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Executive Orders

EXECUTIVE ORDER 95-35

Series 1995-B Bonds

WHEREAS: the Louisiana Stadium and Exposition District (the "district") was originally created as a body politic and corporate of the State of Louisiana (the "state"), composed of all of the territory in the parishes of Orleans and Jefferson, under the authority of Article XIV, Section 47 of the 1921 Constitution of the state, as amended, continued as a statute by Article XIV, Section 16 of the 1974 Constitution of the state (the "original act"), for the purpose of planning, financing, developing, maintaining and operating facilities to be located within the district to accommodate the holding of sports events, athletic contests and other events of public interest; and

WHEREAS: the district has heretofore issued its hotel occupancy tax and state lease-rental refunding bonds, series 1976, in the original principal amount of \$134,000,000 (the "series 1976 bonds") pursuant to the original act and the resolution adopted by the district on February 21, 1969; as amended by resolutions adopted by the district on August 27, 1970; October 12, 1971 and October 28, 1976; and a series resolution adopted by the district on October 28, 1976 (collectively, the "series 1976 resolution"); for the purpose of refunding all of the district's outstanding bonds which were issued for the purpose of financing the development and construction of the Superdome in New Orleans and parking and related facilities and the acquisition of land necessary therefore, which Series 1976 Bonds were payable from the revenues (as defined in the series 1976 resolution) and the proceeds of the hotel occupancy tax (as defined in the series 1976 resolution); and

WHEREAS: pursuant to Act 541 of the 1976 Regular Session of the Louisiana Legislature, as amended by Act 499 of the 1978 Regular Session of the Louisiana Legislature, Act 449 of the 1980 Regular Session of the Louisiana Legislature, Act 927 of the 1981 Regular Session of the Louisiana Legislature, Act 476 of the 1984 Regular Session of the Louisiana Legislature, Act 259 of the 1989 Regular Session of the Louisiana Legislature, and Act 640 of the 1993 Regular Session of the Louisiana Legislature, modifying and supplementing the original act (collectively, the "act"), the district is authorized to issue not exceeding \$60,000,000 of refunding bonds to refund all of the district's outstanding series 1976 bonds and not exceeding \$155,000,000 of improvement and construction bonds to finance the projects set forth in the Act upon compliance with the conditions prescribed by the act; and

WHEREAS: pursuant to the act and the general bond resolution adopted by the district on January 31, 1994 (the "general bond resolution"); as amended and supplemented by the first supplemental resolution adopted by the district on March 28, 1994 (the "first supplemental resolution"), the district issued \$63,500,000 of its hotel occupancy tax bonds, series 1994-A (the "series 1994-A bonds"); for the purpose of

refunding the district's outstanding series 1976 bonds, funding the reserve fund, paying the costs of preparing plans and specifications for the projects, including architect's and engineer's fees and expenses, design consultant's fees and expenses, costs and expenses of feasibility studies of the projects, site acquisitions for ingress and egress purposes and site preparations for the projects, other costs incidental to the foregoing, and costs of issuance of the bonds, including the purchase of the reserve fund insurance policy, and paying the premium for the bond insurance policy; and

WHEREAS: pursuant to the act and the general bond resolution, as amended and supplemented by the first supplemental resolution and the second supplemental resolution adopted by the district on April 21, 1995 (the "second supplemental resolution"); the district subsequently issued \$14,500,000 of its hotel occupancy tax bonds; series 1995-A (the "series 1995-A bonds") for the purpose of acquiring and installing a new artificial turf surface in the Superdome and acquiring and installing replacement seats in the terrace section and additional seats in certain other sections of the Superdome, and acquiring and constructing a professional football training facility in Jefferson Parish; and

WHEREAS: pursuant to the act and the general bond resolution, as amended and supplemented by the first supplemental resolution, the second supplemental resolution and the third supplemental resolution adopted by the district on November 10, 1995 (the "third supplemental resolution") (the general bond resolution, as amended by the first supplemental resolution, the second supplemental resolution and the third supplemental resolution, being herein collectively called the "bond resolution"); the district now desires to issue not exceeding \$50,000,000 of its hotel occupancy tax bonds, series 1995-S (the "series 1995-B bonds") for the purpose of (A) paying the costs of construction (as defined in the third supplemental resolution) of (i) a baseball stadium to be located in Jefferson Parish, (ii) the remaining planned improvements and betterments to the Superdome not financed by the series 1995-A Bonds, (iii) recreational facilities and other facilities to accommodate expositions, conventions, exhibitions, sports events, spectacles and public meetings at Bayou Segnette State Park, (iv) an athletic facility addition to the Pontchartrain Center located in Jefferson Parish, (v) recreational facilities in the cities of Gretna and Marrero in Jefferson Parish, and (vi) improvements to recreational facilities in the city of New Orleans, (B) paying costs of site preparation, providing utilities, acquiring rights-of-way and relocating utilities for a multi-purpose arena in New Orleans, and (C) paying cost of issuance of the series 1995-B bonds, including the purchase of a reserve fund insurance policy and paying the premium for a bond insurance policy and funding a deposit to the reserve fund; and

WHEREAS: the series 1995-B bonds will rank on a parity in all respects with the series 1994-A bonds and the series 1995-A bonds; and

WHEREAS: the act provides that for the purposes of and in connection with the undertakings authorized by the act, including the issuance and servicing of any bonds, the district shall be acting solely in its capacity as a political subdivision

of the state; and

WHEREAS: the series 1995-B bonds will not constitute an indebtedness, general or special, or a liability of the state or the parishes of Orleans and Jefferson, State of Louisiana (the "parishes") and will not be considered a debt of the state or the parishes within the meaning of the constitution or the statutes of the state and will not constitute a charge against the credit or taxing power of the state or the parishes, but are limited obligations of the district, which is obligated to pay the principal of, premium, if any, and interest on the series 1995-B bonds only from (i) the Tax Revenues (as defined in the bond resolution) derived from the collection of the hotel occupancy tax (as defined in the bond resolution) being levied by the district pursuant to the original act and the tax ordinance (as defined in the bond resolution) and collected pursuant to the collection agreement (as defined in the bond resolution), and (ii) other funds and accounts pledged pursuant to the bond resolution; and

WHEREAS: the act further provides that the series 1995-B bonds shall be authorized by executive order of the governor.

NOW, THEREFORE, I, Edwin W. Edwards, Governor of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Pursuant to the provisions of the act and in accordance with the terms of the bond resolution, as the same may be amended and supplemented by supplemental resolution providing for the details of the series 1995-B bonds in accordance with the terms of their sale, the district is authorized to issue the series 1995-B bonds in an amount not exceeding \$50,000,000.

SECTION 2: This executive order shall be effective upon signature of the governor.

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in Baton Rouge, Louisiana, on this 7th day of November, 1995.

Edwin W. Edwards
Governor

Attested by
the Governor
Fox W. McKeithen
Secretary of State
9512#005

Emergency Rules

DECLARATION OF EMERGENCY

Department of Economic Development
Racing Commission

Claiming Rule-Time of Entering (LAC 35:XI.9905)

The State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to authority granted under R.S. 4:141 et seq., repeals LAC 35:XI.9905 effective November 16,

1995, and it shall remain in effect for 120 days or until the final rule takes effect through the normal promulgation process, whichever comes first.

This action is necessary because the rule has become obsolete.

Title 35 HORSE RACING

Part XI. Claiming Rules and Engagements

Chapter 99. Claiming Rule

§9905. Timing of Entering Next Claiming Race

Repealed in its Entirety

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, amended by the Department of Commerce, Racing Commission, LR 2:445 (December 1976), repromulgated LR 3:41 (January 1977), LR 4:285 (August 1978), amended LR 14:292 (May 1988), repealed LR 22

Paul D. Burgess
Executive Director

9512#006

DECLARATION OF EMERGENCY

Department of Economic Development
Real Estate Commission

Real Estate Licensee's Compensation
(LAC 46:LXVII.3103)

In accordance with the provisions of R.S. 49:953(B) of the Administrative Procedure Act, the Real Estate Commission has adopted emergency revisions to the rules and regulations affecting the compensation of Louisiana real estate licensees.

The purpose of this declaration of emergency is to emendate an action whereby the original language contained in R.S. 37:1446(B), scheduled to be renumerated, was inadvertently deleted.

The effective date of this emergency rule is December 16, 1995 for 120 days, or until the final rule takes effect through the normal promulgation process, whichever occurs first. This rule was scheduled for final adoption on December 20, 1995; however, to ensure that all parties have been duly notified in accordance with the guidelines established in the Administrative Procedure Act, and to provide continued safeguard of the public, the Real Estate Commission elects to reestablish the promulgation of this rule.

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXVII. Real Estate

Chapter 31. Compensation

§3103. Sponsored Licensees

Associate brokers and salespersons shall not accept a commission or valuable consideration for the performance of any act herein specified or for performing any act relating

thereto, from any person, except their sponsoring or qualifying broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 22:

J. C. Willie
Executive Director

9512#024

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Tuition Assistance Plan—Student Incentive Grant Program

In accordance with R.S. 49:953(B) of the Administrative Procedure Act, the Student Financial Assistance Commission, Office of Student Financial Assistance has adopted emergency rules, effective November 9, 1995, amending its Scholarship and Grant Policy and Procedure Manual.

Act 872 of 1995, applicable to students being considered for the Tuition Assistance Plan (TAP) for the current academic year, requires LASFAC to provide a procedure for re-evaluating family need based upon an applicant's submission of evidence showing an actual, estimated, or reasonably anticipated reduction in the annual adjusted gross income of the applicant's family from that amount reported and verified by Internal Revenue Service returns. The State Student Incentive Grant Program provision will expedite delivery of awards to student recipients at the beginning of the semester.

Without this emergency action, a significant number of otherwise eligible students would be denied the immediate benefit of financial assistance to pursue their higher education. The Tuition Assistance Plan (TAP), Section VI of the manual, and the State Student Incentive Grant (SSIG) Program, Section VIII of the manual, are amended as follows:

Tuition Assistance Plan

Section VI.C.1.h., add the following subparagraphs:

iii. In the event circumstances cause a reduction in the annual adjusted gross income of the applicant's family from that reported and verified in accordance with Paragraph i of this subsection, then an applicant found to be ineligible due to family income may request reconsideration, provided:

a. The applicant meets all academic and non-academic requirements except that the family's most recent adjusted gross income as reported to the Internal Revenue Service (IRS) is in excess of TAP allowable limits; and

b. The Financial Aid Administrator at the institution the student attends has verified and adjusted the family's adjusted gross income based upon the administrator's professional judgment applied in accordance with Title IV of the Higher Education Act of 1965, the "HEA", as amended, and its implementing regulations. Pursuant to Title IV standards, the determinations shall relate to a given student's special circumstances and shall be documented in the student's campus file. Individual determinations shall be made in a

manner consistent with the institutional policies regarding the awarding of need-based financial aid. The institution shall provide LASFAC any material finding or audit exception related to the use of professional judgment at any time such is revealed in the course of an audit or program review. The institution may be required to refund to LASFAC any TAP funding which is paid to the institution for a student as a result of the institution's failure to exercise professional judgment in accordance with the HEA; and

c. The family's revised adjusted gross income is within the limits allowable for TAP as specified in Paragraph i of this subsection.

iv. For applicants qualifying under paragraph iii of this subsection, at the conclusion of the academic year, the family's actual adjusted gross income must be confirmed to be within the allowable income limits. In the event income is not within the allowable limits, the student will be ineligible for future participation in the program; however, no refunds of prior TAP tuition awards will be required.

State Student Incentive Grant (SSIG) Program Section VIII.C., subsections 1.d., 2.b. and 3.h. are amended to read:

Be certified as a full-time undergraduate student in an eligible program at an eligible school and either:

Be enrolled full-time at the time of disbursement if disbursement occurs on or prior to the 14th class day (ninth class day for Louisiana Tech); or

Be enrolled full-time as of the 14th class day (ninth class day at Louisiana Tech) and is enrolled at least half-time at the time of disbursement if disbursement occurs after the 14th class day (ninth class day at Louisiana Tech).

Jack L. Guinn
Executive Director

9512#004

DECLARATION OF EMERGENCY

Office of the Governor Division of Administration Office of Facility Planning and Control

Resolution of Controversies (LAC 34:III.511)

The Division of Administration, Office of Facility Planning and Control, is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) in order to amend the Louisiana Administrative Code, Title 34, Part III, to bring it into conformity with R.S. 39:1671. The following emergency rule will be in effect for 120 days or until finalized as a rule, whichever comes first.

Title 34
GOVERNMENT CONTRACTS,
PROCUREMENT AND PROPERTY CONTROL

Part III. Facility Planning and Control

Chapter 5. Rental and Lease Procedure

§511. Resolution of Controversies

A. Right to Protest. Any prospective lessor who is aggrieved in connection with the solicitation or award of a contract may protest to Facility Planning and Control. Protests with respect to a solicitation shall be submitted in writing no later than 10 days prior to the opening of bids. If a person protests a solicitation, an award cannot be made until said protest is resolved. Protests with respect to the award of a contract shall be submitted in writing within 14 days after contract award. Said protest shall state fully and in particular, the reason for protest if a protest is made with respect to the award of a contract. Work on the contract cannot be commenced until it is resolved administratively.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 11:946 (October 1985), amended LR 22:

Roger Magendie
Director

9512#071

DECLARATION OF EMERGENCY

Office of the Governor
Division of Administration
Office of State Purchasing

Procurement Code-Conduct of Hearing (LAC 34:I.3105)

The Division of Administration, Office of State Purchasing is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) in order to amend LAC 34:I.3105 so that the said rule will be in conformity with R.S. 39:1671, which emergency rule will be effective December 8, 1995 and remain in effect for 120 days or until finalized as a rule whichever comes first, as follows:

Title 34

GOVERNMENT CONTRACTS,
PROCUREMENT AND PROPERTY CONTROL

Part I. Purchasing

Chapter 31. Conduct of Hearing - Louisiana
Procurement Code

§3105. Initiation of Hearing

A. ...

B. Protest of Aggrieved Person in Connection with the Solicitation, Award, or Issuance of Written Notice of Intent to Award. Any person who is aggrieved in connection with the solicitation, award, or issuance of written notice of intent to award may protest to the chief procurement officer. Protests with respect to a solicitation shall be submitted in writing prior to the opening of bids. Protests with respect to the award of a contract or the issuance of written notice of intent

to award a contract shall be submitted in writing within 14 days after contract award.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, State Purchasing, LR 9:210 (April 1983), amended LR 22:

Denise Lea
Director

9512#034

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Board of Nursing

Registered Nurses Advanced Practice
(LAC 46:XLVII.Chapters 33-45)

In accordance with the emergency of R.S. 49:953(B), the Administrative Procedure Act, and R.S. 37:918(12) which delegates the authority to the board to adopt and revise rules and regulations necessary to implement R.S. 37:911 et seq., the Board of Nursing hereby finds that an imminent peril to the public welfare exists and accordingly adopts emergency rules related to: LAC 46:XLVII.3361 and LAC 46:XLVII.4501-4517; and the repeal of LAC 46:XLVII.3705-3713.

The effective date of these emergency rules is January 1, 1996, and they shall remain in effect for 120 days or until the final rules take effect through the normal promulgation process, whichever occurs first.

Title 46

PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XLVII. Nurses

Subpart 2. Registered Nurses

Chapter 33. General Rules

Subchapter D. Registration and Licensure

§3361. Fees for Registration and Licensure

A. The board shall collect, in advance, fees for registration and licensure services as follows:

1. Registered Nurse
 - a. examination, registration, work permit, and initial licensure \$35
 - b. repeat examination 35
 - c. qualifying examination 35
 - d. renewal of license 25
 - e. reinstatement of lapsed license 50
 - f. verification to other states 15
 - g. endorsement 50
 - h. duplicate renewal application fee 10
 - i. duplicate license 10

2. Advanced Practice Registered Nurse. In addition to the fees for Registered Nurse licensure, the board shall collect, in advance, fees for registration and licensure services as follows:

a. initial licensure	\$75
b. renewal of license	45
c. reinstatement of a lapsed license	90
d. verification to other states	15
e. endorsement	75
f. duplicate renewal application fee	10
g. duplicate license	10

B. Fees for Returned Checks

1. The board shall collect a \$25 fee for returned checks for any of the fees discussed in §3361.A.

2. If the nurse fails to make restitution within 14 days from the date of the letter of notification of the returned check, then the nurse's current license shall become lapsed and practice as a registered nurse is no longer legal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918 and R.S. 37:927.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 8:417 (August 1982), amended by the Department of Health and Hospitals, Board of Nursing, LR 14:533 (August 1988), LR 22:

Chapter 37. Nursing Practice

§3705. Advanced Practitioner of Nursing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:72 (March 1981), repealed by Department of Health and Hospitals, Board of Nursing, LR 22:

§3707. Primary Nurse Associate

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:72 (March 1981), repealed by the Department of Health and Hospitals, Board of Nursing, LR 22:

§3709. Certified Nurse-Midwife

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:72 (March 1981), repealed by the Department of Health and Hospitals, Board of Nursing, LR 22:

§3711. Certified Registered Nurse Anesthetist

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:72 (March 1981), repealed by the Department of Health and Hospitals, Board of Nursing, LR 22:

§3713. Certified Registered Nurse Anesthetist

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:72 (March 1981), repealed by the Department of Health and Hospitals, Board of Nursing, LR 22:

Chapter 45. Advanced Practice Registered Nurses

§4501. Introduction

A. Louisiana Revised Statutes of 1950, specifically R.S. 37:911 et seq., delegated to the Louisiana State Board of Nursing the responsibility to authorize additional acts to be performed by registered nurses practicing in expanded roles and gave the board of nursing the power to set standards for nurses practicing in specialized roles. From 1981 to 1995, the board has recognized advanced practitioners of nursing as certified nurse-midwives, certified registered nurse anesthetists, clinical nurse specialists, and primary nurse associates.

B. In 1995, the Louisiana Legislature amended R.S. 37:911 et seq., empowering the board of nursing to use the term advanced practice registered nurse (APRN) as a means of licensing a registered nurse as described in the R.S. 37:913.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 22:

§4503. Titles

A nurse licensed as an APRN shall include, but not be limited to, the following categories:

1. certified nurse midwife as defined in the R.S. 37:913(1)(a);

2. certified registered nurse anesthetist as defined in the R.S. 37:913(1)(b);

3. clinical nurse specialist as defined in the R.S. 37:913(1)(c);

4. nurse practitioner as defined in the R.S. 37:913(1)(d).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 22:

§4505. Definitions (Reserved)

§4507. Licensure as Advanced Practice Registered Nurse

A. Initial Licensure

1. After January 1, 1996, the applicant shall meet the following requirements:

a. holds a current and valid registered nurse license in Louisiana and is without grounds for disciplinary proceedings, as stated in R.S. 37:921;

b. completion of a minimum of a master's degree with a concentration in the respective advanced practice nursing specialty from an accredited college or university. Exception to the master's degree will be granted to those applicants who provide documentation as requested by the board that the applicant completed or was continuously enrolled in a formalized post-basic-education program preparing for the advanced practice nursing specialty as approved by the board prior to December 31, 1995 as follows:

i. a program of studies offered through an institution of higher education which qualifies graduate to write a certification examination in the advanced practice specialty; or

ii. a program of studies accepted by a nationally recognized certifying agency which is recognized by the Louisiana State Board of Nursing; or

iii. a program which is individually recognized by the Board of Nursing based on established criteria;

c. submission of a completed application on a form furnished by the board;

d. submission of evidence of national certification by a certification program approved by the board. When specialty certification is not available, the individual will be required to meet commensurate requirements established by the board;

e. submission of a nonrefundable fee as specified in LAC 46:XLVII.3361.

2. Act 633, of 1995, empowers the board through the process of grandfathering, to license as an advanced practice registered nurse any nurse who was previously recognized by the board as an advanced practitioner of nursing on or before December 31, 1995. Requirements, effective January 1, 1996, shall include:

a. holds a current and valid registered nurse license in Louisiana and is without grounds for disciplinary proceedings, as stated in R.S. 37:921;

b. a completed application on a form furnished by the board;

c. the required nonrefundable fee as set forth in LAC 46:XLVII.3361.

3. If more than four years have elapsed since the applicant has practiced in the advanced practice registered nurse category, in addition to meeting the above requirements, the applicant shall:

a. apply for a six month permit;

b. practice under the temporary permit and current practice standards set forth by the specific advanced practice category;

c. successfully complete the number of clinical practice hours as required by the recognized national certification boards for clinical practice, supervised by an advanced practice registered nurse preceptor approved by the board;

d. cause to have submitted a final evaluation by the preceptor verifying successful completion of the clinical practice requirements;

e. have a minimum of 500 hours of clinical practice when specialty certification is not available.

4. The APRN license will be issued with an expiration date that coincides with the applicant's RN license.

B. Endorsement. The board may issue a license by endorsement if the applicant has practiced under the laws of another state and if, in the opinion of the board, the applicant meets the requirements for licensure as an APRN in this jurisdiction.

1. If the applicant is applying from another jurisdiction that licenses the category of APRN for which the applicant is seeking licensure, the applicant shall submit:

a. a completed application on a form furnished by the board;

b. the required nonrefundable fee as set forth in LAC 46:XLVII.3361;

c. verification of current RN licensure in this jurisdiction or documentation that the applicant has applied for licensure as a RN and meets the requirements of this jurisdiction, without grounds for disciplinary proceedings as stated in R.S. 37:921;

d. verification of licensure status directly from the jurisdiction of original licensure in the advanced practice category;

e. verification of current unencumbered license in the advanced practice category directly from the jurisdiction of current or most recent employment as an APRN;

f. verification of meeting the educational requirements as stated in LAC 46:XLVII.4507.A.1.b;

g. verification of current national certification in the respective specialty area as recognized by the board;

h. documentation of continued competence as required in LAC 46:XLVII.4515.

2. If the applicant is applying from a jurisdiction that does not license the APRN category for which the applicant is seeking licensure, the applicant shall submit 1.a, b, c, f, g and h as stated above, plus:

a. information regarding the applicant's qualifications for advanced practice directly from the state where the applicant first practiced in the APRN category.

b. information regarding the applicant's qualifications for advanced practice directly from the state where the applicant was last employed in the APRN category.

C. Temporary Permit: Initial Applicants

1. An APRN applicant who possesses a current RN license or a valid RN temporary permit, and has submitted a complete application, the required fee, and evidence of meeting all educational requirements, may be granted a temporary permit which allows for the applicant's practice to be supervised by a licensed APRN or another approved preceptor within the practice specialty if the applicant:

a. is applying for initial licensure under LAC 46:XLVII.4507.A.

b. has completed or is completing practice requirements for national professional certification for the advanced nursing practice category.

c. has been accepted as a first-time candidate for the next national professional certification examination for the advanced nursing practice category; or is awaiting certification results based upon initial application.

d. is without grounds for disciplinary proceedings as stated in R.S. 37:921.

2. A nurse practicing under the temporary permit shall use the title advanced practice registered nurse applicant or APRN applicant.

3. The temporary permit shall not extend beyond receipt of initial certification examination results. A temporary permit is not renewable and is only awarded once.

4. Falsifying any records will lead to automatic suspension of license to practice as a registered nurse or disciplinary proceedings against the licensee in accordance with R.S. 37:921 and LAC 46:XLVII.3329.

D. Temporary Permit: Endorsement Applicants

1. An APRN who has filed an application for RN licensure by endorsement, and has been issued a RN temporary permit, may be issued a temporary permit to practice as an APRN, for a maximum of 90 days, if the applicant submits:

a. a completed APRN application on a form furnished by the board;

b. the required nonrefundable fee as set forth in LAC 46:XLVII.3361;

c. evidence of meeting the educational and certification requirements specified in LAC 46:XLVII.4507.A.1.b;

d. evidence of complying with continued competence requirements of LAC 46:XLVII.4515.

2. If the RN license is issued before the applicant receives the results of initial certification examination the APRN temporary permit may be extended until receipt of initial certification results.

E. Renewal and Reinstatement of Licenses

1. Renewal. The date for renewal of licensure to practice as an APRN shall coincide with renewal of the applicant's RN license. Renewal of the APRN license is contingent upon renewal of the RN license and verification that the applicant is without grounds for disciplinary proceedings as stated in R.S. 37:921. An applicant for renewal of an APRN license shall submit to the board:

a. a completed application on a form furnished by the board;

b. evidence of current certification/recertification;

c. evidence of continued competence as required in LAC 46:XLVII.4515;

d. the licensure renewal fee as specified in LAC 46:XLVII.3361.

2. Reinstatement of APRN Lapsed License. An APRN who has failed to renew licensure may apply for reinstatement by submitting to the board:

a. evidence of current RN licensure;

b. a completed application on a form furnished by the board;

c. evidence of current certification/recertification;

d. evidence of competence to return to practice as required in LAC 46:XLVII.4515;

e. the required fee as specified in LAC 46:XLVII.3361.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 22:

§4509. Educational Requirements (Reserved)

§4511. Advanced Practice Registered Nurse Professional Certification Programs

A national certifying body which meets the following criteria shall be recognized by the board to satisfy R.S. 37:913(2):

1. is national in scope of its credentialing;

2. has no requirement for an applicant to be a member of any organization;

3. submits documentation to the board of the criteria for applicant eligibility to write for initial certification and recertification;

4. has a master's degree as the minimal educational requirement for certification or otherwise approved by the board;

5. has an application process and credential review which includes documentation that the applicant's education is in the advanced nursing practice category being certified, and that the applicant's clinical practice is in specialty area of

certification;

6. uses an examination as a basis for certification in the advanced nursing practice category which meets the following criteria:

a. the examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community;

b. the examination represents entry-level practice based on standards in the advanced nursing practice category;

c. the examination represents the knowledge, skills (critical thinking and technical), and role functions essential for the delivery of safe and effective advanced nursing care to the client;

d. the examination content and its distribution are specified in a test plan, based on the job analysis study, that is available to examinees;

e. examination items are reviewed for content validity, cultural sensitivity, and correct scoring using an established mechanism, both before use and periodically;

f. examinations are evaluated for psychometric performance;

g. the passing standard is established using acceptable psychometric methods, and is re-evaluated periodically;

h. examination security is maintained through established procedures.

7. issues certification based upon passing the examination and meeting all other certification requirements;

8. provides for periodic recertification which includes review of qualifications and continued competence;

9. has mechanisms in place for communication to boards of nursing for timely verification of an individual's certification status, changes in certification status, and changes in the certification program, including qualifications, test plan, and scope of practice;

10. has an evaluation process to provide quality assurance in its certification program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 22:

§4513. Authorized Practice

A. Scope of Practice. The advanced practice registered nurse shall practice in a manner consistent with the definition of advanced nursing practice set forth in R.S. 37:913(3)(a) and the standards set forth in these administrative rules. The client services provided by the APRN shall be in accord with the educational preparation of the APRN.

B. Standards of Nursing Practice for the Advanced Practice Registered Nurse. Standards of practice are essential for safe practice by the APRN and should be in accordance with the published professional standards for each recognized category. The core standards for all categories of advanced practice registered nurses include, but are not limited to:

1. the APRN shall meet the standards of practice for registered nurses as defined in LAC 46:XLVII.3901-3913;

2. the APRN shall assess clients at an advanced level, identify abnormal conditions, analyze and synthesize data to establish a diagnosis, develop and implement treatment plans, and evaluate client outcomes;

3. the APRN shall use advanced knowledge and skills

in providing clients and health team members with guidance and teaching;

4. the APRN shall use critical thinking and independent decision-making at an advanced level, commensurate with the autonomy, authority, and responsibility of the practice category while working with clients and their families in meeting health care needs;

5. when collaborating with other health care providers, the APRN shall demonstrate knowledge of the statutes and rules governing advanced nursing practice, and function within the legal boundaries of the appropriate advanced nursing practice category;

6. the APRN shall demonstrate knowledge of and apply current nursing research findings relevant to the advanced nursing practice category;

7. the APRN shall make decisions to solve client care problems and select treatment regimens in collaboration with a licensed physician or dentist;

8. the APRN shall retain professional accountability for advanced practice nursing care when delegating nursing actions and/or interventions.

C. Prescriptive and Distributing Authority. The advanced practice registered nurse shall practice in a manner consistent with the definition as set forth in R.S. 37:913(3)(b) and with the provisions of R.S. 37:1031-1034.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 22:

§4515. Continued Competence of Advanced Practice Registered Nurses

Continued competence requirements shall apply to:

1. a licensee seeking to renew an APRN license, as required in LAC 46:XLVII.4507.E.1;

2. a licensee seeking to reinstate an APRN license, as required in LAC 46:XLVII.4507.E.2;

3. an applicant for APRN licensure by endorsement, as required in LAC 46:XLVII.4507.B;

4. an applicant for APRN licensure after four years out of practice, as required in LAC 46:XLVII.4507.A.3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 22:

§4517. Additional Standards For Each Advanced Practice Nurse Category

A. Nurse Practitioner. In addition to the core standards described in LAC 46:XLVII.4513.B, an APRN in the category of nurse practitioner and area of the nursing specialty shall practice in the area of specialty in accord with standards established by a national professional nursing association and which have been reviewed and accepted by the board.

B. Certified Registered Nurse Anesthetist. In addition to the core standards described in LAC 46:XLVII.4513.B, an APRN in the category of certified registered nurse anesthetist shall practice in accord with standards established by a national professional nursing association and which have been reviewed and accepted by the board.

C. Certified Nurse-Midwife. In addition to the core standards described in LAC 46:XLVII.4513.B, an APRN in

the category of certified nurse-midwife shall practice in accord with standards established by a national professional nursing association and which have been reviewed and accepted by the board.

D. Clinical Nurse Specialist. In addition to the core standards described in LAC 46:XLVII.4513.B, APRN in the category of clinical nurse specialist and area of the nursing specialty shall practice in the area of specialty in accord with standards established by a national professional nursing association and which have been reviewed and accepted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 22:

Barbara L. Morvant
Executive Director

9512#002

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Durable Medical Equipment

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriations Act which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule.

The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed federal law." This emergency rule is in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq., and shall be in effect for the minimum period allowed under the Administrative Procedure Act or adoption of the rule whichever occurs first.

The Bureau of Health Services Financing adopted a dual reimbursement methodology on April 20, 1993, Volume 19, Number 4 for the Durable Medical Equipment Program. This Program includes prosthetic devices, artificial eyes, braces, medical appliances, equipment, and supplies. Effective for dates of service July 7, 1995 and after, the Bureau of Health Services Financing revised the flat fee component of the reimbursement methodology for durable medical equipment, for Medicaid only recipients, by establishing flat fees at a rate of 80 percent of the Medicare durable medical equipment fee schedule or at a rate of 80 percent of the lowest cost at which the item is widely available. The department amended the provisions of that emergency rule by allowing for an exception to the 80 percent of the Medicare DME fee schedule and for 80 percent of the lowest cost at which the item is

widely available for specified HCPC procedure codes. Flat fees for certain specified HCPC procedure codes were established at a rate of 100 percent of the Medicare durable medical equipment fee schedule amounts or at a rate of 100 percent of the lowest cost at which a needed item has been determined to be widely available. This action was necessary to remain in compliance with 42 CFR, 447.204 mandating that the Medicaid Program ensure the availability of covered services. In addition, the department revised the method of reimbursement for certain supplies for wound care and dressings, and other medically necessary supply items exclusively designated for home health care. These home health care supplies are reimbursed through the Durable Medical Equipment Program, instead of the Home Health Care Program, through which they were formerly reimbursed. Durable medical equipment providers may bill for these home health care items only if they are used by a home health agency for services in the home and only if prior authorization through the established prior authorization mechanism for durable medical equipment. Diapers and blue pads were not reimbursable supply items under the Durable Medical Equipment Program.

A notice of intent was published on September 20, 1995 and a public hearing was held on October 27, 1995 in which the following clarifications were made. The following emergency rule continues this initiative in force until adoption of the final rule. This action is being taken to avoid a budget deficit in medical assistance programs.

Emergency Rule

Effective for dates of service December 15, 1995 and after, the Department of Health and Hospitals, Bureau of Health Services Financing adopts the following provisions governing the reimbursement of durable medical equipment in the Medicaid Program.

1. The flat fee component of the reimbursement methodology for durable medical equipment is revised at a rate of 80 percent of the Medicare durable medical equipment fee schedule amounts or at the lowest cost at which a needed item has been determined to be widely available.

2. If the item is not available at 80 percent of the Medicare DME fee schedule, the flat fee to be utilized will be 100 percent of the Medicare durable medical equipment fee schedule or at the lowest cost at which these items have been determined to be widely available.

3. Wound care supplies and dressings, and other medically necessary supply items exclusively designated for home health care are reimbursable under the Durable Medical Equipment Program, and are not reimbursable under the Home Health Program. Durable medical equipment providers must obtain prior authorization through the prior authorization process required under the Durable Medical Equipment Program in order to provide and be reimbursed for these home health care supplies. These supplies must be used by home health agencies in the home.

4. Diapers and blue pads are not reimbursable supply

items under the Durable Medical Equipment Program.

Rose V. Forrest
Secretary

9512#029

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Home Health Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, and utilization review, and other measures as allowed by federal law." This emergency rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing previously reimbursed home health services at interim payment rates established for skilled nursing visits, physical therapy, home health aide visits with annual cost settlement. The cost of covered nonroutine supplies was reimbursed at an interim rate assigned by Medicare annually. The annual cost settlement was 100 percent of allowable cost for covered nonroutine supplies. Effective July 7, 1995 the bureau revised the reimbursement to home health agencies by establishing maximum rates for interim and cost settlement payment amounts established at levels not to exceed the following limits: 1) skilled nursing visits (procedure code X9900) - \$64.54; 2) health aide visits (procedure code X9901) - \$22.81; and 3) physical therapy (procedure code X9926) - \$70.46. Also, the bureau reimbursed the home health agency at an interim rate of 80 percent of allowable billed charges for nonroutine covered supplies (procedure code X9925). Final reimbursement for covered nonroutine supplies was at 80 percent of allowable costs through the cost settlement process except for diapers which were not reimbursable under the supply cost category for home health services.

Effective August 18, 1995 the bureau repealed the July 7, 1995 emergency rule and adopted the following emergency rule which includes prospective maximum rates, increases the rate for the skilled nursing and the health aide visits; deletes the interim rate and cost settlement process; and establishes the provision of medically necessary supplies for the delivery

of a home health service under the prior authorization mechanism of the Durable Medical Equipment Program. In addition, a notice of intent was published on September 20, 1995. The following emergency rule continues this initiative in force until adoption of the final rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Emergency Rule

Effective for dates of service of December 15, 1995 and after, the Department of Health and Hospitals, Bureau of Health Services Financing, adopts the following provisions governing home health services under the Medicaid Program.

1. The bureau reimburses home health agencies for allowable services by establishing the following prospective rates: 1) skilled nursing visits (procedure code X9900) - \$68.65; 2) health aide visits (procedure code X9901) - \$24.38; and 3) physical therapy (procedure code X9926) - \$70.46.

2. The Home Health Agency is required to insure that the families are instructed on a home maintenance exercise program which has been established by the treating physical therapist.

3. The bureau reimburses home health agencies for medically necessary supplies through the Durable Medical Equipment Program which requires prior authorization for the item. Items may be authorized to an existing durable medical equipment provider or to home health agencies which enroll as durable medical equipment providers.

a) Diapers and blue pads are not reimbursable as a durable medical equipment item.

b) Certain supplies for wound care and dressing will be covered under the Durable Medical Equipment Program but will be authorized exclusively for the use of home health agencies when delivering a home health service.

Rose V. Forrest
Secretary

9512#027

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Nursing Facility Services Reimbursement

The Department of Health and Hospitals, Office of Secretary, Bureau of Health Services Financing has adopted the following emergency rule in the Medicaid Program as authorized by R.S. 46:153 and pursuant to the Social Security Act. This emergency rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and shall remain in effect for the maximum period allowed by the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Bureau of Health Services Financing established the current prospective reimbursement methodology for private nursing facility services effective August 1, 1984 by rule as published in the June 20, 1994 issue of the *Louisiana Register*

(Volume 10, Number 6, pages 467-468). This methodology utilizes a base rate determined according to a uniform recipient Level of Care designation (Intermediate Care-I, Intermediate Care-II and Skilled Nursing) which is adjusted by specific economic indices. Subsequently, the provisions of nursing home reform as mandated by the Omnibus Budget Reconciliation Act of 1987 were established by rule in the December 20, 1990 issue of the *Louisiana Register* (Volume 16, Number 12, page 1061). In addition, subsequent rules have been adopted for specialized nursing facility Levels of Care for specific patient types (SN-Infectious Disease, SN-Technology Dependent Care and SN-Neurological Rehabilitation Treatment Program).

The following emergency rule repeals the August 1, 1984 rule and adopts provisions to govern private nursing facility services which re-establish a prospective cost-related methodology based on specific cost categories for each Level of Care and specifies the inflationary adjustment mechanism or recalculation period. Within this framework the following changes are included: the new categories consist of three direct and five indirect resident care costs and the incentive factor; the annual wage for nonsupervisory service workers is deleted as a single component but the following categories where these and other costs are incorporated, i.e., housekeeping/linen/laundry, other dietary, plant operation and maintenance, administrative and general are established; nursing services cost are limited to one category. This revision of the methodology represents an improved and more efficient manner for determining cost factors reimbursable under the Medicaid Program. The calculation of the incentive factor remains at five percent but excludes building costs from the computation. The percentiles to be utilized are changed from the single current 60th percentile to the following percentiles: direct resident care costs (80th); indirect resident care costs are at the 60th percentile except housekeeping/linen/laundry/ (70th). The required nursing service hours remain at the current levels: the intermediate care levels one and two remain at 2.35, and the skilled nursing level continues to be 2.6.

The above changes were implemented through emergency rule making and published in the *Louisiana Register* January, May, and September 1995 (Volume 21, Numbers 1, 5 and 9). Implementation of the above changes through emergency rulemaking is necessary to ensure that Medicaid payment rates for nursing facility services reflect current economic conditions and provide reimbursement for the allowable costs for each Level of Care in a private facility which is economically and efficiently operated. Further, these changes are necessary to avoid possible penalties or sanctions from the federal government.

The current rules for specialized levels of nursing facility care, i.e., Technology Dependent Care, Infectious Disease, and the Neurological Rehabilitation Treatment Program are not revised in the following rule.

Emergency Rule

Effective December 26, 1995, the Bureau of Health Services Financing repeals the August 1, 1984 rule governing reimbursement for private nursing facility services and adopts the following methodology and provisions to govern

reimbursement of these services for Medicaid recipients. Reimbursement for the nursing home reform requirements of the Omnibus Budget Reconciliation Act of 1987 are incorporated in the following methodology and provisions. Costs are determined based upon audited and or desk reviewed cost reports to calculate the new base rate components.

REIMBURSEMENT METHODOLOGY FOR PRIVATE NURSING FACILITIES

A. General Provisions

1. The bureau has designated a system of prospective payment amounts based on recipient Levels of Care: Intermediate Care I (IC-I); Intermediate Care II (IC-II); Skilled Nursing (SN); Skilled Nursing/Infectious Disease (SN/ID) and Skilled Nursing/Technology Dependent Care (SN/TDC); Neurological Rehabilitation Treatment Program (NRTP), which includes Rehabilitation Services; and Complex Care Services.

2. Facilities may furnish services to patients of more than one classification of care. Every nursing facility provider must meet the nursing home reform requirements of OBRA 1987.

3. Determination of Limits. Cost limits will be established based on a statistical analysis of industry data to assure that total payments under the plan will not exceed Title XVIII reimbursement. The ceiling limitation on reasonable cost will be set at a level the state determines adequate to reimburse an efficiently operating facility. Incentive for efficient operation will be allowed as a profit opportunity for providers who provide required services at a cost below the industry average.

4. Maximum Rate. The state will make payment at the statewide rate for the patient Level of Care provided or the provider's customary charge to the public, whichever is lower.

B. Cost Determination

1. Definitions

a. Consumer Price Indices

CPI-Administrative and General—the Consumer Price Index - South Region (All Items line) as published by the United States Department of Labor.

CPI-Housekeeping/Linen/Laundry—the Consumer Price Index for All Urban Consumers - South Region (All Items line) as published by the United States Department of Labor.

CPI-Nursing Services—the Consumer Price Index for All Urban Consumers - South Region (Medical Care Services line) as published by the United States Department of Labor.

CPI-Other Dietary—the Consumer Price Index for All Urban Consumers - South Region (All Items line) as published by the United States Department of Labor.

CPI-Plant Operation and Maintenance—the Consumer Price Index - South Region (All Items line) as published by the United States Department of Labor.

CPI-Raw Food—the Consumer Price Index for All Urban Consumers - South Region (Food line) as published by the United States Department of Labor.

CPI-Recreation—the Consumer Price Index for All Urban Consumers - South Region (All Items line) as published by the United States Department of Labor.

b. Economic Adjustment Factors. Each of the above

economic adjustment factors is computed by dividing the value of the corresponding index for December of the year preceding the rate year by the value of the index one year earlier (December of the second preceding year).

c. Rate Year. The rate year is the one-year period from July 1 through June 30 of the next calendar year during which a particular set of rates is in effect. It corresponds to a state fiscal year.

d. Base Rate. The base rate is the rate calculated in accordance with B.3.b.

e. Base Rate Components. The base rate is the summation of the components shown in Table I. Each base rate component is intended to reimburse for the costs indicated by its name.

2. Table I. Base Rate Components

A	B	C
Preceding Rate Year Base Rate Component	Economic Adjustment Factor	New Base Rate Component
DIRECT RESIDENT CARE COSTS:		
Nursing Services (NSCC)	CPI - Medical Care Services	New NSCC
Raw Food (RFCC)	CPI - Food	New RFCC
Recreational (RCC)	CPI - All Items	New RCC
INDIRECT RESIDENT CARE COSTS:		
Housekeeping/Linen/Laundry (HLLCC)	CPI - All Items	New HLLCC
Other Dietary (ODCC)	CPI - All Items	New ODCC
Plant Operation and Maintenance (POMCC)	CPI - All Items	New POMCC
Administrative and General (AGCC)	CPI - All Items	New AGCC
Building Costs ¹ (BCC)	Recompute annually	New BCC
Incentive Factor ² (IF)	Recompute annually	NEW IF

¹ The base rate is established computing an average fair rental value on nursing home beds as follows:

Step 1. Base Value of a Nursing Home Bed. The base value of a nursing facility bed is determined by the median value of the cost of a nursing home bed, adjusted for Louisiana, as published in the *Building Construction Cost Data* by R.S. Means for the previous rate year and then adjusted for occupancy. The adjustment for Louisiana is computed by multiplying the median value by the simple average of the adjustment factors listed for Louisiana metropolitan areas. This result is then divided by a statewide occupancy factor based on the LTC2 for the third quarter of the preceding calendar year.

Step 2. Rental Value. The base value as computed above is multiplied by 150% of the 30 year Treasury Bill Rate as of December 31, 1993. The result of this computation is then converted to a daily rental value rate.

² The Incentive Factor component is computed based on 5% of the sum of the base rate components excluding the Building Cost Component.

3. Base Rate Determination and Percentile Levels. Rate determination is made according to a uniform recipient Level of Care rate which is adjusted annually from the base rate using the economic indices specified in the plan. In all calculations, the base rate and the base rate components will be rounded to the nearest one cent (two decimal places) and the Economic Adjustment Factors will be rounded to four decimal places.

a. Determination of Inflation Adjustment Factor. The determination of the inflation adjustment factor is based on the Consumer Price Index (CPI) as described in Section B.1.b.

b. Calculation of Base Rate. Separate daily rates will be calculated for each recipient Level of Care (IC-I, IC-II, and SN). The rate for each Level of Care will be set at an amount which the state determines is reasonable to reimburse adequately in full the allowable cost of providing care in a provider facility that is economically and efficiently operated. The rate for each Level of Care will be recalculated each year and will be effective for July services. The rate for each Level of Care shall be calculated by multiplying each specific rate component by the corresponding economic adjustment factor as specified in Table I. The nursing services component of the base rate differs by the Level of Care as a result of the minimum number of nursing hours required for the Level of Care as mandated by the Standards for Payment for Nursing Facility Services as follows intermediate care levels one and two 2.35 and skilled nursing 2.6.

c. The following percentiles are used in calculating the base rate:

direct resident care costs	80th
housekeeping/linen/laundry	70th
other indirect resident care costs exclusive of building costs and incentive factor	60th

A percentile factor is not applicable to the building costs and incentive component.

d. Base Value of a Nursing Facility Bed. The base value of a nursing facility bed is determined by the median value of the cost of a nursing home bed, adjusted for Louisiana, as published in the *Building Construction Cost Data* by R.S. Means for the previous rate year and then adjusted for occupancy. The adjustment for Louisiana is computed by multiplying the median value by the simple average of the adjustment factors listed for Louisiana metropolitan areas. This result is then divided by statewide occupancy factor based on the LTC2 for the third quarter of the preceding calendar year.

e. Rental Value. The base value as computed above is multiplied by 150 percent of the 30-year Treasury Bill Rate as of December 31, 1993. The result of this computation is then converted to a daily rental value rate.

f. Incentive Factor. The incentive factor component is computed based on five percent of the sum of the base rate components excluding the Building Cost Component.

g. Annualization

i. Base Rate Components. After formal adoption of the new rate, the components computed above will become the base rate components used in calculating the next year's

new rate, unless they are adjusted as provided in Section B.4 and B.5.

ii. New Base Rate Components. The base rate components are adjusted annually (each rate year) by the economic adjustment factors as listed in Table I. This computation is performed by multiplying the preceding year base rate component (Table I, Column A) multiplied by the applicable economic adjustment factor (Table I, Column B). The product becomes the new base rate component. The building cost component and the return on equity factor are recomputed annually as described in the footnotes to Table I.

4. Interim Adjustment to Rates. If an unanticipated change in conditions occurs which affects the cost of a Level of Care of at least 50 percent of the enrolled nursing homes providing that Level of Care by an average of five percent or more, the rate may be changed. The Bureau of Health Services Financing will determine whether or not the rates should be changed when requested to do so by 10 percent or more of the enrolled nursing homes, or an organization representing at least 10 percent of the enrolled nursing homes providing the Level of Care for which the rate change is sought. The burden of proof as to the extent and cost effect of the unanticipated change will rest with the entities requesting the change. In computing the costs, all capital expenditures will be converted to interest and depreciation. The Bureau of Health Services Financing, however, may initiate a rate change without a request to do so. Changes to the rates may be one of two types:

a. temporary adjustments; or

b. base rate adjustments as described below:

i. Temporary Adjustment. Temporary adjustments do not affect the base rate used to calculate new rates.

(a). Changes that will be reflected in the economic indices. Temporary adjustments may be made when changes which will eventually be reflected in the economic Indices occur after the end of the period covered by the index, i.e., after the December preceding the rate calculation. Temporary adjustments are effective only until the next annual base rate calculation.

(b). Lump Sum Adjustments. Lump sum adjustments may be made when the event causing the adjustment requires a substantial financial outlay. Such adjustments shall be subject to BHSF review and approval of costs prior to reimbursement. These changes are usually specific to *Federal Register* changes or "Standards for Payment Changes" which result in a significant one time cost impact on the facility. In the event of an adjustment, the providers will be responsible for submitting to the bureau documentation to support the need for lump sum adjustment and related cost data upon which the bureau can calculate reimbursement.

ii. Base Rate Adjustment. A base rate adjustment will result in a new base rate component or a new base rate component value which will be used to calculate the new rate for the next year. A base rate adjustment may be made when the event causing the adjustment is not one that would be reflected in the indices.

C. Filing of Cost Reports

1. Providers of nursing home services under Title XIX

are required to file annual cost reports for evaluation for each patient Level of Care for which services were rendered during the year. A chart of accounts and an accounting system on the accrual basis are used in the evaluation process.

2. The bureau's personnel or its contractual representative will perform desk reviews of the cost reports within six months of the date of submittal. In addition to the desk review, a representative number of the facilities are subject to a full-scope, on-site audit annually.

3. Cost reports will be compared by the Bureau of Health Services Financing to the rates calculated by this methodology at least every three years to insure that the rates remain reasonably related to costs. When indicated by such comparison, base rate component and the overall base rate will be adjusted to reflect cost experience.

a. Initial Reporting. The initial cost report submitted by Title XIX providers of long term care services must be based on the most recent fiscal year end. The report must contain costs for the 12 month fiscal year.

b. Subsequent Reports. Cost reports shall be submitted annually by each provider within 90 days of the close of the facility's normal fiscal year end. Cost reports filed subsequent to interim rate adjustments may be used to validate an interim rate adjustment.

4. Exceptions. Limited exceptions to the report requirement will be considered on an individual facility basis upon written request from the provider to Department of Health and Hospitals, Chief, Health Standards Section. If an exception is allowed, providers must attach a statement describing fully the nature of the exception for which written permission has been requested and granted prior to filing of the cost report. Exceptions which may be allowed with written approval are as follows:

a. For the initial reporting period only, the provider may allocate costs to the various cost centers on a reasonable basis if the required itemized cost breakdown is not available.

b. If the facility has been purchased, leased or has effected major changes in the accounting system as an on-going concern within the past 12 months, a six-month cost report may be filed in lieu of the required twelve month report.

c. If the facility experiences unavoidable difficulties in preparing the cost report by the prescribed due date, an extension may be requested prior to the due date. Requests for exception must contain full statement of the cause of difficulties which rendered timely preparation of the cost report impossible.

d. If a facility is new, it will not be required to file a cost report for rate setting purposes until one full operating year is completed.

5. Sales of Facilities

a. In the event of the sale of a Title XIX facility, the seller is required to submit a cost report from the date of its last fiscal year end to the date of sale.

b. If the purchaser continues the operation of the facility as a provider of Title XIX services, he is required to furnish an initial cost report covering the date of purchase to the end of the facility fiscal year under his ownership. Thereafter, the facility will file a cost report

annually on the purchaser's designated fiscal year end.

EXAMPLE: Mr. X purchased facility J from Mr. Q on September 1, 1993. Facility J's fiscal year end, prior to purchase, was 12/31/93. Mr. Q is required to file a cost report for the period 1/1/93 through the period 8/31/93. If Mr. X decides to change facility J's fiscal year end to 6/30/93, his first report will be due for the nine month period ending 6/30/94, and annually thereafter. NOTE: Facilities purchased as on-going concerns are not considered new facilities for cost reporting purposes.

6. New Facilities

a. For cost reporting purposes a new facility is defined as a newly constructed facility. A new facility is paid the applicable patient Level of Care rates. A new facility is not required to file a cost report for rate setting purposes until one full operating year has been completed.

b. A facility purchased as an on-going concern is not considered a new facility for reimbursement rate determination. Cost data shall be submitted as required for the original ownership. Any additional costs, such as increased depreciation, interest, etc., will be reflected in the future year's per diem rates only.

Rose V. Forrest
Secretary

9512#026

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing

Pharmacy Program—Drug Utilization Review

The Department of Health and Hospitals, Office of Secretary, Bureau of Health Services Financing has adopted the following emergency rule in the Medicaid Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act Section 1927(g) and (h) and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid Program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law."

Section 1927(g) as added by Section 4401 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) provides that in order for states to receive federal financial participation for covered outpatient drugs, the state must have in operation a drug use review program. This Drug Utilization Review Program must consist of prospective drug review, retrospective drug use review, the application of explicit predetermined standards, and an educational program. The purpose of this program is to improve the quality of pharmaceutical care by ensuring that prescriptions are appropriate and medically necessary, and that they are not likely to result in adverse medical effects. This section of the act mandates detailed requirements for conducting drug use

reviews and for the state drug utilization review boards.

The Department of Health and Hospitals, Board of Pharmacy adopted a rule on August 20, 1992 (*Louisiana Register*, Volume 19, Number 8) which incorporated these requirements under the Professional and Occupational Standards for pharmacists. Section 1927(h) also added by the Omnibus Budget Reconciliation Act of 1990 encourages states to establish a point-of-sale Electronic Claims Management (ECM) system for processing claims for covered outpatient drugs which is capable of performing on-line, real time eligibility verifications, claims data capture, adjudication of claims and assisting pharmacists and other authorized person in applying for and receiving payment. Regulations at Section 456.705(a) and (b)(1) require review of drug therapy based on predetermined standards at the point of sale before each prescription is filled or delivered to a recipient. The following emergency rule provides for the enhanced operation of the Drug Utilization Review Program and the Medicaid State Plan by including prospective drug review at the point of sale, an educational program, and implementation of the Point of Sale Electronic Claims Management. Adoption of this rule is necessary to assure compliance with Sections 1927(g) and (h) and the federal regulations contained at 42 CFR Part 456, Subpart K and thereby to avoid possible federal sanctions or penalties. It is also necessary to comply with the mandated legislative budgetary limitation for the Pharmacy Program for state fiscal year 1996 and thereby avoid a budget deficit in the medical assistance programs. It is anticipated that implementation of this emergency rule will contain the cost effectiveness in expenditures by approximately \$4,531,232 for state fiscal year 1996 and by approximately \$11,823,400 for state fiscal year 1997.

This emergency rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

The implementation of the following emergency rule will integrate and enhance current efforts to provide optimal pharmaceutical services and to maintain program integrity.

Integration of the Pharmacy Program's existing components, retrospective drug utilization review, formulary management, claims management, patient education program, pharmacy provider network and provider service with the Medicaid pharmacy benefits management's new components of enhanced pharmacy network, pharmacy provider help desk, point-of-sale electronic claims management network, point of service prospective drug utilization review system and patient, physician and pharmacist education system will enhance the existing features to allow for greater capability to determine if appropriate pharmaceuticals are being utilized for optimal disease and outcomes management of the patient. The Department of Health and Hospitals has initiated an interdisciplinary medicine and pharmacy team to assist in the development of various educational and intervention components. The conversion of the current Drug Utilization Review Program into an enhanced on-line electronic prospective one will reduce costly duplicate drug therapy, prevent potential drug to drug interactions, assure appropriate

drug use, dosage and duration of therapy. In addition, the electronic system will provide drug information and education to providers. This electronic system will enable the Medicaid Program to monitor prescribing patterns and recipient drug utilization patterns. Analyses of data derived from the point of sale/pro-DUR system will allow for timely interventions for those providers and/or recipients. The point of sale technology will integrate provider networks which will allow for better management of disease state.

Emergency Rule

Effective January 1, 1996, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing shall implement the Louisiana Medicaid pharmacy benefits management system. The point of sale/prospective Drug Utilization Review system will begin operations February 1, 1996. This system will be administered with the Northeast Louisiana University, School of Pharmacy and the fiscal intermediary for the Bureau of Health Services Financing. The prospective DUR system will process information about the patient and the drug through eight therapeutic modules. The department reserves the right for ultimate decision making relative to certain therapeutic class information, contraindications or interactions. The point-of-sale prospective Drug Utilization Review will be administered in accordance with the standards of the National Council of Prescription Drug Plan.

I. Provider Participation

A. A point-of-sale enrollment amendment and certification is required prior to billing POS/Pro-DUR system as well as an annual recertification.

B. All Medicaid enrolled pharmacy providers will be required to participate in the Pharmacy Benefits Management System.

C. All Medicaid enrolled pharmacy providers whose claim volume exceeds 100 claims or \$4,000 per month and all providers enrolled on January 1, 1996 will be required to participate in point of sale system. Long term care pharmacy provider claims may be processed through Electronic Media Claims (EMC).

D. Providers accessing the POS/Pro-DUR system will be responsible for the purchase of all hardware for connectivity to the switching companies and any fees associated with connectivity or transmission of information to the fiscal intermediary. The Bureau of Health Services Financing will not reimburse the provider for any on-going fees incurred by the provider to access the POS/Pro-DUR system.

E. Providers are required to verify eligibility with the monthly eligibility card and a copy of the card should be retained for processing the claim.

F. Pharmacy providers and physicians may obtain assistance with clinical questions from the Northeast Louisiana University, School of Pharmacy.

G. Physicians and pharmacy providers will be required to participate in the educational and intervention features of the Pharmacy Benefits Management System.

II. Recipient Participation

Pharmacy patients are encouraged to take an active role in the treatment or management of their health conditions

through participation in patient counseling efforts with their physicians and pharmacists.

Interested persons may submit written comments to: Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821. He is the person responsible for responding to inquiries regarding this emergency rule. A copy of this rule is available at parish Medicaid offices for review by interested parties.

Rose V. Forrest
Secretary

9512#036

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

**Pharmacy Program—Medicare Part B
Crossover Pharmacy Claims**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following emergency rule in the Medicaid Program as authorized by R.S. 46:153 and under the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. This emergency rule shall be in effect for the maximum allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

The Bureau of Health Services Financing reimburses enrolled Medicaid pharmacy providers for pharmacy services submitted on behalf of Medicaid recipients who have Medicare Part B coverage. These services are billed on a HCFA 1500 claim form. The Medicaid Program has identified drugs for which Medicare Part B is currently providing coverage and reimbursement. The bureau has determined that a cost savings will be achieved by requiring the pharmacist to bill Medicare first. Medicare claims for those Medicare covered outpatient drug services would then crossover to Medicaid reimbursement of the coinsurance up to the Medicare allowable and the deductible, if it has not been met. The bureau has determined that there is Medicaid cost-savings attributed by electing to pay co-insurance and the Medicare deductible for these pharmacy services. By cost avoiding these claims, Medicare will be the primary payor for these services and the bureau will be in compliance with Medicaid and Medicare regulations.

It is anticipated that implementation of this rule will reduce state expenditures in the medical assistance programs by approximately \$737,386 for state fiscal year 1996.

Emergency Rule

Effective December 11, 1995 the Bureau of Health Services Financing will pay the full co-insurance and the Medicare deductible on the HCFA 1500 claims for drug services for Medicaid recipients covered by Medicare Part B.

Interested persons may submit written comments to: Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA

70821-9030. He is responsible for responding to inquiries regarding this emergency rule.

Rose V. Forrest
Secretary

9512#037

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Transplant Reimbursement

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following emergency rule under the Medical Assistance Program as authorized by R.S. 46:153 and pursuant Title XIX of the Social Security Act. This emergency rule is in accordance with the Administrative Procedure Act R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the act or until adoption of the final rule whichever occurs first.

On July 1, 1994 the department adopted the Prospective Payment Reimbursement Methodology for inpatient hospital services (referenced in the *Louisiana Register*, June 20, 1994, Volume 20, Number 6) which included specific methodology for the reimbursement of transplant services. The department has determined that systems limitations prohibit the implementation of the transplant reimbursement provision of the Prospective Payment Reimbursement Methodology. Therefore, the department has adopted the following emergency rule which re-institutes the Tax Equity and Fiscal Reduction Act (TEFRA) provisions for the reimbursement of transplant services. This action is necessary to protect the health and welfare of Medicaid recipients by maintaining an effective organ transplant reimbursement methodology in order to assure that Medicaid recipients are provided these services and to avoid sanctions or penalties from the United States government.

Emergency Rule

Effective November 25, 1995, the department repeals the provisions governing organ transplant services contained in the "Hospital Prospective Reimbursement Methodology" rule referenced in the June 20, 1994 *Louisiana Register* (Volume 20, Number 6) and adopts the following provisions to govern Medicaid reimbursement for nonexperimental organ transplant services only which are pre-authorized by the Medicaid program. Payment is allowable only in accordance with a per diem limitation established for inpatient discharges for organ transplant unit services reflected for a distinct carve out unit. Each type of organ transplant service must be reported as a separate carve-out unit cost. Organ procurement costs shall be included in the carve out and shall be subject to the per diem limitation. The per diem limitation shall be calculated based on costs (routine and ancillary) for such transplant carve-out discharges derived from each hospital's first cost reporting period under the Tax Equity and Fiscal

Responsibility Reduction Act cost per discharge limitation (fiscal years ending September 30, 1983 through August 31, 1984). The base period per diem costs for transplant carve out units shall be trended forward using the target rate percentage for hospital inpatient operating costs established by the Health Care Financing Administration (HCFA). For subsequent fiscal years, the limitation shall be inflated by the applicable target percentage. Discharges applicable to these carve-out-units shall be deleted from the total Medicaid discharges prior to calculation of the target rate limitation. Reimbursement for transplant carve-out unit services shall not exceed the per diem limitation and no incentive payment shall be allowed. The TEFRA provisions governing exceptions and adjustments for inpatient hospital services shall also apply to the per diem limitation for the reimbursement of carve units for organ transplant services. The Medicaid share of each transplant unit's costs subject to the per diem limitation shall be included in the total Medicaid reimbursement at the hospital's cost settlement at fiscal year end.

Rose V. Forrest
Secretary

9512#003

DECLARATION OF EMERGENCY

Department of Labor
Office of Workers' Compensation

Compliance Penalty (LAC 40:I.109)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedures Act, and under the authority of R.S. 23:1291(B)(13), the assistant secretary of the Office of Workers' Compensation declares that the following emergency rule is adopted to be effective December 16, 1995, for a period of 120 days or until the final rule is adopted, whichever occurs first.

The adoption and amendment of these rules is necessary to implement the provisions of Act 246 of the 1995 Regular Session of the Legislature, and to enforce the existing rules of the Office of Workers' Compensation.

The reason for this emergency rule is that technical changes have been made to the previous emergency rule, and that the previous emergency rule will expire before the rule becomes effective through the regular rulemaking process.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Chapter 1. General Provisions

§109. Compliance Penalty

A. Unless otherwise provided for in the rules of the Office of Workers' Compensation, a person or entity that fails to comply with any rule or regulation adopted under the provisions of the Workers' Compensation Act may be penalized with a fine not to exceed \$500.

B. Penalties may be imposed pursuant to this rule after a investigatory hearing before the director or his designee.

C. A person or entity may appeal any penalty imposed pursuant to this rule by filing a Disputed Claim Form, LDOL-WC-1008, in the district where the person or entity is located or in Baton Rouge, Louisiana. All such appeals shall be de novo. Any penalty imposed pursuant to this rule becomes final and may be pursued for collection unless such an appeal is filed within 30 days of the notice of the penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1291(B)(13).

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 11:775 (August 1985), repealed and repromulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:357 (April 1991), amended by the Department of Labor, Office of Workers' Compensation, LR 21:

O. Larry Wilson
Director

9512#041

DECLARATION OF EMERGENCY

Department of Labor
Office of Workers' Compensation
Second Injury Board

Assessment and Timely Filing
(LAC 40:III.107 and 301-307)

Under the authority of the Workers' Compensation Act, particularly R.S. 23:1021 et seq., R.S. 23:1376 and R.S. 23:1377, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., R.S. 49:953(B) in particular, the Second Injury Board ("the board") declares that the following rules and regulations are adopted effective on the 121st day from such time that these emergency rules were effective on and published in the August 20, 1995 *Louisiana Register* and continue for 120 days or until such time that the rules become effective, whichever is earlier.

The adoption of these rules is necessary to prevent imminent peril to the public health and safety and proposed rules are necessary to allow the board, under Acts 1995 No. 188, effective June 12, 1995, to administer the Second Injury Fund reimbursement program in a timely manner, and in order to do so, the board must assess, notify entities, and collect such assessments before the 1996 calendar year. Without rules and regulations, the assessment cannot be timely made; therefore, time is of the essence to implement the rules for administration of the program under law. These proposed rules are also necessary for compliance with Acts 1995 No. 245, effective June 14, 1995, to require presentation of claims to the board within one year after the first payment of either compensation or medical benefits. Further, these rules are necessary because the emergency rules, published in and effective on August 20, 1995, are in effect only for 120 days and the rules, which were published in the October 1995 edition of the *Louisiana Register*, will not become effective until January 20, 1996, whereby, without these emergency rules, there would otherwise be no rules in effect beginning on

the 121st day, counting from August 20, 1995, until such time that the rules become effective. These emergency rules are effective on December 18, 1995 or the 121st day from such time that emergency rules were published in and effective on the August 20, 1995 *Louisiana Register* and continuing for 120 days or until such time that the rules become effective, whichever is earlier. The board therefore establishes the following amendment to rules already in effect and new requirements.

The board has initiated rulemaking procedures to finalize the requirements of this rule.

Title 40

LABOR AND EMPLOYMENT

Part III. Workers' Compensation

Second Injury Board

Chapter 1. General Provisions

§107. Presentation of Claim for Reimbursement from Second Injury Fund, Timely Filing Thereof

Within one year after the first payment of either compensation or medical benefits, the employer or his insurer, whichever of them makes the payments or becomes liable therefor, shall notify the board in writing of such facts and furnish such other information as may be required for the board to determine if the employer or his insurer is entitled to reimbursement from the Workers' Compensation Second Injury Fund. No employer, insurer, servicing agent or self-insured association shall be reimbursed unless the board is notified within one year from the date of the first payment of either compensation or medical benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1376.

HISTORICAL NOTE: Promulgated by the Workmen's Compensation Second Injury Board, LR 1:146 (February 1975), amended LR 3:49 (January 1977), amended by the Department of Labor, Workmen's Compensation Second Injury Board, LR 3:49 (December 1977), amended and repromulgated by the Department of Employment and Training, Office of Workers' Compensation, Second Injury Board, LR 17:179 (February 1991), amended by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 22:

Chapter 3. Assessments

§301. Assessment; Calculation of Rate

A. The board shall determine the amount of the total assessment to be collected which shall not exceed 125 percent of the disbursements made from the fund in the preceding fiscal year.

B. The assessment rate shall be calculated by dividing the total assessment by the total workers' compensation benefits as reported to the Office of Workers' Compensation on form LDOL-WC-1000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1376 and R.S. 23:1377.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 22:

§303. Assessment; Due Date; Notice

A. Each reporting entity shall be assessed an amount determined by multiplying the assessment rate times the total reported workers' compensation benefits paid by that entity.

B. The board shall set the date that the assessment shall be due and shall provide notice to all entities assessed at least 30 days prior to such due date.

C. An assessment notice shall be prepared and mailed to each entity filing an annual report and for which an assessment is due. The notice shall be sent certified mail, return receipt requested.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1376 and R.S. 23:1377.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 22:

§305. Assessments - Failure to Pay; Penalties; Collection

A. Any entity assessed, shall remit the amount of the assessment within 30 days of the date of notice or by the due date set forth in the notice if greater than 30 days. The official United States Postal Department postmark shall be the basis for determining compliance with this requirement.

B. Any entity failing to pay by the due date may be assessed a penalty of 20 percent of the unpaid assessment for each 30 days, or portion thereof, that the assessment remains unpaid.

C. Payments received by the office shall be applied first to penalties assessed and then to the outstanding second injury fund assessment.

D. The assessment and/or penalties imposed pursuant to this Section shall be pursued for collection by the procedures used for collection of an open account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1376 and R.S. 23:1377.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 22:

§307. Ineligibility for Reimbursement

A. Any entity required by law to make an annual payment or payments into the fund, but which has not made such annual payment or payments, shall be ineligible for reimbursement from the fund for injuries occurring during such period of non-payment of assessment.

B. Except as provided in R.S. 23:1378(A)(7), any entity that is not required by law to make an annual payment or payments into the fund shall be ineligible for reimbursement from the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1376 and R.S. 23:1377.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 22:

O. Larry Wilson
Chairman

9512#035

DECLARATION OF EMERGENCY

Department of Treasury Board of Trustees of the State Employees Group Benefits Program

Managed Prescription Drug Benefits

In accordance with the applicable provisions of R.S. 49:953(B), the Administrative Procedure Act, and R.S. 42:871(C) and 874(A)(2), vesting the Board of Trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power

to adopt and promulgate rules with respect thereto, the Board of Trustees hereby finds that imminent peril to the public health and welfare exists which requires adoption of the following emergency rule.

WHEREAS the health and welfare of the employees of the State of Louisiana and of the public school systems within the state is of crucial to the delivery of vital services to the citizens of the state; and

WHEREAS the State Employees Group Benefits Program provides health and accident benefits for approximately 76,300 active and retire employees of the State of Louisiana and many school boards across the state, with over 155,000 total covered individuals; and

WHEREAS the plan for delivery of and payment for health care services to members of the State Employees Group Benefits Program can impact upon the availability of services necessary to maintain the health and welfare of the covered employees and their dependents; and

WHEREAS the Board of Trustees of the State Employees Group Benefits Program has contracted for a managed prescription drug benefit program to be implemented on January 1, 1996, in order to improve the plan for delivery of and payment for outpatient prescription drug benefits; and

WHEREAS it is necessary to amend the Plan Document of Benefits for the State Employees Group Benefits Program in order to implement the managed prescription drug benefit program; and

WHEREAS it is necessary to amend the Plan Document of Benefits for the State Employees Group Benefits Program in order to make changes with regard to lifetime maximum benefits and annual restoration thereof; and

WHEREAS it is necessary to amend the Plan Document of Benefits for the State Employees Group Benefits Program in order to clarify certain benefit limitations and exclusions in light of recent litigation;

NOW THEREFORE, the Board of Trustees of the State Employees Group Benefits Program does hereby invoke the emergency rule provisions of R.S. 49:953(B) to adopt the following amendments to the Plan Document of Benefits.

These amendments shall become effective on January 1, 1996, and shall remain effective for a maximum of 120 days or until promulgation of the final rule, whichever occurs first.

Amendment Number 1

Amend the SCHEDULE OF BENEFITS on pages 4 and 5 of the Plan Document in the following particulars:

A. Amend the Lifetime Maximum and Automatic Annual Restoration provisions on page 4 read as follows:

"Lifetime Maximum for all benefits except Outpatient Prescription Drug Benefits on and after January 1, 1996, per Person. . . \$750,000*

Automatic Annual Restoration for all benefits except Outpatient Prescription Drug Benefits on and after January 1, 1996. . . \$ 4,000*

Lifetime Maximum for all Outpatient Prescription Drug Benefits on and after January 1, 1996, per person (no Automatic Annual Restoration). . . \$250,000"

B. Add a new footnote on page 4, as follows, and redesignate the other footnotes on pages 4 and 5 accordingly:

"*Lifetime Maximum in excess of \$750,000 may be

accumulated pursuant to the automatic annual restoration."

C. Under "Deductibles" on page 4, amend the prescription drug deductible provision to read as follows:

"Prescription drugs (in addition to and separate from calendar year deductible). . . \$150

(Not subject to family unit maximum or annual stoploss)"

D. Under "Percentage Payable after Satisfaction of Applicable Deductibles" on page 5, amend the prescription drug provision to read as follows:

"Prescription Drugs (subject to a minimum copayment of \$3 per prescription and not to exceed the brand name and generic maximum allowable charges) . . . 90 percent (network), 50 percent non-network, in state, 80 percent non-network, out-of-state***"

E. Amend the redesignated footnote "****" on pages 4 and 5 to read as follows:

"**** A PPO provider or network pharmacy will be paid (after deductibles) at 90 percent of negotiated fee.

a. If the needed medical service is available from a PPO provider in the area where the service is to be performed and the covered person chooses not to use the preferred provider, or if a covered person receives an eligible prescription drug from a non-network in-state pharmacy, benefits will be paid at 50 percent (after deductibles) of negotiated fee.

b. If the needed medical service is not available from a PPO provider in the area where the service is to be performed, or if a covered person receives an eligible prescription drug from a non-network out-of-state pharmacy, benefits will be paid at 80 percent (after deductibles) of negotiated fee."

F. Amend item 4 in redesignated footnote "*****" on page 5 to read as follows:

"***** ...4) expenses for prescription drugs (never eligible for 100 percent reimbursement)."

Amendment Number 2

Amend Article 1, Section I, Subsection P to read as follows:

"P. The term *PPO* as used herein shall mean a Preferred Provider Organization. A PPO is a medical provider such as a hospital, doctor or clinic who has entered into a contractual agreement with the Program to provide medical services to covered persons at a reduced or discounted price. In return, the Program has agreed to reimburse the PPO at an increased level of benefits.

With reference to outpatient prescription drug benefits only, the term *Network Pharmacy* as used herein shall mean a pharmacy which participates in a network established and maintained by a third-party prescription benefits management firm with which the Program has contracted to provide and adjudicate prescription drug benefits."

Amendment Number 3

Amend Article 3, Section I, Subsection C, Paragraphs 1, 2, and 4, and add a new Paragraph 5, to read as follows:

"C. Benefits for Eligible Medical Expenses

When disease, illness, accident or injury requires the covered person to incur any of the eligible expenses defined herein, ...

1. 50 percent of the first \$5,000 of eligible expenses incurred with non-PPO providers in an area where PPO contracts are in force and can provide the needed medical service;

2. 80 percent of the first \$5,000 of eligible expenses incurred in areas where no PPO contracts are in place or where PPO providers cannot provide the needed medical service;

3. ...

4. except for prescription drugs, 100 percent of eligible expenses in excess of \$5,000 for the remainder of the calendar year subject to the maximum amount as specified in the Schedule of Benefits; and

5. the percentage payable for eligible outpatient prescription drug expenses shall be determined in accordance with the provisions of Article 3, Section XI."

Amendment Number 4

Amend Article 3, Section I, Subsection E, to read as follows:

"E. Restoration of Comprehensive Medical Benefits

For all Comprehensive Medical Benefits under Article 3, Section I, other than Outpatient Prescription Drug benefits on and after January 1, 1996, the automatic annual restoration amount as stated in the Schedule of Benefits shall be restored by the Plan on each January 1."

Amendment Number 5

Amend Article 3, Section I, Subsection F, Preamble and Paragraphs 8, 9, 10, and 11, and add a new Paragraphs 36 and 37, to read as follows:

"F. Eligible Expenses

The following shall be considered eligible expenses except when related to or in connection with non-covered procedures as listed in Section VIII of this Article. These eligible expenses shall be subject to applicable limitations of the Fee Schedule and the Schedule of Benefits, under Comprehensive Medical Benefits when prescribed by a physician and medically necessary for the treatment of a covered person:

8. Subject to the provisions of Article 3, Section XI, and the limitations and deductibles specified in the Schedule of Benefits, drugs and medicine approved by the Food and Drug Administration or its successor, requiring a prescription, dispensed by a licensed pharmacist or pharmaceutical company, but which are not administered to a covered person as an inpatient hospital patient or as an outpatient surgical patient, including insulin, Retin-A dispensed for covered persons under the age of 26, vitamin B12 injections, and prescription potassium chloride, but not including items listed in Article 3, Section VIII(W);

9. Over the counter diabetic supplies, subject to the provisions of Article 3, Section XI, and the limitations and deductibles for prescription drugs specified in the Schedule of Benefits;

10. Surgical supplies and medical supplies as listed below:

Catheters - External and Internal
Cervical Collar
IV Connectors
IV Tubing
Kidney Dialysis Supplies
Leg Bags for Urinal Drainage
Ostomy Supplies

Prosthetic Socks
Prosthetic Sheath
Sling (Arm or Wrist)
Suction Catheter for Oral Evacuation
Surgical Shoe (Following Foot Surgery Only);

11. Intravenous injections, solutions, and eligible related intravenous supplies, except in conjunction with home health care services;

36. Oxygen and equipment necessary for its administration; and

37. Services and supplies included in an approved treatment plan pursuant to the Case Management provisions in Section IV of this Article."

Amendment Number 6

Amend Article 3, Section VI, Subsection E, Paragraph 2, relative to outpatient benefits under the Catastrophic Illness Endorsement by deleting subparagraph c, relative to drugs and medicines, in its entirety and redesignating subparagraphs d and e as c and d, respectively.

Amendment Number 7

Amend Article 3, Section VIII, Subsections W and KK to read as follows:

"VIII. Exceptions and Exclusions for All Medical Benefits

No benefits are provided under this contract for:

W. Appetite suppressant drugs, dietary supplements, topical forms of Minoxidil, Retin-A dispensed for covered persons over age 26, nutritional or parenteral therapy, vitamins and minerals, and drugs available over the counter;

KK. Expenses for services rendered by a dentist or oral surgeon and any ancillary or related services, except for covered dental surgical procedures (Article 3, Section V), dental procedures which fall under the guidelines of Article 3, Section I(F)(15), procedures necessitated as a result of or secondary to cancer, or oral and maxillofacial surgeries which are shown to the satisfaction of the program to be medically necessary, non-dental, non-cosmetic procedures;"

Amendment Number 8

Amend Article 3, Section X, Subsection B, Paragraph 2 to read as follows:

2. If a non-PPO provider is used in an area where there are PPO providers of the same service, then the plan member is reimbursed 50 percent of the eligible expenses. If there is no PPO provider of the same service in the area where the service is provided, then the plan member is reimbursed 80 percent of eligible expenses. If services are received from a PPO, then services are reimbursed at 90 percent of the PPO rate with payments made to the PPO provider. These are all made subject to deductibles to the PPO provider. There is contractual assignment to every PPO provider."

Amendment Number 9

Amend Article 3, by adding a new Section XI to read as follows:

"XI. Prescription Drug Benefits

Effective January 1, 1996, outpatient prescription drug

benefits are adjudicated by a third-party prescription benefits management firm with whom the Program has contracted. In addition to all provisions, exclusions and limitations relative to prescription drugs set forth elsewhere in this Plan Document, the following shall apply to expenses incurred for outpatient prescription drugs:

A. Upon presentation of the Group Benefits Program identification card at a network pharmacy, the plan member shall be responsible for payment of 10 percent of eligible charges for the drug, with a minimum copayment of \$3 per prescription, provided, however, that in no event will a combination of payments made by the prescription benefits management firm and the plan member exceed the actual charge by the pharmacy for the drug.

B. In the event the plan member does not present the Group Benefits Program identification card to the network pharmacy at the time of purchase, the plan member shall be responsible for full payment for the drug and must then file a claim with the prescription benefits management firm for reimbursement, which shall be limited to the rates established for non-network pharmacies.

C. In the event the plan member obtains a prescription drug from an in-state non-network pharmacy, benefits shall be limited to 50 percent and benefits for prescription drugs obtained from an out-of-state non-network pharmacy shall be limited to 80 percent. In either event, a plan member must submit a claim to the prescription benefits management firm in order to receive benefits.

D. Regardless of where the prescription drug is obtained, eligible expenses for single-source brand name drugs shall be limited to the prescription benefits management firm's maximum allowable charge and eligible expenses for generic drugs and for brand name drugs for which a generic equivalent is manufactured shall be limited to the prescription benefits management firm's generic maximum allowable charge.

E. Prescription drug dispensing and refills shall be limited in accordance with protocols established by the prescription benefits management firm, including the following limitations:

1. up to a 34 day supply of acute drugs may be dispensed at one time;
2. up to a 90 day supply of maintenance drugs may be dispensed at one time; and
3. refills will be available only after 75 percent of drugs previously dispensed should have been consumed.

F. The Board of Trustees reserves the authority to administratively adopt prior authorization and/or case management procedures governing the terms and conditions under which expenses for certain drugs are considered eligible."

Amendment Number 10

Amend Article 4, Section II to read as follows:

"II. Deadline for Filing Claims

A properly submitted claim for benefits as a result of any disease, illness, accident or injury must be received by the State Employees Group Benefits Program, or for outpatient prescription drug benefits, by the prescription benefits management firm, by 4:30 p.m., close of business, on June 30

next following the end of the calendar year in which the medical expenses were incurred. When June 30 is a non-work day, the deadline is automatically extended to 4:30 p.m. of the next regular workday. Each expense shall constitute a separate claim."

Amendment Number 11

Amend Article 4 by deleting Section IV, relative to filing claims for prescription drugs, in its entirety and redesignating Sections V through XVIII as IV through XVII, respectively.

Amendment Number 12

Amend Article 5, Section IV by adding a new subsection C to read as follows:

"IV. Request for Review

A plan member, affected by an initial determination, may appeal the determinations in the following manner:

* * *

C. The foregoing notwithstanding, an appeal from the disallowance of a claim relating to outpatient prescription drug benefits may not be filed until all review and appeal procedures available through the prescription benefits management firm have been exhausted. The appeal must be filed within 90 days of the prescription benefits management firm's final determination, a copy of which must be included with the request for appeal."

James R. Plaisance
Executive Director

9512#023

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Office of Fisheries

Commercial Fisherman's Sales Report Forms (LAC 76:VII.203)

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 56:345(B) which allows the secretary to promulgate rules and regulations on the submission of Commercial Fisherman's Sales Report Forms to the department, LAC 76:VII.203(D), which establishes an implementation date of January 1, 1996, the secretary of the Department of Wildlife and Fisheries hereby finds that imminent peril to the public welfare exists and accordingly adopts the following emergency rule effective January 1, 1996, for 120 days or until promulgation of the final rule, whichever occurs first.

The full implementation date for the Commercial Fisherman's Sales Report Forms is January 1, 1998.

The secretary has amended the full implementation date of the Commercial Fisherman's Sales Report Forms to January 1, 1998 due to the lack of sufficient funding to initiate and maintain the program.

Joe L. Herring
Secretary

9512#016

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Office of Fisheries

Dealer Receipt Form (LAC 76:VII.201)

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 56:303.7(B) and 306.4(E) which allows the secretary to promulgate rules and regulations on the submission of Dealer Receipt Forms to the department; LAC 76:VII.201.F which establishes an implementation date of January 1, 1996; the secretary of the Department of Wildlife and Fisheries hereby finds that imminent peril to the public welfare exists and accordingly adopts the following emergency rule effective January 1, 1996, for 120 days or until promulgation of the final rule, whichever occurs first.

The full implementation date for the Dealer Receipt Forms is January 1, 1998.

The secretary has amended the full implementation date of the Dealer Receipt Forms to January 1, 1998 due to the lack of sufficient funding to initiate and maintain the program.

Joe L. Herring
Secretary

9512#015

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Office of Fisheries

Gill and Trammel Nets Marking System (LAC 76:VII.181)

The Department of Wildlife and Fisheries is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:320(F), adopts the rule set forth below.

This declaration of emergency is necessary because Act 1316 of the 1995 Legislature mandates the Department of Wildlife and Fisheries to adopt this rule.

The effective date of Act 1316 is August 15, 1995, and the effective date of the declaration of emergency shall be December 29, 1995. It shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 1. Freshwater Sport and Commercial Fishing

§181. Marking System for Freshwater Gill Nets and Trammel Nets

Each gill net or trammel net used to take freshwater commercial fish shall be marked with a waterproof tag attached to the corkline at each end of the net, no more than 3 feet from the edge of the webbing. Said tags shall be supplied by the commercial fisherman and shall be completely

waterproof. Each tag shall have the fisherman's full name (no initials) and commercial fisherman's license number (not the net license number) printed thereon in the English language, so as to be clearly legible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:320(F).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Fisheries, LR 21:

Joe L. Herring
Secretary

9512#020

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Office of Fisheries

Oyster Landing

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Department of Wildlife and Fisheries to use emergency procedures to establish rules for the taking of oysters and R.S. 56:6(25)(a), which allows the Wildlife and Fisheries Commission to set seasons, times, places, size limits, quotas, daily take and possession limits for the taking of fish and Act 234 (House Bill 976) of the 1995 Regular Session of the Louisiana Legislature which directs the department to adopt rules regulating the landing of oysters outside the state, the secretary of the Department of Wildlife and Fisheries does hereby establish the following emergency rule effective December 15, 1995 for 120 days.

Effective December 15, 1995, a lessee legally harvesting oysters which have been properly tagged from his own lease may land those oysters outside the state if the vessel operating in his behalf has on board a permit for that vessel issued by the Department of Wildlife and Fisheries. This permit does not exempt the lessee from any of the rules, regulations and license requirements of this and other state agencies and of the other states as they pertain to the interstate shipment of shellfish. These permits may be obtained from the Baton Rouge and New Orleans Licensing Offices of the Department of Wildlife and Fisheries and shall be valid for a period of one calendar year from January 1 through December 31. The cost of the permit shall be \$100. Permits shall include oyster lessee name, address, phone number, lease numbers, and vessel registration and shall not be transferable. In order to qualify for the permit, proof of lease ownership must be provided. The permit shall be on board the vessel during transport. Transport logs shall be completed and returned to the department at the end of each calendar month. Failure to provide the required transport logs may result in suspension or revocation of the permit, at the discretion of the department. Failure to abide by all permit requirements may

result in loss of the permit and/or other legal action being taken against the permittee.

Joe L. Herring
Secretary

9512#021

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

1995 Fall Inshore Shrimp Season Extension

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all inside waters, and under the authority of a resolution adopted by the Wildlife and Fisheries Commission on August 3, 1995, the secretary does hereby extend the 1995 Fall Inshore Shrimp Season in all the waters of Zone 1 until 12:01 a.m., February 1, 1996 and in the Breton and Chandeleur Sound area of Zone 1 until 12:01 a.m., April 1, 1996.

Zone 1 is that portion of Louisiana's inshore waters from the Mississippi state line westward to the eastern shore of south pass of the Mississippi River.

Breton and Chandeleur Sounds are those waters as described in R.S. 56:495.1(A)(2), as amended by Act 1040 of the 1995 Regular Legislative Session. This area consists only of the open waters of the sounds.

Perry Gisclair
Chairman

9512#047

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Traversing Permit (LAC 76:VII.403)

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission are exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to their authority under R.S. 56:305.5.B. and R.S. 56:320.2.E. adopts the rule set forth below. Promulgation of this rule as a declaration of emergency is necessary because Act 1316 (The Louisiana Marine Resources Conservation Act of 1995) mandates the Department of Wildlife and Fisheries to implement the Act effective August 15, 1995.

This declaration of emergency is effective December 29, 1995, and it shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule whichever occurs first.

The Department of Wildlife and Fisheries and the

Wildlife and Fisheries Commission hereby establish rules and regulations for the issuance of permits to persons authorized to possess gill nets, trammel nets, strike nets, and seines within the territorial boundaries of the state while traversing state waters to and from the federal exclusive economic zone, and to carry out the provisions of R.S. 320.1.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 4. License and License Fees

§403. Traversing Permit

A. The Department of Wildlife and Fisheries is authorized to issue a Traversing Permit upon application to its Commercial License Section at the Baton Rouge office for a fee of \$250 for each permit. Application for permits must be made in person.

B. The Traversing Permit shall be valid for the calendar year of issue (January 1 through December 31).

C. The captain or vessel owner shall only be required to have one Traversing Permit for any number of gill nets, trammel nets, strike nets, or seines. Each gear used in the waters of the federal exclusive economic zone (EEZ) shall be properly licensed. For licensing purposes, trammel nets, strike nets, and seines are required to be licensed as gill nets when used in the EEZ.

D. The possession of gill nets, trammel nets, strike nets, or seines on or aboard any vessel in the saltwater areas of the state is prohibited unless the captain or owner of the vessel has in his immediate possession upon the vessel a Traversing Permit as well as any other licenses as required by law.

E. While traversing state waters going to and from the waters of the federal exclusive economic zone, all gill nets, trammel nets, strike nets, and seines shall remain on board the vessel and shall not be used in state waters.

F. Harvest and possession of all fish pursuant to this permit is subject to all rules established by the Wildlife and Fisheries Commission relative to seasons, size limits, and quotas.

G. Vessels containing or transporting prohibited nets shall proceed as directly, continuously, and expeditiously as possible.

H. Permittees will be required to abide by the following conditions:

1. Possession of a permit does not exempt the permittee from laws or regulations except for those which may be specifically exempted by the permit. Any violation of a fish law shall constitute a violation of this permit.

2. Information gained by the department through the issuance of a Traversing Permit is not privileged and will be disseminated to the public upon request.

3. The permittee shall report monthly the catch and effort under the permit, even when catch and effort is zero. This report shall contain total catch, total effort, and any other parameters which may be required by the department. The report shall be filed with the enforcement division of the Department of Wildlife and Fisheries no later than 30 days following the last day of each month.

4. When permitted gear is on board the permitted vessel or in possession of the permittee, the permittee and the vessel are assumed to be operating under authority of the permit. No

gear other than gear allowed under the Traversing Permit may be on board the vessel or in possession of the permittee.

5. The vessel authorized for use under the Traversing Permit shall have distinguishing signs so that it may be identified as such. The signs shall have the letters "EEZ" and assigned numbers printed on them in at least 10-inch high letters and numbers on a contrasting background in block style so as to be visible and legible from low-flying aircraft and from any vessel in the immediate vicinity. The assigned numbers shall be situated on both sides and on top of the vessel.

6. The department reserves the right to observe the operations taking place under the Traversing Permit and, at its request, the department may assign aboard any permitted vessel an enforcement agent as an observer.

7. All permittees shall notify the department four hours prior to leaving port to traverse or fish under the conditions of the Traversing Permit and immediately upon returning from the permitted trip. The department shall be notified by calling a designated phone number.

8. The permittee must report to the department the name of the buyer who will purchase the fish product obtained under the Traversing Permit. This information shall be provided at the time that permittee notifies the department of his return.

9. When quotas have been met or seasons have been closed, no fish affected by such quotas or seasons may be possessed on board a vessel while having commercial gear on board traveling state waters.

10. Any violation of the conditions of the Traversing Permit and any violation of any fisheries regulation shall be punishable as defined by R.S. 56:320.2.D.(1) in accordance with Act 1316 of the 1995 Legislature.

AUTHORITY NOTE: Promulgated in accordance with 56:305.B and 56:320.2.E.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 22:

Joe L. Herring
Secretary

Glynn Carver
Vice-Chairman

9512#019

Rules

RULE

Department of Agriculture and Forestry Office of Forestry

Rural Fire Protection (LAC 7:XXXIX.21101)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Office of Forestry, hereby adopts

LAC 7:XXXIX.21101. This rule establishes procedures for the assignment of state surplus property to local governments or duly organized and officially recognized fire organizations to be utilized in suppressing or providing protection from fires in rural areas. This rule complies with the provisions of R.S. 3:2.

Title 7

AGRICULTURE AND ANIMALS

Part XXXIX. Forestry

Chapter 211. Rural Fire Protection

§21101. State Excess Property Program

The Department of Agriculture and Forestry, through the Office of Forestry, shall use the following procedures for the assignment of state surplus property to local governments or duly organized and officially recognized fire organizations to be utilized in suppressing or providing protection from fires in rural areas:

1. This program shall be called the State Surplus Property Program (hereinafter "the program").

2. The state forester, or his designee, shall be the "program coordinator" and responsible for coordinating with local governments or duly organized and officially recognized fire organizations for the assignment of state surplus property under the program.

3. In order to be eligible to participate in the program, local governments or duly organized and officially recognized fire organizations must submit an application in writing to the program coordinator, Alexander State Forest, Box 298, Woodworth, LA 71485. The application must contain the name, address and phone number of the applicant and must state in detail the specific equipment sought by the applicant. All applications will be date stamped as of the date received in the office of the program coordinator and will be checked to verify the applicant's eligibility to participate in the program.

4. The department shall maintain a list of applicants which shall be divided into three categories of requested property:

- a. vans and pickups up to 3/4 ton;
- b. pickups 1 ton or larger and larger trucks; and
- c. all other types of equipment not included in categories a and b.

5. Following receipt and verification of eligibility, the applicant's name and the date the application was received shall be placed on the list in the appropriate category or categories.

6. As equipment becomes available, the program coordinator will assign the property to the applicants in the following manner:

- a. First priority shall be given to newly formed departments.
- b. Second priority shall be given to established departments that have not previously received property under the program.
- c. Third priority shall be given to established departments that have previously received property under the program.
- d. Should two or more applicants have equal priority under the order set forth above, the property shall be assigned

based on the date the applications of those equal applicants was received by the program coordinator.

e. Should two or more applicants have equal priority under the order set forth above, the property shall be assigned to the applicant who can demonstrate to the program coordinator the greatest need for the property.

7. Applicants shall be removed from the list upon assignment of property, or two years from the date their application was received by the program coordinator. Applicants shall be entitled to a two-year extension of their original application, provided that the program coordinator receives a written request from the applicant 60 days prior to the expiration of the original application. Applications extended pursuant to this Section shall maintain the same priority as the original application.

8. The assignment and the cooperative endeavor between the Office of Forestry and local governments or duly organized and officially recognized fire organizations shall be evidenced by a written agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Forestry, LR 21: (December 1995).

Bob Odom
Commissioner

9512#009

RULE

Board of Elementary and Secondary Education

Bulletin 1794—Textbooks and Library Books

In accordance with R. S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education adopted the following amendment to page 16 of Bulletin 1794, Textbook and Library Book Policy and Procedure Manual, Revised 1994.

Page 16, amend Number 3 to read:

1. Submit request to the department by December 15 of each year.

2. Upon submission of request, parish shall notify all nonpublic schools within their parish of the availability of these textbooks by disciplines, giving them three weeks to express their interest in securing any of these textbooks.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17(6)(A)

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 21: (December 1995).

Carole Wallin
Executive Director

9512#028

RULE

Board of Elementary and Secondary Education

Minimum Foundation Program (MFP) Student Membership Data (LAC 28:I.1709)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education adopted an amendment to the present policy on student count for Minimum Foundation Program funding. This policy which was suspended for one year (June 24, 1994 - June 24, 1995) is being amended. This is an amendment to LAC 28:I.1709 as stated below.

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 17. Finance and Property §1709. Budgets

* * *

H. MFP General Provisions

* * *

3. Student Count for MFP Funding. Reporting documents submitted by the local city and parish school systems shall be in accordance with the rules and regulations of the State Department of Education and the R.S. that pertain to the Minimum Foundation Program. This information is to be audited by the Bureau of Educational Finance Services for compliance. The auditor(s) shall provide both positive and negative assurance that the student count and other information provided by the local city and parish school systems is free of material misstatements.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Department of Education LR 21: (December 1995).

Carole Wallin
Executive Director

9512#030

RULE

Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

Control of Emission of Organic Compounds (LAC 33:III.2117) (AQ131)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality Division regulations, LAC 33:III.2117, (AQ131).

This action adds acetone to the list of compounds excluded from the definition of VOC on the basis that these compounds

have been determined to have negligible photochemical reactivity.

This action revises the definition of volatile organic compounds (VOC) for purposes of preparing state implementation plans (SIPs) to attain the national ambient air quality standards (NAAQS) for ozone under Title I of the Clean Air Act (Act).

This action is required by federal regulation.

The text "parachlorobenzotrifluoride (PCBTF), and cyclic, branched, or linear completely methylated siloxanes." has been added to this rule. This text was finalized in AQ113 in July 1995 and was inadvertently left out of this proposed rule in August 1995.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 21. Control of Emission of Organic Compounds

Subchapter A. General

§2117. Exemptions

The following compounds are considered exempt from the control requirements of LAC 33:III.2101 to 2145: methane, ethane, 1, 1, 1 trichloroethane (methyl chloroform), methylene chloride (dichloromethane), trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (CFC-22), trichlorotrifluoroethane (CFC-113), trifluoromethane (FC-23), dichlorotetrafluoroethane (CFC-114), chloropentafluoroethane (CFC-115), dichlorotrifluoroethane (HCFC-123), tetrafluoroethane (HFC-134a), dichlorofluoroethane (HCFC-141b), chlorodifluoroethane (HCFC-142b), 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124), pentafluoroethane (HFC-125), 1,1,1,2-pentafluoroethane (HFC-134), 1,1,1-trifluoroethane (HFC-143a), 1,1-difluoroethane (HFC-152a), acetone, parachlorobenzotrifluoride (PCBTF), and cyclic, branched, or linear completely methylated siloxanes. The following classes of perfluorocarbons are also considered exempt from the control requirements of LAC 33:III.2101 to 2145: cyclic, branched, or linear, completely fluorinated alkanes; cyclic, branched, or linear, completely fluorinated ethers with no unsaturations; cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:118 (February 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:289 (March 1994), LR 21:681 (July 1995), LR 21: (December 1995).

James B. Thompson, III
Assistant Secretary

9512#038

RULE

Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

Fugitive Emission Control
(LAC 33:III.2121)(AQ130)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality Division regulations, LAC 33:III.2121.D.1., (AQ130).

This submittal is made in order to change the existing phrase in LAC 33:III.2121.D.1 to read "...subject to LAC 33:III.2121.C.1.b and 2.b".

This action is required to correct an oversight in the original rule promulgation.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 21. Control of Emission of Organic Compounds

Subchapter A. General

§2121. Fugitive Emission Control

* * *

[See Prior Text in A-D]

1. Alternate Standards for Valves and Pumps subject to LAC 33:III.2121.C.1.b and 2.b—Skip Period Leak Detection and Repair:

* * *

[See Prior Text in D.1.a-G]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:959 (November 1990), LR 17:654 (July 1991), LR 21: (December 1995).

James B. Thompson, III
Assistant Secretary

9512#039

RULE

Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

Modification of NESHAP Sources
(LAC 33:III.5115)(AQ129)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality Division regulations, LAC 33:III.Chapter 51, (AQ129).

Barium sulfate shall be delisted from the list of toxic air pollutants in LAC 33:III.Chapter 51. The prior regulation (LAC 33:III.Chapter 51) made reference to barium and compounds as toxic air pollutants that must be reported and controlled. EPA delisted barium sulfate from the category "barium compounds" on the toxic chemicals list under Section 313 of the Emergency Planning and Community Right-to-know Act of 1986 due to insufficient evidence that barium sulfate causes adverse acute or chronic health effects. DEQ received a request to delist barium sulfate and concurs with EPA.

**Title 33
ENVIRONMENTAL QUALITY
Part III. Air**

**Chapter 51. Comprehensive Toxic Air Pollutant
Emission Control Program**

**Subchapter A. Applicability, Definitions, and General
Provisions**

§5115. Modification of NESHAP Sources

* * *

[See Prior Text in A-D.4]

Editor's Note: Tables 51.1, 51.2, and 51.3 are being moved to §5112 in their entirety.

AUTHORITY NOTE: Promulgated in accordance with R.S., 30:2060 and R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1364 (December 1992), repromulgated LR 19:45 (January 1993), LR 19:891 (July 1993), amended LR 21: (December 1995).

§5112. Tables

Table 51.1 Minimum Emission Rates Toxic Air Pollutants			
Class I - Known and Probable Human Carcinogens			
Compounds	Cas No.	Synonyms	Minimum Emission Rate (Pounds/Year)
* * *			
[See Prior Text in Class I-Class III Chlorine]			
Cresol[4]	1319-77-3		1,600.0
* * *			
[See Prior Text in Cumene-Vinyl Acetate]			

* * *

Explanatory Notes:

[1]Includes any unique chemical substance that contains the listed metal as part of that chemical's infrastructure, excluding barium sulfate. Barium sulfate has been delisted as a toxic air pollutant and should not be included as part of the metals and compounds emissions. Concentrations are based on $\mu\text{g}(\times)/\text{m}^3$, where \times is the elemental form of the metal.

* * *

[See Prior Text in Explanatory Notes [2]-[11]]

Table 51.2 Louisiana Toxic Air Pollutant Ambient Air Standards				
Compounds	Cas no.	Class	Ambient Air Standard	
			($\mu\text{g}/\text{m}^3$) (8 Hour Avg.)	($\mu\text{g}/\text{m}^3$) (Annual Avg.)
* * *				
[See Prior Text in Acetaldehyde-copper (And Compounds) [1]]				
Cresol [4]	1319-77-3	III	276.00	
* * *				
[See Prior Text in CUMENE-51.2 Explanatory Note †]				

* * *

[1]Includes any unique chemical substance that contains the listed metal as part of that chemical's infrastructure, excluding barium sulfate. Barium sulfate has been delisted as a toxic air pollutant and should not be included as part of the metals and compound emissions. Concentrations based on $\mu\text{g}(\text{x})/\text{m}^3$, where x is the elemental form of the metal.

* * *

[See Prior Text in Explanatory Note [2]-Table 51.3 Explanatory Note 4]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2060 and R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21: (December 1995).

James B. Thompson, III
Assistant Secretary

9512#032

RULE

**Department of Environmental Quality
Office of Air Quality and Radiation Protection
Air Quality Division**

**Nonattainment New Source Review
(LAC 33:III.504) (AQ127)**

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the secretary has amended the Air Quality Division regulations, LAC 33:III.504, (AQ127).

Reference to NO_x shall be removed, as a pollutant to be controlled under nonattainment in LAC 33:III.504, so that the state will qualify for a control exemption under Section 182(f)(1) of the Clean Air Act.

The prior regulation (LAC 33:III.504) made reference to NO_x as a pollutant that must be controlled under nonattainment. In order to qualify for a control exemption

under Section 182(f)(1), this reference is deleted from LAC 33:III.504.

**Title 33
ENVIRONMENTAL QUALITY
Part III. Air**

Chapter 5. Permit Procedures

§504. Nonattainment New Source Review Procedures

* * *

[See Prior Text in A]

1. For an area which is designated incomplete data, transitional nonattainment, marginal, moderate, serious, or severe nonattainment for ozone, volatile organic compounds are the regulated pollutants under this Section.

* * *

[See Prior Text in A.2-D.4]

5. The proposed major stationary source or major modification will meet all applicable emission requirements in the Louisiana State Implementation Plan (SIP), any applicable new source performance standard in 40 CFR part 60, and any national emission standard for hazardous air pollutants in 40 CFR part 61 or part 63.

* * *

[See Prior Text in D.6-F.5]

6. The emission limit for determining emission offset credit involving an existing fuel combustion source shall be the most stringent emission standard which is allowable under the applicable regulation for this major stationary source for the type of fuel being burned at the time the permit application is filed. If the existing source commits to switch to a cleaner fuel, emission offset credit based on the difference between the allowable VOC emissions of the fuels involved shall be acceptable only if an alternative control measure, which would achieve the same degree of emission reductions should the source switch back to a fuel which produces more pollution, is specified in a permit issued by the department.

* * *

[See Prior Text in F.7-10]

G. Definitions. The terms in this Section are used as defined in LAC 33:III.111 with the exception of those terms specifically defined as follows:

* * *

[See Prior Text]

Allowable Emissions—the emissions rate of a major stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- a. the applicable standard set forth in 40 CFR part 60, 61, or 63;
- b. any applicable State Implementation Plan emissions limitation including those with a future compliance date; or
- c. the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

* * *

[See Prior Text]

Federally Enforceable—all limitations and conditions which are federally enforceable by the administrator, including those requirements developed pursuant to 40 CFR parts 60, 61, and 63, requirements within any applicable State

Implementation Plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I including 40 CFR 51.165 and 40 CFR 51.166.

* * *

[See Prior Text]

Major Modification—

* * *

[See Prior Text in a]

b. any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

* * *

[See Prior Text in c-c.vii]

Major Stationary Source—

* * *

[See Prior Text in a-b]

c. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

d. A stationary source shall not be a major stationary source due to fugitive emissions, to the extent that they are quantifiable, unless the source belongs to:

- i. any category in Table A in LAC 33:III.509; or
- ii. any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

e. A stationary source shall not be a major stationary source due to secondary emissions.

* * *

[See Prior Text]

Table 1 Major Stationary Source/Major Modification Emission Thresholds			
POLLUTANT	MAJOR STATIONARY SOURCE Threshold Values (tons/year)	MAJOR MODIFICATION Significant Net Increase Values (tons/year)	OFFSET RATIO Minimum
OZONE VOC		Trigger Values	
Marginal ¹	100	40 (40) ²	1.10 to 1
Moderate	100	40 (40) ²	1.15 to 1
Serious	50	25 ³ (5) ⁴	1.20 to 1
Severe	25	25 ³ (5) ⁴	1.30 to 1
CO			
Moderate	100	100	>1.00 to 1
Serious	50	50	>1.00 to 1
SO ₂	100	40	>1.00 to 1
PM ₁₀			
Moderate	100	15	>1.00 to 1
Serious	70	15	>1.00 to 1
Lead	100	0.6	>1.00 to 1

¹ For those parishes which are designated incomplete data or transitional nonattainment for ozone, the new source review rules for a marginal classification apply.

² Consideration of the net emissions increase will be triggered for any project which would increase emissions by 40 tons or more per year, without regard to any project decreases.

³ For serious and severe ozone nonattainment areas, the increase in emissions of volatile organic compounds resulting from any physical change or change in the method of operation of a stationary source shall be considered significant for purposes of determining the applicability of permit requirements, if the net emissions increase from the source equals or exceeds 25 tons.

⁴ Consideration of the net emissions increase will be triggered for any project which would increase volatile organic compound emissions by five tons or more per year, without regard to any project decreases, or for any project which would result in a 25 ton or more per year cumulative increase in emissions after November 15, 1992, without regard to project decreases.

VOC = volatile organic compounds

CO = carbon monoxide

SO₂ = sulfur dioxide

PM₁₀ = particulate matter of less than 10 microns in diameter

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21: (December 1995).

James B. Thompson, III
Assistant Secretary

9512#040

RULE

**Department of Environmental Quality
Office of Air Quality and Radiation Protection
Air Quality Division**

**Storage of Volatile Organic Compounds (VOC)
(LAC 33:III.2103)(AQ117)**

(Editor's Note: A portion of the following rule, which appeared on pages 1223 through 1224 of the November 20, 1995 Louisiana Register, is being republished to correct a typographical error.)

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 21. Control of Emission of Organic Compounds

Subchapter A. General

§2103. Storage of Volatile Organic Compounds

A. - D.3 ...

4. Requirements for Guide Poles and Stilling Well Systems. Emissions from guide pole systems must be controlled for external floating roof storage tanks with a capacity greater than 40,000 gallons (approximately 151 m³)

and storing a liquid having a total vapor pressure of 1.5 psia or greater. The description of the method of control and supporting calculations based upon the Addendum to American Petroleum Institute Publication Number 2517 Evaporative Loss from External Floating Roof Tanks (dated May 1994) shall be submitted to the administrative authority for approval prior to installation. Controls for nonslotted guide poles and stilling wells shall include pole wiper and gasketing between the well and sliding cover. Controls for slotted guide poles shall include a float with wiper, pole wiper and gasketing between the well and sliding cover. Alternate methods of controls are acceptable if demonstrated to be equivalent to the controls in this Section. The administrative authority* must approve alternate methods of control. Installation of controls required by this Subsection shall be required by November 15, 1996. Requests for extension of the November 15, 1996, compliance date will be considered on a case-by-case basis for situations which require the tank to be removed from service to install the controls and must be approved by the administrative authority*. The requirements of this Paragraph shall only apply in ozone nonattainment areas classified marginal or higher. Controls systems required by this Subsection shall be inspected semiannually for rips, tears, visible gaps in the pole or float wiper, and/or missing sliding cover gaskets. Any rips, tears, visible gaps in the pole or float wiper, and/or missing sliding cover gaskets shall be repaired in accordance with this Section in order to avoid noncompliance with this Section. Repairs necessary to be in compliance must be initiated within seven working days of identification by ordering appropriate parts. Repairs shall be completed within three months of the ordering of the repair parts. However, if it can be demonstrated that additional time for repair is needed, the administrative authority may extend this deadline.

E. - I.5 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended, LR 15:1061 (December 1989), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:360 (April 1991), LR 18:1121 (October 1992), LR 20:1376 (December 1994), LR 21: 1223 (November 1995), repromulgated LR 21: (December 1995).

James B. Thompson, III
Assistant Secretary

9512#007

RULE

**Department of Environmental Quality
Office of Solid and Hazardous Waste
Hazardous Waste Division**

**Waste Analysis and Minimization
(LAC 33:V.Chapters 15 and 22) (HW49)**

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Hazardous Waste Division regulations, LAC 33:V. Chapter 15 and 22 (HW49).

Waste minimization and waste analysis plans that reach the department without certification are often of unacceptable quality.

This rule requires that waste minimization and waste analysis plans be certified by professional engineers and remove the option of certification by a certified hazardous materials manager (CHMM).

These regulations are to become effective upon publication as a final rule in this issue of the *Louisiana Register*.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

**Subpart 1. Department of Environmental Quality—
Hazardous Waste**

**Chapter 15. Treatment, Storage, and Disposal
Facilities**

§1519. General Waste Analysis

[See Prior Text in A-C.3]

D. Certification. All waste analysis plans must be certified by a Louisiana licensed professional engineer (PE).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 15:378 (May 1989), LR 16:220 (March 1990), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21: (December 1995).

Chapter 22. Prohibitions on Land Disposal

§2231. Variance from a Treatment Standard

[See Prior Text in A-C.1]

2. Certification. Each petition for a variance must be certified by a Louisiana licensed professional engineer (PE).

[See Prior Text in D-F]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21: (December 1995).

**§2237. Exemption for Surface Impoundments Treating
Hazardous Waste**

[See Prior Text in A-A.2.d]

e. Certification. Each waste analysis plan must be certified by a Louisiana licensed professional engineer (PE).

[See Prior Text in A.3-C.3]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21: (December 1995).

**§2242. Exemptions to Allow Land Disposal of a
Prohibited Waste by Deep Well Injections**

[See Prior Text in A-C.2.c]

d. each waste reduction program or plan must be certified by a Louisiana licensed professional engineer (PE).

[See Prior Text in C.3-Z]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 15:1067 (December 1989), LR 16:221 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 19:187 (February 1993), LR 21:266 (March 1995), LR 21: (December 1995).

**§2245. Generators' Waste Analysis, Recordkeeping, and
Notice Requirements**

[See Prior Text in A-J]

K. Certification. Each waste minimization plan must be certified by a Louisiana registered professional engineer (PE).

L. All generators shall develop and retain a waste minimization plan on-site. The plan shall be submitted to the administrative authority within 30 days of receipt of request. The plan shall include ongoing and proposed waste minimization projects and tentative beginning dates for proposed projects.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:267 (March 1995), LR 21: (December 1995).

**§2247. Owners or Operators of Treatment or Disposal
Facilities: Testing, Waste Minimization,
Recordkeeping and Notice Requirements**

[See Prior Text in A-H]

I. Certification. Each waste minimization plan must be certified by a Louisiana registered professional engineer (PE).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:267 (March 1995), LR 21: (December 1995).

James B. Thompson, III
Assistant Secretary

9512#033

RULE

Department of Health and Hospitals Board of Examiners of Psychologists

Disclosure of Financial Interests and Prohibited Payments (LAC 46:LXIII.Chapter 21)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Examiners of Psychologists, pursuant to the authority vested in the board by R.S. 37:1744, R.S. 37:1745, hereby adopts rules implementing, interpreting and providing for enforcement of the provisions of Act 657 of 1993, requiring written disclosure of a psychologist's financial interest in another health care provider prior to referring a patient to such health care provider and of Act 827 of 1993, prohibiting certain payments in return for the referral or solicitation of patients by psychologists and other health care providers, LAC 46:LXIII.2103 through 2115 as follows.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXIII. Psychologists

Chapter 21. Disclosure of Financial Interests and Prohibited Payments

§2101. Scope and Purpose of Chapter

The rules of this Chapter interpret, implement and provide for the enforcement of R.S. 37:1744 and R.S. 37:1745 requiring disclosure of a psychologist's financial interest in another health care provider to whom or to which the psychologist refers a patient, and prohibiting certain payments in return for referral or soliciting patients. It is the purpose of these rules to prevent payments by or to a psychologist as a financial incentive for the referral of patients to a psychologist or other health care provider for diagnostic or therapeutic services or items. These rules should be interpreted, construed and applied so as to give effect to such purposes and intent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1744, R.S. 37:1745.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 21: (December 1995).

§2103. Definitions

A. For the purpose of this Chapter, the following terms are defined as follows:

Board—the Louisiana State Board of Examiners of

Psychologists.

Financial Interest—a significant ownership or investment interest established through debt, equity or other means and held, directly or indirectly, by a psychologist or a member of the psychologist's immediate family, or any form of direct or indirect remuneration of referral.

Group Practice—a group of two or more psychologists, operating in whole or in part as psychologists, legally organized as a general partnership, registered limited liability partnership, professional psychological corporation, limited liability company, foundation, nonprofit corporation or similar organization or association, including a faculty practice plan.

Health Care Item—any substance, product, device, equipment, supplies or other tangible good or article which may be used or is useful in the provision of health care.

Health Care Provider—any person licensed by a department, board, commission or other agency of the State of Louisiana to provide, or which does in fact provide, preventative, diagnostic, or therapeutic health care services or items.

Immediate Family—as respects a psychologist, the psychologist's spouse, children, grandchildren, parents, grandparents and siblings.

Investment Interests—a security issued by an entity, including, without limitation, shares in a corporation, interests in or units of a partnership, bonds, debentures, notes or other debt instruments.

Payment—the tender, transfer, exchange, distribution or provision of money, goods, services or anything of economic value.

Person—a natural person or a partnership, corporation, organization, association, facility, institution or any governmental subdivision, department, board, commission or other entity.

Psychologist—any individual licensed to practice psychology by the Louisiana State Board of Examiners of Psychologists.

Psychologist Applicant/Candidate—a graduate of an approved doctoral program in psychology who has applied to the board for licensure and who is practicing under the supervision of a licensed psychologist under applicable provisions of LAC Title 46, Part LXIII.

Referral—any direction, recommendation or suggestion given by the psychologist to a patient, directly or indirectly, which is likely to determine, control or influence the patient's choice of another health care provider for the provision of health care services or items.

Remuneration for Referral—any arrangement or scheme, involving any remuneration, directly or indirectly, in cash or in kind, between a psychologist, or an immediate family member of such psychologist, and another health care provider which is intended to induce referrals by the psychologist to the health care provider or by the health care provider to the psychologist, other than the amount paid by an employer to an employee who has a bona fide employment relationship with the employer, for employment in the furnishing of any health care item or service.

B. Construction. As used here and after in this Chapter,

the term "psychologist" is deemed to likewise incorporate psychologist applicant/candidate as defined herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1744, R.S. 37:1745.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 21: (December 1995).

Subchapter A. Disclosure of Financial Interest in Third-Party Health Care Providers

§2105. Required Disclosure of Financial Interests

A. Mandatory disclosure. The psychologist shall not make any referral of a patient outside of the psychologist's group practice for the provision of health care items or services by any health care provider in which the referring psychologist has a significant financial interest unless, in advance of such referral, the referring psychologist discloses to the patient, in accordance with relative provision of this Chapter, the existence and nature of financial interests.

B. Definition: Significant Ownership or Investment Interest. For the purpose of these regulations, an ownership or investment interest shall be considered "significant" within the meaning of §2105.A, if such interest satisfies any of the following tests:

1. such interests, in dollar amount or value, represents five percent or more of the gross assets of the health care provider in which an interest is held;

2. such interest represents five percent or more of the voting securities of the health care provider in which such interest is held.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1744, R.S. 37:1745.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 21: (December 1995).

§2107. Prohibited Arrangements

Any arrangement or scheme including cross referral arrangements, which the psychologist knows, or should know has a principal purpose of ensuring or inducing referrals by the psychologist to another health care provider which, if made directly by the psychologist, would be a violation of §2105 shall be deemed a violation of §2105.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1744, R.S. 37:1745.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 21: (December 1995).

§2109. Form of Disclosure

A. Required Contents. The disclosure required by §2105 of this Chapter shall be made in writing, shall be furnished to the patient, or the patient's authorized representative, prior to or at the time of making the referral, and shall include:

1. the psychologist's name, address and phone number;
2. the name and address of the health care provider to whom the patient is being referred by the psychologist;
3. the nature of the items or services which the patient is to receive from the health care provider to which the patient is being referred; and
4. the existence and nature of the psychologist's financial interest in the health care provider to whom or to which the patient is being referred.

B. Permissible Contents. The form of disclosure required

by §2105 of this Chapter may include a signed acknowledgment by the patient or the patient's authorized representative that the required disclosure has been given.

C. Approved Form. Notice to a patient given substantially in the form of Disclosure of Financial Interest, found at the end of this Chapter, shall be presumptively deemed to satisfy the disclosure requirements of this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1744, R.S. 37:1745.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 21: (December 1995).

Subchapter B. Illegal Payments

§2111. Prohibition of Renumeration for Referrals

A. A psychologist shall not knowingly or willfully make or offer to make any payment, directly or indirectly, overtly or covertly, in cash or in kind, to induce another person to refer an individual to the psychologist for the furnishing or arranging of the furnishing of any health care item or service.

B. A psychologist shall not knowingly or willfully solicit, receive or accept any payment, directly or indirectly, overtly or covertly, in cash or in kind, or in return for referring a patient to a health care provider for the furnishing or arranging of the furnishing of any health care item or service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1744, R.S. 37:1745.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 21: (December 1995).

§2313. Exceptions

A. A proportional return on investment. Payments or distributions by any entity representing a direct return on investment based upon a percentage of ownership shall not be deemed a payment prohibited by R.S. 37:1445(B) or by §2111 of these rules provided that:

1. the amount of payment to an investor in return for the investment interest is directly proportional to the amount or value of the capital investment, including the fair market value of any pre-operational services rendered of that investor;

2. the terms on which an investment interest was or is offered to an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity must be no different than the terms offered to other investors;

3. the terms which an investment interest was or is offered to an investor who is in a position to make or influence referrals to, furnish items or services to or otherwise generate for the entity must not be related to the previous expected volume of referrals, items or services furnished or the amount of business otherwise generated by that investor to the entity;

4. there is no requirement that an investor make referrals to, be in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity as a condition of becoming or remaining an investor;

5. the entity or other investor does not market or furnish the entity's items or services to investors differently than to non-investors; and

6. the entity does not loan funds to or guarantee a loan for an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity if the investor uses any part of such loan to obtain the investment interest.

B. General Exceptions. Any payment, remuneration, practice or arrangement which is not prohibited by or unlawful under §1128B(b) of the Federal Social Security Act (act), 42 U.S.C. §1320a-7b(b), as amended, with respect to health care items or services for which payment may be made under Title XVIII or Title XIX of the act, including those payments and practices sanctioned by the secretary of the United States Department of Health and Human Services, through regulations promulgated at 42 C.F. R. §1001.952, shall not be deemed a payment prohibited by R.S. 37:1745(B) or by §2111 of these rules with respect to health care items or services for which payment may be made by any patient or third-party payers, whether a governmental or private payer, on behalf of a patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1744, R.S. 37:1745.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 21: (December 1995).

§2115. Effect of Violation

A. Any violation of or failure of compliance with the prohibitions and provisions of §2105 and/or §2111 of this Chapter shall be deemed grounds for disciplinary proceedings against a psychologist, providing cause for the board to deny, revoke, suspend, restrict, refuse to issue or impose probationary or other restrictions on any license held or applied for by a psychologist found guilty of such violation.

B. Administrative Sanctions. In addition to the sanctions provided for by §2115.A, the board may order the additional sanctions or penalties described below:

1. Upon proof of a violation of §2105 of this Chapter by a psychologist, the board may order that all or any portion of any amounts paid by a patient, and/or any third-party payor on behalf of the patient, for health care items or services furnished upon a referral by the psychologist in violation of §2105 be refunded by the psychologist to such patient and/or third-party payor together with legal interest on such payment at the rate prescribe by law calculated from the date on which any such payment was made by the patient and/or third-party payors.

2. Upon proof of a violation of §2111 of this Chapter by a psychologist, the board may order a fine of not more than \$500 for each count or separate offense, plus administrative costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1744, R.S. 37:1745.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 21: (December 1995).

(Name of Psychologist or Group)
(Address)
(Telephone Number)

DISCLOSURE OF FINANCIAL INTEREST
As Required by R. S. 37:1744; R. S. 37:1745, and
LAC 46:LXIII.2101-2115

TO: _____ Date: _____
(Name of Patient to be Referred)

(Patient Address)

Louisiana law requires psychologists and other health care providers to make certain disclosures to a patient when they refer a patient to another health care provider or facility in which the psychologist has a significant financial interest. (I am/we are) referring you, or the named patient for whom you are legal representative, to:

(Name and Address of Provider to Whom Patient is Referred)

to obtain the following health care services, products or items:

(Purpose of the Referral)

(I/we) have a financial interest in the health care provider to whom we are referring you, the nature and extent of which are as follows:

PATIENT ACKNOWLEDGMENT

I, the above named patient, or legal representative of such patient, hereby acknowledge receipt, on the date indicated and prior to the described referral, of a copy of the foregoing Disclosure of Financial Interest.

(Signature of Patient or Patient's Representative)

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1744, R.S. 37:1745.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 21: (December 1995).

James W. Quillin, Ph.D.
Chairman

9512#010

RULE

**Department of Health and Hospitals
Office of Public Health**

Sanitary Code—Mechanical Wastewater (Chapter XIII)

In accordance with R.S. 40:4, 40:5, and the provisions of Chapter XIII of the State Sanitary Code, the following amendment to the listing entitled "Mechanical Wastewater Treatment Plants for Individual Homes-Acceptable Units" is made:

Amend the listing to include additional manufacturer and associated plant model(s)/series, specified as follows:

MANUFACTURER	PLANT DESIGNATION	RATED CAPACITY
Ecological Tanks, Inc. 2247 Highway 151 North Downsville, LA 71234 (318) 644-0397	"Aqua Safe"	
	A.S. 500	500 GPD
	A.S. 600	600 GPD
	A.S. 750	750 GPD
	A.S. 1000	1000 GPD
	A.S. 1500	1500 GPD

The specified change is in compliance with the requirements set forth in Section 6.6 of Appendix A of Chapter XIII of the State Sanitary Code.

Rose V. Forrest
Secretary

9512#031

RULE

**Department of Insurance
Commissioner of Insurance**

Regulation 51—Individual Health Insurance Rating

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Commissioner of Insurance hereby amends Regulation 51 in order to comply with changes made to R.S. 22:228.6(B) set forth in Act 1173 of the 1995 Regular Legislative Session.

Section 1. - Section 4. ...

Section 5. Restrictions on Premium Rates

A. ...

B. R.S. 22:228.6.b(2)(e), requires, in substance, that the premium rates charges during a rating period to individuals may not vary from the index rate by more than 20 percent following January 1, 1994. This requirement shall be met for each individual if the ratio of the premium charged the individual to that calculated from the rate manual is between 1 and 1.5 for rating periods following January 1, 1994.

C. - C.1. ...

C.2. For rating periods following January 1, 1994, the maximum renewal premium is 1.5 times the manual rate in C.1.

C. 3. ...

Section 6. ...

James H. "Jim" Brown
Commissioner

9512#017

RULE

**Department of Insurance
Commissioner of Insurance**

Regulation 52—Small Group Health Insurance Rating

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Commissioner of Insurance hereby amends to Regulation 52 in order to comply with changes made to R.S. 22:228.6(B) set forth in Act 1173 of the 1995 Regular Legislative Session.

Section 1. - Section 4. ...

Section 5. Restrictions on Premium Rates

A. ...

B. R.S. 22:228.2.A(2) and R.S. 22:228.6.B(2)(e), Louisiana Statutes, require, in substance, that within a class the premium rates charged to small employers during a rating period may not vary from the index rate by more than 20 percent following January 1, 1994. This requirement shall be met for each small employer if the ratio of the premium charged the employer to that calculated from the rate manual is between 1 and 1.67 for rating periods from September 30, 1992 through December 31, 1993 and between 1 and 1.50 for rating periods following January 1, 1994.

C.1 - 3.i. ...

ii. The sum of 1.00 plus the highest ratio calculated from C.3.i divided by two shall be used as the conversion factor in C.3 above. For the calendar year 1993, if the highest ratio calculated in C.3.i above is greater than 1.67, then 1.67 shall be used as the highest ratio. This conversion factor should be calculated for each class of business. For calendar year 1994 and thereafter, 1.5 shall be used above.

C.4. - 5. ...

D. - E.5.i. ...

ii. For rating periods through December 31, 1993, if E.5.i exceeds 1.67, then 1.67 multiplied by the manual rate in E.1 is the maximum renewal premium, not the renewal premium in E. For rating periods after December 31, 1993, 1.50 should be substituted for 1.67.

Section 6. ...

James H. "Jim" Brown
Commissioner

9512#018

RULE

**Department of Labor
Office of Labor**

**Community Services Block Grant (CSBG)
(LAC 40:XVII.Chapters 1-49)**

Under the authority of R.S. 23:1 and R.S. 23:66 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Labor, Office of Labor, amends rules relative to the Community Services Block Grant Program, LAC 40: XVII, Chapters 1-49.

These rules are being amended to clarify changes to and to provide new guidance in accordance with the Community Services Block Grant amendments of 1994 found at 42 USC 9901.

Title 40

LABOR AND EMPLOYMENT

Part XVII. Community Services Block Grant

Subpart 1. CSBG Policy Manual

Chapter 1. Allocation of Funds

§101. Method of Allocation

Not less than 90 percent of the total funds appropriated for Louisiana shall be allocated to eligible entities in accordance with Section 675(c)(2)(A) of the CSBG Act and LSA 23:65. The formula to be used for the allocation of funds shall be approved through a process which includes a public hearing(s) scheduled each fiscal year to determine the use and distribution of funds. The formula adopted and the identification of the data base used to allocate funds will be included in the Annual Statewide Community Services Block Grant Plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et. seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:204 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

§103. Identification of Eligible Entities

A. Those organizations which were designated as a Community Action Agency or a Community Action Program under the Economic Opportunity Act of 1964 for fiscal year 1981 are qualified recipients for 90 percent of funds under the Community Services Block Grant (CSBG) Act. Not more than seven percent of these funds in each fiscal year may be used to designate other qualified community action agencies to serve areas not previously served by an existing eligible entity as defined by the Act.

B. If any geographic area of the state, is not, or ceases to be served by an eligible entity, the governor may decide to serve the area by:

1. requesting an eligible entity which is located and provides services in an area contiguous to the new area to serve the new area;

2. if no eligible entity is located and provides services in an area contiguous to the new area, requesting the eligible entity located closest to the area to be served or an existing eligible entity serving an area within reasonable proximity of

the new area to provide services in the new area: or

3. where no existing eligible entity requested to serve the new area decides to do so, designating an existing eligible entity, any organization which has a board meeting the requirements of Section 675 (c) (3) or any political subdivision of the state to serve the new area shall qualify such organization as an eligible entity under this act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et. seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:204 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

Chapter 3. Subgrant Proposal for Eligible Entities

§301. Date of Submission

Each eligible entity shall submit a subgrant proposal for the use of CSBG funds to the Louisiana Department of Labor annually or as otherwise instructed by that department. The Louisiana Department of Labor will issue written instructions on the due date for subgrant proposals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et. seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:204 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

§303. Content of Subgrant Proposal

A. The subgrant proposal shall be prepared in the format prescribed by the Department of Labor, and shall include (but not be limited to) the following:

1. identification of the eligible entity, to include the corporate name, street address and contact person;

2. a complete budget, including a budget summary, spending plan and staffing plan; and

3. a complete description of the programmatic activities to be funded which must provide programs in accordance with the CSBG Act.

B. The forms for submission of the Subgrant Proposal will be provided by the Department of Labor, CSBG Unit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:205 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

§305. Attachments to Subgrant Proposal

Each proposal shall contain (but not be limited to) the following attachments:

1. a list of the current board of directors, providing the names, addresses and telephone numbers of board members; identification of the segment each board member represent and dates of the current and preceding terms of each board member;

2. special clauses and assurances; and

3. any other information determined to be necessary by the Department of Labor to meet state or federal requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:205 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

§307. Review and Approval of Subgrant Proposal

A. The CSBG Unit will review and provide any technical assistance necessary to make modifications to the subgrant proposal submitted to assure compliance with the CSBG Act.

B. The subgrant proposal submitted will be signed by the executive director or the person empowered to enter into a subgrant on behalf of the eligible entity.

C. If the subgrant proposal is modified it shall be returned to the eligible entity for review, concurrence in the modifications made and signature. The signed subgrant will be returned to the CSBG Unit within 15 days. If no modification is necessary, the original plan shall become the subgrant.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:204 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

Chapter 5. Application for Discretionary Funds

§503. Requirement of Agency

Any private not for profit agency applying for funds must be incorporated by the State of Louisiana and must provide a copy of the articles of incorporation with its application for funding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:205 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

Chapter 7. Governing Boards

§701. Requirements

A. Applicability. In order to initially receive 90% CSBG funds and to maintain eligibility for CSBG funding, private not for profit agencies must maintain a governing board; and public agencies must maintain an advisory board, which meets the requirements of the CSBG Act. A list of board members, the segment each represents, their mailing address, and their terms must be submitted with each application for CSBG funding. Each parish served with CSBG funds must have representatives on the board from each segment.

B. ...

C. Structure of Board & Selection of Board Members for a Community Action Agency or Nonprofit Private Organization. The board shall be constituted to assurances that in the case of a community action agency or nonprofit private organization, each board will be selected by the community action agency or nonprofit private organization and constituted so as to assure that:

1. one-third of the members of the board are elected public officials, currently holding office in the geographical area to be served by the community action agency, or their

representatives, except that if the number of elected officials reasonably available and willing to serve is less than one-third of the membership of the board, membership on the board of appointed public officials may be counted in meeting such one-third requirements. Duly appointed members may designate an individual to represent them on the board by properly notifying the local community action agency of such delegation;

2. at least one third of the members of the governing board shall be individuals with low income who reside in the area to be served by the agency, or representatives of those individuals. Persons representing individuals with low income need not themselves have incomes below the level established by the Department of Labor for purposes of this Part; however these representatives must reside in the same geographical area as the individuals they represent and must be chosen in accordance with democratic selection procedures adequate to assure that they are representative of the poor in the area served. The board will devise the method utilized to select representatives of the poor and the method utilized will be subject to review and approval by the grantor; and

3. the remainder of the members of the board shall be officials or members, or their designees of public agencies, business, industry, labor, religious, welfare, education or other major groups and interests in the community.

D. Structure of Board & Selection of Board Members for a Public Organization. In the case of a public organization receiving CSBG funds, such organization either establish:

1. a board of which at least one-third of the members are chosen in accordance with democratic selection procedures adequate to assure that they are representatives of the poor in the area served which is subject to the review and approval by the grantor; or

2. another mechanism specified by the grantor to assure low-income citizens participation in the planning, administration, and evaluation of projects for which such organization has been funded; and

3. members who represent officials or members of business, industry, labor, religious, welfare, education, or other major groups or interests shall be selected to provide a broad base of community involvement and support, and should be selected from each parish served. Organizations that are to have membership on the board must be selected by the board of directors, unless the selection process is changed by state or federal Legislation.

E. Bylaws

1. ...

2. The terms of the board members representing the elected public officials segment of the board shall coincide with their terms of elective office. The terms of all other board members shall not exceed five years and they shall server no more than two consecutive terms without serving an inactive year.

3. The governing board of a community action agency or private nonprofit organization shall have the power to appoint a person to the senior staff position; to determine fiscal and program policies; approve all rules and procedure; and to assure compliance with all conditions which relate to their responsibilities. Such actions shall be consistent with the

policies promulgated by the Louisiana Department of Labor. If the designated community action agency is the local governing authority, the community action agencies advisory board shall have no powers as outlined in this Section other than advisory to the community action agency.

F. Conflict of Interest

1. No board members shall engage in any selection, award, or administration of a subgrant or contract supported in total or part with CSBG funds if a conflict of interest real or apparent, exist. Such a conflict would exist when the individual, any member of the individual's immediate family, the individual's partner or the organization that employs or is about to employ the individual has a financial interest in the award, subgrant or contract.

2. For the purpose of this Part immediate family will be defined as children, brother, sister, parent, spouse, and the parent of a spouse.

G. Reimbursements to Board Members

1. Board members may be reimbursed for travel required to carry out their responsibility to assure compliance with the CSBG subgrant. Travel shall be in accordance with the approved travel policy of the subgrantee and must be documented and approved by the president of the board. Travel reimbursement from CSBG funds shall be in accordance with the approved travel policy of the state.

2. ...

H. Meal Reimbursement for Board Members and Necessary Staff Attending Board Meetings. The cost of meals which are in conjunction with scheduled board business meetings held at normal meal times is allowable for board members and necessary CSBG staff in attendance. Reimbursement for such meals shall not exceed the amount allowed for those meals by the state's travel policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:206 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

Chapter 9. Fiscal Policy

§901. Deobligation Policy (Effective October 1, 1990)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:207 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§903. Fiscal System For Subgrantees

Each subgrantee shall maintain an accounting system which separately identifies the expenditure of Community Services Block Grant funds and complies with generally accepted accounting standards applicable to the subgrantee. The subgrantees fiscal system may be reviewed by the Louisiana Department of Labor prior to the award of a subgrant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:204 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

§905. Separate Bank Account

A. Each subgrantee who is a private not for profit agency or a public agency that maintains a independent accounting system shall maintain a separate bank account for Community Services Block Grant funds. This account must be reconciled at the at the end of each program year and be in balance with the final close out report. It must also be closed at the end of the program year. Variances from this requirement shall have prior written approval from the Department of Labor.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:204 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

§909. Expenditure Reports

A. Each subgrantee shall submit an expenditure report in duplicate to the Louisiana Department of Labor. The report will be submitted in the format, by the due date and for the period established by the Louisiana Department of Labor.

B. - C. ...

D. Failure to submit correct expenditure reports on time may result in a suspension of funds until reports are correct and current.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:207 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

§911. Closeout of Subgrant

A. Each subgrant must be closed after the end of the subgrant period or upon termination of a subgrant agreement. A written close out procedure, including the due date for the close out reports, will be issued by the Louisiana Department of Labor. A subgrant will not be considered closed until all expenses encumbered prior to the end of the program year have been paid.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:207 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

§915. Audits

A. Performance of Audits

1. Each subgrant using CSBG funds must be audited annually by an independent auditing firm at the end of the subgrantee's fiscal year, except that biannual audits will be allowed with the approval of the Louisiana Department of Labor. Audit reports are due no later than eight months after the end of the subgrantee's fiscal year.

2. Audits of subgrants shall be included in a single audit of all the subgrantee's activities. The audit must be in accordance with the Single Audit Act of 1984, OMB Circular A-128, R.S. 24:514 and R.S. 24:517 or OMB Circular A-133 whichever is applicable to that subgrantee.

3. Selection of the auditing firm must be performed in accordance with the state procurement regulations applying to professional service contracts or as otherwise noted in these regulations in order for CSBG funding to be utilized to pay for any portion of the audit. In the event the subgrantee's procurement regulations are more restrictive, however, those regulations must be followed.

B. Audit Resolution

1. ...

2. Within 60 days of receipt from the audit report, the CSBG Unit will review the audit report and request information from the subgrantee to resolve any questioned or disallowed costs.

3. Within 30 days after receiving request for information, the subgrantee must submit to the CSBG Unit documentation to rebut or substantiate the questioned or disallowed costs.

4. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:207 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

Chapter 11. Costs

§1101. Allowable Costs

A. Only those reasonable costs which are in support of the activities in the approved CSBG subgrant and are included in the subgrant are allowable. A Cost is reasonable if in its nature or amount does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. In determining the reasonableness of costs consideration should be given to the following:

1. whether there were significant deviations from the established practice of the organization which may have unjustly caused the costs to be incurred; and

2. whether the costs incurred required prior approval from the grantor agency or were specifically prohibited by any rules or regulations that were applicable to the subgrant.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:207 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

§1103. Non Allowable Costs

CSBG funds shall not be utilized for the following costs:

A. - I. ...

J. The costs of employee benefits not available to other similarly employed employees of the subgrantee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:208 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

§1105. Costs Requiring Prior Approval

CSBG funds may be used for the following activities only if prior written approval has been received from the Department of Labor:

1. Subcontracts and third party agreements for professional, consulting and personal services including legal, and accounting services, etc.

2. Any purchase of an item which has a unit purchase price of \$1,000 or more before taxes.

3. Any indirect costs. Indirect costs rates and amounts must have the prior written approval of the federal cognizant agency of the subgrantee and the CSBG Unit of the Louisiana Department of Labor.

4. Any costs incurred by or reimbursement to persons not in positions listed in the approved subgrant except as otherwise noted in these rules.

5. The cost of employee benefits not available to all employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:208 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

Chapter 13. Subcontractors and/or Third Party Agreements

§1301. Content of and Monitoring Subcontractors and/or Third Party Agreements

A. The Louisiana Department of Labor reserves the right to review and monitor the activities covered by any contract or third party agreement entered into by subgrantees.

B. Contract Content. All subcontracts and agreements entered into by subgrantees utilizing CSBG funding shall contain at a minimum the following information:

1. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:208 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

Chapter 15. Procurement Policies

§1501. Public and Private Agencies

All procurement of goods and services, including leases, with Community Services Block Grant funds in whole or part shall be done in accordance with the State of Louisiana Procurement Regulations unless other requirements are specified in these rules or the subgrantees' or federal procurement requirements are more restrictive. The procurement requirements that are the most restrictive must be followed, except that subgrantees that are part of local government shall be allowed to utilize their approved procurement regulations for audits when their audit is part of the local government audit and are exempt from the state

procurement requirements for leasing of space when they are located in a facility owned by the parish government they are a part of. Further, the Louisiana Department of Labor may issue reasonable modifications to the state rules when it determines that such modifications are in the best interest of the state and the CSBG Program. Specific procurement regulations shall be issued from time to time and shall be substantially in compliance with R.S. 39, Chapter 17, The Louisiana Procurement Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:208 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

§1503. Federal Requirement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:208 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§1505. State Contract Bid List

Any community action agency receiving a subgrant under these rules shall be deemed a quasi public agency and will be allowed to utilize the state contract bid list for the purpose of the purchase of supplies and equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:208 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

§1507. Ownership of Property

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:208 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§1509. Equipment Purchased with CSBG Funds

A. Each subgrantee will maintain an inventory identifying equipment purchased with CSBG funds at a unit cost of \$250 or more including a description of the equipment identifying it as CSBG equipment, it's condition, acquisition costs, serial number and a property number assigned the equipment. The property number will be affixed to the equipment in a conspicuous place. Subgrantees may utilize their existing inventory procedures, provided they meet these requirements and separately identify equipment purchased with CSBG funds. An inventory listing equipment purchased with CSBG funds will be submitted to the Louisiana Department of Labor, CSBG Unit, at the end of each fiscal year with the subgrantee's close-out package. The CSBG Unit will also monitor the subgrantees to assure an inventory of equipment purchased with CSBG funds is being maintained.

B. Before equipment purchased with CSBG funds at a unit price of \$250 or more may be disposed of, written approval must be obtained from the Louisiana Department of Labor, CSBG Unit. Any income resulting from the disposal of this equipment will be considered program income. The subgrantee will immediately notify the Louisiana Department of Labor, CSBG Unit, of any program income obtained and it will be utilized only in support of approved CSBG activities.

C. Ownership of equipment purchased with CSBG funds rest with the CSBG subgrantee until its CSBG funding is terminated or as otherwise noted in its subgrant agreement. CSBG equipment purchase with a unit price of \$250 shall be returned to the Louisiana Department of Labor, CSBG Unit, within 30 days from termination of CSBG funding and utilized for approved CSBG activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:208 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

§1511. Identification

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:208 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§1515. Sole Source Procurement

R.S. 39, the State Procurement Code will be followed to determine when sole source procurement is allowable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:208 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

§1517. Leases of Space

A. ...

B. R.S. 39, the State Procurement Code will be followed, except where the subgrantee is a part of local government and is required by the local government to be located in a facility owned by local government (see §1501 of these rules).

C. -D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:209 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

§1519. Procurement Procedures for Purchases not Exceeding \$5,000

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:210 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§1521. Equipment Lease

Subgrantees shall follow the Louisiana Procurement Code for the lease of any equipment in part or totally with CSBG funds unless their own lease requirements or federal lease requirements are more restrictive.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:210 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

Chapter 17. Personnel

§1701. Establishment of Personnel Policy

A. Each subgrantee will be required to have a written personnel policy, which has board approval. The personnel policy must be reasonable and available for review by the Department of Labor.

B. Policy Compliance. Each subgrantee will be required to comply with the provisions of its personnel policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

Chapter 19. Travel Policy

§1901. Establishment of Policy

Each subgrantee will be required to have a written travel policy, which has been approved by its board. The travel policy will be reasonable and available for review by the Louisiana Department of Labor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:210 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

Chapter 21. Reporting

§2101. Activity Reports

A. Each subgrantee will be required to submit an activity report on the progress made in achieving planned activity goals. The activity reports will be submitted in the format and by the due date established by the Louisiana Department of Labor.

B. Penalty for Failure to Report. Failure to submit reports by established deadlines may result in a delay or suspension of funds for the subgrantee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:210 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

Chapter 23. Availability and Retention of Records

§2301. Record Availability

A. Right to Access Records. The Department of Labor, or its agent, shall have the right to review and/or copy all the records of the subgrantee pertaining to the operation of their CSBG subgrant. All such records shall be made available upon request.

B. Period of Retention. All records pertaining to the operation of the subgrant shall be retained for a period of three years after the end of the subgrant or the final resolution of any audit whichever occurs later.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:210 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

Chapter 25. Civil Rights Policy

§2501. Affirmative Action Plan

A. To be eligible for funding each CSBG subgrantee shall have an affirmative action plan approved by the Secretary of the Louisiana Department of Labor or designee which shall include at least the following:

1. a written Equal Opportunity Policy statement;
2. a listing by name, race, and sex of the designated Equal Opportunity Committee members on the subgrantee's tripartite board;
3. - 6. ...

B. The subgrantee shall develop the Affirmative Action Plan to cover both staff and participants of its subgrant which will include a comparison of the subgrantee's employees and participants by race, sex, disability, age and national origin to the corresponding characteristics of the relevant work force and eligible participants.

NOTE: The Affirmative Action Plan will become a part of the CSBG Subgrant. The LDOL's Office of equal Opportunity and Compliance will be available for providing technical assistance to Subgrantees in drafting their Affirmative Action Plans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:210 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

§2503. Implementation

A. The recipient of CSBG financial assistance is required to implement its CSBG approved affirmative action plan and to ensure compliance with this part. At a minimum, the following requirements must be met:

1. Each subgrantee board shall formally adapt an Equal Employment Opportunity Policy and establish an Equal Opportunity Committee which shall reflect the composition of the board in regards to the representation of the public, private and low-income sectors.
2. The Equal Opportunity Committee shall review the determinations of the Equal Opportunity Officer (EOO) regarding complaints of discrimination and shall oversee the enforcement of the subgrantee's civil rights program.
3. Subgrantees shall have at least one EOO, who shall

report directly to the Board of Directors on EEO matters. Resources must be provided to the individual assigned responsibility for the civil rights program as required by this part; as well as the assignment of such additional personnel as are necessary to carry out the requirements of this part. The EEO shall not be the Executive Director, Deputy Director or Personnel Officer or their equivalents. The Compliance Programs Director may make a recommendation that the EEO be full-time or part-time.

4. The Equal Opportunity Officer (EEO) shall undergo training as prescribed by Louisiana Department of Labor. All expenses incurred by such training shall be borne by the subgrantee.

5. The EEO shall be granted the authority to carry out the following activities:

a. receive and attempt to resolve complaints of discrimination;

b. provide aggrieved persons with information and advise on equal opportunity procedures including local, state and federal redress procedures, and notification of the filing deadlines for Equal Employment Opportunity Commission complaints, where applicable;

c. take other steps which may assist in the resolution of a problem, prior to the filing of a formal complaint;

d. assist, if requested by a complainant, in preparing a formal complaint to the Louisiana Department of Labor of alleged discrimination based on race, color, creed, sex, sexual orientation, national origin, age, disability, political affiliation or beliefs;

e. provide staff leadership in developing, implementing, and evaluating the subgrantee's Affirmative Action Plan (AAP); and

f. provide EEO training and compliance monitoring on an on-going basis.

6. Subgrantees shall display, in conspicuous places, posters which summarize the rights of the employees, programs participants and beneficiaries under the Title VI, of the Civil Rights Act. Such posters shall describe the functions of the EEO and the procedures for filing complaints of discrimination, including the right to complain directly to the Louisiana Department of Labor as part of their complaint procedure.

7. In addition to the posters, each subgrantee shall make available information regarding the provisions of this Part and its applicability to the program under which the subgrantee receives federal financial assistance and make such information available in such manner as the compliance programs director or her designee finds necessary to apprise such persons of the protections against discrimination. In accordance with the Americans with Disabilities Act, this information must be available for individuals with both hearing and vision impairments.

8. Within 30 days of the termination of its subgrant, a report describing the activities and actions taken under its subgrant, including but not limited to changes in employee makeup, agency rules, effects of layoffs, and demotions and promotions, must be submitted to the grantor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:210 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

Chapter 29. Appeal of Termination or Reduction of Funding

§2901. Termination and Reduction of Funding; Appeal

A. Termination or Reduction of Funding Notice. The Department of Labor will notify the agency in writing of the intention to terminate funding or reduce funding below its proportional share, and shall state the reasons for the termination or reduction in funding.

B. An agency has the right to request a hearing prior to termination or reduction of funding. The request for a hearing must be filed within five days of the notice of intention to terminate or reduce funding. The hearing will be held in accordance with the procedures outlined in §2903.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:211 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

§2903. Selection of Hearing Officer and Responsibilities

A. Specific person(s) should be identified by the Department of Labor to function in a quasi-judicial capacity in relation to the hearing process. Each party will be notified as to the hearing officer(s) selected to conduct their appeal or hearing at least 10 days prior to the hearing. Standards to be applied in selection of these persons are as follows:

1. They should have independence in obtaining facts and making decisions.

2. The hearing officer(s) must be in a position to render impartial decisions that are fair.

B. If either party to the complaint is aware of facts or circumstances which put the designated hearing officer's independence and impartiality in question, the appointing body should be notified within five days of receiving notice. An alternate(s) will be appointed if deemed appropriate by the Department of Labor. In all cases, documentation regarding the allegation and how it was handled should be included in the file.

C. Responsibilities within the scope of the designated hearing officer(s) are:

1. directs preparation of and reviews a complete file on the case prior to the hearing;

2. directs parties to appear at hearing;

3. holds hearing;

4. receives evidence;

5. disposes of procedural requests;

6. questions witnesses and parties, as required;

7. considers and evaluates facts, evidence and arguments to determine credibility;

8. renders decision and issues it in writing to all parties involved; and

9. provides the complete record including:
 - a. all pleadings, motions and intermediate rulings;
 - b. detailed minutes of the oral testimony plus all other evidence received or considered;
 - c. a statement of matters officially noted;
 - d. all staff memoranda or data submitted to the decision maker in connection with their consideration of the case;
 - e. findings of fact based on the evidence submitted at the hearing;
 - f. notification of further appeal procedures, if applicable; and
 - g. final decision of the hearing officer.

D. The hearing may be conducted informally. Unnecessary technicalities (i.e., legal requirements that would be appropriate in court proceedings) should be avoided. It will provide the flexibility to enable adjustment to the circumstances presented. The following guidance is provided in respect to the hearings.

1. Full regard should be given to the requirements of due process to ensure a fair and impartial hearing.

2. All testimony at any hearing before the hearing officer(s) designated at the State level shall be mechanically recorded.

3. The hearing officer should begin the hearing by summarizing the record and the issues, affording both parties an opportunity to review such record, and should explain the manner in which the hearing will be conducted, making sure that everyone involved understands the proceedings. Such explanation should be adapted to the needs of the specific situation. The hearing officer shall take testimony under oath or affirmation to give some assurances of veracity to the hearing.

4. The burden of proof should be reasonable and flexible, dependent upon the circumstances of the case involved. The hearing officer(s) determines the order of proof. Generally, the agency making the complaint has the obligation of establishing its case, and should be examined first.

5. The parties involved may be represented, but are responsible for securing such representation. Otherwise, he/she is limited to his/her own abilities and those of the hearing officer(s) in obtaining testimony in the case.

6. It is important that the hearing officer(s) obtain the fullest information for the record. If the parties involved, or their representatives, do not know how to ask the right or pertinent question, in pursuing their right to due process, it shall be necessary for the hearing officer(s) to assist in having all the material and relevant facts elicited.

7. The practice in informal hearings is generally not to apply strict rules of evidence in obtaining facts. However, the quantity of evidence required to support a decision on an issue should be sufficiently credible that a court upon reviewing the decision, would conclude that it is supported by substantial evidence.

8. The general rules in law should be applied in decision on remedies, which should be reasonable and fit the problem and/or violation.

9. The hearing officer(s) may accept any resolution of the issue agreeable to all parties at any time prior to the

rendering of a decision, as long as such agreement does not violate state or federal law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 21: (December 1995).

§2905. Hearing Notice

The procedure required to hold a hearing shall include reasonable notice by registered or certified mail, or by hand with signature indicating receipt. The notice will include:

1. a statement of the time and place of hearing;
2. the identity of the hearing officer;
3. a statement of the authority and jurisdiction under which the hearing is to be held;
4. a reference to the particular section of the act, regulations, grant or other agreements under the act involved;
5. notice to the parties of the specific charges involved;
6. the right of both parties to be represented by legal counsel;
7. the right of each party to bring witnesses and/or documentary evidence; and
8. the right of each party to cross examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 21: (December 1995).

§2907. Decision; Appeal

A. The hearing officer shall render a decision within 10 days after the hearing is held. Written notification of the decision shall be mailed to the interested parties. The decision will become final within 15 days unless an appeal is filed.

B. The agency may appeal the decision to the Secretary of the U.S. Department of Health and Human Services within 15 days after the receipt of the decision. If no appeal is filed, the decision is final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:66 et seq.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 21: (December 1995).

Subpart 2. Special Clauses

Chapter 41. General Provision

§4101. Compliance

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:211(March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

Chapter 43. Funds

§4301. Use of Funds

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:211 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§4303. Obligation of Funds

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:211 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

Chapter 45. Contracts

§4501. Modification

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:211 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§4503. Contract Termination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:211 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§4505. Political Activities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:211 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§4507. Charging of Fees

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:211 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§4509. Child Labor Laws

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:211 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

Chapter 47. Fiscal Documentation

§4701. Fiscal Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:211 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§4703. Audits and Audit Resolution

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:211 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§4705. Reports, Records, and Policies

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:215 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§4707. Insurance

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:211 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§4709. Income

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:211 (March 1990), repealed and repromulgated LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 21: (December 1995).

Chapter 49. Performance Provisions

§4901. Performance Evaluation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:215 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§4903. Disputes and Appeals

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:215 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§4905. Energy Policy and Conservation Act

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:215 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§4907. Legislative Auditor

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:215 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§4909. Taxes

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:215 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§4911. Travel Expenses and Reimbursement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:215 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

§4913. Purchase Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:61 et seq.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Labor, LR 16:211 (March 1990), repealed and repromulgated LR 17:357 (April 1991), repealed by the Department of Labor, Office of Labor, LR 21: (December 1995).

Gayle F. Truly
Secretary

9512#001

RULE

**Department of Labor
Plumbing Board**

Licensure, Renewals, Fees
(LAC 46:LV.101, 301-310, 901)

In accordance with the Administrative Procedure Act, the Plumbing Board hereby amends its rules to comply with and implement provisions of Act 824 of the 1995 Regular Session of the Louisiana Legislature, which relate to the examination and licensing of medical gas piping installers and endorsements of plumbing licenses for the work of water supply protection specialists. The board is empowered to adopt such regulations by R.S. 37:1366(D), 1368(G) and 1368(H). Existing fees in LAC 46:LV.309.A and B relative

to journeyman and master plumbers are repromulgated in a new §310, which also implements new fees in Subsections C and D of this new Section relative to medical gas piping installers and water supply protection specialists. Plumbing Board rules are restated and/or amended as follows.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LV. Plumbers

Chapter 1. Introductory Information

§101. Definitions

The following terms, as used in these regulations, shall have the following meanings:

A. - G. ...

H. *Water Supply Protection Specialist* as used in R.S. 37:1366(H), 1367(G) and 1368(H)—a master plumber or journeyman plumber licensed by this board, who has been issued an endorsement to his master or journeyman plumber license by this board permitting him to install, repair and maintain backflow prevention devices between the public's or an individual consumer's potable and other water system and any other source or system through which it is possible to introduce into any part of the potable system any used water, industrial fluid, gas or substance other than the intended potable water with which the system is supplied.

I. *Cross-Connection*—any physical link in a public or a consumer's potable water supply system that allows backflows or any other source of contamination or pollution.

J. *Backflow*—the flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended source.

K. *Backflow Prevention Device*—an assembly that has been investigated and approved by the Foundation for Cross-Connection Control and Hydraulic Research of the University of Southern California, University Park, and, if applicable, by the Louisiana Department of Health and Hospitals.

L. *Medical Gas Piping Installer*—a natural person who possesses the necessary qualifications and knowledge to install, repair and maintain medical gas piping installations and is licensed as such by the board.

M. *Medical Gas Piping Installation*—the work or business of installing in buildings and premises piping used solely to transport gases for medical purposes. Generally, it shall refer to a pipe distribution system characterized by a central supply (including bulk systems, manifold devices or medical air compressors) with control equipment and piping extending to points in a facility where nonflammable gases are required or utilized, with suitable outlet valves at each use point.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, promulgated as amended by Department of Employment and Training, Plumbing Board, LR 17:48 (January 1991), amended by the Department of Labor, Plumbing Board, LR 21: (December 1995).

Chapter 3. Licenses

§301. Licenses Required

A. - K. ...

L. Apprentices may engage in the work of medical gas

piping installation only when they are under the direct, constant on-the-job supervision of a licensed medical gas piping installer. Direct, constant on-the-job supervision means that a licensed medical gas piping installer will supervise no more than one apprentice on only one job at a time. No apprentice shall be permitted to engage in brazing procedures or brazing performance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, promulgated as amended by the Department of Employment and Training, LR 17:49 (January 1991), amended LR 19:897 (July 1993), amended by the Department of Labor, Plumbing Board, LR 19:1593 (December 1993), LR 21: (December 1995).

§303. Application for License

A. - C. ...

D. An application for medical gas piping installer shall be completed and sworn to before a notary public by the applicant. The applicant must submit proof that he has completed a course of training described in §304.B of these regulations by an organization certified by the board pursuant to R.S. 37:1368(G). Additionally, the applicant must present proof of maintenance of performance qualification as a brazer in accordance with §304.J of these regulations. The applicant must furnish whatever other information relevant to his experience that is requested in the application form or specially requested by the board.

E. An application for an endorsement to a master or journeyman plumber license shall be completed and sworn to before a notary public by the applicant. The applicant must submit proof that he is licensed by the board at the time of application as a master or journeyman plumber. The applicant must submit proof that he has completed a course of training described in §309.B of these regulations. He must furnish whatever other information relevant to his experience that is requested in the application form or specially requested by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, promulgated as amended by the Department of Employment and Training, Plumbing Board, LR 17:50 (January 1991), amended by Department of Labor, Plumbing Board, LR 21: (December 1995).

§304. Medical Gas Piping Installer License

A. No natural person shall engage in the work or business of medical gas piping installation unless he possesses a license or renewal thereof issued by this board. The board shall issue a medical gas piping installer license to any person who qualifies under the board's regulations and who desires to engage in the work or business of a medical gas piping installer if he passes a written and manual examination given by the board for this purpose and pays the fees established by the board. No person shall qualify for examination as a medical gas piping installer unless he completes a course of training provided by an organization recognized by the board pursuant to §304.B.

B. As authorized by R.S. 37:1368(G), the board shall recognize and certify certain programs of education and training of medical gas piping installation offered by private

or public organizations or institutions. A natural person's satisfactory completion of any such program shall qualify him for admission to an examination offered under §304.A of these regulations. Any such organization must satisfy the board that its program or programs meets the following criteria:

1. The program is conducted at a training facility open to those members of the public that provide proof of five years of training or experience in any aspect of the piping industry.

2. The program requires 32 hours of medical gas piping installation training that meets criteria prescribed by the board and is included in the National Fire Protection Association (NFPA) *99C Gas and Vacuum Systems*, latest edition. Program testing must cover the following areas:

- a. the history of medical gas piping;
- b. application of NFPA 99C to medical gas piping;
- c. industry terminology, definitions, and vocabulary;
- d. performance criteria and objectives;
- e. medical gas hazards;
- f. basic components of medical gas systems;
- g. storage and manifold requirements;
- h. requirement for gas supply systems;
- i. bulk systems;
- j. medical air compressors;
- k. color coding and labeling requirements;
- l. scope of piping;
- m. valves;
- n. medical gas rail;
- o. gas piping;
- p. brazing procedures and installation requirements;
- q. alarm requirements.

3. The program must employ or utilize certified welding inspectors (CWI) to witness brazing exercises and the certification of brazers in accordance with American Welding Society (AWS), *Standard for Brazing Procedures and Performance Qualification*.

4. The program must be conducted at a facility capable of housing brazing qualification procedures administered to trainees in accordance with either Section IX, "Welding and Brazing Qualifications" of the *ASME Boiler and Pressure Code* or AWS B2.2, *Standard for Brazing Procedure and Performance Qualification*, as modified by NFPA 99C Gas and Vacuum Systems, latest edition. Such brazing training must be performed on copper tubing and conducted in a fashion to qualify a trainee on all ranges from quarter-inch through four-inch nominal type "L" copper tubing.

5. The program must employ or utilize instructors who are certified as medical gas installers by a governmental agency having jurisdiction over medical gas piping. In the absence of a governmental agency exercising such jurisdiction, the board will recognize the role of insurance inspection departments or property owners who have assumed the role of inspecting and approving medical gas piping installation and have exercised such authority with respect to work performed by any such individual providing instructional services to others. Instructors must have completed a 40-hour course on instructional training in the field of medical gas piping installation by an organization certified pursuant to R.S. 37:1368(G) or similar organization

recognized by public or private agencies having jurisdiction or authority with respect to medical gas piping installation. Instructors must also possess proof of completion of a minimum of eight hours of annual continuing education in the field of medical gas piping installation.

C. To be eligible for board certification pursuant to R.S. 37:1368(G), an interested organization providing medical gas piping installation training and education must complete a written application on a form or forms supplied by the board. The board shall be entitled to receive timely information on the program or programs administered by such organization and background of instructors upon request at any time. The board, acting through its representatives, may also inspect the facility and observe the actual training and education programs used or offered by such organizations. Failure to cooperate with the board and its representatives may be grounds for denial or withdrawal of board certification of any such organization. The board may investigate complaints concerning such programs. Adverse administrative action affecting an organization's application for certification or its continued status as an organization certified by the board pursuant to R.S. 37:1368(G) will be subject to the Administrative Procedure Act.

D. An applicant for a medical gas piping installer license must attach to his application a money order or check for the appropriate fee established in §310 of these regulations.

E. Regular quarterly examinations for medical gas piping installer may be held in conjunction with examinations for journeyman or master plumber license applications, or on such days specially set by the board. Interested persons shall be notified of the examination schedule.

F. A medical gas piping installer license application must be submitted to the New Orleans office of the board not less than 30 days before any scheduled examination. Failure to report for the examination will result in forfeiture of the applicant's fee. This forfeiture may be reversed by the board upon a showing of good cause by the applicant explaining his failure to attend the scheduled examination.

G. The chairman of the board shall appoint an examiner or examiners to conduct medical gas piping installer license examinations. An examiner may be a representative of a private or public professional service provider qualified to administer a standardized, nationally recognized test duly adopted by the board.

H. The board may accept, in lieu of an examination directly administered by the board to any applicant, the verifiable results of an examination administered between June 1, 1992 and December 31, 1996 by an organization certified pursuant to R.S. 37:1368(G), as evidence of successful completion of the examination referred to in R.S. 37:1368(G). Any papers from such examinations must be available for inspection and the board may require notarized affidavits from the applicant and the administering organization representative attesting to the accuracy of the examination results and the scope of any such examination, which must minimally include the subject areas described in §304.B.4 of the regulations.

I. Any person possessing a restricted master plumber license, who is also licensed by the board as a medical gas

piping installer, shall not be restricted geographically with respect to his work or business as a medical gas piping installer. However, the restrictions applicable to his restricted master plumber license shall remain in effect.

J. A medical gas piping installer shall, as a condition of licensing under these regulations, maintain his brazer performance qualification in accordance with NFPA 99C *Gas and Vacuum Systems*, latest edition.

K. Any person, who at any time is cited by the board for working as a medical gas piping installer without possessing the necessary license issued by the board, shall be subject to a special enforcement fee as a precondition to any subsequent examination or licensing of any nature. This fee shall be in addition to the regular fees assessed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D) and R.S. 37:1368(G).

HISTORICAL NOTE: Promulgated by the Department of Labor, Plumbing Board, LR 21: (December 1995).

§307. Renewals

A. All plumbing and medical gas piping installer licenses, as well as water supply protection endorsements, expire December 31 of each year. Applications for renewal will be mailed out by the end of October. The issuance of renewals will commence November 1 of each year. The term "renewal application" as used in this §307 shall refer to all licenses and endorsements issued by the board.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, promulgated LR 2:419 (December 1976); amended LR 7:588 (November 1981); amended by Department of Employment and Training, Plumbing Board, LR 17:53 (January 1991), LR 18:30 (January 1992); amended by the Department of Labor, Plumbing Board, LR 21: (December 1995).

§309. Water Supply Protection Specialist Endorsement

A. No natural person shall engage in the work of a water supply protection specialist unless he possesses an endorsement to either a master plumber license or a journeyman plumber license or renewals thereof issued by the board. The board shall issue such an endorsement to either form of license to any person who qualifies under the board's regulations and who desires to engage in doing the work of a water supply protection specialist, if he passes an examination given by the board and pays the fees established by the board.

B. A person possessing a restricted master plumber license, who also possesses a water supply protection specialist endorsement to that license issued by the board, shall not be restricted geographically with respect to his work or business as a water supply protection specialist. However, the restrictions applicable to his restricted master plumber license shall remain in effect.

C. As authorized by R.S. 37:1368(H), the board shall recognize and certify certain programs of education and training of water supply protection offered by private or public organizations or institutions. A journeyman or master plumber licensed by this board who successfully completes any such program shall qualify for admission to an examination offered under §309.A of these regulations. Any such organization must satisfy the board that its program or

programs includes training and testing in the following areas:

1. the history of plumbing as it pertains to backflow and cross-connections and the public health;
2. knowledge of backflow and cross-connection incidents;
3. regulations, statutes, ordinances and codes (federal, state and local);
4. industry terminology, definitions and vocabulary;
5. purpose of a cross-connection control program;
6. knowledge of backflow, backpressure, back-siphonage;
7. the identification of cross-connections (direct and indirect);
8. the identification and description of backflow preventers and devices utilized for the prevention of cross-connections;
9. knowledge of the principles and operation of test gauges;
10. knowledge of proper testing of backflow preventers;
11. trouble shooting backflow preventers;
12. responsibilities of the general tester, water purveyor, building safety departments and maintenance and repair personnel;
13. documentation (to include maintenance and repair);
14. safety (Applicable rules and regulations as specified by OSHA); and
15. maintenance and repair of backflow prevention assemblies.

D. Courses of instruction defined in §309.C must be provided by a person or persons possessing a current American Society of Sanitary Engineers (ASSE) General Tester Certificate to the guidelines of the ASSE Series 5000/5010 Professional Qualifications Standard or its equivalent; a minimum of five years related experience in the plumbing, pipefitting, or related fields; proof of annual participation in at least eight hours of update and training sessions in the backflow/cross-connection field; approved by the ASSE or its equivalent; and trade related teaching experience or teaching experience for instructor qualifications.

E. To be eligible for board certification pursuant to R.S. 37:1368(H), an interested organization providing water supply protection specialist training and education must complete a written application on a form or forms supplied by the board. The board shall be entitled to receive timely information on the program or programs administered by such organization and background of instructors upon request at any time. The board, acting through its representatives, may also inspect the facility and observe the actual training and education programs used and offered by such organization. Failure to cooperate with the board and its representatives may be grounds for denial or withdrawal of board certification of any such organization. The board may investigate complaints concerning such programs. Adverse administrative action affecting an organization's application for certification or its continued status as an organization certified by the board pursuant to R.S. 37:1368(H) will be subject to the Administrative Procedure Act.

F. The board may accept, in lieu of an examination directly administered by the board to any applicant, the

verifiable results of an examination administered by an organization certified pursuant to R.S. 37:1368(H) between June 1, 1992 and December 31, 1996, as evidence of successful completion of the examination referred to in R.S. 37:1368(H). Any papers from such examinations must be available for inspection and the board may require notarized affidavits from the applicant and the administering organization representative attesting to the accuracy of the examination results and the scope of any such examination, which must minimally include the subject areas described in §309.C of these regulations.

G. An applicant for a water supply protection specialist endorsement must attach to his application a money order or check for the appropriate fee established in §310 of these regulations.

H. Regular quarterly examinations for water supply protection specialist endorsements may be held in conjunction with examinations for journeyman or master plumber license applications, or on such days specially set by the board. Interested persons shall be notified of the examination schedule.

I. A water supply protection specialist endorsement application must be submitted to the New Orleans office of the board not less than 30 days before any scheduled examination.

J. The chairman of the board shall appoint an examiner or examiners to conduct water supply protection specialist endorsement examinations. An examiner may be a representative of a private or public professional service provider qualified to administer a standardized, nationally recognized test duly adopted by the board.

K. Any person, who at any time is cited by the board for working as a water supply protection specialist without possessing an endorsement to that effect, shall be subject to a special enforcement fee as a precondition to any subsequent examination or licensing of any nature. This fee shall be in addition to the regular fees assessed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D) and R.S. 37:1368(H).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, promulgated as amended LR 7:588 (November 1981), amended LR 15:1089 (December 1986) amended by the Department of Employment and Training, Plumbing Board, LR 16: 1088 (January 1990), amended LR 17:53 (January 1991), amended by the Department of Labor, Plumbing Board, LR 19:898 (July 1993), LR 19:1594 (December 1993), LR 21: (December 1995).

§310. Fees

A. The fees and charges of the board relative to journeyman plumbers shall be as follows:

1. Special examinations	\$ 500
2. Examinations	\$ 75
3. Illiterate examinations (This fee's actual cost not to exceed \$100)	\$ 100
4. Initial license fee (This fee to be paid after applicant has successfully passed the exam, in order to receive his first license)	\$ 30
5. Renewal fee	\$ 30

6. Revival fee If renewed after March 31	\$ 10 \$ 20
7. Temporary permits	\$ 50
8. Administrative charges for processing application (to be retained by the board should applicant withdraw his application before taking the examination)	50% of Exam Fee
9. Fee for N.S.F. or returned check	\$ 20
10. Special enforcement fee imposed under §305.H	\$ 500

B. The fees and charges of the board relative to master plumbers, restricted master plumbers and inactive master plumbers shall be as follows:

1. Special examinations	\$ 500
2. Examinations	\$ 100
3. Initial license fee	\$ 180
4. Renewal fee	\$ 180
5. Revival fee If renewed after March 31	\$ 60 \$ 120
6. Administrative charges for processing application (to be retained by the board should applicant withdraw his application before taking the examination)	50% of Exam Fee
7. Fee for N.S.F. or returned check	\$ 20
8. Special enforcement fee imposed under §306.G	\$ 500
9. Inactive master plumber fee	\$ 30
10. Fee for conversion of inactive master plumber license to active master plumber	\$ 150
11. Employing entity redesignation fee	\$ 150
12. Special daily enforcement fee imposed under §301.K	\$10/day, not to exceed \$500 in the aggregate
13. Special daily enforcement fee imposed under §308.H	\$10/day, not to exceed \$500 in the aggregate

C. The fees and charges of the board relative to medical gas piping installers shall be as follows:

1. Special examinations	\$ 500
2. Examination	\$ 95
3. Initial License Fee (this fee to be paid after applicant has successfully passed the exam)	\$ 30
4. Renewal fee	\$ 30
5. Revival fee If renewed after March 31	\$ 10 \$ 20

6. Administrative charges for processing application (to be retained by the board should an applicant withdraw his application before taking the examination)	50% of Exam Fee
7. Fee for N.S.F. or returned check	\$ 20
8. Special enforcement fee imposed under §304.K	\$ 500

D. The fees and charges of the board relative to water supply protection specialists endorsements shall be as follows:

1. Special examinations	\$ 500
2. Examination	\$ 50
3. Initial endorsement fee (this fee to be paid after applicant has successfully passed the exam)	\$ 10
4. Renewal fee	\$ 10
5. Revival fee If renewed after March 31	\$ 10 \$ 20
6. Administrative charges for processing application (to be retained by the board should an applicant withdraw his application before taking the examination)	50% of Exam Fee
7. Fee for N.S.F. or returned check	\$ 20
8. Special enforcement fee imposed under §309.K	\$ 500

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D) and R.S. 37:1371.

HISTORICAL NOTE: Promulgated by the Department of Labor, Plumbing Board, LR 21: (December 1995).

Chapter 9. Revocation and Related Administration Proceedings

§901. Revocation, Suspension and Probation Procedures

A. All adjudication proceedings initiated pursuant to R.S. 37:1378 and conducted by the board shall be in accordance with the Administrative Procedure Act, R.S. 49:955 et seq. The term "licensee" as used in this Section, shall refer, where applicable, to the holder of a journeyman plumber, restricted journeyman plumber, master plumber, restricted master plumber, inactive master plumber license, medical gas installer license, and holder of a water supply protection specialist endorsement.

B. - K.3. ...

a. A license or license endorsement to practice plumbing, engage in the work of a water supply protection specialist and/or medical gas piping installer may be withheld by the board as a result of the findings of fact presented in a hearing. The duration of a suspension may be for a definite or indefinite period of time. A licensee or endorsement holder whose license or endorsement is suspended may not practice plumbing, the work of a water supply protection specialist and/or medical gas installer in the state of Louisiana during the designated period of suspension.

b. - c. ...

L. Revocation. A license or endorsement to practice plumbing, engage in the work of a water supply protection

specialist and/or medical gas piping installer may be withdrawn by the board for any reason or ground permitted by R.S. 37:1378 or other law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, promulgated as amended by the Department of Employment and Training, Plumbing Board, LR 17:55 (January 1991), amended by Department of Labor, Plumbing Board, LR 21: (December 1995).

All currently stated rules of the board unless amended herein, shall remain in full force and effect.

Don Traylor
Executive Director

9512#011

RULE

Department of Social Services Office of Community Services

Multiethnic Placement (LAC 67:V.401)

The Department of Social Services, Office of Community Services has adopted the following rule in the Adoption and Foster Care Programs.

This rule is mandated by Public Law 103-382, Part E-Multiethnic Placement, Sections 551 - 555 passed by the Congress of the United States October 20, 1994 and effective October 21, 1995. This rule prohibits discrimination based on race, color, or national origin in the decision to terminate parental rights, foster care, and adoptive placements.

Title 67

SOCIAL SERVICES

Part V. Office of Community Services

Subpart 1. General Administration

Chapter 4. Placements

§401. Multiethnic Placement

A. OCS and its subrecipients involved in adoption or foster care placements may not:

1. categorically deny to any person the opportunity to become an adoptive or a foster parent, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved; or

2. delay or deny the placement of a child for adoption or into foster care, or otherwise discriminate in making a placement decision, solely on the basis of the race, color or national origin of the adoptive or foster parent, or the child, involved.

B. OCS and its subrecipients involved in adoption or foster care placements may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of this background as one of a number of factors used to determine the best interests of a child.

C. The term *placement decision* means the decision to place, or to delay or deny the placement of, a child in a foster care or an adoptive home, and includes the decision of OCS

and its subrecipients, to seek the termination of birth parents rights or otherwise make a child legally available for adoptive placement.

D. Any individual who is aggrieved by an action in violation of Subsection A of this Section taken by OCS or its subrecipients shall have the right to bring an action seeking relief in a United States district court of appropriate jurisdiction.

E. Nothing in this rule shall be construed to affect the application of the Indian Child Welfare Act of 1978, 25 USC 1901 et seq.

AUTHORITY NOTE: Promulgated in accordance with P. L. 103-382, Part E - Multiethnic Placement, Sections 551- 555.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 21: (December 1995).

Gloria Bryant-Banks
Secretary

9512#025

RULE

Department of Transportation and Development Board of Registration for Professional Engineers and Land Surveyors

Bylaws (LAC 46:LXI.Chapter 27)

In accordance with R.S. 49:950 et seq., the Board of Registration for Professional Engineers and Land Surveyors has amended LAC 46:LXI.Chapter 27 as follows.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXI. Professional Engineers and Land Surveyors

Subpart 2. Bylaws

Chapter 27. General Information

§2701. Domicile

A. Domicile. The domicile of the board shall be the city of Baton Rouge.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:52 (February 1976), amended LR 5:117 (May 1979), LR 11:1179 (December 1985), LR 21: (December 1995).

§2703. Board Member

A. - B. ...

C. Date of Elections. The election of board officer shall take place not later than at the board's annual meeting. In the event that an officer cannot complete his term, an election in order to fill the unexpired term shall be scheduled at the earliest practical regular or special meeting.

D. Duties

1. Chairman. The chairman shall preside at all meetings, appoint all committees, except as otherwise provided, and shall, together with the secretary, sign all certificates of

registration issued by the board. The chairman shall compile certificates of registration issued by the board. The chairman shall compile the agenda for each regular and special meeting. The chairman shall be empowered to authorize expenditures of funds, in the beneficial interests of the board and without its prior approval, up to an aggregate amount of \$5,000, and any expenditures made under this authorization shall be reported to and ratified by the board at its next regular meeting.

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:52 (February 1976), amended LR 5:118 (May 1979), LR 11:1179 (December 1985), LR 19:54 (January 1993), LR 21: (December 1995).

§2705. Standing Committees

A. Committees. The board shall establish the following committees: Executive Committee, Engineering Committees, Land Surveying Committee, Engineering-in-Training Committee, Liaison and Law Review Committee, Curricula Committee, Finance Committee, Nominations Committee, and Complaint Review Committee.

B. - C. ...

D. Engineering Committees

1. The chairman of the board shall appoint not less than two members to each of the branches of engineering committees listed in §901 and §902.

- a. Agricultural Engineering Committee;
- b. Chemical Engineering Committee;
- c. Civil Engineering Committee;
- d. Control Systems Engineering Committee;
- e. Electrical Engineering Committee;
- f. Environmental Engineering Committee;
- g. Industrial Engineering Committee;
- h. Mechanical Engineering Committee;
- i. Metallurgical Engineering Committee;
- j. Mining Engineering Committee;
- k. Nuclear Engineering Committee;
- l. Petroleum Engineering Committee.

2. Each of these committees shall:

- a. review applications for registration in each respective branch of professional engineering;
- b. recommend approval or disapproval of application;
- c. supervise the selection of examinations on principles and practice of engineering for the respective branches; and
- d. recommend passing scores for their respective written examinations.

E. - F. ...

G. Liaison and Law Review Committee. The chairman shall appoint a liaison and Law Review Committee to work with similar committees of professional and technical organizations on matters of mutual concern. The committee shall make recommendations to the board in matters concerned with the Registration Law and the rules and regulations of the board.

H. Engineering Curricula Committee. The chairman shall appoint a Curricula Committee to evaluate and make recommendations to the board concerning the quality of the

engineering curricula, along with an evaluation of the faculties and facilities of schools within the state of Louisiana. The Engineering Curricula Committee shall have the power to make inspections in the course of its evaluations. The committee chairman shall coordinate the selection of board observers for all ABET visitations in the state.

I. Finance Committee. The chairman shall appoint a Finance Committee composed of not less than two board members. The secretary will serve as ex-officio member of this committee. It will be the responsibility of the committee to make studies, reports and recommendations to the board on fiscal matters. At the end of the fiscal year, the Finance Committee shall review the annual audit and prepare a budget for presentation to the board at its next meeting.

J. ...

K. Complaint Review Committee. Review committee shall be composed of three standing members, the executive secretary, board investigator, board attorney and one board member appointed on a case-by-case basis. It shall be the responsibility of the committee to review the results of investigations of complaints against registrants and unlicensed persons and recommend appropriate action to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:52 (February 1976), amended LR 5:118 (May 1979), LR 11:1180 (December 1985), LR 19:54 (January 1993), LR 21: (December 1995).

§2707. The Executive Secretary

A. ...

B. Officer of Board. Although not a member of the board, the executive secretary shall be an officer of the board and ex-officio member on all committees.

C. Duties of the Executive Secretary. The executive secretary shall:

1. ...
2. record and file all applications, examinations, registrations, suspensions and revocations;
3. - 5. ...
6. address inquiries to references to verify the qualifications, experience and character of applicants as directed by the board;
7. - 24. ...
25. have an audit made of all receipts and disbursements at the closing of each fiscal year (June 30) by a board certified public accountant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:52 (February 1976), amended LR 5:118 (May 1979), LR 11:1180 (December 1985), LR 19:55 (January 1993), LR 21: (December 1995).

§2709. Meetings

A. - D. ...

E. Meetings Dates. Written, public notice of the dates, times, and places of all regular meetings shall be given at the beginning of each fiscal year.

F. Separate Notice of all Meetings. In addition, separate written, public notice of any regular, special, or rescheduled

meeting shall be given no later than 24 hours before the holding of the meeting. This separate notice shall include the agenda, date, time and place of the meeting.

G. Posting of Notice. The public notice discussed in §2709.E and F shall include (1) posting a copy of the notice at the office of the board; or (2) publication of the notice in the board newsletter no less than 24 hours before the meeting.

H. Notice to Board Members. Notice of all meetings, in conformity with §2709.E and F shall be given in writing to each member by the executive secretary.

I. Quorum. A simple majority of board members shall constitute a quorum for the transaction of business.

J. *Roberts Rules of Order*. *Roberts Rules of Order* shall govern the proceedings of the board at all meetings, except as otherwise provided herein or by statute.

K. Location of Meetings. All meetings shall be held at the board office, unless, in the judgment of the chairman, it is necessary or convenient to meet elsewhere.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:52 (February 1976), amended LR 5:118 (May 1979), LR 11:1181 (December 1985), LR 19:55 (January 1993), LR 21: (December 1995).

§2715. Voting

A. General Provisions. Unless otherwise specified in the following Subsections a simple majority of a quorum of the board at a meeting properly noticed and convened is necessary in order to elect an officer or approve a measure before the board.

B. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 11:1181 (December 1985), LR 19:55 (January 1993), LR 21: (December 1995).

§2719. Publications of the Board

A. ...

B. Official Journal. The official journal of the board shall be a newsletter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:52 (February 1976), amended LR 5:118 (May 1979), LR 11:1182 (December 1985), LR 19:55 (January 1993), LR 21: (December 1995).

§2723. Disbursements

A. - B. ...

C. Required Signatures on Checks. All checks must be signed by two of the following individuals: chairman, vice-chairman, secretary, executive secretary, or board member and/or staff person designated by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:52 (February 1976), amended LR 5:118 (May 1979), LR 11:1182 (December 1985), LR 21: (December 1995).

Paul L. Landry, P.E.
Executive Secretary

9512#008

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Possession of Potentially Dangerous Wild Quadrupeds (LAC 76:V.107 and 115)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Wildlife and Fisheries Commission does hereby promulgate rules governing possession of certain wild quadrupeds and amends LAC 76:V.107, which initially regulated the possession of live wild quadrupeds.

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

§107. Game Breeder's License

A - B.8.c ...

9. * Elk (license will not be issued). Single animal: 5,000 square feet paddock or corral; increase corral size by 50 percent for each additional animal; barn, shaded or protected area attached to or adjoining corral fence, 9 gauge chain link or woven wire; 8 feet high. Welded wire is not acceptable.

Regulation of elk is under jurisdiction of the Louisiana Department of Agriculture and Forestry by Act 41 of the 1992 Legislative Session.

* Note: Valid game breeder's license holders for these species legally possessed prior to October 1, 1988, will be "grandfathered" and renewed annually until existing captive animals expire, or are legally transferred out of state or to a suitable public facility. No additional animals may be required. This position by the department is necessary due to the ability of these animals to cause serious physical injury to the owner or other innocent bystanders and/or their potential to transmit disease to wildlife or livestock. Qualified educational institutions, municipal zoos or scientific organizations will be exempted to this provision on a case-by-case basis.

10. Other Game Quadrupeds and Birds. Other game quadrupeds and birds endemic to North America may not be kept without approval of the Wildlife Division. Pen specifications for animals not listed will be developed by the Wildlife Division as needed.

C. General Requirements

C.1 - C.5 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:171.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 14:631 (September 1988), amended LR 18:1134 (October 1992), LR 21: (December 1995).

§115. Possession of Potentially Dangerous Wild Quadrupeds

A. This commission finds that possession of certain potentially dangerous quadrupeds poses significant hazards to public safety and health, is detrimental to the welfare of the animals, and may have negative impacts on conservation and recovery of some threatened and endangered species.

1. The size and strength of such animals in concert with their natural and unpredictable predatory nature can result in severe injury or death when an attack upon a human occurs. Often such attacks are unprovoked and a person other than the owner, often a child, is the victim. Furthermore, there is no approved rabies vaccine for such animals, so even minor scratches and injuries inflicted upon humans or other animals could be deadly.

2. Responsible possession of these potentially dangerous wild quadrupeds necessitates that they be confined in secure facilities. Prolonged confinement is by its nature stressful to these animals and proper long-term care by experienced persons is essential to the health and welfare of these animals and to society.

3. Certain of these animals are listed as endangered species and others are so similar in appearance to endangered subspecies as to make practical distinction difficult. This similarity of appearance may provide a means to market illegally obtained endangered animals and can limit the effective enforcement of endangered species laws.

B. This commission regulation prohibits possession of certain wild quadrupeds as follows.

C. No person shall possess within the state of Louisiana, any of the following species or its subspecies of live wild quadrupeds, domesticated or otherwise:

1. Cougar or mountain lion (*Felis concolor*)
2. Black bear (*Ursus americanus*)
3. Grizzly bear (*Ursus arctos*)
4. Polar bear (*Ursus maritimus*)
5. Red wolf (*Canis rufus*)
6. Gray wolf (*Canis lupus*)
7. Wolf-Dog hybrids (*Canis lupus* or *Canis rufus* x *Canis familiaris*).

D. Valid game breeder license holders for these species legally possessed prior to October 1, 1988, will be "grandfathered" and renewed annually until existing captive

animals expire, or are legally transferred out of state, or are transferred to a suitable public facility. No additional animals may be acquired.

The prohibition against wolf-dog hybrids will expire January 1, 1997. Persons are cautioned that local ordinances or other state regulations may prohibit possession of these animals. After January 1, 1997, an animal which appears indistinguishable from a wolf, or is in any way represented to be a wolf may be considered to be a wolf in the absence of bonafied documentation to the contrary.

E. Qualified educational institutions, zoos, and scientific organization may be exempted from this prohibition on a case-by-case basis upon written application to the secretary. Minimum pen requirements for exempted educational institutions, zoos and scientific organization are as follows:

1. Bears
 - a. single animal - 25 feet long x 12 feet wide x 10 feet high, covered roof;
 - b. pair - 30 feet long x 15 feet wide x 10 feet high, covered roof;
 - c. materials - chain link 9 gauge minimum;
 - d. safety perimeter rail;
 - e. pool - 6 feet x 4 feet x 18 inches deep with facilities for spraying or wetting bear(s);
2. Wolf
 - a. 15 feet long x 8 feet wide x 6 feet high per animal, covered roof;
 - b. secluded den area 4 feet x 4 feet for each animal;
 - c. materials - chain link wire or equivalent;
 - d. safety perimeter rail;
3. Cougar, Mountain Lion
 - a. single animal - 10 feet long x 8 feet wide x 8 feet high, covered roof;
 - b. pair - 15 feet long x 8 feet wide x 8 feet high, covered roof;
 - c. materials - chain link 9 gauge minimum;
 - d. safety perimeter rail;
 - e. claw log;
 - f. shelf - 24 inch wide x 8 feet long, 40 inches off floor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115, 56:171, and 56:1904(F).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21: December 1995).

Perry Gisclair
Chairman

9512#022

Notices of Intent

NOTICE OF INTENT

Department of Civil Service
Civil Service Commission

Compensation/Cash Payments

The State Civil Service Commission will hold a public hearing on Wednesday, January 10, 1996 to consider amending proposed rules 1.9.02 and 6.13(a), and the adoption of proposed rule 6.3.1. The public hearing will begin at 9 a.m. in the Commission Hearing Room at the Department of State Civil Service, Second Floor, DOTD Annex Building, 1201 Capitol Access Road, Baton Rouge, LA.

Consideration will be given to the following:

Proposed Amendment to Rule 1.9.02

1.9.02 *Compensation*—any salary, wages, fees, special pay considerations, or any other cash payment directly to an employee as a result of service rendered in any position. It shall not include reimbursement for travel incurred as a result of the performance of official duties.

Proposed Amendment to Rule 6.13(A)

6.13 Certification and Payment

(a) No employee shall receive any compensation except as authorized by or pursuant to Civil Service rule or by the classification and pay plan adopted by the commission, and only after certification from the director that such compensation is in conformity with these rules.

(b) ...

Proposed Adoption of Rule 6.3.1

6.3.1 Other Compensation

An appointing authority desiring to provide compensation not specifically covered either by Chapter 6 of these rules or by the classification and pay plan shall obtain approval from the commission of a plan for providing such compensation, and shall obtain certification in accordance with Rule 6.13(a) prior to providing such compensation. The alteration of any such plan shall not be made without the prior approval of the commission.

Explanation

The purpose of these rules is to provide for the regulation of all cash payments to classified employees such as housing allowances, food allowances, and other similar allowances.

Persons interested in making comments relative to these proposals may do so at the public hearing or by writing to the director of State Civil Service, Box 94111, Baton Rouge, LA 70804-9111.

If any accommodations are needed, please notify us prior to this meeting.

Herb L. Sumrall
Director

9512#058

NOTICE OF INTENT

Department of Economic Development
Board of Examiners of Certified Shorthand Reporters

Disclosure (LAC 46:XXI.1105)

Under authority of R.S. 37:2554 and with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Board of Examiners of Certified Shorthand Reporters is amending Part XXI of the Louisiana Administrative Code. This amendment will require the court reporter to disclose upon request any arrangements, financial or otherwise, with the party requesting the court reporter's services.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXI. Certified Shorthand Reporters

Chapter 11. Certificates

§1105. Disclosure

Upon request by any party present at a deposition each certified court reporter shall disclose the complete arrangement, financial or otherwise, made between the reporter or any person or entity making arrangements for the reporter's services and the attorney or other party making such arrangements with the reporter, person, or entity. Each reporter is responsible for inquiring about and discovering such information before accepting any assignment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554 and R.S. 37:2557.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters in LR 21:21 (January 1995), amended by the Department of Economic Development, LR 22:

Interested persons may submit written or oral comments to Gay M. Pilié, Executive Director, Board of Examiners of Certified Shorthand Reporters, 325 Loyola Avenue, Suite 306, New Orleans, LA 70112, (504) 523-4306. Comments will be accepted through the close of business on January 20, 1996.

Gay M. Pilié
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Court Reporter's Services Disclosure

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be a one time cost of \$100 to the Certified Shorthand Reporters Board to publish the rule in the *Louisiana Register*.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no anticipated effect on revenue to state governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no anticipated effect on costs to nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no anticipated effect on competition or employment due to the proposed rule.

Gay M. Pilié
Executive Director
9512#012

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Economic Development Office of Financial Institutions

Bond for Deed Escrow Agents (LAC 10:XV.Chapter 9)

Under the authority of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 6:414(B), the commissioner hereby gives notice of his intent to amend the existing rule, originally published in the *Louisiana Register*, Volume 20, page 412 (April 1994), regarding the licensing, regulation and supervision of persons performing bond for deed escrow agent services. The amended rule provides specifically for the definition of terms; license requirements; application procedures; fees; submission of surety bonds; record keeping and retention; visitations and examinations; submission of reports; reporting significant changes in status; procedures for license suspension and revocation; and the enforcement powers of the commissioner.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES, AND UCC

Part XV. Other Regulated Entities

Chapter 9. Bond For Deed Escrow Agents

§901. Definitions

Bond for Deed—a contract to sell real property, in which the purchase price is to be paid by the buyer to the seller in installments and in which the seller, after payment of a stipulated sum, agrees to deliver title to the buyer.

Buyer—a prospective transferee of title to real property which is the subject of the bond for deed transaction.

Commissioner—the commissioner of the Office of Financial Institutions.

Escrow Agent—a person designated by the parties to a bond for deed transaction who distributes payments made by the buyer to the seller, or on behalf of the seller, to any person in accordance with a written bond for deed escrow agent agreement.

Person—any individual, firm, corporation, limited liability company, partnership, association, trust, or legal or commercial entity, or other group of individuals, however organized.

Principal Shareholder—a person owning in excess of 10 percent of the total outstanding shares of a corporation, a

limited liability company or other legal or commercial entity.

Real Property—immovable property located in Louisiana.

Seller—a prospective transferor of title to real property which is the subject of the bond for deed transaction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22:

§903. License Requirement, Ownership Change, Location Change, Name Change, Ceasing to Do Business

A. No person, other than a financial institution or other person subject to the general supervision or regulation of the commissioner pursuant to Title 6 or Title 9 of the Louisiana Revised Statutes of 1950, as amended, shall engage in business as a bond for deed escrow agent, unless such person has first obtained a license in conformity with this rule. Licenses are only required for those persons who wish to act as escrow agent, pursuant to written agreement, for the transfer of real property located within the boundaries of the state of Louisiana. The license must be prominently displayed at each location where business as a bond for deed escrow agent is conducted.

B. A license issued in accordance with this rule shall be nontransferable. A licensee shall give 30 days prior written notification to the Office of Financial Institutions of any change in ownership of 25 percent or more of its outstanding voting securities or equity ownership. A change in ownership of more than 50 percent shall require the acquiring person to apply for a new license in accordance with the provisions of §905 before ownership transfer occurs.

C. No licensee shall change its name or the location of any office without prior written notification to the commissioner. Written notification should be submitted 30 days prior to the anticipated date of change.

D. No licensee shall cease doing business without providing 30 days prior written notification to the commissioner and shall also provide therewith evidence of full compliance with all applicable laws and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22:

§905. Application For License and Renewal, Forms, Contents, Fees

A. Applications for licensure shall be in such form and contain such information as the commissioner may from time to time prescribe. Application forms may be obtained from the Office of Financial Institutions. The application shall contain a public section and a confidential section as determined by the commissioner.

1. The original of the application accompanied by a nonrefundable license fee of \$150 shall be submitted by U.S. mail or private mail courier in completed form to the commissioner. Any other method of delivery shall cause the application to be returned.

2. Upon receipt of the application the commissioner, or his designee, shall conduct an investigation. Additional information not included in the application, which is

necessary to determine qualification for licensing, may be requested from the applicant. Failure to provide the information requested on a timely basis may necessitate the return of the application to the applicant or may necessitate denial of the application by the commissioner. Processing of an application will not be completed until the satisfactory conclusion of such required investigation.

B. Each applicant shall possess and maintain a net worth of \$25,000. Further, the financial condition, business experience and background of the applicant shall be such as to reasonably warrant the commissioner's belief that the applicant's business shall be conducted honestly, carefully and efficiently. The commissioner shall investigate and consider the qualifications of each sole proprietor, partner, director, officer, principal shareholder or member of an applicant in determining whether the applicant qualifies for licensure.

C. Effective January 1, 1995, and on or before March 15 of each year, each licensee shall file an application for renewal and shall pay to the Office of Financial Institutions a nonrefundable license renewal fee of \$100. If the renewal application and fee are mailed after March 15, but on or before April 15, an additional late penalty equal to 50 percent of the renewal fee shall be paid as a prerequisite for renewal of an existing license. Failure to mail an application for renewal with its accompanying fee on or before April 15 shall result in expiration of the existing license.

D. The application for renewal shall be in such form and require such information as prescribed from time to time by the commissioner. The licensee may be required to submit with the renewal application an annual report disclosing all business activities with regard to servicing escrow agent agreements conducted during the previous year. With any renewal application, the licensee shall also provide annual financial statements sufficient to determine each licensee's financial condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22:

§907. Escrow Deposit Account

A. No person shall engage in business as a bond for deed escrow agent without first providing evidence to the commissioner that an escrow deposit account has been established for the sole purpose of receiving the proceeds of monthly payments paid to the licensee by a buyer. The escrow deposit account shall be established with a federally-insured depository institution or branch thereof. The licensee shall give the commissioner written authority to examine the escrow deposit account and if said account is located in an institution domiciled outside of the state of Louisiana, the licensee shall pay any reasonable and necessary expenses, in addition to the examination fee permitted by §911 of this rule, incurred by the commissioner or his designated representatives to conduct such an examination. The licensee shall hold all proceeds of monthly payments in trust from the moment of their receipt. The licensee shall timely account for or deliver to any person any personal property obtained by the escrow agent as required by a written bond for deed escrow agent agreement such as money, funds, deposits, checks,

drafts or other property of any value which has come into his hands and which is not his property, or which he is not by law entitled to retain. The licensee shall not commingle the proceeds in the escrow account with his own property or funds. If the licensee commingles any proceeds received from a buyer with his own property or funds controlled by licensee, all commingled proceeds and other property shall be considered held in trust by licensee in an amount equal to the amount of the proceeds owed any person by a buyer, which is to be paid on behalf of a seller.

B. When a licensee ceases to do business as a bond for deed escrow agent for any reason, the licensee shall immediately supply the commissioner with a written list of all parties that are represented by the licensee under all bond for deed escrow agent agreements. The licensee shall also supply the commissioner with a written list of all persons to whom he/she is required to make payments on behalf of any parties to bond for deed escrow agreement. Said lists shall be certified by the escrow agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22:

§909. Irrevocable Letter of Credit, Surety Bond, Other Security

A. No person shall engage in business as a bond for deed escrow agent without having first issued, in favor of the Office of Financial Institutions, an irrevocable letter of credit in an amount to be determined by the commissioner, but in no event less than \$10,000, which letter of credit shall be issued by a federally insured financial institution. Each applicant shall enter into an Irrevocable Letter of Credit Agreement, an Escrow and Regulatory Agreement and Power of Attorney with the Office of Financial Institutions on forms supplied by the commissioner before being issued a license to commence business.

B. In lieu of such irrevocable letter of credit as required in Subsection A above, each applicant may post and maintain a surety bond issued by a bonding company or insurance company, either of which must be authorized to do business in Louisiana, in the amount of \$10,000, to cover the first year of operation as a licensed bond for deed escrow agent. The bond shall be in a form acceptable to the commissioner and shall run to the Office of Financial Institutions for the benefit and use of the Office of Financial Institutions, parties to the bond for deed agreement or any persons with a right to the payments made on behalf of any parties to a bond for deed escrow agreement for any liability incurred as a result of the failure of the licensee to perform under a bond for deed escrow agent agreement. Persons who have claims against the licensee or its agents may bring suit directly on the bond. The Louisiana attorney general may bring suit on the bond on behalf of claimants either in one action or successive actions.

C. In lieu of such an irrevocable letter of credit, corporate surety bond, or any portion of such instruments required by this section, the licensee may deposit in escrow with any federally-insured depository institution, or branch thereof, located in Louisiana, the substitution of cash in an amount not less than that required by the irrevocable letter of credit or

corporate surety bond, or any portion thereof to be determined by the commissioner. A deposit of cash shall be made in an interest bearing account which must be pledged to the commissioner. The licensee shall be entitled to receive all interest and dividends on the deposit placed in escrow.

D. The amount of the irrevocable letter of credit, surety bond or cash escrow deposit after the first year of operation may be determined by the commissioner based upon the following nonexclusive factors:

1. The highest level of bond for deed transaction activity performed by the licensee during any one month in the preceding calendar year.

2. The risk to the general public, if any, commensurate with the continuance of the existing surety bond amount established during the preceding period.

3. In no event shall the total amount of security be less than \$10,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22:

§911. Record Keeping and Retention, Examination

A. A bond for deed escrow agent required to be licensed under this Chapter shall maintain in his/her office such books, records and accounts as are reasonably necessary to allow the commissioner to determine whether such bond for deed escrow agent is complying with the provisions of this rule and with the provisions of all escrow servicing agreements entered into by him/her. Such books, records and accounts shall be maintained separate and apart from any other business in which the bond for deed escrow agent is involved and shall be kept at the licensed location unless otherwise permitted in writing by the commissioner. Further, each licensed bond for deed escrow agent shall maintain a record of all bond for deed transactions and escrow agent agreements effected by him/her for a period of three years following the expiration or termination of such escrow agent agreement. Each bond for deed escrow agent licensed by this office shall also maintain a file containing the original and/or copies of all complaints filed by sellers, buyers or other third parties affected by bond for deed transactions or escrow agent agreements entered into by the licensee.

B. The commissioner, or his designee, may visit and examine each licensee in accordance with a schedule consonant with the use, to the fullest extent possible, of the resources of the Office of Financial Institutions, in accordance with good examination practice, to determine compliance with this rule, to investigate complaints or for other good cause shown. If records are moved outside of the boundaries of Louisiana, the bond for deed escrow agent, at the commissioner's option, shall make such records available to the commissioner at a location within this state convenient to the commissioner or shall pay the reasonable and necessary expenses for the commissioner or his representatives to examine such records at the place where they are maintained.

C. The commissioner shall assess an examination and/or visitation fee of \$50 per hour per examiner. If this fee is not paid within 30 days after its assessment, the licensee examined shall be subject to an administrative penalty of not

more than \$50 for each day the fee is late. The penalty, together with the amount due, plus attorney fees and court cost, may be recovered by the commissioner in a civil action brought in any court of competent jurisdiction.

D. The commissioner shall have the authority to examine the books, records and accounts of any former licensee as they pertain to bond for deed escrow activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22:

§913. Significant Developments

Each licensee must report any significant developments immediately to the commissioner, including but not limited to:

1. the filing of any bankruptcy petitions by the licensee;
2. the indictment or conviction of a felony by any sole proprietor, partner, director, officer, principal shareholder, member or agent of licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22:

§915. Suspension or Revocation of License

A. After the licensee has been given notice and an opportunity to be heard, the commissioner may suspend or revoke the license of a bond for deed escrow agent in accordance with R.S. 6:121.1, 6:122 and/or any other relevant provision of law, whenever it has been established that the licensee has:

1. violated any provisions of the law or regulations applicable hereto, or committed any act which would constitute grounds for the refusal of a new license;
2. knowingly provided or caused to be made to the commissioner any false or fraudulent misrepresentation of material fact, or suppressed or withheld from the commissioner any information which, if submitted, would have rendered the licensee ineligible to be licensed under this Chapter;
3. refused to permit examination by the commissioner of the licensee's books, records or affairs, or has refused or failed, within a reasonable time, to furnish information or to make a report that may be required by the commissioner under the provisions of any applicable law or regulation;
4. violated the reporting requirements set out in §913;

or

5. failed to pay all fees and/or assessments as may be imposed by the Office of Financial Institutions.

B. In the event the commissioner suspends the license of an escrow agent, the licensee may continue to service any existing escrow agent agreements entered into prior to the date of suspension but may not enter into new escrow agent agreements subsequent to the date of suspension.

C. In the event the commissioner revokes the license of an escrow agent, or if the license expires for failure to renew, the escrow agent may not enter into any new escrow agent agreements subsequent to the date of revocation or expiration and must further comply with one of the following conditions:

1. the licensee must sell all existing escrow agent agreements entered into prior to the date of revocation of the license to a duly licensed escrow agent; or

2. if the licensee is unable to sell the escrow agent agreement to another duly licensed escrow agent, then each escrow agent agreement entered into by licensee must be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22:

Written comments regarding this proposed rule should be submitted no later than February 9, 1996, to Ann B. Lemenager, Chief Examiner, Office of Financial Institutions, Box 94095, Baton Rouge, LA 70804-9095 or by delivery to 8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809.

This proposed rule shall become effective upon final publication.

Larry L. Murray
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bond for Deed Escrow Agents

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The estimated implementation cost for this regulation will be \$480, which consists entirely of publication fees for the *Louisiana Register*.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect upon revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule, as it consists solely of administrative amendments to the presently existing regulation, adds no additional cost to the licensees or applicants impacted.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No significant change in competition or employment in the public or private sector is anticipated.

Larry L. Murray
Commissioner
9512#070

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Economic Development Real Estate Commission

Checks Returned for Insufficient Funds (LAC 46:LXVII.705)

Notice is hereby given that the Louisiana Real Estate Commission will consider the adoption of revisions to the existing rules and regulations of the agency, the text of which appears in its entirety in the emergency rule section of the November 20, 1995, *Louisiana Register*, LAC 46:LXVII.705.

Interested parties may direct inquiries and present their views in writing to the commission through January 20, 1996.

Contact Stephanie C. Fagan, Communications Specialist, Louisiana Real Estate Commission, Box 14785, Baton Rouge, LA 70898-4785.

J.C. Willie
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Checks Returned for Insufficient Funds

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated implementation costs (savings).

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Persons remitting checks that are returned because of insufficient funds will be assessed a \$25 processing fee in addition to the amount of the original check.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Licensees, registrants, and/or certificate holders who remit checks that are returned because of insufficient funds will be subject to disciplinary action that may result in the suspension or revocation of their license, registration and/or certificate.

J.C. Willie
Executive Director
9512#069

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

Student Financial Assistance Commission Office of Student Financial Assistance

Federal Family Educational Loan Program (FFELP) Common Manual

The Student Financial Assistance Commission (LASFAC) advertises its intention to rescind the May 20, 1992 *Louisiana Guaranteed Student Loan Program Policy and Procedure Manual* and its supplementing Loan Program Memoranda (LPMs), except for the following sections:

'Appeal of Adverse Discretionary Decisions', originally published in the *Louisiana Register*, Volume 17, Number 7, page 652 on July 20, 1991, with minor revisions referenced in the *Louisiana Register*, Volume 18, Number 5, page 492 on May 20, 1992. These procedures comprise Chapter 12 of the May 20, 1992 manual.

'Lender of Last Resort Programs', published in the *Louisiana Register*, Volume 20, Number 8, pages 871-872 on August 20, 1994. These procedures comprise Section 2.4 of the May 20, 1992 manual.

The Student Financial Assistance Commission advertises its intention to promulgate the *Common Manual, Unified Student Loan Policy*, effective April 1, 1996.

LASFAC supplies copies of the manual to schools and lenders participating in the Federal Family Education Loan Program (FFELP) administered by the commission. The manual will be maintained in conformity with federal regulations by the issuance of updates.

The proposed Common Manual may be viewed from 7:45 a.m. to 4:30 p.m., Monday through Friday, at the Office of Student Financial Assistance, 1885 Wooddale Boulevard, Baton Rouge, LA 70806 and at the Office of the State Register, 1051 North Third Street, Baton Rouge, LA 70802, telephone (504) 342-5015, refer to document 9512#059.

Interested persons may submit written comments on the proposed manual until 4:30 p.m., February 20, 1996, to: Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Jack L. Guinn
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: FFELP Common Manual**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
We estimate the cost of ordering 500 copies of the *Common Manual, Unified Student Loan Policy* to be approximately \$7,000 (interim final price quoted at \$13.98 each).
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No impact on revenue collections of state or local governmental units is anticipated.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The Common Manual incorporates updates to program policies to reflect statutory and regulatory changes that have occurred since the agency's last manual revision May 20, 1992. The common manual's adoption by 25 guaranty agencies nationwide will assure more simplified and standardized policy for lenders and schools participating in the Title IV loan programs.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No impact on competition and employment is anticipated from the adoption of this manual.

Jack L. Guinn
Executive Director
9512#059

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Environmental Quality
Office of Solid and Hazardous Waste
Solid Waste Division**

Ditches and Air Curtains
(LAC 33:VII.Chapters 1, 3, and 4) (SW018)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Solid Waste Division regulations, LAC 33:VII.Chapters 1, 3, and 7 (SW018).

The proposed rule will modify the definitions of "ditch" and "woodwaste," exempt some ditches from the requirements of solid waste permitting, extend the compliance dates for solid waste facility upgrades and financial assurance, and provide regulations for portable air curtain destructors as required by R.S. 30:2154(D).

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3), therefore, no report regarding environmental/health benefits and social/economic costs is required.

These proposed regulations are to become effective upon publication of the final rule in the *Louisiana Register*.

**Title 33
ENVIRONMENTAL QUALITY
Part VII. Solid Waste
Subpart 1. Solid Waste
Chapter 1. General Provisions and Definitions
§115. Definitions**

For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

[See Prior Text]

Ditch—an earthen trench or excavation principally used to convey wastewaters without regard to whether solids settling or treatment of wastewater occurs therein.

* * *

[See Prior Text]

Type III Facility—a facility used for disposing or processing of construction/demolition debris or woodwaste, composting organic waste to produce a usable material, or separating recyclable wastes (a separation facility). Residential, commercial, or industrial solid waste must not be disposed of in a Type III facility.

* * *

[See Prior Text]

Woodwaste—yard trash and types of waste typically generated by sawmills, plywood mills, and woodyards associated with the lumber and paper industry, such as wood residue, cutoffs, wood chips, sawdust, wood shavings, bark, wood refuse, wood-fired boiler ash, and plywood or other bonded materials that contain only phenolic-based glues or other glues that are approved specifically by the administrative authority. Treated or painted lumber is not considered woodwaste under this definition.

* * *

[See Prior Text]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:

Chapter 3. Scope and Mandatory Provisions of the Program

§301. Wastes Governed by These Regulations

All solid wastes as defined by the act and these regulations are subject to the provisions of these regulations, except as follows:

* * *

[See Prior Text in A-B.4.b]

c. solids or sludges in ditches are exempt from the definition of solid waste until such time as such solids or sludges are removed from the ditches for disposal, provided however, that this exclusion from the definition of solid waste only applies to solids and sludges derived from wastewaters described in Subsection B.4.a and b of this Section.

* * *

[See Prior Text in B.4.d-6]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:

§305. Facilities Not Subject to the Permitting Requirements or Processing or Disposal Standards of These Regulations

The following facilities that are operated in an environmentally sound manner are not subject to the permitting requirements or processing or disposal standards of these regulations:

* * *

[See Prior Text in A-I.6]

J. ditches that receive nonroutine spillage (i.e., do not routinely receive solid waste except for de minimus spillage) from manufacturing or product storage areas within an industrial establishment. This exemption does not include ditches for solid waste disposal units such as landfills, landfarms, or surface impoundments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:

§315. Mandatory Provisions

All persons conducting activities regulated under these regulations shall comply with the following provisions:

* * *

[See Prior Text in A-G.1.a]

b. Existing Type I landfills and Type I landfarms shall be upgraded in accordance with these regulations no later than December 31, 1997.

2. Existing Type II Landfills

a. Permit holders of existing Type II landfills operating under a standard permit must submit to the Solid Waste Division, no later than August 1, 1994, a mandatory modification document to address these regulations.

b. Except as provided in Subsection G.2.c of this Section, existing Type II landfills shall be upgraded in accordance with these regulations no later than December 31, 1997.

* * *

[See Prior Text in G.2.c-3.a]

b. Existing Type I, Type I-A, Type II, and Type II-A facilities shall be upgraded in accordance with these regulations no later than December 31, 1997.

4. Financial Assurance. Existing Type I facilities that are owned or operated by local governments must comply with the financial assurance requirements in LAC 33:VII.727 no later than August 1, 1996. Existing Type II only or Type III facilities that are owned or operated by local governments must comply with the financial assurance requirements in LAC 33:VII.727 no later than April 9, 1997. All other facilities must comply by February 20, 1995.

5. Units of existing Type II landfills which are not upgraded in accordance with these regulations must cease accepting waste and complete closure on or before August 1, 1996.

* * *

[See Prior Text in G.6-R.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 19:1143 (September 1993), LR 19:1315 (October 1993), repromulgated LR 19:1421 (November 1993), amended LR 22:

Chapter 7. Solid Waste Standards

Subchapter D. Minor Processing and Disposal Facilities

§725. Separation and Woodwaste Processing Facilities (Type III)

* * *

[See Prior Text in A-B.1.a.vi]

vii. The annual report for portable air curtain destructors shall identify the site and quantity of solid waste processed at each individual site.

* * *

[See Prior Text in B.1.b-D.2.a]

b. All remaining waste shall be removed to a permitted facility for disposal or properly disposed of on-site as provided for in LAC 33:VII.305.H.

* * *

[See Prior Text in D.2.c-3]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 20:1001 (September 1994), amended LR 22:

A public hearing will be held on January 25, 1996, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference SW018. Such comments should be submitted no later than Friday, February 1, 1996, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA, 70810 or to FAX (504) 765-0486.

James B. Thompson, III
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Ditches and Air Curtains**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no implementation costs to state governmental units as the job functions are already being performed. No local governmental units with solid waste facilities will be affected by the rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated effect on revenue collections to the state governmental unit will be a decrease of approximately \$18,000 per year as a result of affected facilities no longer providing maintenance and monitoring fees.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The estimated impact to directly affected persons or nongovernmental groups will be a savings of approximately \$18,000 the first year as a result of not paying solid waste monitoring and maintenance fees. In following years, affected persons may save \$34,200 per year by not being required to install groundwater monitoring wells, funding monitoring well testing, or remitting Groundwater Division monitoring and maintenance fees.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no estimated effect on competition or employment to facilities within the state.

Glenn A. Miller
Assistant Secretary
9512#055

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

**Firefighters' Pension and Relief Fund
City of New Orleans and Vicinity**

Deferred Retirement Option Plan

The Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity (the "fund"), pursuant to R.S. 11:3363(F), proposes to adopt rules and regulations for participation in the Deferred Retirement Option Plan, in accordance with the provisions of R.S. 11:3385.1.

**Rules and Regulations for Participation in the
Deferred Retirement Option Plan**

In accordance with R.S. 11:3385.1, a member of the Firefighters' Pension and Relief Fund may elect to participate in the Deferred Retirement Option Plan upon the board's determination that the member is eligible to receive a service retirement benefit pursuant to R.S. 11:3381 or 3384, provided all applicable provisions of R.S. 11:3361 et seq., including R.S. 11:3385.1 pertaining to the DROP and these rules and regulations are fully satisfied.

A. Definitions. In connection with R.S. 11:3385.1 and when used in these rules and regulations, the following terms shall have the following meanings:

Board or Board of Trustees—the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans.

Covered Employment—service pursuant to R.S. 11:3361 as a firefighter employed by the fire department of the city of New Orleans actively engaged in the extinguishment of fires.

Creditable Service—pension credits accrued in the fund by a member on the basis of services rendered in covered employment. Solely for purposes of eligibility in the DROP, *creditable service* shall include service credit reciprocally recognized under R.S. 11:142.

DROP—established in R.S. 11:3385.1 for eligible members of the Firefighters' Pension and Relief Fund for the City of New Orleans.

DROP Account—an individual member's accumulation of monthly service retirement benefits payable to him by the fund during a period of DROP participation in accordance with the member's service retirement benefit election.

Fund—the Firefighters' Pension and Relief Fund for the City of New Orleans.

Fund DROP Account—the bank account held by the fund on behalf of all participating DROP members in which are deposited the monthly payments payable on behalf of each member for his individual DROP account during his participation in the DROP.

Member—a firefighter employed by the fire department of the city of New Orleans who is actively engaged in extinguishing fires, or is otherwise eligible pursuant to R.S. 11:3361 to participate in the fund.

Retired Member—a former member receiving retirement benefits from the fund, but not including a DROP participant who has not yet received distribution of his DROP account balance.

Service Retirement Benefit—the vested benefit of a member payable from the new system under R.S. 11:3384 or from the old system under R.S. 11:3381.

Qualified Domestic Relations Order or QDRO—an order issued by a court of competent jurisdiction recognized and approved by the board pursuant to its rules and regulations relating to QDROs as requiring the board to make payment of a part or all of a member's retirement benefit to an alternate beneficiary.

Year of Creditable Service—a period of 12 consecutive months of pension credit accrued in the fund by a member on the basis of services rendered in covered employment.

B. Eligibility

1. In order to satisfy eligibility to participate in the DROP, the member shall satisfy the following conditions:

a. The member shall have accrued not less than 20 years of creditable service, including not less than 15 years of creditable service accrued in this fund plus any reciprocal credit reciprocally recognized by the board under R.S. 11:142.

b. The member shall satisfy all eligibility requirements for a service retirement benefit.

c. The member shall file with the board and the board shall approve the member's service retirement benefit application.

d. The member shall file and the board shall approve the member's DROP enrollment application.

e. By submitting a DROP enrollment application, the member shall automatically elect to participate in the DROP for the full three-year period. Nonetheless, the member may exit the DROP at any time by filing with the board an application to withdraw from the DROP, effective upon the board's approval.

2. A member may participate in the DROP only once.

3. The member's application to enter the DROP shall request retirement on the first day of a calendar month and shall specify a requested effective date no earlier than the first day of the second calendar month following the calendar month in which the DROP enrollment application is submitted. The service retirement application and the DROP enrollment application shall not be submitted to the board for consideration and approval until such time as all required and requested data, documentation and information have been submitted to the board in order to complete both the service retirement and the DROP enrollment applications. Such participation shall be limited to a maximum period of three years—i.e., 36 calendar months—as to each individual.

C. Participation in and Withdrawal from the DROP

1. The effective date of a member's entry into the DROP shall be the first day of the second calendar month following the calendar month in which the member initially files his DROP enrollment application, providing, however, that:

a. The member has completed submission of any and all requested data, documentation and information to the board in connection with the DROP enrollment application and the service retirement application no later than the seventh of the first calendar month (or the first work day following this date if the seventh of the first calendar month falls on a holiday or weekend) following the submission date; and

b. the board has considered and formally approved said applications prior to the requested effective date.

2. Upon the effective date of the member's DROP participation, the fund shall distribute monthly benefit payments pursuant to the member's service retirement award into the member's DROP account.

3. Upon a member's commencement of participation in the DROP, his membership in the fund shall terminate and he shall accrue no additional creditable service during DROP participation.

4. No employer contributions shall be made to the fund on behalf of a member participating in the DROP, nor shall the member be required to make employee contributions to the fund.

5. A member's compensation and creditable service shall be frozen when the member enters participation in the

DROP and shall thereafter remain as they existed on the effective date of the member's commencement of participation in the DROP.

6. A member participating in the DROP shall not be eligible to receive the cost-of-living adjustments awarded by the fund from time to time to retired members. Eligibility for cost-of-living adjustments shall not commence until the member has been separated from covered employment for one full year.

7. A member's DROP account shall not be charged, debited or assessed any fees, charges or similar expenses of any kind for any purpose, nor shall the account be subject to diminution based on valuation or earnings losses of any kind. In addition, no such fees, charges, losses or other similar charges shall be charged, debited or assessed against the member indirectly.

8. A member's DROP account shall not earn or accrue any interest, gains, or earnings of any kind, nor shall the member accrue such earnings indirectly.

9. Pursuant to R.S. 29:415.1, a member shall not accrue any military service credit or pension credit based on military service performed during a member's participation in the DROP.

10. The duration of participation in the DROP shall not exceed a period of three consecutive years—i.e., 36 consecutive calendar months measured from the effective date of commencement of participation in the DROP.

11. A member may terminate his participation in the DROP to be effective as of the last day of any calendar month prior to the end of the maximum three-year period by filing with the Board of Trustees of the fund a DROP withdrawal application, providing the DROP withdrawal application is submitted to the board no later than the last day of the previous calendar month.

12. If a member participating in the DROP does not terminate his covered employment upon completion of three years of participation in the DROP or upon the effective date of his approved withdrawal prior thereto, payment of the member's service retirement benefit into the member's DROP account shall automatically cease. In the event the member has failed to notify the board of his intent to continue in his covered employment after the effective date of his DROP completion, the board shall notify the member in writing, at his last known address, that the fund has ceased monthly payments into his DROP account.

13. If the member should die during his period of participation in the DROP, a lump sum payment of the balance in the member's DROP account shall be paid within one year of his death to his designated beneficiary or, if none, to his estate. Any additional survivor and/or death benefits payable to the member's beneficiary or beneficiaries, in accordance with the member's individual retirement election, all applicable statutory provisions, and the board's rules and regulations pertaining to death benefits, shall also be subject to distribution.

14. No distribution shall be made from a member's DROP account until the member's covered employment has been fully terminated. A member's DROP account shall not be distributable at any time during the member's DROP

participation or at any time prior to the member's separation from covered employment, even if the member has exited from the DROP.

15. Any payment of the member's DROP account shall be made only as a one-time lump sum payment. Installment, piecemeal, partial, pro rata or annuity payments of any kind from the DROP account shall be strictly prohibited.

16. Neither a member nor a beneficiary shall be permitted to defer receipt of a distribution from the member's DROP account beyond one year—i.e., 12 consecutive calendar months—following the effective date of the member's termination of covered employment, or the member's death, as applicable.

17. Upon termination of covered employment, the member shall file an application with the board requesting distribution of his DROP account on the first day of any calendar month within one year following the calendar month of termination. Provided, however, that the requested distribution date shall be no earlier than the second calendar month following the calendar month of termination.

18. In the event a member validly elects to rollover all or any part of his DROP distribution to a qualified plan or an individual retirement account, said distribution shall not be made until at least 30 days after the member has acknowledged in writing receipt of the applicable explanation to employees and notice relating to rollover, direct rollover, income averaging treatment and tax consequences upon distribution, or compliance with any timeliness requirement subsequently established by applicable law, if different. Any such election shall be made in compliance with the board's rules and regulations of direct rollovers and all applicable provisions of the Internal Revenue Code then effective.

19. Upon termination of covered employment, the monthly benefits that were formerly paid into the member's DROP account during his period of participation shall be paid directly to the retired member.

20. The member shall not be permitted to change, revoke or rescind the retirement benefit distribution option selected and/or the beneficiary or beneficiaries he designated upon entering into the DROP regarding his service retirement benefit nor shall any such change be permitted at the time the DROP account is distributed.

21. If the member does not terminate his covered employment upon completion of the maximum three-year participation period or upon such earlier date as the member has specified for withdrawal:

- a. monthly service retirement benefit payments into the DROP account shall cease; and
- b. the member shall resume active membership in the system; and
- c. the member shall commence accrual of additional creditable service under the system.

D. Post-DROP Accruals and Retirement Benefits

1. If a member continues in covered employment after termination of his participation in the DROP, the member shall accrue a second retirement benefit based on his additional covered employment performed following the date of termination of his DROP participation, using the normal method of computation of benefits, subject to the following conditions:

a. New System Member

i. If the member originally retired from the new system, and his period of additional covered employment after termination of DROP participation is less than 48 months, the average compensation figure used to calculate the additional benefit accruals shall be that used to calculate the member's original benefit.

ii. If the member originally retired from the new system, and his period of additional covered employment after termination of DROP participation is 48 months or more, the average compensation figure used to calculate the additional benefit accruals shall be based on the member's compensation earned during the period of post-DROP service.

b. Old System Member

i. If the member originally retired from the old system and his period of additional covered employment is less than 12 months, the average compensation figure used to calculate the additional benefit shall be that used to calculate the member's original benefit.

ii. If the member originally retired from the old system and his period of additional covered employment is 12 months or more, the average compensation figure used to calculate the additional benefit shall be based on the member's compensation during the period of additional service.

c. If the member was first employed before December 31, 1967 but originally elected to retire from the new system, that election shall also apply to and determine the additional benefits accrued for post-DROP service.

2. The distribution option under R.S. 11:3385 originally selected by the new system member upon entering into the DROP shall also apply to any additional benefits accrued during the period of additional covered employment.

3. The beneficiary designated by the member upon entry into the DROP shall also be the beneficiary or beneficiaries designated in connection with the additional benefits accrued. However, in the event the member's designated beneficiary has predeceased the member, the member may designate a new beneficiary or beneficiaries for purposes of the additional retirement benefit only.

4. If following a period of additional covered employment performed after leaving the DROP the board determines that the member is disabled pursuant to R.S. 11:3376 and is therefore eligible to receive a service-connected disability benefit, the following terms and conditions shall apply:

a. The amount of the service-connected disability benefit shall be in the same amount and calculated as a service retirement benefit based only on the credited service accrued subsequent to the date of the member's termination of participation in the DROP.

b. The fund shall distribute to the member, no later than one year following termination of covered employment, a lump sum payment equal to his DROP account balance.

c. The member's monthly benefit payments attributable to both the original and the additional benefits shall be paid directly to the retiree.

d. All monthly benefits paid and payable to the member, as well as his DROP account balance, shall be classified by the fund as service-connected disability benefits and shall be so reported on all necessary filings made by the fund to the Internal Revenue Service.

e. Under no circumstances shall the original benefit amount or the DROP account balance be recalculated, for any purpose.

5. In no event shall the member's additional retirement benefit exceed an amount which, when combined with the original benefit, equals 100 percent of the average of any three highest consecutive years of compensation earned by a member who elected to retire under the old system, or 100 percent of the average of any four highest consecutive years of compensation earned by a member who elected to retire under the new system, both during participation and after withdrawal from the DROP.

E. Trustees' Procedures Applicable to Payments to Drop Accounts

1. The procedures herein set forth shall govern the monthly payments owed by the fund to each member's DROP account during his participation in the DROP.

2. The board shall maintain a detailed accounting of each individual DROP account on behalf of each member currently participating in the DROP. Each month that a payment is due on behalf of the member, the board shall show a credit to the member's account and shall maintain a current balance showing the total credit to each member's account. At such time as the balance maintained in an individual member's DROP account shall exceed \$95,000, the board shall make all subsequent monthly payments directly to a separate fund bank account to be known as the excess DROP account to be established at a bank other than the fund's then current custodian bank in order to preserve full FDIC pass-through insurance for all participating members. An accounting of all such deposits exceeding \$95,000 per member and the balance to the credit of each such individual DROP participant in the separate excess DROP account shall be maintained. The sum of the participant's balances in both banks shall be the total to be distributed to the participant at such time as a distribution is due.

3.a. Old System. At such time as the board furnishes to the City of New Orleans the required annual report pursuant to R.S. 11:3375 of projected retirements, distributions, and other data necessary for the council to appropriate a budget allocation for each subsequent year, the board shall include in such projections all benefit obligations projected by the board relative to members retiring from the old system and entering or remaining in the DROP and shall include the projected monthly payments payable to fund DROP accounts for the benefit of all DROP participants.

b. New System. In regard to those members retiring under the new system, at such time as the fund's actuary certifies pursuant to R.S. 11:3363(D) the annual amount of contributions required to be paid by the City of New Orleans for the subsequent year in order to maintain the new system on an actuarial basis, the fund actuary shall include therein actuarial projections relative to all anticipated benefit obligations projected for members retiring from the new system and entering or remaining in the DROP and shall include the projected monthly payments payable to fund DROP accounts for the benefit of all DROP participants.

4. When a member enters the DROP, a book transfer shall be made each month of the payment owed by the fund to each DROP participant until such time as the balance in the member's DROP account reaches \$95,000. Thereafter, the board shall cause a payment to be made each month from

regular fund assets to the excess DROP account on behalf of that member, representing the amount of his monthly service retirement award.

5. The board shall maintain complete accounting records documenting all payments, receipts and distributions to and from the fund's excess DROP account, as well as a detailed record of the amount held and accumulated in each member's individual DROP account on behalf of each individual participant in the DROP, and the dates of all transactions related thereto. Nevertheless, all payments to the excess DROP account for the benefit of DROP participants shall be maintained in a joint account for all members, and the board shall not maintain individual or segregated bank accounts on behalf of each member.

6. The fund's actuary shall record in his annual actuarial valuation performed on behalf of the fund relative to the old and the new systems the amount of assets held each year in the excess DROP account for the benefit of all members currently participating.

7. On an annual basis, or more frequently should the board so determine, all earnings accrued in the excess DROP account shall be transferred from the excess DROP account to the fund's general bank account, to be invested or utilized as a general asset of the fund.

8. No payments, disbursements, or deductions of any kind shall be made from the assets held in the excess DROP account other than distributions owed to individual members and the transfer of earnings held in the excess DROP account to the fund's general assets, as described in Paragraph 7 hereof.

9. All costs, expenses and fees payable in connection with DROP participation and/or maintenance of excess DROP account, including any bank charges associated with the maintenance thereof, shall be paid, if and when due, only from the fund's general assets and from bank accounts other than the excess DROP account.

10. All assets held either in the fund's general account or in the excess DROP account on behalf of DROP participants shall be held, recognized, and treated as fund assets until such time as distributions approved by the board are made therefrom. No individual member participating in the DROP, or any person claiming through him, shall have any personal ownership, interest or entitlement in any fund account, including the excess DROP account, until such time as a distribution is made to or on his behalf by the board.

11. All DROP assets held in the fund's general account or in the excess DROP account shall be exempt from seizure, levy, sale, garnishment, attachment or any other process whatsoever, and shall be exempt from state and municipal taxes, except as follows:

a. The board shall honor all QDROs recognized by the board as valid pursuant to its procedural rules and regulations for determining status of qualified domestic relations orders, in accordance with the terms, conditions and effective dates specified in each such individual order.

b. The board shall honor any such levy, garnishment or other process validly served upon it in the event the board determines, based on advice of its counsel, that the process in question is based on statutory, administrative, judicial or other

authority or precedent that preempts and/or supersedes the provisions of R.S. 11:3389.

12. At such time as distributions are made by the fund to participants, beneficiaries or other persons claiming through them, the payments shall be subject to federal, state and municipal taxation, and to levy, garnishment, seizure, sale, attachment or any other process whatsoever, that is applicable to any other distribution or payment made to a retired member. However, any distribution of the balance contained in a member's DROP account shall also be subject to federal income tax and withholding treatment under the rollover provisions of the Internal Revenue Code, the regulations issued thereunder by the Internal Revenue Service, and the board's rules and regulations of direct rollovers, in the event the member or a qualified beneficiary should elect rollover treatment.

13. In the event a DROP participant has failed to keep the fund advised of his current address and whereabouts at a time when a distribution is due from the member's DROP account, the fund shall forward the distribution to the member's last known address, via certified mail. If said mailing is returned to the fund, the fund shall hold said mailing and check in the participant's file until such time as the board receives additional information sufficient to permit distribution. Any such distribution shall be made as a direct payment to the individual member, unless the member shall have validly elected to make a direct rollover to a qualified plan or a financial institution, in which event said election shall be honored.

14. If the board is unable to effect the required distribution because of the member's failure to advise the fund of his current address, or for any other reason not directly attributable to the fund's intentional action or inaction, neither the fund nor the board shall be responsible or liable for any loss, prejudice, expense or other consequences, including tax liability or consequences, attributable to the fund's inability to distribute. No matter how long the board is required to hold the distribution due to such member failure, no interest, gains, or earnings of any kind shall be payable thereon.

15. At such time as a participant requests or the fund is required to effect any distribution of a member's DROP account balance, the board shall furnish to the member the applicable notice and explanation to employees relating to direct rollover, income averaging treatment and tax consequences upon distribution required under Internal Revenue Code §402(F) and Internal Revenue Service Notice No. 92-48, such notice to be furnished in accordance with the time delays and other requirements therein specified, as amended from time to time. Currently said statutory provisions and Internal Revenue Service Notice require that the notice and explanation to employees be furnished no later than 30 days prior to the date the DROP account is distributable.

16. Neither the board nor the fund shall give, distribute or offer to any member or participant on the fund's behalf any advice, counseling, or information concerning taxability and tax consequences, or financial information pertaining to DROP distributions, other than the general summation reflected in the fund's explanation and notice to employees.

Instead, the fund and the board shall advise the member that the rules applicable to distributions of lump sum amounts for a member's DROP account are complex and confusing and may prompt the member, in his individual discretion, to seek advice from a competent professional tax advisor or from the member's local Internal Revenue Service office, which from time to time may distribute publications relative to retirement distributions and related matters.

F. General

1. Consistent with the provisions of R.S. 11:3361 et seq., the board shall have full and complete authority and discretion to determine the eligibility of any member to enter the DROP and to receive a DROP distribution and to make any other determinations pertaining thereto, consistent with all applicable statutory provisions, applicable jurisprudence published thereunder, and all rules and regulations adopted by the board from time to time, including these rules and regulations pertaining to the DROP.

2. Should the board determine that a member is ineligible to participate in the DROP or should it make any other determination pertaining to the DROP that is considered by the member, a beneficiary, legal representative, or other person claiming through the member to be adverse or in any way prejudicial, the injured person shall be entitled to pursue an appeal before the board in accordance with the appeal procedures set forth in the fund's summary plan description. At the time any decision is issued to the board member, whether or not the board considers it to be adverse to the claimant, the claimant shall be advised in writing of such entitlement to request rehearing and of the time delays and other requirements to be observed in connection therewith.

3. No member, beneficiary, legal representative, or other person claiming through the member shall be entitled to pursue judicial review of any board determinations reached in regard to DROP entitlement and other issues pertaining to DROP participation, exit from the DROP, benefit distributions from the DROP, and related matters, unless the claimant shall first have exhausted all internal fund appellate and review procedures and the board has issued a final decision, and then only in accordance with applicable provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

A public hearing will be conducted by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity at 10 a.m. on January 26, 1996 at 329 South Dorgenois Street, New Orleans, LA 70119.

Any interested party may submit data, views or arguments orally or in writing concerning these rules or may make inquiries concerning the adoption of these rules to Richard Hampton, Jr., Secretary-Treasurer of the Board of Trustees, 329 South Dorgenois, New Orleans, LA 70119.

William M. Carrouche
President

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Deferred Retirement Option Plan**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The only estimated, anticipated implementation cost is the cost of printing and distributing copies of the proposed rules and regulations to persons requesting a copy of same. Copying costs, assuming every participant requests one copy, are estimated to be \$528.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Adoption and implementation of the rules and regulations for participation in the Deferred Retirement Option Plan should not have any effect on revenue collection of state or local government units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The rules and regulations clarify statutory requirements permitting members to participate in a Deferred Retirement Option Plan, provided the member is already eligible by law to receive a service retirement benefit and meets other statutory prerequisites. Therefore, the adoption and implementation of the rules should not have a cost impact or provide an economic benefit to any person or nongovernmental group other than costs and benefits already incurred pursuant to the statutory requirements.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
Adoption and implementation of the rules and regulations for participation in Deferred Retirement Option Plan should not have any effect on competition and employment.

Rosemarie Falcone
Fund Counsel
9512#075

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Office of Facility Planning and Control**

Resolution of Controversies (LAC 34:III.511)

The Division of Administration, Office of Facility Planning and Control, in accordance with R.S. 49:950 et seq. gives notice that in order to be in conformity with R.S. 39:1671, it intends to amend and reenact LAC 34:III.511 governing the resolution of controversies.

The full text of the proposed amendment to Title 34, Part III, Facility Planning and Control, §511 can be viewed in its entirety in the Emergency Rule Section of this issue of the *Louisiana Register*.

Interested persons may submit written comments within 20 days of publication to: Roger Magendie, Director of Facility Planning and Control, Box 94095, Baton Rouge, LA 70804-9095.

Roger Magendie
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Resolution of Controversies**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no implementation costs to any state or local governments.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no costs or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no anticipated effect on competition or employment.

Roger Magendie
Director
9512#064

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Office of the Governor
Division of Administration
State Purchasing**

Conduct of Hearing (LAC 34:I.3105)

The Division of Administration, Office of State Purchasing, in accordance with R.S. 49:950 et seq., gives notice that in order to be in conformity with R.S. 39:1671 it intends to amend and reenact the rule governing the conduct of hearings.

The text of the proposed amendment to LAC 34:I.3105 can be viewed in its entirety in the Emergency Rule Section of this issue of the *Louisiana Register*.

Interested persons may submit written comments within 20 days of publication to: Denise Lea, Director of State Purchasing, Box 94095, Baton Rouge, LA 70804-9095.

Denise Lea
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Conduct of Hearing**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no implementation costs to any state or local governments.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no costs or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition or employment.

Denise Lea
Director
9512#076

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Office of the Governor Office of Elderly Affairs

Hearing Procedures (LAC 4:VII.1265, 1267, and 1269)

In accordance with Revised Statutes 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs (GOEA) intends to amend the GOEA Policy Manual, effective April 20, 1996. The purpose of this rule change is to provide uniform hearing procedures for affected parties when certain types of action are proposed by GOEA.

Title 4

ADMINISTRATION

Part VII. Governor's Office

Chapter 11. Elderly Affairs

§1265. General Hearing Provisions

A. Purpose. The Governor's Office of Elderly Affairs is required to provide the opportunity for a hearing, on request, to area agencies submitting plans under Title III of the Older Americans Act, to any provider of a service under such a plan, or to any applicant to provide a service under such a plan; and to any unit of general purpose local government, region within the state recognized for area wide planning, metropolitan area, or Indian reservation which applies for designation as a planning and service area when certain types of action are proposed. This Section specifies the timing and procedures for the hearings.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with OAA Section 305(b)(1), Section 307(a)(5) and 45 CFR 1321.29(a).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 11:618 (June 1985), amended LR 11:1078 (November 1985), LR 22:

§1267. Hearing Procedures for Area Agencies

A. Purpose. The Governor's Office of Elderly Affairs is required to provide an opportunity for a hearing to area agencies on aging when particular types of action have been taken or are proposed.

B. Right to a Hearing. An area agency has a right to a hearing under these rules whenever GOEA proposes to:

1. disapprove an area plan or plan amendment;
2. revoke the designation of an area agency on aging;

3. designate an additional planning and service area in the state;

4. divide the state into different planning and service areas; or

5. otherwise affect the boundaries of the planning and service areas in the state.

C. - K. ...

L. Final Decision

1. ...

2. Procedures for rehearing and appeal shall be governed by R.S. 49:959.

M. ...

N. Appeal to Assistant Secretary for Aging. Any area agency that is adversely affected by a proposed action of the state agency, and who has been provided a written decision by the Governor's Office of Elderly Affairs, may appeal the decision to the assistant secretary for aging in writing within 30 days following receipt of the state agency's decision. Such appeal shall be governed by the procedures outlined in the federal regulations issued by the assistant secretary for aging.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 305(b)(5)(C) and 307(a)(5).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 11:618 (June 1985), amended LR 11:1078 (November 1985), LR 22:

§1269. Hearing Procedures for Applicants for Planning and Service Area Designation

A. ...

B. Right to a Hearing. The Governor's Office of Elderly Affairs shall provide an opportunity for a hearing, and issue a written decision to any unit of general purpose local government, region within the state recognized for purposes of area wide planning, metropolitan area, or Indian reservation whose application for designation as a planning and service area is denied.

C. 1. - 2. ...

3. Petitioner shall be given no less than 10 days notice of the scheduled hearing. Notice shall be sent by registered or certified mail, return receipt requested.

D. ...

E. Hearing Examiner. The director or his designated representative shall be the hearing examiner and preside at the hearing, subject to the provisions of R.S. 49:960. The hearing examiner shall conduct the hearing in an orderly fashion and in accordance with the procedures outlined herein. It is the responsibility of the hearing examiner to fully consider information relevant to the complaint and to draft a fair decision based on such information.

F. - M. ...

N. Appeal to Assistant Secretary for Aging. Any qualified applicant for designation as a planning and service area whose application has been denied, and who has been provided a written decision by the Governor's Office of Elderly Affairs, may appeal the denial to the assistant secretary for aging in writing within 30 days following receipt of the state agency's decision. Such appeal shall be governed by the procedures outlined in the federal regulations issued by the assistant secretary for aging.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 305(b)(1), 305(b)(4), and 45 CFR 1321.29.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 11:618 (June 1985), amended LR 11:1078 (November 1985), LR 22:

Betty Johnson is responsible for responding to inquiries concerning this proposed rule. Interested persons may submit written comments to the Governor's Office of Elderly Affairs, Box 80374, Baton Rouge, LA 70898-0374. Written comments will be accepted until 5 p.m. January 29, 1996.

A public hearing on this proposed rule will be held on Monday, January 29, 1996, in the State Police Training Academy Auditorium, 7901 Independence Blvd., Baton Rouge, LA 70806, at 1:30 p.m. All interested parties will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing.

Bobby Fontenot
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Hearing Procedures**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Units of general purpose local government whose application for designation as planning and service areas (PSAs) are denied will be entitled to a hearing from GOEA and to appeal the agency's decision to the U.S. Department of Health and Human Services Assistant Secretary for Aging. The costs associated with preparing and submitting the necessary paperwork will vary from agency to agency and cannot be determined at this time.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This rule change will not affect revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Designated area agencies on aging (AAAs) who may be adversely affected when GOEA initiates an action or proceeding to revoke the designation of an AAA, designate an additional planning and service area (PSA) in the state, divide the state into different PSAs, or otherwise affect the boundaries of the PSAs of the state will be able to receive a hearing from GOEA and to appeal the agency's decision to the U.S. Department of Health and Human Services Assistant Secretary for Aging. The costs associated with preparing and submitting the necessary paperwork will vary from agency to agency and cannot be determined at this time.

Older Americans Act Title III funds are allocated by an intrastate funding formula. AAAs may expend up to 10 percent of the allocation to develop and administer area plans on aging.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is not expected to affect competition and employment.

James R. Fontenot
Executive Director
9512#061

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Office of the Governor
Office of Elderly Affairs**

Organization (LAC 4:VII.1167)

In accordance with Revised Statutes 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs (GOEA) intends to amend the GOEA Policy Manual, effective April 20, 1996.

The purposes of this amendment are to define the general membership of a parish council on aging, to provide standards for the election of members of the boards of directors by the general membership, and to prohibit boards and executive directors of councils on aging from imposing requirements upon employees and prospective employees that are not job related.

**Title 4
ADMINISTRATION**

Part VII. Governor's Office

Chapter 11. Elderly Affairs

§1167. Organization

A. General Membership. Membership in the council shall be open at all times, without restriction, to those residents of the parish who have reached the age of majority. Membership applications shall be made available at the office of the council. A membership drive shall be conducted annually. The membership rolls shall be closed two weeks prior to the annual meeting.

B. Membership of the Board of Directors

1. The bylaws shall contain provisions for the method used to fill vacancies on the board which occur between regular elections, and termination of membership.

2. - 7. ...

8. Board members shall be elected by the general membership of the council. Ballots shall be prepared from the list of nominees submitted by the Nominating Committee. The presiding officer shall allow ample time for nominations and shall recognize all nominations, including those from the floor, before declaring the nominations closed.

C. - J. 5. ...

6. Neither the board nor the executive director shall impose upon any employee or prospective employee of the council any conditions of employment, either expressed or implied, which are not job related in terms of qualifications, duties and responsibilities.

K. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:932, R.S. 46:934, R.S. 46:1605, and R.S. 42:1119.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 10:1023 (December 1984), LR 11:1078 (November 1985), LR 13:23 (January 1987), LR 13:569 (October 1987), LR 17:602 (June 1991), LR 22:

Betty Johnson is responsible for responding to inquiries concerning this proposed rule. Interested persons may submit written comments to the Governor's Office of Elderly Affairs, Box 80374, Baton Rouge, LA 70898-0374. Written comments will be accepted until 5 p.m. January 29, 1996.

A public hearing on this proposed rule will be held on Monday, January 29, 1996, in the State Police Training Academy Auditorium, 7901 Independence Blvd., Baton Rouge, LA 70806, at 1:30 p.m. All interested parties will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing.

Bobby Fontenot
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Organization**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rule will not result in costs or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This rule change will not affect revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Some parish councils on aging may have to revise their bylaws. The associated costs are expected to be nominal.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule will not affect competition and employment.

James R. Fontenot
Executive Director
9512#060

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Office of the Governor
Office of Elderly Affairs**

Planning and Service Areas and Area Agencies
on Aging Designation
(LAC 4:VII.1137)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs (GOEA) intends to repeal and repromulgate §1137 the GOEA Policy Manual, effective April 20, 1996. The purpose of this rule change is to establish uniform guidelines governing the designation of planning and service areas and area agencies on aging (AAAs), and the withdrawal of AAA designation in accordance with the Older Americans Act and the Code of Federal Regulations.

**Title 4
ADMINISTRATION**

Part VII. Governor's Office

Chapter 11. Elderly Affairs

§1137. Designation of Planning and Service Areas and Area Agencies on Aging

A. Authority

1. Authority to Designate Planning and Service Areas. In accordance with Section 305(a)(1)(E) of the Older Americans Act (the act), the Governor's Office of Elderly Affairs (GOEA) shall divide the state into distinct planning and service areas (PSAs), after considering the geographical distribution of individuals aged 60 and older in the state, the incidence of the need for supportive services, nutrition services, multipurpose senior centers, and legal assistance, the distribution of older individuals who have greatest economic need (with particular attention to low-income minority individuals) residing in such areas, the distribution of older individuals who have greatest social need (with particular attention to low-income minority individuals) residing in such areas, the distribution of older Indians residing in such areas, the distribution of resources available to provide such services or centers, the boundaries of existing areas within the state which were drawn for the planning or administration of supportive service programs, the location of units of general purpose local government within the state, and any other relevant factors.

2. Authority to Designate Area Agencies on Aging (AAAs). In accordance with Section 305(a)(2)(A) of the Older Americans Act, GOEA shall designate for each such area after consideration of the views offered by the unit or units of general purpose local government in each designated planning and service area, a public or private nonprofit agency or organization as the AAA for such area.

3. Authority to Grant Hearings

a. In accordance with Section 305 (a)(2)(B) of the act, GOEA shall take into account the views of recipients of supportive services or nutrition services, or individuals using multipurpose senior centers provided under the state plan when designating area agencies on aging.

b. In accordance with Section 305 (b)(5)(C)(i) of the act, GOEA shall provide due process to affected parties, if the state agency initiates an action or proceeding to:

- i. revoke the designation of an AAA;
- ii. designate an additional planning and service area;
- iii. divide the state into different planning and service areas; or
- iv. otherwise affect the boundaries of the planning and service areas in the state.

c. The procedures to provide due process to affected parties are found in Subchapter F of the GOEA Policy Manual (LAC 4:VII.1265-1269).

B. Planning and Service Area Designation

1. Eligible Applicants

a. Any unit of general purpose local government, region within the state recognized for areawide planning, metropolitan area, or Indian reservation may make application to GOEA to be designated as a planning and service area (PSA) in accordance with GOEA procedures.

b. GOEA shall approve or disapprove any application submitted under Subparagraph a of this Paragraph.

c. Any applicant under Subparagraph a of this Paragraph whose application for designation as a planning and service area is denied by GOEA may appeal the denial to GOEA under procedures specified in LAC 4:VII.1269.

d. If GOEA denies an applicant for designation as a PSA under Subparagraph a of this Paragraph, GOEA shall provide a hearing on the denial of the application, if requested by the applicant, as well as issue a written decision.

2. Application Procedure for Planning and Service Area (PSA) Designation

a. Starting with the state plan beginning October 1, 1997, GOEA shall accept and act upon applications for PSA designation received no later than 24 months prior to the expiration date of the approved state plan on aging. Any designation so approved shall become effective on the first day of the next state plan and shall remain in effect throughout the duration of the approved state plan.

b. Eligible applicants requesting designation as a PSA shall submit a written application to GOEA in the format prescribed by GOEA.

c. The application in Subparagraph b above shall include:

i. a signed resolution by the governing body of the applicant organization authorizing the request for designation of the unit of general purpose local government, region within the state recognized for areawide planning, metropolitan area, or Indian reservation as a planning and service area;

ii. a narrative and statistical description of: the number of individuals aged 60 and older in the proposed PSA; the number of older individuals who have the greatest economic need (with particular attention to low-income minority individuals) residing in the proposed PSA; the number of older individuals who have the greatest social need (with particular attention to low-income minority individuals) residing in the proposed PSA; and the number of older individuals who are Indians residing in the proposed PSA;

iii. the incidence of need for supportive services, nutrition services, multipurpose senior centers, and legal assistance in the proposed PSA;

iv. the distribution of resources available to provide such services or centers in the proposed PSA;

v. the boundaries of existing areas within the proposed PSA which were drawn for the planning or administration of supportive and/or nutrition services programs;

vi. the location of units of general purpose local government within the proposed PSA;

vii. a list of multipurpose senior centers and agencies providing supportive and/or nutrition services in the proposed PSA including services supported by Title III of the act; and

viii. proof of receipt of the application by the AAA currently serving the proposed planning and service area, as provided in Paragraph 3.c of this Subsection.

d. If the proposed PSA's boundaries are either a combination or subdivision of existing planning and service areas, the application shall address the basis of need for the merger or separation.

e. Applications for PSA designation shall be signed by the chief elected official representing the unit of general purpose local government, region within the state recognized for areawide planning, metropolitan area, or Indian reservation.

3. Criteria for Approval of PSA Designation Applications

a. The application must be received by GOEA in the prescribed time frame. Applications received after the deadline shall not be accepted.

b. The application must be completed, including all required documentation and signatures.

c. The application must be submitted by the applicant to the AAA currently serving the proposed planning and service area for review and comment. The application shall be submitted to the AAA at the AAA's office by certified mail with return receipt requested or by messenger who shall provide a receipt for signature. The return receipt or the messenger's receipt shall be proof of receipt of the application by the AAA.

d. The application must clearly demonstrate that the designation of the proposed PSA is necessary for, and will enhance, the effective administration of the programs authorized by Title III of the act.

4. Additional Considerations for Designating Planning and Service Areas

a. GOEA shall consider fully all written comments from the AAA currently serving the proposed PSA. These comments must be received within 30 days of the AAA's receipt of the application for review and comment.

b. GOEA may include in any planning and service area such additional areas adjacent to the unit of general purpose local government, region, metropolitan area, or Indian reservation so designated as GOEA determines to be necessary for, and will enhance the effective administration of the programs authorized by Title III of the act.

c. GOEA may include the area covered by the appropriate economic development district involved in any planning and service area designated and may include all portions of an Indian reservation within a single planning and service area.

C. Area Agency on Aging (AAA) Designation

1. Eligible Applicants

a. Any established office on aging which is operating within the PSA. The term "established office on aging" means a public or private nonprofit agency/organization which has functioned for at least one year for the purpose of planning, developing or administering aging service programs. The agency/organization must be capable of functioning effectively throughout the PSA designated by the state agency;

b. any office or agency of a unit of general purpose local government, which is designated to function only for the purpose of serving as a AAA by the chief elected official of such unit;

c. any office or agency designated by the appropriate chief elected officials of any combination of units of general purpose local government to act only in behalf of such combination for the purpose of serving as an AAA; or

d. any other public or private nonprofit agency in a PSA, or any separate organizational unit within such agency, which is under the supervision or direction for this purpose of GOEA and which can and will engage only in the planning or provision of a broad range of supportive serviced, or nutrition services within such planning and service area.

e. GOEA shall approve or disapprove any application submitted under this Paragraph.

2. Application Procedure for Area Agency on Aging (AAA) Designation

a. Applicants for AAA designation shall submit a written application to GOEA in the format prescribed by GOEA.

b. The application shall include:

i. the legal basis upon which the agency is organized;

ii. a list of members serving on the governing body and the agencies/organizations they represent;

iii. a copy of the agency's most recent audit;

iv. a copy of the agency's current approved financial plan;

v. an organizational chart depicting the manner in which the agency's staff will be divided to fulfill its AAA responsibilities; and

vi. job descriptions reflecting the proposed AAA's intent to carry out the advocacy, planning, coordination, inter-agency linkages, information sharing, brokering, monitoring and evaluation functions described in 45 CFR 1321.53.

c. The agency applying for AAA designation shall provide an opportunity for on-site review and assessment by GOEA to insure that said organization has the capacity to perform the functions of an AAA.

3. Criteria for Approval of Applications for Area Agency (AAA) Designation

a. The application must be submitted in a timely manner, including any required documentation.

b. Applications must demonstrate that the agency, if designated, will have the ability to fulfill the mission of the AAA as defined in 45 CFR 1321.53 published in the *Federal Register*, Vol. 53, No. 169, Wednesday, August 31, 1988.

c. Application must clearly demonstrate that the designation of the proposed AAA is necessary for and will enhance the effective administration of Older Americans Act programs.

4. Priorities for Area Agency on Aging (AAA) Designation

a. When a new AAA is designated, GOEA shall give the right of first refusal to a unit of general purpose local government if:

i. such unit can meet the requirements of Section 305(c) of the act; and

ii. the boundaries of such a unit and the boundaries of the PSA are reasonably contiguous.

b. If the unit of general purpose local government chooses not to exercise this right, GOEA shall then give preference to an established office on aging, as required in Section 305(c)(5) of the act.

5. Staffing and Duration of Area Agency on Aging (AAA) Designation

a. The AAA, once designated, shall provide for an adequate and qualified staff to perform all of the functions prescribed in the act.

b. The designated AAA shall continue to function in that capacity until either:

i. the AAA informs GOEA that it no longer wishes to carry out the responsibilities of an AAA; or

ii. GOEA withdraws the designation of the AAA as provided in 45 CFR 1321.35.

D. Withdrawal of Area Agency on Agency (AAA) Designation

1. The Governor's Office of Elderly Affairs withdraws the AAA designation whenever GOEA, after reasonable notice and opportunity for a hearing, finds that:

a. the AAA does not meet the requirements of 45 CFR 1321; or

b. the plan or plan amendment is not approved; or

c. there is substantial failure in the provisions or administration of an approved area plan to comply with any provision of 45 CFR 1321 and this manual; or

d. activities of the AAA are inconsistent with the statutory mission prescribed in the act or in conflict with the requirement that it function only as an AAA.

2. If GOEA withdraws the AAA's designation, it shall:

a. provide a plan for the continuity of AAA functions and services in the affected planning and service area; and

b. designate a new AAA in a timely manner.

3. If necessary to ensure continuity of service in a planning and service area, GOEA may, for a period up to 180 days after its final decision to withdraw the designation of an AAA:

a. perform the responsibilities of the AAA; or

b. assign the responsibilities of the AAA to another agency in the planning and service area.

4. The assistant secretary of the Administration on Aging may extend the 180 day period if GOEA:

a. notifies the assistant secretary in writing of its action;

b. requests an extension; and

c. demonstrates to the satisfaction of the assistant secretary a need for the extension.

AUTHORITY NOTE: Promulgated in accordance with OAA Sections 305 and 307 of the Older Americans Act, 45 CFR 1321.11 and R.S. 46:932.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), repealed and repromulgated LR 22:

Betty Johnson is responsible for responding to inquiries concerning this proposed rule. Interested persons may submit written comments to the Governor's Office of Elderly Affairs, Box 80374, Baton Rouge, LA 70898-0374. Written comments will be accepted until 5 p.m. January 29, 1996.

A public hearing on this proposed rule will be held on Monday, January 29, 1996, in the State Police Training Academy Auditorium, 7901 Independence Boulevard, Baton Rouge, LA 70806, at 1:30 p.m. All interested parties will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing.

Bobby Fontenot
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Planning and Service Areas and
Area Agencies on Aging Designation**

NOTICE OF INTENT

**Office of the Governor
Office of Rural Development**

Projects and Funding (LAC 4:VII.1901-1903)

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will allow local governmental units to apply for designation as planning and service areas (PSAs), and afford them the right to first refusal for designation as area agencies on aging (AAAs). Local governmental units requesting the PSA designation would be required to submit written applications to the Office of Elderly Affairs (GOEA). If the AAA designation occurs, the local governmental unit would be required to develop and administer an area plan on aging. The costs involved cannot be determined at this time.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Older Americans Act Title III funds are allocated among the PSAs by an intrastate funding formula, which is based upon several factors, including the geographical distribution of older individuals in the state and the distribution among planning and service areas of older individuals with greatest economic need and older individuals with greatest social need, with particular attention to low-income minority older individuals. No additional economic benefits would be realized. Receipts and/or income simply would be redistributed among PSAs.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS
TO DIRECTLY AFFECTED PERSONS OR
NONGOVERNMENTAL GROUPS (Summary)**

Existing AAAs and eligible applicants for PSA designation would be affected by the proposed action. A party in either category could appeal GOEA's decision on applications for PSA or AAA designation. The costs involved would depend on the nature of the appeals submitted and the extent to which relief is sought by the aggrieved parties. These costs will vary from agency to agency and cannot be determined at this time.

**IV. ESTIMATED EFFECT ON COMPETITION AND
EMPLOYMENT (Summary)**

The proposed rule is not expected to affect competition and employment.

James R. Fontenot
Executive Director
9512#062

John R. Rombach
Legislative Fiscal Officer

Under the authority of the Louisiana Rural Development Law, R.S. 3:311 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the director gives notice that rule making procedures have been initiated to adopt LAC 4:VII.1901-1903.

The proposed regulation will serve as a guideline to apply for grants from the Office of Rural Development revitalization.

**Chapter 19. Rural Development
§1901. Projects or Activities**

A. R.S. 3: Chapter 4-A describes the Rural Development Law. The following rules and regulations will serve as guidelines for the Governor's Office of Rural Development (the office).

B. The office can provide financial assistance to local units of government throughout the state to mitigate the effects of natural and economic emergency situations that exist to allow units of local government to undertake projects essential to community well being.

C. Municipalities with populations of less than 25,000 and parishes with populations of less than 100,000 will be considered "rural" for the purposes of this program.

D. The office shall apply the following guidelines to any project funded.

1. All projects or activities funded must be related to the rural development revitalization of a designated rural area, as defined in R.S. 3:313.

2. All funds shall be used to mitigate the rapid deterioration of and improve rural health, education, agribusiness, transportation, public facilities, tourism, infrastructure, or other purposes essential to the socioeconomic well-being of the state's rural areas.

3. Projects or activities should further enhance community services and broaden rural employment opportunities whenever possible.

4. Projects or activities should further the provisions of the Rural Development Law.

E. The director of the Office of Rural Development shall develop an application procedure which will satisfy the intent of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:311 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Rural Development, LR 22:

§1903. Application Process

A. Pending legislative approval of the executive budget each fiscal year, the Office of Rural Development receives funding monies available after July 1 of each calendar year. Upon official notification from the Division of Administration that those funds are in fact available for use, the Office of Rural Development can accept applications for funding for the current fiscal year.

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Projects and Funding**

B. Rural development applications are made available from the Office of Rural Development and through the office of each Louisiana legislator. All requests for information can be submitted to the Office of Rural Development, Post Office Box 94004, Baton Rouge, Louisiana 70804.

C. Municipalities, parish governments, school boards, other units of governments, or special districts are eligible to apply for rural development funds if they are authorized by law to perform governmental functions and are subject to state audit.

D. There are nonrural parishes in Louisiana and the police juries of those parishes are not eligible for funding at this time. Pending legislative approval, some rural areas within these parishes, designated to be nonrural, may be permitted to apply and receive funds through their respective police juries.

E. Current population figures are used to determine the eligibility for the funding of municipalities. Those requirements are:

1. village	0- 1,000	\$ 15,000
2. town	1,001- 5,000	\$ 25,000
3. city	5,001-25,000	\$ 50,000
4. parish		\$100,000

F. Funding may exceed above amounts listed for economic development projects if permanent jobs are created. Based upon the size of the parish population and the number of applications received within that parish, funding may exceed the recommended amount of \$100,000 per parish.

G. The rural development application is a document with specific questions that must be answered and requires documentation that also must be submitted before the review process can occur. No funds will be awarded without a completed application and all supporting documents as outlined on the application.

H. Funds from this program cannot be used to pay consulting fees charged to a unit of government for the preparation of the application or used for previously created debt.

I. Grant recipients will be required to maintain an audit trail verifying that any monies received under this grant program were in fact, used to fulfill the above criteria for funding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:311 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Rural Development, LR 22:

All interested persons are invited to submit comments on the proposed regulations. Such comments should be submitted no later than January 29, 1995, at 4:30 p.m., to Ruth Russell, Executive Director, Office of Rural Development, Box 94004, Baton Rouge, LA 70804 or to FAX (504)342-1618.

Ruth Russell
Executive Director

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no implementation costs or savings to be incurred by publishing the rules of the Office of Rural Development. No fees or administrative charges have ever been charged to any unit of local government upon the submission of their grant application to the above office.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

State dedicated funds for the Rural Development Grant Program are appropriated each fiscal year by the State Legislature. This process will not change and thus there is no change in the revenue collection process for either the state or the local units of government.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

By publishing the rules of the Office of Rural Development, the public and the local units of government may have a better understanding of the application process and the funding guidelines that have been in effect for the last five years.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The Office of Rural Development and the Grant Program was created to provide necessary funding for those rural projects that are needed to improve the quality of life and well-being for all rural citizens. No significant effect of this proposed rule on competition and employment is anticipated.

Ruth L. Russell
Executive Director
9512#014

John R. Rombach
LegislativeFiscalOfficer

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Board Certified Social Work Examiners**

Fees (LAC 46:XXV.119)

The Louisiana State Board of Board Certified Social Work Examiners proposes to amend LAC 46:XXV.119 as follows.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXV. Certified Social Workers

§119. Fees

The fees charged in connection with a board certified social work license shall be as follows:

A. Registration fee	\$65
B. Registration fee for applicants retaking exam ...	\$40
C. Renewal fee	\$55
D. Directory fee	\$20
E. Fee for returned checks	\$25
F. Fee for mailing list of licensees	\$.03 per label plus postage and handling

- G. Directory fee \$20
- H. Reissuance of lost or destroyed certified \$20
- I. Copy fee for documents \$.25 per page
plus postage and handling
- J. Fee for board publications
(Social Work Practice Act, Rules, Regulations and
Procedures, Guide for Supervision \$2 ea
plus postage and handling
- K. Brochure fee (BCSW brochure) \$.10 ea
plus postage and handling
- L. Fax transmission \$2 first page
\$1 per additional page
- M. Subpoena fee

Fees must be submitted in advance for issuing a subpoena. A written request must be submitted to the board, listing the name and address of the individual to be subpoenaed.

Subpoenas issued in East Baton Rouge Parish \$25
per subpoena

Subpoenas issued outside East Baton Rouge Parish \$25
per subpoena, plus \$.30 per mile for service

N. The board may assess all costs incurred in connection with disciplinary actions, including but not limited to investigator's, stenographer's and attorney's fees.

O. Verification of License fee (written) \$5 ea
All fees are nonrefundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2712.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Certified Social Work Examiners, LR 10:204 (March 1984), amended by the Department of Health and Hospitals, Board of Board Certified Social Work Examiners, LR 17:370 (April 1991), LR 21:174 (February 1995), LR 22:

Interested persons may submit written comments to the following address: Suzanne L. Pevey, Administrator, Louisiana State Board of Board Certified Social Work Examiners, Box 345, Prairieville, LA 70769. She is the person responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed amendments to the rule will be held at 1 p.m., December 28, 1995, in the auditorium at the Louisiana Archives Building, 3851 Essen Lane, Baton Rouge, LA. All interested persons will be afforded an opportunity to express their views at said hearing.

Suzanne L. Pevey
Administrator

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Fees

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The Louisiana State Board of Board Certified Social Work Examiners estimates that it will cost approximately \$2,093 to implement the board's proposed amendments to the fee rule. The board operates solely on self-generated funds and has the funds in their 1995-96 operating budget to implement the rule.

The board proposes to eliminate the examination fee from the fee rule, since the board recognizes the national examination owned and administered by the American Association of State Social Work Board (AASSWB). The AASSWB sets the fee for the examination and candidates submit their fee directly to the association. The elimination of the examination fee from the board's fee rule would eliminate the need for the board to amend the fee rule when the association raises the examination fee in the future.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The board estimates that revenues will increase annually by approximately \$46,050 beginning with the 1996-97 fiscal year based on the minimal increase to individual renewal and registration fees (\$15 per licensee) and the establishment of fees to cover the cost of services provided to licensees and the public and private sector.

The board's renewal fee has not been increased since 1988 and the registration fee has not been increased since the inception of the practice act in 1972.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS
TO DIRECTLY AFFECTED PERSONS OR
NONGOVERNMENTAL GROUPS (Summary)**

Licensees would be affected as a result of increased renewal of registration fees. Board employees would be affected by the increased workload relating to paperwork to implement the rule.

**IV. ESTIMATED EFFECT ON COMPETITION AND
EMPLOYMENT (Summary)**

There should be no effect on competition and/or employment of board certified social workers as a result of the proposed amendment to the existing fee rule.

Alan Walker
Chair
9512#052

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Examiners for Speech-Language Pathology
and Audiology**

Rules Repeal/Repromulgation (LAC 46:LXXV)

The Louisiana Board of Examiners for Speech-Language Pathology and Audiology proposes to repeal and repromulgate its rules and regulations, to comply with R.S. 37:2650, et seq. A copy of these proposed rules can be viewed at the Office of the State Register at 1051 North Third Street, Room 512, Baton Rouge, LA 70802 and also at the Board of Examiners for Speech-Language Pathology and Audiology at the address listed below.

Interested persons may submit written comments to the following address: Suzanne L. Pevey, Administrator, Louisiana Board of Examiners for Speech-Language Pathology and Audiology, Box 355, Prairieville, LA 70769. She is responsible for responding to inquiries regarding the proposed rules.

A public hearing on the proposed rules, regulations and procedures will be held at 10 a.m., on December 28, 1995 in the auditorium at the Louisiana Archives Building, 3851 Essen Lane, Baton Rouge, LA. All interested persons will be afforded an opportunity to express their views at said hearing.

Suzanne L. Pevey
Administrator

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Rules and Regulations**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The Louisiana Board of Examiners for Speech-Language Pathology and Audiology estimates that it will cost approximately \$11,000 to implement the board's rules, regulations and procedures. The board operates solely on self-generated funds and has the funds in their 1995-96 operating budget to implement these rules.

There will be no savings to state or local governmental units based on the implementation of these rules.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The board estimates that their revenues will increase by approximately \$67,000 beginning with the 1996-97 fiscal year due to the minimal increase to individual renewal fees (\$15 per licensee) and the establishment of fees to cover the cost of services provided to the licensees and the public and private sector.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Licensees would be affected as a result of increased licensure fees. Board employees would be affected by the increased workload relating to paperwork. Audiologists would experience a decrease in licensure fees since Act 892 allows audiologists to dispense hearing aids under the umbrella of their audiology license instead of requiring them to hold a separate license as a hearing aid dealer. This action reduces the double regulatory burden placed on audiologists and saves them the cost of two separate license fees. The implementation of administrative fees and fees from disciplinary actions positively impacts the licensees by providing additional sources of revenue for the operation of this regulatory board. Revenue from these fees can serve to offset any future increases in licensure fees.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

As a result of Act 892, and the adoption of these rules, the public schools have been able to employ speech-language pathologists who previously did not meet the qualifications for licensure, thereby reducing a personnel shortage and allowing school systems to meet federal guidelines requiring services to children with speech, language, or hearing problems. These individuals are also eligible for employment in the private sector, an area where a personnel shortage also exists. Since August 15, 1995, 43 licenses have been issued to individuals who previously did not meet the licensure requirements.

Glenn M. Waguespack
Chairperson
9512#068

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Nursing**

Registered Nurses Advanced Practice
(LAC 46:XLVII.Chapters 33-45)

Notice is hereby given, that the Board of Nursing, pursuant to the authority vested in the board by R.S. 37:918(12), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., intends to amend LAC 46:XLVII.3361 and promulgate LAC 46:XLVII.4501-4517 and repeal LAC 46:XLVII.3705-3713 to standardize the titles and requirements for licensure in Louisiana of the Advanced Practice Registered Nurses and in turn to impose the necessary fees to provide these services.

The text of this proposed rule may be viewed in its entirety in the emergency rule section of this issue of the *Louisiana Register*.

A public hearing will be held on January 29, 1996, at 8:30 a.m., at the Airport Hilton, 901 Airline Highway, Kenner, LA. Interested persons are invited to attend and submit oral comments on the proposed rules.

All interested persons are invited to submit written comments on the proposed rules. Such comments must be submitted no later than January 24, 1996 at 4:30 p.m., to Barbara L. Morvant, Executive Director, Board of Nursing, 150 Baronne Street, Suite 912, New Orleans, LA 70112.

Barbara L. Morvant
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Registered Nurses Advanced Practice**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that additional staff will be needed to implement this program, one additional RN staff member and one additional secretary. Additional operating expenses, printing, equipment and computer software programming will be required. The anticipated costs by fiscal year are as follows: FY 95-96—\$65,159.99 - \$108,006 and FY 97-98—\$111,579.08.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue projections are based on initial application of 1500 APRNs based on the number of currently recognized advanced practitioners of nursing and anticipated number allowing their RN licensure to lapse or to become inactive. An additional decrease is anticipated based on individuals retaining their RN licensure but, due to practice in another area than an advanced practitioner of nursing, will not request licensure as an advanced practice registered nurse. Revenue projections by fiscal year are as follows: FY 95-96—\$112,500; \$84,750 and \$95,310 respectively.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Those individuals currently recognized as advanced practitioners of nursing will be required to apply for initial licensure as an advanced practice registered nurse by grandfathering, including payment of application fee. Further, these individuals will be subject to annual renewal. These fees are established as \$75 and \$45, respectively.

New applicants will be required to demonstrate meeting the educational requirements and meeting certification requirements as accepted by the board. Individuals seeking to meet the educational requirements after January 1, 1996 must obtain graduate education. Costs will vary greatly depending on the educational program selected and the specific certifying agency.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The impact on competition and employment is unknown at this time.

Barbara L. Morvant
Executive Director
9512#056

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Physical Therapy Examiners**

Qualifications for Licensure (LAC 46:LIV.107 and 115)

Notice is hereby given, in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, that the Board of Physical Therapy Examiners (Board), pursuant to the authority vested in the board by R.S. 2401.2A(3), intends to amend its existing rules as set forth below.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part LIV. Louisiana State Board of Physical Therapy
Examiners**

Subpart 1. Licensing and Certification

**Chapter 1. Physical Therapists and Physical Therapist
Assistants**

**Subchapter B. Graduates of American Physical
Therapy Schools and Colleges**

§107. Qualifications for License

A. - B.1. . . .

4. possess a minimum of a Bachelor's of Science degree in Physical Therapy duly issued and conferred by a physical therapy school or program accredited by the Commission on Accreditation of Physical Therapy Education (CAPTE); and

5. . . .

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A) 3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:747 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 22:

§115. Qualifications for License

A. To be eligible for a license as a physical therapist, a foreign graduate applicant shall:

1. possess all of the substantive qualifications for license specified by §107 of this Chapter, except for §107.A.4;

2. have successfully completed didactic and clinical courses in physical therapy which are equivalent in level and purpose to a Bachelor's of Science degree in physical therapy awarded by an accredited college or university in the United States as determined by the evaluation of the applicant's transcript by a board approved evaluation service;

3. have completed at least six months (with a minimum of 1,000 patient care hours) of postgraduate clinical practice in Louisiana under the direction and supervision of the physical therapist authorized by the board. In order for a period of supervised clinical practice to count toward the 1,000 hours, the permittee must comply with the following:

a. supervised clinical practice must be with an approved supervisor and valid permit;

b. supervised clinical practice must be for at least three months in any one facility; and

c. supervised clinical practice must be documented by having the supervisor complete, in its entirety, the clinical evaluation form developed and distributed by the board.

4. . . .

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A) 3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 22:

Pursuant to the Administrative Procedure Act, if oral presentation or argument is requested by the requisite number of persons or the proper entities, then a public hearing on these matters will be held on Thursday, January 25, 1996, at 9 a.m. at the Office of the Board of Physical Therapy Examiners, 2014 West Pinhook Road, Suite 701, Lafayette, LA 70508. Please contact the board office at (318) 262-1043 to confirm whether or not the public hearing will be conducted.

Written comments concerning the proposed rules may be directed to Sharon Toups, Chairman, at the address above. Such comments should be submitted no later than the close of business at 4:30 p.m., Friday, January 19, 1996.

Sharon Toups
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Physical Therapist Educational Requirements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on implementation cost to the state or local governmental units as a result of the rule change.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on the revenue collections of state or local governmental units due to the proposed rule changes.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or nongovernment groups secondary to this rule change proposal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment as a result of this rule change.

Sharon Toups
Chairman
9512#048

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Health and Hospitals Office of Public Health

Sanitary Code—Sewage Disposal (Chapter XIII)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Health and Hospitals, Office of Public Health proposes to amend Chapter XIII of the State Sanitary Code, Appendix A (A:6.4.1), to resolve the questionable legality of the matter as presently written.

Chapter XIII, Appendix A, is amended as follows:

Chapter XIII Sewage Disposal

* * *

A:6.4.1 Permitted individual mechanical plants shall strictly comply with the related requirements provided for in Appendix A:6.5 of this Chapter. In all cases, judgment as to compliance with either NSF Standard Number 40 requirements (as revised May 1983 and July 1990 as applicable) and/or additional, related requirements provided for in Appendix A:6.5 of this Chapter shall be the responsibility and sole authority of the State Health Officer acting through the Office of Public Health. Such judgment as to compliance with either NSF Standard Number 40 requirements (as revised May 1983 and July 1990 where applicable) and/or additional, related requirements provided for in appendix A:6.5 of this Chapter by the Department of Health and Hospitals, Office of Public Health, shall be evidenced upon issuance of approval in accordance with provisions of Appendix A:6.7 of this Chapter.

* * *

Interested persons may submit written comments to Bobby G. Savoie, Director, Division of Environmental Health Services, Box 60630, New Orleans, LA 70160, by the close of business on January 26, 1996. He is responsible for responding to inquiries regarding this proposed rule. A public hearing on the proposed change will be held at 10 a.m. on Friday, January 26, 1996 at the Department of Transportation and Development Annex Building, Fourth Floor Conference Room, 1201 Capital Access Road, Baton Rouge, LA. All

interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at said hearing.

Rose V. Forrest
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Sanitary Code—Sewage Disposal

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be none.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no costs and/or economic benefits.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect.

Rose V. Forrest
Secretary
9512#049

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Health and Hospitals Office of the Secretary

Ephedrine Marketing, Advertising, or Labeling (LAC 48:I.3945)

In accordance with R.S. 49:950 et seq., and pursuant to R.S. 40:962(1) (as enacted by Act 1253 of the 1995 Regular Session of the Louisiana Legislature), the Department of Health and Hospitals, Office of the Secretary proposes to adopt rules relative to products containing ephedrine. The statute sets forth the general rule that ephedrine products may be dispensed only by prescription, then enumerates certain exceptions to the general rule. The act further provides that the "marketing, advertising, or labeling of any nonprescription product containing ephedrine . . . for the indication of stimulation, mental alertness, appetite control, or energy is prohibited", but grants to the department the authority to exempt other nonprescription products from the prohibition if the product is intended for use for a valid medicinal purpose.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 1. General

Chapter 39. Controlled Dangerous Substances

§3945. Ephedrine Marketing, Advertising, or Labeling

A. General Rule. Pursuant to the statute, the marketing, advertising, or labeling of any nonprescription product containing ephedrine, a salt of ephedrine, an optical isomer of ephedrine, or a salt of an optical isomer of ephedrine for the

indication of stimulation, mental alertness, weight loss, appetite control, or energy is prohibited unless the distributor or manufacturer is granted an exemption by the Department of Health and Hospitals.

B. Procedures for Seeking an Exemption

1. Distributors or manufacturers seeking an exemption from the prohibition set forth in Subsection A above must submit documentation which clearly demonstrates the following:

- a. the nonprescription product is intended for use for a valid medicinal purpose, and
- b. the marketing of the product does not encourage, promote, or abet the abuse or misuse of ephedrine.

2. A review committee composed of representatives from the following groups shall conduct a review of the documentation submitted by the distributor or manufacturer:

- a. Board of Pharmacy,
- b. Board of Wholesale Drug Distributors,
- c. Pharmaceutical Manufacturer's Association,
- d. Office of Alcohol and Drug Abuse,
- e. Physician.

3. The following factors shall be considered by the review committee in determining whether an exemption should be granted, and information related to the factors shall be submitted by the distributor or manufacturer:

- a. packing of the product;
- b. name and labeling of the product;
- c. manner of distribution, advertising, and promotion of the product;
- d. verbal representations made concerning the product; and
- e. duration, scope, and significance of abuse or misuse of the particular product.

4. Following a review of the materials submitted by the manufacturer or distributor, a determination will be made whether an exemption will be granted regarding the nonprescription ephedrine product, and written notice will be sent to the distributor or manufacturer.

AUTHORITY NOTE: Act 1253 of the 1995 Louisiana Regular Legislative Session, enacting R.S. 40: 962(1).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 22:

Interested persons may submit written comments about the proposed rule to Carol Blanchfield, Department of Health and Hospitals, Office of Public Health, 1201 Capitol Access Road, Bin 4, Fourth Floor, Baton Rouge, LA, 70804. Written comments must be received on or before February 1, 1996.

Rose V. Forrest
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Ephedrine Marketing, Advertising,
Labeling**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no costs.

- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no effect.

- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
What, if any, costs will be borne cannot be ascertained.

- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect.

Rose V. Forrest
Secretary
9512#054

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Chiropractic Care

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following proposed rule in the Medical Assistance Program to comply with Louisiana Constitution Article 7, Section 10, R.S. 39:73 and R.S. 77, which requires that the secretary not incur obligations or expenditures in excess of the funds appropriated.

Act 16, Schedule 9, of the 1995 Louisiana Regular Legislative Session directs: "The secretary shall implement reductions in the Medicaid Program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law".

The following proposed rule is also adopted as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act.

This rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has provided coverage for chiropractic services under the Medicaid Program.

Chiropractic services are optional State Plan service under Title XIX of the Social Security Act which allows a state to choose whether these services are to be included or excluded under its Medicaid State Plan.

The 1995-96 General Appropriations Act mandates that the budgetary limit for the Chiropractic Care Program is \$5,406,000.

The department has determined that program expenditures are reaching this amount appropriated for this service and it is necessary to suspend coverage for chiropractic services under the State Plan of the Medicaid Program effective December 1, 1995 for persons over 21 years of age.

However, the Medicaid Program will continue to cover mandatory medically-necessary manual manipulations of the spine for recipients under the age of 21 of the Early Periodic, Diagnostic and Treatment Program (EPSDT) only when rendered on the basis of a referral from a medical screening provider for the Early Periodic, Screening, Diagnostic and Treatment Program.

The provisions of the July 13, 1995 emergency rule (*Louisiana Register* Volume 21 Number. 7, 1995), which established provisions governing the reimbursement of chiropractic services, will continue in force for dates of services prior to December 1, 1995.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following provisions governing chiropractic care under the Professional Services Program of the Medicaid Program.

I. Effective for dates of service December 1, 1995 and after, the Bureau of Health Services Financing will suspend coverage for chiropractic services under the State Plan.

II. Effective for dates of service December 1, 1995 and after recipients of the Early Periodic, Screening, Diagnostic Treatment Program (EPSDT) will be eligible to receive only mandatory medically necessary manual manipulations of the spine, specifically procedure codes 97260 and 97261. Also, these services may be reimbursed by the Medicaid Program only if provided on the basis of a referral of a medical screening provider of the Early Periodic, Screening, Diagnostic Treatment Program.

III. Effective November 9, 1995 reimbursement for chiropractic dates of service prior to December 1, 1995 shall continue to be reimbursed in accordance with the following requirements.

A. General Provisions

1. Chiropractors' services consist of diagnostic and treatment services which are within the scope of practice for chiropractors under state law and regulations.

2. An encounter is defined as any visit in which any of the services listed in the Professional Services Program Manual are rendered which are included under the selected CPT treatment codes.

3. All chiropractic treatment services for recipients under the age of 21 shall be prior authorized.

B. Service Limits

1. One diagnostic evaluation per 180 days per recipient not to exceed two diagnostic evaluations per calendar year per recipient will be allowed.

2. Radiology services are limited to \$50 per recipient per 180 days not to exceed \$100 per calendar year per recipient.

3. Recipients 21 years of age and older are allowed 18 chiropractic encounters or treatment services per calendar year. No extension of this number shall be granted.

C. Reimbursement

1. Reimbursement is provided to chiropractors who are licensed by the state to provide chiropractic care and services and who are enrolled in the Medicaid Program as an enrolled provider.

2. Reimbursement is made in accordance with the following designated CPT codes under a maximum fee schedule for billable codes established by the Professional Services Program for each chiropractic service rendered to a Medicaid eligible individual.

Procedure Code	Proposed Rate
97010	\$ 7.41
97012	\$ 5.31
97014	\$ 7.41
97020	\$ 4.88
97022	\$ 6.65
97024	\$ 4.88
97026	\$ 4.88
97028	\$ 1.66
97039	\$ 6.65
97110	\$ 8.08
97112	\$ 8.08
97032	\$ 8.08
97122	\$ 3.85
97124	\$ 5.05
97034	\$ 6.65
97035	\$ 3.85
97139	\$ 6.65
97036	\$11.09
97250	\$12.94
97260	\$ 8.00
97261	\$ 3.54

IV. The Bureau of Health Services Financing will reimburse claims for chiropractic services up to the extent that funds are authorized by legislative appropriation for these services.

Interested persons may submit written comments to the following address: Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this notice of intent.

A public hearing will be held on this matter at 9:30 a.m., Thursday, January 25, 1996, in the DOTD Auditorium, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day following the public hearing.

Rose V. Forrest
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Chiropractic Care**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of this proposed rule will result in no increased or decreased expenditures for chiropractic services for SFY 1995-1996 based on current expenditures and the legislative allocation for SFY 1996. Based on SFY 1995-96 budget allocations, the expenditures for SFY 1996-1997 are \$1,569,729 and \$1,682,658 for SFY 1997-1998. These figures represent a cost savings from expenditures in SFY 1994-95 figures which were \$15,008,946.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that federal revenue collections for chiropractic services will decrease by approximately \$0 for SFY 1995-1996; \$4,052,511 for SFY 1996-1997, and \$4,164,472 for SFY 1997-1998.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is anticipated that providers of chiropractic services will experience the combined state and federal expenditure decreases shown above for the provision of these services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins
Director
9512#042

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Laboratory and X-Ray Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule under the Medical Assistance Program as authorized by R.S. 46:153(G) and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriations Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, and utilization review, and other measures as allowed by federal law." This proposed rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Bureau of Health Services Financing reimburses clinical laboratory services on the basis of the lowest of billed charges, state maximum amount, or the Medicare fee schedule amount (however Medicaid payment cannot exceed the Medicare fee schedule). Effective July 7, 1995 this amount was reduced by 15 percent (*Louisiana Register*, Volume 21, Number 7). Claims for these services are processed for payment through the bureau's fiscal intermediary for automated billing and reimbursement. The fiscal intermediary's automated system includes edits to assure that automated chemistry tests are properly bundled. The department has determined that it is necessary to revise the edits governing the payment of clinical laboratory services in order to ensure that these edits are sufficient to detect and prevent payment for tests that are not properly bundled and/or duplicated as well as to assure that hematology and urinalysis

tests are properly bundled. The following proposed rule revises the edits which regulate reimbursement for laboratory services for automated, multichannel tests, hematology, prenatal lab panels and urinalysis.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, proposes to establish the following requirements for the reimbursement of clinical laboratory services.

I. Automated, Multichannel Tests and Panels

A. Procedure code 84478 (Triglycerides) is included in the list of automated, multichannel tests enumerated under the heading "Automated, Multichannel Tests" in the 1995 issuance of the Physicians' Current Procedural Terminology.

B. A panel code (80002 - 80019) must be billed after the performance of the first, rather than the second, automated, multichannel test.

C. If more than one of the codes listed below is billed by the same billing provider for the same recipient for the same date of service, the first billing will be paid and the second will be denied with the message "Multiblood tests billed; to be combined to panel."

82040	82250	82251	82310	82315	82320
82325	82330	82374	82435	82465	82565
82947	83615	83620	84060	84075	84100
84132	84155	84295	84450	84455	84460
84465	84520	84525	84550	83624	83610
82555	84478	82550	84160		

II. Hepatic Function Panel and General Health Panel

A. If individual tests and panel codes are billed for the same recipient for the same date of service by the same billing provider, the first billing will be paid and the second billing will be denied with the message "Blood component billed with panel code."

B. The panel codes begin with 80002 and extend through 80019 and include panel codes 80050 and 80058. The individual codes included in this edit are the ones listed under I.C above.

III. Hematology

A. Incorrect billings of hematology components, indices and profiles will be denied with the message "Hematology components/indices/profiles billed incorrectly."

B. Only one of codes 85021 - 85027 shall be paid to the same billing provider for the same recipient for the same date of service. A second billing of any of these codes on the same date of service for the same recipient by the same billing provider will be denied. Code 85021 should be billed by itself or one of 85022, 85023, 85024, 85025 or 85027 should be billed.

C. The billing of more than two of the hematology component codes (85007, 85014, 85018, 85041, 85048, 85595) by the same billing provider for the same recipient for the same date of service will result in denial of the third code in this group as a profile code should be billed if more than two tests in this group are performed.

D. The billing of one of the above profile codes (85021 - 85027) and one or more of the component codes 85014, 85018, 85041 or 85048 by the same billing provider for the same recipient for the same date of service will result in

payment of the first billing and denial of the second as the component codes are included in the profile codes.

E. The billing of code 85007 and codes 85022 and/or 85023 on the same date of service for the same recipient by the same billing provider will result in payment of the first claim and denial of the second. Procedure code 85007 is included in codes 85022 and 85023.

F. A billing of code 85595 and codes 85023, 85024, 85025 and/or 85027 by the same billing provider for the same recipient for the same date of service will result in payment of the first claim and denial of the second claim. Procedure code 85595 is included in codes 85023, 85024, 85025 and 85027.

IV. Panel Codes

A billing of more than one panel code (80002 - 80019, 80050 and 80058) on the same date of service for the same recipient by the same billing provider will result in denial of the second billing with the message "Max allowed. One panel per day per billing provider."

V. Prenatal Lab Panels

A. A billing of more than one prenatal lab panel code (Z9001, Z9002, Z9003) on the same date of service for the same recipient by the same billing provider will result in denial of the second billing with the message "One prenatal panel per pregnancy payable."

B. Only one prenatal lab panel code is to be paid per pregnancy. Therefore, a second billing of Z9001, Z9002 or Z9003 within a 270-day period by the same billing provider for the same recipient will be denied with the message "Max allowed. Only one payable per pregnancy."

C. Procedure code 80055 (Obstetric Panel) will be placed in nonpay status as the Louisiana Medicaid Program has locally-assigned codes for prenatal lab panels.

D. Providers who have been reimbursed for a Z9001, Z9002 or Z9003 on a recipient will not be reimbursed also for codes 85018, 85022, 85025, 86592, 86762, 86900, 86901 or 86850 on that same recipient.

E. Only one claim for code 81000 will be reimbursed per recipient per pregnancy (270 days) per billing provider.

VI. Urinalysis

A. A billing of code 81000 and one or more of 81002, 81003, or 81015 by the same billing provider for the same recipient for the same date of service will result in denial of the second billing with the message "Urinalysis billed incorrectly" because 81002, 81003 and 81015 are inappropriate with 81000.

B. A billing of code 81002 and 81003 on the same date of service for the same recipient by the same billing provider will result in denial of the second claim with the same message because the descriptions of the two codes are contradictory.

C. A billing of code 81001 and 81002, 81003 or 81015 on the same date of service for the same recipient by the same billing provider will result in denial of the second claim as the descriptions of the latter three codes are contradictory to that of code 81001.

D. A billing of code 81000 and 81001 on the same date of service for the same recipient by the same billing provider will result in denial of the second claim as the two codes have contradictory descriptions.

VII. Panels and Component Codes within Panels

A. A billing of panel code 80050 and component codes 80012 - 80019, 85022, 85025 and/or 84443 by the same billing provider on the same date of service for the same recipient will result in denial of the second claim with the message "Billed panel and individual code within panel."

B. A billing of panel code 80058 and component codes 82040, 82250, 84075, 84450 and/or 84460 by the same billing provider on the same date of service for the same recipient will result in denial of the second billing with the same message.

C. If panel code 80059 is paid, component codes 86287, 86291, 86289, 86296, and 86302 will not also be paid on the same date of service for the same recipient to the same billing provider.

D. The above rule also applies to panel codes 80061, 80072, 80090, 80091, 80092 and their components.

Interested persons may submit written comments to the following address: Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA. He is responsible for responding to inquiries regarding this proposed rule and providing information on this proposed rule. A public hearing will be held on this matter at 9:30 a.m., Thursday, January 25, 1996, in the DOTD Auditorium, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day following the public hearing.

Rose V. Forrest
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Laboratory and X-Ray Services

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is anticipated that implementation of this proposed rule will result in decreased expenditures for lab and x-ray services by approximately \$301,293 for SFY 1995-1996; \$313,344 for SFY 1996-1997; and \$335,887 for SFY 1997-1998.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is anticipated that federal revenue collections for lab and x-ray services will decrease by approximately \$777,836 for SFY 1995-96; \$808,950 for SFY 1996-97 and \$831,299 for SFY 1997-98.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
It is anticipated that the providers of lab and x-ray services will experience the combined state and federal expenditure decreases shown above for the provision of these services.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no known effect on competition and employment.

Thomas D. Collins
Director
9512#044

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Mental Health Rehabilitation

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule in the Medicaid Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to recertification, preadmission screening, and utilization review, and other measures as allowed by federal law."

The Office of the Secretary, Bureau of Health Services Financing adopted a rule on April 20, 1993 and published in the *Louisiana Register*, Volume 19, Number 4, which established the standards for participation for the Mental Health Rehabilitation Program and the provider reimbursement requirements.

The Department of Health and Hospitals, Office of Mental Health adopted a rule defining adults with serious mental illness and children with emotional/behavioral disorders on September 20, 1994 (*Louisiana Register*, Volume 20, Number 9).

Also the bureau adopted a rule for the Mental Health Rehabilitation Program which requires recipients to meet the definition of serious mental illness as defined by the Office of Mental Health and to be prior authorized to receive services (*Louisiana Register*, November 1995, Volume 21, Number 11).

The department has determined that the following revisions and amendments to these rules are needed to insure effective delivery of services and to control cost in the Mental Health Rehabilitation Program in accordance with the budget appropriation contained in the General Appropriation Act of the 1995-96 Regular Legislative Session.

Emergency rulemaking has been adopted on the following provisions and was published in the *Louisiana Register*, Volume 21, Number 11. The bureau now proposes to incorporate these additional provisions under the Administrative Procedure Act.

The following revisions and amendments include a change in reimbursement from the unit of service methodology to a flat rate based on the level of need of the recipient. Programmatic revisions to the Mental Health Rehabilitation Program necessitate that the bureau specify the reimbursement is not available to the same Medicaid recipient for both mental health rehabilitation services and optional targeted case management services. Program enhancements require a standardized clinical evaluation which must be completed by professional staff who meet the appropriate criteria. Also, the

following revisions to the Mental Health Rehabilitation Program establish a single provider agency which requires that all current providers of Mental Health Rehabilitation Services will be required to meet new standards for continued enrollment in the Medicaid program in addition to adherence to previously published regulations. Providers must apply to the bureau through the Office of Mental Health for a transitional certification to assure continued enrollment until an on-site visit can be conducted by the BHSF or its designee.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, is proposing to amend the rule entitled Mental Health Rehabilitation adopted April 20, 1993 (*Louisiana Register*, Volume 19, Number 4), by adopting the following provisions governing recipient eligibility, service delivery requirements and reimbursement methodology. All mental health rehabilitation services must be prior authorized by the bureau or its designee prior to the provision of these services.

I. Recipient Eligibility

Recipients must qualify as a member of the target population by meeting the definition of *seriously mentally ill* as defined by rule (*Louisiana Register*, Volume 20, Number 9) and by meeting the medical necessity criteria for mental health rehabilitation services as measured by the *North Carolina Functional Assessment Scale* for adults and the *Child and Adolescent Functional Assessment Scale* for children/youth. The measurement derived from these scales must indicate that the Medicaid recipient has a high need for mental health rehabilitation services as determined by the Office of Mental Health. Providers must include all information essential for a determination of level of need. All Medicaid recipients of mental health rehabilitation services must also meet the level of need required for the specific services they are receiving. As Medicaid recipients progress in their rehabilitation, services will be authorized and reimbursed at the medium and low levels of care.

The *North Carolina Functional Assessment Scale* provides a rating of the extent to which an adult recipient's mental health disorder is disruptive of functioning in each of six major areas: emotional health, behavior, self/other, thinking, role performance, basic needs, and substance abuse. Each subscale is rated according to explicit criteria, and the scores are summed to obtain a total functional assessment score.

The *Child and Adolescent Functional Assessment Scale* provides a rating of the extent to which a child/adolescent recipient's mental health disorder is disruptive of functioning in each of five major areas: moods/self-harm, behavior toward others, thinking, role performance, and substance abuse. Two additional subscales assess the extent to which the youth's care giver is able to provide for the needs and support of the youth. Each subscale is rated according to explicit criteria, and the scores are summed to obtain a total functional assessment score for both the child and the care giver.

II. Provider Participation

A. The enrolled mental health rehabilitation provider or case management provider must apply to the BHSF through the Office of Mental Health for transitional certification as a

mental health rehabilitation provider. The enrolled provider has the ultimate responsibility for the delivery of all services, including those delivered through contractual agreement(s). The enrolled provider must meet the following requirements and assurances and submit the information to the regional Office of Mental Health:

1. PE-50 completed after October 1, 1995;
2. disclosure of ownership form completed after October 1, 1995;
3. statement identifying the population to be served: adults with serious mental illness, children with emotional/behavioral disorders or both;
4. résumés of the current mental health rehabilitation program director, the psychiatric director, and all clinical managers, including documentation of licensure;
5. identification of the agency's main office, all offices billing with the main office's Medicaid provider number and all regions in which the agency conducts business;
6. proof of general liability of at least \$100,000 and professional liability insurance of at least \$300,000. The certificate holder shall be the Department of Health and Hospitals to receive notice of insurance changes;
7. assure that the following requirements are met and/or agreed to as evidenced by completion of the "Request for Mental Health Rehabilitation Transitional Certification" form provided by the BHSF.

- a. assure that the enrolled MHR agency will provide clinical management, the MHR assessment and the MHR service agreement for all recipients served;
- b. have the capacity to provide the full range of services to the full range of recipients served by the Mental Health Rehabilitation Program;
- c. assure that all services provided by the MHR agency or through contractual arrangement are provided in conformity with all applicable federal and state regulations.
- d. assure that all the service delivery staff meets the requirements as specified in the Mental Health Rehabilitation Program Manual.
- e. assure that the enrolled agency and subcontractors will participate in the Mental Health Rehabilitation data system and provide data on a weekly basis to the Medicaid office or its designee;
- f. assure that the enrolled agency will meet all new certification and enrollment standards as required by the Bureau of Health Services Financing by July 1, 1996 or by the on-site certification visit which is not to occur prior to May 1, 1996. Compliance with the new certification enrollment standards is required by the first occurrence of either of these two events.

B. The enrolled MHR agency must submit the "Request for Mental Health Rehabilitation Transitional Certification" to the regional Office of Mental Health. If the enrolled agency fails to meet the standards or does not submit the proper documentation, the agency will not be authorized to bill for services delivered after October 31, 1995. Those agencies that have submitted applications for enrollment to the BHSF prior to October 31, 1995, but have not received a Medicaid provider number may also apply for transitional certification by following the guidelines outlined above. Agencies

applying for enrollment after October 31, 1995 will have to meet all licensing requirements, current enrollment requirements, participate in an on-site visit by the regional Office of Mental Health and meet the transitional certification requirements.

C. Enrolled case management agencies may also be eligible for transitional certification as a mental health rehabilitation provider by applying for transitional certification through the regional Office of Mental Health. The agency must meet the standards for transitional certification and submit the "Request for Mental Health Rehabilitation Transitional Certification" to the regional Office of Mental Health no later than the close of business January 31, 1996. The agency will not be considered an enrolled MHR agency until the approval of the transitional certification has been granted.

D. Transitional certification for those agencies who meet the requirements outlined above will be effective until July 1, 1996 or until the on-site certification process is completed, whichever occurs first.

III. Administrative Requirements

A. Psychiatric Director. Each agency is required to have a licensed psychiatrist on staff as the psychiatric director. The director is required to provide a minimum of two hours of on-site clinical supervision/consultation per month for every 10 recipients.

B. Clinical Manager. Each agency is required to have a clinical manager. The clinical manager is a licensed mental health professional who is responsible for an identified caseload. The clinical manager must be an employee of the mental health rehabilitation agency. The clinical manager provides ongoing clinical direction. The clinical manager must provide the following minimum requirements for clinical management:

1. The clinical manager must have one face-to-face contact with the adult recipient or two face-to-face contacts with the child and family every 30 days.
2. The clinical manager must provide at least five hours of clinical management for adults and 12 hours of clinical management for children during each 90-day action strategy period.
3. The clinical manager must document at least two contacts with other community providers or significant others each month.
4. The clinical manager must provide lead responsibility for the MHR assessment team.
5. The clinical manager must provide lead responsibility for development and oversight of the MHR agreement.
6. The clinical manager must assure that all activity plans are developed and implemented.
7. The clinical manager must write the Quarterly Summary Progress Report.
8. The clinical manager provides oversight and access and coordination of all services for the MHR recipient. This includes but is not limited to the provision of the following:
 - a. assurance of active recipient involvement in all aspects of care;
 - b. coordination and management of all services provided through the MHR agency;

c. access and coordination of services provided through non-MHR agencies.

C. Staffing Definitions

1. *Mental Health Service Delivery Experience*—mental health service delivery experience at the professional or paraprofessional level delivered in an organized mental health or psychiatric rehabilitation setting such as a psychiatric hospital, day treatment or mental health case management program, or community mental health center. Evidence of such service delivery experience must be provided by the agency in which the experience occurred.

2. *Supervised Experience*—experience supervised by a mental health professional is mental health services provided under a formal plan of supervision documented by a plan of professional supervision. Evidence of such supervised experience must be provided by the supervising professional and/or agency in which the supervision occurred.

3. *Core Mental Health Disciplines*—academic training programs in psychiatry, psychology, social work, and psychiatric nursing.

4. *Mental-Health-Related Field*—academic training programs based on the principles, teachings, research and body of scientific knowledge of the core mental health disciplines. To qualify as a related field there must be substantial evidence that the academic program has a curriculum content in which at least 70 percent of the required courses for graduation are based on the knowledge base of the core mental health disciplines. Programs which may qualify include but are not limited to sociology, criminal justice, nursing, marriage and family counseling, rehabilitation counseling, psychological counseling, and other professional counseling.

5. *Licensed Mental Health Professional*—an individual qualified to provide professional mental health services. A LMHP is one who meets one of the following education and experience requirements:

a. a physician who is duly licensed to practice medicine in the state of Louisiana and has completed an accredited training program in psychiatry; or

b. a psychologist who is licensed as a practicing psychologist under the provisions of state law; or

c. a social worker who holds a master's degree in social work from an accredited school of social work and is a board-certified social worker under the provisions of R.S. 37:2701-2718; or

d. a nurse who is licensed to act as a registered nurse in the state of Louisiana by the Board of Nursing, and is a graduate of an accredited master's level program in psychiatric nursing with two years experience in mental-health-related field; or has a master's degree in nursing or a mental-health-related field with two years of supervised experience in the delivery of mental health services; or has four years of experience in the delivery of mental health services; or

e. a licensed professional counselor who is licensed as such under the provision of state law and has two years supervised experience in the delivery of mental health services post-master's degree.

IV. The Mental Health Rehabilitation Assessment

The mental health rehabilitation assessment for children/youth and mental health rehabilitation assessment for adults includes an initial MHR assessment and one update,

development of an initial service agreement and one update of the service agreement.

A. The MHR assessment is a comprehensive, integrated series of assessment procedures conducted largely in the recipient's or his family's daily living environments to determine strengths and needs with regard to functional skills and environmental resources that will enable the mental health rehabilitation recipient to attain a successful and satisfactory community adjustment. The assessment and service agreement must be submitted in the format and utilize the protocols defined by the Office of Mental Health.

B. Assessment procedures at a minimum include but are not limited to the following:

1. review of the standardized clinical evaluation(s) and other pertinent records;

2. face-to-face strengths assessment with the recipient or child/family which must be completed by the clinical manager. The strengths assessment must be in the format defined by the Office of Mental Health;

3. key informant interview(s) (for example: family member, teacher, friend, employer, job coach). For children an interview with the teacher is required;

4. observation(s) in natural settings(s) (for example: home, school, job site, community). For children an observation in the home and school is required;

5. interview by licensed physician to assess past history of all medications and current medication, specifying issues of polypharmacy and untoward responses;

6. standardized functional assessment scale;

7. integrated summary and prioritized strengths/need list must be organized by the life areas;

8. update of the MHR assessment.

C. The assessment team must include the clinical manager and a licensed physician, at a minimum. Other professionals and paraprofessionals are included as indicated by recipient/family need.

D. The standardized clinical evaluation submitted by providers for prior authorization of mental health rehabilitation services (MHR) must meet the following criteria. The standardized clinical evaluation must be completed by either a Louisiana licensed (1) board-certified social worker and a board-certified or board-eligible psychiatrist or licensed psychologist; or (2) board-certified or board-eligible psychiatrist; or (3) licensed psychologist. This evaluation must include a face-to-face interview with the recipient by all professionals signing the evaluation and must provide detailed descriptive information about the recipient's functional status in life areas as defined by the Office of Mental Health. The information must be submitted on the Standardized Clinical Evaluation form which is available through the regional offices of mental health. Key symptoms and functional behaviors are to be identified in sufficient detail so that the impact on the consumer's functioning can be judged independently by an outside reviewer.

V. The Mental Health Rehabilitation Service Agreement

The service agreement is a written document which identifies the goals, objectives, action strategies and services which have been agreed to by the MHR agency and the adult recipient or the child and family. The service agreement must

be based on the mental health rehabilitation assessment and must address at least two life areas. The agreement is to be submitted in the format defined by the Office of Mental Health and must be approved by the Office of Mental Health prior to the delivery of services. The service agreement is developed by a team which at a minimum consists of the clinical manager, a physician, and the recipient or the child and family. The clinical manager has lead responsibility for oversight of the process.

VI. Service Package

A service package is a defined range of interventions appropriate for a determined level of need for care (high, medium and low). The service packages are derived from the following menu of services:

- clinical management;
- individual intervention (child/youth only);
- supportive counseling (adults only);
- parent/family intervention (child/youth only);
- group counseling;
- medication management;
- behavior intervention plan development (child/youth only);
- individual psychosocial skills training;
- group psychosocial skills training;
- service integration.

The individualized mix of services for any individual is specified on the 90-day action strategy of the MHR service agreement. The MHR service agreement is derived from the MHR assessment.

VII. Reimbursement

Reimbursement is made by a prospective, negotiated and noncapitated rate based on the delivery of services as specified in the service agreement and the service package as required for the adult and child/youth populations.

Adult assessment/service agreement	\$ 700
Child/youth assessment/service agreement	\$ 800

The MHR assessment/service agreement is reimbursed based on the approval of a MHR assessment and MHR service agreement and is paid semiannually.

Adult:		Child/Youth:	
High need	\$1,300	High need	\$1,375
Medium need	\$ 550	Medium need	\$ 800
Low need	\$ 250	Low need	\$ 250

Services are reimbursed based on services specified in the 90-day action strategy plan and are paid monthly contingent upon the delivery of 80 percent of the prorated 90-day services approved in the MHR service agreement. As Medicaid recipients progress in their rehabilitation services and the level of need decreases, services will transition from the high to medium and/or low level of need. Reimbursement will be made in the amounts specified above for the medium and low levels of need as determined by the bureau or its designee.

Reimbursement for the delivery of services under the Mental Health Rehabilitation Program and Optional Targeted Case Management Program is not provided to the same Medicaid recipient.

VIII. Crisis Services

The MHR provider is required to maintain a 24-hour on-call system with the capacity to provide 24-hour face-to-face

services. With respect to a psychiatric emergency, the MHR physician must first screen the recipient and determine if referral to the Office of Mental Health Crisis Response System is warranted. The format for screening and referral is defined by the Office of Mental Health.

Interested persons may submit written comments to: Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing will be held on this matter at 9:30 a.m., Thursday, January 25, 1996, in the DOTD Auditorium, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day following the public hearing.

Rose V. Forrest
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Mental Health Rehabilitation**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is anticipated that implementation of this proposed rule will result in decreased expenditures for mental health rehabilitation program services by approximately \$6,328,085 for SFY 1995-1996; \$6,581,209 for SFY 1996-1997; and \$7,054,669 for SFY 1997-1998.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is anticipated that federal revenue collections for mental health rehabilitation program services will decrease by approximately \$16,336,977 for SFY 1995-1996; \$16,990,455 for SFY 1996-1997 and \$17,459,862 for SFY 1997-1998.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
It is anticipated that the providers of the mental health rehabilitation program services will experience the combined state and federal expenditure decreases shown above for the provision of these services.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no known effect on competition and employment.

Thomas D. Collins
Director
9512#043

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Insurance Commissioner of Insurance

Regulation 58—Viatical Settlements

Under the authority of R.S. 22, Sections 3 and 210, the Department of Insurance gives notice that the following proposed regulation, is scheduled to become effective March 20, 1996. This intended action complies with the statutory law administered by the Department of Insurance.

Proposed Regulation 58 Viatical Settlements

Section 1. Purposes

The purpose of this regulation is to provide for the implementation of licensure of viatical settlement providers, brokers or any person soliciting a viatical settlement contract and to provide for related matters.

Section 2. Authority

This regulation is promulgated by the Department of Insurance under the authority granted by R.S. 22:3, R.S. 22:210 and the Administrative Procedure Act, R.S. 49:950 et seq.

Section 3. Applicability and Scope

These regulations shall apply to any person soliciting a viatical settlement contract.

Section 4. Definitions

For purposes of this regulation:

Person—any natural or artificial entity including but not limited to individuals, partnerships, associations, trusts, or corporations.

Viatical Settlement Broker—a person who, for themselves or for another, offers or advertises the availability of viatical settlements, introduces viators to viatical settlement providers, or offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers for a fee, commission, or other valuable consideration. Viatical settlement broker does not include an attorney, accountant, or financial planner retained to represent the viator whose compensation is not paid by the viatical settlement provider.

Viatical Settlement Contract—a written agreement entered into between a viatical settlement provider and a viator in this state. The agreement shall establish the terms under which the viatical settlement provider will pay compensation or anything of value in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

Viatical Settlement Provider—a person who enters into a viatical settlement contract with a viator owning a life insurance policy or a viator who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life-threatening illness or condition. Viatical settlement provider shall not include:

1. any bank, savings bank, savings and loan association, credit union, or other licensed lending institution which takes an assignment of a life insurance policy as collateral for a loan;

2. the issuer of a life insurance policy providing accelerated benefits under R.S. 22:644 and Regulation 44 promulgated by the Department of Insurance;

3. any natural person who enters into only one viatical contract in a calendar year.

Viator—the owner of a life insurance policy insuring the life of a person with a catastrophic or life-threatening illness or condition or the certificate holder who enters into an agreement under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

Section 5. License Requirements for Viatical Settlement Providers

- A. A viatical settlement provider shall not enter into or solicit a viatical settlement contract without first obtaining a license from the commissioner.

- B. The application shall be on a form required by the commissioner and accompanied by a fee of \$1,000.

- C. Only individuals named in the application may act as viatical settlement providers.

- D. The license may be renewed yearly by payment of a fee of \$500 on or before May 1 of each year. Failure to pay the fee within the terms prescribed by the department shall result in the automatic cancellation of the license. However, a viatical settlement provider may reinstate a license by payment of the fee within six months after the due date.

- E. The applicant shall provide such information as required on forms prescribed by the Department of Insurance. The commissioner may ask for such additional information as is necessary to determine whether the applicant complies with the requirements of R.S. 22:203.

- F. A viatical settlement provider may operate pursuant to the provisions in this law pending licensure by the Department of Insurance, but in no case shall a provider be allowed to operate without a license following June 1, 1996.

- G. The Department of Insurance shall establish minimum capital requirements in the amount of \$500,000.

- H. The Department of Insurance shall have the right to suspend, revoke or refuse to renew the license of any viatical settlement provider if it finds that:

1. there was any misrepresentation in the application for the license;

2. the holder of the license has been guilty of fraudulent or dishonest practices or is otherwise shown to be untrustworthy or incompetent to act as a viatical settlement provider;

3. the licensee has been convicted of a felony or any misdemeanor of which criminal fraud is an element;

4. the licensee has violated any of the provisions of R.S. 22:203;

5. failure to file an annual report required by Section 8 of this regulation.

- I. The Department of Insurance shall not deny a license application or suspend, revoke, or refuse to renew the license application or suspend, revoke, or refuse to renew the license

of a viatical settlement provider without first conducting a hearing in accordance with Part XXIX of the Insurance Code.

Section 6. License Requirements for Viatical Settlement Brokers

A. A viatical settlement broker shall not enter into or solicit a viatical settlement contract without first obtaining a license from the commissioner.

B. The application shall be on a form required by the commissioner and accompanied by a fee of \$50.

C. The license may be renewed yearly by payment of a fee of \$50. Failure to pay the renewal fee within the time prescribed shall result in automatic cancellation of the license. However, a viatical settlement provider may reinstate a license by payment of the fee within six months.

D. The license shall be a limited license which allows solicitation only of viatical settlement contracts.

E. Viatical brokers operating in this state shall be licensed by the Department of Insurance as a Louisiana life insurance agent, subject to all preclicensing education and continuing education requirements as required, and appointed by a licensed viatical provider.

F. The applicant shall provide such information as required on forms prescribed by the Department of Insurance. The commissioner may ask for such additional information as is necessary to determine whether the applicant complies with the requirements of R.S. 22:203.

G. A viatical settlement broker may operate pursuant to the provisions in R.S. 22:203 pending licensure by the Department of Insurance, but in no case shall a broker be allowed to operate without a license following June 1, 1996.

H. The commissioner shall have the right to suspend, revoke or refuse to renew the license of any viatical settlement broker if the commissioner finds that:

1. there was any misrepresentation in the application for a license;

2. the broker has been found guilty of fraudulent or dishonest practices, has been found guilty of a felony or any misdemeanor of which criminal fraud is an element, or is otherwise shown to be untrustworthy, incompetent or financially irresponsible;

3. the licensee has placed or attempted to place a viatical settlement contract with a viatical settlement provider not licensed in this state;

4. the licensee has violated any of the provisions of R.S. 22:204.

I. The Department of Insurance shall not deny a license application or suspend, revoke or refuse to renew the license of a viatical settlement provider without first conducting a hearing in accordance with Part XXIX of the Insurance Code.

Section 7. Approval of Viatical Settlement Contract

A viatical settlement provider shall not use any viatical settlement contract or escrow agreement in this state unless it has been filed with and approved by the Department of Insurance. Failure by the department to approve or disapprove a viatical settlement contract form or escrow agreement within 60 days of the submission of the form shall constitute automatic approval for use of such form. The department shall disapprove a viatical settlement contract form or escrow agreement if, in the department's opinion, the

contract or escrow agreement or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. The commissioner of insurance shall notify in writing the viatical settlement provider, specifying the reasons for his disapproval of the contract form or escrow agreement; and it shall thereafter be unlawful for such viatical settlement provider to issue such form in this state. In such notice, the commissioner of insurance shall state that a hearing will be granted within 60 days upon written request by the provider.

Section 8. Reporting Requirements

On March 1 of each calendar year, each licensed provider shall file with the Department of Insurance an annual statement in addition to the following information for the previous calendar year:

A. for each policy viaticated:

1. date viatical settlement contract entered into;

2. life expectancy of viator at time of contract;

3. names of insurance company and face amount of policy;

4. amount paid by the viatical settlement provider to viaticate the policy; and

5. if the viator has died:

a. date of death; and

b. total insurance premiums paid by viatical settlement provider to maintain the policy in force;

B. breakdown of applications received, accepted and rejected, by disease category;

C. breakdown of policies viaticated by issuer and policy type;

D. number of secondary market vs. primary market transactions;

E. portfolio size; and

F. source and amount of outside financing.

Section 9. Examination

A. The Department of Insurance may, when reasonably necessary to protect the interest of the public, examine the business and affairs of any licensee or applicant for a viatical settlement provider license. The Department of Insurance shall have the authority to order any licensee or applicant to produce any records, books, files or other information reasonably necessary to ascertain whether or not the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

B. Should the viatical settlement provider deem the amount of expenses billed to it unreasonable, it may within 15 days after the receipt of such billing, take a rule in a court of competent jurisdiction upon the commissioner of insurance to test the reasonableness and legality of the amount of expenses billed to it by the commissioner of insurance which rule shall be tried by preference, and upon appeal, shall be given preference in the appellate court, as provided by the laws of this state for other state cases.

C. Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the Department of Insurance, unless required by law.

D. Records of all transactions of viatical settlement contracts shall be maintained by the licensee and shall be available to the commissioner for inspection during reasonable business hours.

Section 10. Disclosure

A viatical settlement provider shall disclose to the viator, no later than the date the viatical settlement contract is signed by all parties, the following information:

A. the possible alternatives to viatical settlement contracts for persons with catastrophic or life-threatening illnesses, including but not limited to, accelerated benefits offered by the issuer of the life insurance policy;

B. the tax consequences of receipt of the proceeds of a viatical settlement;

C. the adverse effects of receipt of the proceeds of a viatical settlement, including but not limited to the claims of creditors and the recipients' eligibility for Medicaid or other government benefits or entitlement;

D. the viator's right to rescind a viatical settlement contract within 30 days of the date it is executed by all parties or 15 days of the receipt of the viatical settlement proceeds by the viator, whichever is less, as provided in R.S. 22:209(D);

E. the date by which the funds will be available to the viator and the source of the funds.

Section 11. Standards for Evaluation of Reasonable Payments

In order to assure that viators receive a reasonable return for viaticating an insurance policy, the following shall be minimum discounts:

Less than 6 months	80%
At least 6 but less than 12 months	70%
At least 12 but less than 18 months	65%
At least 18 but less than 24 months	60%

The percentage may be reduced by five percent for viaticating a policy written by an insurer rated less than the highest four categories by A.M. Best, or a comparable rating by another rating agency.

The commissioner shall have the discretion to permit a reduction to the minimum percentages set forth in this Section, by up to 10 percent, upon a determination by the Department of Insurance that economic conditions have changed to such an extent that such variance is warranted. This reduction can be determined by subtracting 10 percent from the minimum statutory valuation interest rate for "single premium deferred annuities" as defined for a given calendar year subject to a maximum value of not greater than 10 percent and a minimum value of not less than zero.

The commissioner shall have the discretion to permit variance from the minimum percentages set forth in this Section upon a determination by the department that a viator's insurance policy is within the contestability period permitted by R.S. 22:172.

The commissioner may permit variance from the minimum percentages set forth if the expected premium to be paid by the viatical settlement provider exceeds five percent of the face value of the policy.

Section 12. General Rules

A. A viatical settlement provider entering into a viatical settlement contract with any person with a catastrophic or life-threatening illness or condition shall first obtain:

1. a written statement from a licensed attending physician that the person is of sound mind and under no constraint or undue influence;

2. a witnessed document in which the person consents to the viatical settlement contract, acknowledges the catastrophic or life-threatening illness, represents that he or she has a full and complete understanding of the viatical settlement contract, that he or she has a full and complete understanding of the benefits of the life insurance policy, releases his or her medical records, and acknowledges that he or she has entered into the viatical settlement contract freely and voluntarily.

B. All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information.

C. With respect to policies containing a provision for double or additional indemnity for accidental death or any other additional death benefits, the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement contract, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or in the absence of a designation, to the estate of the viator, unless otherwise mutually agreed to in writing by the viator and viatical settlement provider.

D. All viatical settlement contracts entered into in this state shall contain an unconditional refund provision of at least 30 days from the date of the contract, or 15 days from receipt of the viatical settlement proceeds, whichever date occurs first.

E. Immediately upon receipt from the viator of documents to effect the transfer of the insurance policy, the viatical settlement provider shall pay the proceeds of the settlement by means of wire transfer or by certified check to an escrow or trust account managed by a trustee or escrow agent in a state or federally chartered financial institution that is a member of the Federal Reserve System. The trustee or escrow agent shall be required to transfer the proceeds due to the viator immediately upon receipt of acknowledgment of the transfer from the insurer.

F. Payment of the proceeds pursuant to a viatical settlement shall be made in a lump sum. Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible. Installment payments shall not be made unless the viatical settlement company has purchased an annuity or similar financial instrument issued by a licensed insurance company or bank.

G. Failure to tender the viatical settlement by the date disclosed in writing to the viator renders the contract null and void.

H. A viatical settlement provider or broker shall not discriminate in the making of viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation, or discriminate between viators with dependents and without.

I. A viatical settlement provider or broker shall not pay or offer to pay any finder's fee, commission or other compensation to any viator's physician, attorney, accountant, or other person providing medical, legal or financial planning

services to the viator, or to any other person acting as an agent of the viator with respect to the viatical settlement.

J. Contacts for the purpose of determining the health status of the viator by the viatical provider or broker after the viatical settlement has occurred should be limited to once every three months for viators with a life expectancy of more than one year, and to no more than one per month for viators with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into.

K. Viatical settlement providers and brokers shall not solicit investors who could influence the treatment of the illness of the viators whose coverage would be the subject to the investment.

L. Advertising Standards

1. Advertising should be truthful and not misleading by fact or implication.

2. If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

3. If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the advertiser during the past six months.

A public hearing on this proposed regulation will be held at 10 a.m., January 25, 1996 in the Plaza Hearing Room of the Insurance Building at 950 North Fifth Street, Baton Rouge, LA. All interested persons will be afforded an opportunity to make comments.

Interested persons may obtain a copy of this proposed regulation from, and may submit oral or written comments to Denise Cassano, Assistant Director, Louisiana Health Care Commission, Department of Insurance, Box 94214, Baton Rouge, LA 70804-9214, (504) 342-0819 or (504) 342-5075. Comments will be accepted through the close of business at 4:30 p.m. on January 25, 1996.

James H. "Jim" Brown
Commissioner of Insurance

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Viatical Settlements**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is not anticipated that the adoption of proposed Regulation 58 would result in any implementation costs (savings) to the Department of Insurance, however, should any costs result from the adoption of Regulation 58, such costs would be absorbed by the Department of Insurance within its existing appropriation.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Adoption of proposed Regulation 58 will result in application fees and renewal fees paid to the Department of Insurance; however, there is insufficient data available at this time to determine the extent of those fees or the impact of such fees on state or local governmental units.

If any additional revenue were collected by the Department of Insurance as a result of the adoption of Regulation 58, that revenue would be deposited in the department's self-generated revenue fund.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Viatical settlement providers would be required to pay initial licensing fee of \$1,000 with their applications and to pay \$500 renewal fee each year; they would also be required to meet minimum capital requirement of \$500,000. Brokers would be required to pay an initial licensing fee of \$50 with their applications and would be required to pay \$50 renewal fee each year.

There is insufficient information available at this time to determine the impact of adoption of Regulation 58.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that adoption of Regulation 58 would have any effect on employment or competition.

Brenda St. Romain
Assistant Commissioner
Management and Finance
9512#066

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Insurance
Commissioner of Insurance**

Regulation 59—Health Insurance Data Collection Program

Under the authority of R.S. 22:3 and 9(1), the Department of Insurance gives notice that the following proposed regulation is to become effective March 20, 1996. This intended action complies with the statutory law administered by the Department of Insurance.

Proposed Regulation 59

Health Insurance Data Collection Program

Section 1. Purpose

The purpose of this rule is to implement the requirements of R.S. 22:9(1). The intent of R.S. 22:9(1) is to establish a health insurance data collection program for the state of Louisiana. The health insurance data collection program's intent is to establish and maintain an information collection program to gather data demonstrating the availability and affordability of health insurance coverage in the state. Such data and analysis of the data is to be used to evaluate the performance of past and future health care and health insurance reform measures.

Section 2. Authority

This regulation is promulgated by the Department of Insurance under the authority granted by R.S. 22:3 and 22:9(1), and the Administrative Procedure Act, R.S. 49:950 et seq.

Section 3. Applicability and Scope

R.S. 22:9(1) applies to all health insurance coverage in the state. For purposes of this regulation, health insurance shall mean, and data shall be reported from, all who issue group accident and health insurance policies, group certificates, or other entities that engage in the furnishing of hospital

services, medical or surgical benefit plans, health maintenance organization plans or subscriber agreements, and partially self-insured health benefit plans, individually underwritten limited benefit and supplemental health insurance policies, family group, blanket, franchise, and individual health and accident insurance policies written or issued in the state of Louisiana.

Section 4. Definitions

Administrative Service Fees—fees earned to provide self-insured and/or partially self-insured employers with certain administrative services in the delivery of health care services to employees. Such fees shall include operational expenses, actuarial, marketing, commissions, legal, and research and development, but shall not include risk or pooling charges or stop-loss premiums.

Group Carrier—any entity writing, delivering or issuing for delivery in the state of Louisiana accident and health insurance policies, group certificates, medical or surgical benefit plans, health maintenance organization plans or subscriber agreements, partially self-insured health benefit plans, or other entity that engages in the furnishing of hospital, medical or surgical services to employers who employed on at least 50 percent of its working days during the preceding year more than 35 employees.

Health Maintenance Organizations (HMOs)—an entity as defined in R.S. 22:2002(7).

Individual Carrier—any entity writing, delivering or issuing for delivery in the state of Louisiana any hospital, health or medical expense insurance policy, hospital or medical services contract, health and accident insurance policy, health maintenance organization subscriber agreement, or any other insurance contract of this type covering any one person with or without eligible family members. Not included under this definition are continuation or conversion policies, or insurance policies written to cover specified disease, hospital indemnity, accident only, credit, dental, disability income, Medicare supplementary or long-term care, or other limited, supplemental benefit insurance policies. Individual policy shall also mean a policy issued to an individual or individual member of an association where the individual pays for the entire premium.

Limited Benefit Policy—for purposes of this regulation, any health and accident policy designed, advertised, and marketed to supplement major medical insurance, specified disease, dental, fixed indemnity, vision, and any other health and accident or health maintenance organization subscriber agreement. Limited benefit policy shall include the Louisiana Basic Health Insurance Plan Pilot Program (LA Health), but shall not include Medicare supplement insurance.

Medicare Supplement Carrier—any entity writing, delivering or issuing for delivery in the state of Louisiana a Medicare supplement policy.

Small Group Carrier—any entity writing, delivering or issuing for delivery in the state of Louisiana group accident and health insurance policies, group certificates, medical or surgical benefit plans, health maintenance organization plans or subscriber agreements, partially self-insured health benefit plans, or other entity that engages in the furnishing of

hospital, medical or surgical services to employers who employed no less than three nor more than 35 eligible employees on at least 50 percent of its working days during the preceding year.

Supplement Carrier—any entity writing, delivering or issuing for delivery in the state of Louisiana a limited benefit policy.

Third-party Administrator—any individual, partnership, corporation, or other person as defined in R.S. 22:3031.1.

Section 5. Data Submission and Penalties

A. All data shall be submitted annually in a written format and shall include all data required in Section 7 of this regulation. The statements filed shall contain the letters and captions of all data elements. The text of the data elements may be omitted, provided that the answers thereto are stated in such a manner as to clearly indicate the scope and coverage of the data elements. Unless expressly provided otherwise, if any data element is inapplicable, an appropriate statement to that effect shall be made. All information shall be filed with the commissioner of insurance before the first day of March by U.S. Mail, or as provided in Rule 12. Filings should be addressed to: Insurance Commissioner of the State of Louisiana, Box 94214, Baton Rouge, LA 70804-9214.

B. Failure to timely submit this information will lead to penalties as provided in R.S. 22:1457.

Section 6. Categories to be Submitted

A. Each carrier, health maintenance organization or third-party administrator shall submit to the Louisiana Department of Insurance the data elements contained in Section 7 according to the following lines or blocks of their business:

1. group,
2. small group,
3. individual,
4. supplementary,
5. Medicare supplement.

B. For entities that transact more than one of the above lines of business, the data elements in Section 7 should be reported separately according to each line of business.

C. For entities that transact business in both the HMO market and the indemnity market, the two should also be reported separately for each of the data elements in Section 7.

Section 7. Data Elements to be Reported

A. Number of health insurance policies in force as of December 31.

B. Number of fully insured lives (including all participating funding arrangements) including dependents covered as of December 31. Where composite rating utilized, use actuarial assumptions for estimating the number of lives.

C. Direct fully insured premiums (including all participating funding arrangements) as of December 31.

D. All administrative services fees earned as of December 31.

E. Dividends paid or credited on direct business as of December 31.

F. Direct losses incurred during the period from January 1 to December 31. This number is calculated as either the Paid Claims + IBNR, or Paid Claims + Change in Reserves.

G. Number of new health insurance policies written during the period of January 1 to December 31.

H. Net gain or loss in the number of fully insured lives (including all participating funding arrangements) written during the period from January 1 to December 31. Where composite rating utilized, use actuarial assumptions for estimating the number of lives.

I. Average annual premium per life as of December 31. This number should be based on the total direct premiums written divided by the number of insured lives (C./B.).

J. Lowest premium rate charged per life as of December 31.

K. Highest premium rate charged per life as of December 31.

L. Percentage of the number of fully insured lives paying a rate above the average premium per life as of December 31.

M. Indicate the overhead/administrative load (premiums minus claims) for the fully insured block (including all participating funding arrangements) of business as of December 31. This should be calculated as a percentage.

N. Indicate whether there is a minimum percentage of employees required to participate in the groups that your company will consider insuring and if so, what that participating percentage is.

O. Indicate the group sizes which would require individual underwriting of group members based on the companies' underwriting requirements:

- 1. 5 or fewer _____
- 2. 10 or fewer _____
- 3. 15 or fewer _____
- 4. 25 or fewer _____
- 5. 35 or fewer _____
- 6. 50 or fewer _____
- 7. Other (Please Specify) _____
- 8. Do not individually _____

underwrite group applicants _____

P. Please indicate the percentage of insured lives covered under policies with the annual deductible-per-person listed below. Where composite rating utilized, use actuarial assumptions for the number of lives.

- 1. \$ 0 - 100 _____
- 2. 101 - 200 _____
- 3. 201 - 300 _____
- 4. 301 - 500 _____
- 5. 501 - 800 _____
- 6. 801 - 1,000 _____
- 7. More than 1,000 _____
- 8. No deductible used _____

Q. Please indicate the percentage of insured lives covered under policies with coinsurance requirements listed below. Where composite rating utilized, use actuarial assumptions for the number of lives. Please round off to the higher coinsurance if level not given.

- 1. 10% _____
- 2. 20% _____
- 3. 30% _____
- 4. 40% _____
- 5. More than 40% _____
- 6. Do not use coinsurance _____

R. Please indicate the percentage of insured lives covered under policies with lifetime maximum benefit levels listed

below. Where composite rating utilized, use actuarial assumptions for the number of lives.

- 1. \$100,000 - 250,000 _____
- 2. \$251,000 - 500,000 _____
- 3. \$501,000 - 750,000 _____
- 4. \$751,000 - 1,000,000 _____
- 5. More than \$1,000,000 _____
- 6. No lifetime limit _____

S. Please indicate the percentage of insured lives covered under policies with out-of-pocket limits listed below. Where composite rating utilized, use actuarial assumptions for the number of lives.

- 1. \$0 - 250 _____
- 2. \$251 - 500 _____
- 3. \$501 - 1,000 _____
- 4. \$1,001 - 1,500 _____
- 5. More than \$1,500 _____

Section 8. General Provisions

A. Prior to any distribution of the analysis of these data elements as required by R.S. 22:9(1), the data elements and the analysis of such elements shall be reviewed by a qualified actuary.

B. As required by R.S. 22:9(1)(E), the data submitted by carriers shall not be subject to public disclosure and shall be afforded confidentiality by those reviewing the data. Data is only to be released in a composite form so as not to reveal the identity of any single carrier or individual.

A public hearing on this proposed regulation will be held on January 25, 1996 in the Plaza Hearing Room of the Insurance Building at 950 North Fifth Street, Baton Rouge, LA at 10:15 a.m. All interested persons will be afforded an opportunity to make comments.

James H. "Jim" Brown
Commissioner of Insurance

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Health Insurance Data Collection Program**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is not anticipated that adoption of Regulation 59 would result in any implementation costs (savings) to the Department of Insurance; however, should any costs result from the adoption of Regulation 59, such costs would be absorbed by the Department of Insurance within its existing appropriation.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Adoption of Regulation 59 may result in penalties paid to the Department of Insurance; however, there is insufficient data available at this time to determine the extent of those penalties or the impact of such penalties on state or local governmental units. If any additional revenue were collected by the Department of Insurance as a result of the adoption of Regulation 59, that revenue would be deposited in the department's self-generated revenue fund.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is not sufficient data available at this time to determine if there could be any costs and/or economic benefits to the health care insurers or insureds as a result of this proposed regulation.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that adoption of Regulation 59 would have any effect on employment or competition.

Brenda St. Romain
Assistant Commissioner
9512#067

John Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Labor
Office of Workers' Compensation**

Forms (LAC 40:I.105)

Under the authority of the Workers' Compensation Act, R.S. 23:1021 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Labor, Office of Workers' Compensation hereby gives notice that rulemaking procedures have been initiated to amend the Office of Workers' Compensation rules, LAC 40:I.105, Chapter 1, General Provisions.

This rule provides for the forms prescribed for use as required by the Workers' Compensation Act and the Workers' Compensation rules.

In addition to the above rule amendment, existing rule text in §§105, 107, and 109 is being repromulgated in new §§1733, 1735, and 1737, respectively.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Chapter 1. General Provisions

§105. Forms (formerly "Annual Reports")

The following forms are prescribed for use as required by the Workers' Compensation Act and these Rules:

1. Form LDOL-WC-1007, Employer's Report of Occupational Injury or Disease, shall be filed with the Office of Workers' Compensation and with the employer's insurer when required by R.S. 23:1306, or within seven days of the first mediation conference of a disputed claim for benefits, whichever comes first. Failure to file this form as required may be penalized pursuant to LAC 40:I.109.

2. Form LDOL-WC-1020, Employee's Monthly Report of Earnings, shall be filed with the employer's insurer by employees who receive workers' compensation indemnity disability benefits within 30 days of their job-related injury, and every 30 days thereafter as long as they receive workers' compensation indemnity disability benefits. This form does not have to be filed by employees who only have received

medical benefits. Failure to file this form as required may result in a suspension of benefits.

3. a. Form LDOL-WC-1025, Employee and Employer Certificate of Compliance, shall be filed with the employer's insurer after form LDOL-WC-1007 has been filed with the Office of Workers' Compensation. Employers who fail to file this form as required are subject to a penalty of \$500, payable to the insurer.

b. Form LDOL-WC-1025, Employee and Employer Certificate of Compliance, shall be filed with the employer's insurer by employees within 14 days of their receipt of the form, after form LDOL-WC-1007 has been filed with the Office of Workers' Compensation. Employees who fail to file this form as required may have their benefits suspended; after this form is filed, employees are entitled to all suspended benefits, if otherwise eligible for benefits.

4. Form LDOL-WC-1026, Employee's Quarterly Report of Earnings, shall be filed with the employer's insurer by employees within 14 days of receipt of the form. This form does not have to be filed by employees who only have received medical benefits, or by employees who have timely filed all necessary LDOL-WC-1020 forms. Employees who fail to file this form as required may have their benefits suspended; after this form is filed, employees are entitled to all suspended benefits, if otherwise eligible for benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1291.

HISTORICAL NOTE: Promulgated by Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 11:776 (August, 1985), repealed and repromulgated by the Department of Employment and Training, LR 17:358 (April, 1991), amended by Department of Labor, Office of Workers' Compensation, LR 22:

§107. Assessments (see new §1735)

Repealed. (Reserved.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1291.

HISTORICAL NOTE: Promulgated by Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 11:776 (August, 1985), repealed and repromulgated by the Department of Employment and Training, LR 17:358 (April, 1991), repealed by Department of Labor, Office of Workers' Compensation, LR 22:

§109. Compliance Penalty (see new §1737)

Repealed. (See Emergency Rule Section, December, 1995 issue of the *Louisiana Register*.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1291.

HISTORICAL NOTE: Promulgated by Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 11:776 (August, 1985), repealed and repromulgated by the Department of Employment and Training, LR 17:358 (April, 1991), repealed by Department of Labor, Office of Workers' Compensation, LR 22:

NOTE: The following Chapter number is new and the new sections in it contain existing rule text previously located in Chapter 1.

Chapter 17. Fiscal Responsibility Unit

§1733. Annual Reports (formerly promulgated in Part I, §105)

All carriers writing workers' compensation insurance and all self-insured employers shall submit to the office, by April 30 of each year, an annual report on Form LDOL-WC-1000 showing the amount of workers' compensation benefits paid in the previous calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1291.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, LR 22:

§1735. Assessments (formerly promulgated in Part I, §107)

The annual report will be used by the director in determining an assessment for the administration of workers' compensation. The assessment shall be paid into the Office of Workers' Compensation Administrative Fund within 30 days from the date notice is served upon such carrier. If such amount is not paid within such period there may be assessed, for each 30 days the amount assessed remains unpaid, a civil penalty equal to 20 percent of the amount unpaid, which shall be due and collected at the same time as the unpaid part of the amount assessed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1291.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, LR 22:

§1737. Compliance Penalty (formerly promulgated in Part I, §109)

If any carrier fails to pay the amount assessed against it within 60 days from the time such notice is served upon it, the commissioner of insurance, upon being advised by the director, may suspend or revoke the authorization to insure compensation in accordance with the procedures of the insurance code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1291.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, LR 22:

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than 4:15 p.m., January 20, 1996 to O. Larry Wilson, Assistant Secretary, Office of Workers' Compensation, Box 94040, Baton Rouge, LA 70804-9040 or 1001 North 23rd Street, Baton Rouge, LA 70802 or to FAX number (504)342-5665.

O. Larry Wilson
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Forms (LAC 40:I.105)**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no costs or savings accruing to state or local governmental units as a result of implementing these rules.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is a potential increase in revenue collection of the Office of Workers' Compensation as a result of penalties to be paid by parties failing to comply with the rules and regulations of the Office of Workers' Compensation. It is not possible to estimate the scope of these revenues at this time.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

These rules facilitate the administration of the Office of Workers' Compensation in fulfilling its various functions. The rules will benefit the public and more particularly insurers and self-insurers by encouraging others similarly situated to comply with the rules and regulations thus reducing the cost of administering the system.

V. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

These rules are designed to facilitate the administration of the Office of Workers' Compensation and as such will not directly affect employment or competition.

O. Larry Wilson
Assistant Secretary
9512#050

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Labor
Office of Workers' Compensation**

Fraud (LAC 40:I.Chapter 19)

Under the authority of the Workers' Compensation Act, particularly R.S. 23:1021 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Labor, Office of Workers' Compensation hereby gives notice that rulemaking procedures have been initiated to amend the Office of Workers' Compensation rules, LAC 40:I.Chapter 19.

The changes to these rules will replace the current fraud section of the Office of Workers' Compensation rules in their entirety. These rules are being amended in order to implement the provisions of Act 368 of 1995.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Chapter 19. Fraud

§1901. Forms

The following forms are prescribed for use pursuant to R.S. 23:1208:

1. LDOL-WC-1025 Employee's and Employer's Certificate of Compliance;
2. LDOL-WC-1026 Employee's Quarterly Report of Earnings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1208 and 23:1291.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:359 (April, 1991), amended by the Department of Labor, Office of Workers' Compensation, LR 22:

§1903. Certification; Report

A. For an accident occurring on or after April 1, 1996, the employee and employer shall certify their compliance with the Louisiana Workers' Compensation Act by filing with their insurer form LDOL-WC-1025, Employee's and Employer's Certificate of Compliance.

B.1. Whenever an employee receives workers' compensation indemnity disability benefits for more than 30 days, the employee shall report his other earnings to his employer's insurer quarterly on form LDOL-WC-1026, Employee's Quarterly Report of Earnings.

2. The requirements of paragraph B.1 of this rule are waived whenever an employee has timely filed all necessary LDOL-WC-1020 forms, or only has received medical benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1208 and 23:1291.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:359 (April, 1991), amended by the Department of Labor, Office of Workers' Compensation, LR 22:

§1905. Penalty; Hearing; Appeal

A. Any person violating the provisions of R.S. 23:1208 may be assessed civil penalties by the director of not less than \$500 nor more than \$5000.

B. Penalties may be imposed pursuant to this rule after a investigatory hearing before the director or his designee.

C. A person may appeal any penalty imposed pursuant to this rule by filing form LDOL-WC-1008, Disputed Claim for Compensation, in the district where the person is located or in Baton Rouge, Louisiana. All such appeals shall be de novo.

Any penalty imposed pursuant to this rule becomes final and may be pursued for collection unless such an appeal is filed within 30 days of the notice of penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1208 and 23:1291(1)(5).

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:359 (April, 1991), amended by the Department of Labor, Office of Workers' Compensation, LR 22:

§1907. Notice of Penalty; Filing

The director shall notify the employee and employer of any civil penalty imposed for violation of R.S. 23:1208. In addition, the director shall file the notice of penalty in the record of the disputed claim for benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1208 and 23:1291.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:359 (April, 1991), amended by the Department of Labor, Office of Workers' Compensation, LR 22:

§1909. Commencement of Hearing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1208 and 23:1291.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:359 (April, 1991), repealed by the Department of Labor, Office of Workers' Compensation, LR 22:

§1911. Fact Finding Determination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1208 and 23:1291.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:359 (April, 1991), repealed by the Department of Labor, Office of Workers' Compensation, LR 22:

All interested persons are invited to submit written comments on the proposed regulations. Such comments

should be submitted no later than 4:15 p.m., January 20, 1996 to O. Larry Wilson, Assistant Secretary, Office of Workers' Compensation, Box 94040, Baton Rouge, LA 70804-9040 or 1001 North 23rd Street, Baton Rouge, LA 70802 or to FAX number (504)342-5665.

O. Larry Wilson
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Fraud

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no costs or savings accruing to state or local governmental units as a result of implementing these rules.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is a potential increase in revenue collection of the Office of Workers' Compensation as a result of penalties to be paid by parties failing to comply with the rules and regulations of the Office of Workers' Compensation. It is not possible to estimate the scope of these revenues at this time.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

These rules facilitate the administration of the Office of Workers' Compensation in fulfilling its various functions. The rules will benefit the public and more particularly insurers and self-insurers by encouraging others similarly situated to comply with the rules and regulations thus reducing the cost of administering the system.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

These rules are designed to facilitate the administration of the Office of Workers' Compensation and as such will not directly affect employment or competition.

O. Larry Wilson
Assistant Secretary
9512#051

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Natural Resources
Office of the Secretary**

**Oyster Lease Damage Evaluation Board
Administration (LAC 43:I.Chapters 37-41)**

In accordance with the laws of the State of Louisiana, and with reference to the provisions of Title 56 of the Louisiana Revised Statutes of 1950, a public hearing will be held in the Mineral Board Hearing Room, First Floor, State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA at 9 a.m., January 30, 1996.

At such hearing the secretary of the Department of Natural Resources will consider evidence relative to the proposed rules governing the administration of the Oyster Lease

Damage Evaluation Board. The proposed amendments represent the views of the secretary as of this date; however, the secretary reserves the right to make additions or deletions prior to final adoption.

Title 43

NATURAL RESOURCES

Part I. Office of the Secretary

Subpart 3. Administration of the Oyster Lease Damage Evaluation Board

Chapter 37. Definitions

§3701. Definitions

As used in the promulgation of these rules and regulations, unless the context requires otherwise, the terms set forth herein shall have the following meanings:

Additional Damage—any damage caused to an oyster lease outside of the estimated damages during the scope of the proposed project.

Biological Test Data—surveys of oyster beds and grounds by a certified biologist to determine the quality, condition, and value of oyster beds and grounds.

Biologist—the certified biologist who performs or supervises the biological test data surveys.

Board—the Oyster Lease Damage Evaluation Board.

Department—the Department of Natural Resources.

Leaseholder—an owner of an oyster lease granted by the Department of Wildlife and Fisheries.

Mineral Activity—exploration (such as, but not limited to all seismic operations), production, transportation (of equipment or product), and any other activity associated with the production of oil and gas.

Owner—an owner or operator of a mineral activity.

Proposed Project—the activity which the owner intends to pursue in the area of existing oyster leases.

Secretary—the secretary of the Department of Natural Resources, or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

Chapter 39. Administration

§3901. Oyster Lease Damage Evaluation Board;

Membership

A. The Oyster Lease Damage Evaluation Board shall be established according to law to arbitrate disputes on damages caused to oyster leases due to mineral activities.

B. The board shall consist of the secretary of the Department of Natural Resources, the assistant secretary of the office of conservation, a biologist from the office of fisheries in the Department of Wildlife and Fisheries, and a member of the Louisiana Oyster Task Force.

C. The secretary of the Department of Natural Resources or his designee, the representative from the Office of Fisheries, the representative from the Oyster Task Force, and the assistant secretary of the Office of Conservation shall review the biological test data of oyster leases and by a majority vote shall make the final determination of damages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§3903. Powers and Duties of the Secretary

A. The secretary shall be responsible for the daily operations of the board which shall be performed by the staff under the supervision, direction, and procedures as established by the secretary.

B. The secretary shall set the schedule for all meetings of the board and shall provide tentative agendas which shall be mailed or otherwise made available to each member and all interested parties at least six days prior to each meeting.

C. The secretary may call emergency meetings as warranted to expedite the business of the board by providing at least three days notice to each member and all interested parties. In the event of an emergency, notice may be made by telephone.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§3905. Powers and Duties of the Members of the Board

The secretary of the Department of Natural Resources or his designee, the designee of the Department of Wildlife and Fisheries, the Louisiana Oyster Task Force, and the assistant secretary of the Office of Conservation shall attend all meetings as called by the secretary and shall review biological survey and damage evaluation reports, make inquiries as to the proposed operations affecting an oyster lease, discuss the scope of the evaluation, and by a majority vote make the final determination of damages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§3907. Meetings of the Board

The board shall meet once every month on the second Wednesday at 2 p.m., or as needed, to be called by the secretary of the Department of Natural Resources at his discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§3909. Business of the Board

The board shall meet to hold hearings on damage evaluations, to render decisions on final damages, to arbitrate settlement agreements, to entertain motions for rehearing, and for any other purpose which involves determination of damages as provided by law. All hearings shall be made on the record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§3911. Operation of the Board

The daily operations of the board shall be handled by the staff, under the direction and supervision of the secretary, for the purpose of receiving applications, receiving and preparing biological test data for the boards review, scheduling meetings, notifying parties of hearings and any other administrative business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§3913. Administrative Fees

A. Every individual, corporation, or other entity filing an application for review with the board shall submit a fee of \$500 per proposed project, with the application. The fee shall cover administrative costs and the cost of making the record of all hearings by a certified court reporter.

B. Anyone filing an application for rehearing shall submit a fee of \$300 with the motion to cover the cost of the hearing and the taking of the record thereof.

C. In the event of judicial review by the district court the party filing suit shall pay the cost of transcribing the record to be transmitted to the court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

Chapter 41. Damage Evaluation Process

§4101. Prerequisite to Filing Application

A. Before an owner may file an application for review to the board a reasonable effort shall be made by the owner to negotiate for a release of damages from the leaseholder under the following conditions:

1. The owner shall make a written request, by certified mail, mailed to the leaseholder's address of record recorded with the Department of Wildlife and Fisheries, setting forth the proposed mineral activity, asking for a release to enter, or conduct activity near an oyster lease, and making a monetary offer and any mitigation which may be offered to the leaseholder to settle damages which may be incurred by the leasehold due to the proposed mineral activity.

2. The description of the proposed mineral activity in the owner's written request to the leaseholder shall set forth the following:

- a. the likely date of the commencement of the mineral activity;
- b. the likely date of the termination of the mineral activity;
- c. in lieu of Subparagraphs a and b above, the likely duration of the mineral activity;
- d. the likely effects of the proposed mineral activity;
- e. the likely damages which will result from the proposed mineral activity;
- f. the geographical area where the proposed mineral activity will take place;
- g. the number, dimensions, draft, and particulars of vessels likely to be involved in the proposed mineral activity;
- h. the number and types of equipment to be used in the proposed mineral activity;
- i. the intended method of excavation and disposition of sediment, if any; and
- j. the amount of excavation if any.

3. The leaseholders have 30 days from receipt of the written request to respond in writing by certified mail, granting the release to enter the leasehold to perform the proposed mineral activity and accepting the offer for damages which may be sustained due to the proposed activity.

4. The leaseholders written response to the owners offer, if rejected, or his failure to respond in writing within 30

days shall be cause to submit the matter to the board for hearing.

B. Notwithstanding any other section of this Subpart, if an owner herein wishes to pursue relief under this Subpart he shall not commence the proposed mineral activity until such time as authorized by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§4103. Applications to the Board for Review

A. Upon application to the board, on a form provided by the department, the secretary shall fix a return date, of 60 days from the date the application is filed, for the biological survey and damage evaluation report which shall be submitted to the board for its review.

B. Upon receipt of notice of the return date, the parties shall have the right and opportunity to forward to the board any evidence, including documentation which they wish to provide to the biologist to review in connection with the generation of the biologist's report. A copy of any such evidence or documentation shall be contemporaneously forwarded to the other party by certified mail.

C. The application shall contain a minimum of the following information:

- 1. The name, address, telephone and FAX number of the owner.
- 2. The name, address, telephone and FAX number of the leaseholder.
- 3. The name, address, telephone, FAX number and certificate number of the biologist hired to perform the biological survey.
- 4. The description and identifying number of the mineral lease, if applicable.
- 5. The scope of the proposed mineral activity as it affects the oyster lease in question.
- 6. The identifying number, survey plat or description of the oyster lease which shall be provided to the owner by the leaseholder, or by the Department of Wildlife and Fisheries, if the leaseholder fails or refuses to submit the information to the owner.
- 7. Any written offers made by the owner and the written response to the offer by the leaseholder. This information shall not be considered by the secretary, the board, the biologist, or any court for the determination of damages. This information shall only be used to form part of the data base established by the board.

D.1. Upon receipt of a completed application the board shall mail a copy to the leaseholder and/or the owner with a copy of the order showing the return date for the completed survey and damage evaluation report.

2. Upon receipt of the completed application from the board, the leaseholder shall disclose all parties who have an interest in the lease, or the oysters, cultch, or reefs located thereon, including, but not limited to, sublessees, transferees, operators, corporations, shareholders and/or any other parties deriving income therefrom.

3. Every settlement certified in accordance with these regulations shall contain an indemnification provision in favor of the owner requiring the leaseholder to indemnify the owner

for all claims relating to damages for the proposed project which may be made on behalf of any parties holding an interest in the lease as is set forth in §4103.2 above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§4105. Biological Test Data; Biologist; Reports

A. Biological test data shall consist of a review of the scope of the proposed mineral activity as it affects the oyster leasehold noted in the application; a review of the production records of the oyster leasehold if available shall be provided to the biologist by the leaseholder; an onsite inspection of the oyster lease beds and grounds to determine the present condition and productivity of the leasehold; an evaluation of the leasehold; and an estimate of the damages which may be caused by the mineral activity to the leasehold accompanied by supporting documentation.

B.1. Biologists who are to be employed by the board shall meet the following minimum qualification and shall have submitted same to the board and have been placed on the approved list of biologists by the secretary:

a. shall hold a master's degree or above in a biological science and have been qualified as an expert relative to oyster biology in at least one Louisiana State or Federal District Court; or,

b. shall have been certified by the board pursuant to §4106 to have equivalent qualifications to serve as a biologist under these provisions.

2. To be placed on the approved list of biologist by the board an interested person shall submit to the secretary his résumé, certified copies of degrees, expert qualifications, and any other documentation to support his claim accompanied by a processing fee of \$200.

3. The board shall consider all applications for approval by biologist and may require a biologist to be interviewed by the board at its next regular meeting following submission of the application for approval. If the applicant meets the minimum qualifications he shall be approved by the board within 30 days of receipt of his application unless and until decertified by the board for cause..

C. Biological test data and evaluation reports shall be prepared incorporating a minimum established criteria to be used uniformly in all biological test data surveys and evaluations of oyster leaseholds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§4106. Alternative Certification of Biologist

A. An individual who does not have the prerequisite qualifications set forth in §4105.B.1.a may apply to the board for alternative certification to serve as a biologist.

B. An individual who seeks alternative certification shall submit a written application setting forth the criteria which he believes support his qualifications as a biologist. Such criteria shall include the following: educational degrees; work experience, familiarity with oyster production; and knowledge of marine science.

C. An individual seeking alternative certification shall submit his application 30 days prior to the next meeting of the board and shall submit a processing fee of \$200 to cover the cost of transcribing the hearing related to the applicant's certification.

D. The board shall make its decision as to the alternative certification of the applicant within 10 days of the hearing on certification. Alternative certification shall only occur by unanimous vote of the board.

E. If certified, the applicant shall be considered approved pursuant to §4105.B.3 unless and until decertified by the board for cause.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§4107. Minimum Standard to Perform Oyster Lease Damage Evaluation

A. There shall be a minimum standard applied in preparation of all information to be gathered with respect to the interest of the owner and the oyster leaseholder including but not limited to the following:

1. Identify and describe the waterbottom and the water quality where the oyster lease is located (i.e., bay, bayou, canal, Department of Health and Hospital open and closed seasons, and historical salinity records, cultch present, live oysters present, oyster predators present, proximity to public seed ground, proximity to other leases, and proximity to shore facilities). The biologist shall receive confirmation by a professional land surveyor of the accuracy of the geographical information on file with the Department of Wildlife and Fisheries related to the oyster lease in question including verification of the location of the lease through a GPS survey.

2. Determine the lease number, the total acreage of the lease, the age of the lease(as recorded in the Department of Wildlife and Fisheries), any transfers and the conveyance price.

3. Determine bottom types by poling or other accepted methods of the industry. Calculate and locate the actual reef acreage, producing acreage and/or acreage capable of producing within the oyster lease.

4. Determine the living oyster biomass (standing crops, expressed as sacks), mortality, and quality of the reef using the meter squared frame method or equivalent thereof to quantify and qualify the total potential oyster production on the reef. The determination shall also include water current, configuration and dimension of lease, harvesting methods, and water depth.

5. Review production records if available of the oyster lease for a minimum of five years or the life of the reef if less than five years.

6. Review any other pertinent information (i.e., previous oilfield activities, fresh water diversions, etc.) which may be applicable to the specific mineral activity on the reef involved to determine whether the lease is capable of production or will be out of production for a specific duration of time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§4108. Biologist Appointed by the Board; Rotating List; Payment

A. Upon receipt of application by the board of a claim for review a biologist shall be appointed from a list of approved biologists under the following conditions:

1. As they are approved by the board every biologist shall be placed on a list in order of their approval. the board shall appoint biologist from the list in rotation beginning with the first through the last in numerical order before

reappointing the same biologist. If the biologist who is in line for appointment cannot immediately undertake the task so appointed the next biologist on the list shall receive the appointment.

2. The fee for the biologist shall be assessed by the board to the owner of the proposed mineral activity. Payment of the assessment shall be due upon receipt by the owner and shall be payable to the board.

B. All information related to the list of approved biologists, including the identity of the next available biologist in the rotation, shall be kept strictly confidential.

C. In no event, shall the same biologist be used in successive proceedings before the board involving either the same owner and/or the same leaseholder.

D. Any biologist appointed by the board shall disclose the identities of those parties for whom he is presently working in unrelated matters, and if the biologist is presently working for the owner or the leaseholder in an unrelated matter he shall recuse himself from the appointment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§4109. Damages

A. Damages to be considered by the biologist in his initial estimate shall be those which are the probable result of the proposed project, (i.e., dredging, seismic surveys, rig moves, pipeline installations, and traversing the leasehold for purposes of servicing a mineral lease). Damages to the leasehold interest shall include but not be limited to the difference in the value of the leasehold interest before and after the project; the loss of seed oysters; and the loss of anticipated income from production.

B. Additional damages which shall be considered by the biologist after the mineral activity is completed, shall include but not be limited to any additional damages to the leasehold interest caused by collision/allision, siltation, and pollution which may result during the course of the proposed project. These damages shall be considered by the board as a part of the proposed project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§4110. Discovery; Evidence at Hearing

A. The parties may conduct discovery in all manners as provided by law in civil actions.

B. Evidence at hearings before the board shall be conducted in accordance with the Louisiana Code of Evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§4111. Damage Awards; Escrow; Permission to Begin Operations; Receipt and Release by Leaseholder

A.1. Upon receipt by the board of the return of five copies of the biological test data and evaluation report from the biologist a date shall be fixed for a hearing and ruling on damages before the board and notice shall be sent by the

secretary by certified mail to all members of the board, the owner, and the leaseholder. Notice shall be sent no later than 10 days prior to the hearing.

2. All hearings shall be fixed no later than 30 days after the return date as set forth in §4103.D.

B. A copy of the biological test data and evaluation report accompanied by all supporting documentation shall be transmitted to each member of the board who shall immediately review the report, and, if necessary make inquiries to the staff of the board to request additional information or clarification.

C. A copy of the biological test data and evaluation report accompanied by all supporting documentation shall be transmitted to the owner and the leaseholder for their review with the notice fixing the hearing date.

D. At the hearing the board shall afford an opportunity to the owner and the leaseholder or their representative to be heard. After the hearing is complete and the biological test data and evaluation report has been reviewed, estimated damages shall be awarded.

E. The amount of estimated damages shall be immediately remitted to the board by the owner to be escrowed in the state treasury on behalf of the leaseholder.

F. Upon receipt of the estimated damages the secretary shall authorize the owner to begin operations upon the leasehold.

G. If the leaseholder elects to accept the estimated damages as full and final compensation he shall sign a receipt and release to the owner and upon submittal of same to the board the damages in escrow shall be tendered to the leaseholder by the secretary subject to reimbursement to the board on behalf of the owner if the final damages are determined to be less than the estimated damages.

H. If the leaseholder does not elect to accept the estimated damage award in escrow, then, upon completion of the mineral activity the board shall have a final biological test data and evaluation report performed by the same biologist, at the owner's expense to be returned within 30 days of completion of the mineral activity. Upon receipt of the final report the secretary shall fix a hearing within 30 days to determine final damages. If any additional damages are awarded the owner shall remit that amount to the board within five days and the secretary shall pay all sums awarded to the leaseholder as full and final damages. If the final damages are determined to be less than the estimated damages, the excess shall be returned to the owner by the secretary.

I. If the leaseholder has accepted the estimated damages, but, within 30 days after notification of completion of the proposed project by the owner, by certified mail, he believes that additional damages have occurred he may file an application with the board, at his own expense and the board shall employ the same biologist to perform a final biological test data and evaluation report and assess the costs of the biologist to the leaseholder. In this event the leaseholder shall file an addendum to the original application which shall have a return date fixed by the secretary as was done in the original filing. After the return of the final biological test data and evaluation report the secretary shall fix a hearing to determine final damages. If any additional damages are awarded the

owner shall remit that amount to the board within five days and the secretary shall pay all sums awarded to the leaseholder as full and final damages. If the final damages are determined to be less than the estimated damages the leaseholder shall remit the excess amount to the board within five days and the secretary shall refund the excess funds to the owner.

J. For purposes of these rules, completion of a mineral activity is presumed to be short term. Many activities such as seismic operations, movement of a vessel, or laying a pipeline over and through an oyster lease would be completed within several months. If a channel is dredged for purposes of moving a rig to a mineral lease, completion shall be considered as the point in time that the well is completed and the rig is moved out, not to exceed six months from the date that the activity upon the oyster lease commences. Within one month of the completion of the proposed project the final biological test data and evaluation report shall be ordered. The biological test data and evaluation report shall be completed within 30 days from the date it is assigned. Once final damages are awarded the matter may be subject to judicial review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§4113. Liability

A. The purpose of Act 1304 of the Regular Session of the Legislature of 1995 is to establish actual damages to oyster leases caused by mineral activities over and on the oyster beds and grounds, therefore, the liability of the owner to the leaseholder shall not be diminished or expanded by the act.

B. The secretary, the assistant secretary of the Office of Conservation, the biologist from the Office of Fisheries in the Department of Wildlife and Fisheries, the member of the Louisiana Oyster Task Force, and the staff of the Oyster Lease Damage Evaluation Board shall not be liable in any manner to the leaseholder, the owner their successors or assigns in relation to their functions in these matters.

C. The biologist employed to obtain biological test data from a leasehold shall not be subject to any liability to the leaseholder, nor shall he be liable for trespass if he has first attempted to get permission of the leaseholder to enter the lease. If the biologist has contacted the leaseholder for permission and the leaseholder unreasonably withholds permission the biologist may enter the leasehold to perform the survey utilizing written authority from the secretary without obtaining said permission from the leaseholder. If any damage is caused to the oyster lease by the biologist, employing the standard of care within the industry, during the course and scope of the biological survey, those damages shall be attributable to the owner as part of the mineral activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§4114. Prescription

The filing of the application with the board shall suspend the time within which suit must be instituted by the leaseholder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§4115. Hearing Notice; Records

A. The secretary shall fix the time and place for the hearings. All hearings shall be held in a convenient place, accessible to the public, in the City of Baton Rouge.

B. Any hearing may for valid cause be continued by the secretary or the presiding officer.

C. Owners and leaseholders shall have the right, but shall not be required, to be represented by counsel. Any such counsel must be duly licensed to practice law in the state of Louisiana.

D. In a hearing of any matter before the board, all parties who do not waive their rights shall be afforded an opportunity for hearing after reasonable notice.

E. The notice shall include:

1. a statement of the time, place, and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular sections of the statutes and rules involved;
4. a brief statement of the matters to come before the board;
5. in the event of multiple hearings, an agenda of the matters to be heard and the order of the hearings;
6. the date on which any person who may object to the matters asserted must present to the secretary a written objection. A written objection shall contain a brief statement of the basis for the objection.

F. Opportunity shall be afforded all parties to timely respond and present evidence on all issues of fact, and argument on all issues of law and policy involved, and to conduct such cross-examination as may be required for a full and true disclosure of all facts.

G. Informal disposition may be made, at any time, of any case fixed for hearing of adjudication by stipulation, agreed settlement, consent order or default.

H. The record of hearings shall include:

1. all pleadings, motions and intermediate rulings;
2. all evidence received or considered including testimony, exhibits, and supporting documentation;
3. a statement of matters officially noticed, except matters so obvious that statement of them would serve no useful purpose;
4. any offers of proof, objections and rulings thereon;
5. proposed findings, conclusions and exceptions thereto;
6. any decision, opinion or report by the secretary.

I. The secretary shall make a full transcript of all proceedings and shall, at the request of any party or person, furnish said party with a copy of the transcript or any part thereof upon payment of the cost thereof.

J. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§4117. Decisions and Orders

Any final decision or order shall be in writing. Owners and leaseholders shall be notified by certified mail of any decision or order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§4119. Rehearings

A. A decision or order in these proceedings shall be subject to rehearing, reopening or reconsideration by the board within 10 days from the date of its entry. The grounds for such action shall be either that:

1. the decision or order is clearly contrary to the rules and the evidence presented therein;
2. the party has discovered, since the hearing, evidence important to the issues which he could not with due diligence have obtained before or during the hearing;
3. there is a showing that issues not previously considered ought to be examined in order to dispose of the matter.

B. The application of a party for rehearing, reconsideration or review, and the order of the board, if granting it, shall set forth the grounds which justify such action. The rehearing, reconsideration or review shall be confined to those grounds upon which the rehearing, reconsideration or review was ordered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

§4123. Judicial Review of Adjudication

A. Any person who is aggrieved by a final decision or order in these proceedings is entitled to judicial review thereof whether or not he has applied to the secretary for rehearing herein.

B. Proceedings for judicial review and damages against the owner may be instituted by filing a petition in the Civil District Court for the parish in which the immovable oyster lease is located, within 30 days after the mailing of notice of the final decision by the secretary, or if a rehearing is requested, within 30 days of denial of rehearing or the final decision thereon. Copies of the petition shall be served upon the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

Comments and views regarding the proposed rule should be directed in written form to be received not later than 5 p.m., January 26, 1995. Oral comments will be received at the hearing but should be brief and not cover the entire matters contained in the written comments. If accommodations are required under the Americans with Disabilities Act, please contact the Office of the Secretary at (504) 342-4500, within 10 working days of the hearing date. Comments should be directed to: Jack McClanahan, Secretary, Box 94396, Baton Rouge, LA 70804-4396.

Jack McClanahan
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Oyster Lease Damage Evaluation Board

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Implementation cost to the state is \$42,750 for the first year 1995/96. There will be no implementation cost or savings to local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
While impossible to qualify, there is a distinct possibility that revenues from Severance Tax and Royalty will increase as the purpose of these rules are to increase oil and gas exploration and other activity.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Estimated additional cost to producers of oil and gas is:
Fees assessed in FY 95/96 \$42,750
Fees assessed in FY 96/97 \$82,500
Fees assessed in FY 97/98 \$82,500
There could be some savings in damage payments by oil and gas producers.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect on competition. There may be increased employment of biologist in the private sector to perform biological surveys.

Robert D. Harper
Undersecretary
9512#053

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Social Services Office of Family Support

Delinquent Child Support Collection by Revenue and
Taxation Department (LAC 67:III.2543)

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 4, Support Enforcement Services (SES), the child support enforcement program.

Pursuant to Act 894 of the Regular Session of the 1995 Louisiana Legislature and to further improve enforcement of child support orders, SES will refer certain delinquent claims to the Department of Revenue and Taxation for assistance in collection. In particular, the rule may assist SES with regard to delinquent obligors who are self-employed. The rule will establish the agency's role in this referral process.

Title 67
SOCIAL SERVICES

Part III. Office of Family Support

Subpart 4. Support Enforcement Services

Chapter 25. Support Enforcement

Subchapter M. Cooperation with Other State Agency
§2543. Department of Revenue and Taxation

A. Support Enforcement Services may refer support cases to the Department of Revenue and Taxation which can use any means available under law to collect delinquent child support payments. SES will provide to the obligor a 30-day advance notice prior to referral.

B. Criteria for referral include cases in which the obligor is not making regular child support payments at least equal to the monthly obligation; income assignment cannot be used; the obligor is delinquent \$1,000 or more; and there is an indication that the obligor may have assets which could be seized to pay the delinquency.

C. The Department of Revenue will refer information to SES when an obligor indicates that collection would result in undue hardship to the health and welfare of his family. SES will review the case and render a decision on continuance within 45 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:236.9.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 22:

Interested persons may submit written comments within 30 days to: Howard L. Prejean, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, LA 70804-4065. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on January 25, 1996 in the Second Floor Auditorium, 755 Third Street, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (504) 342-4120 (Voice and TDD).

Gloria Bryant-Banks
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Delinquent Child Support Collection by
Department of Revenue and Taxation**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
- This agency rule will result in minimal costs to this agency and SES does expect savings if collection is successful. The Department of Revenue and Taxation (DRT) will have increased costs as that agency's records, resources, and authority will be utilized in the collection process. However, since SES has previously been unable to pursue collection on

these cases, and DRT has not previously sought to take action in these matters, projection of costs and savings would be purely speculative.

- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
- Since this is a new collection method, there is no data on which any projection could be based, but state government should have an increase in collection of child support which increases federal incentive dollars. There will be no direct effect on revenue collections of local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
- Increased collections result in benefits (increased child support payments) to children and their parents or custodians.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
- No effect anticipated.

Howard L. Prejean
Assistant Secretary
9512#046

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Social Services
Office of Family Support**

Uniform Interstate Family Support Act
(LAC 67:III.2524)

The Department of Social Services, Office of Family Support, proposes to amend the LAC 67:III.2524, Support Enforcement Services (SES), the child support enforcement program.

Chapter III of 45 CFR requires that states have laws for the interstate establishment and enforcement of child support obligations. Since its inception SES has operated under the judicial rules of the Uniform Reciprocal Enforcement of Support Act (URESA) as recommended by the governing federal agency. An improved version of this interstate agreement has been developed, and it is the Uniform Interstate Family Support Act.

Therefore, pursuant to Chapter I of Title XIII of the Children's Code, Articles 1301.1 through 1308.2 as amended by Act 251 of the Regular Session of the 1995 Louisiana Legislature, the agency will adopt the Uniform Interstate Family Support Act.

Title 67
SOCIAL SERVICES

Part III. Office of Family Support

Subpart 4. Support Enforcement Services

Chapter 25. Support Enforcement

Subchapter F. Cooperation with Other States
§2524. Uniform Interstate Family Support Act

Support Enforcement Services will establish, modify and enforce interstate child support obligations under the provisions of the Uniform Interstate Family Support Act (UIFSA).

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 302.36, 303.7, and LSA-Ch.C. art. 1301-1308.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 22:

Interested persons may submit written comments within 30 days to: Howard L. Prejean, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, LA 70804-4065. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on January 25, 1996 in the Second Floor Auditorium, 755 Third Street, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (504) 342-4120 (Voice and TDD).

Gloria Bryant-Banks
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Uniform Interstate Family Support Act

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This rule change will require minimal implementation costs for FY 95/96 for SES policy and forms revisions. Since UIFSA will replace an existent plan, the agency anticipates no new ongoing costs. Increased collections should result in savings to the state because the judicial process of UIFSA is regarded as "improved." There should be minimal effect on local governmental units. Although there are differences in the manner of processing cases under UIFSA, district attorneys and courts should have no change in the numbers of cases handled.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The rule is expected to further improve interstate collection of child support and this increases revenues for state government and those district attorneys with whom the agency maintains contracts providing incentives for collection.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The child(ren) for whom child support has been ordered and custodial parent(s) would benefit from improved collection. There is no effect on any nongovernmental group.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect.

Howard L. Prejean
Assistant Secretary
9512#045

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

**Department of Transportation and Development
Highways/Engineering**

**Permits for Rural Water Districts
(LAC 70:III.Chapter 21)**

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Transportation and Development intends to promulgate a rule entitled "Permit Regulations for Rural Water Districts", in accordance with Act 1075 of the 1995 Session of the Louisiana Legislature.

Title 70

**DEPARTMENT OF TRANSPORTATION AND
DEVELOPMENT**

Part III. Highways/Engineering

Chapter 21. Permits for Rural Water Districts

§2101. Exemptions

All parish and municipal facilities are exempt from payment of annual permit fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:381 (E).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 22:

§2103. Expense Reimbursement

The Department of Transportation and Development shall reimburse any reasonable expenses incurred by the rural water districts during an inspection and issue permits insofar as funding for such expense is available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:381(E).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 22:

§2105. Inspection Fee Reimbursement

Rural water districts shall comply with the following regulations if inspection fees are to be reimbursed:

1. A cost estimate per unit break-down shall accompany each permit request. The minimum cost reimbursable estimate shall be one inspector-hour.

2. The rural water district shall notify DOTD within 72 hours of completing work, and DOTD shall arrange for a final inspection. Failure to notify DOTD within the time limit specified shall relieve DOTD of any responsibility for reimbursement of inspection fees.

3. The rural water district shall submit the detailed invoice to DOTD within one week of the final inspection.

4. Upon receipt of the above information, DOTD shall schedule an audit of the rural water district's records. Upon completion of audit, all verifiable inspection expenses shall be paid by DOTD. Any expenses which cannot be verified by the DOTD auditor will not be approved for reimbursement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:381(E).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 22:

§2107. Fees Covering Expenses

Reasonable inspection fees include one rural water district representative for the on-site inspection by DOTD, and other expenses incurred as a result of DOTD requests, such as surveying, excavating, probing, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:381 (E).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 22:

§2109. Expenses not Reimbursed

A. DOTD shall not reimburse expenses associated with highway relocation projects or expenses incurred after the permitted work has been completed.

B. Rural water districts that have received or requested Utility Relocation Assistance Funds (URAF) shall not be eligible for reimbursement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:381(E).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 22:

All interested persons so desiring shall submit oral or written data, views, comments, or arguments not later than 30 days from the date of publication of the notice of intent to: John Collins, Headquarters Utility and Permit Engineer, Box 94245, Capitol Access Road, Baton Rouge, LA 70804-9245, (504) 379-1509.

Jude W. P. Patin
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Permits for Rural Water Districts

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Act 1075 of the 1995 Session of the Louisiana Legislature requires that DOTD reimburse reasonable expenses incurred by rural water districts during inspections conducted in order to obtain permits for occupancy of DOTD rights-of-way. This rule attempts to define "reasonable" thereby limiting the charges to the state by the rural water districts. These charges are estimated to total approximately \$500,000 per year.

The rule also eliminates the utility permit fee for all parish and municipal facilities, which fees total \$120,000 annually.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This rule will reduce revenue collections for the Department of Transportation and Development by approximately \$120,000. Act 1075 requires reimbursement for inspections totaling approximately \$500,000.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no increase in cost to nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

Jude W. P. Patin
Secretary
9512#065

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

**Department of Transportation and Development
Highways/Engineering**

Specific Services (LOGO) Signing
(LAC 70:I.101-113)
(LAC 70:III.301-313)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Transportation and Development intends to amend LAC 70:I.101-113 entitled "Installation of Specific Services (LOGO) Signing", in accordance with R.S. 48:274.1 and Act 490 of the 1995 Regular Session of the Louisiana Legislature.

LAC 70:III.301-307 pertaining to Specific Services (LOGO) Signing is being repealed to recodify in LAC 70:I.101-113.

Title 70

TRANSPORTATION

Part I. Office of the General Counsel

Chapter 1. Outdoor Advertisement

Subchapter A. Outdoor Advertising Signs

§101. Purpose

The purpose of this directive is to establish policies for the installation of Specific Services (LOGO) Signing within state highway rights-of-way.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 11:782 (August 1985), amended LR 18:784 (July 1992), LR 19:352 (March 1993), LR 22:

§103. Definitions

Except as defined in this Paragraph, the terms used in this directive shall be defined in accordance with the definitions and usage of the Louisiana Manual on Uniform Traffic Control Devices (MUTCD).

Business Sign—a separately attached sign mounted on the specific information sign panel to show the brand, symbol, trademark, or name, or combination of these, for a motorist service available on or near a crossroad or frontage road at or near an interchange.

Department—the Louisiana Department of Transportation and Development.

Specific Information Sign—a ground mounted rectangular sign panel with:

- a. the words "FUEL", "FOOD", "LODGING", "CAMPING" or "ATTRACTIONS";
- b. directional information;
- c. one or more business signs.

Specific Services (LOGO) Signing—the Specific Services (LOGO) Signing Program consists of the various components including business signs, specific information signs (Mainline and Ramp) and trailblazing signs. The term "LOGO Program" shall refer to the overall Specific Services Signing Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 11:782 (August 1985), amended LR 18:784 (July 1992), LR 19:352 (March 1993), LR 22:

§105. Location

A. Eligible Highways. Specific information signs shall be allowed only on interstates and other fully controlled access facilities. Signs shall not be installed on elevated roadways and bridges.

B. Rural Areas. Specific information signs are intended for use primarily in rural areas.

C. Urban Areas. Specific information signs may be installed within urban areas where there is sufficient room for the installation of two or more specific services signs. Separate distance criteria have been established for interchanges in urban and rural areas. Increased congestion and travel time dictate the use of shorter distance criteria for interchanges in urban areas. The department shall determine which interchanges are urban based on political boundaries, commercial development, and other appropriate factors.

D. Lateral Location. The specific information signs should be located to take advantage of natural terrain, to have the least impact on the scenic environment, and to avoid visual conflict with other signs within the highway right-of-way. Sign panel supports shall be of a breakaway or yielding design.

E. Relative Location. In the direction of travel, successive specific information signs shall be those for "ATTRACTIONS", "CAMPING", "LODGING", "FOOD", and "FUEL" in that order.

F. Convenient Reentry Required. Specific Information signs will not be installed at an interchange where the motorist cannot conveniently reenter the highway and continue in the same direction of travel.

G. Number of Signs Permitted. There shall be no more than one specific information sign for each type of service along an approach to an interchange or intersection. There shall be no more than six business signs displayed on a specific information sign.

H. Ramp Signing. Specific Information signs with directional and distance information shall be installed along the ramp approaching the crossroad when the business(es) are not visible from that approach. These signs will be similar to the corresponding specific information signs along the main highway but reduced in size.

I. Trailblazing. Trailblazing to a business shall be determined by the department in accordance with the following provisions:

1. Trailblazing shall be done with an assembly (or series of assemblies) consisting of a ramp size business sign, an appropriate white on blue arrow, and if required a mileage plaque. The business shall furnish all business sign(s) required. Preference will always be given to the erection of standard traffic signs (e.g., regulatory, warning, and guide signs) which may preclude the installation of trailblazers in heavily congested areas.

2. Intersection trailblazers shall be required in advance of all intersections requiring the motorist to turn from one route to another. The intersection trailblazer shall be installed with the appropriate left or right arrows.

3. When the distance between the interchange and the intersection trailblazers is greater than five miles verification trailblazers shall be required. The verification trailblazers shall be installed with a straight ahead arrow.

4. When the total distance from the interchange is greater than five miles a verification trailblazer shall be installed within 1,000 feet of the interchange. The verification trailblazers shall be installed with a straight ahead arrow and a mileage plaque.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 11:782 (August 1985), amended LR 18:785 (July 1992), LR 19:352 (March 1993), LR 22:

§107. Criteria for Specific Information Permitted

A. General Criteria. Each business identified on a specific information sign shall meet the following general criteria:

1. Give written assurance to the department of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color, sex, age, disability, or national origin, and not be in breach of that assurance.

2. In rural areas businesses shall be located no more than 10 miles in either direction for "FUEL", "FOOD" and "LODGING" or 25 miles in either direction for "CAMPING" and "ATTRACTIONS" from the terminal of the nearest off ramp. In urban areas businesses shall be located no more than two miles in either direction for "FUEL", "FOOD" and "LODGING" or five miles in either direction for "CAMPING" and "ATTRACTIONS" from the terminal of the nearest off ramp. Measurements shall be made from the beginning of the curves connecting the ramp to the crossroad or the nosepoint of a loop along the normal edge of the pavement of the crossroad as a vehicle must travel to reach a point opposite the main entrance to the business.

3. Have appropriate licensing and/or permitting as required by federal, state, parish, and local laws or regulations.

4. Provide a telephone for public use.

B. Types of Services Permitted. The types of services permitted shall be limited to "FUEL", "FOOD", "LODGING", "CAMPING", and "ATTRACTIONS." At the discretion of the department, Camping business signs may be displayed on an "ATTRACTIONS" specific information sign using the provisions of §109.C.2 to differentiate the two services.

C. Specific Criteria for "FUEL"

1. Vehicle services of fuel (unleaded, diesel, or alternative fuels intended for use in motor vehicles for highway travel), oil, and water for batteries and/or radiators.

2. Clean modern restroom facilities for each sex and drinking water suitable for public use.

3. Year-round operation at least 16 continuous hours per day, seven days a week.

4. An on-premise attendant to collect monies, and/or make change.

D. Specific Criteria for "FOOD"

1. Indoor seating for at least 16 persons.

2. Clean modern restroom facilities for each sex.

3. Year-round operation at least 12 continuous hours per day.

E. Specific Criteria for "LODGING"

1. Adequate sleeping accommodations consisting of a minimum of 20 units with private baths.

2. Off-street vehicle parking spaces for each lodging room for rent.

3. Year-round operation.

F. Specific Criteria for "CAMPING"

1. Adequate off-street vehicle parking

2. Clean modern restroom facilities for each sex, drinking water suitable for public use, modern sanitary and bath facilities (for each sex) which are adequate for the number of campers that can be accommodated.

3. Year-round operation seven days per week.

4. At least 10 campsites with water and electrical outlets for all types of travel-trailers and camping vehicles. A tent camping area must also be provided.

G. Specific Criteria for "ATTRACTIONS"

1. Fall under one of the following categories:

- Arena/Stadium*
- Bed and Breakfast
- Cultural Center*
- Historical Society*
- Historic District
- Historic Structure/Museum*
- Industrial Facility*
- Museum/Art Gallery
- Scenic/Natural Attraction
(forest, garden, nature preserve, park, etc.)
- Tour Boat
- Winery/Brewery*
- Zoo/Aquarium

* providing visitor tours

2. Adequate off-street vehicle parking

3. Clean modern restroom facilities for each sex and drinking water suitable for public use.

4. Year-round operation at least five continuous days per week.

5. Bed and Breakfast shall have adequate sleeping accommodations consisting of a minimum of two units with private baths, and shall serve complementary breakfast (included as part of the room rate). In addition the Bed and Breakfast shall be a member of the Louisiana Bed and Breakfast Association OR shall meet additional specific criteria established by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 11:782 (August 1985), amended LR 18:785 (July 1992), LR 19:353 (March 1993), LR 22:

§109. Sign Composition

A. Specific Information Sign. The Specific Information sign shall be a blue background with a white reflectorized border and legend.

B. Business Signs. Business signs shall consist of either graphic symbols or text used to identify the business. A business identification graphic symbol or trademark shall be reproduced in the colors and general shape consistent with

customary use, and any integral legend shall be in proportionate size. Businesses advertising on the "FUEL" specific information panel shall be required to use the trademark of the brand of fuel offered rather than a unique graphic symbol. Graphic symbols and trademarks that resemble any official traffic control device are prohibited. Business identification text shall consist of block letters no smaller than FHWA 6" Series C Lettering. No products, goods and services, accessory activities or descriptive advertising words, phrases or slogans shall be displayed on a business sign. The word "Diesel" shall be permitted on the "FUEL" business sign of a facility that provides Diesel motor fuel.

C. Supplemental Information on Business Signs (Flashes). Flashes consist of a solid color 6" stripe with a contrasting legend along the bottom edge of a business sign. Flashes may be used to convey the following information:

1. Twenty-four Hours. A business that is open 24 hours per day may use a highway red flash with the legend "24 HOURS" in white 4" block lettering.

2. Attractions. A business that qualifies under camping, but is placed on the "ATTRACTIONS" specific information sign may use a highway yellow flash with the legend "CAMPING" in black 4" block letters. A business that qualifies as an attraction, but is not open seven days a week, must use a highway yellow flash with the continuous days of operation in black 4" letters. (ex: "MON - FRI" or "TUE - SUN")

D. Single-Exit Interchanges. The name of the specific service followed by the exit number shall be displayed in one line above the business signs. At unnumbered interchanges the directional legend "NEXT RIGHT (LEFT)" shall be substituted for the exit number.

E. Double-Exit Interchanges. The specific information signs shall consist of two sections, one for each exit. The top section shall display the business signs for the first exit and the lower section shall display signs for the second exit. The name of the specific service followed by the exit number shall be displayed in one line above the business signs in each section. At unnumbered interchanges the directional legends "NEXT RIGHT (LEFT)" and "SECOND RIGHT (LEFT)" shall be substituted for the exit numbers. Where a specific service is to be signed for at only one exit, one section of the specific information sign may be omitted, or a single-exit interchange sign may be used.

F. Split Signs. In remote rural areas where not more than three qualified facilities are available for each of two or more specific services or urban areas where space is not available for more than two signs, business signs for two specific services may be displayed on the same specific information sign. The specific information sign shall consist of two sections, one for each service. The top section shall display the business signs for the first service and the lower section shall display signs for the second service. The name of the specific service followed by the exit number shall be displayed in one line above the business signs in each section. Business signs should not be combined on a specific information sign when it is anticipated that additional service facilities will become available in the near future.

G. Priority. If space is limited, when an interchange is brought into the Specific Services Program, priority for signs will be given to FUEL, FOOD, LODGING, CAMPING and ATTRACTIONS in that order. Combined specific information signs shall be used to provide signing for all services with qualifying businesses, even if there are more than three qualifying businesses in a particular service.

H. Size

1. Specific Information Signs. The allowed sizes and layouts shall be as shown in the "DETAILS FOR SPECIFIC INFORMATION SIGNS."

2. Business Signs. Signs displayed on a mainline specific information panel shall be 48" x 36". Signs displayed on a ramp specific information panel or trailblazer shall be 24" x 18". The legend on ramp or trailblazer business signs shall be the same as on the mainline sign only proportionately smaller.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 11:782 (August 1985), amended LR 18:785 (July 1992), LR 19:353 (March 1993), LR 22:

§111. Special Requirements

A. Business sign applications will be accepted on a "first-come" basis. Businesses must meet the distance requirements from each approach independently in order to be signed on each approach. All distance criteria are to be determined in accordance with the provisions stated in §107.A.2.

B. The specific information signs shall be fabricated and installed by the department. All business signs shall be furnished by the businesses at no cost to the department and shall be manufactured in accordance with the department's standards or special specifications and/or supplements thereto, for both materials and construction. Signs not meeting these requirements shall not be installed.

C. No business shall be eligible to participate in the Specific Services (LOGO) Signing program while advertising on an illegal outdoor advertising sign.

D. When one or more businesses at an interchange meeting the requirements of §107.A.2 agree to participate in the Specific Services (LOGO) Signing program, the general motorist service sign at that interchange shall be removed. General services other than FUEL, FOOD, LODGING, CAMPING and ATTRACTIONS shall be signed for using an independently mounted symbolic service sign.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 11:782 (August 1985), amended LR 18:786 (July 1992), LR 19:354 (March 1993), LR 22:

§113. Fees and Agreements

The fees and renewal dates shall be established by the department. Notification will be given 30 days prior to changes in fees.

1. Businesses will be invoiced for renewal 30 days before the renewal date. The fee shall be remitted by check or money order payable to the LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT. Failure of a business

to submit the renewal fee(s) by the annual renewal date shall be cause for removal and disposal of the business signs by the department. The initial fee shall be prorated by the department to the annual renewal date to cover the period beginning with the month following the installation of the business signs.

2. When requested by a business, the department, at its convenience may perform additional services in connection with changes of the business sign. A service charge shall be assessed for each business sign changed, and any new or renovated business sign required for such purposes shall be provided by the applicant.

3. The department shall not be responsible for damages to business signs caused by acts of vandalism, accidents, natural causes (including natural deterioration), etc. requiring repair or replacement. In such events the business shall provide a new or renovated business sign together with payment of a service charge fee per sign to the department to replace such damaged business sign(s).

4. Individual businesses requesting placement of business signs on a specific information sign shall submit to the department a completed application form provided by the department.

5. Businesses must submit a layout of professional quality or other satisfactory evidence indicating design of the proposed business sign for approval by the department before the sign is fabricated.

6. No business sign shall be displayed which, in the opinion of the department, does not conform to the department's standards, is unsightly, badly faded, or in a substantial state of dilapidation. The Department shall remove, replace, or mask any such business signs as appropriate. Ordinary initial installation and maintenance service shall be performed by the department and removal shall be performed upon failure to pay any fee or for violation of any provision of these rules. The business (applicant) shall provide all business signs.

7. When a business sign is removed, it will be taken to the business during normal business hours. If the sign cannot be left with the business (closed, new owners, etc.), it will be taken to the district office of the district in which the business is located. The business will be notified of such removal and given 30 days in which to retrieve their business sign(s). After 30 days the business sign will become the property of the department and will be disposed of as the department shall see fit.

8. Should a business qualify for business signs at two or more interchanges, the business sign will be installed at the nearest interchange. If the business wants signing at the other interchanges, it may be so signed provided it does not prevent another business from being signed. Should a business qualify for two or more services at one business location, it may do so provided the secondary business does not prevent another primary business from participating in the program. The primary business will be determined by the department.

9. When it comes to the attention of the department that a participating business does not meet the minimum criteria, the business will be notified that it has a maximum of 30 days to correct any deficiencies or its signs will be removed. If the business later applies for reinstatement, this request shall be

handled in the same manner as a request from a new applicant with a service charge per sign for reinstallation.

10. The department reserves the right to cover or remove any or all business signs in the conduct of its operation or whenever deemed to be in the best interest of the department or the traveling public without advance notice thereof. The department reserves the right to terminate this program or any portion thereof by furnishing the business written notice of such intent not less than 30 calendar days prior thereto.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 11:782 (August 1985), amended LR 18:784 (July 1992), LR 19:352 (March 1993), LR 22:

Part III. Office of Highways

Chapter 3. Installation of Specific Services (LOGO)

Signing

§§301—313.

Repeal to recodify in LAC 70:I.Chapter 1, Subchapter A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 11:782 (August 1985), amended LR 18:784 (July 1992), LR 19:352 (March 1993), repealed LR 22:

All interested persons so desiring shall submit oral or written data, views, comments, or arguments no later than 30 days from the date of publication of this notice of intent. Such comments should be submitted to Peter A. Allain, State Traffic Engineer, Traffic and Planning, Department of Transportation and Development, Box 94245, Baton Rouge, LA 70804-0245, (504)358-9139.

Jude W. P. Patin
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Specific Services (LOGO) Signing

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The change in the LOGO rules will reflect changes in the Revised Statutes, specifically Act 490 of the 1995 Regular Session of the Louisiana Legislature. There will be no implementation costs or savings to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The Department of Transportation and Development will collect approximately \$6,000 per year from businesses taking advantage of the LOGO advertising program.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Businesses taking advantage of the LOGO signing program will be benefitted economically in an amount which cannot be quantified at this time.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be a positive effect for businesses by making LOGO signing available to the tourism industry. The amount of the impact cannot be determined at this time.

Jude W. P. Patin
Secretary
9512#057

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Transportation and Development Highways/Engineering

Tourist Oriented Directional Signs (TODS) (LAC 70:I.Chapter 2)

In accordance with the applicable provision of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Transportation and Development intends to adopt a rule in accordance with R.S. 48:461.2.

Title 70

TRANSPORTATION AND DEVELOPMENT

Part III. Highways/Engineering

Chapter 2. Installation of Tourist Oriented Directional Signs (TODS)

§201. Purpose

A. The purpose of this directive is to establish policies for the installation of Tourist Oriented Directional Signs (TODS) within state highway rights-of-way.

AUTHORITY NOTE: Promulgated in accordance with R. S. 48:461.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 12:1596 (December, 1993), amended LR 22:

§202. Definitions

Except as defined in this paragraph, the terms used in this directive shall be defined in accordance with the definitions and usage of the Louisiana Manual on Uniform Traffic Control Devices (MUTCD).

Conventional Highway—any state maintained highway other than interstate.

Department—all references to "department" shall be interpreted to mean Louisiana Department of Transportation and Development.

Local Road—any roadway which is not part of the state maintained system.

Tourist Activities—publicly or privately owned or operated; natural phenomena, historic, cultural, scientific, educational, or religious sites, and areas of national beauty or areas naturally suited for outdoor recreation, as well as all associated business services, deemed to be in the interest of the traveling public, "the major portion of whose income or visitors are derived during the normal business season from motorists not residing in the immediate area of the activity."

Tourist Oriented Directional Signs (TODS)—official signing located within the state rights-of-way giving specific directional information regarding tourist activities.

AUTHORITY NOTE: Promulgated in accordance with R. S. 48:461.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 12:1596 (December, 1993), amended LR 22:

§203. General Eligibility Requirements

A. General. Tourist activities shall be open to all persons regardless of race, color, religion, ancestry, national origin, sex, age or handicap; be neat, clean and pleasing in appearance; maintained in good repair; and comply with all federal, state, and local regulations for public accommodations concerning health, sanitation, safety, and access.

B. Types of attractions may include, but will not be limited to the following:

1. national historical sites, parks, cemeteries, monuments;
2. state historical sites, parks, monuments, cultural attractions;
3. aquariums, museums, zoos planetariums, and arboretums;
4. lakes and dams, recreational areas, beaches;
5. Indian sites, historical homes/buildings, gift/souvenir shops.

C. Admission Charges. If general admission is charged, charges shall be clearly displayed so as to be apparent to prospective visitors at the place of entry.

D. Parking. Off-street parking adequate to handle the demand.

E. Hours. Tourist activities shall maintain regular hours and schedules and be open to the public at least five days each week and a minimum of eight months of the year.

F. Illegal Signs. TOD sign applications will not be accepted if the tourist activity has any illegal advertising signs on or along any state highway.

G. Insufficient Space. Preference will always be given to the erection of standard traffic signs (e.g., regulatory, warning, and guide signs) which may preclude the authorization of TODS since a space of 200 feet is required between all signs on conventional roads.

H. On-Premise Sign. The tourist activity shall have on-premise sign identifying the name of the facility. If the attraction's on-premise sign is readily visible from the highway, a TOD sign is not normally required in front of the attraction.

I. Trailblazing. Trailblazing needs will be determined by the department. The activity must provide all trailblazing signs on local roads.

J. Return in Same Direction of Travel. TOD signs will not be authorized for facilities if motorists cannot readily return to the highway in the same direction of travel.

K. Onto Freeways. TOD signs will not be authorized to direct traffic onto a freeway or expressway.

M. Sign Design. TOD signs will be designed as follows:

1. Each sign should have one or two lines of legend. All signs shall have directional arrow with mileage. If the distance to the attraction is over ½ mile, the distance to the attraction to the nearest whole mile shall be included below the arrow. The content of the legend shall be limited to the name of the attraction and the directional information. If

space exists on the second line, additional directional information may be indicated, e.g., ¼ mile on left, left on second street, etc. The maximum number of letters and spaces on a given line will be about 18. Legends shall not include promotional advertising.

2. The standard sign will be 72 inches x 18 inches for conventional roads and 48 inches x 12 inches for trailblazers. Letters, numbers, and arrows are to conform to the provisions in the Louisiana Manual on Uniform Traffic Control Devices and detailed drawings in the *Standard Highway Signs* book.

3. TODS shall have white reflectorized legend and borders on a blue reflectorized background, except that a brown reflectorized background may be used for attraction signs for state and national parks or recreational areas, and for historical sites.

AUTHORITY NOTE: Promulgated in accordance with R. S. 48:461.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 12:1596 (December, 1993), amended LR 22:

§204. Location and Number of TODS on Conventional Highways

A. General. On conventional highways, TODS may be authorized for eligible attractions, directing motorists from the nearest arterial highway from each approach to the attraction for a distance not to exceed 15 road miles.

B. Sign Location. Sign assemblies should be placed far enough in advance of the intersection to allow time for the necessary maneuver. A minimum of 200 feet should be maintained between all signs.

C. Maximum Number of Signs. A maximum of six attractions will be authorized for signs on any approach to an intersection.

D. Sign Assemblies. TOD signs should normally be installed as independent sign assemblies as follows:

1. Signs shall be installed on one sign assembly with the signs with arrows pointing to the left above those pointing to the right. If any straight ahead arrows are authorized, as in the case where the road turns and the attraction's access is straight ahead, the sign for that attraction shall be installed above any signs for attractions to the left or right.

2. If more than six attractions qualify at a given location priority will be given to the closest attraction. Once an attraction has been signed it has priority over subsequent attractions which are closer.

3. If more than one attraction exists in a given direction, the signs for the closer attraction should be above the more distant attractions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 12:1596 (December, 1993), amended LR 22:

§205. Application Procedure

A. Application for TODS shall be submitted to LA DOTD Traffic Engineering and Safety Section or one of the district traffic operations engineers.

B. Personnel assigned to the Office of DOTD Traffic Engineering and Safety Section will review the application and a field check will be made by the district traffic operations

engineer to verify information provided and to collect additional data on existing conditions, including whether a location for a TODS exist at the requested intersection and what trailblazing will be necessary.

C. The department shall forward the application with information to the assistant secretary of the Louisiana Office of Tourism.

D. The assistant secretary of the Louisiana Office of Tourism will determine if the applicant qualifies as a tourist activity and make a report of its finding to the department.

E. TODS applications will accepted on a "first-come" basis.

F. All TODS signs shall be furnished by the businesses at no costs to the department and shall be manufactured in accordance with the department's standards or special specifications and/or supplements thereto, for both materials and construction. Signs not meeting these requirements shall not be installed.

G. Applicants must submit a layout of professional quality or other satisfactory evidence indicating design of the proposed TODS sign for approval by the department before the sign is fabricated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 12:1596 (December, 1993), amended LR 22:

§206. Fees and Agreements

A. The fees and renewal dates shall be established by the department. Notification will be given 30 days prior to changes in fees.

1. The permittee will be invoiced for renewal, 30 days prior to the renewal date. The fee shall be remitted by check or money order payable to the Louisiana Department of Transportation and Development. Failure of a business to submit the renewal fee(s) by the annual renewal date shall be cause for removal and disposal of the TOD signs by the department. The initial fee shall be prorated by the department to the annual renewal date to cover the period beginning with the month following the installation of the TOD signs. Service fees will be charged for the removal and reinstallation of delinquent applicants.

2. When requested by the applicant, the department at its convenience may perform additional requested services in connection with changes of the TOD sign, with a service charge per sign. A service fee will be charged for removal and reinstallation of seasonal signs.

3. The department shall not be responsible for damages to TOD signs caused by acts of vandalism, accidents, natural causes (including natural deterioration), etc., requiring repair or replacement. In such events the business shall provide a new or renovated business sign together with payment of a service charge fee per sign to the department to replace such damaged business sign(s).

4. Tourist attractions requesting placement of TOD signs shall submit to the department a completed application form provided by the department. The required service charges for installation must be submitted prior to commencing work.

5. No TOD sign shall be displayed which, in the opinion of the department, does not conform to department standards,

is unsightly, badly faded, or in a substantial state of dilapidation. The department shall remove or replace any such TOD signs as appropriate. Removal shall be performed upon failure to pay any fee or for violation of any provision of these rules.

6. When a TOD sign is removed, it will be taken to the district office of the district in which the activity is located. The applicant will be notified of such removal and given 30 days in which to pay the fees.

7. Should the department determine that trailblazing to a tourist attraction is desirable, it shall be done with an assembly (or series of assemblies) consisting of trailblazing signs or an acceptable alternate. The attraction will be responsible for installing the signs on all local roads.

8. Should an attraction qualify for TOD signs at two locations, the TOD sign(s) will be erected at the nearest location. If the applicant desires signing at the other location also, it may be so signed provided it does not prevent another attraction from being signed.

9. When it comes to the attention of the department that a participating activity is not in compliance with the minimum criteria, the applicant will be notified that it has a maximum of 30 days to correct any deficiencies or its signs will be removed. If the applicant applies for reinstatement, this request will be handled in the same manner as a request from a new applicant.

10. The department reserves the right to cover or remove any or all TOD signs in the conduct of its operations or whenever deemed to be in the best interest of the department or the traveling public without advance notice thereof. The department reserves the right to terminate this program or any portion thereof by furnishing the applicant, a written notice of such intent not less than 30 calendar days prior thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 12:1596 (December, 1993), amended LR 22:

§207. Other Issuances Affected

All directives, memoranda or instructions issued heretofore that conflict with this rule are hereby rescinded. All existing supplemental guide signs which qualify under this rule, but are not TODS, shall be removed by the department within two years, and may be replaced with TODS in accordance with these procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 12:1596 (December, 1993), amended LR 22:

All interested persons so desiring shall submit oral or written data, views, comments, or arguments no later than 30 days from the date of publication of this notice of intent. Such comments should be submitted to Peter A. Allain, State Traffic Engineer, Traffic and Planning, Department of Transportation and Development, Box 94245, Baton Rouge, LA 70804-9245, telephone (504) 358-9319.

Jude W. P. Patin
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Installation of Tourist Oriented
Directional Signs**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The change in the application procedure for TODS will simplify and accelerate the process. There will be no implementation costs or savings to governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no costs and/or economic benefits to directly affected persons. The process will be more simple.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There should be a positive effect for businesses by improving the TODS application process. The amount of the impact cannot be determined at this time.

Jude W.P. Patin
Secretary
9512#077

David W. Hood
Senior Fiscal Analyst

Potpourri

POTPOURRI

Department of Economic Development Office of Financial Institutions

1996 Judicial Interest Calculation

Pursuant to LSA-C.C. Article 2924(B)(3), as amended by Act 774 of 1989 and Act 1090 of 1992, the Commissioner of Financial Institutions has made the determination that the rate of judicial interest beginning January 1, 1996 and ending December 31, 1996 will be 9.75 percent per annum, in accordance with the formula mandated by LSA-C.C. article 2924(B)(3).

The terms *prime rate* and *reference rate* shall be deemed synonymous for purposes of this calculation. Prime rate is the rate of interest established by a financial institution for its "most favored corporate clients" in commercial loan transactions.

The "prime rate" or "reference rate" was decreased on July 7, 1995 from 9 percent per annum to 8.75 percent per annum and that rate remained in effect on October 1, 1995, the "index" date for purposes of computing the prime rate or reference rate charged by (1) Chase Manhattan Bank, N.A., (2) Chemical Bank, which acquired Manufacturers Hanover Trust Company of New York on June 22, 1992, (3) Morgan Guaranty Trust Company of New York, (4) City Bank, N.A.,

and (5) Bank of America National Trust and Savings Association.

LSA-C.C. Article 2924(3)(a) mandates that "[t]he effective judicial interest rate for the calendar year following the calculation date shall be one percentage point above the average prime or reference rate of the five financial institutions named in this Subparagraph or their successors."

The effective judicial interest rate for the calendar year beginning on January 1, 1996 shall be 9.75 percent per annum.

This calculation and its "publication in the *Louisiana Register* shall not be considered rulemaking, within the intendment of the Administrative Procedure Act, R.S. 49:950 et seq., and particularly R.S. 49:953", thus, neither a fiscal impact statement nor a "notice of intent" is required.

Larry L. Murray
Commissioner

9512#074

POTPOURRI

Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

Annual Report Elimination (LAC 33:III.918)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et. seq. and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the assistant secretary gives notice rulemaking has been initiated on LAC 33:III.918 to eliminate an annual report required under LAC 33:III.109.C and 927.

In as much as effected sources are currently required to submit an "Annual Report," by March 1, 1996, LDEQ is giving notice that the report specified in LAC 33:III.918 will no longer be required. Facilities are still required to capture emissions data to be submitted to the department by March 31st of each year (for the period January 1st to December 31st of the previous year) unless otherwise directed by the department. Miscellaneous rule corrections to Chapters 5, 9, 21 and 31 are expected to be noticed as AQ136 in the January 20, 1996, *Louisiana Register*. Questions should be directed to Annette Sharp at (504) 765-0914.

Gus Von Bodungen
Assistant Secretary

9512#073

POTPOURRI

Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

Fee System Notice Withdrawal (LAC 33:III.223)(AQ124)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., the secretary gives notice that the department is withdrawing the proposed rule, Log AQ124, Fee Revisions to Effectively Administer the Air Quality Program. This proposal was published in the September 20, 1995, issue of the *Louisiana Register*. This action is necessary due to a recent constitutional amendment affecting fee revisions.

James B. Thompson, III
Assistant Secretary

9512#063

POTPOURRI

Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

Interpretative Notice and Alternate Monitoring Program (LAC 33:III.2122)

LAC 33:III.2122, promulgated October 1994 and repromulgated November 1994, provides for control of fugitive emissions at certain facilities in ozone nonattainment areas designated moderate or above. LAC 33:III.2122 has been submitted to the United States Environmental Protection Agency (EPA) as a component of the Louisiana State Implementation Plan (SIP). To date, no action has been taken to approve the SIP submittal. Until such EPA approval is final, LAC 33:III.2122 is enforceable by DEQ under Louisiana law, but is not enforceable by EPA under federal law.

Subsection A.6 of the above-referenced regulation provides an exemption from the fugitive emission control requirements of the regulation for facilities which are subject to certain federal fugitive emission control regulations, specifically New Source Performance Standards at 40 CFR 60 Subparts VV, GGG, or KKK, or National Emission Standards for Hazardous Air Pollutants at 40 CFR 61 Subpart V. In order to utilize the exemption, sources are required to comply with the provisions specified in Subsection A.6.a, b, c, and d of LAC 33:III.2122. In particular, Subsection A.6.a requires the source to submit a written notice to the administrative authority* informing them of the facility's request to become exempt and of how the federal regulations will be administered to obtain that exemption. Subsections A.6.b, c, and d go on to specify certain criteria by which the federal regulations must be applied in order to obtain the exemption.

Questions have been raised as to whether a written approval of the notice submitted under Subsection A.6 must be obtained from the Office of Air Quality and Radiation Protection and/or EPA before the source can take advantage of the exemption provided therein. By this notice, the Office of Air Quality and Radiation Protection clarifies that no such approval is required. Rather, the exemption available under LAC 33:III.2122.A.6 may be applied provided the source submits a written notice as described in Subsection A.6.a, and complies with the conditions specified in Subsection A.6.b, c, and d. Such written notice should be submitted no later than the end of the first monitoring period which would otherwise apply to the facility under LAC 33:III.2122.

LAC 33:III.2122.E.1 provides for use of Skip Period Leak Detection and Repair options. Questions have been raised as to whether periodic reports and other historical data previously submitted to the department serve as sufficient documentation to establish good performance under LAC 33:III.2122.E.1.g., qualifying the facility to utilize the skip period option. By this notice, the Office of Air Quality and Radiation Protection clarifies that periodic reports or other historical data previously submitted to the department under other fugitive emission control programs which document the specified good performance level of 2.0 percent at 10,000 ppmv for the required time period are sufficient to comply with LAC 33:III.2122.E.1.g. No additional submittals are required if such data has already been submitted.

Subsection D.5 of LAC 33:III.2122 provides for an exemption from the fugitive emission control requirements of the regulation for facilities practicing an alternate monitoring program which controls to a higher degree. This exemption is available to the source upon submittal of a description of the program to the administrative authority* and approval thereof. Certain facilities subject to LAC 33:III.2122 and also subject to the federal maximum achievable control technology standard at 40 CFR 63 Subparts F, G, and H, commonly known as the HON, or Hazardous Organic NESHAP, have requested approval of the HON fugitive emission control program (Subpart H) as an alternate monitoring program qualifying the source for exemption from LAC 33:III.2122. The HON applies to synthetic organic chemical manufacturing facilities which are major sources of toxic air pollutants, and requires a fugitive emission control program which, when implemented at the Phase II or Phase III level, controls to a higher degree than that program required under LAC 33:III.2122. By this notice, the Office of Air Quality and Radiation Protection approves the fugitive emission control program at 40 CFR 63 Subpart H as an alternate monitoring program under LAC 33:III.2122.D.5. Any facility wishing to use the HON Subpart H monitoring program to obtain an exemption from LAC 33:III.2122 should submit a notice to the assistant secretary, Office of Air Quality and Radiation Protection, describing how the alternate program will be implemented. The notice shall identify by process unit, by stream, or by component where the alternate monitoring program will be applied, and shall indicate the dates by which the Phase II and Phase III levels of the program will be met. Compliance dates as required under Subpart H for Phase II and Phase III implementation will be

considered adequate for compliance under LAC 33:III.2122. The exemption does not extend to any process units, streams, or components subject to LAC 33:III.2122 and not included in the alternate monitoring program. Because the Office of Air Quality and Radiation Protection has full documentation of a description of the HON Subpart H program and is, by this notice, issuing approval of that program as an alternate monitoring program under LAC 33:III.2122, no additional submittals will be required of facilities wishing to claim this exemption and no source specific approvals from this office will be required.

Gustave A. Von Bodungen, P.E.
Assistant Secretary

9512#072

POTPOURRI

Department of Health and Hospitals Board of Veterinary Medicine

Board Member Nominations

The Board of Veterinary Medicine announces that nominations for the position of board member will be taken by the Louisiana Veterinary Medical Association at the winter meeting in February, 1996.

Interested persons should submit the names of nominees directly to that organization as per R.S. 37:1515. It is not necessary to be a member of the LVMA to be nominated.

Vikki Riggle
Executive Director

9512#013

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