which the carrier has reimbursed the payor, and to add two items of information to be included on medical bills filed with the commission.

Andrew Thigpen, associate director, financial management, has determined that for the first five-year period the amended sections are in effect the only fiscal implications for the state or local government will arise in their capacity as self-insured employers, and will be the minimal costs of postage and reproducing forms.

There is no anticipated impact on employment, locally or statewide, as a result of implementing the amendments as proposed.

Mr. Thigpen also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be implementation of the new Texas Workers' Compensation Act. Concerning effect on small businesses, pharmacists will incur minimal costs of purchasing or reproducing the commission-prescribed billing forms as a result of the amendment to §134.800. Health care providers will incur minimal costs for postage when providing the information copies of a bill to the employee, the employee's representative, the employer, or the commission as a result of the amendment to §134.801. Carriers will incur minimal costs for postage when filing copies of reimbursed bills with the commission. The cost of compliance for small businesses is proportionate to the cost of compliance for large businesses relative to market share. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Susan M. Kelley, General Counsel, Texas Workers' Compensation Commission, 4000 South IH-35, Austin, Texas 78704. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register.*

The amendments are proposed under Texas Civil Statutes, Article 8308-2.09(a), which authorize the commission to adopt rules necessary to administer the Texas Workers' Compensation Act, and Article 8308-4.66(a), which authorize the commission to adopt rules concerning required reports and records to be filed by health care providers.

§134.800. Required Billing Forms and Information [Health Care Provider Billing].

[(a) All medical bills shall be submitted to the insurance carrier only. Upon request, a copy of the bill shall be sent at no charge to the employee, the employee's representative or the commission.

[(b) Rebilling by the health care provider shall include identical codes and charges as reflected on the original bill. The bill shall be clearly marked "rebill" and shall not include charges for new services.]

(a)[(c)] **Except as provided by subsection (f) of this section medical** [Medical] bills from all health care providers shall be **submitted for payement on the forms prescribed in this section, prepared according to the commission-prescribed instructions accompanying each form.** [in the form and manner prescribed by the commission and contain the following:

[(1) information required under §133.1 of this title (relating to Information Required in Communications);

[(2) date(s) of service provided;

[(3) specific diagnosis(es) with appropriate ICD-9-CM code(s);

[(4) itemized list(s) of procedures performed or services provided;

[(5) charge for each procedure performed or the service provided;

[(6) total charges billed; and

[(7) date of the billing.]

(b)[(d)] **Except as provided in subsections (c) and (d) of this section, all health care providers, as defined in the Texas Workers' Compensation Act (the Act), Article 8308-1.03,** [In addition to the information in subsection (c) of this section, doctors of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic, and psychologists, physical therapists, occupational therapists, and ambulatory surgical centers, radiology centers, pathology centers, and emergency centers (other than hospital-based emergency centers)] shall submit bills using the national standard HCFA-1500 health insurance claim form, **prepared according to the commission-prescribed instructions accompanying the form.** [and include:

[(1) place of service;

[(2) procedure code(s) according to the fee guidelines established by the commission;

[(3) description of the service(s) provided;

[(4) unit(s) (or number) of service(s) or treatment(s); and

[(5) type of service.]

(c)[(e)] Hospitals, **including hospital-based emergency centers and ambulatory surgical centers** shall[, in addition to the information in subsection (c) of this section,] include the revenue code and submit bills using the UB-82 billing form for institutional services and the national standard HCFA-1500 health insurance claim form for professional services, **prepared according to the commission-prescribed instructions accompanying each form.**

(d)[(f)] Pharmacists shall submit bills **using forms TWCC-66a or TWCC-66c, Statement for Pharmacy Services prepared according to the commission-prescribed instructions accompanying each form.** [in a form and manner prescribed by the commission, and include:

[(1) information required under §133.1 of this title (relating to Information Required in Communications);

[(2) date(s) of service provided;

[(3) date of the billing;

[(4) prescribing doctor's name and professional license number

[(5) prescription number of each medication and the charge for each medication;

[(6) national drug code (NDC) of each medication;

[(7) medication name and strength;

[(8) quantity of each medication dispensed;

[(9) estimated days' supply dispensed;

[(10) if the prescription is new or a refill supply; and

[(11) total charges billed.]

(e) Rebilling by the health care provider shall include identical codes and charges as reflected on the original bill. The bill shall be clearly marked "rebill" and shall not include charges for new services.

(f)[(g)] Health care providers not specifically noted in the preceding subsections of this section shall prepare and submit bills in a form and manner prescribed by the commission.

(g)[(h)] The division of medical review will order the health care provider to reimburse a carrier when the health care provider is paid in excess of the amount allowed by the medical policies and fee guidelines established. A health care provider may request a review of those services and charges under the §8.26, no later than 10 days after the division of medical review orders the reimbursement.

§134.801. Submitting Bills for Payment: Information Copies [Submission of Health Care Provider Billing].

(a) Submitting bills for payment. The health care provider shall submit all medical bills to the insurance carrier. The provider may elect to submit bills to an employer who has indicated willingness to pay them.

(b) Waiver of rights. A provider who elects to submit bills to an employer waives, for the duration of the election period, the rights to:

(1) prompt payment, as provided by the Texas Workers' Compensation Commission Act (the Act), Article 8308-4.68;

(2) interest for delayed payment as provided by the Act Article 8308-8.27; and

(3) commission-provided medical dispute resolution as provided by the Act, Article 8308-8.26.

(c)[(a)] **Time for submission-health care practitioners.** Health care practitioners (as defined in the Act, §1.03(22)) shall submit to the carrier a properly completed bill within 15 days after the initial service or treatment date. Subsequent billing shall be at least monthly for services and treatments rendered.

(d)[(b)] **Time for submission-health care facilities.** For inpatient services, health care facilities (as defined in the Act, §1.03(21)) shall submit bills to the insurance carrier within 10 days after discharge, if the confinement is less than 30 days. If the confinement is greater than 30 days, the facilities shall submit an interim bill within 45 days of admission and then at least every 30 days until discharge. The final bill shall be submitted within 10 days of discharge. For outpatient services, bills shall be submitted **at least** [on a] monthly [basis] to the insurance carrier.

(e) Providing information copies of bills. Upon request the provider shall send, at no cost, a copy of the bill, as submitted for payment, to the employee, the employee's representative, the employer, or the commission. Information copies shall state the following in bold type: "THIS IS ONLY AN INFORMATION COPY, IT IS NOT A REQUEST FOR PAYMENT."

§134.802. Insurance Carriers' Submission of Medical Bills to the Commission.

(a) Within 15 days after final payment of an original bill from a health care provider, **or reimbursement to any person who has paid a health care provider's bill,** insurance carriers shall submit a copy of the bill with the information described in subsections (c) and (d) of this section to the commission in Austin. Upon written approval by the commission, the insurance carrier may submit the information described in this rule electronically, in a form and format prescribed by the commission.

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

(d) In addition to the information in subsection (c) of this section, the insurance carrier shall include the following information for each service, treatment, or medication charged by the provider:

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

(7) the charge; [and]

(8) [if paid in full,] the date of reimbursement;

(9) amount paid: and

(10) exception code.

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

Issued in Austin, Texas, on December 11, 1991.

TRD-9115701

Susan M. Kelley
General Counsel
Texas Workers' Compensation Commission

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 440-3972

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 55. Law Enforcement

Subchapter H. Special Game Warden Program

• 31 TAC §§55.401, 55.403, 55.405, 55.407, 55.409, 55.411

The Texas Parks and Wildlife Department proposes new regulations to implement a Special Game Warden Program under 31 TAC, Chapter 55, by adding Subchapter H, §§55.401, 55.403, 55.405, 55.407, 55.409, and 55.411 concerning a special law enforcement commission for honorably retired game wardens. The 72nd Legislature expanded the agency's regulatory authority to include a special game warden commission. House Bill 1578 amended the Texas Parks and Wildlife Code, Chapter 11, Subchapter H, to allow the director to commission honorably retired game wardens to perform law enforcement services under rules established by the commission. The amendments define the conditions of service, time frame of enforcement activities, and a bond requirement.

Robin Riechers, staff economist, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Riechers also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of implementing these rules will provide a wider base for enforcing the Parks and Wildlife Code as well as other state statutes. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. The department has not filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A, as this agency has determined that the rules as proposed will not impact local economics.

Comments on the proposed amendments may be submitted to Chester Burdett, Director of Law Enforcement, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4845, or 1-(800)-792-1112, extension 4845.

The new sections are proposed as a result of recent legislation which amended the Texas Parks and Wildlife Code, Chapter 11, Subchapter B, which authorizes the department to implement a Special Game Warden Program.

§55.401. Applicability. These rules apply to all counties in Texas.

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

Active status–The period of time when a Special Game Warden is commissioned, called to active service by the director, and compensated by the department.

Inactive status–The period of time when a Special Game Warden is commissioned, but is not compensated by the department.

Applicant–An individual who files an application for a Special Game Warden commission who has honorably retired with at least 20 years of service as a game warden of the Texas Parks and Wildlife Department and who has not retired as an option to involuntary dismissal for cause.

Department–The Texas Parks and Wildlife Department.

Director–Executive Director of the Texas Parks and Wildlife Department or his/her designee.

Bond–A $2,500 bond executed by a surety company authorized to do business in this state that indemnifies all persons against damages resulting from an unlawful act of the Special Game Warden, and is payable to the department at the time the applicant receives the commission.

§55.405. Application for Special Game Warden Commission.

(a) An applicant shall complete and place on file with the department an application packet on forms prescribed by the director. The application packet shall contain:

(1) a copy of his/her retirement documents;

(2) an oath of office;

(3) a copy of the required surety bond.

(b) Special game wardens shall not hold any other commission or office of trust that may conflict with any duty of a special game warden.

(c) Special game warden commissions shall expire on August 31 of each odd numbered year and may be renewed under conditions prescribed by the director.

§55.407. Duty Assignments.

(a) Special game wardens shall serve at the will of the director to the same extent as other game wardens commissioned under this subchapter.

(b) The director has authority over the law enforcement activities of special game wardens, regardless of whether a special game warden is on active or inactive status.

(c) The department shall assign special game wardens for duty in any area of the state, under the authority of the department's supervisory personnel in that area.

(d) Special game wardens shall comply with all components of the law enforcement division operating procedures and the department's personnel manual.

(e) While on inactive service, special game wardens may enforce laws authorized by the Parks and Wildlife Code, §11.0201(d), that are flagrant violations and occur in his/her presence when the violator and/or evidence may leave the scene.

(f) Special game wardens on active service may enforce any law authorized in the Parks and Wildlife Code, §11.0201(d), to the extent that a regular game warden may investigate and enforce.

(g) While on active duty, special game warden shall wear the uniform prescribed for a regular game warden. While on inactive duty, special game wardens shall identify themselves with such badge, identification, and uniform as prescribed by the director at the time of commissioning.

§55.409. Compensation.

(a) Special game wardens on active service may be compensated not to exceed the salary of a Game Warden IV and may claim per diem or other expenses authorized by the director.

(b) Special game wardens on inactive status may not be compensated by salary, but may claim per diem expenses for inservice training required by the Texas Commission on Law Enforcement Officer Standards and Education.

§55.411. Reports.

(a) Special game wardens shall submit activity reports, arrest reports, or any other report required within the same time period as a regular game warden.

(b) Special game wardens shall be evaluated annually with an evaluation report prescribed by the director and under the same conditions as a regular game warden.

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

Issued in Austin, Texas, on December 16, 1991.

TRD-9115912

Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Earliest possible date of adoption: January 20, 1991

For further information, please call: 1-(800)-792-1112, ext. 4845, or (512) 389-4845

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Potentially Harmful Fish, Shellfish, and Aquatic Plants

• 31 TAC §§57.111-57.121

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

The Texas Parks and Wildlife Commission proposes the repeal of 31 TAC §§57.111-57.121, concerning harmful or potentially harmful exotic fish, shellfish, and aquatic plants proclamation. Simultaneous with this repeal, new rules are being proposed for adoption that retains existing text but also permits the use of triploid (sterile) grass carp in private freshwaters to control nuisance vegetation. The repeal and new adoption rather than amending the existing rules is an aid to clarification and simplification of the rules.

Additionally, the repeal allows new proposed rules that adds one new oyster species to those listed as harmful or potentially harmful exotic shellfish; reduces the number of penaeid shrimp which may be possessed by a Fish Farmer to one specie of shrimp; implements a new disease certification requirement for exotic shellfish; and bighead carp are now grouped with other permitted exotic carp species.

Robin Riechers, staff economist, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Riechers, also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be to adopt new rules that permit the use of triploid grass carp to control nuisance vegetation.

Additionally, the repeal allows new rules to incorporate restriction of a new oyster species, reduction of penaeid shrimp species that may be possessed, strengthening of criteria for disease certification, and grouping of the bighead carp will allow the department to apply greater control on harmful or potentially harmful exotic species within Texas. There will be no effect on small businesses. It is anticipated there will be no fiscal implications to persons who are required to comply with the repeal. The department has filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A and has not received a reply.

Comments on the repeal as proposed may be submitted to Philip Durocher, Inland Fisheries Branch Chief, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4860 or 1 (800) 792-1112, extension 4850.

The repeals are proposed under the Texas Parks and Wildlife Code, §66.007 and §66.015 and Agriculture Code, §134.020, which authorizes the department to regulate exotic harmful or potentially harmful fish, shellfish, and aquatic plants.

§57.111. Definitions.

§57.112. General Rules.

§57.113. Exceptions.

§57.114. Transportation of Live Exotic Species.

§57.115. Exotic Species transport Invoice.

§57.116. Exotic Species Permit.

§57.117. Exotic Species Permit; Expiration and Renewal.

§57.118. Permit Denial.

§57.119. Appeal.

§57.120. Reports.

§57.121. Penalties.

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

Issued in Austin, Texas, on December 16, 1991.

TRD-9115907 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Earliest possible date of adoption: January 20, 1992

For further information, please call: 1-(800)-792-1112, ext. 4860 or (512) 389-4860

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Harmful or Potentially Harmful Fish, Shellfish, and Aquatic Plants

• 31 TAC §§57.111-57.130

The Texas Parks and Wildlife Commission proposes new 31 TAC §§57.111-57. 130 concerning harmful or potentially harmful exotic fish, shellfish, and aquatic plants.

The proposed new rules permit introductions of triploid (sterile) grass carp to be utilized as a management tool in private freshwaters to control nuisance aquatic vegetation and add new regulations concerning use of exotic harmful or potentially harmful exotic fish and shellfish in fish farming activities.

New rules rather than amendments are being proposed to simplify, clarify, and reduce complexity of the text to the reader.

The proposed new rules allow, by permit only, the introduction of certified triploid grass carp in private waters. The proposed rules specify permit issuance requirements which allow possession of triploid grass carp in private waters. The rules also require proof of certification of triploidy by the United States Fish and Wildlife Service or this department. The rules allow the department to make random checks of private water stocking sites and specifies that certified triploids may be purchased in Texas only from holders of Exotic Species Permits. A permit processing fee to cover the costs of the program and to provide for management, review, and technical assistance to private pond owners needed as a result of the stockings is proposed.

Additionally, the new proposed rules add one new oyster species to those listed as harmful or potentially harmful exotic shellfish; reduces the number of penaeid shrimp which may be possessed by a Fish Farmer to one species of shrimp; implements a new disease certification requirement for exotic shellfish; set new fish farm design and construction requirement; set fees for processing Exotic Species permit applications; and provide regulation of bighead carp consistent with other carp species permitted for use in fish farming activities.

The release of large numbers of Penaeus vannamei into the Arroyo Colorado underscores the need for comprehensive regulation of exotic species in aquaculture operations. In that regard, new rules are proposed which substantively address release of exotic species into public waters and prevention of disease introductions.

Robin Riechers, staff economist, has determined that the first five-years the new rules are in effect there will be fiscal implications to state or local governments as a result of enforcing or administering the rules.

The fiscal implications to state government will be positive. The proposed new rules will permit this agency to collect fees for the importation and certifying of triploid grass carp. These fees will cover administrative costs of permitting and allow this department to expand its habitat (structure and vegetative balance) enhancement programs.

The department anticipates that this program will generate to this agency $550,000 during the first year and approximately $275,000 each succeeding year as a result of assessed fees for permits and fish. The proposed cost to a private pond operator is $15 per application for a Triploid Grass Carp Permit plus $2 per triploid grass carp requested. The department recommended stocking rate of triploid grass carp is anticipated to be between five and 10 fish per surface acre.

There will be no fiscal implications to local governments.

Fiscal implication for small businesses based on the triploid grass carp rules will be beneficial. Small businesses within the boundaries of Texas will benefit from the sale of triploid grass carp to stock private freshwater ponds. Potentially there may be economic implications for small businesses as a result of further restrictions on exotic shrimp and oysters and the strengthening of the rules surrounding disease certification. However, no species of exotic shrimp defined as harmful or potentially harmful in these rules are currently in use by Texas fish farmers and department staff conducted in-depth meetings with Texas shrimp farmers prior to composition of new disease certification rules.

Mr. Riechers also has determined that for each of the first five-years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the new rules as proposed is the control of nuisance vegetation through the use of a biological control agent as opposed to herbicides. Costs to the public could occur if triploid grass carp were to negatively affect habitat or ecosystems. However, the department will not issue Triploid Grass Carp Permits in areas where threatened or endangered aquatic plant or animal species habitat may be affected.

Additionally, restriction of a new oyster species, reduction of penaeid shrimp species that may be possessed, strengthening of criteria for disease certification, and grouping of the bighead carp will benefit the public by allowing the department to exercise greater control of harmful or potentially harmful exotic species within Texas.

It is anticipated there will be fiscal implications to persons who are required to comply with the rules as proposed. Fees will be assessed to the private pond operators both for the Triploid Grass Carp Permit and for the number of fish stocked.

The department has filed a local employment impact statement with the Texas Employment Commission in compliance with §4A of the Administrative Procedure and Texas Register Act but has not received a reply.

Comments on the new rules as proposed may be submitted to Philip Durocher, Inland Fisheries Branch Chief, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4860 or 1-(800)-792-1112, extension 4860.

The new sections are proposed under the Texas Parks and Wildlife Code, §§11.027(b), 66.007, 66.015, and Agriculture Code, §134.020, which authorizes the department to regulate exotic harmful or potentially harmful fish, shellfish, and aquatic plants and to assess appropriate fees.

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

Aquaculture or fish farming–The business of producing and selling cultured species raised in private facilities.

Cultured species–Aquatic plants or animals raised under conditions where at least a portion of their life cycle is controlled by an aquaculturist.

Department–The Texas Parks and Wildlife Department or a designated employee of the department.

Director–The Executive Director of the Texas Parks and Wildlife Department.

Exotic species–A nonindigenous plant or animal not normally found in public water of this state.

Fish farm–The property including all drainage ditches and private facilities from which cultured species are produced, propagated, transported or sold.

Fish farm complex–A group of two or more separately owned fish farms located at a common site and sharing privately owned water diversion or drainage structures.

Fish farmer–Any person engaged in aquaculture or fish farming.

Grass carp–The species Ctenopharyngodon idella.

Harmful or potentially harmful exotic fish–

(A) Lampreys Family: Petromyzontidae–All species except Ichthyomyzon castaneus and I. gagei;

(B) Freshwater Stingrays Family: Potamotrygonidae–All Species;

(C) Arapaima Family: Osteoglossidae –Arapaima gigas;

(D) South American Pike Characoids Family: Characidae–All species of genus Acestrorhyncus;

(E) African Tiger Fishes Subfamily: Hydrocyninae–All species;

(F) Piranhas and Priambebus Subfamily: Serrasalminae–All Species;

(G) Rhaphiodontid Characoids Subfamily: Rhaphiodontinae–All species of genera Hydrolycus and Rhaphiodon (synonymous with Cynodon);

(H) Dourados Subfamily: Bryconinae–All species of genus Salminus;

(I) South American Tiger Fishes Family: Erythrinidae–All species;

(J) South American Pike Characoids Family: Ctenolucidae–All species of genera Ctenolucius and Luciocharax (synonymous with Boulengerella and Hydrocinus);

(K) African Pike Characoids Families: Hepsetidae Ichthyboridae–All species;

(L) Knifefishes Family: Gymnotidae–Gymnotus carapo;

(M) Electric Eels Family: Electrophoridae–Electrophorus electricus;

(N) Carps and Minnows Family: Cyprinidae–All species and hybrids of species of genera: Abramis, Aristichthys, Aspius, Aspiolucius, Blicca, Catla, Cirrhina, Ctenopharyngodon, Elopichthys, Hypophthalmichthys, Leucisus, Megalobrama, Mylopharyngodon, Parabramis, Pseudaspius, Rutilus, Scardinius, Thynnichthys, Tor, and the species Barbus tor (Synonymous with Barbus hexoagoniolepis);

(O) Walking Catfishes Family: Clariidae–All species;

(P) Electric Catfishes Family: Malapteruridae–All Species;

(Q) South American Parasitic Candiru Catfishes Subfamilies: Stegophilinae Vandelliinae–All species;

(R) Pike Killifish Family: Poeciliidae–Belonesox belizanus;

(S) Marine Stonefishes Family: Synanceiidae–All species;

(T) South American Pike Cichlids Family: Cichlidae–All species of genera Crenicichla and Batrachops;

(U) Tilapia Family: Cichlidae–All species of genus Tilapia (including Sarotherodon and Oreochromis);

(V) Asian Pikeheads Family: Luciocephalidae–All species;

(W) Snakeheads Family: Channidae–All species;

(X) Walleyes Family: Percidae–All species of the genus Stizostedion except Stizostedion vitreum and S. canadense;

(Y) Nile Perch Family: Centropomidae–All species of genera Lates and Luciolates;

(Z) Drums Family: Sciaenidae–All species of genus Cynoscion except Cynoscion nebulosus, C. nothus, and C. arenarius;

(AA) Whale Catfishes Family: Cetopsidae–All species;

(BB) Ruff Family: Percidae–All species of genus Gymnocephalus;

(CC) Air sac Catfishes Family: Heteropneustidae–All Species of genus Heteropneustes.

Harmful or potentially harmful exotic shellfish–

(A) Crayfishes Family: Parastacidae–All species of the genus Astacopsis;

(B) Mittencrabs Family: Grapsidae–All species of genus Eriocheir;

(C) Asian Clams Family: Corbiculidae–All species of genus Corbicula

(D) Giant Ram's-horn Snails Family: Piliidae (synonymous with Ampullariidae)–All species of genus Marisa;

(E) Zebra Mussels Family: Dreissenidae–All species of genus Dreissena;

(F) Penaeid Shrimp Family: Penaeidae–All species of genus Penaeus except P. setiferus P. aztecus and P. duorarum;

(G) Pacific Oyster Family: Ostreidae–Crassostrea gigas;

Harmful or potentially harmful exotic plants–

(A) Giant Duckweed Family: Lemnaceae–Spirodela oligorhiza;

(B) Salvinia Family: Salviniaceae–All species of genus Salvinia;

(C) Waterhyacinth Family: Pontederiaceae–Eichhornia crassipes;

(D) Waterlettuce Family: Araceae–Pistia stratiotes;

(E) Hydrilla Family: Hydrocharitaceae–Hydrilla verticillata;

(F) Egeria Family: Hydrocharitaceae–Egeria densa;

(G) Lagarosiphon Family: Hydrocharitaceae–Lagarosiphon major;

(H) Eurasian Watermilfoil Family: Haloragaceae–Miyriophyllum spicatum;

(I) Alligatorweed Family: Amaranthaceae–Alternanthera philoxeroides;

(J) Rooted Waterhyacinth Family: Pontederiaceae–Eichhornia azurea;

(K) Paperbark Family: Myrtaceae–Melaleuca quinquenervia;

(L) Torpedograss Family: Gramineae–Panicum repens;

(M) Water spinach Family: Convolvulaceae–Ipomoea aquatica

Nauplius or nauplii–A larval crustacean having no trunk segmentation and only three pairs of appendages.

Operator–The person responsible for the overall operation of a wastewater treatment facility.

Postlarvae–A juvenile crustacean having acquired a full complement of functional appendages.

Private facility–A pond, tank, cage, or other structure capable of holding cultured species in confinement wholly within or on private land or water, or within or on permitted public land or water.

Private facility effluent–Any and all water which has been used in aquaculture activities.

Private pond–A pond, tank, lake, or other structure capable of holding fish species in confinement wholly within or on private land.

Public waters–Bays, estuaries, and water of the Gulf of Mexico within the jurisdiction of the state, and the rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination.

Quarantine condition–Confinement of nauplii, postlarvae or adults of exotic shellfish such that neither the shellfish nor the water in which they are maintained comes into contact with other fish or shellfish.

Triploid grass carp–A grass carp (Ctenopharyngodon idella) which has been certified by the United States Fish and Wildlife Service as having 72 chromosomes and as being functionally sterile.

Wastewater treatment facility–All contiguous land and fixtures, structures or appurtenances used for treating wastewater pursuant to a valid permit issued by the Texas Water Commission.

§57.112. General Rules.

(a) Scientific reclassification or change in nomenclature of taxa at any level in taxonomic hierarchy will not, in and of itself, result in redefinition of a harmful or potentially harmful exotic species.

(b) Except as provided in §57.113 of this title (relating to Exceptions), it is an offense for any person to release into public waters, import, sell, purchase, propagate or possess any species, hybrid of a species, subspecies, eggs, seeds, or any part of any species defined as harmful or potentially harmful exotic fish, shellfish, or aquatic plant.

(c) Violation of any provision of a permit issued under these rules is a violation of these rules.

§57.113. Exceptions.

(a) A person who holds a valid scientific or zoological permit issued by the department may possess the exotic harmful or potentially harmful fish, shellfish, and aquatic plants as authorized in the permit.

(b) A person may possess exotic harmful or potentially harmful fish or shellfish without a permit if the intestines of the fish or shellfish have been removed.

(c) A fish farmer who holds a valid Exotic Species permit issued by the department may possess, propagate, transport, or sell silver carp, (Hypophthalmichthys molitrix), black carp (Mylopharyngodon piceus, also commonly known as snail carp), bighead carp (Aristichthys/Hypopthalmichthys nobilis), blue tilapia (Tilapia aurea), Mozambique tilapia (Tilapia mossambica), or hybrids between the two tilapia species as provided by conditions of the permit and these rules.

(d) A fish farmer who holds a valid Exotic Species permit issued by the department may possess, propagate, transport or sell Penaeus vannamei provided the exotic shellfish meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish) and as provided by conditions of the permit and these rules.

(e) A fish farmer who holds a valid Exotic Species permit issued by the department may possess, transport, or sell triploid grass carp (Ctenopharyngodon idella) as provided by conditions of the permit and these rules.

(f) A wastewater treatment facility that holds a valid Exotic Species permit issued by the department may possess waterhyacinth (Eichornia crassipes) only for the purpose of wastewater treatment.

(g) A person may possess Mozambique tilapia in a private pond subject to compliance with §57.116(d) of this title (relating to Exotic Species Transport Invoice).

(h) The holder of a valid Triploid Grass Carp permit issued by the department may possess triploid grass carp only in a private pond as provided by conditions of the permit and these rules.

(i) A licensed retail or wholesale fish dealer is not required to have an Exotic Species permit to purchase or possess live individuals of species or hybrids of species listed in subsection (c) of this section held in the place of business as defined in the Parks and Wildlife Code, §47.001(9), unless the retail or wholesale fish dealer propagates one or more of these species. However, such a dealer may sell or deliver these species to another person only if the intestines or head of the fish are removed.

(j) A person may possess species listed in subsections (c) and (d) of this section delivered as authorized in subsection (i) of this section only if such fish or shellfish are dead, packaged on ice, or frozen.

(k) A person may possess the hybrid grass carp (Ctenopharyngodon idella x Aristichthys/Hypophthalmichthys nobilis) if that person has documented evidence of possession prior to January 25, 1990, has provided such evidence to the department by May 1, 1990, and possesses acknowledgment of such evidence from the department by June 1, 1990. A person in possession of hybrid grass carp on January 25, 1990, shall not replace or supplement hybrid grass carp. This subsection shall be in effect only until January 1, 1995.

§57.114. Health Certification of Exotic Shellfish.

(a) All disease free certification of exotic shellfish must be conducted by a shellfish disease specialist approved by the department.

(b) A fish farmer importing nauplii of exotic shellfish from facilities outside the state must provide documentation to the department, prior to importation of such nauplii, that the producing facility from which the nauplii are to be received has been certified as being free of disease.

(c) A fish farmer in possession of nauplii of exotic shellfish for the purpose of production of postlarvae must provide to the department monthly certification that such postlarvae have been examined and certified to be free of disease.

(d) Any shipment of exotic shellfish received by a fish farmer must be:

(1) certified as being disease free; and

(2) maintained under quarantine conditions until the department acknowledges that the additional stock is free of disease.

(e) Prior to removal of exotic shellfish from quarantine conditions, a fish farmer must have:

(1) obtained certification that any new shipment of exotic shellfish imported from outside the state have been examined and found to be free of disease;

(2) forwarded a copy of the disease free certification to the department; and

(3) received acknowledgement from the department that the shellfish stock is free of disease.

§57.115. Transportation of Live Exotic Species.

(a) Transport of live harmful or potentially harmful exotic species is prohibited except by a licensed fish farmer or the operator of a wastewater treatment facility who has in immediate possession a valid Exotic Species permit, by a commercial shipper acting for the permit holder, or when transported between a warehouse and retail outlet within a company possessing a retail fish dealers license, and persons holding a valid zoological or scientific permit authorizing the transportation.

(b) Any person transporting live harmful or potentially harmful exotic species must have an Exotic Species Transport Invoice; except harmful or potentially harmful exotic species covered under zoological or scientific permits may be transported in compliance with rules governing zoological or scientific permits.

(c) A fish farmer transporting live triploid grass carp must have an Exotic Species Transport Invoice and a copy of the United States Fish and Wildlife Service certification declaring that the grass carp being transported have been certified as being triploid grass carp.

§57.116. Exotic Species Transport Invoice.

(a) An Exotic Species Transport Invoice shall contain all the following information correctly stated and legibly written: invoice number; date of shipment; name, address, and phone number of the shipper; name, address, and phone number of the receiver; Texas Fish Farmer's License number and Exotic Species permit number, if applicable; number and total weight of each harmful or potentially harmful exotic species; a check mark indicating interstate import, interstate export, or intrastate type of shipment. A completed invoice shall accompany each shipment of harmful or potentially harmful exotic species, and shall be sequentially numbered during the permit period; no invoice number shall be used more than once during any one permit period by the permittee.

(b) The Exotic Species Transport Invoice shall be provided by the permittee; one copy shall be retained by the permittee for a period of at least one year following shipping date.

(c) The permittee is responsible for supplying copies of the Exotic Species Transport Invoice to out-of-state dealers from which the permittee has ordered harmful or potentially harmful exotic species so that shipment will be properly marked and numbered upon delivery to the permittee in Texas.

(d) Owners, or their agents, of private ponds stocked with Mozambique tilapia or triploid grass carp by an Exotic Species permit holder shall retain a copy of the Exotic Species Transport Invoice for a period of one year after the stocking date or as long as the tilapia or triploid grass carp are in the water, whichever is longer.

§57.117. Exotic Species Permit; Fee and Application Requirements.

(a) The department shall charge a nonrefundable Exotic Species permit application fee as follows:

(1) application for new, renewed, or amended Exotic Species permit which requires facility inspection-$250;

(2) application for renewed or amended Exotic Species permit requiring no facility inspection-$25.

(b) To be considered for an Exotic Species permit, the applicant shall:

(1) possess a valid Texas Fish Farmer's License or permit from the Texas Water Commission authorizing operation of a wastewater treatment facility;

(2) complete an initial Exotic Species permit application on a form provided by the department;

(3) submit this application to the department;

(4) submit an accurate-to-scale plat of the fish farm specifically including, but not limited to, location of:

(A) all private facilities including a designation on the plat of all private facilities which will be used for possession of harmful or potentially harmful exotic species;

(B) all structures which drain private facilities;

(C) all points at which private facility effluent is discharged from the private facilities or the fish farm;

(D) all structures designed to prevent discharge of harmful or potentially harmful species from the fish farm;

(E) any vats, raceways, or other structures to be used in holding harmful or potentially harmful exotic species;

(5) demonstrate to the department that an existing fish farm or wastewater treatment facility meets requirements of §57.129 of this title (relating to Exotic Species Permit; Private Facility Criteria);

(6) provide plans of sufficient detail to demonstrate that fish farms or wastewater treatment facilities in planning or construction will comply with the criteria listed in §57.129; and

(7) remit to the department all applicable fees.

(c) Applicants for an Exotic Species permit for culture of harmful or potentially harmful exotic shellfish must meet all Exotic Species permit application requirements and requirements for disease free certification as listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish).

(d) An applicant for an Exotic Species permit shall provide documentation upon request from the department necessary to identify any harmful or potentially harmful exotic species for which a permit is sought.

(e) An applicant for an Exotic Species permit shall allow inspection of their facilities by authorized employees of the department during normal business hours.

§57.118. Exotic Species Permit Issuance.

(a) The department may issue an Exotic Species permit only to a licensed fish farmer and only for species listed in §57.113(c), (d), and (e) of this title (relating to Exceptions) or to a wastewater treatment facility operator only for possession and use of waterhyacinth.

(b) The department may issue an Exotic Species permit upon a finding by the department that:

(1) all application requirements as set out in §57.117 of this title (relating to Exotic Species Permit; Fee and Application Requirements) have been met;

(2) the fish farm operated by the applicant and named in the permit meets or will meet the design criteria listed in §57.129 of this title (relating to Exotic Species Permit; Private Facility Criteria); and

(3) the applicant has not violated any provision of the Parks and Wildlife Code, §66. 007, §66.015, or these rules during the one year period preceding the date of application.

(c) Permits issued for fish farms or wastewater treatment facilities under construction shall not authorize possession of harmful or potential harmful exotic fish, shellfish or aquatic plants until such time as the department has certified that the fish farm or wastewater treatment facility as-built meets the requirements in §57.129.

§57.119. Exotic Species Permit; Requirements for Permittee.

(a) A copy of the Exotic Species permit shall be:

(1) made available for inspection upon request of authorized department personnel; and

(2) kept on the premises of the fish farm or wastewater treatment facility named in the permit.

(b) Permittee must provide access to authorized department personnel during any hours in which operations pursuant to the Exotic Species Permit are ongoing.

(c) If a permittee discontinues fish farming of a permitted harmful or potentially harmful exotic species or discontinues wastewater treatment utilizing waterhyacinth, the permittee shall:

(1) immediately and lawfully, sell or destroy all remaining individuals of that species in possession; and

(2) notify the department's aquaculture coordinator at least 14 days prior to cessation of operation.

(d) A permittee shall provide an adequate number of fish, shellfish, or aquatic plants of the exotic species named in the permit application to authorized department employees upon request for identification and analyses.

(e) In the event that the fish farm or a wastewater treatment facility of a permit holder appears in imminent danger of overflow, flooding, or release of harmful or potentially harmful exotic fish, shellfish or aquatic plants into public water, the permittee shall destroy or harvest all permitted exotic harmful or potentially harmful fish, shellfish and aquatic plants to prevent their release. It is the responsibility of the permittee to have available sufficient quantity of biocide to destroy all harmful or potentially harmful exotic fish, shellfish and aquatic plants in danger of release. The biocide shall be registered with the Texas Department of Agriculture and used in accordance with label directions.

(f) Except in case of an emergency, a holder of an Exotic Species permit authorizing possession of Penaeus vannamei must notify the department at least 72 hours prior to any harvesting of permitted adult shellfish. In an emergency beyond the control of the permittee, notification of harvest must be made as early as practicable prior to beginning of harvest operations.

(g) A holder of an Exotic Species permit authorizing possession of Penaeus vannamei may sell or transfer ownership of live P. vannamei only to the holder of a valid Exotic Species permit specifically authorizing possession of P. vannamei.

(h) Upon discovery of release or escapement of harmful or potentially harmful exotic fish or shellfish from the private facilities authorized in an Exotic Species Permit, the permittee must immediately halt discharge of all private facility effluent from the fish farm. If the permittee's fish farm is located within a fish farm complex, upon discovery or release or escapement of harmful or potentially harmful fish or shellfish from the permittee's fish farm, the permittee must immediately halt discharge of all private facility effluent from the fish farm complex.

(i) A holder of an Exotic Species permit must notify the department in the event of escapement or release of harmful or potentially harmful exotic fish or shellfish, within two hours of discovery.

(j) All devices required in the Exotic Species permit for prevention of discharge of harmful or potentially harmful exotic fish, shellfish or aquatic plants must be in place and properly maintained at all times such species are in possession.

(k) All private facility effluent discharged from a fish farm holding exotic harmful or potentially harmful species must be routed such that all private facility effluent passes through all devices for prevention of discharge of such exotic species as required in the permit.

(l) A permittee must notify the department's aquaculture coordinator in the event of change of ownership of the fish farm named in that permittee's Exotic Species permit. Notification must be made within seven days of change in ownership.

(m) Permits are not transferable from site to site or from person to person.

§57.120. Exotic Species Permit; Expiration and Renewal.

(a) Exotic Species permits required by these rules expire one year from date of issuance.

(b) The department may renew an Exotic Species permit upon finding that:

(1) the applicant has met application requirements in §57.117 of this title (relating to Exotic Species Permit; Fee and Application Requirements);

(2) the facility will meet all applicable facility design criteria listed in §57.129 of this title (relating to Exotic Species Permit; Private Facility Criteria); and

(3) the applicant has not violated any provision of the Parks and Wildlife Code, §66.007, §66.015, or these rules during the one year period preceding the date of agency action on the application for renewal;

(4) the applicant has submitted a renewal application and required annual report to the department not more than 60 days nor less than 30 days prior to the Exotic Species permit expiration.

(c) Applicants seeking renewal of Exotic Species permits, including those issued prior to January 23, 1992, must meet all application requirements listed in §57.117 and facility design criteria listed in §57.129.

§57.121. Exotic Species Permit; Amendment.

(a) Exotic species permits may be amended upon a finding by the department that:

(1) the applicant has not violated any provision of the Parks and Wildlife Code, §66.007, §66.015, or these rules during the one year period preceding the date of application;

(2) the applicant has met all applicable application requirements under §57.117 of this title (relating to Exotic Species Permit; Fee and Application Requirements); and

(3) the facilities as altered will meet the private facility criteria in §57.129 of this title (relating to Exotic Species Permits; Private Facility Criteria).

(b) Exotic Species permits must be amended to reflect any:

(1) addition or deletion of species of harmful or potentially harmful exotic fish, shellfish, or aquatic plants held pursuant to the permit;

(2) intended redistribution of harmful or potentially harmful fish, shellfish, and aquatic plants into private facilities not authorized in the permit;

(3) change in methods of preventing discharge of harmful or potentially harmful exotic fish, shellfish, and aquatic plants;

(4) change in discharge of private facility effluent from fish farms or wastewater treatment facilities; and

(5) change in existing design criteria listed in §57. 129.

(c) Applicants seeking amendment of exotic species permits, including those issued prior to January 23, 1992, must meet all application requirements listed in §57.117 and facility design criteria listed in §57. 129.

§57.122. Appeal. An opportunity for hearing shall be provided to the applicant or permit holder for any denial of an Exotic Species permit or a Triploid Grass Carp permit where the terms of issuance are different from those requested by the applicant.

(1) Requests for hearings shall be made in writing to the department no more than 30 days from receipt of the denial notification.

(2) All hearings shall be conducted in accordance with the Rules of Practice and Procedure of the Texas Parks and Wildlife Department and the Administrative Procedure and Texas Register Act.

§57.123. Exotic Species Permit Reports.

(a) The exotic species permit holder shall submit an annual report that accounts for importation, possession, transport, sale or other disposition of any harmful or potentially harmful exotic species handled by the permittee. This report shall be submitted on forms provided by the department with the application for renewal or within 30 days after termination of the Exotic Species permit.

(b) An exotic species permit holder who has imported, possessed, transported, or sold triploid grass carp shall submit a quarterly report to the department. This report shall be submitted on a form provided by the department and shall include:

(1) a copy of each Exotic Species Transport Invoice issued during the past quarterly period; and

(2) a copy of each triploid grass carp certification received by the permittee for triploid grass carp purchased during the past quarterly period.

§57.124. Triploid Grass Carp; Sale, Purchase.

(a) Triploid grass carp may be sold only to:

(1) a person in possession of a valid Exotic Species permit authorizing possession of triploid grass carp or;

(2) a person in possession of a valid Triploid Grass Carp permit.

(b) A person who holds a valid Triploid Grass Carp permit may purchase triploid grass carp only from a fish farmer in possession of a valid Exotic Species permit authorizing possession of triploid grass carp.

(c) A holder of an Exotic Species permit may obtain triploid grass carp only from:

(1) the holder of an valid Exotic Species permit authorizing possession of triploid grass carp; or

(2) a lawful source outside of the state.

(d) A fish farmer in possession of an Exotic Species permit must notify the department not less than 72 hours prior to taking possession of any and all shipments of triploid grass carp received from any source. Notification must include:

(1) number of triploid grass carp being purchased;

(2) source of triploid grass carp;

(3) final destination of triploid grass carp; and

(4) name of certifying authority who conducted triploid grass carp certification.

§57.125. Triploid Grass Carp Permit; Application, Fee.

(a) The department may issue a Triploid Grass Carp permit only for stocking of triploid grass carp into a private pond.

(b) To be considered for a Triploid Grass Carp permit, the applicant shall:

(1) complete an initial Triploid Grass Carp permit application on a form provided by the department;

(2) submit this application to the department not less than 30 days prior to the proposed stocking date; and

(3) remit to the department the sum of the cost of the Triploid Grass Carp permit application fee and the Triploid Grass Carp User fee.

(c) The department shall charge a Triploid Grass Carp permit application fee in the amount of the sum of a $15 application flat fee plus $2.00 for each triploid grass carp requested on the Triploid Grass Carp permit application form. In the case of permit denial, the Triploid Grass Carp permit application flat fee is not refundable.

(d) An applicant for a Triploid Grass Carp permit or a permittee shall allow inspection of their facilities and private ponds by authorized employees of the department during normal business hours.

§57.126. Triploid Grass Carp Permit; Terms of Issuance.

(a) The department may issue a Triploid Grass Carp permit upon a finding that:

(1) applicant has completed and submitted to the department a Triploid Grass Carp permit application;

(2) applicant has remitted to the department all pertinent fees;

(3) all information provided in the Triploid Grass Carp permit application is true and correct;

(4) applicant has not been finally convicted, within the last year, for violation of the Parks and Wildlife Code, §66.007, §66.015, or these rules;

(5) issuance of a Triploid Grass Carp permit is consistent with department fisheries or wildlife management activities; and

(6) issuance of a Triploid Grass Carp permit is consistent with the Parks and Wildlife Commission's Environmental Policy.

(b) A permittee shall allow, upon request, take of a reasonable number of grass carp from the permittee's private body of water by department personnel for determination of triploid status.

(c) In determining the number of triploid grass carp authorized for possession under a Triploid Grass Carp permit the department shall consider the surface area of the private pond named in the permit application, and as appropriate, the percentage of the surface area of the private pond infested by aquatic vegetation.

§57.127. Triploid Grass Carp Permit; Denial. The department may deny a Triploid Grass Carp permit upon a finding that the applicant fails to satisfy any of the required crieria for issuance of a permit listed in §57. 124 of this title (relating to Triploid Grass Carp; Sale, Purchase) permit issuance.

§57.128. Exotic Species Permits, Triploid Grass Carp Permits; Revocation. The department may revoke an Exotic Species permit or a Triploid Grass Carp permit upon a finding that the permittee has violated any provision in these rules or rules promulgated under Texas Parks and Wildlife Code, §66.015 during the valid permit period.

§57.129. Exotic Species Permit. Private Facility Criteria.

(a) The fish farm or wastewater treatment facility must be designed to prevent discharge of water containing adult or juvenile harmful or potentially harmful exotic species, their eggs, seeds or other re-

productive parts from the permittee's property.

(1) Fish farms holding harmful or potentially harmful exotic fish or shellfish shall have at least three appropriately designed and constructed permanent screens placed between any point in the fish farm where harmful or potentially harmful exotic fish or shellfish are intended to be in water on the fish farm and the point where private facility effluent first leaves the fish farm. Screen mesh shall be of an appropriate size for each state of shellfish growth and development. Screens must be designed and constructed such that screens can be maintained and cleaned without reducing the level of protection against release of harmful or potentially harmful exotic fish or shellfish. The department may approve alternate methods of preventing discharge of harmful or potentially harmful exotic fish or shellfish upon a finding that those methods are at least as effective in preventing discharge of adult or juvenile harmful or potentially harmful exotic species, their eggs, or other reproductive parts from the permittee's property.

(2) Fish farms containing harmful or potentially harmful exotic fish or shellfish must be designed such that private facility effluent from the fish farm can be wholly contained upon the fish farm in the event of escapement or release of such exotic species from the specific private facilities permitted to hold those species.

(b) Fish farms which are to contain species or hybrids of species listed in §57.113(c), (d), and (e) of this title (relating to Exceptions) and wastewater treatment facilities containing waterhyacinth which are within the 100 year flood plain, referred to as Zone A on the National Flood Insurance Program Flood Insurance Rate Map, must enclosed within an earthen or concrete dike or levee constructed in such a manner to exclude all flood waters and such that no section of the crest of the dike or levee is less than one foot above the 100 year flood elevation. Dike design or construction must be approved by the department before issuance of a permit.

(c) Fish farms containing harmful or potentially harmful exotic shellfish shall be capable of segregating stocks of shellfish which have not been certified as free of disease from other stocks of shellfish on that fish farm.

(d) A fish farm containing harmful or potentially harmful exotic fish or shellfish must have in place security measures reasonably designed to prevent unrestricted or uncontrolled access to any private facilities containing harmful or potentially harmful exotic fish or shellfish. Security measures must be reasonably adequate to prevent unauthorized removal of such species from the fish farm.

(e) For fish farms that are part of a fish farm complex, the following additional facility standards shall apply.

(1) Each permittee shall maintain in the common drainage, at least one screen or other method for preventing the movement of harmful or potentially harmful exotic fish or shellfish between the point where private facility effluent from the permittee's fish farm enters the common drainage and each point where an adjacent fish farmers private facility effluent enters the common drainage. The adequacy of design and construction of such screens or other structures shall be determined by the department as provided in subsection (a)(1) of this section.

(2) The complex must be designed such that flow of private facility effluent can be wholly contained within the drainage system of the fish farm complex in the event of escapement or release of harmful or potentially harmful exotic fish or shellfish from any fish farm within the complex. Each permittee within the complex must have authority to stop the discharge of private facility effluent from the complex in the event of escapement or release of such fish or shellfish from that permittee's fish farm.

§57.130. Penalties. The penalties for violation of this subchapter are prescribed by Parks and Wildlife Code, §66.012.

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

Issued in Austin, Texas, on December 16, 1991.

TRD-9115908 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Earliest possible date of adoption: January 20, 1992

For further information, please call: 1-(800)-792-1112, ext. 4863 or (512) 389-4863

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• 31 TAC §§57.191-57.193

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

The Texas Parks and Wildlife Commission proposes repeal of 31 TAC §§57. 191-57.193, concerning exotic shellfish culture permits. Chapter 51 of the Parks and Wildlife Code, which provided statutory authority for promulgation of rules regulating shellfish sourcing permits was repealed by the 72nd Legislature. The statutory authority to regulate exotic shellfish was transferred to Chapter 66 of the Parks and Wildlife Code.

Robin Riechers, staff, economist, has determined that for the first five-year period the repeals are in effect there will be no significant fiscal implications for state or local government as repeal will not affect current activities.

Mr. Riechers, also has determined that for each year of the first five years the repeals are in effect the following public benefit and costs are anticipated. The public benefit anticipated as a result of enforcing the repeal of the existing regulations will be the substitution of more exclusive and enforceable regulations in another section of the Texas Administrative Code. There will be no effect on small businesses. The anticipated economic cost to persons who are affected by the repeal of the existing regulations is not determinable. The agency has determined that there will be no local employment impact as a result of this proposed repeal.

Comments on proposed repeal may be submitted to C. E. Bryan, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4863 or 1-(800)-792-1112, extension 4863.

The repeals are proposed under Senate Bill 726, passed in regular session of the 72nd Legislature repealed, in its entirety, Chapter 51 of the Parks and Wildlife Code. The statutory authority under which 31 TAC §§57.191-57.193 were promulgated was transferred to Chapter 66 of the Texas Parks and Wildlife Code, necessitating repeal of existing rules promulgated under the statutory authority which existed in Chapter 51.

§57.191. Evidence.

§57.192. Permit: Requirements.

§57.193. Permit: Issuance.

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

Issued in Austin, Texas, on December 16, 1991.

TRD-9115911 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

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For further information, please call: 1-(800)-792-1112, ext. 4863 or (512) 389-4863

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Shellfish Sourcing Permit Issuance Procedures

• 31 TAC §§57.201-57.203

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl

Rudder Building, 1019 Brazos Street, Austin.)

The Texas Parks and Wildlife Commission proposes the repeal of 31 TAC §§57.201-57.203, concerning shellfish sourcing permits. Chapter 51 of the Parks and Wildlife Code, which provided statutory authority for promulgation of rules regulating shellfish sourcing permits was repealed by the 72nd Legislature. The statutory authority to regulate exotic shellfish was transferred to Chapter 66 of the Parks and Wildlife Code.

Robin Riechers, staff economist, has determined that for the first five-year period repeal of these rules will have no significant fiscal implications for state and local government as repeal will not affect current activities.

Mr. Riechers, also has determined that for each year of the first five years the repeals are in effect the following public benefit and costs are anticipated. The public benefit anticipated as a result of enforcing the repeal of the existing regulations will be the substitution of more inclusive and enforceable regulations in another section of the Texas Administrative Code. There will be no effect on small businesses. The anticipated economic cost to persons who are affected by the repeal of the existing regulations is not determinable. The agency has determined that there will be no local employment impact as a result of this proposed repeal.

Comments on the proposed repeal may be submitted to C. E. Bryan, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4863 or 1-(800)-792-1112, extension 4863.

The repeals are proposed under Senate Bill 726, passed in regular session of the 72nd Legislature repealed, in its entirety, Chapter 51 of the Parks and Wildlife Code. The statutory authority under which 31 TAC §§57.201-57.203 were promulgated was transferred to the Texas Parks and Wildlife Code, Chapter 66, necessitating repeal of existing rules promulgated under the statutory authority which previously existed in Chapter 51.

§57.201. Eligibility.

§57.202. Provisions.

§57.203. Issuance.

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

Issued in Austin, Texas, on December 16, 1991.

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Director, Legal Services
Texas Parks and Wildlife Department

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For further information, please call: 1-(800)-792-1112, ext. 4863 or (512) 389-4863

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Chapter 57. Fisheries and Wildlife

Collection of Broodfish from Public Waters of Texas

• 31 TAC §§57.391-57.401

The Texas Parks and Wildlife Commission proposes new 31 TAC §§57.391-57. 401, concerning collection of fish broodstock from the public waters of Texas.

Passage of Senate Bill 726 by the 72nd Legislature resulted in new Texas Parks and Wildlife Code, §§43.551-43.554. These statutes authorized commission adoption of rules which would allow collection of broodstock from the public waters of the state by a licensed aquaculturist acting under permit issued by the Texas Parks and Wildlife Department. In addition, these statutes authorize the collection of a fee equal to the value of the fish taken as broodstock.

The proposed rules establish the procedures for broodfish collection permit application, issuance, denial and revocation. The value of any broodfish collected by an aquaculturist or an aquaculturist's designated agent, acting under permit from the department, is proposed as the civil restitution value of the fish established by the commission in 31 TAC §§69.20-69.31. The rules require notification of when and where broodfish are to be taken, the final destination of the broodfish and reporting of all broodfish collected by an aquaculturist. In addition, the proposed rules regulate sale and release of any broodfish taken under permit issued by the department. A permit fee is proposed to offset departmental costs in permit processing.

Robin Riechers, staff economist, has determined that the first five-years the new rules are in effect there will be fiscal implications to the state or local governments or small businesses as a result of enforcing or administering the rules.

The fiscal implications to state government will be positive. The proposed new rules allow this agency to collect fees which will offset the costs of administering the broodfish collection permitting process. In addition, this agency will collect a restitution value for any fish collected by an aquaculturist for use as broodstock. There are no anticipated costs to local governments.

Fiscal implication for small businesses is anticipated to be positive. The permitted collection of broodstock from public waters will allow aquaculturists to procure those species of fish which may be unavailable through commercial sources. Permitted collection of some species will lower costs incurred by aquaculturists for those species which are available from commercial sources but may bring premium prices. The net result should be that of encouraging the growth of the state's nascent aquaculture industry.

Mr. Riechers also has determined that for each of the first five-years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the new rules will permit regulation of the taking of broodfish from public waters and concomitant protection of the state's aquatic resources. Costs to the public could occur if excessive numbers of broodfish from a specified body of water were removed, thus requiring the department to restock the water with fish. However, the department will not issue permits for collection of broodfish in areas where such collection could result in overharvest of broodfish.

It is anticipated that there will be positive fiscal implications to persons required to comply with the rules as proposed. Collection of broodfish from public waters by an aquaculturist is substantially less expensive than procurement from other sources. In addition, at least two broodfish species are generally not available from other sources. Aquaculturists would be allowed to designate persons who could capture broodfish for the permittee. The agency anticipates that this should further reduce the costs incurred by aquaculturists.

The agency has filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A, but has not received a reply.

Comments on the new rules as proposed may be submitted to Dr. Bill Harvey, Director of Special Programs, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642 or 1 (800) 792-1112, ext. 4642.

The new sections are proposed under authority of the Texas Parks and Wildlife Code, §§43.551-43.554, and §66.015, which authorize the department to, respectively, regulate taking of broodfish from the public waters of the state and regulate placement of fish, shellfish, or aquatic plants in public waters of the state.

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

Aquaculture (or fish farming)–The business of producing and selling cultured species raised in private facilities.

Aquaculturist–A person holding a valid license, issued under Chapter 27 of the Agriculture Code, to engage in aquaculture or fish farming.

Aquaculture facility (or fish farm)–The property including private ponds from which fish, shellfish, or aquatic plants are produced, propagated, transported or sold.

Broodfish–A fish taken from the public waters of this state for the purpose of aquaculture.

Collection–Any boating, fishing or fish transportation activity involved in the take or attempted take of broodfish.

Cultured species–Fish, shellfish or aquatic plants raised under conditions where at least a portion of their life cycle is controlled by an aquaculturist.

Department–The Texas Parks and

Wildlife Department.

Designated agent–A person designated by an aquaculturist and approved by permit to act on behalf of that aquaculturist in collection of broodfish.

Director–The Executive Director of the Texas Parks and Wildlife Department or his designee.

Private facility–A pond, tank, cage, or other structure capable of holding cultured species in confinement wholly within or on private land or water within or on permitted public land or water.

Progeny–Offspring of fish, including eggs, fry, and fingerlings.

Public waters–Bays, estuaries, and water of the Gulf of Mexico within the jurisdiction of the state, and the rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination.

Sportfishing–The act of using legal means or methods to take or attempting to take aquatic life for non-commercial purposes.

§57.392. General Rules.

(a) The director may issue Broodfish Permits only to an aquaculturist who has not violated, during the one year period preceding the date of application, any provision of these rules or rules promulgated under:

(1) Chapter 66 of the Texas Parks and Wildlife

(2) Chapter 134 of the Agriculture Code.

(b) The director shall issue Broodfish Permits to allow collection of broodfish from specific sites only:

(1) upon a finding of the department that collection of broodfish will not adversely affect the department's fishery management activities at that site and;

(2) upon a finding of the department that broodfish collection activities will not interfere with sportfishing activities.

(c) While collecting broodfish, an aquaculturist's designated agent must be in possession of a valid sportfishing license issued by the department.

(d) Broodfish permits will not be issued for the collection of black bass of the genus Micropterus or crappie of the genus Pomoxis.

§57.393. Sale and Purchase of Broodfish; Notification.

(a) An aquaculturist may sell live broodfish only to another aquaculturist.

(b) An aquaculturist may purchase live broodfish only from another aquaculturist

(c) An aquaculturist may purchase live broodfish only for the purpose of using such fish in the production of progeny.

(d) An aquaculturist intending to sell live broodfish must notify the department's Aquaculture Coordinator, in writing, at least seven days prior to sale. Notification must include:

(1) the number of individuals of each species sold;

(2) the Broodfish Permit number under which the broodfish were collected and;

(3) the fish farm license numbers of both the seller and purchasing aquaculturist.

§57.394. Broodfish Collection; Devices, Methods and Notification.

(a) Broodfish may be collected only by:

(1) an aquaculturist in possession of a valid Broodfish Permit issued by the department or;

(2) a person named in a specific Broodfish Permit as a designated agent of the aquaculturist holding that permit.

(b) A permitted aquaculturist may take broodfish of a length, number, and within a time period by using means and methods only as specified in the aquaculturist's Broodfish Permit.

(c) Aquaculturists and designated agents, while collecting broodfish, must have in their immediate possession a valid copy of the Broodfish Permit under which these activities are authorized.

(d) The department's Law Enforcement Division must be notified no less than 48 hours prior to commencement of broodfish collection. The specific Law Enforcement Division office to be notified shall be included by the department in the Broodfish Permit. Notification must include:

(1) names of aquaculturists and designated agents participating in broodfish collection;

(2) date and time of collection activities;

(3) method of collection;

(4) area from which broodfish are to be collected;

(5) broodfish permit number;

(6) license numbers of vehicles transporting broodfish;

(7) boat registration number of all vessels involved in broodfish collection;

(8) final destination of broodfish.

§57.395. Broodfish Permits; Fees, Terms of Issuance.

(a) The fee for Broodfish Permit application shall be $25 dollars and is not refundable if a permit is denied.

(b) To be considered for a Broodfish Permit, the applicant shall:

(1) complete and submit an Broodfish Permit application on a form provided by the department;

(2) provide a copy of the applicant's fish farming license with the application;

(3) submit the amount of $25 to the department.

(c) An applicant for a Broodfish Permit or a permittee shall allow inspection of their aquaculture facility by authorized employees of the department during normal business hours.

(d) If a permittee discontinues aquaculture activities, broodfish collected under permit from the department may be returned to the public waters of the state only by permit as required by the Parks and Wildlife Code, §66.015.

§57.396. Broodfish Permit; Expiration.

(a) Broodfish Permits required by these rules expire 60 days from the date of issuance.

(b) Broodfish Permits are not transferable.

§57.397. Broodfish Permit; Revocation.

(a) The director may revoke a Broodfish Permit upon finding that a permittee:

(1) does not hold a valid aquaculture (fish farming) license issued by the Texas Department of Agriculture;

(2) has violated any provision of that Broodfish Permit;

(3) fails to report, as required in §57.401, of this title (relating to Reports), the number and sizes of broodfish collected;

(4) provides false information in a Broodfish Report or;

(5) fails to remit to the department within 30 days of broodfish collection all restitution fees assessed to the permittee for recovery of the value of broodfish collected.

(b) The director may revoke a Broodfish Permit upon finding that a permittee's designated agent:

(1) does not hold a valid sport-

fishing license or;

(2) has violated any provision of that Broodfish Permit.

§57.398. Permit Denial. A Broodfish Permit may be denied if:

(1) the applicant fails to satisfy all required or issuance listed in §57.392(a) of this title (relating to General Rules) and §57.395(a)-(c) of this title (relating to Broodfish Permits; Fees, Terms of Issuance);

(2) the department finds that collection of broodfish could be detrimental to existing fish populations at a specified collection site;

(3) the department finds that issuance of the permit is inconsistent with department management or stocking programs in specified public water;

(4) the department finds that issuance of the permit could be reasonably expected to interfere with sportfishing activities at a specified site;

(5) fish species and numbers requested in the permit application are reasonably available from commercial aquaculturists licensed to operate aquaculture facilities within the state;

(6) a designated agent named in the Broodfish Permit Application has violated any of these rules in the five year period preceding the date of permit application.

§57.399. Appeal. An opportunity for hearing shall be provided to the applicant or permit holder for any denial of a Broodfish Permit where the terms of the issuance are different from those requested by the applicant.

(1) Requests for hearings shall be made in writing to the department no more than 30 days from the receipt of the permit denial.

(2) All hearings shall be conducted in accordance with the Rules of Practice and Procedure of the Texas Parks and Wildlife Department and the Administrative Procedures and Texas Register Act.

§57.400. Prohibited Acts.

(a) Except as provided in §57.394 (a) of this title (relating to Broodfish Collection; Devices, Methods and Notification), it is a violation to collect broodfish from the public water of the state.

(b) Except as provided in §57.393(a)-(c) of this title (relating to Sale and Purchase of Broodfish; Notification) it is a violation to sell, buy or offer to buy, transport, barter, or exchange broodfish collected from the public water of this state.

(c) It is a violation if an aquaculturist fails to remit to the department, within 14 days of written notification by the department, the monetary value of broodfish collected from the public waters of the state. The value of an individual broodfish shall be that established by rule in 31 TAC, §§69.20-69.31.

(d) It is a violation if an aquaculturist or an aquaculturist's designated agent, while collecting broodfish:

(1) is in possession of a number of fish, of any species, in excess of the daily bag limit for that species at the collection site specified in a Broodfish permit;

(2) is in possession of fish of a length other than that specified in the Broodfish Permit or;

(3) is in possession of fish of any species other than the species specified in the permit.

§57.401. Reports. The Broodfish Permit holder must submit a Broodfish Collection Report to the department within seven days of broodfish collection. The report shall be submitted on a form provided by the department.

§57.402. Restitution for Broodfish. Parks and Wildlife Code, §43.554, authorizes the department to set fees equal to the value of the broodfish to be taken under authority of that subchapter. The value of fish taken from the public waters of Texas is prescribed by rule in 31 TAC, §§69. 20-69.31. Upon receipt of a Broodfish Collection Report, the department shall provide the permittee with a restitution request in an amount equal to the established value of any and all fish collected. Permittee shall remit to the department the full restitution value of all broodfish taken within 14 days of receipt of restitution request from the department.

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

Issued in Austin, Texas, on December 16, 1991.

TRD-9115909 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Earliest possible date of adoption: January 20, 1992

For further information, please call: 1-(800)-792-1112, ext. 4642 or (512) 389-4642

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Blue Crab Fishery Management Plan

• 31 TAC §57.701

The Texas Parks and Wildlife Commission proposes to adopt new 31 TAC §57. 701 which will adopt by reference a Texas Blue Crab Fishery Management Plan. Available and applicable biological, economic, legal, sociologic information essential to the management of blue crabs in Texas is contained in the Texas Blue Crab Fishery Management Plan. Descriptions of the biology, life history, fishery, past, and future management practices and suggested management structures are presented. Suggested management strategies are in the areas of shared management authority, size limits, fishing seasons and times, area closures, bag and possession limits, means and methods, licensing, penalties and compliance, allocation, shedding technology development, mariculture development, habitat maintenance, restoration and enhancement, fishery monitoring, assessment and evaluation, and communication and education.

Copies of the Texas Blue Crab Fishery Management Plan are available from the Texas Parks and Wildlife Department at 4200 Smith School Road, Austin, Texas 78744.

Mr. Robin Riechers, staff economist, has determined that adoption of the Texas Blue Crab Fishery Management Plan will have no direct fiscal impacts as it is a statement of policy, and does not implement, interpret or prescribe rules or regulations. Rule making following the adoption of the Plan could have impacts in the future, but those fiscal impacts will be considered on a case by case basis as those rules are adopted.

Mr. Riechers also has determined that adoption of the Texas Blue Crab Fishery Management Plan will impose no direct economic costs to individuals during each of the first five years of its implementation as it is a statement of policy, and does not implement, interpret, or prescribe rules or regulations. Rule making following the adoption of the Plan could impose economic costs on individuals in the future, but those economic costs will be considered on a case by case basis as these rules are adopted. Benefits will accrue during each of the first five years that the plan is in force. The benefit will be to provide for a mechanism to prevent the depletion of blue crab while achieving, on a continuing basis, the optimum yield for the crabbing industry. The benefits will come about through the adoption of rules that are based on the best scientific information available to manage blue crabs that will promote efficiently in utilizing blue crab resources, that will minimize cost and avoid unnecessary duplication in their administration and that will enhance law enforcement.

Comments on the proposed Texas Blue Crab Fishery Management Plan may be submitted to C. E. Bryan, Fisheries Resource Program Director, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, telephone (512) 389-4863 or 1-(800)-792-1112, extension 4863.

The new section is proposed under the Texas Parks and Wildlife Code, Chapter 66. In addition, §66.018 provides the Texas Parks and Wildlife Commission with authority to make regulations for the safe use of crab traps and to determine the amount of the fee for crab trap tags upon adoption of a crab management plan and the establishment of a crab advisory committee.

§57.701. Texas Blue Crab Fishery Management Plan.

(a) Texas Blue Crab Fishery Management Plan is adopted by reference.

(b) Copies may be obtained at the Texas Parks and Wildlife Department at 4200 Smith School Road, Austin, Texas 78744.

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

Issued in Austin, Texas, on December 16, 1991.

TRD-9115906 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Earliest possible date of adoption: January 20, 1992

For further information, please call: 1-800-792-1112, extension 4863 or (512) 389-4863

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

• 34 TAC §3.299

The Comptroller of Public Accounts proposes an amendment to §3.299, concerning newspapers, magazines, publishers, exempt writings. The amendment is the result of a change in the Tax Code, Chapter 151, made by the 72nd Legislature, 1991. The amendment expands the definition of newspaper to include newspapers furnished without charge. Another amendment, unrelated to legislative action, defines the term "other short intervals." The expansion of the definition of newspapers to include free newspapers is effective September 1, 1991.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no revenue impact on the state or local government.

Dr. Plaut also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in providing new information regarding tax responsibilities. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.299. Newspapers, Magazines, Publishers, Exempt Writings.

(a) Newspapers.

(1) Newspaper–**A publication:**

(A) [Those publications] printed on newsprint;

(B) whose average sales price per copy over a 30-day period does not exceed $.75;

(C) that is [which are] printed and distributed periodically at daily, weekly, or other short intervals of **four weeks or less** [30 days or less];

(D) for the dissemination of news of a general character and of a general interest, including advertising.

(2) Newspaper [also] includes a publication containing articles and essays of general interest by various writers and advertisements **that** [which] is produced for the operator of a licensed and certificated carrier of persons and distributed by the operator to its customers during their travel on the carrier.

(3) Newspaper also includes publications for the dissemination of news of a general character and of a general interest that is printed on newsprint and distributed to the general public free of charge at daily, weekly, or other short intervals of four weeks or less.

(4) [(3)] The term newspaper does not include magazines, handbills, circulars, flyers, sales catalogs, or the like, unless **these** [the] items are distributed as a part of a [publication which itself constitutes a] newspaper and [further provided that] the items, after being printed, are delivered by the printer to the person responsible for the distribution of the newspaper.

(5)[(4)] The sale of newspapers whether sold or distributed by individual copy or subscription is exempt.

(b) Magazines.

(1) Magazine–Those publications usually paper-backed and sometimes illustrated that appear at regular intervals and contain stories, articles, [and] essays by various writers, and advertisements.

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

(c) Publishers.

(1) Newspaper publishers [who sell their product] may claim **a** [an exemption equivalent to the] manufacturing exemption as set out in §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing). Newspaper publishers **may also claim** [whose product is not sold, but rather distributed free of charge, may only claim exemptions as set out in §3.300(a)-(e) of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing) and] the exemption for packaging supplies as set out in §3.314 of this title (relating to Wrapping, Packing, Packaging Supplies, Containers, Labels, Tags, and Export Packers)[, regardless of whether their finished product is ultimately sold at retail]. Persons printing newspapers may accept an exemption certificate in lieu of the sales tax from the publisher.

(2) (No change.)

(d) Exempt writings.

(1) Periodicals and writings are exempt from tax if published and distributed by a religious, philanthropic, charitable, historical, scientific, or other similar organization[,] not operated for profit. Periodicals and writings published and distributed by an educational organization are subject to the tax.

(2)-(6) (No change.)

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

Issued in Austin, Texas, on December 12, 1991.

TRD-9115793 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 463-4028

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Subchapter S. Interstate Motor Carrier Sales and Use Tax

• 34 TAC §3.445

The Comptroller of Public Accounts proposes

an amendment to §3.445, concerning computation of proportioned tax on trailers and semitrailers. The amendment reflects the changes to the Tax Code, Chapter 157, made by the 72nd Legislature, 1991. The tax rate used in the computation was increased.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no revenue impact on the state or local government.

Dr. Plaut also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in providing new information regarding tax responsibilities. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.445. Computation of the Proportioned Tax-Trailers and Semitrailers.

(a) (No change.)

(b) Computation of the proportioned tax-Method 1:

(1) (No change.)

(2) multiply [the percentage calculated in paragraph (1) of this subsection by 6.0% of] the purchase price of all trailers and semitrailers purchased during the reporting period **by the current tax rate, and that result by the percentage calculated in paragraph (1) of this subsection**;

(3) (No change.)

(c) Computation of the proportioned tax-Method 2.

(1) If a motor carrier can prove that the tax liability for the number of trailers and semitrailers which were actually purchased in Texas or first brought into Texas during the reporting period is less than the amount computed using the method described in subsection (b) of this section, the motor carrier may use the following method:

(A) (No change.)

(B) multiply [the percentage calculated in subparagraph (A) of this paragraph by 6.0% of] the purchase price of each trailer and semitrailer that was purchased in Texas or first brought into Texas during the reporting period **by the current tax rate, and that result by the percentage calculated in subparagraph (A) of this paragraph**.

(2) (No change.)

(d) Credit for tax paid to another state. If the motor carrier has previously paid any legally imposed sales or use tax to another state upon a vehicle subject to tax under subsection (b) or (c) of this section, a deduction or credit may be taken in accordance with the Tax Code, §157.102(a)(3) or §157.102(c)(1)(D). In computing the proportioned credit allowed, credit may not be taken for sales or use tax previously paid to Texas or another state in excess of **the current tax rate multiplied by** [6.0% of] the purchase price of any vehicle.

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

Issued in Austin, Texas, on December 12, 1991.

TRD-9115796 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 463-4028

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• 34 TAC §3.447

The Comptroller of Public Accounts proposes an amendment to §3.447, concerning owner-operator contracts. The amendment reflects the changes to the Tax Code, Chapter 157, made by the 72nd Legislature, 1991, First Called Session. An exclusion was added due to the change in the proportioned tax rate.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Plaut also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in providing new information regarding tax responsibilities. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.447. Owner-Operator Contracts.

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

(c) Exclusion.

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

(5) If the motor vehicle was purchased in Texas or first operated in Texas on or after September 1, 1991, and tax on the purchase price of the motor vehicle of at least 6.25% has been paid, the $25 tax is not due.

(d)-(e) (No change.)

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

Issued in Austin, Texas, on December 12, 1991.

TRD-9115795 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 463-4028

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• 34 TAC §3.448

The Comptroller of Public Accounts proposes an amendment to §3.448, concerning trip-lease agreements. The amendment reflects the changes to the Tax Code, Chapter 157, made by the 72nd Legislature, 1991. The exclusion is changed due to the tax rate increase.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Plaut also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in providing new information regarding tax responsibilities. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the

§3.448. Trip-Lease Agreements.

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

(c) Exclusion. If a sales or use tax **equal to or greater than the current tax rate has been paid on** [of at least 6.0% of] the purchase price of the motor vehicle [has been paid] or if the tax under the Tax Code, §157. 102(a), (b), or (c) has been paid, the $5.00 tax is not due.

(d) (No change.)

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

Issued in Austin, Texas, on December 12, 1991.

TRD-9115794 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 463-4028

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Subchapter U. Public Utility Gross Receipts Tax

• 34 TAC §3.511

The Comptroller of Public Accounts proposes an amendment to §3.511, concerning due date for assessment. The amendment reflects legislative changes required by House Bill 11, 72nd Legislature, 1991, First Called Session, increasing the interest rate from 10% to 12%. Subsection (d) is omitted as it is no longer valid.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Plaut also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in clarification of comptroller rules related to House Bill 11. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.511. Due Date for Assessment.

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

(c) All payments and reports postmarked, or received if not mailed, after the due date are late, and a penalty of 10% of the tax is due. Interest at a rate of **12%** [10%] per year, **compounded monthly,** is due of the payment and the report are more than 30 days delinquent.

[(d) In order to adjust to the new assessment periods, the annual report due August 15, 1984, must be based on gross receipts for the period from June 1, 1983, through June 30, 1984. The quarterly report due on February 15, 1984, must be based on gross receipts for the period from September 1, 1983, through March 31, 1984. Any taxpayer who includes receipts from December 1983 in the report due on February 15, 1984, may exclude those receipts from the report due on May 15, 1984.]

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

Issued in Austin, Texas, on December 12, 1991.

TRD-9115797 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 463-4028

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Subchapter AA. Automotive Oil Sales Fee

• 34 TAC §3.701

The Comptroller of Public Accounts proposes new §3.701, concerning reporting requirements. Senate Bill 1340, adopted in the 72nd Legislature, 1991, requires the comptroller to administer and enforce the collection of the automotive oil fee imposed on the first actual sale of automotive oil delivered to a location in this state and sold to a purchaser who is not an automotive oil manufacturer. This new section sets forth the reporting requirements.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Plaut also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in providing new information regarding tax responsibilities. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.701. Reporting Requirements.

(a) Report and payment required.

(1) Each automotive oil manufacturer or importer shall file a report with the comptroller stating the number of quarts and/or gallons of automotive oil sold or imported into this state.

(2) An automotive oil manufacturer who makes a first sale of automotive oil in Texas is liable for the fee.

(3) An automotive oil importer who imports or causes to be imported automotive oil into Texas for sale, use, or consumption is liable for the fee.

(b) Amount of fee.

(1) Except as provided in paragraph (2) of this subsection, the rate of the fee shall be $ .02 per quart or $ .08 per gallon of automotive oil.

(2) The Texas Department of Health may adjust the fee rate to meet the expenditure requirements of the Used Oil Recycling Program, and to maintain an appropriate fund balance. The fee rate may not exceed $ .05 per quart or $ .20 per gallon.

(3) On or before September 1 of each year, the Texas Department of Health and the comptroller shall jointly issue notice of the effective fee rate for the next fiscal year.

(c) Due date of report and payment.

(1) The automotive oil fee report and payment are due no later than the 25th day of the month following the end of each calendar quarter in which the liability for the fee is incurred.

(2) An automotive oil manufacturer or importer of automotive oil must file a quarterly report even if there is no fee to report.

(d) Discount. A person required to pay the fee may retain 1.0% of the amount of the fees due from each quarterly payment as reimbursement for administrative costs.

(e) Penalty. Penalties due on delinquent fees and reports shall be imposed as

provided by the Tax Code, §111.061.

(f) Interest. Interest due on delinquent fees shall be imposed as provided by the Tax Code, §111.060.

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

Issued in Austin, Texas, on December 13, 1991.

TRD-9115881 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 463-4028

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Chapter 7. Administration of State Lottery Act

Subchapter A. Procurement

• 34 TAC §7.101

The Comptroller of Public Accounts proposes new §7.101, concerning lottery procurement procedures. These procedures outline the solicitation process for the lease and purchase of various goods and services by the Lottery Division. These procedures also define the contract award process, as well as the protest process.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no significant revenue impact on state or local government.

Dr. Plaut also has determined that for each year of the first five years the section is in effect there would be no significant public cost or benefit. There is no anticipated economic cost to persons who are required to comply with the section as proposed. This section is adopted under the State Lottery Act, §2. 02, and does not require a statement of fiscal implications for small businesses.

Comments on the new section may be submitted to Nora Linares, Director, Lottery Division, Comptroller of Public Accounts, Austin, Texas 78774.

The new section is proposed under the State Lottery Act, §2.02, which provides the comptroller with the authority to adopt all rules necessary to administer the State Lottery Act.

§7.101. Lottery Procurement Procedures.

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

(1) Act–The State Lottery Act.

(2) Director–The director of the division.

(3) Division–The lottery division in the comptroller's office.

(4) Emergency purchase–The purchase or lease of goods or services that are so badly needed that the division will suffer financial or operational damage if the goods or services are not secured immediately.

(5) Goods–Supplies, materials, and equipment.

(6) IFB–A written invitation for bid.

(7) Lottery–The procedures operated by the division under the State Lottery Act through which prizes are awarded or distributed by chance among persons who have paid, or unconditionally agreed to pay, for a chance or other opportunity to receive a prize.

(8) Nonresident bidder or proposer–A bidder or proposer whose principal place of business is not in Texas, but excludes a bidder or proposer whose ultimate parent company or majority owner has its principal place of business in Texas.

(9) Principal place of business in Texas–A business entity that has at least one permanent office located in Texas, from which business activities other than submitting bids or proposals to governmental agencies are conducted, with at least one employee working in that office.

(10) Produced in Texas–Those goods that are manufactured in Texas, excluding the sole process of packaging or repackaging.

(11) RFP–A written request for proposals.

(12) Resident bidder or proposer–A bidder or proposer whose principal place of business is in Texas, and includes a bidder or proposer whose ultimate parent company or majority owner has its principal place of business in Texas.

(13) Services–Includes consultant services, personal services, professional services, facility services (i.e., the lease of real property, including utility and custodial service), public relations, telecommunications services, and advertising services.

(14) State contract–A term contract for goods or services established and administered by the General Services Commission.

(b) Competitive solicitations.

(1) For the purchase or lease of goods and services not expected to exceed $5,000, or for the purchase or lease of goods and services available under a state contract, a competitive solicitation, whether formal or informal, may be conducted, but is not required.

(2) For the purchase or lease of goods and services not expected to exceed $25,000, the division, at a minimum, must conduct an informal competitive solicitation in an attempt to obtain at least three competitive price quotations.

(3) For the purchase or lease of goods and services expected to exceed $25,000, the division must conduct a formal competitive solicitation in an attempt to obtain at least three competitive bids or proposals.

(4) For the purchase of printing services, the division must conduct a formal competitive solicitation in an attempt to obtain at least three competitive bids or proposals.

(5) For those formal or informal competitive solicitations where less than three bids, proposals, or price quotations are received, the division must document the reasons, if known, for the lack of three bids, proposals or price quotations. If less than three bids, proposals, or price quotations are received, the division may cancel the solicitation and conduct another solicitation, or it may award a contract if one acceptable bid, proposal, or price quotation is received.

(6) Notwithstanding paragraphs (1)-(3) of this subsection, the division may make an emergency purchase or lease of goods or services if the division will suffer financial or operational damage. Prior to making an emergency purchase or lease of goods or services, the existence of an emergency should be documented. For emergency purchases in excess of $5,000, the division, at a minimum, must conduct an informal competitive solicitation in an attempt to obtain at least three competitive price quotations. The division may ask the General Services Commission or any other appropriate entity for advice and assistance in the handling of an emergency purchase.

(c) Informal competitive solicitations.

(1) An informal competitive solicitation is a process conducted in order to receive at least three competitive price quotations for a specifically identified good or service, without the advertisement and issuance of an IFB or RFP. The price quotations may be solicited by letter, telegram, facsimile, or telephone call. The following information must be recorded by the division in the solicitation file:

(A) the name and telephone number of the person or company submitting the price quotation;

(B) the time and date the price quotation was received;

(C) the amount of the price quotation; and

(D) the name and telephone number of the person receiving the price quotation for the division.

(2) The director or the director's designees shall award a contract to the qualified bidder submitting the lowest price quotation. In determining the lowest price quotation, an amount will be added to a nonresident bidder's or proposer's price quotation equal to the amount a Texas resident bidder or proposer would be required to underbid a nonresident bidder or proposer to obtain a comparable contract in the state in which the nonresident bidder or proposer has its principal place of business. This added amount will only be used for evaluation purposes, and will not be included in the nonresident bidder's or proposer's contract if one is awarded.

(3) The contract shall be awarded by the issuance of a written purchase order.

(d) Formal competitive solicitations.

(1) A formal competitive solicitation is a process conducted in order to receive at least three sealed competitive bids or proposals pursuant to the issuance of an IFB or RFP, respectively. An IFB will be used when the division is able to describe, by way of established specifications, exactly what it wishes to procure, and wants bidders to offer such at a specific price. An RFP will be used when the division knows generally what it wishes to procure in order to accomplish a certain goal(s) or objective(s) , and wants proposers to offer a solution(s) to address such need(s) at a specific price(s).

(2) When an RFP is used by the division, the RFP shall contain, at a minimum, the following:

(A) a general description of the goods to be provided and/or the services to be performed, and a specific identification of the goals or objectives to be achieved;

(B) a description of the format proposals must follow and the elements they must contain;

(C) the time and date proposals are due, and the location/person they are to be submitted to; and

(D) an identification of the criteria to be utilized in evaluating proposals and awarding a contract.

(3) Where time permits, the division shall advertise formal competitive solicitations, whether by IFB or RFP, in the *Texas Register*. The division may advertise such solicitations in other media determined appropriate by the division. In addition, the division shall provide a copy of the IFB or RFP to those vendors who have specifically expressed, in writing, an interest in providing certain goods or services to the division, and whose names and addresses are on file with the division.

(4) For formal competitive solicitations where an IFB is used, the director or the director's designee shall award a contract to the qualified bidder submitting the lowest bid, except that the director may reject all bids if it is determined to be in the best interest of the state. In determining the lowest bid, an amount will be added to a nonresident bidder's bid equal to the amount a Texas resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident bidder has its principal place of business. This added amount will only be used for evaluation purposes, and will not be included in the nonresident bidder's contract if one is awarded. The contract shall be awarded by the issuance of a written purchase order. At the time the purchase order is issued, the division shall also notify, in writing, all other bidders of the contract award by certified mail, return receipt requested, or by overnight mail. Any information relating to the solicitation not made privileged from disclosure by law shall be made available for public disclosure after issuance of the purchase order pursuant to the Texas Open Records Act.

(5) For formal competitive solicitations where an RFP is used, the director or the director's designee(s) shall, prior to the deadline for receipt of proposals, develop and establish a comprehensive evaluation plan to be utilized by an evaluation committee in evaluating the proposals and awarding a contract. The evaluation plan shall be based upon the evaluation criteria identified in the RFP. If the evaluation criteria include price as one of the criteria, an amount will be added to a nonresident proposer's price proposal equal to the amount a Texas resident proposer would be required to underbid a nonresident proposer to obtain a contract in the state in which the nonresident proposer has its principal place of business. This added amount will only be used for evaluation purposes, and will not be included in the nonresident proposer's contract if one is awarded. All proposals received will be reviewed by an evaluation committee appointed by the director. The evaluation committee will evaluate and rank all proposals in accordance with the evaluation plan. As part of the evaluation process, the top proposers may be requested to make an oral presentation to the committee, which may include an inspection trip to the proposer's facilities at a mutually agreeable time and place. The evaluation committee will then make a final ranking of all proposers who have made a presentation, based upon the presentation and the evaluation plan. The committee will forward its written recommendation to the director, who will review the recommendation and make the final decision, including the acceptance of a proposal in whole or in part. The director or the director's designee(s) shall then attempt to negotiate a contract with the selected proposer. If a contract cannot be negotiated with the selected proposer at a price the director determines reasonable, negotiations with that proposer will be terminated, and negotiations will be undertaken with the next highest ranked proposer. This process will be continued until a contract is executed by a proposer and the director, or negotiations with the highest ranked proposers are terminated. If no contract is executed, the director or the director's designee(s) may attempt to negotiate a contract with any of the other proposers. Negotiations will continue until a contract is executed or all proposals are rejected. If a contract is executed, the division shall promptly notify, in writing, all other proposers of the contract award by certified mail, return receipt requested, or by overnight mail. Any information relating to the solicitation not made privileged from disclosure by law shall be made available for public disclosure after execution of the contract pursuant to the Texas Open Records Act.

(e) Preferences.

(1) In the award of any contract for the purchase or lease of services, preference shall be given to a Texas resident bidder or proposer. Preference means the right of a Texas resident bidder or proposer to receive a contract award over a nonresident bidder or proposer, the cost to the state and quality being equal.

(2) In the award of any contract for the purchase or lease of goods, preference shall be given to goods produced in Texas. Goods produced in Texas shall have the same preference as services offered by a Texas resident bidder or proposer.

(3) In the award of any contract for the purchase or lease of goods or services where the goods or services produced in Texas or offered by a Texas resident bidder or proposer are not equal in cost and quality, preference shall be given to those goods or services produced in another state or offered by a bidder or proposer from another state over those goods or services produced in a foreign country or offered by a bidder or proposer from a foreign country, the cost to the state and quality being equal.

(4) After application of the pref-

erences established in paragraphs (1)-(3) of this subsection, preference shall be given to a minority business, as defined in the State Lottery Act, §2. 06.

(5) If, after application of the preferences established in paragraphs (1)-(4) of this subsection, a tie continues, the contract award shall be made by the drawing of lots.

(6) A bidder or proposer entitled to a preference(s) under this subsection should claim the preference(s) in its bid or proposal. However, a preference(s) may be granted to a bidder or proposer who fails to claim the preference(s) if documents attached to the bid or proposal clearly indicate entitlement to the preference(s).

(f) Protests.

(1) Any bidder or proposer aggrieved by the terms of any formal competitive solicitation, or with any contract award made pursuant to such a solicitation, may protest the division's or the director's action. For the protest of a formal competitive solicitation, a protest must be filed, in writing, with the comptroller's general counsel within 72 hours after issuance of the IFB or RFP. For the protest of a contract award, a protest must be filed, in writing, with the comptroller's general counsel within 72 hours after receipt of notice of the contract award. Protests not filed timely will not be considered, and the protestant will be so notified, in writing, by the comptroller's general counsel.

(2) To be considered, a protest must contain:

(A) a specific identification of the statutory provision, rule provision, or procurement procedure allegedly violated;

(B) a brief statement of the relevant facts;

(C) an identification of the issue or issues to be resolved; and

(D) arguments and authorities in support of the protest;

(E) an affidavit that the contents of the protest are true and correct; and

(F) a certification that a copy of the protest (if to a contract award) has been served on the successful proposer.

(3) In the event of a timely-filed protest of a solicitation, the director shall not proceed with issuance of a purchase order or execution of a contract unless the comptroller determines, in writing, that such action is necessary to protect the interests of the state.

(4) In the event of a protest of a contract award, the successful proposer may file a written response to the protest within three business days after the comptroller's receipt of the protest.

(5) The general counsel will review the protest, any response, and the solicitation file; prepare a written report with findings and recommendation; and deliver the written report to the deputy comptroller. The deputy comptroller will review the protest, any response, the contract file, and the general counsel's report, and will provide a recommendation to the comptroller. The comptroller will issue a written determination on the protest, which may include an order cancelling the solicitation or voiding the contract. The comptroller's written determination will be served, by certified mail, return receipt requested, on the protestant and the successful proposer (if any), and the determination shall be administratively final when issued.

(g) Contract terms.

(1) When determined appropriate by the director, a contract for the purchase or lease of goods or services related to the implementation, operation, or administration of the lottery shall provide for liquidated damages and a performance bond in an amount equal to the director's best available estimate of the revenue that would be lost by the state if the contractor fails to meet deadlines specified in the contract or materially fails to perform its contractual obligations in any other manner. When such contract terms are determined appropriate by the director, the IFB or RFP shall reflect such requirement.

(2) When determined appropriate by the director, a contract for the purchase or lease of goods or services related to the implementation, operation, or administration of the lottery shall provide that the contractor, when utilizing subcontractors, shall give a preference to minority businesses, as defined in the State Lottery Act, §2.06. When such contract term is determined appropriate by the director, the IFB or RFP shall reflect such requirement.

(3) A contract for the purchase or lease of goods or services relating to the implementation, operation, or administration of the lottery shall provide that the director may terminate the contract, without penalty, if an investigation made pursuant to the Act reveals that the person to whom the contract was awarded would not be eligible to receive a sales agent license under the State Lottery Act, §3.02. An IFB or RFP may require that bidders or proposers provide in their bids or proposals sufficient information to allow the division to determine whether the bidder or proposer meets the eligibility requirements for a sales agent license.

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

Issued in Austin, Texas, on December 16, 1991.

TRD-9115919

Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 463-4028

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 13. Controlled Substances and Precursor/Apparatus Rules and Regulations

Subchapter A. General Provisions

• 37 TAC §13.1

The Texas Department of Public Safety proposes an amendment to §13.1, concerning general information. The amendment to this section adds new paragraphs (5) and (45) with definitions for a concurring practitioner and registration. Other paragraphs are renumbered accordingly. Paragraph (44) is amended by adding language that requires a registrant to have a current valid registration and deleting reference to the Act, §481.063.

Melvin C. Peeples, assistant chief of fiscal affairs, as determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

B. C. Lyon, captain, narcotics service, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification on the part of practitioners as to who is eligible for designation as their agent. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendment is proposed under the Health and Safety Code, which provides the Texas Department of Public Safety with authority to promulgate rules and regulations to

administer the provisions of this Act.

§13.1. General Information.

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

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

(5) Concurring practitioner–A physician, dentist, veterinarian, or podiatrist who is a registrant as defined by the Act, §481.002(44), and who:

(A) examines the patient of another physician, dentist veterinarian, or podiatrist who is not a registrant as defined by the Act, §481.002(44), but is currently licensed by the appropriate state licensing board;

(B) concurs with the diagnosis and proposed treatment made by the other; and

(C) dispenses or prescribes the proper controlled substance to the patient acting in the usual course of professional practice.

(6)[(5)] Controlled substance–A substance, including a drug and an immediate precursor, listed in Schedules I-V or Penalty Groups 1-4 of the Act.

(7)[(6)] Counterfeit/simulated controlled substance–

(A) a substance that is purported to be a controlled substance but is chemically different from the controlled substance it is purported to be; or

(B) a controlled substance which, or the container or labeling of which, without authorization bears the trademark, tradename, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(8)[(7)] Deliver–To transfer, actually or constructively, to another a controlled substance, counterfeit substance, or drug paraphernalia, regardless of whether there is an agency relationship. The term includes offering to sell a controlled substance, counterfeit substance, or drug paraphernalia.

(9)[(8)] Delivery or drug transaction–The act of delivering.

(10)[(9)] Department–The Texas Department of Public Safety.

(11)[(10)] Designated agent–An individual designated under the Act, §481.073 to communicate a practitioner's instructions to a pharmacist.

(12)[(11)] Director–The director of the department or an employee of the department designated by the director.

(13)[(12)] Dispense–The delivery of a controlled substance in the course of professional practice or research, by a practitioner or person acting under the lawful order of a practitioner, to an ultimate user or research subject. The term includes the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for delivery.

(14)[(13)] Dispenser–A practitioner, institutional practitioner, pharmacist, or pharmacy that dispenses a controlled substance.

(15)[(14)] Distribute–To deliver a controlled substance other than by administering or dispensing the substance.

(16)[(15)] Distributor–A person who distributes.

(17)[(16)] Drug–A substance, other than a device or a component, part, or accessory of a device that is:

(A) recognized as a drug in the official *United States Pharmacopoeia*, official *Homeopathic Pharmacopoeia of the United States*, official *National Formulary*, or a supplement to either pharmacopoeia or the formulary;

(B) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(C) intended to affect the structure or function of the body of man or animals but is not food; or

(D) intended for use as a component of a substance described in subparagraphs (A)-(C) of this paragraph.

(18)[(17)] Drug Enforcement Administration–The Drug Enforcement Administration of the United States Department of Justice or its successor agency.

(19)[(18)] Federal Controlled Substances Act–The Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 United States Code, §801 et seq.) or its successor statute.

(20)[(19)] Hospital–

(A) General hospital–Any establishment offering services, facilities, and beds for use beyond 24 hours for two or more nonrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy, and regularly maintaining at least clinical laboratory services, diagnostic x-ray services, treatment facilities which would include surgery and/or obstetrical care, and other definitive medical or surgical treatment of similar extent.

(B) Special hospital–Any establishment offering services, facilities, and beds for use beyond 24 hours for two or more nonrelated individuals who are regularly admitted, treated, and discharged and require services more intensive than room, board, personal services, and general nursing care and which has clinical laboratory facilities, diagnostic x-ray facilities, treatment facilities, and/or other definitive medical treatment and has a medical house staff in regular attendance, and maintains records of the clinical work performed for each patient.

(C) Ambulatory surgical centers (if licensed)–Approved surgical centers licensed by the state hospital licensing board and approved by Medicaid to do day surgery when patient is not admitted beyond a 24-hour period.

(21)[(20)] Institutional practitioner–An intern, resident physician, fellow, or person in an equivalent professional position who:

(A) is not licensed by the appropriate state professional licensing board;

(B) enrolled in a bona fide professional training program in a base hospital or institutional training facility registered by the Drug Enforcement Administration; and

(C) is authorized by the base hospital or institutional training facility to administer, dispense, or prescribe controlled substances.

(22)[(21)] Lawful possession–The possession of a controlled substance that has been obtained in accordance with state or federal law.

(23)[(22)] Long-term care facility–An establishment licensed by the Texas Department of Health, Bureau of Long Term Care, which maintains emergency medical kits and furnishes (in single or multiple facilities) food and shelter to four or more persons unrelated to the proprietor and, in addition, provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners or services which meet some need beyond the basic provisions of food, shelter, and laundry.

(24)[(23)] Manufacture–The production, preparation, propagation, compounding, conversion, or processing of a controlled substance other than marihuana, directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes the packaging or repackaging of the substance or labeling or relabeling of its container. However, the term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

(A) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of professional practice; or

(B) by a practitioner, or by an authorized agent under the supervision of the practitioner, for or as an incident to research, teaching, or chemical analysis and not for delivery.

(25)[(24)] Medical purpose–The use of a controlled substance for relieving or curing a mental or physical disease or infirmity.

(26)[(25)] Medication order–An order from a practitioner to dispense a drug to a patient in a hospital for immediate administration while the patient is in the hospital or for emergency use on the patient's release from the hospital.

(27)[(26)] Official prescription blank–The triplicate prescription form supplied to practitioners at cost by the department for prescribing, administering, dispensing, or delivering Schedule II controlled substances.

(28)[(27)] Patient–A human for whom or an animal for which a drug is administered, dispensed, delivered, or prescribed by a practitioner.

(29)[(28)] Person–An individual, corporation, government business trust, estate, trust, partnership, association, or any other legal entity.

(30)[(29)] Pharmacist–A person licensed by the Texas State Board of Pharmacy to practice pharmacy and who acts as an agent for a pharmacy.

(31)[(30)] Pharmacist-in-charge–The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for the pharmacy's compliance with the Act and other laws relating to pharmacy.

(32)[(31)] Pharmacist intern–An undergraduate student enrolled in the professional sequence of a college of pharmacy approved by the Texas State Board of Pharmacy and participating in a school-based, board-approved internship program or a graduate of a college of pharmacy who is participating in a board-approved internship.

(33)[(32)] Pharmacy–A facility licensed by the Texas State Board of Pharmacy where a prescription for a controlled substance is received or processed in accordance with state or federal law.

(34)[(33)] Physician assistant, assistant, or P.A.–Refer specifically to a person who is a graduate of a physician assistant training program approved by the Council on Allied Health Education Accreditation of the American Medical Association or a person who has passed the examination given by the national commission on the certification of physician's assistants.

(35)[(34)] Possession–Actual care, custody, control, or management.

(36)[(35)] Practitioner–

(A) a physician, dentist, veterinarian, podiatrist, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state;

(B) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state; or

(C) a person practicing in and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current Drug Enforcement Administration registration number, who may legally prescribe Schedule II, III, IV, or V controlled substances in that state.

(37)[(36)] Prescribe–The act of a practitioner to authorize a controlled substance to be dispensed to an ultimate user.

(38)[(37)] Prescription–An order by a practitioner to a pharmacist for a controlled substance for a particular patient that specifies:

(A) the date of issue;

(B) the name and address of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;

(C) the name and quantity of the controlled substance prescribed with the quantity shown numerically followed by the number written as a word if the order is written or, if the order is communicated orally or telephonically, with the quantity given by the practitioner and transcribed by the pharmacist numerically; and

(D) directions for the use of the drug.

(39)[(38)] Principal place of business–A location where a person manufactures, distributes, dispenses, analyzes, or possesses a controlled substance. The term does not include a location where a practitioner dispenses a controlled substance on an outpatient basis unless the controlled substance is stored at that location.

(40)[(39)] Processing fee–The fee charged each applicant for registration or reregistration for the costs necessary for processing the application and administration of the Act.

(41)[(40)] Production–Includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(42)[(41)] Provider pharmacy–A pharmacy that has a signed agreement with a long-term care facility (LTCF) to provide controlled substances and be responsible for obtaining controlled substances registration for an emergency medical kit in the LTCF.

(43)[(42)] Readily retrievable–The maintenance of records required to be kept by the Act or these rules by automatic data processing or mechanized record-keeping systems in such a manner that they can be separated from all records in a reasonable time or records maintained in a manner on which certain items are asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the records.

(44)[(43)] Registrant–A person **who holds a current valid registration** [is registered under the Act, §481.063].

(45) Registration–The certificate issued by both the department under the Act or by the Drug Enforcement Administration under the Federal Controlled Substance Act authorizing a registrant to distribute, dispense, analyze, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state unless the context clearly indicates only the registration of the department or the registration of the Drug Enforcement Administration.

(46)[(44)] Registration fee–The processing fee.

(47)[(45)] Substitution–The dis-

pensing of a drug or a brand of drug other than that which is ordered or prescribed.

(48)[(46)] Supervising physician–A physician licensed by the Texas State Board of Medical Examiners either as a doctor of medicine or doctor of osteopathic medicine who is assuming responsibility and legal liability for the services rendered by the physician assistant and who has been approved by the board to supervise a specific physician assistant.

(49)[(47)] Triplicate prescription form–An official department prescription form used to administer, dispense, prescribe, or deliver a Schedule II controlled substance to an ultimate user.

(50)[(48)] Ultimate user–A person who has lawfully obtained and possesses a controlled substance for the person's own use, for the use of a member of the person's household, or for administering to an animal owned by the person or by a member of the person's household.

(b) (No change.)

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

Issued in Austin, Texas, on December 9, 1991.

TRD-9115757 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: January 20, 1992

For further information, please call: (512) 465-2000

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Subchapter B. Registration

• 37 TAC §13.15, §13.29

The Texas Department of Public Safety proposes an amendment to §13.15, and new §13.29, concerning registration. Paragraph (1) of §13.15 is amended to include designated agent as a person not needing to register and can lawfully possess controlled substances under the Texas Controlled Substances Act. New §13.29, entitled "Agent or Designated Agent" is proposed to specify the qualifications that a person so designated is required to meet. Also, a designating practitioner shall maintain and disseminate a current list of designated agents.

Melvin C. Peeples, assistant chief of fiscal affairs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

B. C. Lyon, captain, narcotics service, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure the public that only authorized persons by statute may transmit a practitioner's instructions to a pharmacist to dispense a controlled substance. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendment and new section are proposed under the Health and Safety Code, §481.064, which provides the Texas Department of Public Safety with authority to promulgate rules and regulations to administer the provisions of this Act.

§13.15. Persons Exempt from Registration. The following persons need not register and may lawfully possess controlled substances under the Texas Controlled Substances Act (the Act):

(1) an agent, **designated agent,** or employee of any registered manufacturer, distributor, analyzer, or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

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

§13.29. Agent or Designated Agent.

(a) A practitioner may not designate as an agent another practitioner who is not a registrant.

(b) A designated agent must be:

(1) a registered nurse licensed in this state;

(2) a vocational nurse licensed in this state;

(3) a physician assistant licensed in this state; or

(4) an employee located in the designating practitioners office who is a member of the health care staff of the office.

(c) A designating practitioner shall maintain in the practitioner's usual place of business a current written list of persons designated as agents.

(d) Each time a person is added to or deleted from the list, a practitioner shall provide the current list to all pharmacists who have requested such a list.

(e) Upon request of an investigation listed in the Health and Safety Code, §481.073(a), a practitioner shall make the current designated agent list available to the investigator.

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

Issued in Austin, Texas, on December 9, 1991.

TRD-9115756 James R. Wilson
Director
Texas Department of Public Safety

Earliest date of adoption: January 20, 1992

For further information, please call: (512) 465-2000

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Subchapter C. Security

• 37 TAC §13.43

The Texas Department of Public Safety proposes an amendment to §13.43, concerning minimum security controls for all other registrants. Subsection (d) is added, which refers to the penalty for failure to maintain strict security and proper accountability of all controlled substances.

Melvin C. Peeples, assistant chief of fiscal affairs, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

B. C. Lyon, captain, narcotics service, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure controlled substances are not diverted into the illicit market. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendment is proposed under the Health and Safety Code, which provides the Texas Department of Public Safety with authority to promulgate rules and regulations to administer the provisions of this Act.

§13.43. Minimum Security Controls for All Other Registrants.

(a) -(c) (No change.)

(d) Failure to maintain strict security and proper accountability of all controlled substances may be considered a record-keeping violation as provided in the Act, §481.128, as well as a security requirement violation.

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

Issued in Austin, Texas, on December 9, 1991.

TRD-9115755 James R. Wilson
Director
Texas Department of Public Safety

Earliest date of adoption: January 20, 1992

For further information, please call: (512) 465-2000

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Subchapter D. Record Keeping

• 37 TAC §13.66

The Texas Department of Public Safety proposes an amendment to §13.66, concerning written and oral prescriptions. Subsection (g)(3) is amended by revising the time period from the second to the seventh day after the date of issuance of a prescription for which a Schedule II controlled substance may be obtained. Amendment to subsection (j)(1) corrects a previous typographical error.

Melvin C. Peeples, assistant chief of fiscal affairs, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

B. C. Lyon, Captain, narcotics service, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an increased time limit up to seven days in which to get a Schedule II controlled substance prescription filled. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendment is proposed under the Health and Safety Code, §481.064, which provides the Texas Department of Public Safety with authority to promulgate rules and regulations to administer the provisions of this Act.

§13.66. Written and Oral Prescriptions.

(a)-(f) (No change.)

(g) All prescriptions for Schedule II controlled substances must be on the triplicate prescription form and contain all information required in the Act, §481.075(d) and (e).

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

(3) No prescription for Schedule II controlled substances shall be filled after the end of the **seventh** [second] day **after** [following] the **date** [day] on which the prescription **is** [was] issued.

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

(j) A practitioner violates the Act, §481.074 or §481.075, if such practitioner:

(1) issues prescriptions for or dispenses controlled substances to a person known to be **a** [an] habitual user of controlled substances, or to a person who the practitioner should have known was a habitual user of controlled substances. A practitioner administering or dispensing (but not prescribing) narcotic drugs listed in any schedule of the Act to a narcotic-dependent person may do so only as authorized under the provisions of the Code of Federal Regulations, Title 21, Chapter 2, §1306.7;

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

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

Issued in Austin, Texas, on December 9, 1991.

TRD-9115754

James R. Wilson
Director
Texas Department of Public Safety

Earliest date of adoption: January 20, 1992

For further information, please call: (512) 465-2000

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 29. Purchased Health Services

Subchapter L. General Administration

• 40 TAC §29.1101, §29.1104

The Texas Department of Human Services proposes an amendment to §29.1102, concerning payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, and psychologists' services in its Purchased Health Services chapter. The department is also proposing the repeal of §29.1104, concerning reasonable charge in its Purchased Health Services chapter. In addition, a new §29.1104, regarding Texas Medicaid reimbursement methodology, is being proposed. The purpose of the amendment, repeal, and new section is to implement a reimbursement methodology which is based upon historical payments adjusted to account for the adequacy of access to health care services, or the resources required by the economically efficient provider to produce such services.

The new reimbursement methodology will replace the existing Medicare profiling system in which reimbursement fees are based upon a reasonable charge methodology. Medicare will no longer maintain this system but will instead adopt a resource-based relative value system. Implementation is projected to be January 1, 1992. With the exception of the access-based reimbursement, the Texas Medicaid Reimbursement Methodology will be based upon the Medicare initiative.

The amended and proposed sections specify the providers and services covered by the methodology, the methodology for reimbursement, the policy that there will be no geographic or specialty differential, and the timing of and requirements for the fee review process.

Reimbursement for ambulance services will continue to be in accordance with a reasonable charge methodology. Reimbursement for clinical diagnostic laboratory services will continue to be based upon the Medicare-established fee schedule.

Burton F. Raiford, interim commissioner, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the proposal. The effect on state government for the first five-year period the proposal will be in effect is an estimated additional cost of $6,017,760 for fiscal year 1992; $10,312,400 for fiscal year 1993; $12,497,938 for fiscal year 1994; $14,778,267 for fiscal year 1995; and $17,334,914 for fiscal year 1996. There will be no fiscal implications for local government as a result of enforcing or administering the proposal.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be enhanced reimbursement to primary care providers assuring continued provider participation in the Medicaid program and accessability of services to clients. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Joseph B. Branton, Jr. at (512) 338-6505 in DHS's Purchased Health Services. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-347, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

DHS has scheduled a public hearing concerning this proposal. The hearing will begin at 9 a.m. on January 9, 1992, in the public hearing room on the first floor of the John H. Winters Building, 701 West 51st Street, Austin. A copy of this proposal is being sent to each DHS field office, where it will be available for public review.

The amendment and new section are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§29.1102. Payments for Laboratory and X-ray Services, Radiation Therapy, Physical Therapists' Services, Physician Services, Podiatry Services, Chiropractic Services, Optometric Services, Ambulance Services, Dentists' Services, and Psychologists' Services. Subject to qualifications, limita-

tions, and exclusions as provided in this chapter, payment to eligible providers [for laboratory and X-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, and psychologists' services, other than inpatient or outpatient services of a Title XIX hospital,] must not exceed **the lesser of the provider's billed amount or the amount derived from the methodology described** [the reasonable charge for a specific service as provided] in §29.1104 of this title (relating to **Texas Medicaid Reimbursement Methodology** [Reasonable Charges]).

§29.1104. Texas Medicaid Reimbursement Methodology (TMRM).

(a) Reimbursement for physicians and certain other practitioners.

(1) Introduction. Except as otherwise specified, the TMRM for covered services provided by physicians and certain other practitioners employs a prospective payment system which is based upon the Texas Department of Human Services' (DHSs') determination of adequacy of access to health care services as described in this section, or the actual resources required by an economically efficient provider to produce each individual service.

(A) There shall be no geographical or specialty reimbursement differential for individual services.

(B) The fees for individual services will be reviewed at least every two years and will be based upon either:

(i) historical payments, with adjustments, to ensure adequate access to appropriate health care services; or

(ii) actual resources required by an economically efficient provider to produce each individual service.

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

(A) Access-based reimbursement fees (ABRF)–Fees for individual services based upon historical payments adjusted, where the department deems necessary, to account for deficiencies relating to the adequacy of access to health care services as defined in subparagraph (B) of this paragraph.

(B) Adequacy of access–Measures of adequacy of access to health care services include, but are not limited to, the following determinations:

(i) adequate participation in the Medicaid program by physicians and other practitioners; and/or

(ii) the ability of the eligible Medicaid population to receive adequate health care services in an appropriate setting.

(C) Resource-based reimbursement fees (RBRF)–Fees for individual services based upon DHS's determination of the resources required by an economically efficient provider to produce individual services. An RBRF is defined mathematically by the following formula: RBRF1 = (RVUw-1 + RVUo-1 + RVUm-1) * CF where, RBRF1 = Resource-Based Reimbursement Fee for Service 1 RVUw-1 = Relative Value Unit for Work for Service 1 RVUo-1 = Relative Value Unit for Overhead for Service 1 RVUm-1 = Relative Value Unit for Malpractice for Service 1 CF = Conversion Factor

(D) Conversion factor–The dollar amount by which the sum of the three cost component RVUs is multiplied in order to obtain a reimbursement fee for each individual service. The initial value of the conversion factor is $26,873. The conversion factor will be updated based on the adjustments described in subparagraph (E) of this paragraph at the beginning of each state fiscal year biennium. DHS may, at its discretion, develop and apply multiple conversion factors for various classes of service such as obstetrics, pediatrics, general surgeries, and/or primary care services.

(E) Conversion factor adjustments–The biennium adjustment of the conversion factor is composed of the following two components.

(i) Inflation adjustment–To account for general inflation, the conversion factor is adjusted by one-half of the forecasted rate of change of the implicit price deflator–personal consumption expenditures (IPD-PCE). To inflate the conversion factor for the prospective period, DHS uses the lowest feasible IPD-PCE forecast consistent with the forecasts of nationally recognized sources available to DHS at the time of preparation of the conversion factor(s).

(ii) Access-based adjustment–Adjustments to the conversion factor may also be made to ensure adequacy of access as defined in subparagraph (B) of this paragraph.

(F) Relative value units (RVUs)–The relative value assigned to each of the three individual components which comprise the cost of providing individual Medicaid services. The three cost components of each reimbursement fee are intended to reflect the work, overhead, and professional liability expense required to produce each individual service. The RVUs that are employed in the TMRM must, except as otherwise specified, be based upon the RVUs of the individual services as specified in the Medicare fee schedule. DHS will review any changes to or revisions of the various Medicare RVUs and, if applicable, DHS adopts the changes as part of the TMRM.

(3) Calculating the payment amounts. The fee schedule that results from the TMRM must be composed of two separate components:

(A) the access-based fees; and

(B) the resource-based fees which must be composed of RVUs for the work, overhead, and malpractice components. The sum of these components must then be multiplied by the conversion factor to produce a reimbursement fee for each individual service.

(b) Reimbursement for ambulance services. Ambulance services are reimbursed in accordance with a reasonable charge methodology. DHS or its designee defines and determines reasonable charges and payments based on reasonable charges as follows.

(1) A reasonable charge is a charge for a specific service which is the lowest of:

(A) the provider's customary charge for that service;

(B) the prevailing charges made for similar services in the geographic locality; or

(C) the actual charge of the eligible provider.

(2) DHS or its designee uses a statistical base for making reasonable charge determinations. The statistical base is comprised of individual charges gathered from available sources, including Medicare (Title XVIII) and Medicaid (Title XIX).

(3) Determination of reasonable charges, as set forth in this section and established by the Texas Board of Human Services, is made in accordance with applicable federal requirements. Payments for services provided must not exceed the Medicare allowable charges.

(c) Reimbursement for clinical diagnostic laboratory services. Clinical diag-

nostic laboratory tests performed in a physician's office, by an independent laboratory, or by a hospital laboratory for its outpatients are reimbursed on the basis of the Medicare-established fee schedule.

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

Issued in Austin, Texas, on December 13, 1991.

TRD-9115875

Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: March 1, 1992

For further information, please call: (512) 450-3765

• 40 TAC §29.1104

(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 Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§29.1004. Reasonable Charges.

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

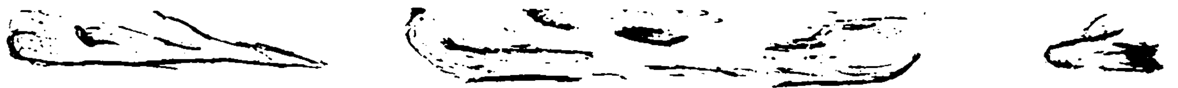
Issued in Austin, Texas, on December 13, 1991.

TRD-9115876

Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: March 1, 1992

For further information, please call: (512) 450-3765



Name: Juan R. Montelongo

Grade: 12

School: Del Rio High School, San Felipe Del Rio CISD

Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filling or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

Part V. Office of the Consumer Credit Commissioner

Chapter 85. Rules of Operation for Pawnshops

- **7 TAC §§85.1, 85.2, 85.4, 85.9, 85.12, 85.22, 85.30, 85.50, 85.57, 85.58**

The Office of the Consumer Credit Commissioner has withdrawn from consideration for permanent adoption proposed new §§85.1, 85.2, 85.4, 85.9, 85. 12, 85.22, 85.30, 85.50, 85.57, and 85.58 which appeared in the August 13, 1991, issue of the *Texas Register* (16 TexReg 4389). The effective date of this withdrawal is December 13, 1991.

Issued in Austin, Texas, on December 13, 1991.

TRD-9115852 Al Endsley
Consumer Credit
Commissioner

Effective date: December 13, 1991

For further information, please call: (512) 479-1280

1992 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1992 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on February 28, November 6, December 1, and December 29. A bullet beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 *Friday, January 3	Friday, December 27	Tuesday, December 31
2 *Tuesday, January 7	Tuesday, December 31	Thursday, January 2
3 Friday, January 10	Monday, January 6	Tuesday, January 7
4 Tuesday, January 14	Wednesday, January 8	Thursday, January 9
5 Friday, January 17	Monday, January 13	Tuesday, January 14
6 Tuesday, January 21	Wednesday, January 15	Thursday, January 16
Friday, January 24	1991 ANNUAL INDEX	
7 Tuesday, January 28	Wednesday, January 22	Thursday, January 23
8 Friday, January 31	Monday, January 27	Tuesday, January 28
9 Tuesday, February 4	Wednesday, January 29	Thursday, January 30
10 Friday, February 7	Monday, February 3	Tuesday, February 4
11 Tuesday, February 11	Wednesday, February 5	Thursday, February 6
12 Friday, February 14	Monday, February 10	Tuesday, February 11
13 Tuesday, February 18	Wednesday, February 12	Thursday, February 13
14 *Friday, February 21	Friday, February 14	Tuesday, February 18
15 Tuesday, February 25	Wednesday, February 19	Thursday, February 20
Friday, February 28	NO ISSUE PUBLISHED	
16 Tuesday, March 3	Wednesday, February 26	Thursday, February 27
17 Friday, March 6	Monday, March 2	Tuesday, March 3
18 Tuesday, March 10	Wednesday, March 4	Thursday, March 5
19 Friday, March 13	Monday, March 9	Tuesday, March 10
20 Tuesday, March 17	Wednesday, March 11	Thursday, March 12
21 Friday, March 20	Monday, March 16	Tuesday, March 17
22 Tuesday, March 24	Wednesday, March 18	Thursday, March 19
23 Friday, March 27	Monday, March 23	Tuesday, March 24
24 Tuesday, March 31	Wednesday, March 25	Thursday, March 26
25 Friday, April 3	Monday, March 30	Tuesday, March 31
26 Tuesday, April 7	Wednesday, April 1	Thursday, April 2
27 Friday, April 10	Monday, April 6	Tuesday, April 7
Tuesday, April 14	FIRST QUARTERLY INDEX	
28 Friday, April 17	Monday, April 13	Tuesday, April 14
29 Tuesday, April 21	Wednesday, April 15	Thursday, April 16

30 Friday, April 24	Monday, April 20	Tuesday, April 21
31 Tuesday, April 28	Wednesday, April 22	Thursday, April 23
32 Friday, May 1	Monday, April 27	Tuesday, April 28
33 Tuesday, May 5	Wednesday, April 29	Thursday, April 30
34 Friday, May 8	Monday, May 4	Tuesday, May 5
35 Tuesday, May 12	Wednesday, May 6	Thursday, May 7
36 Friday, May 15	Monday, May 11	Tuesday, May 12
37 Tuesday, May 19	Wednesday, May 13	Thursday, May 14
38 Friday, May 22	Monday, May 18	Tuesday, May 19
39 Tuesday, May 26	Wednesday, May 20	Thursday, May 21
40 *Friday, May 29	Friday, May 22	Tuesday, May 26
41 Tuesday, June 2	Wednesday, May 27	Thursday, May 28
42 Friday, June 5	Monday, June 1	Tuesday, June 2
43 Tuesday, June 9	Wednesday, June 3	Thursday, June 4
44 Friday, June 12	Monday, June 8	Tuesday, June 9
45 Tuesday, June 16	Wednesday, June 10	Thursday, June 11
46 Friday, June 19	Monday, June 15	Tuesday, June 16
47 Tuesday, June 23	Wednesday, June 17	Thursday, June 18
48 Friday, June 26	Monday, June 22	Tuesday, June 23
49 Tuesday, June 30	Wednesday, June 24	Thursday, June 25
50 Friday, July 3	Monday, June 29	Tuesday, June 30
51 Tuesday, July 7	Wednesday, July 1	Thursday, July 2
52 Friday, July 10	Monday, July 6	Tuesday, July 7
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56 Tuesday, July 28	Wednesday, July 22	Thursday, July 23
57 Friday, July 31	Monday, July 27	Tuesday, July 28
58 Tuesday, August 4	Wednesday, July 29	Thursday, July 30
59 Friday, August 7	Monday, August 3	Tuesday, August 4
60 Tuesday, August 11	Wednesday, August 5	Thursday, August 6
61 Friday, August 14	Monday, August 10	Tuesday, August 11
62 Tuesday, August 18	Wednesday, August 12	Thursday, August 13
63 Friday, August 21	Monday, August 17	Tuesday, August 18
64 Tuesday, August 25	Wednesday, August 19	Thursday, August 20
65 Friday, August 28	Monday, August 24	Tuesday, August 25
66 Tuesday, September 1	Wednesday, August 26	Thursday, August 27
67 Friday, September 4	Monday, August 31	Tuesday, September 1
68 Tuesday, September 8	Wednesday, September 2	Thursday, September 3
69 *Friday, September 11	Friday, September 4	Tuesday, September 8

70 Tuesday, September 15	Wednesday, September 9	Thursday, September 10
71 Friday, September 18	Monday, September 14	Tuesday, September 15
72 Tuesday, September 22	Wednesday, September 16	Thursday, September 17
73 Friday, September 25	Monday, September 21	Tuesday, September 22
74 Tuesday, September 29	Wednesday, September 23	Thursday, September 24
75 Friday, October 2	Monday, September 28	Tuesday, September 29
76 Tuesday, October 6	Wednesday, September 30	Thursday, October 1
77 Friday, October 9	Monday, October 5	Tuesday, October 6
Tuesday, October 13	THIRD QUARTERLY INDEX	
78 Friday, October 16	Monday, October 12	Tuesday, October 13
79 Tuesday, October 20	Wednesday, October 14	Thursday, October 15
80 Friday, October 23	Monday, October 19	Tuesday, October 20
81 Tuesday, October 27	Wednesday, October 21	Thursday, October 22
82 Friday, October 30	Monday, October 26	Tuesday, October 27
83 Tuesday, November 3	Wednesday, October 28	Thursday, October 29
Friday, November 6	NO ISSUE PUBLISHED	
84 Tuesday, November 10	Wednesday, November 4	Thursday, November 5
85 Friday, November 13	Monday, November 9	Tuesday, November 10
*86 Tuesday, November 17	Tuesday, November 10	Thursday, November 12
87 Friday, November 20	Monday, November 16	Tuesday, November 17
88 Tuesday, November 24	Wednesday, November 18	Thursday, November 19
89 Friday, November 27	Monday, November 23	Tuesday, November 24
Tuesday, December 1	NO ISSUE PUBLISHED	
90 Friday, December 4	Monday, November 30	Tuesday, December 1
91 Tuesday, December 8	Wednesday, December 2	Thursday, December 3
92 Friday, December 11	Monday, December 7	Tuesday, December 8
93 Tuesday, December 15	Wednesday, December 9	Thursday, December 10
94 Friday, December 18	Monday, December 14	Tuesday, December 15
95 Tuesday, December 22	Wednesday, December 16	Thursday, December 17
96 Friday, December 25	Monday, December 21	Tuesday, December 22
Tuesday, December 29	NO ISSUE PUBLISHED	
1 (1993) Friday, January 1	Monday, December 28	Tuesday, December 29

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