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ANNOUNCEMENT

TO: All State Agencies, Boards and Commissions

The Office of the State Register will conduct the annual rulemaking seminar:

FRIDAY, MARCH 29, 1996

ROOM 139

CAPITAL ANNEX BUILDING

1051 NORTH THIRD STREET

BATON ROUGE

8:30 A.M. UNTIL 12 NOON

This training is expressly designed for individuals who: audit/interpret state and federal laws to assure regulatory compliance by state agencies; conduct legal research to formulate rules and amendments; administer and document an agency's legal rulemaking process; and provide legal counsel and assistance to agencies, boards and commissions. Presentations include:

OVERVIEW OF RULEMAKING: time frames for Administrative Procedure Act compliance; fiscal requirements; public comments and hearings; legislative oversight review; documentation during and after the rulemaking process; and legal publishing requirements.

REQUIREMENTS FOR SUBMITTING DOCUMENTS FOR "LOUISIANA REGISTER" PUBLICATION: legal formatting of rules and rule amendments; composition guidelines; legal document substance requirements; and the Louisiana Administrative Code codification system.

If your agency has not attended rulemaking training during past years, please contact the Office of the State Register, (504) 342-5015 for reservations.

Executive Orders

EXECUTIVE ORDER EWE 96 - 1

Bond Allocation—TransAmerica Refining Corporation

WHEREAS: pursuant to the Tax Reform Act of 1986 (the "Act") and Act 51 of the 1986 Louisiana Legislative Session, Executive Order No. EWE 92-47 establishes (i) a method for the allocation of bonds subject to the private activity bond volume limits, including the method of allocation of bonds subject to the private activity bond volume limits for this calendar year 1996 (the "1996 Ceiling"), (ii) the procedure for obtaining an allocation of bonds under the 1996 Ceiling, and (iii) a system of central record keeping for such allocations; and

WHEREAS: the South Louisiana Port Commission has requested an allocation from the 1996 Ceiling to be used in connection with the financing of the acquisition, construction and installation of certain industrial sewage treatment facilities (the "Project") at the refinery of TransAmerican Refining Corporation, located near Norco, in St. Charles Parish, Louisiana; and

WHEREAS: the governor has determined that the project serves a crucial need and provides a benefit to the State of Louisiana and the Parish of St. Charles; and

WHEREAS: it is the intent of the Governor of the State of Louisiana that this Executive Order, to the extent inconsistent with the provisions of Executive Order EWE 92-47, supercedes and prevails over such provisions with respect to the allocation made herein;

NOW, THEREFORE, BE IT ORDERED BY EDWIN W. EDWARDS, Governor of the State of Louisiana, as follows:

SECTION 1: That the bond issue described in this Section is hereby granted an allocation from the 1996 ceiling in the amount shown:

AMOUNT OF ALLOCATION	NAME OF ISSUER	NAME OF PROJECT
\$14,500,000	South Louisiana Port Commission	TransAmerica Refining Corporation

SECTION 2: The allocation granted hereunder is to be used only for the bond issue described in Section 1 and for the general purpose set in the "Application for Allocation of a Portion of the State of Louisiana IDB Ceiling" submitted in connection with the bonds described in Section 1.

SECTION 3: In conclusion of the fact that TransAmerican Corporation (i) received an allocation from the 1995 Ceiling that it was unable to use prior to the end of 1995, and (ii) was considered for a carryforward allocation that would have expired in three years, the allocation granted hereby shall be valid and in full force and effect through August 12, 1996, provided that such bonds are delivered to the initial purchasers thereof on or before August 12, 1996.

SECTION 4: The undersigned certifies, under penalty of perjury, that the allocation granted hereby was not made in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign.

SECTION 5: That this Executive Order, to the extent conflicting with the provisions of Executive Order EWE 92-47, supercedes and prevails over the provisions of such Executive Order.

SECTION 6: All references herein to the singular shall include the plural and all plural references shall include the singular.

SECTION 7: 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 the City of Baton Rouge, on this 4th day of January, 1996.

Edwin Edwards
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9602#005

EXECUTIVE ORDER MJF 96 - 1

Affirmative Action

WHEREAS: in order to restore to the people of Louisiana, faith and confidence in their government, all citizens must be treated equally; and

WHEREAS: I, as Governor, have sworn to uphold the Constitutions of the United States and the state of Louisiana; and

WHEREAS: the United States Constitution provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"; and

WHEREAS: the Louisiana Constitution in its Declaration of Rights states "No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations"; and

WHEREAS: the Louisiana Constitution further provides that "No classified employee shall be discriminated against because of his political or religious beliefs, sex, or race"; and

WHEREAS: these basic statements of the Constitutions of the United States and the State of Louisiana stand for the principles that no one should be discriminated against and that fairness be foremost in all operations of state government; and

WHEREAS: the Supreme Court of the United States has called upon society to treat citizens as individuals, not as components of a racial, religious, sexual or national class; and

WHEREAS: the Governor of Louisiana has the duty to promote equal opportunity and fairness regardless of race, sex, age, religious belief, physical condition or political affiliation; and

WHEREAS: there is no place in my administration for preferential treatment programs or plans such as racial quotas, set asides, or "affirmative action" programs which require reaching a quota, and which discriminate in favor of one person over another on the basis of race, religion, birth, age, sex, culture, political ideas or affiliations; and

WHEREAS: that only ability, merit, responsibility, and the value of the product or services to be rendered should be the cornerstones of whether to select a person to do a job, whether by contract or employment;

NOW THEREFORE I, MURPHY J. FOSTER, JR., Governor of the State of Louisiana, by virtue of the power and authority vested in me by the Constitution and statutes of Louisiana, do hereby order the following:

SECTION 1: That entities of state government shall not discriminate against any person in employment or contractual relationships on the basis of race, religion, birth, age, sex, culture, physical condition, or political ideas or affiliations.

SECTION 2: That all departments, agencies, boards, commissions, or other entities of state government in the Executive Branch, over which I have appointing authority and as Chief Executive Officer of the State have general Executive Authority, shall assure that all persons are provided equal protection of the laws of Louisiana and the United States and that no one shall be discriminated against because of race, religion, birth, age, sex, culture, physical condition, or political ideas or affiliations.

SECTION 3: That programs which are designed to aid all Louisiana citizens who are physically or mentally challenged shall be maintained and encouraged.

SECTION 4: That all decisions regarding positions to be filled or contracts to be awarded in state government shall be based upon ability, merit, responsibility, and the value of the product or services to be rendered.

SECTION 5: That any preferential treatment program or plan, such as racial quotas, set asides, and "affirmative action" programs which require reaching a quota, and which are not required or mandated by state law or federal statute, regulation or court order shall be abolished.

SECTION 6: The provisions of this order shall not affect any contract previously entered into or any employment previously granted.

SECTION 7: The Louisiana State Civil Service Commission is hereby requested to reexamine its rules and regulations relative to hiring and preferential treatment, and to repeal such rules and regulations or opinions which provide any preferential hiring treatment based on race, sex, political or religious beliefs, except as otherwise required or mandated by state law or federal statute, regulation or court order.

SECTION 8: All statewide elected officials, political subdivisions of the state, college and university boards and the State Board of Elementary and Secondary Education, as well

as any other executive department boards, agencies, commissions, and other entities not subject to appointment by this office, are respectfully requested to comply with the provisions of this order.

SECTION 9: All entities in the executive branch shall report, within 60 days, to the Executive Counsel of the Office of the Governor any state law or federal statute, regulation or court order that requires or mandates such entity to discriminate in favor of one person over another on the basis of race, religion, birth, age, sex, culture, or political ideas or affiliations.

SECTION 10: All entities in the Executive Branch shall report to the Chief of Staff of the Office of the Governor, within 60 days, any preferential treatment programs or plans which have been continued or abolished pursuant to this order.

SECTION 11: Executive Order EWE 92-28 and 93-6 are hereby repealed.

SECTION 12: The terms "mandate" and "mandated" as used herein shall mean that which is required, by statute or regulation, as necessary to receive federal funds.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 11th day of January, 1996.

Murphy J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9602#006

Emergency Rules

DECLARATION OF EMERGENCY

**Department of Agriculture and Forestry
Office of Agricultural and Environmental Sciences
Structural Pest Control Commission**

Bait and Baiting Systems - Pilot Program

In accordance with the Administrative Procedure Act (R. S. 49:950 et seq.) and R. S. 3:3203(A), the commissioner of Agriculture and Forestry is amending and adopting the following rules for the implementation of regulations governing the use of baits and baiting systems as a means of treating structures.

This emergency adoption is necessary in order to protect the health and safety of the public by allowing the department to immediately put into place new regulations governing the qualifications of personnel making bait and baiting systems applications and to implement a plot program for bait and

baiting applications of structures. The bait and baiting systems are newly labeled products and systems and afford the public a new way to protect their homes from termites. The department has further deemed these regulations necessary to provide minimum specifications for the application of baits and baiting systems.

The effective date of these rules is February 5, 1996, and shall remain in effect for 120 days or until these rules take effect through the normal promulgation process, whichever is shortest.

Emergency Rule

The commissioner hereby establishes a pilot program and regulations for the use of Bait and Baiting Systems that contain Hexaflumuron and Sulfluramid. The Structural Pest Control Commission shall reevaluate the pilot program and the regulations for the use of Bait and Baiting Systems that contain Hexaflumuron and Sulfluramid prior to the end of the first quarter of calendar year 1997 and may make changes during any appropriately notified meetings.

A. Any licensee, licensed in the termite phase, or any technician, registered in the termite phase and working under the supervision of a licensee, licensed in the termite phase, that applies baits and/or baiting systems shall register with the commission.

B. Any licensee or any person working under the supervision of a licensee, that applies baits and/or baiting systems, shall be certified in the use of the baits and baiting systems, by the manufacturer of the product, prior to any application of the bait or baiting system. Manufacturer certification and training programs shall have approval of the agenda prior to the program, by the Louisiana Department of Agriculture and Forestry.

C. Any person or dealer, prior to selling a bait or baiting system to control subterranean termites, must first register such intent by notifying the Louisiana Department of Agriculture and Forestry and the Louisiana Structural Pest Control Commission Office in writing prior to making such application.

D. All baits and baiting systems applications shall be contracted and reported according to L.R.S. 3:3370 and LAC 7:XXV.14115 and pay the fee as described in LAC 7:XXV.14115.E.

1. Baits and baiting systems may be used as a stand alone termite treatment only with written approval by LDAF.

2. Baits and baiting systems may be used as a supplement to traditional ground termiticide treatments.

E. Bait and baiting systems shall be used according to label and labeling and shall include, but not be limited to the following:

1. Bait and Baiting Systems Containing Hexaflumuron
a. Monitoring. Monitoring shall be used to detect the presence of subterranean termites and generate feeding activity for bait (toxicant) delivery. Monitoring station spacings shall not exceed 20 feet where soil access is not restricted and shall be placed in the soil and recorded on a map or graph of the site. Monitoring stations shall be inspected at regular intervals, not less than monthly and data shall be recorded on the map or graph.

b. Bait Delivery. When termites are detected (minimum of 40 worker termites) during monitoring, the monitoring device shall be removed and replaced with the bait toxicant. Bait toxicant shall be monitored not less than once monthly and shall be replaced according to label and labeling.

c. Resumptions of monitoring for the presence of termite activity after control has been achieved shall follow according to the original bait termite contract and label and labeling.

2. Bait and Baiting Systems Containing Sulfluramid

a. Monitoring. Monitoring shall be used to detect the presence of subterranean termites. Monitoring may include the use of the toxicant in or on monitoring devices. Monitoring stations shall be inspected at regular intervals, not less than monthly and data shall be recorded on the map or graph.

b. Bait Delivery. Bait toxicant shall be monitored not less than once monthly and shall be replaced according to label and labeling.

c. Resumptions of monitoring for the presence of termite activity after control has been achieved shall follow according to the original bait termite contract and label and labeling.

F. Records of contracts, graphs, monitoring, bait applications, and resuming of monitoring, shall be kept according to LAC 7:XXV.14113.

G. All buildings that cannot be treated according to the bait and baiting minimum specifications must have a waiver of the listed item or items signed, by the owner, prior to the baiting treatment. A copy of signed waiver must be filed with the Louisiana Department of Agriculture and Forestry with the monthly Termite Eradication Reports.

H. A consumer information sheet, supplied by the manufacturer and approved by the commission, shall be supplied to the registered pest control operator. The pest control operator shall, in turn, supply a copy of the consumer information sheet to all persons contracted.

Bob Odom
Commissioner

9602#009

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Bulletin 1706—Exceptional Children

The State Board of Elementary and Secondary Education has exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B) and readopted as an emergency rule, Bulletin 1706, regulations for implementation of the Exceptional Children's Act. Readoption of the emergency rule is necessary in order to continue the federally required changes until they are finalized as a rule. The effective date of this emergency rule is March 1, 1996. It will remain in effect for 120 days or until finalized as a rule whichever occurs first.

Emergency adoption is necessary because the Office of Special Education Programs in the U.S. Department of Education has been assured that these regulations would be in effect and enforceable by July 1, 1994. This is required in order for the Louisiana State Plan for Special Education to be approved and Part B dollars to be released to Louisiana.

Bulletin 1706 may be viewed in its entirety in the Office of the State Register, Capitol Annex, Room 512, 1051 North Third Street, Baton Rouge, LA; Office of Special Educational Services; State Department of Education; or in the Office of the State Board of Elementary and Secondary Education, located on the first floor of the Education Building in Baton Rouge, LA.

Carole Wallin
Executive Director

9602#014

DECLARATION OF EMERGENCY

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

Case Management Reimbursement

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, has adopted the following rule in the Medicaid Program as authorized by R.S. 46:153 and pursuant to Title XIX of 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 be in effect for the maximum period allowed under the Administrative Procedure Act or adoption of the rule, whichever occurs first.

The Bureau of Health Services Financing reimburses optional targeted case management services for the following specific population groups: 1) mentally retarded or developmentally disabled individuals; 2) developmentally disabled infants and toddlers; 3) high-risk pregnant women (limited to the metropolitan New Orleans area); 4) HIV infected individuals; 5) seriously mentally ill individuals. In addition, reimbursement is provided under the Home and Community-Based Services Waiver Program for case management services provided to participants in the Home Care for the Elderly Waiver.

The department adopted emergency rules which enhanced program requirements by setting uniform standards for case management services delivered to the above referenced populations and specified the reimbursement methodology based on the provision of a 15-minute unit of service for the on-going services component of case management services. These rules were adopted effective July 22, 1994 and August 13, 1994 (*Louisiana Register*, Volume 20, Numbers 6 and 7). Subsequent emergency rulemaking continued this initiative in force as published in the *Louisiana*

Register, (November 20, 1994, Volume 20, Number 11; April 20, 1995, Volume 21 Number 4; August 20, 1995, Volume 21 Number 8 and November 20, 1995, Volume 21, Number 11). Subsequently the department determined that it was necessary to discontinue the unit of service reimbursement methodology and instituted a revised methodology through emergency rulemaking (*Louisiana Register*, Volume 21, Number 10). This revised methodology included a monthly reimbursement rate for both components of case management services, the initial assessment/service plan development and the ongoing services. This methodology also provided for the following two exceptions: 1) both payment methods, assessment fee and the monthly rate for on-going services, were retained for the high-risk pregnant women group; and 2) assessments prior authorized for the MR/DD and the seriously mentally ill populations through September 30, 1995 and completed by October 31, 1995 were to be reimbursed in accordance with the prior payment methodology. Monthly reimbursement rates were assigned for each population group based upon minimum standards for service delivery for each of these groups.

The following emergency rule continues the above initiative force. This action is necessary to avoid a budget deficit in the medical assistance programs and to comply with the line item appropriation limit for case management services for state fiscal year 1996. Program reports through January 31, 1996 indicate that program expenditures total \$8,503,797 or 38 percent of the \$22,138,498 appropriated for the state fiscal year 1996 with one-half of the year remaining. Therefore the department has determined that it is essential to maintain the flat monthly reimbursement methodology in order to ensure compliance with the legislative appropriation for case management services.

Emergency Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, adopts the following minimum program standards and reimbursement methodology to govern the reimbursement for optional targeted and waiver case management services under the Medicaid program.

I. General Provisions

A. All reimbursement for optional targeted and waiver case management services shall be made in accordance with all applicable federal and state regulations.

B. The reimbursement rate for optional targeted and waiver case management services is a monthly rate for the provision of mandated monthly minimum services. It is not a capitated rate. Service hours provided in different months that are less than the minimum standard shall not be rolled up in order to meet the minimum standards for service delivery required for reimbursement. Providers shall not bill for failed attempts to make contact with either consumers or collaterals.

C. Billed case management services shall be monitored through the use of provider record review, consumer survey for verification of services provision and quality of service, and verification with collaterals of contacts made on behalf of the recipient. Any situation involving fraud and/or abuse in the provision of case management services will be referred to the bureau's SURS Unit for investigation. A subsequent

referral will be made to the state attorney general's Medicaid Fraud Control Unit by the SURS Unit if a criminal investigation is warranted.

D. The following Minimum Program Standards are required for the reimbursement of case management services.

1. Seriously Mentally Ill Individuals

a. A minimum of four hours of documented case management services in each month in which services are billed. The four hours must include one face-to-face contact with the consumer in addition to case management activities such as assessment, service plan development/update, linkage to services and follow-up/monitoring.

b. Services shall be authorized for a maximum six-month time period. All services must be documented on the CAMIS service log and be entered into CAMIS. Weekly submission of CAMIS data is required.

c. The procedure code applicable to case management services for this population is Z0090 and the monthly payment rate is \$223.

2. Mentally Retarded/Developmentally Disabled Individuals

a. A minimum of three hours of documented case management services is required in each month in which services are billed. The three hours must include one face-to-face contact with the recipient in addition to case management activities such as assessment, service plan development/update, linkage to services and follow-up/monitoring. Two home visits are required in a six-month period. Service provider records MR/DD waiver participants must be monitored by the case management agency on a quarterly basis.

b. Services shall be authorized for a maximum six-month time period. All services must be documented on the MRCAMIS service log and be entered into MRCAMIS. Weekly submission of MRCAMIS data is required.

c. The procedure codes applicable to case management services for the MR/DD population is Z0092 for waiver participants and Z0091 for nonwaiver participants. The monthly payment rate is \$147 for both groups of the MR/DD population.

3. Developmentally Disabled Infants and Toddlers

a. A minimum of two hours of documented case management services in each month in which services are billed. The two hours must include one face-to-face contact with the recipient in addition to case management activities such as assessment/service plan development/update, linkage to services and follow-up/monitoring. Two home visits are required in a six-month period. Service provider records for MR/DD waiver participants must be monitored by the case management agency on a quarterly basis.

b. Services shall be authorized for a maximum six-month time period. All services must be documented on the MRCAMIS service log and be entered into MRCAMIS. Weekly submissions of MRCAMIS data are required.

c. The procedure codes applicable to case management services for the infants and toddler population is

Z0094 for MR/DD waiver participants and Z0093 for nonwaiver participants. The monthly payment rate is \$133 for both groups of children.

4. Persons infected with HIV

a. A minimum of two hours of documented case management services in each month in which services are billed. The two hours must include one face-to-face contact with the recipient in addition to case management activities such as assessment, service plan development/update, linkage to services and follow-up/monitoring. A home assessment is a required component of the initial assessment for HIV case management services.

b. The procedure code applicable to case management services for this population is Z0095 and the monthly payment rate is \$99.

5. High Risk Pregnant Women of the Metropolitan New Orleans Area

a. A minimum of one hour of documented case management services in each month in which services are billed. This must include one face-to-face contact with the recipient in addition to case management activities such as assessment, service plan development/update, linkage to services and follow-up monitoring. A home assessment is a required component of the initial assessment for high risk pregnant women case management services.

b. In addition, the following contacts are required: 1) a minimum of monthly verbal contact with the recipient's obstetrician or his staff, 2) weekly verbal contact with the recipient beginning with her thirty-seventh week of pregnancy until the delivery, 3) quarterly home visits with the recipient, 4) weekly contact with other service providers and/or informal supports, and 5) a postpartal home visit to be made within 10 to 14 calendar days after delivery focusing on postpartal concerns and infant care.

c. The procedure codes continue to be X0057 for assessment and X0058 for ongoing services and the monthly payment rates are \$130 for the assessment and \$57 for ongoing services.

d. Only one assessment service shall be reimbursed for each pregnancy.

6. Case Management Services for participants of the Home Care for the Elderly Waiver Program

a. A minimum of two hours of documented case management services in each month in which services are billed. The two hours must include one face-to-face contact with the consumer in addition to case management activities such as assessment, service plan development/update, linkage to services and follow-up/monitoring.

b. Service provider records must be monitored by the case management agency on a quarterly basis.

c. The procedure code continues to be Z0088 for this population and the monthly payment rate is \$99.

D. Assessments prior authorized for the MR/DD populations and the seriously mentally ill population through September 30, 1995 and completed by October 31, 1995 are reimbursable under the prior reimbursement methodology.

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this emergency rule.

Bobby P. Jindal
Secretary

9602#060

DECLARATION OF EMERGENCY

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

Home and Community Based Services Waiver Program

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 pre-certification, pre-admission 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, Office of the Secretary, Bureau of Health Services Financing administers the Home and Community Based Services Program. Participation in each Home and Community Based Services waiver program is limited to a specific number of participants based on the approval of the waiver program by the Health Care Financing Administration. Previously the bureau filled approved vacated slots by allocating the vacated slot to the next available person on the appropriate waiting list. That person, if found eligible, became the next occupant of the slot. This process was continued with the maximum number of allowable slots approved by the Health Care Financing Administration serving as the participation limit.

The bureau revised the above policy for the Mentally Retarded/Developmentally Disabled Waiver Program through emergency rulemaking (*Louisiana Register*, Volume 21, Number 7) by mandating that vacated slots would not be filled except that the eligibility determination process had been completed in the following circumstances: (1) for those persons whose applications for waiver services were filed in the parish BHSF office prior to July 13, 1995; and (2) for those foster children who have been designated by court order and who are in the custody of the Office of Community Services for whom that agency will provide the state funds

required to match federal financial participation for the waiver.

The bureau subsequently determined that it is necessary to revise the above policy regarding the filling of slots in the MR/DD Waiver Program and adopted an emergency rule (*Louisiana Register*, Volume 21, Number 10) which specified how these vacant slots are to be filled. The vacated slot would be allocated to the next available person on the appropriate waiting list. That person, if found eligible, becomes the occupant of that slot. If that person is not found eligible, the next available person on the appropriate waiting list is reviewed for eligibility for the slot. This process is continued until the slot is filled. The maximum number of slots to be filled must not exceed the number of filled slots as of September 1, 1995. The above provisions are being continued in force through adoption of the following emergency rule.

Adoption of the following emergency rule is necessary to maintain the above policy on the filling of MD/DD slots at the September 1, 1995 level in order to avoid a budget deficit in the medical assistance programs and to comply with the line item appropriation for the MR/DD Home and Community Based Waiver Program. Program reports through December 31, 1995 indicate that the expenditures for this program total \$23,026,118 which is 48 percent of the \$47,918,000 appropriated for the entire state fiscal year 1996 with one half of the year still remaining. If the participation level is not maintained expenditures will exceed the legislative appropriation.

Emergency Rule

Effective February 6, 1996 the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following methodology for filling vacant slots in the MR/DD Waiver Program.

1. The maximum number shall not exceed the number of filled slots as of September 1, 1995.

2. The bureau shall fill vacant slots by allocating a vacated slot to the next available person on the appropriate waiting list. That person, if found eligible, becomes the occupant of that slot. If that person is not found eligible, the next available person on the appropriate waiting list will be reviewed for eligibility for the waiver slot.

Bobby P. Jindal
Secretary

9602#052

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections
Board of Pardons

Clemency Filing and Processing (LAC 22:V.Chapter 1)

Pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and pursuant to R.S. 15:572, et seq., the Board of Pardons, at its meeting of February 6, 1996, adopted the following emergency rules and procedures for processing and filing for clemency consideration. The

following emergency rules, having been adopted by the board, will govern the processing of applications for pardon, commutation of sentence, or restoration of citizenship. This emergency rule supersedes rules published in December, 1990.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part V. Board of Pardons

Chapter 1. Applications - Rule 101

§101. Policy

Any complete application for pardon, commutation of sentence, or restoration of citizenship filed with the Board of Pardons shall be considered by the board at anytime after receipt thereof. No application will be considered by the board until it deems the application to be complete in accordance with the following rules and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1062 (December 1990), amended LR 22:

§103. Filing Procedure

A. All Applicants

1. Every Application for Clemency must be submitted on the form approved by the Board of Pardons, the latest revision of which may be obtained from the board. Every Application for Clemency form must contain the following information:

- a. name of applicant;
- b. prison number (DOC#);
- c. date of birth;
- d. race/sex;
- e. education (highest grade completed);
- f. age at time of offense;
- g. present age;
- h. offender class;
- i. place of incarceration;
- j. parish of conviction/judicial district/court docket number;
- k. offense(s) charged with, convicted of, or plead to;
- l. parish where offense(s) committed;
- m. date of sentence;
- n. length of sentence;
- o. time served;
- p. prior parole and/or probation;
- q. when and how parole or probation completed;
- r. prior clemency hearing/recommendation/approval;
- s. reason for requesting clemency;
- t. relief requested; and
- u. institutional disciplinary reports (incarcerated applicants only) total disciplinary reports, number within the last 12 months, nature and date of last violation, and custody status.

2. The application shall be signed by applicant, dated and shall contain a prison or mailing address and home address.

3. An application must be completed; if any required information does not apply the response should be "NA".

B. In addition to the information submitted by application

and a one-page narrative detailing events surrounding the offense, the following required documents must be attached as they apply to each applicant.

1. Incarcerated Applicants. Any applicant presently confined in any institution must attach a current master prison record and time computation/jail credit worksheet and have the signature of a classification officer verifying the conduct of the applicant as set out in Subsection A.1.u.

2. Parolees. Applicants presently under parole supervision or who have completed parole supervision must attach a copy of their master prison record and/or parole certificate.

3. Probationers. Applicants presently under probation supervision or who have completed probationary period must attach a certified copy of sentencing minutes.

4. R.S. 15:572(B) First Offender Pardons. Applicants who have received an Automatic First Offender Pardon must attach a copy of the Automatic First Offender Pardon.

C. No additional information or documents may be submitted until applicants have been notified that they will be given a hearing. The Board of Pardons will not be responsible for items submitted prior to notification that a hearing will be granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1062 (December 1990), amended LR 22:

§105. Discretionary Powers of the Board

A. The Board of Pardons, at its discretion, may deny any applicant a hearing for any of the following reasons, however, nothing in this article shall prevent the board from hearing any case:

1. serious nature of the offense;
2. insufficient time served on sentence, (i.e. lifers who have served less than 15 years);
3. insufficient time after release, (i.e. released from custody/supervision less than two years);
4. proximity of parole/good time date, (i.e. parole/good time date within one year of the date of application);
5. institutional disciplinary reports;
6. probation/parole - unsatisfactory/violated;
7. past criminal record; or
8. any other factor determined by the board.

B. Any applicant denied under this article shall be notified in writing of the reason for denial and thereafter may file a new application two years from date of the letter of denial.

C. Any fraudulent documents or information submitted by applicant will result in an automatic denial by the board and no new application will be accepted until four years have elapsed from the date of letter of denial.

D. In any matters not specifically covered by these rules, the board shall have discretionary powers to act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1062 (December 1990), amended LR 22:

§107. Hearing Granted

A. After notice to an applicant that a hearing has been granted the applicant must submit the following documents and/or information:

1. proof of advertisement (affidavit/certificate) from the official journal of the parish where the offense was committed:

a. this ad must state: "I, (applicant's name), DOC#, have applied for clemency"; and

b. the ad must be published for three days within a 30-day period without cost to the Department of Public Safety and Corrections, Corrections Services, Board of Pardons;

- 2. employment agreement; and
- 3. residence agreement.

B. Applicant may submit additional information, i.e. letters of recommendation and copies of certificates of achievement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1062 (December 1990), amended LR 22:

§109. Public Hearing Dates

The chairman shall determine public hearing dates for the purpose of reviewing and acting on applications pending before the board. The board shall also meet at the discretion of the chairman to transact such other business as deemed necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1062 (December 1990), amended LR 22:

§111. Notice of Public Hearings

A. After receipt of all documents required by §103 and §107.A.1-3 and the clemency investigation from the appropriate probation and parole district, the board shall set the matter for public hearing.

B. At least 30 days prior to public hearing date the board shall give written notice of the date, time and place to the following:

1. the district attorney and sheriff of the parish in which the offense occurred and the district attorney and sheriff of the parish in which the applicant was convicted;

2. the applicant;

3. the victim who has been physically or psychologically injured by the applicant (if convicted of that offense), and the victim's spouse or next of kin, unless the injured victim spouse or next of kin advises the board, in writing, that such notification is not desired;

4. the spouse or next of kin of a deceased victim when the offender responsible for the death is the applicant (if convicted of that offense), unless the spouse or next of kin advises the board, in writing, that such notification is not desired; and

5. any other interested person who notifies the Board of Pardons in writing, giving name and return address.

C. The district attorney, injured victim, spouse or next of kin, and any other persons who desire to do so shall be given a reasonable opportunity to attend the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Correction, Board of Pardons, LR 16:1062 (December 1990), amended LR 22:

§113. Denials by Board after Public Hearing

The board shall notify the applicant of the denial. Applicant may submit a new application two years after the date of letter of denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1063 (December 1990), amended LR 22:

§115. Denial/No Action Taken by Governor after Favorable Recommendation

A. The board shall notify the applicant after its receipt of notification that favorable recommendation was denied or no action taken by the governor. Applicant may submit a new application one year from the date of the letter of denial or notice of no action. This rule does not apply to applicants denied under §§105 or 113.

B. An applicant who has been paroled, released under good time parole supervision or released from sentence, within one year of the date of letter of denial or notice of no action by the governor, may submit a new application after two years from the date of release from confinement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1063 (December 1990), amended LR 22:

§117. Governor Grants

The Office of the Governor, will notify the applicant if any clemency is granted. Applicant may submit a new application for additional relief two years from the date of notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 22:

Cynthia F. Fayard
Chairman

9602#047

DECLARATION OF EMERGENCY

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

**Black Drum, Sheepshead, Flounder and Other Species
Using Pompano Strike Nets (LAC 76:VII.349)**

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(10), 56:6(25)(a), 56:326.1, 56:326.3, and 56:325.4 as described in Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below.

This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the commission establish rules for the implementation of the Louisiana Marine Resources Conservation Act of 1995 for an effective date of August 15, 1995. This emergency rule shall be effective on February 21, 1996, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule. This emergency rule supersedes the declaration of emergency published in the September 1995 *Louisiana Register*.

The Wildlife and Fisheries Commission herein establishes rule and regulations governing the harvest of black drum, flounder, sheepshead and other saltwater finfish (other than red drum, spotted seatrout, and mullet) with pompano strike nets.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§349. Harvest of Black Drum, Sheepshead, Flounder and Other Saltwater Species using Pompano Strike Nets

A. Drum/Sheepshead Strike Net Permit

1. The commercial taking of black drum, sheepshead and flounder with pompano strike nets is prohibited except by special permit issued by the Department of Wildlife and Fisheries, hereby designated as a Drum/Sheepshead Strike Net Permit. This permit is required in addition to the Pompano Strike Net License required by law.

2. No person shall be issued a Drum/Sheepshead Strike Net Permit unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a certified public accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant. Fishermen applying for fishing permits which require proof that 50 percent of his income was derived from the legal capture and sale of seafood species may also qualify using the following Alternative Method.

c. Alternative Method. Provided a fisherman meets all other qualifications for obtaining a commercial fishing permit except for having a tax return in one of the years 1994 or 1993, he will be allowed to provide proof that 50 percent of

his income was derived from the legal capture and sale of seafood species for the current calendar year 1995 along with a 1040 and Schedule C from 1994 or 1993 which meets the qualifying standard. Said proof of the nature and amount of his 1995 income shall be as follows with no exceptions.

i. Applicant shall submit to the Department of Wildlife and Fisheries an affidavit signed by a certified public accountant (CPA) attesting to the audit of applicant's financial records and applicant's eligibility as defined by Act 1316.

ii. The Department of Wildlife and Fisheries shall make available the affidavit referred to in number 1 and number 6.

iii. CPA's engaged by applicants to prepare financial data shall adhere to generally accepted accounting principals as recognized by the American Institute of Certified Public Accountants (AICPA).

iv. The CPA shall require and accept documentation of applicant's financial transactions in the form normally acceptable to the I.R.S. The record keeping standards required by I.R.S. shall be adhered to in the evaluation of applicant's documentation.

v. The CPA shall prepare a financial statement depicting and listing separately applicant's total earned income as well as his earned income derived solely from the capture and sale of seafood species. This financial statement shall represent the period beginning January 1, 1995 through September 30, 1995.

vi. The CPA shall provide an unqualified opinion attesting to the nature and amount of the applicant's earned income and whether said income complies with the requirement that more than 50 percent of the applicant's earned income was derived from the legal capture and sale of seafood species.

vii. The CPA shall provide copies to the Department of Wildlife and Fisheries (Licensing Section) of all financial documents relied upon in support of his unqualified opinion.

viii. The alternative method of fulfilling the earned income requirement shall become obsolete and discontinued on May 1, 1996. Applicants qualifying under the alternative method subsequent to December 31, 1995 shall be allowed to acquire a temporary permit which will be valid only through May 1, 1996. Those applicants receiving a temporary fishing permit valid from January 1, 1996 through May 1, 1996 may reapply for the usual permit at no additional cost, provided said applicant can provide proof of earned income as described in Act 1316 for two 12-month periods (calendar years) including the years 1993, 1994 and 1995 exclusively.

ix. Irrespective of the method used by applicant fishermen to qualify under the 50 percent earned income from the capture and sale of seafood species criteria, each applicant shall make available to the Department of Wildlife and Fisheries (Licensing Section) a certified copy of his Federal Income Tax return, including Schedule C of Federal Form 1040 prior to being issued any additional permits which require the 50 percent earned income test. Currently accepted 1040 and Schedule C Transcripts shall not be sufficient to qualify a permit applicant to renew or acquire a fishing permit beyond the period May 1, 1996. It is incumbent upon each permit applicant to obtain said 1040 and Schedule C information from the Internal Revenue Service.

d. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

e. The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

3. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any Drum/Sheepshead Strike Net Permit and shall be forever barred from receiving any such permit in the future.

B. Commercial Taking of Saltwater Finfish Using Pompano Strike Nets

1. There shall be two seasons for the commercial harvest of all species of saltwater finfish (other than mullet, spotted seatrout and red drum) with a pompano strike net: the first season shall open on Monday, October 16, 1995, and end with the closure of the mullet strike net season, but no later than March 1, 1996; the second season shall open on Monday, October 21, 1996, and end with the closure of the mullet strike net season, but no later than March 1, 1997. A season for the taking of these species shall be closed prior to the dates listed in this Paragraph if the commercial quota for that species has been taken, or on the date projected by the staff of the Department of Wildlife and Fisheries that a quota will be reached, whichever occurs first. The closure shall not take effect for at least 72 hours after notice to public.

2. During these two seasons the commercial harvest of these species with pompano strike nets shall not be allowed during the period from 5 a.m. on Saturday through 6 p.m. on Sunday. There shall be no commercial taking of these species with pompano strike nets during the period after sunset and before sunrise.

3. The commercial taking of these species by using a pompano strike net in excess of 1200 feet in length is prohibited. Furthermore, use of more than one pompano strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each pompano strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the Drum/Sheepshead Strike Net Permit number, if applicable. The department shall not issue any tag to a person who does not have a social security number.

5. Each Drum/Sheepshead Strike Net Permit holder shall on or before the 10th of each month file a return to the department on forms provided or approved for the purpose, the pounds of black drum from 16 to 27 inches, the number of black drum over 27 inches, the pounds of sheepshead and the pounds of flounder taken commercially during the preceding month, the gears used for harvest, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

C. General Provisions. Effective with the closure of a commercial season for black drum, sheepshead, or flounder, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of that species on the waters of the state with pompano strike nets in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of fish legally taken during any open period provided that those who are required to do so shall maintain

appropriate records in accordance with R.S. 56:306.4 and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or 306.

AUTHORITY NOTE: Promulgated in accordance with 56:6(10), 56:6(25)(a); 56:326.1; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:698 (August 1990), amended LR 22:

Glynn Carver
Chairman

9602#054

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Commercial Fisherman's Assistance Program (LAC 76:XVII.101)

The Wildlife and Fisheries Commission is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:13.1.B(1) adopts the rule set forth below. Act 1316 (The Louisiana Marine Resources Conservation Act of 1995) mandates the Department of Wildlife and Fisheries to provide economic assistance to those commercial fishermen who are displaced or severely financially impacted by the loss of the use of commercial fishing nets due to its enactment. Initial promulgation of this rule as a declaration of emergency is necessary because the act establishes a deadline for implementation which predates the earliest date for promulgation of a final rule through nonemergency rulemaking procedures.

This declaration of emergency shall be effective on February 21, 1996, and shall supersede the declaration of emergency published in the September 1995, *Louisiana Register*. The declaration of emergency remains in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule whichever occurs first.

The Wildlife and Fisheries Commission herein establishes procedures for determining proof of income of applicants for economic assistance under R.S. 56:13.1.

Title 76

WILDLIFE AND FISHERIES

Part XVII. Commercial Fisherman's Assistance Program

Chapter 1. Proof of Income

§101. Criteria for Establishing Proof of Income and Procedures

A. An applicant for economic assistance shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species in at least two of the years 1995, 1994, and 1993.

B. 1. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax

return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a certified public accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant. Fishermen applying for fishing permits which require proof that 50 percent of his income was derived from the legal capture and sale of seafood species may also qualify using the following alternative method.

2. Alternative Method. Provided a fisherman meets all other qualifications for obtaining a commercial fishing permit except for having a tax return in one of the years 1994 or 1993, he will be allowed to provide proof that 50 percent of his income was derived from the legal capture and sale of seafood species for the current calendar year 1995 along with a 1040 and Schedule C from 1994 or 1993 which meets the qualifying standard. Said proof of the nature and amount of his 1995 income shall be as follows with no exceptions.

a. Applicant shall submit to the Department of Wildlife and Fisheries an affidavit signed by a Certified Public Accountant (CPA) attesting to the audit of applicant's financial records and applicant's eligibility as defined by Act 1316.

b. The Department of Wildlife and Fisheries shall make available the affidavit referred to in number 1 and number 6.

c. CPA's engaged by applicants to prepare financial data shall adhere to generally accepted accounting principals as recognized by the American Institute of Certified Public Accountants (AICPA).

d. The CPA shall require and accept documentation of applicant's financial transactions in the form normally acceptable to the I.R.S. The record keeping standards required by I.R.S. shall be adhered to in the evaluation of applicant's documentation.

e. The CPA shall prepare a financial statement depicting and listing separately applicant's total earned income as well as his earned income derived solely from the capture and sale of seafood species. This financial statement shall represent the period beginning January 1, 1995 through September 30, 1995.

f. The CPA shall provide an unqualified opinion attesting to the nature and amount of the applicant's earned income and whether said income complies with the requirement that more than 50 percent of the applicant's earned income was derived from the legal capture and sale of seafood species.

g. The CPA shall provide copies to the Department of Wildlife and Fisheries (Licensing Section) of all financial documents relied upon in support of his unqualified opinion.

h. The alternative method of fulfilling the earned income requirement shall become obsolete and discontinued on May 1, 1996. Applicants qualifying under the alternative method subsequent to December 31, 1995 shall be allowed to acquire a temporary permit which will be valid only through May 1, 1996. Those applicants receiving a temporary fishing permit valid from January 1, 1996 through May 1, 1996 may reapply for the usual permit at no additional cost, provided said applicant can provide proof of earned income as described in Act 1316 for two 12-month periods (calendar years) including the years 1993, 1994 and 1995 exclusively.

i. Irrespective of the method used by applicant fishermen to qualify under the 50 percent earned income from the capture and sale of seafood species criteria, each applicant shall make available to the Department of Wildlife and Fisheries (Licensing Section) a certified copy of his Federal Income Tax return, including Schedule C of Federal Form 1040 prior to being issued any additional permits which require the 50 percent earned income test. Currently accepted 1040 and Schedule C Transcripts shall not be sufficient to qualify a permit applicant to renew or acquire a fishing permit beyond the period May 1, 1996. It is incumbent upon each permit applicant to obtain said 1040 and Schedule C information from the Internal Revenue Service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:13.1.B(1).

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

Glynn Carver
Chairman

9602#024

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Mullet Harvest (LAC 76:VII.343)

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(25)(a), 56:326.3, and 56:333 as described in Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the commission establish rules for the implementation of the Louisiana Marine Resources Conservation Act of 1995 for an effective date of August 15, 1995. This emergency rule shall be effective on February 21, 1996, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule. This emergency rule supersedes the declaration of emergency published in the September 1995 *Louisiana Register*.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§343. Rules for Harvest of Mullet

A. Seasons

1. The season for the commercial taking of mullet shall begin at sunrise of the third Monday in October of each year and close at sunset of the third Monday in January of the following year. Mullet may not be taken commercially at any time outside of this season.

2. Commercial harvest of mullet shall not be allowed during the period from 5 a.m. on Saturday through 6 p.m. on Sunday. There shall be no commercial taking of mullet during the period after sunset and before sunrise.

B. Commercial Taking

1. Mullet may only be taken commercially with a mullet strike net, which may not be constructed of monofilament. The commercial taking of mullet by using a mullet strike net in excess of 1,200 feet or by using more than one mullet strike net from any vessel at any time is prohibited.

2. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take mullet. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Limits. During the season, there shall be no daily take or possession limit for the commercial harvest of mullet by properly licensed and permitted fishermen.

D. Recreational Limits. The daily take and possession limit for recreational harvest of mullet shall be 100 pounds per person per day.

E. Permits

1. The commercial taking of mullet is prohibited except by special permit issued by the Department of Wildlife and Fisheries at the cost of \$100 for residents of this state and \$400 for those who are nonresidents.

2. No person shall be issued a license or permit for the commercial taking of mullet unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and

signed by a certified public accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant. Fishermen applying for fishing permits which require proof that 50 percent of his income was derived from the legal capture and sale of seafood species may also qualify using the following alternative method.

c. **Alternative Method.** Provided a fisherman meets all other qualifications for obtaining a commercial fishing permit except for having a tax return in one of the years 1994 or 1993, he will be allowed to provide proof that 50 percent of his income was derived from the legal capture and sale of seafood species for the current calendar year 1995 along with a 1040 and Schedule C from 1994 or 1993 which meets the qualifying standard. Said proof of the nature and amount of his 1995 income shall be as follows with no exceptions.

i. Applicant shall submit to the Department of Wildlife and Fisheries an affidavit signed by a certified public accountant (CPA) attesting to the audit of applicant's financial records and applicant's eligibility as defined by Act 1316.

ii. The Department of Wildlife and Fisheries shall make available the affidavit referred to in number 1 and number 6.

iii. CPA's engaged by applicants to prepare financial data shall adhere to generally accepted accounting principals as recognized by the American Institute of Certified Public Accountants (AICPA).

iv. The CPA shall require and accept documentation of applicant's financial transactions in the form normally acceptable to the I.R.S. The record keeping standards required by I.R.S. shall be adhered to in the evaluation of applicant's documentation.

v. The CPA shall prepare a financial statement depicting and listing separately applicant's total earned income as well as his earned income derived solely from the capture and sale of seafood species. This financial statement shall represent the period beginning January 1, 1995 through September 30, 1995.

vi. The CPA shall provide an unqualified opinion attesting to the nature and amount of the applicant's earned income and whether said income complies with the requirement that more than 50 percent of the applicant's earned income was derived from the legal capture and sale of seafood species.

vii. The CPA shall provide copies to the Department of Wildlife and Fisheries (Licensing Section) of all financial documents relied upon in support of his unqualified opinion.

viii. The Alternative Method of fulfilling the earned income requirement shall become obsolete and discontinued on May 1, 1996. Applicants qualifying under the alternative method subsequent to December 31, 1995 shall be allowed to acquire a temporary permit which will be valid only through May 1, 1996. Those applicants receiving a temporary fishing permit valid from January 1, 1996 through May 1, 1996 may reapply for the usual permit at no additional cost, provided

said applicant can provide proof of earned income as described in Act 1316 for two 12-month periods (calendar years) including the years 1993, 1994 and 1995 exclusively.

ix. Irrespective of the method used by applicant fishermen to qualify under the 50 percent earned income from the capture and sale of seafood species criteria, each applicant shall make available to the Department of Wildlife and Fisheries (Licensing Section) a certified copy of his Federal Income Tax return, including Schedule C of Federal Form 1040 prior to being issued any additional permits which require the 50 percent earned income test. Currently accepted 1040 and Schedule C Transcripts shall not be sufficient to qualify a permit applicant to renew or acquire a fishing permit beyond the period May 1, 1996. It is incumbent upon each permit applicant to obtain said 1040 and Schedule C information from the Internal Revenue Service.

d. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

3. No person shall receive more than one permit or license to commercially take mullet.

4. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take mullet and shall be forever barred from receiving any permit or license to commercially take mullet.

5. Each Mullet Permit holder shall, on or before the 10th of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of mullet taken commercially during the preceding month, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

F. General Provisions. Effective with the closure of the commercial season for mullet, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of mullet on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of mullet legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or 306. G

In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), 56:325.1, 56:333 and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1420 (December 1992), amended LR 21:37 (January 1995), LR 22:

Glynn Carver
Chairman

9602#027

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Office of Management and Finance

Net Buy-Back Program (LAC 76:XVII.301)

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. 56:13.1.D. 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. This emergency rule shall be effective on February 21, 1996, and shall supersede the declaration of emergency published in the September 1995 *Louisiana Register*.

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.

Title 76

WILDLIFE AND FISHERIES

Part XVII. Commercial Fisherman's Assistance Program

Chapter 3. Net Buy-Back Program

§301. Criteria for Qualification; Procedures

A. Until January 1, 1996, the Department of Wildlife and Fisheries shall purchase from qualified persons those commercial fishing nets that have been rendered illegal or useless due to the enactment of the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

B. In order to qualify, persons must have applied for assistance under the Commercial Fisherman's Assistance Program on or before October 1, 1995, and must have met all of the following criteria:

1. must have purchased a saltwater gill net license in at least two of the years 1995, 1994, and 1993;
2. during two of those years shall have derived more than fifty percent of his earned income from the legal capture and sale of seafood species;
3. shall not have been convicted of any fishery-related offense that constitutes a class three or greater violation; and
4. must have been a bona fide resident of Louisiana on June 30, 1995.

C.1. Proof of income shall be provided by the applicant in the form of a copy of his federal tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. The Department of Wildlife and Fisheries can provide the applicant with the appropriate Internal Revenue Service form to request this. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect prepared and signed by a certified public accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal

Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant. Fishermen applying for fishing permits which require proof that 50 percent of his income was derived from the legal capture and sale of seafood species may also qualify using the following alternative method.

2. Alternative Method. Provided a fisherman meets all other qualifications for obtaining a commercial fishing permit except for having a tax return in one of the years 1994 or 1993, he will be allowed to provide proof that 50 percent of his income was derived from the legal capture and sale of seafood species for the current calendar year 1995 along with a 1040 and Schedule C from 1994 or 1993 which meets the qualifying standard. Said proof of the nature and amount of his 1995 income shall be as follows with no exceptions.

a. Applicant shall submit to the Department of Wildlife and Fisheries an affidavit signed by a certified public accountant (CPA) attesting to the audit of applicant's financial records and applicant's eligibility as defined by Act 1316.

b. The Department of Wildlife and Fisheries shall make available the affidavit referred to in number 1 and number 6.

c. CPA's engaged by applicants to prepare financial data shall adhere to generally accepted accounting principals as recognized by the American Institute of Certified Public Accountants (AICPA).

e. The CPA shall prepare a financial statement depicting and listing separately applicant's total earned income as well as his earned income derived solely from the capture and sale of seafood species. This financial statement shall represent the period beginning January 1, 1995 through September 30, 1995.

f. The CPA shall provide an unqualified opinion attesting to the nature and amount of the applicant's earned income and whether said income complies with the requirement that more than 50 percent of the applicant's earned income was derived from the legal capture and sale of seafood species.

g. The CPA shall provide copies to the Department of Wildlife and Fisheries (Licensing Section) of all financial documents relied upon in support of his unqualified opinion.

h. The alternative method of fulfilling the earned income requirement shall become obsolete and discontinued on May 1, 1996. Applicants qualifying under the alternative method subsequent to December 31, 1995 shall be allowed to acquire a temporary permit which will be valid only through May 1, 1996. Those applicants receiving a temporary fishing permit valid from January 1, 1996 through May 1, 1996 may reapply for the usual permit at no additional cost, provided said applicant can provide proof of earned income as described in Act 1316 for two 12-month periods (calendar years) including the years 1993, 1994 and 1995 exclusively.

i. Irrespective of the method used by applicant fishermen to qualify under the 50 percent earned income from the capture and sale of seafood species criteria, each applicant shall make available to the Department of Wildlife and Fisheries (Licensing Section) a certified copy of his Federal Income Tax return, including Schedule C of Federal Form

1040 prior to being issued any additional permits which require the 50 percent earned income test. Currently accepted 1040 and Schedule C Transcripts shall not be sufficient to qualify a permit applicant to renew or acquire a fishing permit beyond the period May 1, 1996. It is incumbent upon each permit applicant to obtain said 1040 and Schedule C information from the Internal Revenue Service.

D. Beginning September 1, 1995, qualified persons desiring to have their nets purchased by the Department of Wildlife and Fisheries may obtain an application form provided by the department from any departmental district office; the completed form shall include all information necessary to assist in the determination of the eligibility status of the applicant. All requested information regarding size, type and number of nets must be provided. The completed form, along with proof of income as described herein, a copy of the applicants Louisiana driver's license, and copies of appropriate saltwater gill net licenses, shall be submitted no later than October 1, 1995, to the Commercial License Section of Wildlife and Fisheries located at 2000 Quail Drive, Baton Rouge, LA or by mail to Box 98000, Baton Rouge, LA 70898. Applicants will be notified by mail as to the disposition of their application.

E. Only those nets that were legal for use in the saltwater areas of this state on June 1, 1995, and only those nets in usable condition, will be eligible for purchase under the provisions of Act 1316 and this Declaration of Emergency.

F. Applicants must have had a gear license issued in their name for at least one of the years 1995, 1994, or 1993, for the specific type of net(s) being presented for purchase. This is in addition to the requirements for having a saltwater gill net license for two of the three years.

G. Monetary reimbursement for nets to be purchased under this declaration of emergency shall be determined based on the availability of funds collected from the issuance of the Louisiana Marine Resources Conservation Act Stamp. Funds collected through June 30, 1996, will be distributed as follows: 30 percent to the Enforcement Division of the Department in accordance with the Act; and the remaining 70 percent to be made available for the net buy-back portion of the Commercial Fisherman's Assistance Program. Subsequent to June 1996, 70 percent of the revenue collected from the LMRC Stamp will be used for the remainder of the Commercial Fisherman's Assistance Program as defined in Act 1316, R.S. 56:13.1.C.

H. The disbursement of available funds for nets shall be calculated on a pro rata basis to accommodate the number of qualified applicants at a rate not to exceed 50 percent of the average cost of each qualifying net. The following is a schedule of the maximum amount to be paid for each type and size of net based upon 50 percent of the average standard 1995 catalog prices not including sales tax, shipping charges, or options. Actual prices to be paid will be limited by the number of qualifying nets and by the amount of revenue collected.

MESH DEPTH	GILL NETS	
	PRICE PER FOOT	SEINES PRICE PER FOOT
4' - 6'	\$.25	\$.76
over 6' - 8'	\$.30	\$.80
over 8' - 10'	\$.38	\$.87
over 10' - 12'	\$.42	\$.92
over 12' - 14'	\$.44	\$.96
over 14'	\$.53	\$ 1.02

TRAMMEL NETS	
PRICE PER FOOT	
4' - 6'	\$.38
over 6' - 8'	\$.40
over 8' - 10'	\$.43
over 10'	\$.45

FISH TRAWLS	
Complete	\$ 11.22 per foot of trawl width
Trawl only	\$ 6.84 per foot of trawl width

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:13(1)(D).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Management and Finance, LR 22:

James H. Jenkins, Jr.
Secretary

9602#025

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Oyster Season Extension, Calcasieu Lake

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 967 and under the authority of R.S. 56:6(25)(a) and R.S. 56:435(1), notice is hereby given that the Wildlife and Fisheries Commission finds that imminent peril to the public welfare exists and hereby adopts the following emergency rule:

The 1995/96 oyster season in Calcasieu Lake shall be extended through March 31, 1996.

Glynn Carver
Chairman

9602#055

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Saltwater Commercial Rod and Reel License
(LAC 76:VII.405)

The Wildlife and Fisheries Commission is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S.

56:305.B.(14)(b) adopts the rule set forth below. Initial 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 February 21, 1996, and shall supersede the Declaration of Emergency published in the September, 1995 *Louisiana Register*. The Declaration of Emergency also remains in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule whichever occurs first.

The Wildlife and Fisheries Commission herein establishes procedures relative to the proof of income of applicants for a saltwater commercial rod and reel gear license.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 4. License and License Fees

§405. Saltwater Commercial Rod and Reel License;

Proof of Income

A. Each applicant shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species in at least two of the three years, 1995, 1994, and 1993.

B.1. Proof of income shall be provided by the applicant in the form of a copy of his federal income tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service and a copy of his state tax return which has been certified by the Louisiana Department of Revenue and Taxation. In the event that the certified copies of the tax returns, including Schedule C, do not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a certified public accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant. Fishermen applying for fishing permits which require proof that 50 percent of his income was derived from the legal capture and sale of seafood species may also qualify using the following alternative method.

2. Alternative Method. Provided a fisherman meets all other qualifications for obtaining a commercial fishing permit except for having a tax return in one of the years 1994 or 1993, he will be allowed to provide proof that 50 percent of his income was derived from the legal capture and sale of seafood species for the current calendar year 1995 along with a 1040 and Schedule C from 1994 or 1993 which meets the qualifying standard. Said proof of the nature and amount of his 1995 income shall be as follows with no exceptions.

a. Applicant shall submit to the Department of Wildlife and Fisheries an affidavit signed by a certified public accountant (CPA) attesting to the audit of applicant's financial records and applicant's eligibility as defined by Act 1316.

b. The Department of Wildlife and Fisheries shall make available the affidavit referred to in number 1 and number 6.

c. CPA's engaged by applicants to prepare financial data shall adhere to generally accepted accounting principals as recognized by the American Institute of Certified Public Accountants (AICPA).

d. The CPA shall require and accept documentation of applicant's financial transactions in the form normally acceptable to the I.R.S. The record keeping standards required by I.R.S. shall be adhered to in the evaluation of applicant's documentation.

e. The CPA shall prepare a financial statement depicting and listing separately applicant's total earned income as well as his earned income derived solely from the capture and sale of seafood species. This financial statement shall represent the period beginning January 1, 1995 through September 30, 1995.

f. The CPA shall provide an unqualified opinion attesting to the nature and amount of the applicant's earned income and whether said income complies with the requirement that more than 50 percent of the applicant's earned income was derived from the legal capture and sale of seafood species.

g. The CPA shall provide copies to the Department of Wildlife and Fisheries (Licensing Section) of all financial documents relied upon in support of his unqualified opinion.

h. The alternative method of fulfilling the earned income requirement shall become obsolete and discontinued on May 1, 1996. Applicants qualifying under the alternative method subsequent to December 31, 1995 shall be allowed to acquire a temporary permit which will be valid only through May 1, 1996. Those applicants receiving a temporary fishing permit valid from January 1, 1996 through May 1, 1996 may reapply for the usual permit at no additional cost, provided said applicant can provide proof of earned income as described in Act 1316 for two 12-month periods (calendar years) including the years 1993, 1994 and 1995 exclusively.

i. Irrespective of the method used by applicant fishermen to qualify under the 50 percent earned income from the capture and sale of seafood species criteria, each applicant shall make available to the Department of Wildlife and Fisheries (Licensing Section) a certified copy of his Federal Income Tax return, including Schedule C of Federal Form 1040 prior to being issued any additional permits which require the 50 percent earned income test. Currently accepted 1040 and Schedule C Transcripts shall not be sufficient to qualify a permit applicant to renew or acquire a fishing permit beyond the period May 1, 1996. It is incumbent upon each permit applicant to obtain said 1040 and Schedule C information from the Internal Revenue Service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:13.1.D.

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

Glynn Carver
Chairman

9602#026

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Spotted Seatrout Management (LAC 76:VII.341)

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(10), 56:6(25)(a), 56:325.3, 56:326.3, and 56:325.3 as described in Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the commission establish rules for the implementation of the Louisiana Marine Resources Conservation act of 1995 for an effective date of August 15, 1995. This emergency rule shall be effective on February 21, 1996, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule. This emergency rule supersedes the declaration of emergency published in the September 1995 *Louisiana Register*.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§341. Spotted Seatrout Management Measures

A. Commercial Season; Quota; Permits

1. The season for the commercial taking of spotted seatrout shall begin at sunrise on the third Monday in November of each year, and close at sunset on May 1 the following year or when the quota has been reached or on the date projected by the staff of the Department of Wildlife and Fisheries that the quota will be reached, whichever occurs first.

2. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

3. The commercial quota for spotted seatrout shall be 1,000,000 pounds for each fishing season.

4. Permits

a. The commercial taking of spotted seatrout is prohibited except by special nontransferable Spotted Seatrout Permit issued by the Department of Wildlife and Fisheries at the cost of \$100 for residents of this state and \$400 for those who are nonresidents.

b. No person shall be issued a license or permit for the commercial taking of spotted seatrout unless that person meets all of the following requirements:

i. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

ii. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has

been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a certified public accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant. Fishermen applying for fishing permits which require proof that 50 percent of his income was derived from the legal capture and sale of seafood species may also qualify using the following alternative method.

iii. Alternative Method. Provided a fisherman meets all other qualifications for obtaining a commercial fishing permit except for having a tax return in one of the years 1994 or 1993, he will be allowed to provide proof that 50 percent of his income was derived from the legal capture and sale of seafood species for the current calendar year 1995 along with a 1040 and Schedule C from 1994 or 1993 which meets the qualifying standard. Said proof of the nature and amount of his 1995 income shall be as follows with no exceptions.

(a). Applicant shall submit to the Department of Wildlife and Fisheries an affidavit signed by a certified public accountant (CPA) attesting to the audit of applicant's financial records and applicant's eligibility as defined by Act 1316.

(b). The Department of Wildlife and Fisheries shall make available the affidavit referred to in number 1 and number 6.

(c). CPA's engaged by applicants to prepare financial data shall adhere to generally accepted accounting principals as recognized by the American Institute of Certified Public Accountants (AICPA).

(d). The CPA shall require and accept documentation of applicant's financial transactions in the form normally acceptable to the I.R.S. The record keeping standards required by I.R.S. shall be adhered to in the evaluation of applicant's documentation.

(e). The CPA shall prepare a financial statement depicting and listing separately applicant's total earned income as well as his earned income derived solely from the capture and sale of seafood species. This financial statement shall represent the period beginning January 1, 1995 through September 30, 1995.

(f). The CPA shall provide an unqualified opinion attesting to the nature and amount of the applicant's earned income and whether said income complies with the requirement that more than 50 percent of the applicant's earned income was derived from the legal capture and sale of seafood species.

(g). The CPA shall provide copies to the Department of Wildlife and Fisheries (Licensing Section) of all financial documents relied upon in support of his unqualified opinion.

(h). The alternative method of fulfilling the earned income requirement shall become obsolete and discontinued

on May 1, 1996. Applicants qualifying under the alternative method subsequent to December 31, 1995 shall be allowed to acquire a temporary permit which will be valid only through May 1, 1996. Those applicants receiving a temporary fishing permit valid from January 1, 1996 through May 1, 1996 may reapply for the usual permit at no additional cost, provided said applicant can provide proof of earned income as described in Act 1316 for two 12-month periods (calendar years) including the years 1993, 1994 and 1995 exclusively.

(i). Irrespective of the method used by applicant fishermen to qualify under the 50 percent earned income from the capture and sale of seafood species criteria, each applicant shall make available to the Department of Wildlife and Fisheries (Licensing Section) a certified copy of his Federal Income Tax return, including Schedule C of Federal Form 1040 prior to being issued any additional permits which require the 50 percent earned income test. Currently accepted 1040 and Schedule C Transcripts shall not be sufficient to qualify a permit applicant to renew or acquire a fishing permit beyond the period May 1, 1996. It is incumbent upon each permit applicant to obtain said 1040 and Schedule C information from the Internal Revenue Service.

iv. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

v. The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

c. No person shall receive more than one permit or license to commercially take spotted seatrout.

d. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take spotted seatrout and shall be forever barred from receiving any permit or license to commercially take spotted seatrout.

5. Each Spotted Seatrout Permit holder shall, on or before the 10th of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of spotted seatrout taken commercially during the preceding month, and the commercial dealers to whom these were sold, if sold. Monthly reports shall be filed, even if catch or effort is zero.

B. Commercial Taking of Spotted Seatrout Using Mullet Strike Nets, Seasons

1. There shall be two seasons for the commercial harvest of spotted seatrout with a mullet strike net: the first season shall open on Monday, November 20, 1995, and end no later than March 1, 1996; the second season shall open on Monday, November 18, 1996, and end no later than March 1, 1997. Such seasons shall be closed prior to the dates listed in this Paragraph if:

a. 1,000,000 pounds of spotted seatrout have been taken commercially during a fishing season; or

b. on the date projected by the staff of the Department of Wildlife and Fisheries that the quota will be reached, whichever occurs first. The closure shall not take effect for at least 72 hours after notice to the public.

2. During these two seasons the commercial harvest of spotted seatrout with mullet strike nets shall not be allowed during the period from 5 a.m. on Saturday through 6 p.m. on Sunday. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

3. The commercial taking of spotted seatrout by using a mullet strike net in excess of 1200 feet in length is prohibited. Furthermore, use of more than one mullet strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take spotted seatrout. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Taking of Spotted Seatrout Using Other Commercial Gear

1. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

2. During the 1995-1996 season for harvest of spotted seatrout with a mullet strike net, all other legal methods of harvest may also be used until March 1, 1996. After that date, only commercial rod and reel may be used for the commercial harvest of spotted seatrout, provided that the commercial harvest of spotted seatrout does not exceed the commercial quota.

3. During the 1996-1997 season for commercial harvest of spotted seatrout with a mullet strike net, only a mullet strike net or a commercial rod and reel may be used for the

commercial harvest of spotted seatrout provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

4. Following the closure of the 1996-1997 season for the harvest of spotted seatrout with a mullet strike net, only a commercial rod and reel shall be used for the commercial harvest of spotted seatrout, provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

D. General Provisions. Effective with the closure of the commercial season for spotted seatrout, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of spotted seatrout on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of spotted seatrout legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or 306.

AUTHORITY NOTE: Promulgated in accordance with Act Number 157 of the 1991 Regular Session of the Louisiana Legislature, R.S. 56:6(25)(a); 56:325.3; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:199 (February 1992), amended LR 22:

Glynn Carver
Chairman

9602#028

Rules

RULE

Department of Economic Development Licensing Board for Contractors

Residential Construction (LAC 46:XXIX.1501-1509)

The Department of Economic Development, Licensing Board for Contractors has adopted the following rules.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXIX. Contractors

Chapter 15. Residential

§1501. Definitions

A. All individuals bidding or performing the work of a general contractor on a residential project the cost of which equals \$50,000 or more must be licensed under the classification "residential construction." It shall not include individuals who build no more than one residence for their own use per year.

B. A subcontractor, architect or engineer who acts as a residential building contractor as defined in R.S. 37:2150.1(9) must possess a residential construction license.

C. "Cost of a project" includes the value of all labor, materials, subcontractors, general overhead and supervision.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2150-2173.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, State Licensing Board for Contractors, LR 22:94 (February 1996).

§1503. Requirements

A. All residential building contractors shall work in the name which appears on the official records of the State Licensing Board for Contractors for the current license.

B. If a licensed general residential contractor assigns a contract, or any portion of a contract, in the amount of \$50,000 or more to another general residential contractor, the person or firm to which it is assigned, and/or who performs the work must possess the proper current license. No unlicensed contractor shall be permitted to assign a contract, or any portion of a contract, in the amount of \$50,000 or more to a licensed contractor in circumvention of the laws of the State of Louisiana.

C. All applications for a residential contractors license shall contain the information required on the forms which are available at the offices of the State Licensing Board for Contractors, 7434 Perkins Road, Baton Rouge, Louisiana 70808. Application shall be time dated when received and shall be reviewed by the Residential Contractors Licensing Board Subcommittee prior to being submitted to the Contractors Licensing Board at the next regularly scheduled meeting of the board, provided the application is completed with all of the information requested thereon, along with a financial statement, fees, certificate of workers compensation insurance, certificate of general liability insurance in the

minimum amount of \$100,000, properly notarized and provided all examination requirements have been met.

D. Workers compensation and general liability insurance, obtained from an insurer authorized to sell those forms of insurance coverage in the state, shall be maintained continuously by residential building contractors. Insurance certificates evidencing current workers compensation and general liability insurance shall be submitted with each new application, every renewal application, and upon the renewal date of coverage. In the event of a lapse of insurance coverage, a cease and desist order shall be issued and such lapse shall be grounds for suspension or revocation of the license after proper hearing.

E. The qualifying party for each applicant must pass any examinations required and administered by the State Licensing Board for Contractors.

F. The qualifying party shall be an individual owner, an original incorporator, partner, member or shareholder, or an employee of the applicant who has been in full-time employment for 120 consecutive days immediately preceding the application. Any licensed residential building contractor may have more than one qualifying party.

G. All licensed residential builders shall take and pass all examinations required to change or add a nonresidential classification or subclassification.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2150-2173.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, State Licensing Board for Contractors, LR 22:94 (February 1996).

§1505. Exceptions

A. An applicant for a residential building contractor's license who can show written proof that he possessed a contractors license for building construction as required by R.S. 37:2150-2164 prior to February 1, 1996 shall not be required to take the examinations required by the State Licensing Board for Contractors, but shall meet all other requirements for such license.

B. An applicant who can show written proof that he holds a residential construction license issued by a local municipality issued prior to February 1, 1996 that administered a test written by a national testing company, approved by the State Licensing Board for Contractors, shall be exempt from taking the examinations required by the board, but shall meet all other requirements for such license.

C. An applicant seeking an exemption from the examinations required by the State Licensing Board for Contractors for having been actively engaged in residential building construction prior to February 1, 1996 as stated in R.S. 37:2167(D)(3) and (4) shall, in addition to all other requirements for licensure:

1. submit copies of the required building permits to the State Licensing Board for Contractors with the application; and

2. submit requests for any exceptions or other special requests in writing to the State Licensing Board for Contractors Residential Subcommittee.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2150-2173.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, State Licensing Board for Contractors, LR 22:95 (February 1996).

§1507. Violations

A. The State Contractors Licensing Board Residential Subcommittee has the authority to conduct hearings on alleged violations by residential building contractors in accordance with the provisions of R.S. 37:2158.

B. The State Contractors Licensing Board Residential Subcommittee shall make recommendations to the Contractors Board regarding their findings and determinations as a result of the hearings on said alleged violations.

C. Residential building contractors whose alleged violations were heard by the subcommittee and a recommendation rendered may request to appear at the next regularly scheduled board meeting, or at any other board meeting where their alleged violations are brought before the board for final action, and shall be given an opportunity to address the board regarding the subcommittee's recommendation.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2150-2173.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, State Licensing Board for Contractors, LR 22:95 (February 1996).

§1509. Penalties

A. The subcommittee has the authority to issue, suspend, modify or revoke residential contractors licenses, subject to the final approval of the State Licensing Board for Contractors.

B. In accordance with the provisions of R.S. 37:2172, the subcommittee shall have the authority to issue a fine not to exceed \$500 for each violation, for the causes listed in R.S. 37:2158, subject to final approval by the State Contractors Licensing Board.

C. In addition to or in lieu of any of the penalties provided in this Chapter, the subcommittee is empowered to issue a cease and desist order. Further, the subcommittee may seek the other civil remedies provided in R.S. 37:2162 for violations of this Chapter, subject to the final approval of the State Licensing Board for Contractors.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2150-2173.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, State Licensing Board for Contractors, LR 22:95 (February 1996).

Joy Evans
Administrator

9602#007

RULE

**Department of Economic Development
Real Estate Commission**

Adjudicatory Proceedings (LAC 46:LXVII.4707)

Notice is hereby given that the Real Estate Commission has adopted amendments and changes to the existing rules and regulations of the agency: LAC 46:LXVII, Subpart 1, Chapter 47, Investigations and Hearings.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part LXVII. Real Estate
Subpart 1. Real Estate**

**Chapter 47. Investigations and Hearings
§4707. Adjudicatory Proceedings**

When, as a result of an investigation, it appears that violations of the Louisiana Real Estate License Law may have been committed by a licensee, registrant or certificate holder, the violations may be adjudicated through informal or formal adjudicatory proceedings.

1. Informal Adjudicatory Proceedings

a. The complaint may be concluded informally without public hearing on the recommendation of the hearing examiner and the concurrence of the executive director.

b. A preliminary notice of adjudication will be issued to advise the respondent of the violation or violations alleged and to advise the respondent that the matter can be resolved informally should the respondent desire to admit to committing the act or acts specified and submits a written request that the matter be resolved informally.

c. A hearing officer will be appointed by the executive director to conduct an informal hearing with the respondent.

d. The informal hearing will be attended by the case investigator, who will respond to questions concerning the investigation which resulted in the allegations, and the hearing examiner, who will inform the hearing officer of the administrative, jurisdictional, and other matters relevant to the proceedings. No evidence will be presented, no witnesses will be called and no formal transcript of the proceedings will be prepared by the commission. Statements made during the informal proceedings may not be introduced at any subsequent formal adjudicatory proceedings without the written consent of all parties to the informal hearing.

e. If the informal hearing results in an admission by the respondent that violations were committed as alleged, the hearing officer may enter into a recommended stipulations and consent order to include the imposition of any sanctions authorized by the Louisiana Real Estate License Law. In the written document the respondent must stipulate to having committed an act or acts in violation of the license law or the rules and regulations of the commission, accept the sanctions recommended by the hearing officer, and waive any rights to request a rehearing, reopening, or reconsideration by the commission, and the right to judicial appeal of the consent order.

f. If at the informal hearing the respondent does not admit to having committed the act or acts specified, does not accept the sanctions recommended by the hearing officer, or does not waive the specified appellate rights, the alleged violations will be referred to the commission along with a recommendation for a formal adjudicatory hearing.

g. If the respondent does execute a stipulations and consent order, the executive director shall submit the document to the commission at the next regular meeting for approval and authorization for the executive director to execute the consent order in the name of the commission.

h. The actions of the commission relative to all consent orders shall be noted in the minutes of the meeting at which the consent order is approved and authorization is granted to the executive director to execute the order in the name of the commission.

i. Any consent order executed as a result of an informal hearing shall be effective on the date approved by the commission.

j. Repeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435 and R.S. 37:1453.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989), amended LR 21:460 (May 1995), repromulgated LR 21:932 (September 1995), repromulgated LR 22: 96 (February 1996).

J. C. Willie
Executive Director

9602#020

RULE

Department of Economic Development Real Estate Commission

Compensation (LAC 46:LXVII.3103)

Notice is hereby given that the Real Estate Commission has adopted revisions to the existing rules and regulations of the agency, specifically LAC 46:LXVII. Chapter 31, Compensation.

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 22:96 (February 1996).

J. C. Willie
Executive Director

9602#053

RULE

Department of Economic Development Real Estate Commission

Names on Licenses, Registrations and Certificates; Tradenames; Symbols and Trademarks (LAC 46:LXVII.Chapter 21)

Notice is hereby given that the Real Estate Commission has adopted the following amendments and changes to the existing rules and regulations of the agency: LAC 46:LXVII, Subpart 1, Chapter 21, Names on Licenses, Registrations, and Certificates; Tradenames; Symbols; and Trademarks.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXVII. Real Estate Subpart 1. Real Estate

Chapter 21. Names on Licenses, Registrations, and Certificates; Tradenames; Symbols; and Trademarks

§2101. Names on Licenses, Registrations and Certificates

All licenses, registrations and certificates issued by the Louisiana Real Estate Commission will be issued in the name of the legal entity of the applicant.

1. Licenses, registrations and certificates issued to individual real estate brokers, real estate salespersons, timeshare registrants, and real estate school instructors will be issued in the name of the individual person.

2. Licenses, registrations and certificates issued to any corporation or partnership for any purpose will be issued in the identical name of the corporation or partnership as registered with the secretary of state, except as indicated in §2101.A.3. No license, registration or certificate will be issued to any corporation or partnership not registered with the secretary of state.

3. The name of any broker or salesperson whose real estate license has been revoked by the commission, with the revocation becoming final and effective on or after February 1, 1995, which in any way represents that the former broker or salesperson is licensed by the commission to conduct real estate activities requiring licensing in Louisiana, shall not be utilized on any license issued by the commission.

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Real Estate Commission, LR 3:398 (October 1977), amended LR 4:479 (December 1978), amended by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989), LR 21:461 (May 1995), repromulgated LR 22:97 (February 1996).

§2103. Tradenames

Licenses, registrations and certificates issued by the commission will not indicate a tradename of the licensee, registrant or certificate holder unless the tradename is registered with the secretary of state and a copy of the registration is on file at the commission.

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Real Estate Commission, LR 3:398 (October 1977), amended LR 4:479 (December 1978), amended by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989), LR 21:461 (May 1995), repromulgated LR 22:97 (February 1996).

§2105. Symbols and Trademarks

A. Licensees, registrants and certificate holders are prohibited from using any symbol or trademark in connection with any license, registration or certificate issued by the commission without first registering the symbol or trademark with the secretary of state and placing a copy of the registration on file with the commission.

B. Repeal

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December, 1989), amended LR 21:461 (May 1995), repromulgated LR 22:97 (February 1996).

§2107. Transitional Licensing and Registration of Documents

Repeal

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Real Estate Commission, LR 3:398 (October 1977), amended LR 4:479 (December 1978), amended by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989), repealed LR 21:461 (May 1995), repealed LR 22:97 (February 1996).

J. C. Willie
Executive Director

9602#021

RULE

Board of Elementary and Secondary Education

Bulletin 741—Adult Education Program

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has adopted numerous amendments to the Adult Education Program policies and standards which are included

in Bulletin 741, Louisiana Handbook for School Administrators. These changes are for the purpose of clarification and/or to incorporate policies and practices that have been recommended for implementation in the statewide GED Testing Program and Adult Education Program. These amendments, printed below, will be incorporated into Bulletin 741 along with the other numerous revisions.

Adult Education Program

1.124.00 The Adult Education program shall be administered by the State Department of Education (SDE) and operated by the local governing authority.

Refer to *Louisiana State Plan for Adult Education*, and R.S. 17:14 for administration of the program

Requirements for Taking the General Educational Development (GED) Test

1.124.02 A student shall be 17 years of age or older, in order to be authorized to be administered the General Educational Development (GED) Test. A married or emancipated individual may be permitted to take the General Educational Development (GED) test at 16 years of age and above. A student who has attained the age of 16 and qualified to take the test of GED may request an age waiver if a bona fide hardship exists. Such waiver must be approved by the Board of Elementary and Secondary Education (BESE) prior to taking the GED test. Individuals 15 years of age and below shall not be permitted to take the GED test under any circumstances.

1.124.03 To qualify for recommendation to take the General Educational Development (GED) Test, a student shall be a veteran or member of the armed forces or shall enroll in an adult education program and take the California Achievement Test or the Test of Adult Basic Education at the high school level. An average score of 12.9, with no subject matter area below 12.0, shall be attained by the individual to be authorized to take the General Educational Development (GED) Test. Certifying qualifying scores on the California Achievement Test or the Test of Adult Basic Education is the responsibility of the adult education supervisor in the local school district.

1.124.04 The test of General Educational Development (GED) may not be administered to candidates who are enrolled in an accredited high school, or have graduated from an accredited high school, or have received a high school equivalency diploma.

Requirements for Passing the General Educational Development (GED) Test

1.124.05 A student shall earn a standard score of 40 or above on each of the five sections of the test of General Educational Development (GED). If any one or more of the scores on the initial testing is below 40, the student shall earn a minimum average score of 45 on all sections.

1.124.06 The same form shall be used on all five tests when a student is being administered the General Educational Development (GED) Test.

Requirements for Retesting on the General Educational Development (GED) Test.

1.124.07 A student other than a veteran or member of the armed forces shall receive instruction in the area(s) of deficiency until such time as the instructor certifies the student

to be proficient in the failed section(s). A veteran or member of the armed forces may receive instruction if the individual desires. A student may not be retested before 30 days have elapsed since the student last tested.

1.124.08 Retesting shall be done on a form of the test different from the one originally used in testing. No form may be used a second time. If more than one test is being repeated by a student, all retests shall be on the same form.

1.124.09 The department will retain records of a student's unsuccessful attempts to pass the GED test for only five years following the individuals last attempt to pass the test. The student must retest on all five sections of the GED test should the five years elapse.

1.124.10 The student shall score a minimum of 40 on each of the retested sections.

Issuance of Equivalency Diplomas

1.124.11 A high school equivalency diploma will be issued from a state approved high school after the student has successfully completed the test of General Educational Development (GED).

1.124.12 The high school equivalency diploma shall be issued from the last high school the student attended, the high school nearest the student's legal residence, the high school nearest to the publicly supported institution of higher learning to which the student is academically admissible, or the high school which has been officially designated by a local school system for that purpose.

1.124.13 High school equivalency diplomas shall be issued only through state approved high schools, and the student shall be considered a graduate of the school through which the diploma is issued.

1.124.14 A Louisiana resident who successfully completes the General Educational Development (GED) test at an official out-of-state GED testing center may be entitled to receive an equivalency diploma provided that an official copy of the GED test results and qualifying scores on the California Achievement Test or the Test of Adult Basic Education are submitted for review to the Director of the Bureau of Adult and Community Education of the Louisiana Department of Education, and the student meets all other qualifications to receive an equivalency diploma. Veterans do not need to submit qualifying scores.

1.124.15 To be eligible for an equivalency diploma based on results of the General Educational Development (GED) test, a veteran or member of the armed forces shall be a legal resident of Louisiana for six consecutive months or have formerly attended a Louisiana school.

1.124.16 A student that has earned an equivalency diploma is considered a Louisiana high school graduate in every respect.

1.124.17 A student that has received a high school equivalency diploma may return to a regular high school program but will not be allowed to participate in athletic activities.

1.124.18 Public high school equivalency diplomas shall be signed by the State Superintendent of Education, the President of the Board of Elementary and Secondary Education, the local superintendent of schools, the local school board president, and the local high school principal.

AUTHORITY NOTE: Promulgated in accordance with R. S. 17:6, 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 22:98 (February 1996).

Carole Wallin
Executive Director

9602#018

RULE

Board of Elementary and Secondary Education

Bulletin 746—Child Welfare and Attendance Supervisor Certification

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended the certification requirements for Supervisor of Child Welfare and Attendance. This is an amendment to *Bulletin 746, Louisiana Standards for State Certification of School Personnel*.

Supervisor of Child Welfare and Attendance and/or Visiting Teacher

The applicant must hold a valid Type A Louisiana teaching certificate.

The applicant must hold a master's degree from a regionally accredited institution, including 15 semester hours of professional education at the graduate level as follows:

Principles of guidance and counseling	3 semester hours
Supervision of child welfare and attendance and/or visiting teacher work	3 semester hours
School law	3 semester hours
Social psychology	3 semester hours
Psychology of child growth and development or human growth development	3 semester hours

Social workers licensed under R.S. 37:2701 et seq., shall be certified as visiting teachers.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 22:98 (February 1996).

Carole Wallin
Executive Director

9602#016

RULE

Board of Elementary and Secondary Education

Bulletin 1943—Teacher Assessment

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education, in order to be in conformity with R.S. 17:3882(6)(a), Act 60 of the Regular Session of the 1995

Louisiana Legislature, has amended *Bulletin 1943, Policies and Procedures for the Louisiana Teacher Assessment* as listed below:

Section III: Applicability and Timelines

A. Delete "assessment teachers, librarians, counselors, NOTE: Promulgated by the Board of Elementary a speech therapists"

Revised A. will now read:

New teachers subject to this assessment program, as specified by Act 1 of the 1994 Third Extraordinary Session of the Louisiana Legislature, include general education teachers, vocational education teachers, special education teachers, and "any person employed as a full-time employee of a local board who is engaged to directly and regularly provide instruction to students."

Section IV: Glossary

New Teacher

Delete "including a librarian, an assessment teacher, a speech therapist, and a counselor",

New Teacher will now read:

New teachers—any full-time employee of a local board who is engaged to directly and regularly provide instruction to students in any elementary, secondary, or special education school setting, one who is not an administrator and who is employed for the first time in a public school in this state after August 1, 1994; and one who holds a regular teaching certificate which when issued was valid for three years, or who is authorized under law or board regulation to teach temporarily while seeking a regular teaching certificate.

AUTHORITY NOTE: R. S. 17:17:3882(6)(a), Act 60 of R. S. 1995.

HISTORICAL nd Secondary Education, LR 22:99 (February 1996).

Carole Wallin
Executive Director

9602#015

RULE

Board of Elementary and Secondary Education

Special Education Advisory Council (LAC 28:I.105)

In accordance with the R.S. 49:950 et seq., the Administrative Procedure Act, Board of Elementary and Secondary Education adopted the recommendations of the Ad Hoc Committee studying the composition and selection of the Special Education Advisory Council. This is an amendment to the LAC 28:I.105 as stated below. This policy shall replace all current and conflicting policies on the Special Education Advisory Council whether they be in the Special Education State Plan, Bulletin 1706 or other BESE approved bulletins, policies or guidelines governing special education programs and funding.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary
Education**

Chapter 1. Organization

§105. Board Advisory Councils

* * *

B. Composition

* * *

2. Special Education Advisory Council

a. Creation. Pursuant to federal law and regulations and to state law, the Special Education Advisory Council is created to serve the state board in its constitutional functions to supervise and control public schools including programmatic and budgetary responsibility for all funds appropriated for special education programs.

b. Membership. The state advisory panel will be composed of persons involved in or concerned with the education of children with disabilities will include one persons representative of each of the following categories except for category five which shall have two representatives:

- i. individuals with disabilities;
- ii. teachers of children with disabilities;
- iii. parents of children with disabilities;
- iv. state and local educational officials;
- v. special education program administrators (two);
- vi. regular classroom teachers;
- vii. representatives of recipients of special education and related services and their families;
- viii. representatives of advocate agencies for the disabled;
- ix. vocational-technical schools; and
- x. colleges and universities.

C. Appointments. As provided in R.S. 17:1954(A), the advisory council shall be appointed by the Department of Education with the approval of the state board. Each board member shall recommend to the superintendent, one name to serve on the advisory body from one of the membership categories to be chosen on the basis of lots drawn by board members as vacancies occur.

D. Procedures. The Special Education Advisory Council shall conduct its meetings according to rules of procedures for state board advisory councils as found in §105 of this Code and in particular those policies relating to membership terms, selection of officers, filling of vacancies, payment of expenses, general functions, quorum, attendance, procedures for the conduct of meetings, reporting, and staffing by the state board and the State Department of Education.

E. Functions

1. As stated in federal regulations the functions of the advisory council shall be to:

- a. advise the state board and the Department of Education of unmet needs within the state in the education of children with disabilities;
- b. comment publicly on the Special Education State Plan and on rules and regulations proposed for issuance by the state regarding the education of children with disabilities and the procedures for distribution of funds under federal laws;

c. assist in developing and reporting such information and evaluations as may assist federal authorities in the performance of their legal responsibilities.

2. As stated in R.S. 17:1945(B) of the Louisiana Revised Statutes, the advisory council shall review rules and regulations governing the Education of Exceptional Children Act.

3. As stated in state board policy in LAC 28:I.105(G), the functions of the council are advisory in nature and considerations shall include items referred by the state board as well as items initiated by the council and approved by the board through its regular procedures.

4. As stated in state board policy LAC 28:I.1711(E), the advisory council shall perform the duties related to disbursal of certain special education discretionary funds.

AUTHORITY NOTE: Promulgated in accordance with 20 USC 1413(a)(12); 34 C.F.R. Part 300, Sec. 300.650-653; R.S. 17:1954.

HISTORICAL NOTE: Amended by the Board of Elementary and Secondary Education, LR 22:100 (February 1996).

Carole Wallin
Executive Director

9602#017

RULE

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

Foreign Hazardous Waste Importation (LAC 33:V.4139) (HW45)

(Editor's Note: A portion of the following rules, which appeared on pages 20-21 of the January 20, 1996 Louisiana Register, is being republished to correct typographical errors.)

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

§4139. Recyclable Materials Used in a Manner Constituting Disposal

[See Prior Text in A-B.1]

2. Owners and operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal but who are not the ultimate users of the materials are regulated under all applicable provisions of LAC 33:V.Chapters 5, 9, 11, 15, 19, 21, 23, 33, 35, and 37; Subchapters A-K of LAC 33:V.Chapters 43; and LAC 33:V.105.A.

3. Owners and operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of LAC 33:V.Chapters 1, 3, 5, 7, 9, 11, 15, 19, 21, 23, 25, 27, 29, 31, 33, 35 and 37; Subchapters A-M of Chapter 43; and the notification

requirement under section 3010 of RCRA. (These requirements do not apply to products which contain these recyclable materials under the provisions of LAC 33:V.4139.A.2.)

[See Prior Text in B.4]

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 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 15:378 (May 1989), LR 16:220 (March 1990), LR 17:362 (April 1991), LR 17:658 (July 1991), LR 20:1000 (September 1994), LR 22:21 (January 1996), repromulgated LR 22:100 (February 1996).

James B. Thompson, III
Assistant Secretary

9602#003

RULE

Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity

Actuarial Apportionment of Cost of Living Adjustments

The Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity ("Fund"), pursuant to R.S. 11:3363(F), has repealed rules and regulations applicable to actuarial apportionment of cost of living adjustments between members retiring under the new system and their beneficiaries due to the recent passage of legislation granting cost of living increases in their own right to widows and beneficiaries pursuant to R.S. 11:3382.

Rule I. Definitions

Repealed

Rule II. Apportionment of Cost of Living Adjustments ("COLAs")

Repealed

Rule III. Calculation of COLA Apportionment

Repealed

Rule IV. Application of COLA Apportionment

Repealed

Rule V. Effective date

Repealed

Rule VI. Sunset Provision

Repealed

William M. Carrouché
President

9602#002

RULE

Department of Health and Hospitals Board of Examiners of Professional Counselors

General Provisions (LAC 46:LX.Chapters 1-17)

The Licensed Professional Counselors Board of Examiners, under authority of the Louisiana Mental Health Counselor Licensing Act, R.S. 37:1101-1115, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended the following rules governing the practice of mental health counseling in the state of Louisiana and repealed LAC 46:LX.1103.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LX. Licensed Professional Counselors Board of Examiners

Chapter 1. General Provisions

§101. ...

§103. Description of Organization

The Louisiana Licensed Professional Counselors Board of Examiners, hereafter referred to as the board, resides in the Department of Health and Hospitals, and consists of seven members, who shall be residents of the state of Louisiana. Each term shall be for four years. Appointments to the board shall be made by the governor from a list of qualified candidates submitted by the executive board of the Louisiana Counseling Association. Each appointment by the governor shall be submitted to the Senate for confirmation. Board membership shall consist of three licensed professional counselors, three educators who are licensed professional counselors and whose function is the training of mental health counselors in accredited programs, and one individual from the public at large. The professional membership of the board shall be licensed under this Chapter. No board member shall serve more than two full consecutive terms. No board member shall be liable in any civil action for any act performed in good faith in the execution of his duties under Chapter 13 of Title 37.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1115.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:82 (February 1988), amended by the Department of Health and Hospitals, Board of Examiners of Professional Counselors, LR 15:544 (July 1989), LR 22:101 (February 1996).

§105. Vacancies

Any vacancy occurring in board membership for an unexpired term shall be filled for the remainder of the term by the governor, within 30 days, from a list of qualified candidates submitted by the executive board of the Louisiana Counseling Association. Unexpired terms shall be filled by appointment by the governor, within 30 days, from a list of qualified candidates prescribed in Section 1104 of R.S. 37:1101-1115.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1115.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:82 (February 1988), amended by Department of Health and Hospitals, Board of Examiners of Professional Counselors, LR 22:101 (February 1996).

Chapter 3. Board Meetings, Procedures, Records, Powers, and Duties

§301.-307. ...

§309. Quorum

Four members of the board shall constitute a quorum of the board at any meeting or hearing for the transaction of business and may examine, approve, and renew the license of applicants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1115.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:82 (February 1988), amended by Department of Health and Hospitals, Board of Examiners of Professional Counselors, LR 22:101 (February 1996).

§311. ...

§313. Code of Ethics

The board has adopted the Code of Ethics of the American Counseling Association, as specified in R.S. 37:1105(D) and may adopt any revisions or additions deemed appropriate or necessary by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1115.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:83 (February 1988), amended by the Department of Health and Hospitals, Board of Examiners of Professional Counselors, LR 22:101 (February 1996).

Chapter 5. License and Practice of Counseling

§501. ...

§503. Definitions

A-C. ...

D. *Practice of Mental Health Counseling*—rendering or offering to individuals, groups, organizations, or the general public by a licensed professional counselor, any service consistent with his professional training as prescribed by R.S. 37:1107(A)(8), and code of ethics/behavior involving the application of principles, methods, or procedures of the mental health counseling profession which include but are not limited to:

1. *Mental Health Counseling*—assisting an individual or group, through the counseling relationship, to develop an understanding of personal problems, to define goals, and to plan actions reflecting his or their interests, abilities, aptitudes, and needs as these are related to personal and social concerns, educational progress, and occupations and careers.

a. *Mental Health Counseling Practicum*—licensure requires the completion of a mental health counseling practicum totaling 100 clock hours. The practicum includes:

i. a minimum of 40 hours of direct counseling with individuals or groups;

ii. a minimum of one hour per week of individual supervision by a counseling faculty member supervisor or supervisor working under the supervision of a program faculty member;

iii. a minimum of one and one-half hours per week of group supervision with other students in similar practica or internships by a program faculty member supervisor or a student supervisor working under the supervision of a program faculty member or an approved on-site supervisor that meets the on-site supervisor requirements established by the university.

b. *Mental Health Counseling Internship*—licensure requires the completion of a mental health counseling internship totaling 300 clock hours. The internship includes:

i. a minimum of 120 hours of direct counseling with individuals or groups;

ii. a minimum of one hour per week of individual supervision by a counseling faculty member supervisor or an LPC working in conjunction with the faculty member;

iii. a minimum of one and one-half hours per week of group supervision with other students in similar practica or internships by a program faculty member supervisor or a student supervisor working under the supervision of a program faculty member or an approved on-site supervisor that meets the on-site supervisor requirements by the university.

2.-4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1115.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:83 (February 1988), amended by the Department of Health and Hospitals, Board of Examiners of Professional Counselors, LR 16:302 (April 1990), LR 18:51 (January 1992), LR 22:102 (February 1996).

Chapter 7. Requirements for Licensure

§701. ...

§703. Licensing Requirements

A.1.-6. ...

7. has declared special competencies and demonstrated professional competence therein by passing a written and, at the discretion of the board, an oral examination as shall be prescribed by the board;

8. has received a graduate degree the substance of which is professional mental health counseling in content from a regionally accredited institution of higher education offering a master's and/or doctoral program in counseling that is approved by the board and has accumulated at least 48 graduate semester hours as part of the graduate degree plan containing the eight required areas, the supervised mental health practicum and supervised internship in mental health counseling as defined by rules adopted by the board listed under Chapter 5.

a. The following eight areas are required to have at least one semester course:

- i. counseling/theories of personality;
- ii. human growth and development;
- iii. abnormal behavior;
- iv. techniques of counseling;
- v. group dynamics, processes, and counseling;
- vi. lifestyle and career development;
- vii. appraisal of individuals;
- viii. ethics.

b. The following two areas are encouraged for inclusion in graduate training:

- i. substance abuse;
- ii. marriage and family studies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1115.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:83 (February 1988), amended by the Department of Health and Hospitals, Board of Examiners of Professional Counselors, LR 18:269 (March 1992), LR 22:102 (February 1996).

§705. Supervision Experience

A. Supervision Requirements

1. ...

2.a. To be eligible for supervision as a counselor intern, the applicant must provide proof of a supervised mental health counseling practicum/internship and completion of seven of the nine listed content areas, as follows:

- i. counseling/theories of personality;
- ii. human growth and development;
- iii. abnormal behavior;
- iv. techniques of counseling;
- v. group dynamics, processes, and counseling;
- vi. lifestyle and career development;
- vii. appraisal of individuals;
- viii. substance abuse;
- ix. marriage and family studies.

b. Beginning August 15, 1996, to be eligible for supervision as a counselor intern, the applicant must provide proof of completion of a supervised practicum and internship as listed in §503.Definitions, Subsection D.1.a-b (listed above) and all of the following eight content areas as follows:

- i. counseling/theories of personality;
- ii. human growth and development;
- iii. abnormal behavior;
- iv. techniques of counseling;
- v. group dynamics, processes and counseling;
- vi. lifestyle and career development;
- vii. appraisal of individuals;
- viii. ethics.

c. If a counselor intern commences supervision prior to August 15, 1996 pursuant to §705.A.2.a above, the counselor intern must complete all of the eight content areas pursuant to R.S. 37:1107(B), in order to be eligible for licensure upon completion of the supervised internship.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Professional Counselors, LR 18:269 (March 1992), amended LR 21:466 (May 1995), LR 22:102 (February 1996).

Chapter 8. Renewal of License

§801. Renewal

A licensed professional counselor shall renew his license every two years in the month of June by meeting the requirement that 25 clock hours of continuing education be obtained prior to each renewal date every two years in an area of professional mental health counseling as approved by the board and by paying a renewal fee. The licensee will also submit a current copy of his declaration statement at each renewal period. The chairman shall issue a document renewing the license for a term of two years. The license of any mental health counselor who fails to have this license renewed biannually during the month of June shall lapse;

however, the failure to renew said license shall not deprive said counselor the right of renewal thereafter. A lapsed license may be renewed within a period of two years after the expired renewal date upon payment of all fees in arrears and presentation of evidence of completion of the continuing education requirement and a current copy of his/her declaration statement. Application for renewal after two years from the date of expiration will not be considered for renewal; the individual must apply under the current licensure guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Professional Counselors, LR 18:271 (March 1992), amended LR 22:103 (February 1996).

§803. ...

Chapter 9. Fees

§903. ...

Chapter 11. Reciprocity

§1101. States, Territories, and Commonwealths

Upon application accompanied by fee and without written or oral examination, as stated in R.S. 37:1109, the board may issue a license to any person who furnishes upon a form and in such manner as the board prescribes, evidence satisfactory to the board that he is licensed, certified, or registered as a professional counselor by another state, territorial possession of the United States, District of Columbia, or Commonwealth of Puerto Rico if the requirements for such licensure, certification, or registration are substantially equivalent to those of R.S. 37:1101-1115.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1115.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:84 (February 1988), amended by the Department of Health and Hospitals, Board of Examiners of Professional Counselors, LR 22:103 (February 1996).

§1103. Certification by a National Certification Board Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1115.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:84 (February 1988), repealed by the Department of Health and Hospitals, Board of Examiners of Professional Counselors, LR 22:103 (February 1996).

Chapter 13.-15. ...

Chapter 17. Exclusions

§1701. ...

§1703. Exemptions

A. A certified school counselor who meets the standards prescribed by the State Department of Education and the Board of Elementary and Secondary Education, while practicing school counseling within the scope of his employment by a board of education or by a private school. Nothing herein shall be construed to allow such persons to render mental health counseling services to the public unless they have also been licensed under the provisions of R.S. 37:1107.

B. Any nonresident temporarily employed in this state to render mental health counseling services for not more than 30 days a year, who meets the requirements for licensure in R.S.

37:1107 or who holds a valid license and certificate issued under the authority of the laws of another state.

C. Any student in an accredited education institution, while carrying out activities that are part of the prescribed course of study, provided such activities are supervised by a professional mental health counselor. Such student shall hold himself out to the public only by clearly indicating his student status and the profession in which he is being trained.

D. Any persons licensed, certified, or registered under any other provision of the state law, as long as the services rendered are consistent with their laws, professional training, and code of ethics, provided they do not represent themselves as licensed professional counselors or mental health counselors, unless they have also been licensed under the provisions of R.S. 37:1107.

E. Any priest, rabbi, Christian Science practitioner, or minister of the gospel of any religious denomination, provided they are practicing within the employment of their church or religious affiliated institution and they do not represent themselves as licensed professional counselors or mental health counselors unless they have also been licensed under the provisions of R.S. 37:1107.

F. Any person with a master's degree in counseling while practicing mental health counseling under the board-approved supervision of a licensed professional counselor. The supervisee must use the title "counselor intern" and shall not represent himself to the public as a licensed professional counselor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1115.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:85 (February 1988), amended by the Department of Health and Hospitals, Board of Examiners of Professional Counselors LR 15:545 (July 1989), LR 22:103 (February 1996).

Peter Emerson, Ed.D., LPC
Board Chairman

9602#004

RULE

**Department of Health and Hospitals
Board of Nursing**

Domicile and Annual Meeting
(LAC 46:XLVII.3305, 3307)

Notice is hereby given, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that the Board of Nursing (board), pursuant to the authority vested in the board by R.S. 37:918, R.S. 37:919 has adopted rules amending the Professional and Occupational Standards pertaining to the official office of the board and the annual meeting of the board. The amendments of the rules are set forth below.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XLVII. Nurses

Subpart 2. Registered Nurses

Chapter 33. General Rules

Subchapter A. Board of Nursing

§3305. Official Office of the Board

A. The domicile of the board is Baton Rouge, Louisiana. The office for administration of board work shall be established in the metropolitan area of the City of New Orleans.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:919 and R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:73 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 22:104 (February 1996).

§3307. Meetings of the Board

* * *

B. A minimum of four regular meetings shall be held each year. The annual meeting shall be held at the November meeting.

C. - G. ...

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 7:73 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 22:104 (February 1996).

Barbara L. Morvant
Executive Director

9602#056

RULE

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

Adult Denture Program

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, has adopted the following rule 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 and 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, utilization review, and other measures as allowed by federal law." This rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, establishes the following regulations in the Adult Dental Program. New dentures are only allowable seven years after the original dentures are provided.

1. New dentures are only allowable seven years after the original dentures are provided. A combination of two denture relines or one complete denture and one reline per arch may be allowed in a seven-year period, as prior authorized by BHSF or its designee.

2. For relines, at least one year shall have elapsed since the denture was constructed or last relined. In addition the Adult Dental Program shall no longer reimburse for cast partial dentures. Any of the above services previously authorized but not completed prior to July 13, 1995 shall not be reimbursed.

Bobby P. Jindal
Secretary

9602#037

RULE

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

Early Periodic Screening Diagnosis and Treatment
(EPSDT)

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 Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and 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, utilization review, and other measures as allowed by federal law." This rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, limits EPSDT eyeglasses to three per year with provision for extending if medically necessary and reduces reimbursement fees by 15 percent for providers of the following early periodic screening diagnosis and treatment services:

EPSDT Eyeglasses:

Procedure Codes - X6366-X6368; X6370-X6376; X9066-X9068; and X-0089.

EPSDT Hearing Aids:

Procedure Codes - X-0192; V5030; V5040; V5050; V5060; V5070; V5080; V5100; V5120; V5130; V5140; V5150; V5170; V5180; V5190; V5210; V5220; V5230; and V5299

Bobby P. Jindal
Secretary

9602#042

RULE

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

Emergency Medical Transportation Air Ambulance Service

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following rule 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 and 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, utilization review, and other measures as allowed by federal law". This rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing establishes the following regulations in the Emergency Medical Transportation Program for the reimbursement of air ambulance services.

I. Reimbursement Methodology

Medicaid will pay a base rate plus mileage according to the rates in effect for Medicare as of January 1, 1995. Separate reimbursement for oxygen and disposable supplies will be made when the provider incurs these costs. Reimbursement for these services will be made in accordance with the rates previously established by Medicare and approved by Medicaid effective April 1, 1995.

II. Standards for Payment

1. Helicopters and fixed winged aircraft must be certified by the Department of Health and Hospitals, Bureau of Health Services Financing in order to receive Medicaid reimbursement and all air ambulance services must be provided in accordance with the state law and regulations governing the administration of these services. All air ambulance services must comply with the state law and regulations governing the personnel certifications of the emergency medical technicians administered by the Department of Health and Hospitals' Bureau of Emergency Medical Services.

2. The Prior Authorization Unit of the fiscal intermediary must approve the medical necessity for all air ambulance services.

3. The Prior Authorization Unit of the fiscal intermediary must review air ambulance claims and either approve or disapprove these services based on the following requirements:

a. Air ambulance services are covered only if speedy admission of the patient is essential and the point of pick-up of the patient is inaccessible by land vehicle or great distances or other obstacles are involved in getting the patient to the nearest hospital with appropriate facilities.

b. Payment for air mileage will be limited to actual air mileage from the point of pick-up to the point of delivery of the patient.

c. Payment for a round trip transport on the same day between two hospitals, is the base rate plus the round trip mileage.

d. If a land ambulance must be used for part of the transport, the land ambulance provider will be reimbursed separately according to rules and regulations for ground ambulance services.

Bobby P. Jindal
Secretary

9602#041

RULE

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

**Emergency Medical Transportation
Program-Nonemergency Ambulance Service**

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 Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and 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, utilization review, and other measures as allowed by federal law". This rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, reduces by 20 percent the established provider rate for nonemergency ambulance transportation services.

Bobby P. Jindal
Secretary

9602#040

RULE

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

Federally Qualified Health Centers

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, has adopted the following rule under the Medical Assistance Program as authorized by R.S. 46:153 et seq. 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 no limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law." This rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, includes each federally qualified health center visit, i.e., encounter, as one of the 12 outpatient physician visits allowable per year for Medicaid eligibles who are 21 years of age or older.

Federally qualified health center visits for prenatal and post partem care are excluded from the maximum allowable number of physician visits per year and are reimbursed on an interim basis in accordance with the physician procedure reimbursement schedule contained in the State Plan and are cost settled.

Bobby P. Jindal
Secretary

9602#043

RULE

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

**Hospital Program—Acute Inpatient Hospital
Services, Outlier**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following rule under 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 and 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, utilization review, and other measures as allowed by federal law." This rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends its reimbursement methodology for qualification and calculation of outlier payments for catastrophic costs associated with medically necessary services provided to children under six in disproportionate share hospitals and for services to infants one year or under in all general acute care hospitals. To qualify for an outlier payment the covered charges for the case must exceed both \$150,000 and 200 percent of the prospective payment. Outlier cases qualifying under the above criteria will be reimbursed the marginal cost associated with the excess cost above the prospective payment amount. Marginal cost is considered to be 55 percent of cost.

Bobby P. Jindal
Secretary

9602#031

RULE

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

KIDMED Medical Screening

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following rule 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 and 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, utilization review, and other measures as allowed by federal law." This rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, reimburses KIDMED providers \$51 under the Early Periodic Screening Diagnosis and Treatment Program for medical screenings of Medicaid recipients under 21 years of age, which are performed by or under the supervision of a licensed physician, or by a certified physician assistant or registered nurse within their scope of practice permitted by state law.

Bobby P. Jindal
Secretary

9602#039

RULE

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

Lab and X-ray Reimbursement

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule 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 and 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, utilization review, and other measures as allowed by federal law." This rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, reduces reimbursement by 15 percent for lab and x-ray services except for those services provided in an outpatient hospital setting.

Bobby P. Jindal
Secretary

9602#034

RULE

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

Mental Health Clinics

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following rule 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 and 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, utilization review, and other measures as allowed by federal law". This rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses mental health clinics for only one procedure per day per recipient. Occupational therapy, recreational therapy, music therapy, and art therapy are not reimbursable services under the Medicaid Program.

Bobby P. Jindal
Secretary

9602#033

RULE

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

Pharmacy Program-Copayment Requirement

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following rule 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 and 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, utilization review, and other measures as allowed by federal law". This rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing imposes a copayment requirement in the Pharmacy Program based on the following payment schedule:

Calculated State Payment	Copayment
\$10.00 or less	\$0.50
\$10.01 to \$25.00	\$1.00
\$25.01 to \$50.00	\$2.00
\$50.01 or more	\$3.00

The pharmacy provider shall collect a copayment from the Medicaid recipient for each drug dispensed by the provider and covered by Medicaid. The following pharmacy services are exempt from the copayment requirement:

- A. services furnished to individuals under 21 years of age;
- B. services furnished to pregnant women if such services are related to the pregnancy, or to any other medical condition which may complicate the pregnancy;
- C. services furnished to any individual who is an inpatient in a hospital, long term care facility, or other medical institution;
- D. emergency services provided in a hospital, clinic, physician office or other facility equipped to furnish emergency care;
- E. family planning services and supplies.

In accordance with federal regulations the following

provisions apply: 1) the provider may not deny services to any eligible individual on account of the individual's inability to pay the copayment amount. However, this service statement does not apply to an individual who is able to pay, nor does an individual's inability to pay eliminate his or her liability for the copayment. Providers shall not waive the recipient copayment liability. Departmental monitoring and auditing will be conducted to determine provider compliance. Violators of this policy will be subject to a penalty such as suspension from the Medicaid Program.

Bobby P. Jindel
Secretary

9602#046

RULE

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

Pharmacy Program—Maximum Allowable Overhead Cost

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule 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 and 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, utilization review, and other measures as allowed by federal law". This rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions applicable to the maximum overhead cost under the Pharmacy Program.

Maximum Allowable Overhead Cost

1. For fiscal year 1995-96, the maximum allowable overhead cost will remain for a one-year period at the level established for fiscal year 1994-95. This maximum allowable overhead cost was established by applying the 1993 indices to appropriate cost categories for a one-year period.

2. No inflation indices or any interim adjustments will be applied to the maximum allowable overhead costs for the time period, July 1, 1995 through June 30, 1996.

Bobby P. Jindel
Secretary

9602#044

RULE

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

Professional Service Program—Physician Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following rule 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 and 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, utilization review, and other measures as allowed by federal law." This rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, reduces the reimbursement for procedure codes payable under the Professional Services Program in accordance with the following schedule.

I. The fees for the following CPT procedure codes are reduced by 10 percent:

A. CPT Codes:

- CPT codes 10040 - 69979 for surgery
- CPT codes 90700 - 99199 for medicine except for 97010-97261
- CPT codes 99201 - 99499 for evaluation and management.

B. The following locally assigned codes and HCPCS codes:

- Z9001 through Z9006 - Prenatal labs, prenatal visits, postpartum visit

- Z9916 - Brainstem evoked response screening
- Z9919 through Z9920 - Androscopy with and without

Biopsy

- 00099 - Anesthesia for Arteriogram, Cardiac Caths, CT Scans, Angioplasties and MRIs

- Z9918 - Removal of Leaking Breast Implants
- J0170 - Adrenalin Injections
- J7190 - Factor VIII Injections for Hemophilia
- J2910 - Gold Therapy Injections
- J1055 - Depo-Provera C Injections
- L8603 - Collagen Implant

II. The fees for the following procedure codes are reduced by 15 percent:

A. CPT Codes:

- 70010 - 79999 - Radiology
- 80002 - 89399 - Pathology and Laboratory

B. The following locally assigned and HCPCS codes:

- Z0053 - Fructosamine
- Z0054 - Zinc Protoporphin
- Z0055 - Free Erythrocyte Protoporphin

III. The reimbursement rates payable to anesthesiologists and CRNAs for procedure codes 62279 and 59515 and for the neonatal per diem codes 99295, 99296 and 99297 are not subject to this rule.

Bobby P. Jindal
Secretary

9602#035

RULE

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

Rehabilitation Clinic Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is 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 Appropriation Act, which states: "The secretary shall implement reductions in the Medicaid program and 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, utilization review, and other measures as allowed by federal law". This rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, reduces the reimbursement by 10 percent to rehabilitation clinics which are facilities that are not part of a hospital but are organized to provide a variety of outpatient rehabilitative services including physical, occupational, speech, hearing, and language therapies.

Bobby P. Jindal
Secretary

9602#032

RULE

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

Rural Health Clinic

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following rule under the Medical Assistance Program as authorized by R.S. 46:153 et seq., 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 no limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law." This rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing includes each rural health clinic visit, i.e., encounter, as one of the 12 physician outpatient visits allowable per year for Medicaid eligibles who are 21 years of age or older.

Rural Health Center visits for prenatal and post partem care are excluded from the maximum allowable number of physician visits per year and are reimbursed on an interim basis in accordance with the physician procedure reimbursement schedule contained in the State Plan and are cost settled.

Bobby P. Jindal
Secretary

9602#045

RULE

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

Substance Abuse Clinics

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following rule 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 and 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, utilization review, and other measures as allowed by federal law". This rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses substance abuse clinics for only one procedure per day per recipient. Occupational therapy, recreational therapy, music therapy, and art therapy are not reimbursable services under the Medicaid Program.

Bobby P. Jindal
Secretary

9602#038

RULE

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

Tuberculosis-Infected Individuals Coverage

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. This rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, provides Medicaid coverage for specific services to eligible individuals who have been diagnosed as or are suspected of being infected with tuberculosis.

The financial eligibility of these persons will be determined in accordance with the income and resource standards for the Supplemental Security Income eligibility group. These individuals must meet all general nonfinancial requirements or conditions of eligibility for Medicaid coverage including compliance with the application, residency and assignment of rights requirements. Medically needy spend-down provisions are not applicable to this category of eligibles. Medical eligibility is to be determined by the Medical Eligibility Determination Team regarding their status as TB-infective. Medicaid coverage for medical and health services to this new optional group is limited to the following specific services which must be provided for the purpose of treating an individual's tuberculosis infection. Allowable services include services to diagnose and confirm the presence of the infection including physician, pharmacy, laboratory and X-ray, rural health clinics, federally qualified health centers services, outpatient hospital services, clinic services and directly observed therapy. Coverage for outpatient hospital services, clinic and directly observed therapy services is restricted to outpatients only. Medicaid coverage does not include inpatient hospital or nursing facility services or room and board for the new group of eligibles. Current Medicaid recipients who are or who become TB-infected are eligible to receive the directly observed therapy services on an outpatient basis for the treatment of their tuberculosis condition.

The reimbursement for physician, pharmacy, laboratory and x-ray, rural health clinics, federally qualified health centers, outpatient hospital services and clinic services provided to individuals infected with tuberculosis is made according to established regulations and policy for the reimbursement of these services under the Medicaid Program. The reimbursement for the provision of the new service, directly observed therapy is paid as a TB clinic service to the Office of Public Health at a prospective fee for service rate established by the Medicaid Program.

Bobby P. Jindal
Secretary

9602#036

RULE

**Department of Public Safety and Corrections
Office of State Police
Charitable Gaming Control Division**

**Charitable Bingo, Keno, Raffle
(LAC 42:I.1789 and 1791)**

The Department of Public Safety and Corrections, Office of State Police, Division of Charitable Gaming Control, in accordance with R.S. 33:4861.26, R.S. 36:408, R.S. 40:1485.4, and R.S. 49:950 et seq., and Act 1995, Number 1154, effective August 15, 1995, has amended LAC 42:I.1789.A to effectively repeal the amendment to said Section promulgated and published as a rule in the *Louisiana Register* on May 20, 1995 (LR 21:472) since it has been overruled by Act 1995, Number 1154, adopted LAC 42:I.1789.K which provides that organizations may establish a maximum jackpot or cap and once reached continue contributions in order to accumulate a second or subsequent jackpot and other related matters, and adopted LAC 42:I.1791 which authorizes and regulates a new form of bingo known as progressive mega jackpot bingo and for related matters.

Title 42

LOUISIANA GAMING

Part I. Charitable Bingo, Keno, Raffle

Chapter 17. Charitable Bingo, Keno and Raffle

Subchapter G. Civil Penalties

§1789. Progressive Bingo

A. Any licensed charitable organization or organizations playing at the same location may deposit a predetermined amount of money before each licensed call bingo session into a special account in order to offer a jackpot prize.

* * *

K. In accordance with R.S. 33:4861.26(E), participating organizations may establish a maximum jackpot or cap only upon written application to and receipt of written permission from the division. Once approved by the division, any subsequent change to the maximum jackpot or cap shall require written approval from the division. Participating organizations may, prior to the progressive bingo jackpot being won, raise but may not lower the maximum jackpot or cap.

1. Such request for written approval shall include at least the following information:

- a. the location where the progressive bingo jackpot game shall be conducted;
- b. the name and license number of each organization participating in the game;
- c. the total amount of funds currently in the Charitable Gaming Progressive Jackpot Account;
- d. the current progressive jackpot in the Charitable Gaming Progressive Jackpot Account;
- e. the current amount of organizations' start up fees in the Charitable Gaming Progressive Jackpot Account;
- f. the requested maximum jackpot or cap and the proposed date in which such maximum jackpot or cap shall be offered as the progressive bingo jackpot prize.

2. In the event that the maximum jackpot or cap established with the division is reached, organizations may continue to make contributions to the Charitable Gaming Progressive Jackpot Account in the amount of \$100 in order to accumulate a second or subsequent jackpot. However, once the maximum jackpot or cap is reached, participating organizations shall not offer any subsequent progressive bingo jackpot prize until such time that the first progressive bingo jackpot prize is won.

3. The dollar amount of the maximum jackpot or cap as established with the division shall be continuously and conspicuously displayed with the current dollar amount of the progressive bingo jackpot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4861.26(E) and R.S. 40:1485.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Charitable Gaming Division LR 20:448 (April 1994), amended LR 21:472 (May 1995), LR 22:111 (February 1996).

§1791. Progressive Mega Jackpot Bingo

A. In accordance with R.S. 33:4861.3 and R.S. 33:4861.26, the governing authority of any municipality or parish shall decide whether a progressive mega jackpot bingo game shall be permitted within the municipality or parish. Such game shall be the aggregate of predetermined contributions made by a group of licensed charitable organizations before each licensed call bingo session deposited into one special account in order to offer a prize for a specific progressive mega jackpot bingo game. For the purpose of conducting a progressive mega jackpot bingo game, such organizations shall:

1. establish links or networks as provided in R.S. 33:4861.26(A)(1) and (G);

2. deposit a predetermined amount of money not to exceed \$100 per participating organization into one special account before each licensed call bingo gaming session. Each contribution shall be in the amount of \$100 and shall be considered part of the total amount of prizes awarded during that session.

B. Participation. Organizations shall participate in only one progressive mega jackpot bingo game at a time and only within the jurisdictional limits approved by the division.

1. Organizations participating in a progressive blackout bingo game as authorized by LAC 42:I.1789 at the same location shall not be allowed to participate in a progressive mega jackpot bingo game. Any organization electing to participate in a progressive mega jackpot bingo game shall first award any progressive blackout bingo prize as authorized by LAC 42:I.1789 prior to entry into any such game.

2. As provided in R.S. 33:4861.26(G), in the event that the population of a single parish exceeds 400,000, only those organizations playing call bingo within that parish shall be able to network or link with other organizations within that parish to offer a prize for a specific progressive mega jackpot bingo game. In the event that the population of a single parish does not exceed 400,000, those organizations playing call bingo within that parish may network or link with other organizations of other parishes as long as the combined population of those parishes networking or linking together does not exceed 400,000.

3. The population of the respective parishes shall be based on the parish population figures as shown by the most recent federal decennial census.

C. Requirements Prior to Start Up. Each location, hall, commercial lessor or noncommercial lessor that has any licensed organization(s) participating in the progressive mega bingo jackpot game shall transmit by facsimile to the division and to the respective governing authority of the parish or municipality or the certified public accountant or management company contracted to oversee the progressive mega jackpot bingo game, if applicable, the following information and documentation prior to the start up of a progressive mega jackpot bingo game or before any additional organizations are allowed to enter:

1. list of names of licensed charitable organizations participating in the progressive mega jackpot bingo game and the respective gaming location's name and physical address, and the designated organization representative as provided in Subsection I.2 and any subsequent changes;

2. list of all members holding, operating, or conducting or assisting in holding, operating, or conducting any game or games of chance, if different from the list submitted with the most current license application;

3. a copy of the authorized signatory cards for the progressive mega jackpot bingo account and any subsequent changes;

4. a copy of the ordinance from the governing authority of the municipality or parish allowing the progressive mega jackpot bingo game, and the population statistics for the parish or parishes, if applicable;

5. the governing authority of the municipality or parish, or the certified public accountant or management company contracted to oversee the progressive mega jackpot bingo game, if applicable;

6. the proposed starting date and session time of the progressive mega jackpot bingo game.

D. Entry and Withdrawal. Each participating organization shall provide a start up fee in the amount of \$200 at the commencement of or entry into a progressive mega jackpot bingo game for deposit into a "Charitable Gaming Progressive Mega Jackpot Bingo Account." All organizations electing to participate in a progressive mega jackpot bingo game shall contribute an additional \$100 prior to the commencement of a progressive mega jackpot bingo game which shall constitute the progressive mega jackpot bingo prize for the first 24-hour period. This contribution is nonrefundable and shall also be considered part of the total amount of prizes awarded for each organization's first scheduled session of the progressive mega jackpot bingo game.

1. Each participating organization shall submit a check to the designated hall, commercial lessor or noncommercial lessor representative in the amount of \$100 during its licensed four-hour session and prior to the commencement of the organization's first scheduled call bingo game made payable to the "Charitable Gaming Progressive Mega Jackpot Bingo Account." This \$100 contribution is nonrefundable and shall constitute part of the progressive mega jackpot bingo prize for the following day and shall be considered part of the total amount of prizes awarded during that session.

2. If a participating organization voluntarily or involuntarily discontinues participation in the progressive mega jackpot bingo game for any reason, that organization shall not be allowed to re-enter the progressive mega jackpot bingo game until the current progressive mega jackpot bingo prize is won.

3. The \$200 start-up fee deposit shall remain in the account until the progressive mega jackpot bingo game is discontinued by the organizations and shall be refundable upon discontinuance of the progressive mega jackpot bingo blackout game or to any single organization withdrawing, whether voluntarily or involuntarily, from the progressive mega jackpot bingo game within three calendar days of withdrawal.

4. Except as otherwise provided in Paragraph 2 of this Subsection, organizations shall be allowed entry into the progressive mega jackpot bingo game at any time before the progressive mega jackpot bingo blackout prize is won.

5. All monies accumulated in the progressive mega jackpot bingo account for a game shall be given away if all participating organizations in that game withdraw, voluntarily or involuntarily, and discontinue that progressive mega jackpot bingo game.

E. Structure of Game. The progressive mega jackpot bingo game shall be conducted in conjunction with the organizations' regular blackout bingo games and the structure of such game shall be as follows:

1. Only separate additional 3 on 1 up sealed vertical bingo sheets shall be sold at \$2 per sheet for the play of only the progressive mega jackpot bingo game. Purchase of the 3 on 1 up sealed vertical bingo sheet shall afford patrons a chance to win the progressive mega jackpot bingo game and the regular blackout bingo prize.

2. Only those patrons who have purchased a minimum buy-in package for the organization's regular session games shall be allowed to purchase separate 3 on 1 up sealed vertical bingo sheets for the progressive mega jackpot bingo game at that session. The minimum buy-in package shall not contain sheets of cards that entitle a patron to win the progressive mega jackpot bingo prize, but the purchase of any such package shall afford a patron the opportunity to win only the respective organization's regular blackout bingo prize.

3. Any card or sheet that is altered from the original manufacturer's cut, collation, or print shall be invalid.

4. No progressive mega jackpot bingo game 3 on 1 up sealed vertical bingo sheets shall be sold after the first ball is called for the progressive mega jackpot bingo game. Such progressive mega jackpot bingo sheets shall:

a. be purchased by the organization on a separate invoice from a licensed distributor;

b. have an assigned fixed value for each participating organization approved by the division in writing prior to start up of or entry into any progressive mega jackpot bingo game and shall only be good for the session date stamped;

c. be stamped with the words "PROGRESSIVE MEGA JACKPOT BINGO GAME", the organizations' name, license number, and session date to be valid and shall not be purchased as part of a buy-in package.

5. The progressive mega jackpot bingo game shall be completed as the last called bingo game of the licensed session.

F. Amount of Prizes Awarded. A progressive mega jackpot bingo account consists of all contributions made by participating organizations excluding the \$200 start up fee as provided in Subsection D of this Section during the progressive mega jackpot bingo game.

1. Except as otherwise provided in Subsection D of this Section, the dollar amount of the progressive mega jackpot

bingo game shall be the accumulated dollar amount of all contributions deposited or due to be deposited into the progressive mega jackpot bingo account by all participating organizations in a progressive mega jackpot bingo game for the period ending at 12 a.m. (midnight) of the previous calendar day.

2. The dollar amount of any progressive mega jackpot bingo game shall not exceed the sum of \$50,000. Participating organizations shall not cap the progressive mega jackpot bingo prize in an amount less than the limit of \$50,000. Once the limit in the amount of \$50,000 is reached for any progressive mega jackpot bingo game, participating organizations shall continue to make contributions to the progressive mega jackpot bingo account to accumulate a second or subsequent jackpot. However, in the event that the limit in the amount of \$50,000 is reached, organizations shall not offer any subsequent progressive mega jackpot bingo prize until such time that the progressive mega jackpot prize limit in the amount of \$50,000 is won. Only one progressive mega jackpot prize of participating organizations shall be awarded during any 24-hour period as provided in Subsection G of this Section.

G. Time of Game. The organizations' licensed session starting time and date shall be the basis for determining the winner(s) to be paid during a 24-hour period. For purposes of determining the time of a progressive mega jackpot bingo prize winner(s), a 24-hour period shall include all licensed sessions of participating organizations licensed to commence beginning on or after 12:01 a.m. and ending 24 hours later on or before 12 a.m. (midnight).

H. Winner(s). A progressive mega jackpot bingo game shall be won when any player(s) achieves a blackout in 48 balls called or less only on the 3 on 1 up sealed vertical bingo sheet and only during the 24-hour period described in Subsection G of this Section. Each face on any 3 on 1 up vertical bingo sheet shall be considered when determining the number of winners.

1. In the event that a patron achieves a blackout in 47 balls called or less on a sheet of cards from a minimum buy-in package, that patron shall win only the regular blackout bingo prize of the respective organization and that regular blackout bingo game shall end. If such a blackout is achieved in 47 balls called or less, play shall resume until the forty-eighth ball is called, and once called, the progressive mega jackpot bingo game shall end. If no blackout is achieved, the game shall continue until a consolation prize is won as provided in Paragraph 5 of this Subsection.

2. In the event a patron achieves a blackout on sheets of cards from a minimum buy-in package on the same number of balls called as a patron who achieves a blackout on a 3 on 1 up sealed vertical bingo sheet, the regular blackout bingo prize of the respective organization shall be divided equally between all verified winners of the progressive mega jackpot bingo game at that session. The progressive mega jackpot bingo game shall be won only by a patron(s) who achieves a blackout on the 3 on 1 up sealed vertical bingo sheet as provided in this Subsection.

3. In the event there is more than one winner of the progressive mega jackpot bingo game during the 24-hour period as provided in Subsection G of this Section, the progressive mega jackpot bingo prize shall be divided equally between all verified winners of that progressive mega jackpot bingo game.

4. A patron who achieves a blackout on a 3 on 1 up sealed vertical bingo sheet in fewer balls called than a patron who achieves a blackout on a 3 on 1 up sealed vertical bingo sheet at another licensed session of a participating organization shall share the progressive mega jackpot bingo prize equally with all verified winners during the 24-hour period as provided in Subsection G of this Section.

5. If no blackout is achieved in 48 balls called or less, the organization's progressive mega jackpot bingo game shall continue until a consolation prize is won. The consolation prize shall be the respective organization's regular blackout bingo prize and shall constitute part of the total amount of prizes awarded during that called bingo session.

6. A ball shall not be considered called unless it has been announced by the caller.

7. The division may, upon written request and adequate justification, issue a written approval allowing participating organizations in a progressive mega jackpot bingo game to increase the number of balls called to achieve a progressive mega jackpot bingo prize winner. Such request shall be signed by all bingo chairpersons of each participating organization.

I. Noninterest Bearing Account. A separate noninterest bearing checking account shall be opened by the participating organizations for the progressive mega jackpot bingo game.

1. The account shall be in the name of "Charitable Gaming Progressive Mega Jackpot Bingo Account" which shall be imprinted on all checks. Checks from this account shall require two signatures.

2. Each location, hall, commercial lessor, or non-commercial lessor that has any licensed organization(s) participating in the progressive mega jackpot bingo game shall designate in writing and submit to the division a representative who shall make deposits and obtain bank receipts of all monies contributed and deposited into the progressive mega jackpot bingo game account before the close of bank business on the next banking day.

3. At least two designated representatives of each participating organization shall be authorized signatories on the account.

4. Monthly bank statements for the progressive mega jackpot bingo game account shall be mailed directly to the governing authority of the municipality or parish, or the contracted certified public accountant or management company overseeing the progressive mega jackpot bingo game, if applicable.

5. All banking fees and other costs related to the progressive mega jackpot bingo game shall be borne as provided in Subsection N of this Section.

J. The dollar amount of the progressive mega jackpot bingo game shall be continuously and conspicuously displayed by participating organizations during call bingo sessions conducted only by participating organizations at least within the location and within view of all patrons purchasing progressive mega jackpot bingo sheets.

K. All revenues related to the progressive mega jackpot bingo game, and all checks written to and issued from the "Charitable Gaming Progressive Mega Jackpot Bingo Account" shall be reported by each participating organization in a manner acceptable to the division, the governing authority of the municipality or parish, and the contracted certified public accountant or management company overseeing the progressive mega jackpot bingo game, if applicable.

L. Any licensed charitable organizations playing bingo within the state who participates in a progressive mega jackpot bingo game shall contract a certified public accountant or management company selected by the participating organizations and who shall be approved by the division to oversee the progressive mega jackpot bingo game and account in the event that the governing authority of the municipality or parish does not have a regulatory body to oversee the game. The governing authority of the municipality or parish, or if applicable, the contracted certified public accountant or management company approved by the division shall be responsible for, but not limited to the following:

1. reconciling bank statements monthly;

2. ensuring that each \$100 contribution for each session played has been properly deposited in a timely manner, as described in Subsection R of this Section;

3. ensuring that all banking fees and other related costs as provided in Subsection N of this Section are recovered from the proper parties;

4. ensuring that checks written on the account are disbursed only to verified progressive mega jackpot bingo blackout prize winners, to organizations requesting refunds of the \$200 start up fee due to voluntary or involuntary withdrawal from the progressive mega jackpot bingo game as provided in Subsection D of this Section, or for those purposes as may be necessary, if approved in writing by the division;

5. immediately notifying by facsimile all organizations participating in the progressive mega jackpot bingo game that the \$50,000 limit has been reached.

M. Equipment. Each location, hall, commercial lessor or noncommercial lessor that has any licensed organization(s) participating in the progressive mega jackpot bingo game shall have at least the following equipment on site and operational at all times.

1. Facsimile machine installation at each such location capable of transmitting to the division, the governing authority of the parish or municipality, or the certified public accountant or management company contracted to oversee the progressive mega jackpot bingo game, if applicable.

2. A minimum of at least one camera and one monitor at each such location that is capable of televising the first and the next ball to be called and the winning card(s) of the progressive mega jackpot bingo game(s) to the patrons at that session.

3. A video cassette recorder at each such location capable of monitoring and recording any winning card and all bingo balls as they are extracted from the bingo machine and announced to the patrons along with any hand movement of the caller during the entire progressive mega jackpot bingo game.

4. A minimum of at least two bingo boards at each such location capable of displaying the bingo balls called for the regular games, the blackout game, the bonanza games, and the progressive mega jackpot bingo game.

5. A master verification checkbook or similar verification device at each such location depicting the faces of the bingo cards printed by the manufacturer of the bingo cards being used for the progressive mega jackpot bingo game.

N. Costs. Each location, hall, commercial lessor or non-commercial lessor that has any licensed organization(s)

participating in the progressive mega jackpot bingo game shall bear all costs, related to, but not limited to, the following:

1. facsimile machine installation at each such location capable of transmitting the required data and information to the division, the governing authority of the parish or municipality, or the certified public accountant or management company contracted to oversee the progressive mega jackpot bingo game for the parish or parishes, if applicable.

2. banking fees and other related costs, accounting fees of the certified public accountant or management company contracted to oversee all deposits, disbursements, and reporting and tax requirements of the progressive mega jackpot bingo game account(s), if applicable. These costs shall be shared by each such location proportionate to the number of sessions held at each site.

3. attorney fees as may be required for any progressive mega jackpot bingo game. These costs shall be shared by each such location proportionate to the number of sessions held at each site.

4. a minimum of at least one camera and one monitor at each such location that is capable of televising the first and next ball to be called and the winning card(s) of the progressive mega jackpot bingo game to patrons at that session.

5. a video cassette recorder capable of monitoring and recording any winning card and all bingo balls as they are extracted from the bingo machine and announced to the patrons along with any hand movement of the caller during the entire progressive mega jackpot bingo game.

6. a minimum of at least two bingo boards capable of displaying the bingo balls called for the regular games, the blackout game, the bonanza games and the progressive mega jackpot bingo game.

7. a master verification checkbook or similar verification device at each such location depicting the faces of the bingo cards printed by the manufacturer of the bingo cards being used for the progressive mega jackpot bingo game.

O. Organization requirements and verification procedures. All licensed charitable organizations participating in a progressive mega jackpot bingo game shall use the following procedures in verifying the play and winner(s) of the progressive mega jackpot bingo game.

1. Use at each of its games the required camera, monitor, and video cassette recorder at its gaming location to televise and record the following:

a. the caller announcing the organization's name, license number, session date and time prior to calling the first ball of the progressive mega jackpot bingo game;

b. all bingo balls as they are extracted from the bingo machine and announced to the patrons along with any hand movement of the caller during the entire progressive mega jackpot bingo game;

c. the winning card(s) of the progressive mega jackpot bingo game and to display on the monitor such card(s) to the patrons at that session.

2. Use at each of its sessions at least two bingo boards for its progressive mega jackpot bingo game.

3. Ensure that all bingo balls are available and have not been modified in any way from their original manufacture before placing them in play. Bingo balls shall be inspected by

at least the hall manager, session manager, bingo manager, caller, and at least two bingo patrons before placing them in play for the progressive mega jackpot bingo game.

4. Ensure that any division, parish, or municipal representative, any bona fide active member of the participating organizations, any participating hall owner or representative(s), and any participating patron present has the right and ample opportunity to view and inspect any ball or balls for the progressive mega jackpot bingo game before placing them in play and after any winner has been achieved.

5. The caller shall announce:

a. the organization's name, license number, session date and time, and record this information on the video cassette prior to calling the first ball of the progressive mega jackpot bingo game.

b. the dollar amount of the progressive mega jackpot bingo prize prior to the start of each gaming session.

c. that the progressive mega jackpot bingo game shall commence at least five minutes before the first ball is called for the progressive mega jackpot bingo game.

d. when the forty-eighth ball is called and ask if there are any winners.

e. any progressive mega jackpot bingo game winners from another organization's licensed session for the 24-hour period as provided in Subsection H of this Section prior to the first called bingo game of a session or upon receipt of a the facsimile as provided in Paragraph 13 of this Subsection.

f. in order to be eligible to win the progressive mega jackpot bingo game and to collect the prize, one must possess two of the four types of personal identification as provided in Subsection P of this Section.

6. Reduce to writing the sequence that the bingo balls are actually called for the progressive mega jackpot bingo game. Such record shall be in ink and shall become part of the session records and shall be maintained for a period of three years as required by this Part.

7. In the event that there is a progressive mega jackpot bingo game winner as provided in Subsection H of this Section, the video cassette tape shall immediately be rendered incapable of further recording, and secured by the session manager of that organization.

a. The organization shall verify that the winning progressive mega jackpot bingo card(s) compares to the actual balls called. Such verification shall be made by at least the session manager, bingo manager, and the caller.

b. The organization shall use at each of its games the master verification checkbook or similar verification device at its gaming location to compare to the winning card(s) of the progressive mega jackpot bingo game to ensure that such winning card(s) is a valid winner and has not been altered. Such verification shall be made by at least the session manager, bingo manager, and the caller.

c. The organization shall forward such cassette to the Division or to the governing authority of the municipality or parish within three (3) business days where it shall be reviewed and retained for a period of one (1) year.

8. In the event that a licensed bingo session is not held by any participating organization, such organization shall transmit a facsimile immediately to the division and the governing parish or municipal regulatory body or the contracted certified public accountant or management company, if applicable, stating that a licensed session was not

held and the reason why the session was not held. This facsimile shall be signed by the organization's member-in-charge.

9. Ensure that the contracted certified public accountant or management company, if applicable, receives a copy of the participating organization's licensed scheduled sessions prior to beginning the progressive mega jackpot bingo game and any subsequent changes to said license.

10. Vouchers. All organizations participating in a progressive mega jackpot bingo game shall utilize the same type of carbon copy voucher when awarding progressive mega jackpot bingo prize winners. All required information on the voucher(s) shall be accurately completed and properly signed immediately after the winning progressive mega jackpot bingo card(s) has been verified as provided by this Subsection. The voucher(s) shall contain, but shall not be limited to, the following information:

- a. organization name, license number, session date, and session starting time;
- b. printed names and signatures of the session manager, bingo manager, and caller;
- c. name of the hall;
- d. number of winners for the session;
- e. number of balls called for the winning card;
- f. printed name, signature, current address, social security number, and telephone number of the winner.

11. Any winner(s) of the progressive mega jackpot bingo game shall be given the original voucher, and the carbon copy voucher(s) shall be retained along with the winning 3 on 1 up sealed vertical bingo sheet(s) by the organization awarding the progressive mega jackpot bingo prize. The progressive mega jackpot bingo winner(s) printed name(s), signature(s) and social security number(s) shall be affixed to the back of the winning card(s) in order to be valid.

12. Any participating organization(s) which has a progressive mega jackpot bingo winner(s) at its licensed session shall immediately transmit by facsimile the completed voucher(s), the session record as provided in Paragraph 6 of this Subsection and the winning card(s) of the progressive mega jackpot bingo game to the following:

- a. the division;
- b. governing parish or municipal regulatory body, if applicable;
- c. the contracted certified public accountant or management company approved by the division for that progressive mega jackpot bingo game, if applicable;
- d. all locations, halls, commercial lessors and non-commercial lessors whose organizations participate in the progressive mega jackpot bingo game.

P. Payment of the Winner(s). The original voucher(s), the carbon copy voucher(s) and the original winning 3 on 1 up sealed vertical bingo sheet(s) shall be presented to the governing parish or municipal regulatory body or the contracted certified public accountant(s) or management company, if applicable, within three working days for verification. No winner(s) of the progressive mega jackpot bingo prize shall be certified and no winner shall be paid until verified by the governing parish or municipal regulatory body or the contracted certified public accountant or management company, if applicable. Any winner of the progressive mega

jackpot bingo game shall be paid only by check from the charitable gaming progressive mega jackpot bingo account. No winner(s) of the progressive mega jackpot bingo prize shall be paid unless two of the following types of personal identification are presented by the winner(s) to the governing parish or municipal regulatory body or the certified public accountant or management company overseeing the progressive mega jackpot bingo account, if applicable:

1. Social Security card;
2. valid drivers' license;
3. voters' registration card;
4. birth certificate.

Q. Any organization awarding a progressive mega jackpot bingo prize shall be responsible for all local, parish, state, and federal tax withholding and reporting requirements.

R. Each location, hall, commercial lessor, or non-commercial lessor that has any licensed organization participating in the progressive mega jackpot bingo game shall:

1. Prepare a detailed deposit slip(s) for all participating organizations' contributions to the progressive mega jackpot bingo game to be deposited from the previous calendar day indicating each licensed organization's name, license number, and the amount to be deposited.

2. Deposit all participating organizations' contributions to the progressive mega jackpot bingo game from the previous calendar day(s) into the progressive mega jackpot bingo account before close of bank business on the next banking day, and maintain a detailed log of such deposits.

3. Transmit daily by facsimile the detailed deposit slip and proof of deposit as provided in Paragraphs 1 and 2 of this Subsection to the governing parish or municipality regulatory body or the contracted certified public accountant or management company overseeing the progressive mega jackpot bingo account for that game, if applicable.

4. Immediately and conspicuously display at each participating progressive mega jackpot bingo game site for a period of one week after the awarding of the progressive mega jackpot bingo game prize at least the following information concerning the progressive mega jackpot bingo winner:

- a. the location, hall, commercial hall or noncommercial hall where the progressive mega jackpot bingo prize was won;
- b. date and time that the progressive mega jackpot bingo was prize won;
- c. the organizations' name, license number, and session starting time from which the progressive mega jackpot bingo prize was won;
- d. the amount of the progressive mega jackpot bingo prize awarded;
- e. the number of winners for that progressive mega jackpot bingo prize.

5. Ensure that all bingo equipment, including but not limited to, the required camera, monitor, video cassette recorder, bingo boards, and the verification device is properly maintained and is functional before and during each licensed session.

6. Ensure that all bingo balls are available and have not been modified in any way from their original manufacture before placing them in play.

7. Ensure that the progressive mega jackpot bingo prize amount is continuously posted and conspicuously displayed

prior to and during the entire progressive mega jackpot bingo game of each respective organization.

8. Ensure that a copy of the progressive mega jackpot bingo rules are continuously posted and conspicuously displayed for all patrons to review.

9. Ensure that in the case of a hall closure that the participating organizations have the opportunity to hold a final session to award the progressive mega jackpot bingo prize as provided in Subsection D of this Section.

S. The following persons shall be strictly prohibited from playing for the progressive mega jackpot bingo prize.

1. No charitable gaming employee or volunteer shall play for the progressive mega jackpot bingo prize while on duty at the gaming site. For purposes of this Section, a gaming employee or volunteer is any member of the licensed organization holding, operating or conducting any game or games of chance or any member of another licensed organization assisting in the holding, operating or conducting of any game or games of chance. A gaming employee or volunteer working any part of a session or taking a temporary break shall be considered on duty for that gaming session. A charitable gaming employee or volunteer may play bingo, while off duty, at another gaming site other than the site where their organization(s) conduct(s) a licensed gaming session.

2. No location, hall, commercial lessor or non-commercial lessor owners, or its shareholders, directors, employees or agents shall play the progressive mega jackpot bingo game at their licensed location.

3. No licensed distributor owners, or its shareholders, directors or agents shall play the progressive mega jackpot bingo game at any site.

4. No licensed manufacturer owners, or its shareholders, directors or agents shall play the progressive mega jackpot bingo game at any site.

5. No licensed private casino contractor owners, or its shareholders, directors or agents shall play the progressive mega jackpot bingo game at any site.

6. No employee who regulates charitable games of chance on a state, parish or local level shall play the progressive mega jackpot bingo game at any site.

T. Players of the progressive mega jackpot bingo game shall not be allowed to play bingo cards for any person enumerated in Subsection S of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4861.26 and R.S. 40:1485.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Charitable Gaming Division, LR 22:116 (February 1996).

Colonel R. W. "Rut" Whittington
Superintendent

9602#011

RULE

Department of Revenue and Taxation Office of Alcoholic Beverage Control

Alcoholic Beverage Samplings (LAC 55:VII.317)

Under the authority of R.S. 26:75(C)(2) and R.S. 26:275(B)(2) and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue and Taxation, Office of Alcoholic Beverage Control, has amended LAC 55:VII.317 to reflect recent amendments to R.S. 26:75 and R.S. 26:275(B)(2).

Act 1081 of the 1995 Regular Legislative Session amended R.S. 26:75 and R.S. 26:275(B)(2) to authorize the sampling of alcoholic beverages at the premises of all Class A and Class B permit holders and to direct the Office of Alcoholic Beverage Control to promulgate rules necessary to regulate these activities.

Title 55

PUBLIC SAFETY

Part VII. Alcoholic Beverage Control

Chapter 3. Liquor Credit Regulations

§317. Regulation Number IX. Prohibition of Certain

Unfair Business Practices in Malt Beverage Industry

* * *

D. Exceptions

* * *

6. Trade Calls

* * *

b. Except as otherwise provided by law, the gift of beer, wine, or beverage alcohol as a purely social courtesy to unlicensed persons by a manufacturer or wholesaler is not prohibited.

c. Beer, wine, or beverage alcohol sampling for the purposes of allowing a customer to taste a product may be conducted on any premises holding a permit as designated in R.S. 26:75(C)(1) and 275(B)(1) in accordance with the following restrictions.

i. A wholesaler and/or manufacturer may furnish the beer, wine, or beverage alcohol to be sampled and the cups to hold such products. The wholesaler and/or manufacturer may also provide and display point-of-sale material in an amount not to exceed \$150 in value. Said display materials shall only be placed inside of the facility and shall not block the aisles or other points of ingress or egress.

ii. No wholesaler or manufacturer shall furnish a sampling of product in a greater quantity than two ounces per type of beverage alcohol to each individual and no individual shall consume more than two ounces of each type of beverage alcohol provided at the sampling. The sampling of a beverage alcohol having an alcoholic content of more than 23 percent by volume shall be limited to one-half ounce per serving per individual.

iii. All samplings shall be limited in duration to one day.

iv. No more than two samplings per product shall be conducted on the same licensed premises in any month.

v. The wholesaler or manufacturer shall provide the Office of Alcoholic Beverage Control with written notice of

the date, time, place, permit number and product to be sampled at least one week prior to the date of the sampling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:287, R.S. 26:150(A), R.S. 26:75(C)(2), and R.S. 26:275(B)(2).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Alcoholic Beverage Control, LR 4:463 (November 1978), amended LR 5:11 (January 1979), amended by the Department of Public Safety and Corrections, Office of Alcoholic Beverage Control, LR 17:607 (June 1991), LR 20:671 (June 1994), amended by the Department of Revenue and Taxation, Office of Alcoholic Beverage Control, LR 22:117 (February 1996).

Murphy J. Painter
Commissioner

9602#022

RULE

Department of Revenue and Taxation Tax Commission

Ad Valorem Tax (LAC 61:V.Chapters 3-35)

In accordance with provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), and in compliance with statutory law administered by this agency as set forth in R.S. 47:1837, the Tax Commission adopted and/or amended sections of the Louisiana Tax Commission real/personal property rules and regulations for use in the 1996 (1997 Orleans Parish) tax year.

The full text of these proposed rules may be obtained at a cost of \$6.25 from the Office of the State Register, 1051 North Third Street, Room 512, Baton Rouge LA; telephone (504) 342-5015. Please refer to document number 9602#019 when inquiring about this rule.

Malcolm B. Price, Jr.
Chairman

9602#019

RULE

Department of Social Services Office of Family Support

Paternity Acknowledgment Program (LAC 67:III.2703, 2751, 2753)

The Department of Social Services, Office of Family Support, has amended the Louisiana Administrative Code, Title 67, Part III, Subpart 4, Support Enforcement Services (SES), the child support enforcement program.

In order to improve program effectiveness and in accordance with 45 CFR Parts 301-305, R.S. 40:46.1 requires that all hospitals in the state which provide birthing services

shall have a program for the voluntary acknowledgment of paternity. Acknowledgments provided to the state registrar shall be referred to SES. This rule establishes the role of SES in this process.

Subpart 4, previous §2702 is being renumbered as §2751 to accommodate the incorporation of this rule. Previous §2541 is relocated to §2753 also to improve codification.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 4. Support Enforcement Services

Chapter 27. General Program Administration

Subchapter A. Establishment of Paternity

§2703. Hospital-based Paternity Acknowledgment Program

The agency will provide all birthing hospitals in the state written materials concerning paternity establishment, written descriptions of the rights and responsibilities of acknowledging paternity, and the forms necessary to voluntarily acknowledge such, as well as training necessary to operate the program. The agency will receive acknowledgments generated by the program and maintain a statewide database. Information from the database will be used in child support matters subject to the jurisdiction of SES.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 303.4(f), 303.5(g) and (h), R.S. 40:46.1.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 22:117 (February 1996).

Subchapter B. Notice of Collection of Assigned Support

§2751. Annual Notice of Collection

* * *

[Editor's Note: Text of this Section was previously promulgated as §2702.]

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 302.54.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:1151 (December 1985), amended by the Department of Social Services, Office of Family Support, LR 22:117 (February 1996).

§2753. Information Released to Consumer Reporting Agencies

* * *

[Editor's Note: Text of this Section was previously promulgated as §2541.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:56(D), (F)(4), (F)(5), (M) and 45 CFR 303.105.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:1151 (December 1985), amended by the Department of Social Services, Office of Family Support, LR 22:117 (February 1996).

Madlyn B. Bagneris
Secretary

9602#051

RULE

**Department of Social Services
Office of Family Support**

Establishment of Paternity (LAC 67:III.2705)

The Department of Social Services, Office of Family Support, has amended LAC 67:III, Subpart 4, Support Enforcement Services (SES), the child support enforcement program.

Pursuant to Act 954 of the Regular Session of the 1995 Louisiana Legislature, SES is directed to take action on the paternity information form completed by the mother of an illegitimate child and provided to SES by hospitals or the Vital Records Registry. This rule establishes the agency's role in the administrative process of establishing paternity.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 4. Support Enforcement Services

Chapter 27. General Program Administration

Subchapter A. Establishment of Paternity

§2705. Administrative Process for Establishing Paternity

Upon receipt of a Paternity Declaration Form, Support Enforcement Services will notify the alleged father by certified mail that he has been named as father of the child and that he has 90 days to contest the allegation. If the alleged father fails to contest the allegation in writing within this time frame, he shall be presumed to be the father of the child for support purposes only. The agency or the custodial parent may then proceed with establishing a support order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:34 (E).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 22:118 (February 1996).

Madlyn B. Bagneris
Secretary

9602#050

RULE

**Department of Social Services
Office of Family Support**

Support Enforcement (LAC 67:III.2527, 2540)

The Department of Social Services, Office of Family Support, has amended the Louisiana Administrative Code, Title 67, Part III, Subpart 4, Support Enforcement Services (SES), the child support enforcement program.

In a continuing effort to improve program effectiveness and pursuant to Acts 426, 707 and 1078 of the 1995 Regular Session of the Louisiana Legislature, this rule authorizes SES to take new means to enforce court orders relative to child support and medical support. In some instances, action may

be taken against a noncompliant obligor which would suspend certain professional, drivers, or hunting and fishing licenses issued by the state.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 4. Support Enforcement Services

Chapter 25. Support Enforcement

Subchapter H. Medical Support Activities

§2527. Securing and Enforcing Medical Support

Obligations

D. SES may enforce court-ordered medical support by means of income assignment.

E. SES shall require the employer of a parent who is court-ordered to provide medical support to enroll and maintain available health insurance on a child. The agency may also submit claims to the insurer and be reimbursed costs paid on behalf of the child.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 306.50, 45 CFR 306.51 and R.S. 46:236.1(B)(5), 46:236.3, 46:236.4, 46:236.8(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:245 (April 1986), amended by the Department of Social Services, Office of Family Support, LR 22:118 (February 1996).

Subchapter L. Enforcement of Support Obligations

§2540. Suspension of License(s) for Nonpayment of Child Support

A. The agency may, under certain circumstances, petition the courts for an order to suspend the license(s) of an individual who is not in compliance with an order for support. The criteria for referral are as follow:

1. cases which have a support order which is being enforced in Louisiana,
2. income assignment is not practical, and
3. the absent parent is at least six months in arrears and not complying with a court order to make periodic payments.

B. The obligor will be given a 30-day advance written notice affording an opportunity to liquidate the arrears or make satisfactory arrangements with the agency prior to the case being referred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:315.30 through 315.35.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 22:118 (February 1996).

Madlyn B. Bagneris
Secretary

9602#049

RULE

Department of Social Services Office of Rehabilitation Services

Randolph-Sheppard Trust Fund Policy (LAC 67:VII.Chapter 21)

In accordance with the provisions of R.S. 49:950, et seq., the Administrative Procedure Act, the Department of Social Services, Louisiana Rehabilitation Services (LRS) has adopted a Randolph-Sheppard Trust Fund Policy.

The purpose of this rule is to govern Louisiana Rehabilitation Services' Randolph-Sheppard Trust Fund Policy to ensure uniformity in establishing the operation and services for the program.

Title 67

SOCIAL SERVICES

Part VII. Louisiana Rehabilitation Services

Chapter 21. Randolph-Sheppard Trust Fund Policy

§2101. Program Profile

A. Mission. To provide for the enhancement of programs for persons who are licensed and permitted through the Randolph-Sheppard Business Enterprise Program.

B. Program Administration

1. The administration of the fund shall be exercised by the Department of Social Services, Louisiana Rehabilitation Services.

2. The Blind Vendors Trust Fund Advisory Board will have the responsibility to advise and make recommendations to the agency for the promulgation of rules and regulations; monitor, evaluate and review the development and quality of services and programs funded through the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2641-2645.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 22:119 (February 1996).

§2103. Enabling Legislation

Senate Bill No. 676, Act 1285 of the 1995 Regular Session, Chapter 49 of Title 46 of the Revised Statutes 46:2641 through 2645.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2641-2645.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 22:119 (February 1996).

§2105. Definitions

Agency—Louisiana Rehabilitation Services within the Department of Social Services which licenses blind vendors.

Blind Enterprise Program—the services available to establish business enterprises and other similar programs for persons who are blind as provided in the Randolph-Sheppard Act.

Blind Vendors—those individuals who are classified under state and federal regulations as legally blind and who are licensed to and have a permit to operate vending facilities on state, federal, or other property.

Board—the Blind Vendors Trust Fund Advisory Board.

Department—the Department of Social Services.

Director—the director of Louisiana Rehabilitation Services.

Fund—the Blind Vendors Trust Fund.

Randolph-Sheppard Act—the federal law which enables the Blind Enterprise Program under the authority of 20 U.S.C. 107 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2641-2645.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 22:119 (February 1996).

§2107. Blind Vendors Trust Fund Advisory Board

A. The Blind Vendors Trust Fund Advisory Board shall be composed of nine members as follows:

1. the director of Louisiana Rehabilitation Services of the Department of Social Services or his or her designee;

2. eight members of the Louisiana Blind Vendors Elected Committee.

B. The board shall be domiciled in East Baton Rouge Parish.

C. The board shall meet at least once in each quarter of the fiscal year and as often as necessary thereafter as deemed by the chairman.

D. A majority of the individuals appointed to the board shall constitute a quorum.

E. Members shall serve without compensation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2641-2645.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 22:119 (February 1996).

§2109. Blind Vendors Trust Fund Revenues

A. The Blind Vendors Trust Fund shall consist of monies collected from certain vending machines located on state, federal, and other property pursuant to the Randolph-Sheppard Act.

B. The fund may receive monies from any source.

C. The legislature may make annual appropriations to the Trust Fund.

D. All unexpended and unencumbered monies remaining in the fund at the close of each fiscal year shall remain in the fund.

E. Monies in the fund shall be invested by the state treasurer in the same manner as monies in the state general fund.

F. All interest earned from the investment of monies in the fund shall be deposited in and remain to the credit of the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2641-2645.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 22:119 (February 1996).

§2111. Expenditures

A. The monies in the fund shall be used solely for programs to provide services for the Blind Enterprise Program established in Louisiana pursuant to the Randolph-Sheppard Act.

B. Money in the trust fund from vending machines located on federal property shall be distributed for the primary purpose of the establishment and maintenance of retirement or pension plans, for health insurance, and contributions for the provisions of paid sick leave and vacation time for blind

vendors, if approved by majority vote of blind vendors licensed by the agency after the agency has provided to each vendor information on all matters relevant to such purposes.

C. Income not expended for the primary purpose shall be used for the maintenance and replacement of equipment, the purchase of new equipment, management services, and securing a fair return to vendors, or as provided by state and federal guidelines.

D. Money in the trust fund from vending machines located on state-owned property or on property leased by the state agency, or on other property shall be distributed for any purpose associated with the Randolph-Sheppard Program as may be determined by the state licensing agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2641-2645.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 22:120 (February 1996).

§2113. Financial Reports

The director of Louisiana Rehabilitation Services of the Department of Social Services or his or her designee shall arrange for full and accurate financial records to be maintained in compliance with law and shall make a full and complete report to the board annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2641-2645.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 22:120 (February 1996).

§2115. General Requirements

A. Nondiscrimination. All programs administered by and all services provided by the agency shall be rendered on a nondiscriminatory basis without regard to race, creed, color, age, religion, sex, national origin, disability, ethnicity, or status with regard to public assistance in compliance with all appropriate state and federal laws and regulations.

B. Civil Rights and Equal Employment Opportunities with Regard to Employees or Agencies Delivering Services. Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination because of race, color, or national origin; Title V of the Rehabilitation Act of 1973, as amended, and Title I of the Americans with Disabilities Act PL 101-336 prohibit discrimination because of disabling condition. The provisions of these acts apply to services and programs administered by Louisiana Rehabilitation Services.

C. Compliance with State and Federal Laws and Regulations, and Departmental Policies and Procedures. All agencies and staff involved in the Blind Vendors Trust Fund shall comply with all state and federal laws, including the Department of Social Services policies and procedures as well as civil rights rules and regulations, as applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2641-2645.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 22:120 (February 1996).

Madlyn B. Bagneris
Secretary

9602#048

RULE

Department of Transportation and Development Office of Weights and Standards

Legal Limitations (LAC 73:I.Chapters 5-19)

In accordance with the applicable provision of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Transportation and Development has amended LAC 73:I.Chapters 5-19 pertaining to legal limitations and department regulations for size and weight, in accordance with R.S. 32:2.

The full text of these rules may be obtained from the Office of the State Register, 1051 North Third Street, Baton Rouge, LA; telephone (504)342-5015. Please refer to document number 9602#029 when inquiring about this rule.

Frank M. Denton
Secretary

9602#029

RULE

Department of Wildlife and Fisheries Office of Fisheries

Oyster Lessee (LAC 76:VII.515)

The Department of Wildlife and Fisheries does establish regulations for the landing of oysters outside the state.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 5. Oyster

§515. Oyster Lessee Out-of-State Landing Program

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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:424(G).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Fisheries, LR 22:121 (February 1996).

James H. Jenkins, Jr.
Secretary

9602#023

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry
Forestry Commission

Department of Revenue and Taxation
Tax Commission

Timber Stumpage Values
(LAC 7:XXXIX.20101)

In accordance with provisions of the Administrative Procedure Act, R. S. 49:950 et seq., the Department of Agriculture and Forestry, Forestry Commission, and the Department of Revenue and Taxation, Tax Commission propose to amend rules regarding the value of timber stumpage for calendar year 1996. These rules comply with and are enabled by LSA - R.S. 47:633.

Title 7

AGRICULTURE AND ANIMALS

Part XXXIX. Forestry

Chapter 201. Timber Stumpage

§20101. Stumpage Values

The Louisiana Forestry Commission, and the Louisiana Tax Commission, as required by R.S. 47:633, adopted the following timber stumpage values based on current average stumpage market values to be used for severance tax computations for 1996:

1. Pine trees and timber	\$ 361.36/MBF	\$ 45.17/ton
2. Hardwood trees and timber	\$ 195.51/MBF	\$ 20.58/ton
3. Pine Chip and Saw	\$ 82.10/cord	\$ 30.41/ton
4. Pine pulpwood	\$ 23.84/cord	\$ 8.83/ton
5. Hardwood pulpwood	\$ 12.63/cord	\$ 4.43/ton

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

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Forestry and the Louisiana Forestry Commission, LR 4:9 (January 1978), amended LR 5:7 (January 1979), LR 6:728 (December 1980), LR 7:627 (December 1981), LR 8:651 (December 1982), LR 9:848 (December 1983), LR 10:1038 (December 1984), LR 11:1178 (December 1985), amended by the Department of Agriculture and Forestry, Office of Forestry, and the Louisiana Forestry Commission, LR 12:819 (December 1986), LR 13:432 (August 1987), LR 14:9 (January 1988), LR 15:5 (January 1989), LR 16:16 (January 1990), LR 17:476 (May 1991), LR 18:6 (January 1992), LR 19:611 (May 1993), LR 20:408 (April 1994), LR

21:930 (September 1995), LR 21:1069 (October 1995), amended by the Louisiana Forestry Commission and Louisiana Tax Commission, LR 22:

Interested persons may submit written comments to Don Feduccia, Office of Forestry, Box 1628, Baton Rouge, LA 70821-1628. Written comments will be accepted through the close of business on March 29, 1996.

No preamble regarding this proposed amendment is available.

Bill Weaver, Chairman
Forestry Commission

Malcolm Price, Chairman
Tax Commission

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Timber Stumpage Values

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no additional implementation costs or savings to state or local governments required the implementation of this action.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Since this action adjusts the average stumpage value upward for timber harvested, the severance tax revenue received by the state and local governmental will increase if 1996 timber production levels equal 1994 production. State revenue would increase by \$282,486 and local government revenues would increase by \$847,457 during fiscal year 95-96, and again in fiscal year 96-97.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Although the total tax paid by timber sellers and reported and remitted by wood-using industries will increase as a result of this action, the prevailing severance tax rate for timber harvesting remains constant by statute. No increases in paperwork or procedures will result from this action.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This action is taken on an annual basis and should have negligible effect on competition or employment. The increased tax revenue that will result from the increase in average stumpage prices set by this action may have a positive effect on parish and state government.

Richard Allen
Assistant Commissioner
9602#010

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Civil Service
Civil Service Commission

Prohibited Activities

The State Civil Service Commission will hold a public hearing on Wednesday, March 6, 1996 to consider the

proposed adoption of Rule 14.1(p). 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 Rule 14.1(p)

14.1 Prohibited Activities.

(a) - (o) . . .

(p) Except with the prior approval of the commission, no person shall be placed in any position over which he/she is, or was within the past two years, the statutory appointing authority.

Explanation

This rule would prevent unclassified employees with appointing authority from either appointing themselves or from being appointed to a classified position in the agency in which he or she serves.

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 at Box 94111, Baton Rouge, LA 70804-9111.

If any accommodations are needed, please notify us prior to this meeting.

Herbert L. Sumrall
Director

9602#008

NOTICE OF INTENT

**Department of Economic Development
Office of Commerce and Industry**

Enterprise Zone Program (LAC 13:I.Chapter 9)

Under the authority of R.S. 51:1785(5) and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Commerce and Industry has amended the Enterprise Zone rules, Title 13, Part 1, Subpart 1, Chapter 9.

The Board of Commerce and Industry has adopted rules in accordance with 1995, Act 194 which allows the Board of Commerce and Industry discretion in allowing a late filing of an advance notice of a project; and 1995, Act 581 which expands the number of enterprise zones from 35 percent to 40 percent and certain other clarifications and definitions (housekeeping changes). Additionally, 1995, Act 581 created Economic Development Zones. Due to the pervasiveness of the changes, all rules are to be repromulgated.

Title 13

ECONOMIC DEVELOPMENT

Part I. Office of Commerce and Industry

Subpart I. Finance

Chapter 9. Enterprise Zone Program

§901. Scope

A. Intent of Program. To stimulate business and industrial growth in depressed areas of the state which are designated as

enterprise zones; and, in certain other areas designated as Economic Development Zones by providing tax incentives for new jobs created in these areas and by providing assistance to businesses and industries.

B. Description of Program

1. Louisiana's Enterprise Zone Program is a package of tax credits and other incentives to businesses locating in specially designated Enterprise Zones or Economic Development Zones in both urban and rural parishes. Enterprise Zone incentives are in addition to many other state-sponsored incentives such as the Ad Valorem (property) tax exemption for manufacturing facilities and equipment, and the cost-free employee training program.

2. An Enterprise Zone is an officially designated area of high unemployment, low income and/or an area where a large number of residents are receiving some form of public assistance. For purposes of R.S. 51:1787(B)(4)(c) and (D)(4)(b) the term "some form of public assistance" shall include any program of assistance financed in whole or in part by a federal, state, or any local government agency, eligibility for which is dependant upon the employment status or income level of the individual. Any such assistance must have been received by the individual within a six-month period prior to their employment.

3. An Economic Development Zone is a geographic area of contiguous real properties, defined by a visible boundary, designated as such by the state or the local governmental subdivision in which it is located and approved by the Board of Commerce and Industry. The location of an Economic Development Zone once defined is permanent (cannot be moved or swapped) and is owned or operated by the state or a political subdivision of the state or operated by an entity created by the state or a political subdivision of the state. Economic Development Zones will have been created by state statute and are defined to include the following:

- a. industrial park
- b. business park
- c. airport or air park
- d. research park
- e. research and development park
- f. downtown development district
- g. former federal facility (such as an old military base, etc., not a single building or small grouping of prior federally owned and occupied buildings. The immediate previous occupant of this facility must have been a federal governmental entity.)
- h. port (working areas)

4. Each Economic Development Zone will submit an annual report which will compare activity in the last completed year to the previous year's activity.

5. Any business, except residential type development, can qualify for Enterprise Zone tax incentives. Manufacturing plants, service industries and commercial operations are equally eligible. Companies moving into an Enterprise Zone or Economic Development Zone and companies located in an area at the time the region is declared an Enterprise Zone or Economic Development Zone can both apply for benefits providing the minimum of five net new jobs are added (to the state within the first two years).

6. All parishes that have a 1990 population of less than 50,000 will be allowed to designate one additional Enterprise Zone which would not otherwise qualify.

C. Incentives

1. A one-time tax credit of \$2,500 for each net new (Louisiana resident) employee (minimum of five within the first two years of the contract period) added to the payroll. The credit may be used to satisfy state income and corporate franchise tax obligations. If the entire credit cannot be used in the year created, the remainder may be applied against the income tax or franchise tax for the succeeding 10 taxable years, or until the entire credit is used, whichever occurs first.

2. In lieu of the tax credit of \$2,500, aviation and aerospace industries as defined in the 3720's and 3760's Standard Industrial Classification (SIC) manual are eligible for a one-time tax credit of \$5,000 for each net new (Louisiana resident) employee (minimum of five within the first two years of the contract period) added to the payroll. The credit may be used to satisfy state income and corporate franchise tax obligations. If the entire credit cannot be used in the year created, the remainder may be applied against income tax or franchise tax for the succeeding 10 years, or until the entire credit is used, whichever occurs first.

3. An additional \$2,500 tax credit is available to employers who hire Aid to Families with Dependent Children (AFDC) recipients. This tax credit is in addition to the \$2,500 for new jobs created. The AFDC participant must receive compensation which will disqualify such person from continued participation in the AFDC program and must be employed for two years to generate the additional tax credit. An employee shall be limited to two years participation under this program. This credit may be applied to any state income or franchise tax liability and shall be used for the taxable year in which the increase in average annual employment occurred. An employer shall not obtain a credit for more than 10 employees in the first year of participation in the program. An employer receiving this additional credit is limited to 10 years participation.

4. Refunds can be made of sales and/or use taxes, imposed by the state and imposed by its local governmental subdivisions, upon approval of the governing authority of the appropriate municipality, parish, or district, where applicable, on all eligible purchases during the specified construction period (and transfers into Louisiana) of the material used in the construction of a building, any addition or improvement thereon and/or on equipment used exclusively on that site in the operation of that business enterprise. Refunds made by local governmental subdivisions can only be made of those sales/use taxes that are not dedicated to the repayment of a bonded indebtedness (sales/use taxes dedicated to schools are not refundable). Final requests for the payment of any refund must be filed, with the state (Department of Revenue and Taxation) and/or its local governmental subdivision no later than six months after the project's completion or six months after the date of the governor's signature on the contract, whichever is later.

D. Qualifications

1. To qualify for Enterprise Zone tax incentives in a parish designated as urban, a company must be located in a

designated Enterprise Zone and must certify that a minimum of 35 percent of its new or expanded work force meet the requirements of §909.

2.a. In the case of Economic Development Zones or Enterprise Zones located in a parish designated as rural, a minimum of 35 percent of its new or expanded work force must meet the requirements of §911.

b. These requirements apply equally to companies moving into an Enterprise Zone or Economic Development Zone for the first time and to those which may have been located in an Enterprise Zone or Economic Development Zone at the time it was designated as such.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1781 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), amended LR 22:

§902. Future Contract Availability

All businesses that held a valid contract for Enterprise Zone benefits prior to January 1, 1996, may apply for additional contracts for all location(s) which had a prior contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5) et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce, Financial Incentives Division, amended LR 22:

§903. Use of Louisiana Manufacturers and Suppliers

The Board of Commerce and Industry request businesses and manufacturers receiving tax relief and their contractors, to consider giving preference to Louisiana manufacturers, suppliers, contractors, and labor, except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency all other factors being equal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§905. Endorsement Resolution

Applicants who intend to recover local sales/use taxes must submit a resolution, stating that fact, from the taxing body(s) which intends to refund sales/use taxes for the project, with their application for state benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252, (March 1991), LR 22:

§907. Documentation of Location

The business must document its location within the boundaries of a particular Enterprise Zone or Economic Development Zone by furnishing a 1990 U.S. Census map with the site's location clearly marked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§909. Qualified Employees - Urban Zones

A. A business located in an urban parish Enterprise Zone and receiving the benefits of this Chapter must certify that at least 35 percent of its new employees are Louisiana residents who:

1. are living in an Enterprise Zone in the same parish as the location of the business; or
2. are living in an Enterprise Zone in a contiguous parish if the business has 500 or more employees; or
3. were receiving some form of public assistance prior to employment (see definition of "some form of public assistance" §901.B.2); or
4. were considered unemployable by traditional standards, or lacking in basic skills.
 - a. The term "traditional standards" means anyone who qualifies as physically challenged.
 - b. The term "lacking in basic skills" means anyone who exhibits reading or writing or math skills below grade level 8.9.

B. An Annual Employee Certification must be filed by February 15, on all active contracts, if the business is to continue to qualify for additional benefits under this Chapter.

C. Employee count will be taken from the business's entire contiguous site for the purposes of calculating the tax credits generated. If the business has more than one site within the metropolitan area where the project is located, then the department may consider the total employee count at all those locations in calculating the total employee credits generated.

D. Monthly totals of permanent full-time employees will be averaged over a minimum of six months to determine the number of tax credits generated. Part-time employees may be averaged-in with the full-time employees after having completed a minimum of six months of continuous employment comprised of a minimum of 20 hours every week during that continuous period. Generally, the number of employees reported to the Louisiana Department of Labor will be used to calculate this average monthly total.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§911. Qualified Employees - Rural Enterprise Zones and Economic Development Zones

A. A business located in an Economic Development Zone or a rural parish Enterprise Zone and receiving the benefits of this Chapter must certify that at least 35 percent of its new employees are Louisiana residents who:

1. live in the same parish as the location of the business or
2. were receiving some form of public assistance prior to employment or;
3. were considered unemployable by traditional

standards, or lacking in basic skills.

a. The term "traditional standards" means any one who qualifies as physically challenged.

b. The term "lacking in basic skills" means anyone who exhibits reading or writing or math skills below grade 8.9.

B. An Annual Employee Certification must be filed by February 15, on all active contracts, if the business is to continue to qualify for additional benefits under this Chapter.

C. Employee count will be taken from the business' entire contiguous site for the purposes of calculating the tax credits generated. If the business has more than one site within the metropolitan area where the project is located, then the department may consider the total employee count at all these locations in calculating the employee credits generated.

D. Monthly totals of permanent full-time employees will be averaged over a minimum of six months to determine the number of tax credits generated. Part-time employees may be averaged-in with the full-time employees after having completed a minimum of six months of continuous employment comprised of a minimum of 20 hours every week during that continuous period. Generally, the number of employees reported to the Louisiana Department of Labor will be used to calculate this average monthly total.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§913. Reserved

§915. Arbitrary Termination of Employees

The board will not accept an application from a business which has terminated employees and rehired them or others in order to qualify for the benefits of this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§917. Items Eligible for Sales/Use Tax Refund

Only capitalized material used in the construction that becomes a part of a building, or any addition or improvement thereon, for housing any legitimate business, and capitalized machinery and equipment purchased, or transferred into Louisiana, within the construction period and used exclusively on that site and in that business will be considered eligible for refunds of sales/use taxes.

1. A partial listing of ineligible items on which sales/use taxes are not refundable are: per diem, labor, service contracts/labor, storage, freight, portable toilets or radios, utilities, permits and fees, office supplies, construction consumables (blades, drill bits, PVC sheeting, tape, gloves, dusk masks, etc.), all leases and rentals.

2. Lease-purchases are eligible for a sales/use tax refund if the sales/use taxes are paid at the beginning of the lease period and a copy of the agreement is sent to the Louisiana Department of Revenue and Taxation, for review, prior to the

application being presented to the Board of Commerce and Industry for approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, amended LR 17:252 (March 1991), amended LR 22:

§919. Filing of Applications

A. An advance notification of intent shall be filed prior to the beginning of construction. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form. An advance notification will expire two years after the "construction ending date" shown on the advance notification unless a written request for extension is received by the department prior to that date.

B. Applications must be filed with the Office of Commerce and Industry, P.O. Box 94185, Baton Rouge, Louisiana, 70804-9185 on the form prescribed, within three months after completion of construction or the beginning of operations, whichever is later.

C. The phrase "beginning of construction" shall mean the first day on which foundations are started, or, where foundations are unnecessary, the first day on which installation of the facility begins or the first day that materials or equipment purchased for that project are received. Where there is no construction, the first day on which a new hire is made in connection with the project shall mean "beginning of construction" for the purposes of this Section.

D. Submission of Application Fee

1. An application fee shall be submitted with the application based on the following formula:

$$\text{FEE} = \text{TOTAL ESTIMATED TAX RELIEF} \times .002$$

Total Estimated Tax Relief = state sales/use tax refund + local sales/use tax refund + jobs credit*.

Estimated Tax Relief x .2% (.002) = Application Processing Fee

(Anticipated from this application)

2. An application fee correction will be due if a project's scope is increased which would have resulted in a minimum of \$100 more fee than what has already been submitted, unless the maximum has been paid.

* Jobs credit - this amount is either the total amount you calculate by multiplying the new jobs by \$2,500 (\$5,000 for aerospace or AFDC credits that will be claimed) or the total income and franchise tax liability you anticipate for the next 10 years, whichever is less.

Note: Minimum Application Processing Fee \$200.

Maximum Application Processing Fee \$5,000.

3. All fees shall be made by check payable to: Louisiana Office of Commerce and Industry.

E. The business shall file, on the prescribed form, an affidavit of final cost showing a complete listing of building(s) and equipment and the cost of each item on the project, together with a fee of \$100 for the plant inspection which will be conducted by the Office of Commerce and Industry. This affidavit is due to be filed either within six months after the completion of construction or when the signed original contracts are returned to the Office of

Commerce and Industry whichever is later. Upon request by the Office of Commerce and Industry, a map showing the location of all facilities claiming refunds in the project will be submitted in order that the property may be clearly identifiable.

F. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated tax relief or the fee submitted is incorrect. That document may be resubmitted within 30 days with the correct fee without penalty.

G. The advance notification, application, and the affidavit of final cost will not be considered officially received or accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been received and accepted, will not be refundable.

H. Applications must be submitted to the Office of Commerce and Industry, Financial Incentives Division at least 60 days prior to the Board of Commerce and Industry meeting where it is intended to be heard.

I. The applicant proposing a project with a construction period greater than two years is required to separate the project into phases, with no phase having a over a two-year construction period. Each construction phase shall require a separate application to be filed with the department. The applicant must comply with §935.A, requiring the creation of five new jobs on each application filed on a project. An application fee shall be submitted with each application filed based on the fee schedule in §919.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), LR 12:660 (October 1986), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§921. Recommendations of the Secretaries of Economic Development and Revenue and Taxation

The Office of Commerce and Industry shall forward the application with its recommendations to the secretary of Economic Development and the secretary of Revenue and Taxation for their review. The secretaries of Economic Development and Revenue and Taxation shall submit their recommendations (the secretary of Revenue and Taxation shall submit a letter of no-objection in lieu of a letter of recommendation) in writing to the assistant secretary for Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§923. Application shall be Presented to the Board of Commerce and Industry

The Office of Commerce and Industry, Financial Incentives Division shall present an agenda of applications to the Board of Commerce and Industry with the written recommendations

of the secretaries of Economic Development and Revenue and Taxation and, if applicable, the endorsement resolutions outlined in §905 and shall make recommendations to the board based upon its findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§925. Board of Commerce and Industry Enters into Contract

Upon approval of the application, the Board of Commerce and Industry may enter into contract with the applicant for refunds of the taxes allowed by R.S. 51:1781-1791. A copy of the contract shall be sent to the Department of Revenue and Taxation and the local governmental subdivision's taxing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§927. Refunds of Sales/Use Taxes

A. The contract will not authorize the applicant to make tax-free purchases from vendors. The refund of state sales/use taxes will be effected by the Department of Revenue and Taxation. Refunds will be secured by the filing of affidavits with the Department of Revenue and Taxation, Sales Tax Section, which must include the following:

1. a listing of purchases of eligible property that is intended to be used permanently on the project site and the contract number of the project. The listing must include a brief description of each item, the vendor's name, date of the delivery, sales price and the amount of state sales/use tax paid. The items included in the listing must have been purchased by the owner of the project, or by a builder or other party that has contracted with the owner to provide materials and services for the project;

2. a certification that the materials included in the listing are reasonably expected to qualify for a refund under provisions of the statute;

3. a certification that the sales/use taxes have actually been paid on the items included in the listing.

B. The affidavit may be filed on official Department of Revenue and Taxation "Claim for Refund" forms or on other forms prepared by the applicant. After the Department of Revenue and Taxation has verified the information on the application, a refund check will be issued for the amount of state sales/use taxes paid.

C. Local sales/ use tax refunds will be handled in the manner prescribed by the local taxing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August

1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§929. Businesses with Contracts must File State Franchise and Income Tax Returns

A. Businesses that have eliminated their Louisiana Income and/or Franchise tax liability by applying tax credits earned under this program shall file the same required forms and returns with the Department of Revenue and Taxation as would be required if no credits were taken. Each annual return will have the contract number, a certification attached showing the annual increase in employment, as determined by the company's average monthly employment (certified by the Office of Commerce and Industry) as reported to the Louisiana Department of Labor, and the unused credits from previous years. If total tax credits are less than the total taxes, remittance in the amount of the difference must be enclosed with the return. Limited Liability Companies, Subchapter S Corporations, etc. must have the name of all owners shown in the contract in order for tax credits to flow through to said owners.

B. Partnerships and sole proprietorships shall file the same returns as would be required if the tax credits had not been granted. In addition, each return must include a profit and loss statement for a business claiming enterprise zone credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§931. Violations of Rules, Statutes, or Documents

On the initiative of the Board of Commerce and Industry or whenever a written complaint of violation of the terms of the rules, the contract documents, or the statutes is received, the assistant secretary for the Office of Commerce and Industry shall determine if a full investigation is to be made on behalf of the board, and shall have full authority for such investigation including, but not exclusively, authority to call for reports or pertinent records or other information from the contractors. If the investigation appears to substantiate a violation, the assistant secretary will present the subject contract to the board for formal board action. The businesses with contracts shall then remit any and all taxes that would have been imposed but for the issuance of a contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§933. Affidavits Certifying Eligibility Filed Annually

On February 15 of each year, all businesses with active Enterprise Zone contracts are required to file an affidavit with the Office of Commerce and Industry certifying that the business still qualifies under §909 or §911. If the affidavit shows the company no longer qualifies under this rule, the Board of Commerce and Industry shall cancel the contract and no further tax credits will be granted. The Department of

Commerce will notify the Department of Revenue and Taxation within 30 days after cancellation of a contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended LR 12:660 (October 1986), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§935. Job Creation Requirements - Five New Jobs must be Created

A. For a business to qualify for the benefits of this Chapter, there must be an expansion in the total number of employees. A minimum of five new jobs credits must be generated within the first two years of the contract period.

B. A "new employee" shall be a Louisiana resident hired by the taxpayer, during the contract period, to fill a position for a job in this state which previously did not exist in the business. In no case shall the new employees allowed for purpose of the credit exceed the total increase in employment. A person shall be deemed to be so engaged if such person performs duties in connection with the operation of the business on:

1. a regular, full-time basis, (minimum of 30 hours per week, ability to accumulate paid sick and/or annual leave and the option of and possible payment, at least in part, of the employee's health insurance);

2. a part-time basis, provided such person is regularly performing such duties a minimum of 20 hours per week for a minimum of six continuous months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§937. Reserved

§939. Multi-tenant Operations

In the case of a facility where there are more than one occupant/tenant, an owner applicant for the benefits of this Chapter must either occupy a minimum of 33 percent of the total floor area of the building or the tenants are businesses that are new to the state or the tenants are Louisiana businesses that are increasing their number of locations within Louisiana with this location or the tenants are moving from another Louisiana location and will generate a minimum of five new job credits per §935.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§941. Alternate Designation of Enterprise Zones

A. A local governmental subdivision requesting the alternate designation (swap) of an Enterprise Zone must provide valid reason(s) for requesting an exchange and must have the approval of the Board of Commerce and Industry.

The alternate designation of an Enterprise Zone will be on a one-time basis only unless there are extenuating circumstances which must have approval of the Board of Commerce and Industry. All requests to the Board of Commerce and Industry for the movement of an eligible enterprise zone must be accompanied by a single map showing the location of the old and the new zone areas. The following information must also accompany a request for a swap of enterprise zones:

1. the distance between the new zone location and the old location;

2. the number of workers who were or will be hired from the old zone location by the business for which the swap is made;

3. the distance of the new zone to the closest other zone.

B. In order for an applicant to meet the requirements of §909, those employees who are residents of an originally designated 1990 Census Tract - Block Group which was deleted by virtue of an alternative designation may qualify as part of the 35 percent residency requirement.

C. The effective date of a swap approved by the Board of Commerce and Industry shall be the date of passage affixed to the resolution by the local governing authority requesting alternative designation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), LR 12:660 (October 1986), LR 13:289 (May 1987), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§943. Appeals and Petition Procedure

A. Applicants who wish to appeal an action of the Board of Commerce and Industry must submit their appeals along with any necessary documentation to the Office of Commerce and Industry, Financial Incentives Division, at least one month prior to the meeting of the Screening Committee of the Board of Commerce and Industry during which their appeal will be heard.

B. Petitions, and all documentation, on matters not yet presented to or ruled on, by the board, must be submitted to the Office of Commerce and Industry, Financial Incentives Division, at least one month prior to the meeting of the board in which the petition will be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), LR 12:660 (October 1986), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§945. Income and Franchise Tax Requirements

In order for a business to benefit from the income and corporate franchise tax benefits of this Chapter, an estimated five-year income and franchise tax liability must be provided by the applicant. This information will be used only to estimate the economic impact of the project to the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February

1985), LR 12:660 (October 1986), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§947. Exclusion of Residential Developments

A business engaging in residential-type development (construction, selling or leasing of single-family/multi-family dwellings, apartment buildings, condominiums, town houses, etc.) shall not be eligible for the benefits of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), amended LR 12:660 (October 1986), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:

§949. Prohibit Local Fees and Prohibit Local Conflicting Employment Practices

No local governmental subdivision shall charge any fees or require any employment practices which conflict with state law as a precondition to authorize tax benefits under this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), amended LR 22:

§951. Application Procedures

A. Applicants and/or their representatives will be notified of the date of the Screening Committee and board meeting at which their application will be considered. The applicant should have an officer of authority present who is able to answer any questions the Screening Committee or board might have about the information contained in the application. In the event there is not a representative present, the application may be deferred.

B. When an application is approved, a contract is supplied to the applicant by the Office of Commerce and Industry. The applicant must execute the contract and return it within 30 days. The state will complete the execution. A fully executed original will then be forwarded to the applicant, the Louisiana Department of Revenue and Taxation and a copy sent to the proper local governmental taxing authority(s).

C. The taxing authorities of the local governmental subdivision(s) issuing the endorsement resolution should be contacted to determine their procedure for rebating their sales/use tax. The applicant will be contacted by the staff of the Department of Revenue and Taxation who will inform the applicant on the proper procedures to follow in order to obtain the state sales/use tax refund.

D. The sales/use tax refund portion of the contract will only be valid for the duration of the construction period as indicated in the application.

E. The business shall file, on the prescribed form, an Affidavit of Final Cost showing complete listing of building(s) and equipment and cost of each item of the project, together with a fee of \$100, for the inspection which will be conducted by the Office of Commerce and Industry staff. This affidavit is due to be filed either within six months after the completion of construction or when the signed original contracts are returned to the Office of Commerce and Industry which ever is later.

F. An annual employee certification report must be filed (§933), certifying compliance with either §909 or §911. This report will be filed annually by February 15. The Office of Commerce and Industry will supply the necessary forms and instructions to complete them.

G. Notification of any change which may affect the contract should be made to Office of Commerce and Industry. This includes, but is not limited to, changes in the ownership or operational name of the business holding a contract or the suspension, closing or abandonment of operations. Failure to report within 90 days can constitute a breach of contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), amended LR 22:

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than March 11, 1996 at 5 p.m. to Paul Adams, Director, Financial Incentives Division, Box 94185; Baton Rouge, LA 70804 or to 101 France Street, Baton Rouge, LA 70802.

R. Paul Adams
Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Enterprise Zone Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The Board of Commerce and Industry has adopted rules in accordance with 1995 Act 194 (HB 2320) which allows the Board of Commerce and Industry discretion in allowing a late filing of an advance notice of a project; and 1995 Act 581 (HB 799) which expands the number of enterprise zones from 35 percent to 40 percent (203 new areas) and certain clarifications and definitions (housekeeping changes). Additionally, the act created Economic Development Zones (EDZ) which are identified as any industrial park, airport, or air park, research park, research and development park, downtown development districts, former federal facility, or port.

Section 1786(9) mandates new mapping requirements for all enterprise zones and EDZs; and the transmission of copies of updated maps to each sub-state planning district once every six months. The Department of Economic Development estimated that the mapping needs would require one additional position in addition to equipment and supplies at a cost of \$40,268 for FY 95/96. However, these costs have not been budgeted. No estimates are available or can be made for local government costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The Department of Economic Development's administration estimated that the addition of a potential 453 areas (203 enterprise zones and 250 EDZs) would amount to a negligible increase in development in each parish; and which would not increase the total credits and rebates from the existing program levels. It is the opinion of the Department of Economic Development administration that the revenue decreases due to the Enterprise Zone Program are offset by additional tax

revenues generated by the payrolls and other taxes paid by new and expanded businesses.

There will likely be only a small negative effect on state and local revenues as a result of the proposed rule changes. No estimate can be made of the effect on the revenue collections of state and local governments because some of the new zones may be created in areas with existing business activity that would become eligible for Enterprise Zone Program benefits should these businesses expand employment or operations. The impact will decrease local sales and use tax revenues and state income taxes, franchise taxes, and sales and use taxes. The department anticipates receiving an estimated additional 100 applications annually which would remit a minimum \$400 application fee each, resulting in an increase in state self-generated revenue of \$40,000+ annually.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Businesses locating in these new areas will receive tax credits of \$2,500 for each net new permanent job created during the term of the five-year contract, which can be applied to their income and/or corporate franchise tax. In addition, sales/use taxes not dedicated to school taxes or bonded indebtedness may be refunded on new buildings and materials and new machinery and equipment. No estimate can be made of the number of applications that will be received for these new areas.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The intent of the Enterprise Zone Program is to stimulate business and industrial growth in depressed areas of the state which are designated as enterprise zones and, in certain other areas designated as economic development zones, by providing tax incentives for new jobs created. No estimate of the number of new jobs can be made.

R. Paul Adams
Director
9602#061

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Handbook for School Administrators

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 has approved for advertisement, numerous amendments to *Bulletin 741, Louisiana Handbook for School Administrators*.

Numerous amendments are being proposed. The majority of the revisions will have no impact other than to provide clarity as to how the policy and/or standard has been administered in the past. Several changes allow more flexibility at the local level by specifically identifying how regulations have been interpreted, such as multiplying daily time requirements by the total number of required days to aggregate the amount of time. Many regulations that are burdensome to schools and that should be locally administered, such as: regulations pertaining to the philosophy and purposes of schools, staff development, processes for recordkeeping, etc. have been deleted. Other changes were

editorial; such as, changes of titles, additions of references to statutes, addition of references to bulletin numbers, etc. The SBESE honors curriculum requirements are amended to delete the requirement for computer science, which is not offered at all schools.

Changes in the requirements for the assignment of personnel and scheduling are also made. Schools will no longer be required to employ a full-time, on-site principal at every school. Secondary teachers will be allowed to teach more than two subjects during a single period and more than six periods daily in a secondary departmentalized setting.

The State Board of Elementary and Secondary Education convened a task force of local school personnel to review Bulletin 741. Their charge was to make recommendations that would make the implementation of policies and standards more flexible at the local level. These amendments, as a result of the recommendations of the task force, were also reviewed by the State Department of Education and the Parish Superintendents Advisory Council prior to approval by the board.

Any standard(s) affected by inserting a new standard will be renumbered accordingly.

Complete text of the proposed amendments to Bulletin 741 may be seen in the Office of the State Register, Fifth Floor, Capitol Annex, in the Bureau of Secondary Education, State Department of Education, or in the Office of the State Board of Elementary and Secondary Education, located in the Education Building in Baton Rouge, LA.

Interested persons may submit comments on the proposed policies until 4:30 p.m., April 10, 1996 to: Eileen Bickham, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Carole Wallin
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 741

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Local schools and school systems may realize a possible savings by taking advantage of some deregulation. It is not possible to determine how many systems will take advantage of the changes at this time nor is it possible to project the amount of savings.

It is estimated that at least 50 pages of *Bulletin 741* will need to be printed and disseminated to LEAs. The estimated cost at \$100 per page is \$5,000.

BESE estimated cost for printing this policy change and first page of fiscal and economic impact statement in the Louisiana Register is \$130. Funds are available.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There would 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 would be no costs or economic benefits to persons or nongovernmental groups directly affected.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There would be no effect on competition and employment.

Marlyn Langley
Deputy Superintendent
9602#030

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Instructional Staff/Religion

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 approved for advertisement, the following amendments to Bulletin 741, *Louisiana Handbook for School Administrators, Public and Nonpublic*.

Nonpublic School Standards

Amend Standard 6.016.15 to read:

"All members of the instructional staff teaching secular subjects, Pre-kindergarten through 12, shall have received a bachelor's degree from a regionally accredited institution."

Add a procedural block after Standard 6.016.15 to read:

"Staff members teaching religion at the high school level (9-12) for Carnegie units must have a minimum of a bachelor's degree." Staff members teaching religion that do not meet minimum qualifications may be retained in a school provided they were employed during the 1995-96 school year as teachers of religion."

* * *

After Standard 6.105.23 (course credit for religion) amend the following procedural block to read:

"A maximum of four units in religion shall be granted to students transferring from state-approved private and sectarian high schools. Those credits shall be accepted in meeting the requirements for high school graduation."

(NOTE: the standard currently allows two units.)

* * *

Public School Standards

Standard 2.105.23 amended to read:

"A maximum of four units in religion shall be granted to students transferring from state-approved private and sectarian high schools who have completed such course work. Those credits shall be accepted in meeting the requirements for high school graduation."

(NOTE: the standard currently allows two units.)

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

Interested persons may submit comments on the proposed policy until 4:30 p.m., April 10, 1996 to: Eileen Bickham, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Carole Wallin
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Public and Nonpublic
Bulletin 741 Instructional Staff/Religion**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated cost to state or local government units is \$100 to update and disseminate the changes to *Bulletin 741*.
BESE estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$100. Funds are available.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no estimated 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)
The increase of the number of units in religion that may be transferred will be beneficial for students in private and sectarian schools.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no estimated effect on competition and employment.

Marlyn Langley
Deputy Superintendent
Management and Finance
9602#062

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

**Technical College System Refund Policy
(LAC 28:I.1523)**

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 approved for advertisement, an amendment to the refund policy for the Louisiana technical colleges as stated below. This is an amendment to LAC 28:I.1523.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 15. Vocational and Vocational-Technical
Education**

§1523. Students

* * *

E. Fees for Louisiana Residents

* * *

3. Tuition and Fees

a. Enrollment or re-enrollment payments or acceptable evidence of indebtedness, shall be due upon registration or re-enrollment, as part of the enrollment process.

4. State Refund Policy for the Technical College System

a. A 100 percent refund of tuition and fees will only be made when classes are closed or canceled.

b. A 75 percent refund of tuition and fees will be made to students withdrawing during the first five instructional days of the term.

c. A 50 percent refund of tuition and fees will be made to students withdrawing during the sixth to tenth instructional days of the term.

d. No refund shall be made after the tenth instructional day of the term.

e. No refund shall be made for evening extension classes.

NOTE: In accordance with Title IV of the higher education amendments, refunds of tuition and fees for pell grant recipients shall be made to the Pell Grant Program and not to the student.

AUTHORITY NOTE: Promulgated in accordance with R. S. 17:6(a), (10) (11); R. S. 17:1997.

HISTORICAL NOTE: Amended by the Board of Elementary and Secondary Education, LR 22:

Interested persons may submit comments on the proposed amendment until 4:30 p.m., April 10, 1996 to: Eileen Bickham, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Carole Wallin
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Technical College System Refund Policy

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is estimated that the statewide costs for printing the new policy will be approximately \$75. Approximately 30 minutes to one hour of staff time will be required to process the necessary paper work associated with issuing a refund. At this time, it is impossible to predict how many students will be involved in refunds.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

We project that there will be very little decrease in revenues because it will impact only students who withdraw during the first two weeks of each term. At this time, we have no way of projecting exactly how many students this policy will effect. If any revenues are decreased, it will be self-generated funds and not state general funds.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is estimated that there will be a small economic benefit to non-Title IV students who are forced to withdraw from school within the first two weeks of a term. These students will receive a partial refund of their tuition.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no impact on competition or on employment.

Marlyn Langley
Deputy Superintendent
Management and Finance
9602#064

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

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

Storage of Volatile Organic Compounds (LAC 33:III.2103)(AQ137)

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 Air Quality Division Regulations, LAC 33:III.2103 (AQ137).

This rule revision clarifies that the requirements for internal floating roofs must be implemented at the next maintenance turnaround unless that turnaround occurs after December 1, 2005. The previous language implied that the requirements could be met at either the next turnaround or by the deadline, at the choice of the facility. This revision also provides a definition of mechanical shoe seal and liquid mounted seal, where the terms had been open to misinterpretation before this revision. The nonattainment parishes are listed by name in this revision, so that they will be subject to the rule even if their attainment status is downgraded. Other changes are made to improve clarity and readability.

This revision is necessary because the rule has been misinterpreted by the facilities regarding 1) types of seal required, and 2) deadlines for internal floating roof compliance.

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.

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. No person shall place, store, or hold in any stationary tank, reservoir, or other container of more than 250 gallons (950 liters) and up to 40,000 gallons (151,400 liters) nominal capacity any volatile organic compound, having a true vapor pressure of 1.5 Pa or greater at storage conditions, unless such tank, reservoir, or other container is designed and equipped with a submerged fill pipe or a vapor loss control system, as defined in Subsection E of this Section, or is a

pressure tank capable of maintaining working pressures sufficient at all times under normal operating conditions to prevent vapor or gas loss to the atmosphere.

B. No person shall place, store, or hold in any stationary tank, reservoir, or other container of more than 40,000 gallons (151,400 liters) nominal capacity any volatile organic compound having a true vapor pressure of 1.5 Pia or greater at storage conditions unless such tank, reservoir, or other container is a pressure tank capable of maintaining working pressures sufficient at all times under normal operating conditions to prevent vapor or gas loss to the atmosphere or is designed and equipped with a submerged fill pipe and one or more of the vapor loss control devices described in Subsections C, D, and E of this Section.

C. Internal Floating Roof. An internal floating roof consists of a pontoon type roof, double deck type roof, or internal floating cover which will rest or float on the surface of the liquid contents and is equipped with a closure seal to close the space between the roof edge and tank wall.

1. In the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, this closure seal shall consist of either:

a. a liquid mounted seal consisting of a foam- or liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel and the floating roof continuously around the circumference of the tank;

b. a mechanical shoe seal (metallic-type shoe seal) consisting of a metal sheet held vertically against the wall of the storage vessel by springs or weighted levers and connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof; or

c. two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the internal floating roof. The lower seal may be vapor-mounted, but both must be continuous.

2. All tank gauging and sampling devices shall be gas tight except when gauging or sampling is taking place. Each opening (except rim space vents and automatic bleeder vents) shall be provided with a projection below the liquid surface. In addition, each opening (except for leg sleeves, bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains) shall be provided with a cover equipped with a gasket. Automatic bleeder vents and rim space vents shall be gasketed and ladder wells shall be equipped with a sliding cover. This control equipment shall not be permitted if the organic compounds have a vapor pressure of 11.0 pounds per square inch absolute or greater under actual storage conditions.

3. If the internal floating roof does not meet the specifications of this rule, then the specifications shall be met at the earlier of either the next scheduled maintenance turnaround or December 1, 2005. Any request for an extension beyond December 1, 2005, shall be examined on a case-by-case basis and must be approved by the administrative authority*.

D. External Floating Roof. An external floating roof consists of a pontoon type roof, double deck type roof, or

external floating cover which will rest or float on the surface of the liquid contents and is equipped with a primary closure seal to close the space between the roof edge and tank wall and a continuous secondary seal (a rim mounted secondary) extending from the floating roof to the tank wall. The primary closure seal shall consist of a liquid mounted seal or a mechanical shoe seal, as defined in Subsection C.1.a and b of this Section. Installation of the primary and secondary seals shall be within the same time limitation as mentioned in Subsection C of this Section.

* * *

[See Prior Text in D.1]

a. the tank is a welded tank storing a VOC with a vapor pressure at storage conditions less than 4.0 Pia and is also equipped with liquid mounted seals, mechanical shoe seals, or equivalent.

* * *

[See Prior Text in D.1.b]

c. a mechanical shoe seal is used in a welded tank which also has a secondary seal from the top of the shoe seal to the tank wall (i.e., a shoe-mounted secondary).

* * *

[See Prior Text in D.1.d-D.2.e]

3. Requirements for Covering Openings. All openings in the external floating roof, except for automatic bleeder vents, rim space vent, and leg sleeves, are to provide a projection below the liquid surface. Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof is to be equipped with a gasketed cover, seal, or lid that is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. Automatic bleeder vents must be closed at all times except when the roof is floated off or landed on the roof leg supports. Rim vents must be set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting. Automatic bleeder vents and rim space vents are to be gasketed. Any emergency roof drain must be equipped with a slotted membrane fabric cover or equivalent cover that covers at least 90 percent of the opening.

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 which store a liquid having a total vapor pressure of 1.5 Pia or greater. This requirement shall only apply in the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge.

a. 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. 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.

b. Alternate methods of controls are acceptable if demonstrated to be equivalent to the controls in Subsection

D.4.a of this Section. The administrative authority* must approve alternate methods of control.

c. Installation of controls required by Subsection D.4 of this Section 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*.

d. Control systems required by Subsection D.4 of this Section 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 Paragraph in order to avoid noncompliance. Repairs must be initiated by ordering appropriate parts within seven working days after a defect listed in this Subparagraph is identified. 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.

* * *

[See Prior Text in E-G]

1. existing and new storage tanks, located in any parish other than the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, used for crude oil or condensate and having a nominal storage capacity of less than 420,000 gallons (1,589,900 liters) unless such new tanks are subject to New Source Performance Standards;

2. tanks 420,000 gallons (1,589,900 liters) or greater, located in any parish other than the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, used to store produced crude oil or condensate prior to lease custody transfer unless such tanks are subject to New Source Performance Standards;

3. existing and new storage tanks in the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge that are used for crude oil or condensate prior to lease custody transfer and that have a nominal storage capacity of less than 420,000 gallons (1,589,900 liters) unless such new tanks are subject to New Source Performance Standards; and

* * *

[See Prior Text in G.4-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 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 21:1333 (December 1995), amended LR 22:

A public hearing will be held on March 28, 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 this proposed regulation by AQ137. Such comments should be submitted no later than April 4, 1996, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA, 70810 or to FAX number (504) 765-0486.

Dale Givens
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Storage of Volatile Organic Compounds**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no costs or savings to state or local governmental units for this proposal.
- 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 as a result of this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no cost or economic benefit to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This proposal will not have any known effect on competition or employment.

J. Dale Givens
Secretary
9602#065

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Office of Facility Planning and Control
Engineers Selection Board**

Selection Procedures (LAC 4:VII.341)

Pursuant to the provisions of R.S. 38:2310 et seq. as amended, the Engineers Selection Board, hereinafter referred to as board, has amended such rules and procedures as it deemed necessary to carry out the provision of the said

statutes. These rules are established by the board, and are subject to change by said board, in accordance with the Administrative Procedure Act.

Title 4

ADMINISTRATION

Part VII. Governor's Office

Chapter 3. Engineers Selection Board

§341. Selection Procedures

Selection procedure is as follows:

1-4.

5. Select firm from the two firms with the most votes on a "one" vote basis.

6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2313.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Engineers Selection Board, LR 6:12 (January 1980), amended LR 9:551 (August 1983), LR 11:1077 (November 1985), LR 17:661 (July 1991), LR 22:

Persons interested in making comments relative to this rule change may do so in writing until close of business March 1, 1996, to the 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: Selection Procedures

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no costs (savings) to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no measurable costs or economic benefits associated with the proposed rule change.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect on competition or employment.

Roger Magendie
Director
9602#067

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Hospitals Office for Citizens with Developmental Disabilities

Consumer Grievance Policy (LAC 48:XIX.Chapter 11)

Notice is hereby given that the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, pursuant to the authority vested in it by R.S. 39:1554(D)(3) and R.S. 28:380-478, intends to adopt a rule in

accordance with R.S. 49:950 et seq., to provide a mechanism for consumers of mental retardation/developmental disabilities services funded by the department to grieve the provision or circumstances of provision of those services. This rule is necessary to enable the office to be in conformity with R.S. 28:441(A)-(B).

Title 46

PUBLIC HEALTH

Part IX. Mental Retardation Services and Developmental Disabilities Services

Chapter 11. Consumer Grievance Policy

§1101. Purpose

The purpose of this policy is to provide a mechanism for consumers of mental retardation/developmental disabilities (MR/DD) services funded by the Department of Health and Hospitals to grieve the provision of or the circumstances of provision of service delivery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:441(A)-(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 22:

§1103. Applicability

This policy applies to all consumers receiving MR/DD services from providers/contractors of MR/DD services funded by the Department of Health and Hospitals. Consumers receiving MR/DD services funded by Medicaid shall access the remedies available through Medicaid, when an appealable action has been taken in regard to that consumer's receipt of service (such as a denial, termination or reduction of services when such action is the result of a decision by the Medicaid agency.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:441(A)-(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 22:

§1105. Implementation

This policy and any subsequent revisions shall become effective on the date signed by the assistant secretary of the Office for Citizens with Developmental Disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:441(A)-(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 22:

§1107. Definitions

Administrator—that person within any agency which provides MR/DD services who shall receive all grievances, notify appropriate authorities and provide for the conduct and documentation of all grievance processes within that agency, including the appointment of a consumer representative (unless waived by the consumer) who shall be available to represent the wishes of the consumer in bringing initial and further grievance actions as necessary. The administrator is responsible for the conduct of the grievance proceeding either personally or through designation. The administrator shall be the chief executive officer (or his/her designee) for providers/contractors of mental retardation/developmental disabilities (MR/DD) services or the facility administrator (or his/her designee) or the assistant secretary of the Office for

Citizens with Developmental Disabilities (or his/her designee) for state agencies for internal grievance meetings; and the secretary of the Department of Health and Hospitals (or his/her designee) for informal (optional) grievance meetings or grievance hearings.

Consumer—an adult receiving an MR/DD service or his/her legally appointed representative or a person authorized to act on his/her behalf, or, in the case of a minor, the legally appointed representative.

Consumer Representative—that individual chosen by the consumer bringing the grievance, or appointed by the administrator of the agency against whom the grievance is being brought, to assist the consumer in the grievance process. This individual may be a legally appointed representative or the agency administrator or his/her designee to make volunteer or an employee of the agency or of the Department of Health and Hospitals. This individual must represent the wishes of the consumer. If the consumer either cannot or will not appoint a person to assist him/her in the grievance process, a consumer representative will be appointed by the agency providing the MR/DD service. The consumer of MR/DD services may then waive the right to a consumer representative by signing a statement or in some other way indicating a desire to waive that assistance. In all cases in which a consumer representative is appointed by the agency, he/she shall have had experience in dealing with a population of persons who have similar characteristics to the consumer bringing the grievance. The consumer representative, in conjunction with the provider of services, will be responsible for ensuring the provision of all reasonable accommodations as appropriate to the particular needs of the consumer bringing the grievance action.

Expedited Review—the direct referral to a grievance hearing for grievances which involve actions or proposed actions which could affect the physical safety and/or well-being of consumers of MR/DD services. Actions which may justify an expedited review include, but are not limited to: involuntary discharges or transfers from or terminations or reduction of levels of services when such actions may affect the individual's physical safety and well-being. Expedited review and/or a "stay-put" order shall be granted at the discretion of the secretary of the Department of Health and Hospitals (or his/her designee) upon notification from the assistant secretary of the Office for Citizens with Developmental Disabilities (or his/her designee) upon notification from the agency administrator of the consumer's desire for an expedited review of a grievance involving actions or proposed actions referenced above.

Grievable Action—those events for which a consumer of MR/DD services may initiate a grievance, which may include, but are not limited to, denial, termination or diminution of service, involuntary transfer, involuntary discharge and/or failure to provide services appropriate to a consumer's needs. Actions related to services funded through Medicaid are subject to that agency's appeal process; if a consumer's grievance is defined by Medicaid as appropriate for appeal, it will be subject to a fair hearing process.

Grievance—a disagreement between a consumer of an MR/DD service and the provider of that service.

Grievance Hearing—the grievance process which involves, at a minimum, the consumer of a contested service and a consumer representative (unless waived) available to represent the wishes of the consumer, the provider of that service and a grievance officer appointed by the secretary of the Department of Health and Hospitals for the proceeding. This meeting is convened after an internal grievance meeting and/or an informal (optional) grievance meeting or an expedited review has been ordered by the secretary of the Department of Health and Hospitals (or his/her designee). This meeting results in a final decision.

Grievance Officer—that person appointed by the secretary of the Department of Health and Hospitals to ensure the impartiality and adequacy of the grievance hearing and to render a decision on the contested action.

Informal (Optional) Grievance Meeting—the grievance process which involves, at a minimum, the consumer of a contested service and a consumer representative (unless waived) available to assist the consumer, the provider of that service and a mediator appointed by the assistant secretary of the Office for Citizens with Developmental Disabilities (or his/her designee). This process is initiated after an attempt to resolve the issue at an internal grievance meeting has failed, and aims at successful mediation of the dispute without further recourse to the final grievance action, the grievance hearing.

Internal Grievance Meeting—that existing grievance process in place within a provider service agency as mandated by applicable licensing standards. This grievance process involves, at a minimum, the consumer of a contested service and a consumer representative (unless waived) available to assist the consumer and the provider of that service. The initial grievance action is the necessary first step in any grievance action.

Mediator—that person who conducts an informal (optional) grievance proceeding to ensure the impartiality and adequacy of the process. The mediator in an informal (optional) grievance meeting shall be appointed by the assistant secretary of the Office for Citizens with Developmental Disabilities.

Mental Retardation and Developmental Disabilities Services—program and assistance for mentally retarded or developmentally disabled persons that include, but are not limited to, information and referral services, case management services, diagnosis and evaluation services, generic service plan development services, family support services, health services, educational services, therapies and habilitation services, vocational services, transportation services, recreation and leisure services, special olympics services respite services, infant intervention services and adult day services.

Responsible Person—the consumer of MR/DD services, his/her legally appointed representative or a person authorized by the consumer to act on his/her behalf.

Stay-put Order—a directive to a provider/contractor of MR/DD services funded by the Department of Health and Hospitals which requires that existing services be maintained during the period from notification to resolution of an expedited review of a grievance placed by a consumer

receiving those services. A "stay-put order" may be issued at the discretion of the secretary of the Department of Health and Hospitals and in concert with an expedited review grievance hearing. The referral for a "stay-put order" shall originate from the assistant secretary of the Office for Citizens with Developmental Disabilities upon notification from the agency administrator of a consumer's desire for an expedited review of a grievance involving actions or proposed actions which could effect the physical safety and/or well-being of consumers of MR/DD services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:441(A)-(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 22:

§1109. Rights of Consumers in the Grievance Process

A. Any consumer of an MR/DD service or a person legally appointed or authorized by the consumer to act on his/her behalf has the right to grieve the provision of or the circumstances of delivery of MR/DD services through a range of grievance processes. Recipients of Medicaid services are afforded restricted appeal rights as determined by that agency.

B. A grievance cannot be registered on the basis of denial of services for services for which eligibility or level of availability is restricted by a funding authority external to the agency providing the MR/DD service.

C. Any consumer who wishes to register a grievance shall have a "consumer representative" available for assistance in pursuing any grievance unless that consumer signs a statement or otherwise indicates a desire to waive that right. Any consumer registering a grievance shall be offered the services of a consumer representative at each stage of the grievance process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:441(A)-(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 22:

§1111. Provider Responsibilities in the Grievance Process

A. All providers/contractors of MR/DD services funded by the Department of Health and Hospitals are mandated to maintain internal procedures for handling grievances; additionally, those procedures must comply with all conditions and time-lines expressed in this document and shall be available for review by consumers and their representatives.

B. All providers/contractors of MR/DD services funded by the Department of Health and Hospitals shall participate in the full range of grievance processes.

C. All providers/contractors of MR/DD services funded by the Department of Health and Hospitals shall designate its administrator (or his/her designee) as the single contact person to provide for grievance processes, who shall:

1. receive all grievances; and,
2. assure, by appointment if necessary, that a consumer representative is available to the consumer to assist with all aspects of the initial and any subsequent grievances; and,
3. Notify the assistant secretary of the Office for Citizens with Developmental Disabilities (or his/her designee)

of the initiation of and eventual disposition of all grievance processes.

D. A consumer representative shall be chosen by the consumer or appointed by the provider of MR/DD services immediately upon notification that a consumer contests an action unless the consumer waives that right by signing a statement or in some other way indicating a desire to waive that assistance. Failure to adequately assist a consumer of services in pursuing a grievance process is grounds for sanction, including, but not limited to, termination of funding by the Department of Health and Hospitals.

E. The provider of a contested service must provide the consumer with a formal response to the grievance.

F. Failure to comply with the condition of this policy shall be grounds for sanction including, but not limited to, termination of funding by the Department of Health and Hospitals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:441(A)-(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 22:

§1113. Notification and Documentation of Grievance Rights

A. All providers/contractors of MR/DD services funded by the Department of Health and Hospitals shall be responsible for notification to the consumer of service of his/her right to bring a grievance

1. Notifications of grievance rights shall be done both verbally and in writing and the consumer and/or responsible individuals shall confirm receipt of such notification in writing; providers shall be responsible for maintaining adequate documentation.

2. Notifications of grievance rights shall include clear instructions on how to begin the grievance, applicable time-lines and the name and telephone number of the person to be contacted to initiate a grievance.

B. All providers/contractors of MR/DD services funded by the Department of Health and Hospitals shall be responsible for notification to the consumer, in an accessible form, of the availability of assistance from the Advocacy Center for the Elderly and Disabled. Contact information shall be displayed in an easily accessible area and shall be provided upon request by the consumer or his/her responsible individual.

C. All providers/contractors of MR/DD services funded by the Department of Health and Hospitals shall be responsible for notifying consumers of their grievance rights and options for assistance at the point of:

1. determination of eligibility for MR/DD services; or
2. admission into the MR/DD services system (a request for services and/or being placed on a waiting list does not constitute admission into a service);
3. development or alteration of the MR/DD service plan whether the change in service plan is a routing update or reflects significant changes in services. Signatures on the service plan can be used to verify notification of grievance rights but shall not constitute a waiver of those rights; or
4. termination of services; or
5. transfer of responsibilities for service delivery among service providers or practitioners; or

6. conclusion of an internal grievance meeting or informal (optional) grievance meeting.

D. All provider/contractors of MR/DD services funded by the Department of Health and Hospitals shall notify the assistant secretary of the Office for Citizens with Developmental Disabilities of the initiation and eventual disposition of all grievances within time-lines established in §1115 below.

E. All providers/contractors of MR/DD services funded by the Department of Health and Hospitals shall maintain records of internal grievance meetings for a period of three years from the time of their occurrence and shall make these records available to the department upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:441(A)-(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 22:

§1115. Filing Grievances

A. Grievance processes are initiated by consumers or the consumer's legally appointed representatives or persons authorized to act on the consumer's behalf. Verbal notification, in the absence of subsequent written confirmation, with or without the assistance of a consumer representative, shall not be adequate to convene a grievance process.

B. A grievance must be filed within 10 working days of initiation or written notification of an intended action for which a service provider has direct control and responsibility. A grievance for denial of service cannot be filed when the denial is based on eligibility requirements established by or at a level of availability restricted by an external funding authority. When that denial or restriction on availability of services is imposed by the Medicaid agency, Medicaid Fair Hearing procedures apply.

C. Upon a consumer's indication that a service provision or action is not satisfactory, the provider of MR/DD services must act immediately to appoint a consumer representative to assist the consumer in completing the grievance process.

1. Consumer representatives (unless formally waived by the consumer) assist the consumer in initiating and continuing a grievance as necessary.

2. Consumer representatives must represent the wishes of the consumer.

D. The consumer or his/her legally appointed representative or person authorized to act on his/her behalf may assist the consumer by filing a written notice to the provider/contractor of MR/DD service funded by the Department of Health and Hospitals, and the assistant secretary of the Office for Citizens with Developmental Disabilities within 10 working days of initiating an action or notification of an action to which the consumer objects.

E. The assistant secretary of the Office for Citizens with Developmental Disabilities (or his/her designee) will receive copies of all requests for grievance actions and shall make the determination of whether referral for investigation or resolution should proceed to agencies in addition to the provider of the contested service.

F. The provider of the contested service shall have 10 working days from notification from a consumer that a service

provision or action is not satisfactory to convene the internal grievance meeting.

G. Within five working days of any internal grievance meeting, the agency administrator shall notify, in writing, the assistant secretary of the Office for Citizens with Developmental Disabilities (or his/her designee) of the disposition of the grievance, which notification shall include documentation that the consumer has participated in the process.

H. If the agency administrator's written notification indicates the consumer desires to pursue the grievance, the assistant secretary of the Office for Citizens with Developmental Disabilities (or his/her designee) shall contact the consumer, within five working days, to offer the consumer the choice of an informal (optional) grievance meeting or grievance hearing. All parties shall be provided written confirmation of the results of that meeting.

1. If the consumer desires an informal (optional) grievance meeting, the assistant secretary of the Office for Citizens with Developmental Disabilities shall convene that meeting within 10 working days.

a. The results of that effort shall be provided to all parties, in writing, within five working days.

b. If the consumer is not satisfied and desires a grievance hearing the assistant secretary of the Office for Citizens with Developmental Disabilities shall notify the secretary of the Department of Health and Hospitals within five working days that a grievance hearing is to be convened.

2. If the service or action which the consumer desires to grieve is funded through the Medicaid agency and is a service or action which that agency has determined to be appealable, the assistant secretary of the Office for Citizens with Developmental Disabilities shall refer the grievance request to the Department of Health and Hospitals Fair Hearing section.

I. If the agency administrator fails to provide the assistant secretary of the Office for Citizens with Developmental Disabilities (or his/her designee) with written verification that the consumer does not seek further grievance relief within five working days of the internal grievance meeting, the assistant secretary (or his/her designee) shall contact the consumer to offer the option of an informal grievance meeting to mediate the disagreement or a grievance hearing. Refer to §1113.D.

1. If the consumer desires an informal (optional) grievance meeting, the assistant secretary of the Office for Citizens with Developmental Disabilities shall convene that meeting within 10 working days.

2. The results of that mediation effort shall be provided to all parties, in writing within five working days.

3. If the consumer is not satisfied and/or desires a grievance hearing, the assistant secretary of the Office for Citizens with Developmental Disabilities shall notify the secretary of the Department of Health and Hospitals within five working days that a grievance hearing is to be convened.

J. Unless the assistant secretary of the Office for Citizens with Developmental Disabilities (or his/her designee) receives written notification within 15 working days of an internal grievance meeting or informal (optional) grievance meeting (if such has been convened) that the consumer does not desire

further grievance action, the assistant secretary of the Office for Citizens with Developmental Disabilities shall notify the secretary of the Department of Health and Hospitals of a need to convene a grievance hearing.

K. The secretary of the Department of Health and Hospitals (or his/her designee) shall convene a grievance hearing within 15 working days of notification by the assistant secretary of the Office for Citizens with Developmental Disabilities (or his/her designee) of the need to do so; a final written decision shall be provided all involved parties within five working days of the grievance hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:441(A)-(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 22:

§1117. Participants in Grievance Processes

A. Grievance processes are to be conducted by the persons who are impartial to the outcome and who have had no direct participation in the denial or delivery of the contested service or in the evaluation of the grievance.

B. Grievance processes must involve, at a minimum, the consumer of the contested service and a consumer representative (unless waived) available to represent the wishes of the consumer who may participate in the process at the option of the consumer, the provider of the contested service and an individual who conducts an internal grievance meeting, acts as a mediator in an internal (optional) grievance meeting, or a grievance officer in a grievance hearing.

C. At the discretion of the assistant secretary of the Office for Citizens with Developmental Disabilities or the secretary of the Department of Health and Hospitals, designees can be directed to observe any grievance meeting and/or participate as mediators in grievance processes at any time upon the consumer's request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:441(A)-(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 22:

§1119. Grievance Procedures

A. All grievances must be addressed first in an internal grievance meeting composed of, at a minimum, the consumer of the contested service and a consumer representative (unless waived) acting in accordance with the wishes of the consumer, the provider of the contested service and an individual who conducts the meeting.

B. A consumer may pursue a grievance not resolved at an internal grievance meeting by engaging in mediation at an informal (optional) grievance meeting with participation of, at a minimum, the consumer of the contested service and a consumer representative (unless waived) acting in accordance with the wishes of the consumer, the provider of the contested service and a mediator appointed by the assistant secretary of the Office for Citizens with Developmental Disabilities.

C. A consumer may pursue a grievance not resolved at an internal grievance meeting or an informal (optional) grievance meeting, by engaging a grievance hearing with participation of, at a minimum, the consumer of the contested service and a consumer representative (unless waived) acting in

accordance with the wishes of the consumer, the provider of the contested service and a grievance officer designated by the secretary of the Department of Health and Hospitals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:441(A)-(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 22:

§1121. Conduct of the Grievance Process

A. Grievance processes shall be conducted at a time and place and under circumstances reasonably convenient to the consumer of the contested service, the provider of the service and other involved parties.

B. Involved parties in grievance processes shall have the right to bring evidence in support of their position; each shall have the right to question the evidence brought in support of the opposing position.

C. The mediator or grievance officer, as appropriate, shall be responsible for maintaining an adequate record of the proceeding which shall be made available to all principals in the proceedings. This record shall contain at a minimum:

1. the date and time the grievance notification was received by the provider of MR/DD services and the name, date and time of the offer of consumer representative;

2. the name of the consumer bringing the grievance and all parties providing evidence on his/her behalf;

3. the name of the provider involved in the grievance and all parties providing evidence on his/her behalf;

4. a brief statement of the nature of the grievance, including information offered as evidence;

5. a brief narrative of the process, including issues discussed;

6. a summary of the alternative offered by both parties to resolve the issue in contention, the parties which proposed such alternatives, and whether or not such suggestions were accepted or rejected and why;

7. the conclusions of the grievance process, briefly stating any and all resolutions achieved; and,

8. a tape recording of the proceeding.

D. The consumer and/or his/her consumer representative may withdraw a grievance at any point by written notification to the provider against whom the grievance was placed and by assistant secretary of the Office for Citizens with Developmental Disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:441(A)-(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 22:

§1123. Time Limitations for Grievance Processes

A. A consumer may grieve at any time about the provision of on-going MR/DD services.

B. At least 10 working days prior notification must be provided to the consumer by all provider/contractors of MR/DD services funded through the Department of Health and Hospitals of an intent to take an action considered grievable as defined in §1107.

C. The consumer has 10 working days to file a request for a grievance process from the time a provider notifies him/her that a change in MR/DD services is planned or from the time that a grievable action as defined in §1107 is initiated.

D. As soon as possible but in no case later than the next working day after notification, verbal or otherwise, of a consumer's intent to file a grievance action, the provider of MR/DD services must designate a consumer representative to assist the consumer in pursuit of the grievance.

E. As soon as possible but in no case later than the next working day after the grievance request is received, the provider/contractor against whom a grievance is directed shall provide written notification of that action to the assistant secretary of the Office for Citizens with Developmental Disabilities (or his/her designee).

F. Within the 10 working days of notification to the provider of a contested service, an internal grievance meeting must be convened.

G. Within five working days of an internal grievance meeting, the administrator of the agency against which a grievance has been filed shall provide written notification to the consumer and the provider of the contested service. The agency administrator shall then provide a written report to the assistant secretary of the Office for Citizens with Developmental Disabilities which shall include the outcome of the internal grievance meeting and a statement of whether the consumer wishes to pursue further action.

H. If the consumer is not satisfied with the resolution of the internal grievance meeting and indicates a wish to pursue further grievance action, the assistant secretary of the Office for Citizens with Developmental Disabilities (or his/her designee) shall:

1. contact the consumer within five working days to offer an opportunity to engage an informal (optional) grievance proceeding to mediate the dispute with the provider of MR/DD services or a formal grievance hearing;

2. notify the secretary of the Department of Health and Hospitals (or his/her designee) within five working days that the consumer wishes to engage a formal grievance hearing if such is the case.

I. Within 20 working days of verification from the consumer or his/her designated consumer representative that he/she wishes to pursue additional grievance process of a contested service, a grievance hearing must be convened if:

1. an internal grievance meeting and/or informal (optional) grievance meeting has not been resolved to their satisfaction of the consumer, and the consumer indicates that he/she wishes to pursue a grievance hearing; and/or,

2. the provider/contractor of MR/DD services fails to provide notification that the grievance has been resolved at the internal grievance meeting.

J. Within 10 working days of verification from the consumer or his/her appointed consumer representative of the desire to pursue an informal (optional) grievance meeting, the assistant secretary of the Office for Citizens with Developmental Disabilities (or his/her designee) will convene the informal (optional) grievance meeting.

K. Within 15 working days of verification from the assistant secretary of the Office for Citizens with Developmental Disabilities (or his/her designee) that the consumer or his/her designated consumer representative desires to pursue a grievance hearing, the secretary of the Department of Health and Hospitals (or his/her designee) must convene the grievance hearing.

L. The secretary of the Department of Health and Hospitals (or his/her designee) may cancel the informal (optional) grievance meeting with appropriate notifications to involved parties should the assistant secretary of the Office for Citizens with Developmental Disabilities (or his/her designee) provide notification that the grievance has been resolved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:441(A)-(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 22:

§1125. Special Provisions

A. All providers/contractors of MR/DD services to individuals which are funded by the Department of Health and Hospitals must provide written notification to the consumer of their intent to discharge or transfer them from their services.

B. Upon the request of the consumer or consumer representative or the assistant secretary of the Office for Citizens with Developmental Disabilities and at the discretion of the secretary of the Department of Health and Hospitals, a "stay-put" provision may be invoked to prevent the termination, discharge or other interruption of services pending resolution of a grievance process.

C. Upon the request of the consumer or consumer representative, or the assistant secretary of the Office for Citizens with Developmental Disabilities and at the discretion of the secretary of the Department of Health and Hospitals, immediate action may be taken to provide an expedited review of a grievance hearing for actions listed in §1107.

D. Failure of provider/contractor of MR/DD services funded through the Department of Health and Hospitals to comply with the provision of this policy may result in the application of sanctions, including, but not limited to, termination of funding by the Department of Health and Hospitals.

E. A consumer may request an expedited review of an intended action and/or a "stay-put" order (as outlined in §1107) by submitting that request to the assistant secretary of the Office for Citizens with Developmental Disabilities to request a grievance hearing to by-pass the informal (optional) grievance process and shorten the time-lines within which a grievance hearing must be held. The time-line for an expedited review shall be determined by the secretary of the Department of Health and Hospitals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:441(A)-(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 22:

Interested parties may submit data, views, comments or arguments on the proposed rule to: Rosemary I. Estes, Deputy Assistant Secretary, Office for Citizens with Developmental Disabilities, Box 3117, Baton Rouge, LA 70804-3117. She is responsible for responding to inquiries regarding this proposed rule.

A public hearing will be held on this matter at 9 a.m., on Friday, March 29, 1996, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time, all interested parties will be afforded an opportunity to submit comments,

orally or in writing. The deadline for receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Consumer Grievance Policy**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is estimated that there will be no implementation costs (savings) to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is estimated that 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)
It is estimated that there will be no costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
It is estimated that there will be no effect on competition and employment from this rule.

Bobby P. Jindal
Secretary
9602#063

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

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

Children's Special Health Services (CSHS) (LAC 48:V)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Health and Hospital, Office of Public Health proposes to amend, repeal and reenact Part V of the Louisiana Administrative Code, Preventive Health Services, Subpart 17. Children's Special Health Services (CSHS) to resolve service delivery issues, as follows: Sections 4901, 4903, 4905, 5101, 5103, 5105, 5107, 5109, 5113, 5115, 5117, 5301, 5501, 5503, 5505, 5509, 5511, 5513, 5515, 5517, and 5519, to be repealed and reenacted; Section 5903, to be amended; Sections 5111, 5303, and 5305, to be repealed.

The full text of these proposed rules can be obtained by contacting the Office of the State Register, 1051 North Third Street, Room 515, Baton Rouge, LA 70802.

Interested persons may submit written comments to Judy Moore, Program Manager, Children's Special Health Services, Box 60630, Room 607, New Orleans, LA, 70160 by the close of business March 27, 1996. She is responsible for responding to inquires regarding these proposed rules. A

public hearing on the proposed changes will be held at 11 a.m. on March 27, 1996 at the Department of Transportation and Development Annex Building, Third Floor Training Room, Baton Rouge, LA. All interested persons will be afforded an opportunity to submit comments, orally or in writing, at said hearing.

Bobby P. Jindal
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Children's Special Health Services**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rule change will not have implementation costs (savings) to the state.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rule change will not have an effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The proposed rule change will not affect costs.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule change will not have an effect on competition and employment.

Bobby P. Jindal
Secretary
9602#058

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

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

Establishment of an Office of Research Integrity

There is hereby established within the Office of Public Health (OPH) an Office of Research Integrity (ORI) to comply with federal regulation 42 CFR Part 50, Subpart A. The complete policies and procedures of the OPH-ORI are as follows, and have been accepted as complying with the federal guidelines by the United States Department of Health and Human Services, Office of Research Integrity.

I. Introduction

A. General Policy

The Louisiana Office of Public Health is fully and unequivocally dedicated to maintaining the highest of scientific standards in its patient care, public health and health-related research activities. These standards include adherence to professional health care ethics, as stated in health care worker professional conduct or ethics codes and/or in state law. All such ethics include maintenance of scientific integrity, preventing misconduct in research, doing no harm to anyone whose health care is in the trust of the Louisiana

Office of Public Health, and supporting in good faith those persons, who report suspected or known activities contrary to these stated ethics guidelines.

B. Scope

This policy and the associated procedures apply to all individuals at the Louisiana Office of Public Health engaged in research that is supported by or for which support is requested from PHS. The PHS regulation at 42 CFR Part 50, Subpart A applies to any research, research-training or research-related grant or cooperative agreement with PHS. This policy applies to any person paid by, under the control of, or affiliated with the institution, such as scientists, trainees, technicians and other staff members, students, fellows, guest researchers, or collaborators at the Louisiana Office of Public Health.

The policy and associated procedures will normally be followed when an allegation of possible misconduct in science is received by an institutional official. Particular circumstances in an individual case may dictate variation from the normal procedure deemed in the best interests of the Louisiana Office of Public Health and PHS. Any change from normal procedures also must ensure fair treatment to the subject of the inquiry or investigation. Any significant variation should be approved in advance by the research integrity officer of the Louisiana Office of Public Health.

II. Definitions

A. *Allegation*—any written or oral statement or other indication of possible scientific misconduct made to an institutional official.

B. *Complainant*—a person who makes an allegation of scientific misconduct.

C. *Conflict of Interest*—the real or apparent interference of one person's interests with the interests of another person, where potential bias may occur due to prior or existing personal or professional relationships.

D. *Deciding Official*—the institutional official who makes final determinations on allegations of scientific misconduct and any responsive institutional actions. The deciding official will not be the same individual as the research integrity officer and should have no direct prior involvement in the institution's inquiry, investigation or allegation assessment.

E. *Goodfaith Allegation*—an allegation made with the honest belief that scientific misconduct may have occurred. An allegation is not in good faith if it is made with reckless disregard for or willful ignorance of facts that would disprove the allegation.

F. *Inquiry*—gathering information and initial fact-finding to determine whether an allegation or apparent instance of scientific misconduct warrants an investigation.

G. *Investigation*—the formal examination and evaluation of all relevant facts to determine if misconduct has occurred, and, if so, to determine the responsible person and the seriousness of the misconduct.

H. *ORI*—the Office of Research Integrity, the office within the U. S. Department of Health and Human Services (DHHS) that is responsible for the scientific misconduct and research integrity activities of the U.S. Public Health Service.

I. *PHS*—the U.S. Public Health Service, an operating component of the DHHS.

J. *PHS Regulation*—the Public Health Service regulation establishing standards for institutional inquiries and investigations into allegations of scientific misconduct, which is set forth at 42 CFR Part 50, Subpart A, entitled "Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science."

K. *PHS Support*—PHS grants, contracts, or cooperative agreements or applications therefore.

L. *Research Integrity Officer*—the institutional official responsible for assessing allegations of scientific misconduct and determining when such allegations warrant inquiries and for overseeing inquiries and investigations.

M. *Research Record*—any data, document, computer file, computer diskette, or any other written or non-written account or object that reasonably may be expected to provide evidence or information regarding the proposed, conducted or reported research that constitutes the subject of an allegation of scientific misconduct. A research record includes, but is not limited to, grant or contract applications, whether funded or unfunded; grant or contract progress and other reports; laboratory notebooks; notes; correspondence; videos, photographs; X-ray film; slides; biological materials; computer files and printouts; manuscripts and publications; equipment use logs; laboratory procurement records; animal facility records; human and animal subject protocols; consent forms; medical charts and patient research files.

N. *Respondent*—the person against whom an allegation of scientific misconduct is directed or the person whose actions are the subject of the inquiry or investigation. There can be more than one respondent in any inquiry or investigation.

O. *Retaliation*—any action that adversely affects the employment or other institutional status of an individual that is taken by an institution or an employee because the individual has in good faith, made an allegation of scientific misconduct or of inadequate institutional response thereto or has cooperated in good faith with an investigation of such allegation.

P. *Scientific Misconduct or Misconduct in Science*—fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data.

III. Rights and Responsibilities

A. Research Integrity Officer

The deciding official will appoint the research integrity officer who will have primary responsibility for implementation of the procedures set forth in this document. The research integrity officer will be an institutional official who is well qualified to handle the procedural requirements involved and is sensitive to the varied demands made on those who conduct research, those who are accused of misconduct, and those who report apparent misconduct in good faith.

The research integrity officer will appoint the inquiry and investigation committees and ensure that necessary and appropriate expertise is secured to carry out a thorough and authoritative evaluation of the relevant evidence in an inquiry

or investigation. The research integrity officer will attempt to ensure that confidentiality is maintained.

The research integrity officer will assist inquiry and investigation committees and all institutional personnel in complying with these procedures and with applicable standards imposed by government or external funding sources. The research integrity officer is also responsible for maintaining files of all documents and evidence and for the confidentiality and the security of the files.

The research integrity officer will report to ORI as required by regulation and keep ORI apprised of any developments during the course of the inquiry or investigation that may affect current or potential DHHS funding for the individual(s) under investigation or that PHS needs to know to ensure appropriate use of Federal funds and otherwise protect the public interest.

B. Complainant

The complainant will have an opportunity to testify before the inquiry and investigation committees, to review portions of the inquiry and investigation reports pertinent to his/her allegations or testimony, to be informed of the results of the inquiry and investigation, and to be protected from retaliation. Also, if the research integrity officer has determined that the complainant may be able to provide pertinent information on any portions of the draft report, these portions will be given to the complainant for comment.

The complainant is responsible for making allegations in good faith, maintaining confidentiality, and cooperating with an inquiry or investigation.

C. Respondent

The respondent will be informed of the allegations when an inquiry is opened and notified in writing of the final determinations and resulting actions. The respondent will also have the opportunity to be interviewed by and present evidence to the inquiry and investigation committees, to review the draft inquiry and investigation reports, and to have the advice of counsel.

The respondent is responsible for maintaining confidentiality and cooperating with the conduct of an inquiry or investigation. If the respondent is not found guilty of scientific misconduct, he or she has the right to receive institutional assistance in restoring his or her reputation.

D. Deciding Official

The deciding official will receive the inquiry and/or investigation report and any written comments made by the respondent or the complainant on the draft report. The deciding official will consult with the research integrity officer or other appropriate officials and will determine whether to conduct an investigation, whether misconduct occurred, whether to impose sanctions, or whether to take other appropriate administrative actions [see Section X].

IV. General Policies and Principles

A. Responsibility to Report Misconduct

All employees or individuals associated with the Louisiana Office of Public Health should report observed, suspected, or apparent misconduct in science to the research integrity officer. If an individual is unsure whether a suspected incident falls within the definition of scientific misconduct, he or she may call the research integrity officer

at (504) 568-5048 or LINC 621-5048 or 1-800-256-4609 to discuss the suspected misconduct informally. If the circumstances described by the individual do not meet the definition of scientific misconduct, the research integrity officer will refer the individual or allegation to other offices or officials with responsibility for resolving the problem.

At any time, an employee may have confidential discussions and consultations about concerns of possible misconduct with the research integrity officer and will be counseled about appropriate procedures for reporting allegations.

B. Protecting the Complainant

The research integrity officer will monitor the treatment of individuals who bring allegations of misconduct or of inadequate institutional response thereto, and those who cooperate in inquiries or investigations. The research integrity officer will ensure that these persons will not be retaliated against in the terms and conditions of their employment or other status at the institution and will review instances of alleged retaliation for appropriate action.

Employees should immediately report any alleged or apparent retaliation to the research integrity officer.

Also, the institution will protect the privacy of those who report misconduct in good faith to the maximum extent possible. For example, if the complainant requests anonymity, the institution will make an effort to honor the request during the allegation assessment or inquiry within applicable policies and regulations and state and local laws, if any. The complainant will be advised that if the matter is referred to an investigation committee and the complainant's testimony is required, anonymity may no longer be guaranteed. Institutions are required to undertake diligent efforts to protect the positions and reputations of those persons who, in good faith, make allegations.

C. Protecting the Respondent

Inquiries and investigations will be conducted in a manner that will ensure fair treatment to the respondent(s) in the inquiry or investigation and confidentiality to the extent possible without compromising public health and safety or thoroughly carrying out the inquiry or investigation.

Institutional employees accused of scientific misconduct may consult with legal counsel or a non-lawyer personal adviser (who is not a principal or witness in the case) to seek advice and may bring the counsel or personal adviser to interviews or meetings on the case.

D. Cooperation with Inquiries and Investigations. Institutional employees will cooperate with the research integrity officer and other institutional officials in the review of allegations and the conduct of inquiries and investigations. Employees have an obligation to provide relevant evidence to the research integrity officer or other institutional officials on misconduct allegations.

E. Preliminary Assessment of Allegations. Upon receiving an allegation of scientific misconduct, the research integrity officer will immediately assess the allegation to determine whether there is sufficient evidence to warrant an inquiry, whether PHS support or PHS applications for funding are involved, and whether the allegation falls under the PHS definition of scientific misconduct.

V. Conducting the Inquiry

A. **Initiation and Purpose of the Inquiry.** Following the preliminary assessment, if the research integrity officer determines that the allegation provides sufficient information to allow specific follow-up, involves PHS support, and falls under the PHS definition of scientific misconduct, he or she will immediately initiate the inquiry process. In initiating the inquiry, the research integrity officer should identify clearly the original allegation and any related issues that should be evaluated. The purpose of the inquiry is to make a preliminary evaluation of the available evidence and testimony of the respondent, complainant, and key witnesses to determine whether there is sufficient evidence of possible scientific misconduct to warrant an investigation. The purpose of the inquiry is not to reach a final conclusion about whether misconduct definitely occurred or who was responsible. The findings of the inquiry must be set forth in an inquiry report.

B. **Sequestration of the Research Records.** After determining that an allegation falls within the definition of misconduct in science and involves PHS funding, the research integrity officer must ensure that all original research records and materials relevant to the allegation are immediately secured. The research integrity officer may consult with ORI for advice and assistance in this regard.

C. Appointment of the Inquiry Committee

The research integrity officer, in consultation with other institutional officials as appropriate, will appoint an inquiry committee and committee chair within 10 working days of the initiation of the inquiry. The inquiry committee should consist of individuals who do not have real or apparent conflicts of interest in the case, are unbiased, and have the necessary expertise to evaluate the evidence and issues related to the allegation, interview the principals and key witnesses, and conduct the inquiry. These individuals may be scientists, subject matter experts, administrators, lawyers, or other qualified persons, and they may be from inside or outside the institution.

The research integrity officer will notify the respondent of the proposed committee membership in 10 working days. If the respondent submits a written objection to any appointed member of the inquiry committee or expert based on bias or conflict of interest within five days, the research integrity officer will determine whether to replace the challenged member or expert with a qualified substitute.

D. Charge to the Committee and the First Meeting

The research integrity officer will prepare a charge for the inquiry committee that describes the allegations and any related issues identified during the allegation assessment and states that the purpose of the inquiry is to make a preliminary evaluation of the evidence and testimony of the respondent, complainant, and key witnesses to determine whether there is sufficient evidence of possible scientific misconduct to warrant an investigation as required by the PHS regulation. The purpose is not to determine whether scientific misconduct definitely occurred or who was responsible.

At the committee's first meeting, the research integrity officer will review the charge with the committee, discuss the allegations, any related issues, and the appropriate procedures

for conducting the inquiry, assist the committee with organizing plans for the inquiry, and answer any questions raised by the committee. The research integrity officer and institutional counsel will be present or available throughout the inquiry to advise the committee as needed.

E. **Inquiry Process.** The inquiry committee will normally interview the complainant, the respondent, and key witnesses as well as examining relevant research records and materials. Then the inquiry committee will evaluate the evidence and testimony obtained during the inquiry. After consultation with the research integrity officer and institutional counsel, the committee members will decide whether there is sufficient evidence of possible scientific misconduct to recommend further investigation. The scope of the inquiry does not include deciding whether misconduct occurred or conducting exhaustive interviews and analyses.

VI. The Inquiry Report

A. **Elements of the Inquiry Report.** A written inquiry report must be prepared that states the name and title of the committee members and experts, if any; the allegations; the PHS support; a summary of the inquiry process used; a list of the research records reviewed; summaries of any interviews; a description of the evidence in sufficient detail to demonstrate whether an investigation is warranted or not; and the committee's determination as to whether an investigation is recommended and whether any other actions should be taken if an investigation is not recommended. Institutional counsel will review the report for legal sufficiency.

B. **Comments on the Draft Report by the Respondent and the Complainant.** The research integrity officer will provide the respondent with a copy of the draft inquiry report or a summary of the inquiry findings for comment and rebuttal and will provide the complainant, if he or she is identifiable, with portions of the draft inquiry report that address the complainant's role and opinions in the investigation.

1. **Confidentiality.** The research integrity officer may establish reasonable conditions for review to protect the confidentiality of the draft report.

2. **Receipt of Comments.** Within 14 calendar days of their receipt of the draft report, the complainant and respondent will provide their comments, if any, to the inquiry committee. Any comments that the complainant or respondent submits on the draft report will become part of the final inquiry report and record. Based on the comments, the inquiry committee may revise the report as appropriate.

C. Inquiry Decision and Notification.

1. **Decision by Deciding Official.** The Research Integrity Office will transmit the final report and any comments to the Deciding Official, who will make the determination of whether findings from the inquiry provide sufficient evidence of possible scientific misconduct to justify conducting an investigation. The inquiry is completed when the deciding official makes this determination, which will be made within 60 days of the first meeting of the inquiry committee. Any extension of this period will be based on good cause and recorded in the inquiry file.

2. **Notification.** The research integrity officer will notify both the respondent and the complainant in writing of the Deciding Official's decision of whether to proceed to an

investigation and will remind them of their obligation to cooperate in the event an investigation is opened. The research integrity officer will also notify all appropriate institutional officials of the Deciding Official's decision.

D. **Time Limit for Completing the Inquiry Report.** The inquiry committee will normally complete the inquiry and submit its report in writing to the research integrity officer no more than 60 calendar days following its first meeting, unless the research integrity officer approves an extension for good cause. If the research integrity officer approves an extension, the reason for the extension will be entered into the records of the case and the report. The respondent also will be notified of the extension.

VII. Conducting the Investigation

A. **Purpose of the Investigation.** The purpose of the investigation is to explore in detail the allegations, to examine the evidence in depth, and to determine specifically whether misconduct has been committed, by whom, and to what extent. The investigation will also determine whether there are additional instances of possible misconduct that would justify broadening the scope beyond the initial allegations. This is particularly important where the alleged misconduct involves clinical trials or potential harm to human subjects or the general public or if it affects research that forms the basis for public policy, clinical practice, or public health practice. The findings of the investigation will be set forth in an investigation report.

B. **Sequestration of the Research Records.** The research integrity officer will immediately sequester any additional pertinent research records that were not previously sequestered during the inquiry. This sequestration should occur before or at the time the respondent is notified that an investigation has begun. The need for additional sequestration of records may occur for any number of reasons, including the institution's decision to investigate additional allegations not considered during the inquiry stage or the identification of records during the inquiry process that had not been previously secured. The procedures to be followed for sequestration during the investigation are the same procedures that apply during the inquiry.

C. Appointment of the Investigation Committee

The research integrity officer, in consultation with other institutional officials as appropriate, will appoint an investigation committee and the committee chair within 10 working days of the notification to the respondent that an investigation is planned or as soon thereafter as practicable. The investigation committee should consist of at least three individuals who do not have real or apparent conflicts of interest in the case, are unbiased, and have the necessary expertise to evaluate the evidence and issues related to the allegations, interview the principals and key witnesses, and conduct the investigation. These individuals may be scientists, administrators, subject matter experts, lawyers, or other qualified persons, and they may be from inside or outside the institution. Individuals appointed to the investigation committee may also have served on the inquiry committee.

The research integrity officer will notify the respondent of the proposed committee membership within five working

days. If the respondent submits a written objection to any appointed member of the investigation committee or expert, the research integrity officer will determine whether to replace the challenged member or expert with a qualified substitute.

D. Charge to the Committee and the First Meeting

1. Charge to the Committee

The research integrity officer will define the subject matter of the investigation in a written charge to the committee that describes the allegations and related issues identified during the inquiry, defines scientific misconduct, and identifies the name of the respondent. The charge will state that the committee is to evaluate the evidence and testimony of the respondent, complainant, and key witnesses to determine whether, based on a preponderance of the evidence, scientific misconduct occurred and, if so, to what extent, who was responsible, and its seriousness.

During the investigation, if additional information becomes available that substantially changes the subject matter of the investigation or would suggest additional respondents, the committee will notify the research integrity officer, who will determine whether it is necessary to notify the respondent of the new subject matter or to provide notice to additional respondents.

2. **The First Meeting.** The research integrity officer, with the assistance of institutional counsel, will convene the first meeting of the investigation committee to review the charge, the inquiry report and the prescribed procedures and standards for the conduct of the investigation, including the necessity for confidentiality and for developing a specific investigation plan. The investigation committee will be provided with a copy of these instructions and, where PHS funding is involved, the PHS regulation.

E. Investigation Process

The investigation committee will be appointed and the process initiated within 30 days of the completion of the inquiry, if findings from that inquiry provide a sufficient basis for conducting an investigation.

The investigation will normally involve examination of all documentation including, but not necessarily limited to, relevant research records, computer files, proposals, manuscripts, publications, correspondence, memoranda, and notes of telephone calls. Whenever possible, the committee should interview the complainant(s), the respondent(s), and other individuals who might have information regarding aspects of the allegations. Interviews of the respondent should be tape recorded or transcribed. All other interviews should be transcribed, tape recorded, or summarized. Summaries or transcripts of the interviews should be prepared, provided to the interviewed party for comment or revision, and included as part of the investigatory file.

VIII. The Investigation Report

A. **Elements of the Investigation Report.** The final report submitted to ORI must describe the policies and procedures under which the investigation was conducted, describe how and from whom information relevant to the investigation was obtained, state the findings, and explain the basis for the findings. The report will include the actual text or an accurate summary of the views of any individual(s) found to have engaged in misconduct as well as a description of any

sanctions imposed and administrative actions taken by the institution.

B. Comments on the Draft Report

1. Respondent. The research integrity officer will provide the respondent with a copy of the draft investigation report for comment and rebuttal. The respondent will be allowed 30 days to review and comment on the draft report. The respondent's comments will be attached to the final report. The findings of the final report should take into account the respondent's comments in addition to all the other evidence.

2. Complainant. The research integrity officer will provide the complainant, if he or she is identifiable, with those portions of the draft investigation report that address the complainant's role and opinions in the investigation. The report should be modified, as appropriate, based on the complainant's comments.

3. Institutional Counsel. The draft investigation report will be transmitted to the institutional counsel for a review of its legal sufficiency. Comments should be incorporated into the report as appropriate.

4. Confidentiality. In distributing the draft report, or portions thereof, to the respondent and complainant, the research integrity officer will inform the recipient of the confidentiality under which the draft report is made available and may establish reasonable conditions to ensure such confidentiality. For example, the research integrity officer may request the recipient to sign a confidentiality statement or to come to his or her office to review the report.

C. Institutional Review and Decision

Based on a preponderance of the evidence, the deciding official will make the final determination whether to accept the investigation report, its findings, and the recommended institutional actions. If this determination varies from that of the investigation committee, the deciding official will explain in detail the basis for rendering a decision different from that of the investigation committee in the institution's letter transmitting the report to ORI. The deciding official's explanation should be consistent with the PHS definition of scientific misconduct, the institution's policies and procedures, and the evidence reviewed and analyzed by the investigation committee. The deciding official may also return the report to the investigation committee with a request for further fact-finding or analysis. The deciding official's determination, together with the investigation committee's report, constitutes the final investigation report for purposes of ORI review.

When a final decision on the case has been reached, the research integrity officer will notify both the respondent and the complainant in writing. In addition, the deciding official will determine whether law enforcement agencies, professional societies, professional licensing boards, editors of journals in which falsified reports may have been published, collaborators of the respondent in the work, or other relevant parties should be notified of the outcome of the case. The research integrity officer is responsible for ensuring compliance with all notification requirements of funding or sponsoring agencies.

D. Transmittal of the Final Investigation Report to ORI. After comments have been received and the necessary changes have been made to the draft report, the investigation committee should transmit the final report with attachments, including the respondent's and complainant's comments, to the Deciding Official, through the research integrity officer.

E. Time Limit for Completing the Investigation Report. An investigation should ordinarily be completed within 120 days of its initiation, with the initiation being defined as the first meeting of the investigation committee. This includes conducting the investigation, preparing the report of findings, making the draft report available to the subject of the investigation for comment, submitting the report to the deciding official for approval, and submitting the report to the ORI.

IX. Requirements for Reporting to ORI

A. An institution's decision to initiate an investigation must be reported in writing to the Director, ORI, on or before the date the investigation begins. At a minimum, the notification should include the name of the person(s) against whom the allegations have been made, the general nature of the allegation as it relates to the PHS definition of scientific misconduct, and the PHS applications or grant number(s) involved. ORI must also be notified of the final outcome of the investigation and must be provided with a copy of the investigation report. Any significant variations from the provisions of the institutional policies and procedures should be explained in any reports submitted to ORI.

B. If an institution plans to terminate an inquiry or investigation for any reason without completing all relevant requirements of the PHS regulation, the Research Integrity Officer will submit a report of the planned termination to ORI, including a description of the reasons for the proposed termination.

C. If the institution determines that it will not be able to complete the investigation in 120 days, the research integrity officer will submit to ORI a written request for an extension that explains the delay, reports on the progress to date, estimates the date of completion of the report, and describes other necessary steps to be taken. If the request is granted, the research integrity officer will file periodic progress reports as requested by the ORI.

D. When PHS funding or applications for funding are involved and an admission of scientific misconduct is made, the Research Integrity Office will contact ORI for consultation and advice. Normally, the individual making the admission will be asked to sign a statement attesting to the occurrence and extent of misconduct. When the case involves PHS funds, the institution cannot accept an admission of scientific misconduct as a basis for closing a case or not undertaking an investigation without prior approval from ORI.

E. The research integrity officer will notify ORI at any stage of the inquiry or investigation if

1. there is an immediate health hazard involved;
2. there is an immediate need to protect Federal funds or equipment;
3. there is an immediate need to protect the interests of the person(s) making the allegations or of the individual(s) who is the subject of the allegations as well as his/her co-investigators and associates, if any;

4. it is probable that the alleged incident is going to be reported publicly; or

5. the allegation involves a public health sensitive issue, e.g., a clinical trial; or

6. there is a reasonable indication of possible criminal violation. In this instance, the institution must inform ORI within 24 hours of obtaining that information.

X. Institutional Administrative Actions

Louisiana Office of Public Health will take appropriate administrative actions against individuals when an allegation of misconduct has been substantiated.

If the deciding official determines that the alleged misconduct is substantiated by the findings, he or she will decide on the appropriate actions to be taken, after consultation with the research integrity officer. The actions may include:

1. withdrawal or correction of all pending or published abstracts and papers emanating from the research where scientific misconduct was found;

2. removal of the responsible person from the particular project, letter of reprimand, special monitoring of future work, probation, suspension, salary reduction, or initiation of steps leading to possible rank reduction or termination of employment;

3. restitution of funds as appropriate.

XI. Other Considerations

A. Termination of Institutional Employment or Resignation Prior to Completing Inquiry or Investigation

The termination of the respondent's institutional employment, by resignation or otherwise, before or after an allegation of possible scientific misconduct has been reported, will not preclude or terminate the misconduct procedures.

If the respondent, without admitting to the misconduct, elects to resign his or her position prior to the initiation or an inquiry, but after an allegation has been reported, or during an inquiry or investigation, the inquiry or investigation will proceed. If the respondent refuses to participate in the process after resignation, the committee will use its best efforts to reach a conclusion concerning the allegations, noting in its report the respondent's failure to cooperate and its effect on the committee's review of all the evidence.

B. Restoration of the Respondent's Reputation. If the institution finds no misconduct and ORI concurs, after consulting with the respondent, the research integrity officer will undertake reasonable efforts to restore the respondent's reputation. Depending on the particular circumstances, the research integrity officer should consider notifying those individuals aware of or involved in the investigation of the final outcome, publicizing the final outcome in forums in which the allegation of scientific misconduct was previously publicized, or expunging all reference to the scientific misconduct allegation from the respondent's personnel file. Any institutional actions to restore the respondent's reputation must first be approved by the Deciding Official.

C. Protection of the Complainant and Others. Regardless of whether the institution or ORI determines that scientific misconduct occurred, the research integrity officer will undertake reasonable efforts to protect complainants who made allegations of scientific misconduct in good faith and

others who cooperate in good faith with inquiries and investigations of such allegations. Upon completion of an investigation, the deciding official will determine, after consulting with the complainant, what steps, if any, are needed to restore the position or ORI reputation of the complainant. The research integrity officer is responsible for implementing any steps the deciding official approves. The research integrity officer will also take appropriate steps during the inquiry and investigation to prevent any retaliation against the complainant.

D. Allegations not made in Good Faith. If relevant, the deciding official will determine whether the complainant's allegations of scientific misconduct were made in good faith. If an allegation was not made in good faith, the deciding official will determine whether any administrative action should be taken against the complainant.

E. Interim Administrative Actions. Institutional officials will take interim administrative actions, as appropriate, to protect federal funds and ensure that the purposes of the federal financial assistance are carried out.

XII. Record Retention

After completion of a case and all ensuing related actions, the research integrity officer will prepare a complete file, including the records of any inquiry or ORI investigation and copies of all documents and other materials furnished to the research integrity officer or ORI committees. The research integrity officer will keep the file for three years after completion of the case to permit later assessment of the case. ORI or other authorized DHHS personnel will be given access to the records upon request.

In accordance with the policies and procedures of the OPH-ORI the state health officer will serve as the deciding official. Also in accordance with the policies and procedures of the OPH-ORI the state health officer will appoint the research integrity officer, who will serve as such until he or she is relieved of that responsibility by the state health officer. The research integrity officer will be an official of OPH, who is well qualified to handle the procedural requirements involved and is sensitive to the varied demands made on those who conduct research, those who are accused of misconduct, and those who report in good faith apparent misconduct.

Questions regarding the OPH-ORI may be directed to Dr. Louis Trachtman, Office of Public Health, 325 Loyola Avenue, Room 513, New Orleans, LA 70112 or at mailing address Box 60630, New Orleans, LA 70160-0630. Telephone (504) 568-5048 or LINC 621-5048. FAX (504) 568-2609.

Bobby P. Jindal
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Research Integrity

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are zero implementation costs and zero savings to state or local units with the implementation of this rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is a zero effect on revenue collections of state or local governmental units with the implementation of this rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are zero estimated costs and/or economic benefits to directly affected persons or nongovernmental groups with the implementation of this rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is a zero estimated effect on competition and employment with the implementation of this rule.

Bobby P. Jindal
Secretary
9602#057

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Hospitals Office of Public Health

Institutional Review Board for Human Subjects

There is established within the Office of Public Health (OPH) the Institutional Review Board for Human Subjects (IRB). Each member of this IRB shall be appointed by the state health officer, and shall serve until removed by the state health officer, or upon the resignation of the member from the appointed position on the IRB. Herewith are appointed the following persons:

From the Office of Public Health—at least five persons, one of whom will serve as chair of the board;

From the New Orleans Aids Task Force—at least one person, who will serve as the community representative.

In accord and compliance with Title 45, Code of Federal Regulations, Part 46, revised June 18, 1991 and Public Law 99-158 of 1985, the Public Health Service Act, as amended by the Health Research Extension Act of 1985, the following summarizes the guidelines used and complied with by the OPH - IRB:

Research activities considered for approval by the OPH - IRB will be accomplished whether or not funding is to be provided by any federal department or agency, but is to be provided or participated in, as part of official public health work, by any employee of OPH or, for the specific purposes of accomplishing the research activities, any contractee of OPH.

Ethical considerations will be made by the IRB in considering its approval in accord with the above-cited law and code in regard, but not limited, to:

Protection of human subjects from harmful research risks.

Protection of the privacy and confidentiality of human subjects.

Protection of the known rights and welfare of human subjects.

Fetal research.

Further,

1. the procedures of the OPH - IRB will not conflict with and will be in accord and compliance with the provisions of the "Rules and Procedures on Disclosures of Medical Information" of the Department of Health and Hospitals, Policy No. 0008-79, as revised September 25, 1990 and December 19, 1991; and

2. the procedures of the OPH - IRB will not conflict with and will be in accord and compliance with the provisions of Louisiana Revised Statutes 40:41(D), as amended by the 1983 session of the state legislature, providing for the disclosure of vital records for public health research purposes, and the rules therefore, as promulgated in the *Louisiana Register*, Volume 15, Number 6, June 20, 1989.

Questions or comments concerning this notice of intent may be addressed to Dr. Louis Trachtman, Office of Public Health, 325 Loyola Avenue, Room 513, New Orleans, LA 70112 or at mailing address, Box 60630, New Orleans, LA 70160-0630. The telephone number is (504) 568-5048 or LINC 621-5048. The FAX number is (504)568-2609.

Bobby P. Jindal
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Institutional Review Board

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are zero implementation costs and zero savings to state or local units with the implementation of this rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is a zero effect on revenue collections of state or local governmental units with the implementation of this rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are zero estimated costs and/or economic benefits to directly affected persons or nongovernmental groups with the implementation of this rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is a zero estimated effect on competition and employment with the implementation of this rule.

Bobby P. Jindal
Secretary
9602#059

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Insurance Commissioner of Insurance

Regulation 58—Viatical Settlements

Under the authority of Revised Statutes Title 22, Section 3 and 210, the Department of Insurance gives notice that the following proposed regulation, is to become effective May 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. Title 22, Sections 3 and 210 and the Administrative Procedure Act, R.S. Title 49, Section 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:

A. *Person*—any natural or artificial entity including but not limited to individuals, partnerships, associations, trusts, or corporations.

B. *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.

C. *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 policyholder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

D. *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.

E. *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 Department of Insurance (department).

B. The application shall be on a form required by the department and accompanied by a fee of \$1,000.

C. All members, officers, and designated employees of a partnership, corporation or other entity issued a license may act as a viatical settlement provider under the contract.

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.

E. The applicant shall provide such information as required on forms prescribed by the department.

F. A viatical settlement provider may operate pursuant to the provisions in this law pending licensure by the department, but in no case shall a provider be allowed to operate without a license following June 1, 1996.

G. The department shall establish minimum capital requirements in the amount of \$500,000.

H. The department shall have the right to suspend, revoke or refuse to renew the license of any viatical settlement provider as provided by law.

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 the Administrative Procedure Act.

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 department.

B. The application shall be on a form required by the department 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.

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 as a Louisiana life insurance agent, and appointed by a licensed viatical provider.

F. The applicant shall provide such information as required on forms prescribed by the department.

G. A viatical settlement broker may operate pursuant to the provisions in Part V-B of Chapter 1 of Title 22 of the R.S. of 1950 pending licensure by the department, but in no case shall a broker be allowed to operate without a license following June 1, 1996.

H. The department shall have the right to suspend, revoke or refuse to renew the license of any viatical settlement broker as provided by law.

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 the Administrative Procedure Act.

Section 7. Approval of Viatical Settlement Contract

A viatical settlement provider shall not use any viatical settlement contract in this state unless it has been filed with and approved by the department. Failure by the department to approve or disapprove a viatical settlement contract form 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 if, in the department's opinion, the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policyholder. The department shall notify in writing the viatical settlement provider, specifying the reasons for his disapproval of the contract form; and it shall thereafter be unlawful for such viatical settlement provider to issue such form in this state. In such notice, the department 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 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. 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 percent)

At least 6 but less than 12 months (70 percent)

At least 12 but less than 18 months (65 percent)

At least 18 but less than 24 months (60 percent)

The percentage may be reduced by 5 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 department 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 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 department 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 department may permit variance from the minimum percentages set forth if the expected premium to be paid by the viatical settlement provider exceeds 5 percent of the face value of the policy.

Section 10. General Rules

A. 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.

B. Payments of the proceeds pursuant to a viatical settlement shall be made in a lump sum. Retention of a portion of the proceeds pursuant to a viatical settlement shall 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.

C. 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.

D. 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 physical, 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.

E. 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.

F. 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 of the investment.

G. 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 9 a.m., March 28, 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 submit oral or written comments to Denise Cassano, Assistant Director, Louisiana Health Care Commission, Louisiana Department of Insurance, Box 94214, Baton Rouge, LA 70804-9214, telephone (504) 342-0819 or (504) 342-5075. Comments will be accepted through the close of business at 4:30 p.m. on March 28, 1996.

James H. "Jim" Brown
Commissioner of Insurance

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Regulation 58—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 adsorbed 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
9602#068

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Public Safety and Corrections
Board of Private Investigator Examiners**

Continuing Education (LAC 46:LVII.518)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 37:3505B(1), the Department of Public Safety and Corrections, Board of Private Investigators Examiners, hereby gives notice of its intent to amend Part LVII of LAC Title 46, by adding Chapter 5, Section 518 pertaining to continuing education requirements of renewal of licenses of private investigators.

This rule and regulation is an amendment to the initial rules and regulations promulgated by the Board of Private Investigator Examiners.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LVII. Private Investigator Examiners

**Chapter 5. Application, Licensing, Training,
Registration and Fees**

§518. Continuing Education

A. Each licensed private investigator is required to complete a minimum of eight hours of approved investigative educational instruction within the one-year period immediately prior to renewal in order to qualify for a renewal license.

B. Each licensed private investigator is required to complete and return the LSBPIE Continuing Educational Compliance form with the request for license renewal each year. The form shall be signed under penalty of perjury and shall include documentation of each hour of approved investigation educational instruction completed.

C. Any licensee who wishes to apply for an extension of time to complete educational instruction requirements must submit a letter request setting forth reasons for the extension request to the Executive Secretary of the LSBPIE 30 days prior to license renewal. The Training Committee shall rule

on each request. If an extension is granted, the investigator shall be granted 30 days to complete the required hours. Hours completed during a thirty day extension shall only apply to the previous year.

D. These requirements become effective on January 1, 1996; and continuing education forms will be required all 1997 renewals and thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505B(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 22:

Comments should be forwarded to Gary Hyatt, Chairman of the Board, State Board of Private Investigator Examiners, 2051 Silverside Drive, Suite 190, Baton Rouge, LA 70808. Written comments will be accepted through the close of business on March 10, 1996.

Gary Hyatt
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Continuing Education**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The operating expenditures for the Board of Private Investigator Examiners for fiscal year 1995-1996 are estimated to be approximately \$180,000.

It is estimated that costs of \$325 will be incurred in fiscal year 1995-1996 to print and distribute this amended rule and regulation. Minimal costs will also be incurred to print the form required by the rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no estimated effect on revenue collections caused by the the adoption of this rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Licensees will incur costs for the continuing education class.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment as all persons and companies wishing to be licensed will have to comply with these rules and regulations.

Celia R. Cangelosi
Attorney for the Board
9602#001

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Transportation and Development
Weights, Measures and Standards**

Violation Review Committee (LAC 73:I.1101-1117)

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 adopt a rule in accordance with Act 429 of the 1995 Regular Session of the Louisiana Legislature.

Title 73

WEIGHTS, MEASURES AND STANDARDS

Part I. Weights and Standards

Chapter 11. Violation Ticket Review Committee

§1101. Composition of Violation Ticket Review Committee

- A. One representative of the DOTD Maintenance Section.
- B. One representative of the DOTD Legal Section.
- C. One designee of the chief engineer or the chief, Maintenance Division.
- D. The chairman of the committee is the chief, Maintenance Division, or his designee.
- E. The Weights and Standards Enforcement and Vehicle Permits administrator or his designee shall be a nonvoting member.

F. Three of four voting members present are a quorum.

AUTHORITY NOTE: Promulgated in accordance with Act 429 of the 1995 Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Weights, Measures and Standards, LR 22:

§1103. Tickets Subject to Review

A. All tickets recognized to contain mathematical error or obvious legal error; or

B. All tickets formally protested (in writing).

AUTHORITY NOTE: Promulgated in accordance with Act 429 of the 1995 Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Weights, Measures and Standards, LR 22:

§1105. Time Limitations

A. Payment of the fine imposed by a violation ticket is due within 30 days from the date of issuance of the ticket.

B. To receive consideration, a violation ticket must be formally protested within 60 days from the date of issuance of the ticket.

C. The Violation Ticket Review Committee must dispense with tickets within 30 working days from receipt of the request for review.

D. The Weights and Standards Enforcement and Vehicle Permits Administrator must report to the protestor within seven working days from the committee's decision. Said report shall fully inform the protestor of the decision of the committee.

AUTHORITY NOTE: Promulgated in accordance with Act 429 of the 1995 Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Weights, Measures and Standards, LR 22:

§1107. Duties of Weights and Standards Enforcement and Vehicle Permits Administrator

A. Receive and assemble all formally protested violation tickets for review.

B. Investigate the circumstances surrounding all violation tickets formally submitted for review.

C. Communicate with the protestor during the process and after the decision of the committee.

AUTHORITY NOTE: Promulgated in accordance with Act 429 of the 1995 Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Weights, Measures and Standards, LR 22:

§1109. Authorized Action

The Violation Ticket Review Committee is authorized to void or reduce violation tickets, or leave violation tickets intact.

AUTHORITY NOTE: Promulgated in accordance with Act 429 of the 1995 Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Weights, Measures and Standards, LR 22:

§1111. Rights of Protesting Party

A. These rules do not impair the right of the protesting party to sue the department to recover payment of the violation ticket as provided in R.S. 32:389.

B. The protesting party will not be afforded the opportunity to personally appear before the Violation Ticket Review Committee. Only his written statement will be considered.

AUTHORITY NOTE: Promulgated in accordance with Act 429 of the 1995 Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Weights, Measures and Standards, LR 22:

§1113. Prescription

A. The running of prescription for collection of unpaid violation tickets is not interrupted by filing of the protest.

B. The running of prescription for suing the department to recover monies paid for a violation ticket is not interrupted by filing of the protest.

AUTHORITY NOTE: Promulgated in accordance with Act 429 of the 1995 Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Weights, Measures and Standards, LR 22:

§1115. Reconsideration

The decision of the Violation Ticket Review Committee may be reconsidered one time, either upon request of the protestor or upon motion of a member of the Violation Ticket Review Committee. Additional information must be provided at second review.

AUTHORITY NOTE: Promulgated in accordance with Act 429 of the 1995 Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Weights, Measures and Standards, LR 22:

§1117. Record-Keeping

All actions of the Violation Ticket Review Committee shall be recorded on computer and reported to the DOTD Financial Services Section. All records shall be maintained in accordance with the Public Records Law.

AUTHORITY NOTE: Promulgated in accordance with Act 429 of the 1995 Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Weights, Measures and Standards, 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 Major Marshall Linton, Weights and Standards Police, Box 94042, Baton Rouge, LA 70804-9052, (504) 377-7100

Frank M. Denton
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Violation Ticket Review Committee

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no implementation costs or savings for state or local governmental units.
- 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)
Directly affected persons (the trucking industry) will benefit from access to a review process other than the judicial process. There will be no costs for access to this process, and they will save the costs of accessing the legal system.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect on competition or employment.

Frank M. Denton
Secretary
9602#066

Richard W. England
Assistant to the
Legislative Fiscal Officer

Potpourri

POTPOURRI

**Department of Agriculture and Forestry
Office of Agricultural and Environmental Sciences
Horticulture Commission**

Retail Floristry Examination

The next retail floristry examination will be given April 8-12, 1996, at 9:30 a.m. at the 4-H Mini Farm Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending application and fee is March 11, 1996. Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3118, Baton Rouge, LA 70821-3118, telephone (504) 925-7772.

Any individual requesting special accommodations due to a disability should notify our office prior to March 11, 1996. If you have any questions, please call our office at (504) 925-7772.

Bob Odom
Commissioner

9602#013

POTPOURRI

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

Ozone Attainment—Interpretative Notice

Section 107(d)(3)(E) of the Clean Air Act, as amended, provides a statutory means to redesignate an area to attainment. On October 17, 1995, the parishes of Beauregard, Grant, Lafayette, Lafourche and St. Mary were redesignated to ozone attainment with minimal maintenance plans. On November 13, 1995, St. James Parish was redesignated to ozone attainment with a full maintenance plan and on December 3, 1995, the parishes of Jefferson, Orleans, St. Bernard, and St. Charles were redesignated to ozone attainment with a full maintenance plan. The approved redesignation plans specifically state that "existing federal programs, such as the federal vehicle control program and the RVP limit of 7.8 psi for gasoline will not be lifted upon redesignation." Therefore, the summer RVP value for all redesignated parishes remains at 7.8 psi. Questions on the redesignations should be directed to Annette Sharp at (504) 765-0914. Questions on mobile source emissions calculations should be directed to Teri Lanoue at (504) 765-0908.

Gustave Von Bodungen, P. E.
Assistant Secretary

9602#070

POTPOURRI

**Department of Environmental Quality
Office of Legal Affairs and Enforcement
Investigations and Regulation Development Division**

Emergency Response Regulations
(LAC 33:I.Chapter 69)

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, OS18, Emergency Response Regulations. The proposed rule would establish requirements for responding to off-site transportation-related emergency incidents, timely removal of abandoned containers, and creation of emergency response storage facilities. This proposal was published in the August 20, 1995, issue of the *Louisiana Register*.

As a result of comments received and further review by the staff, the department has chosen to withdraw the rule known as OS18. A new rule reflecting many of the public comments and suggestions by the staff will be proposed in the near future. If you have any questions, please call Patsy Deaville at (504) 765-0399.

J. Dale Givens
Secretary

9602#069

POTPOURRI

**Office of the Governor
Office of Community Development**

Consolidated Annual Action Plan FY 1996

As set forth in 24CFR Part 91, the U.S. Department of Housing and Urban Development (HUD) requires state agencies which administer certain HUD programs to incorporate their planning and application requirements into one master plan called the Consolidated Plan. In Louisiana, the four state agencies participating in this consolidated planning process and the HUD funded program administered by each agency include the Division of Administration/Office of Community Development (Small Cities Community Development Block Grant Program), the Louisiana Housing Finance Agency (HOME Investments Partnership Program), and the Department of Health and Hospitals/HIV Program Office (Housing Opportunities for Persons with AIDS Program).

A consolidated plan was prepared which outlined the state's overall housing and community development needs and a strategy for meeting those needs for federal fiscal years 1995-1999 and included a one-year action plan for FY 1995 federal funds received for the four aforementioned HUD programs. An annual update or action plan for the distribution of funds must be prepared and publicized for each of the subsequent four program years.

A proposed FY 1996 Consolidated Annual Action Plan which identifies the proposed method of distribution of FY 1996 funds under the four HUD programs has been prepared and will be available for review beginning February 2, 1996, at the Office of Community Development, State Capitol Annex, 1051 North Third Street, Room 168, Baton Rouge, LA. Copies of the proposed annual action plan will also be available at the Louisiana Housing Finance Agency at 200 Lafayette Street, Suite 300, and the Department of Social Services/Office of Community Services at 333 Laurel Street, Room 802, in Baton Rouge and the Department of Health and Hospitals/HIV Program Office at 1600 Canal Street, Ninth Floor, in New Orleans.

The following presents a summary of the FY 1996 Annual Action Plan.

The state's anticipated federal allocation for the FY 1996 Louisiana Community Development Block Grant Program is approximately \$39,000,000. The Office of Community Development is proposing to establish the following five program areas for the distribution of these funds. (1) Housing-\$2.0 million will be set aside to provide safe and sanitary living conditions through housing rehabilitation or replacement housing for low/moderate income persons. (2) Public Facilities - approximately \$25.6 million will be allocated to improve existing or to construct new water and sewer systems and streets. (3) Economic Development - approximately \$6.4 million will be allocated to provide loans to local governing bodies which will assist a for-profit business and to provide grants to local governing bodies for infrastructure improvements which will assist a for-profit business. (4) Demonstrated Needs - \$2.7 million will be set aside to alleviate critical/urgent needs involving improvements to existing water, sewer, and gas systems. (5) Comprehensive Community Development - \$1 million will be set aside to fund one pilot project which uses a holistic approach to solving some of its economic and social problems.

The Louisiana Housing Finance Agency, as the administrator of the state's HOME Program, expects to receive an allocation of \$12,599,000 in FY 1996 funds. These funds are intended for use in support of the following affordable housing categories: (1) \$1,964,000 (or 15 percent of the HOME allocation) will be set aside for the exclusive use of state designated community housing development organizations in developing or sponsoring rental or home ownership projects. (2) Approximately \$5.2 million will be reserved to provide second mortgage, down payment and closing cost assistance for first time homebuyers. These funds are to be used in combination with state mortgage revenue bonds which provide below market rates for first mortgage financing. (3) Approximately \$4.2 million will be available for primary or secondary financing to for-profit and nonprofit developers of multi-family rental housing in non-HOME entitled areas. The balance of the grant is to be used by the agency in support of the administration of the various HOME supported programs.

Funding allotted to the state under the Emergency Shelter Grants Program is dedicated for the rehabilitation, renovation, or conversion of buildings for use as emergency shelters for

the homeless, for payment of certain operating costs and social services expenses in connection with emergency shelter for the homeless and for homeless prevention services. The Louisiana Department of Social Services, administrative agency for the Emergency Shelter Grants Program, proposes to distribute the State's funding allocation to eligible units of general local government which may make all or part of the grant amounts available to private non-profit organizations for use on eligible activities. Eligible applicants are defined as governmental bodies for all parish jurisdictions and those city jurisdictions with a minimum population of 10,000. The Department of Social Services shall continue use of a geographic allocation formula (based on factors for low income population) to ensure that each region of the state is allotted a specified minimum of Emergency Shelter Grant assistance. Within each region, grant distribution will be conducted through a competitive grant award process. Among other evaluation criteria, this selection process will consider the extent to which proposed activities will address local needs to "complete the development of a comprehensive system of services which will provide a continuum of care to assist homeless persons to achieve independent living."

The Louisiana Department of Health and Hospitals/HIV Program Office proposes to allocate the FY 1996 Housing Opportunities for Persons with AIDS funds through a 70/30 percent funding split. HIV/AIDS residential facilities in eight different regions of the state will be allocated approximately 70 percent of the funds; these funds are for new construction, renovation, rehabilitation, acquisition, conversion, lease and repairs of facilities or purchase of capital equipment. The remaining 30 percent will be allocated through a Request for Proposal through the Ryan White Title II Regional Consortia (this includes the entire state excluding Region I - the New Orleans EMSA). The funds will be used to fund all rent and utilities assistance for low income persons with AIDS within the eight regions.

Written comments on the proposed plan may be submitted beginning February 2, 1996, and ending March 4, 1996, to the Office of Community Development, Box 94095, Baton Rouge, LA 70804-9095.

Mark C. Drennen
Commissioner

9602#071

POTPOURRI

Department of Health and Hospitals Board of Embalmers and Funeral Directors

Embalmer/Funeral Director Examinations

The Board of Embalmers and Funeral Directors will give the National Board Funeral Director and Embalmer/Funeral Director exams on Saturday, March 9, 1996 at Delgado Community College, 615 City Park Ave., New Orleans, LA.

Interested persons may obtain further information from the Board of Embalmers and Funeral Directors, Box 8757, Metairie, LA 70011, (504) 838-5109.

Dawn Scardino
Executive Director

9602#012

POTPOURRI

Department of Natural Resources Office of Conservation

Orphaned Oilfield Sites

Office of Conservation records indicate that the oilfield sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	Well Name	Well Number	Serial Number
Couba Oil Co.	Bayou Couba	Waterford Oil Co C	001	076323
Drew Cornell, Inc.-Agent	Reeves	Industrial Lbr Co SWD	002	044821
Scott Prod. Co., Inc.	Sentell	MPT L SU92; Withrow	001	133494

Ernest A. Burguières
Commissioner

9602#072

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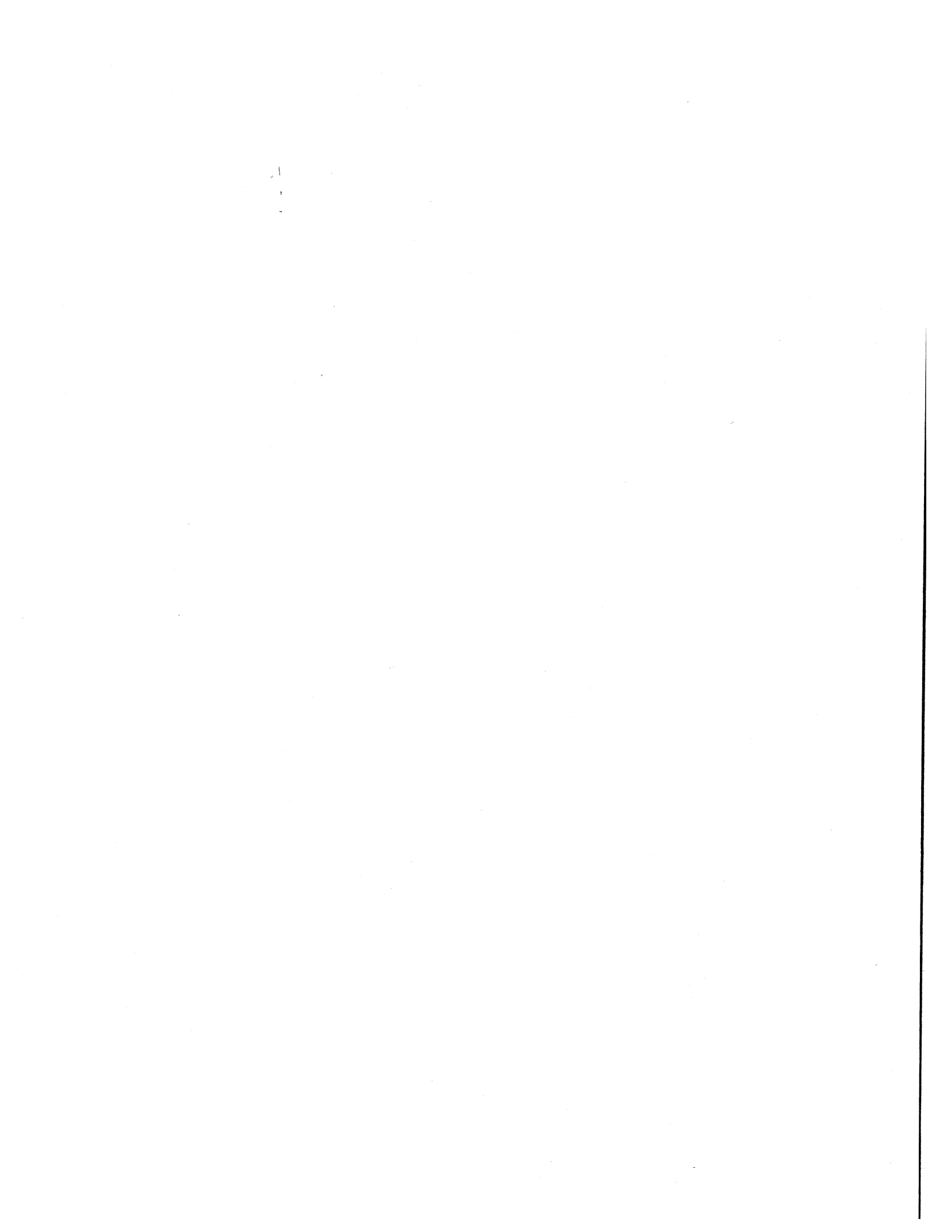
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